

By the Committee on Regulated Industries; and Senators Pruitt, Klein, Peadar, Latvala, Sanderson, Smith, Dawson, Wasserman Schultz, Sullivan and Futch

315-2144-02

1 A bill to be entitled

2 An act relating to funeral and cemetery

3 services; providing a short title; providing

4 for transfer of all records, personnel,

5 property, and unexpended balances of

6 appropriations, allocations, or other funds for

7 the administration of ch. 497, F.S., relating

8 to funeral and cemetery services, from the

9 Department of Banking and Finance to the

10 Department of Business and Professional

11 Regulation; ending the terms of current members

12 of the Board of Funeral Directors and Embalmers

13 and of the Board of Funeral and Cemetery

14 Services; providing for appointment and

15 staggering of terms of members of the new Board

16 of Funeral Directors and Cemeteries; preserving

17 the validity of judicial and administrative

18 proceedings pending at the time of such

19 transfer and the validity of licenses and

20 registrations in effect at the time of such

21 transfer; amending ss. 20.165, 455.2226,

22 470.002, 470.003, 497.005, 497.105, 497.117,

23 497.201, 497.253, F.S.; revising terminology

24 and references, to conform; providing for

25 payment of fees and costs of legal counsel to

26 be paid from the Professional Regulation Trust

27 Fund, to conform; reducing the number of

28 contiguous acres required for a cemetery;

29 providing for application; amending s. 215.321,

30 F.S., relating to the Regulatory Trust Fund, to

31 remove deposit therein of funds received

1 pursuant to ch. 497, F.S.; amending s. 470.017,
2 F.S.; increasing college credit course
3 requirements for registration as a direct
4 disposer; amending s. 470.018, F.S.; increasing
5 continuing education requirements for renewal
6 of registration as a direct disposer; amending
7 s. 470.0295, F.S.; eliminating an exception to
8 the requirement that a licensed funeral
9 director be present during the disinterment and
10 reinterment of human remains; requiring a
11 permit prior to the disinterment of human
12 remains; amending s. 470.0355, F.S.; revising
13 requirements for the identification of human
14 remains; providing rulemaking authority;
15 providing penalties and providing for civil
16 actions; amending s. 497.103, F.S.; requiring
17 the board to establish by rule reasonable times
18 for access to cemeteries; amending s. 497.305,
19 F.S.; prohibiting cemetery companies from
20 restricting cemetery access to authorized
21 installers of monuments and markers during the
22 access times established by board rule;
23 amending s. 497.325, F.S.; clarifying
24 applicability of certain illegal tying
25 arrangements to all entities owning and
26 operating a cemetery; amending s. 497.333,
27 F.S.; requiring each written contract provided
28 to a customer to include a complete description
29 of any grave space to be used for the interment
30 of human remains; repealing s. 497.361(5),
31 F.S., relating to requirements for delivery and

1 deadlines for installation of monuments;
2 amending s. 497.419, F.S.; providing that
3 failure to install a monument within a
4 specified period after interment constitutes
5 breach of contract; authorizing extension of
6 such period by written agreement; amending ss.
7 497.233, 497.429, F.S.; conforming
8 cross-references; creating s. 497.442, F.S.;
9 prohibiting the preneed sale of undeveloped
10 cemetery property prior to the filing of a site
11 plan for board approval; requiring site plans
12 for undeveloped cemetery property to be
13 completed by a professional surveyor and
14 mapper; providing penalties; repealing s.
15 497.101, F.S., relating to the Board of Funeral
16 and Cemetery Services, to conform; repealing s.
17 497.107, F.S., relating to the headquarters of
18 the board, to conform; repealing s. 497.109,
19 F.S., relating to organization and meetings of
20 the board, to conform; requiring death
21 certificates to include the location where the
22 body is buried; providing effective dates.

23

24 Be It Enacted by the Legislature of the State of Florida:

25

26 Section 1. This act may be cited as the "Funeral and
27 Cemetery Services Industry Regulatory Unification Act."

28 Section 2. All of the records, personnel, property,
29 and unexpended balances of appropriations, allocations, or
30 other funds for the administration of chapter 497, Florida
31 Statutes, shall be transferred by a type two transfer as

1 defined in section 20.06(2), Florida Statutes, from the
2 Department of Banking and Finance to the Department of
3 Business and Professional Regulation.

4 Section 3. The transfer of regulatory authority over
5 chapter 497, Florida Statutes, provided by this act shall not
6 affect the validity of any judicial or administrative
7 proceeding pending as of September 30, 2002, and the
8 Department of Business and Professional Regulation shall be
9 substituted for the Department of Banking and Finance as a
10 party in interest.

11 Section 4. Notwithstanding the transfer of regulatory
12 authority over chapter 497, Florida Statutes, provided by this
13 act, all licenses and registrations issued pursuant to chapter
14 497, Florida Statutes, which are valid on September 30, 2001,
15 shall remain in effect subject to the provisions of chapter
16 497, Florida Statutes.

17 Section 5. (1) The terms of all current members of
18 the Board of Funeral Directors and Embalmers and of the Board
19 of Funeral and Cemetery Services shall expire on October 1,
20 2002. Members shall be appointed to the new Board of Funeral
21 Directors and Cemeteries pursuant to section 470.003, Florida
22 Statutes, to terms beginning on October 1, 2002, and staggered
23 as follows, notwithstanding section 470.003(3), Florida
24 Statutes:

25 (a) Three members shall be appointed for terms of 2
26 years each, one of whom must be a funeral director member, one
27 of whom must be a cemetery owner or operator member, and one
28 of whom must be a consumer member.

29 (b) Three members shall be appointed for terms of 3
30 years each, one of whom must be a funeral director member, one
31

1 of whom must be a cemetery owner or operator member, and one
2 of whom must be a consumer member.

3 (c) Three members shall be appointed for terms of 4
4 years each, one of whom must be a funeral director member, one
5 of whom must be a cemetery owner or operator member, and one
6 of whom must be the monument dealer member.

7
8 As the terms of these members expire, the Governor shall
9 appoint their successors for terms of 4 years in accordance
10 with section 470.003(3), Florida Statutes.

11 (2) This section shall take effect upon this act
12 becoming a law.

13 Section 6. Paragraph (a) of subsection (4) of section
14 20.165, Florida Statutes, is amended to read:

15 20.165 Department of Business and Professional
16 Regulation.--There is created a Department of Business and
17 Professional Regulation.

18 (4)(a) The following boards are established within the
19 Division of Professions:

20 1. Board of Architecture and Interior Design, created
21 under part I of chapter 481.

22 2. Florida Board of Auctioneers, created under part VI
23 of chapter 468.

24 3. Barbers' Board, created under chapter 476.

25 4. Florida Building Code Administrators and Inspectors
26 Board, created under part XII of chapter 468.

27 5. Construction Industry Licensing Board, created
28 under part I of chapter 489.

29 6. Board of Cosmetology, created under chapter 477.

30 7. Electrical Contractors' Licensing Board, created
31 under part II of chapter 489.

1 8. Board of Employee Leasing Companies, created under
2 part XI of chapter 468.

3 9. Board of Funeral Directors and Cemeteries
4 ~~Embalmers~~, created under chapter 470.

5 10. Board of Landscape Architecture, created under
6 part II of chapter 481.

7 11. Board of Pilot Commissioners, created under
8 chapter 310.

9 12. Board of Professional Engineers, created under
10 chapter 471.

11 13. Board of Professional Geologists, created under
12 chapter 492.

13 14. Board of Professional Surveyors and Mappers,
14 created under chapter 472.

15 15. Board of Veterinary Medicine, created under
16 chapter 474.

17 Section 7. Section 215.321, Florida Statutes, is
18 amended to read:

19 215.321 Regulatory Trust Fund.--All funds received
20 pursuant to ss. 494.001-494.0077, ~~chapter 497~~, chapter 516,
21 chapter 520, or part I of chapter 559 shall be deposited into
22 the Regulatory Trust Fund.

23 Section 8. Subsection (1) of section 455.2226, Florida
24 Statutes, is amended to read:

25 455.2226 Funeral directors and embalmers; instruction
26 on human immunodeficiency virus and acquired immune deficiency
27 syndrome.--

28 (1) The Board of Funeral Directors and Cemeteries
29 ~~Embalmers~~ shall require each person licensed or certified
30 under chapter 470 to complete a continuing educational course,
31 approved by the board, on human immunodeficiency virus and

1 acquired immune deficiency syndrome as part of biennial
2 relicensure or recertification. The course shall consist of
3 education on the modes of transmission, infection control
4 procedures, clinical management, and prevention of human
5 immunodeficiency virus and acquired immune deficiency
6 syndrome. Such course shall include information on current
7 Florida law on acquired immune deficiency syndrome and its
8 impact on testing, confidentiality of test results, and
9 treatment of patients.

10 Section 9. Subsection (2) of section 470.002, Florida
11 Statutes, is amended to read:

12 470.002 Definitions.--As used in this chapter:

13 (2) "Board" means the Board of Funeral Directors and
14 Cemeteries ~~Embalmers~~.

15 Section 10. Section 470.003, Florida Statutes, is
16 amended to read:

17 470.003 Board of Funeral Directors and Cemeteries
18 ~~Embalmers~~; membership; appointment; terms; headquarters.--

19 (1) The Board of Funeral Directors and Cemeteries
20 ~~Embalmers~~ is created within the Department of Business and
21 Professional Regulation and shall consist of nine ~~seven~~
22 members appointed by the Governor and confirmed by the Senate.

23 (2) Three ~~Five~~ members of the board must be funeral
24 directors licensed under this chapter, ~~no more than two of~~
25 ~~whom may be associated with a cemetery company through~~
26 ~~ownership interests or through employment with a company which~~
27 ~~has an ownership interest in a cemetery.~~ Three members must
28 be owners or operators of a cemetery licensed under chapter
29 497. ~~The remaining~~ Two members must be residents of the state
30 who have never been licensed as funeral directors or embalmers
31 and who are in no way connected with a cemetery, the death

1 care industry, or the practice of embalming, funeral
2 directing, or direct disposition. One member must be a
3 monument dealer affiliated with a monument establishment
4 registered under chapter 497. At least one consumer member of
5 the board must be 60 years of age or older. No licensee on
6 the board may be associated by employment or ownership with a
7 funeral establishment or cemetery which is owned partly or
8 wholly by a person, business, corporation, or other entity
9 which is associated with another licensee on the board.

10 (3) The Governor shall appoint members for terms of 4
11 years, and such members shall serve until their successors are
12 appointed.

13 (4) The board may be contacted through the
14 headquarters of the department in the City of Tallahassee.

15 (5)~~(4)~~ All provisions of chapter 455 and s. 20.165
16 relating to activities of regulatory boards shall apply.

17 Section 11. Paragraph (d) of subsection (2) of section
18 470.017, Florida Statutes, is amended to read:

19 470.017 Registration as a direct disposer.--

20 (2) Any person who desires to be registered as a
21 direct disposer shall file an application with the department
22 on a form furnished by the department. The department shall
23 register each applicant who has remitted a registration fee
24 set by the department, not to exceed \$200; has completed the
25 application form and remitted a nonrefundable application fee
26 set by the department, not to exceed \$50; and meets the
27 following requirements:

28 (d) Has received a passing grade in the following a
29 college credit courses, as provided by rule of the board:
30 course in Florida mortuary law, ethics,
31 microbiology-infectious diseases, thanatology, and accounting.

1 Section 12. Subsection (2) of section 470.018, Florida
2 Statutes, is amended to read:

3 470.018 Renewal of registration of direct disposer.--

4 (2) The department shall adopt rules establishing a
5 procedure for the biennial renewal of registrations. The
6 board shall prescribe by rule continuing education
7 requirements of up to 6 ~~3~~ classroom hours and may by rule
8 establish criteria for accepting alternative nonclassroom
9 continuing education on an hour-for-hour basis, in addition to
10 a board-approved course on communicable diseases that includes
11 the course on human immunodeficiency virus and acquired immune
12 deficiency syndrome required by s. 455.2226, for the renewal
13 of a registration.

14 Section 13. Section 470.0295, Florida Statutes, is
15 amended to read:

16 470.0295 Disinterment; transportation; authorization
17 and notification.--

18 (1) The disinterment and reinterment of human remains
19 shall require the physical presence of a licensed funeral
20 director, ~~unless the reinterment is to be made in the same~~
21 ~~cemetery.~~

22 (2) In order to ensure that any disinterment or
23 transportation of a dead human body is conducted in a manner
24 that properly protects the public health, safety, and welfare,
25 the board may adopt rules to regulate the disinterment and
26 transportation of human remains.

27 (3)(a) The funeral director shall obtain written
28 authorization from a legally authorized person or a court of
29 competent jurisdiction and must obtain a disinterment permit
30 from the local registrar of vital statistics prior to the
31 disinterment and reinterment of a dead human body.

1 (b) The department in consultation with the Department
2 of Health, shall adopt rules governing the issuance of
3 disinterment permits.

4 (c) Any person who violates this subsection is guilty
5 of a misdemeanor of the first degree, punishable as provided
6 in s. 775.082 or s. 775.083.

7 (4) Notification must be provided to the board and
8 department as provided in s. 470.029.

9 (5) The removal of human remains from a designated
10 temporary storage area to a place of permanent burial within a
11 cemetery shall not be considered a disinterment or
12 reinterment.

13 Section 14. Section 470.0355, Florida Statutes, is
14 amended to read:

15 470.0355 Identification of human remains.--

16 (1) The licensee or registrant in charge of the final
17 disposition of dead human remains shall, prior to final
18 disposition of such dead human remains, affix on the ankle or
19 wrist of the deceased, and affix on or otherwise attach to ~~or~~
20 ~~in~~ the casket and outer burial container or any alternative
21 container or cremation container, proper identification of the
22 dead human remains. The identification or tag shall be
23 encased in or consist of durable and long-lasting material
24 containing the name, date of birth, and date of death, ~~and~~
25 ~~social security number~~ of the deceased, if available. If the
26 dead human remains are cremated, proper identification shall
27 be placed in the container or urn containing the remains.

28 (2) Any licensee or registrant responsible for removal
29 of dead human remains to any establishment, facility, or
30 location shall ensure that the remains are identified by a tag
31 or other means of identification that is affixed to the ankle

1 or wrist of the deceased at the time the remains are removed
2 from the place of death or other location. The tag or other
3 identification shall not be removed from the human remains,
4 except to relocate the tag or other identification from the
5 ankle to the wrist or from the wrist to the ankle. The tag or
6 other identification must accompany the remains until final
7 disposition. When cremation is the final disposition, the tag
8 or other identification may be removed just prior to cremation
9 and in that event shall be maintained within the permanent
10 file.

11 (3) Any licensee or registrant may rely on the
12 representation of a legally authorized person to establish the
13 identity of dead human remains.

14 (4) The board shall adopt rules pursuant to ss.
15 120.536(1) and 120.54 necessary to implement the requirements
16 and operating procedures for the identification of human
17 remains set forth in this section.

18 (5) The department may file an action for civil
19 penalties of \$10,000 against any person who violates this
20 section or any rule adopted hereunder. A licensee is entitled
21 to a hearing pursuant to chapter 120 to contest the penalty.

22 (6) In addition to any other remedies provided under
23 law, a party who is injured by a violation of this part may
24 file a civil action for recovery of actual and punitive
25 damages, including costs and attorney's fees. This part does
26 not limit any right or remedy provided under law.

27 (7) A person who violates this section commits a
28 felony of the third degree, punishable as provided in s.
29 775.082 or s. 775.083.

30 Section 15. Subsections (4) and (16) of section
31 497.005, Florida Statutes, are amended to read:

1 497.005 Definitions.--As used in this chapter:

2 (4) "Board" means the Board of Funeral Directors and
3 Cemeteries created under s. 470.003 Cemetery Services.

4 (16) "Department" means the Department of Business and
5 Professional Regulation ~~Banking and Finance.~~

6 Section 16. Subsection (3) of section 497.103, Florida
7 Statutes, is amended to read:

8 497.103 Rulemaking authority of board and
9 department.--

10 (3) The board shall adopt and enforce rules governing
11 the operation of cemeteries in this state and arrange for the
12 preparation, publication, and dissemination to the public of
13 these rules and other information and material relevant to the
14 operation of cemeteries. Such rules shall include
15 establishing reasonable times for access to all cemeteries,
16 including the time of day and days of the week for access to
17 install monuments and markers.

18 Section 17. Section 497.105, Florida Statutes, is
19 amended to read:

20 497.105 ~~Department of Banking and Finance~~ Powers and
21 duties of department.--The department ~~of Banking and Finance~~
22 shall:

23 (1) Adopt rules establishing procedures for the
24 renewal of licenses, registrations, and certificates of
25 authority.

26 (2) Appoint the executive director of the board ~~of~~
27 ~~Funeral and Cemetery Services~~, subject to the approval of the
28 board.

29 (3) With the advice of the board, submit a biennial
30 budget to the Legislature at a time and in the manner provided
31 by law.

1 (4) Develop a training program for persons newly
2 appointed to membership on the board. The program shall
3 familiarize such persons with the substantive and procedural
4 laws and rules which relate to the regulation under this
5 chapter and with the structure of the department.

6 (5) Adopt rules pursuant to ss. 120.536(1) and 120.54
7 to implement the provisions of this chapter conferring duties
8 upon it.

9 (6) Establish by rule procedures by which the
10 department shall use the expert or technical advice of the
11 board, for the purposes of investigation, inspection, audit,
12 evaluation of applications, other duties of the department, or
13 any other areas the department may deem appropriate.

14 (7) Require all proceedings of the board or panels
15 thereof within the department and all formal or informal
16 proceedings conducted by the department, an administrative law
17 judge, or a hearing officer with respect to licensing,
18 registration, certification, or discipline to be
19 electronically recorded in a manner sufficient to ensure the
20 accurate transcription of all matters so recorded.

21 (8) Select only those investigators approved by the
22 board. Such investigators shall report to and work in
23 coordination with the executive director of the board and are
24 responsible for all inspections and investigations other than
25 financial examinations.

26 Section 18. Section 497.117, Florida Statutes, is
27 amended to read:

28 497.117 Legal and investigative services.--

29 (1) The Department of Legal Affairs shall provide
30 legal services to the board ~~within the Department of Banking~~
31 ~~and Finance~~, but the primary responsibility of the Department

1 of Legal Affairs shall be to represent the interests of the
2 citizens of the state by vigorously counseling the board with
3 respect to its obligations under the laws of the state.
4 Subject to the prior approval of the Attorney General, the
5 board may retain independent legal counsel to provide legal
6 advice to the board on a specific matter. Fees and costs of
7 such counsel shall be paid from the Professional Regulation
8 ~~Regulatory~~ Trust Fund of the department ~~of Banking and~~
9 ~~Finance~~.

10 (2) The Department of Business and Professional
11 Regulation ~~Banking and Finance~~ may employ or utilize the legal
12 services of outside counsel and the investigative services of
13 outside personnel. However, no attorney employed or utilized
14 by the department shall prosecute a matter or provide legal
15 services to the board with respect to the same matter.

16 Section 19. Subsections (2) and (3) of section
17 497.201, Florida Statutes, are amended to read:

18 497.201 Cemetery companies; license; application;
19 fee.--

20 (2) The department may require any person desiring to
21 establish a cemetery company who applies for a license to
22 provide any information reasonably necessary to make a
23 determination of the applicant's eligibility for licensure.
24 Any person desiring to establish a cemetery company shall
25 first:

26 (a) File an application, which states the exact
27 location of the proposed cemetery, which site shall contain
28 not less than 15 ~~30~~ contiguous acres; provide a financial
29 statement signed by all officers of the company which attest
30 to a net worth of at least \$50,000, which net worth must be
31

1 continuously maintained as a condition of licensure; and pay
2 an application fee of \$5,000;

3 (b) Create a legal entity; and

4 (c) Demonstrate to the satisfaction of the board that
5 the applicant possesses the ability, experience, financial
6 stability, and integrity to operate a cemetery.

7 (3) If the board finds that the applicant meets the
8 criteria established in subsection (2), the department shall
9 notify the applicant that a license will be issued when:

10 (a) The establishment of a care and maintenance trust
11 fund containing not less than \$50,000 has been certified by a
12 trust company operating pursuant to chapter 660, a state or
13 national bank holding trust powers, or a savings and loan
14 association holding trust powers as provided in s. 497.423.

15 (b) The applicant has filed with the department
16 development plans which are sufficient to ensure the
17 department that the cemetery will provide adequate service to
18 the community and which have been approved by the appropriate
19 local governmental agency regulating zoning in the area of the
20 proposed cemetery.

21 (c) The applicant holds an unencumbered fee simple
22 title to at least 30 contiguous acres of land.

23 (d) The applicant has designated as general manager a
24 person who has integrity, 3 years of cemetery management
25 experience as defined by board rule, and the ability to
26 operate a cemetery.

27 (e) The applicant has fully developed not less than 2
28 acres for use as burial space, such development to include a
29 paved road from a public roadway to the developed section.

30
31

1 (f) The applicant has recorded, in the public records
2 of the county in which the land is located, a notice which
3 contains the following language:

4
5 NOTICE

6
7 The property described herein shall not be sold, conveyed,
8 leased, mortgaged, or encumbered without the prior written
9 approval of the Department of Business and Professional
10 Regulation ~~Banking and Finance~~, as provided in the Florida
11 Funeral and Cemetery Services Act.

12
13 Such notice shall be clearly printed in boldfaced type of not
14 less than 10 points and may be included on the face of the
15 deed of conveyance to the licensee or may be contained in a
16 separate recorded instrument which contains a description of
17 the property.

18 Section 20. Paragraph (x) of subsection (1) of section
19 497.233, Florida Statutes, is amended to read:

20 497.233 Disciplinary proceedings.--

21 (1) The following acts constitute grounds for which
22 the disciplinary actions in subsection (2) may be taken:

23 (x) Sale of an irrevocable preneed contract to a
24 person who is not an applicant for or recipient of
25 Supplemental Security Income, Aid to Families with Dependent
26 Children, or Medicaid pursuant to s. 497.419(8)~~(7)~~.

27 Section 21. Section 497.253, Florida Statutes, is
28 amended to read:

29 497.253 Minimum acreage; sale or disposition of
30 cemetery lands.--

1 (1) Each licensee shall set aside a minimum of 15 ~~30~~
2 contiguous acres of land for use by the licensee as a cemetery
3 and shall not sell, mortgage, lease, or encumber that property
4 without prior written approval of the department.

5 (2) Any lands owned by a licensee and dedicated for
6 use by it as a cemetery, which are contiguous, adjoining, or
7 adjacent to the minimum of 15 ~~30~~ contiguous acres described in
8 subsection (1), may be sold, conveyed, or disposed of by the
9 licensee, after obtaining written approval of the department
10 pursuant to subsection (3), for use by the new owner for other
11 purposes than as a cemetery. All of the human remains which
12 have been previously interred therein shall first have been
13 removed from the lands proposed to be sold, conveyed, or
14 disposed of; however, the provisions of ss. 470.0295 and
15 497.515(7) must be complied with prior to any disinterment of
16 human remains. Any and all titles, interests, or burial rights
17 which may have been sold or contracted to be sold in lands
18 which are the subject of the sale shall be conveyed to and
19 revested in the licensee prior to consummation of any such
20 sale, conveyance, or disposition.

21 (3)(a) If the property to be sold, conveyed, or
22 disposed of under subsection (2) has been or is being used for
23 the permanent interment of human remains, the applicant for
24 approval of such sale, conveyance, or disposition shall cause
25 to be published, at least once a week for 4 consecutive weeks,
26 a notice meeting the standards of publication set forth in s.
27 125.66(4)(b)2. The notice shall describe the property in
28 question and the proposed noncemetery use and shall advise
29 substantially affected persons that they may file a written
30 request for a hearing pursuant to chapter 120, within 14 days
31 after the date of last publication of the notice, with the

1 department if they object to granting the applicant's request
2 to sell, convey, or dispose of the subject property for
3 noncemetery uses.

4 (b) If the property in question has never been used
5 for the permanent interment of human remains, no notice or
6 hearing is required.

7 (c) If the property in question has been used for the
8 permanent interment of human remains, the department shall
9 approve the application, in writing, if it finds that it would
10 not be contrary to the public interest. In determining whether
11 to approve the application, the department shall consider any
12 evidence presented concerning the following:

13 1. The historical significance of the subject
14 property, if any.

15 2. The archaeological significance of the subject
16 property, if any.

17 3. The public purpose, if any, to be served by the
18 proposed use of the subject property.

19 4. The impact of the proposed change in use of the
20 subject property upon the reasonable expectations of the
21 families of the deceased regarding whether the cemetery
22 property was to remain as a cemetery in perpetuity.

23 5. Whether any living relatives of the deceased
24 actively oppose the relocation of their deceased's remains and
25 the conversion of the subject property to noncemetery uses.

26 6. The elapsed time since the last interment in the
27 subject property.

28 7. Any other factor enumerated in this chapter that
29 the department considers relevant to the public interest.

30 (d) Any deed, mortgage, or other conveyance by a
31 cemetery company or other owner pursuant to paragraphs

1 ~~subsections~~ (a) and (c) above must contain a disclosure in the
2 following or substantially similar form:

3
4 NOTICE: The property described herein was formerly used and
5 dedicated as a cemetery. Conveyance of this property and its
6 use for noncemetery purposes was authorized by the Florida
7 Department of Business and Professional Regulation ~~Banking and~~
8 ~~Finance~~ by Order No., dated

9
10 (e) The department shall adopt such rules as are
11 necessary to carry out the provisions of this section.

12 (4) A licensee may convey and transfer to a
13 municipality or county its real and personal property,
14 together with moneys deposited in trust funds pursuant to this
15 chapter, provided the municipality or county will accept
16 responsibility for maintenance thereof and prior written
17 approval of the department is obtained.

18 (5) The provisions of subsections (1) and (2) relating
19 to a requirement for minimum acreage do ~~shall~~ not apply to any
20 cemetery company licensed by the department on or before July
21 1, 2002 ~~2001~~, which owns a total of less than 30 acres of
22 land; however, no cemetery company shall dispose of any land
23 without the prior written consent of the department.

24 Section 22. Subsection (3) of section 497.305, Florida
25 Statutes, is amended to read:

26 497.305 Cemetery companies; authorized functions.--

27 (3) A cemetery company may adopt bylaws establishing
28 minimum standards for burial merchandise or the installation
29 thereof. However, a cemetery company may not restrict access
30 to any cemetery by any person needing access to install a
31 monument or marker on behalf of a registered monument

1 establishment, provided such access is within the reasonable
2 times for access established by the board by rule.

3 Section 23. Subsection (2) of section 497.325, Florida
4 Statutes, is amended to read:

5 497.325 Illegal tying arrangements.--

6 (2)(a) Noncemetery licensed persons and firms shall
7 have the right to sell monuments and to perform or provide on
8 cemetery property foundation, preparation, and installation
9 services for monuments. However, a cemetery company or any
10 other entity owning and operating a cemetery may establish
11 reasonable rules regarding the style and size of a monument or
12 its foundation, provided such rules are applicable to all
13 monuments from whatever source obtained and are enforced
14 uniformly as to all monuments. Such rules shall be
15 conspicuously posted and readily accessible to inspection and
16 copy by interested persons.

17 (b) No person who is authorized to sell grave space
18 and no cemetery company or other entity owning and operating a
19 cemetery may:

20 1. Require the payment of a setting or service charge,
21 by whatever name known, from third party installers for the
22 placement of a monument;

23 2. Refuse to provide care or maintenance for any
24 portion of a gravesite on which a monument has been placed; or

25 3. Waive liability with respect to damage caused by
26 cemetery employees or agents to a monument after installation,

27
28 where the monument or installation service is not purchased
29 from the person authorized to sell grave space or the cemetery
30 company or other legal entity providing grave space or from or
31 through any other person or corporation designated by the

1 person authorized to sell grave space or the cemetery company
2 or other legal entity providing grave space. No cemetery
3 company or other entity owning and operating a cemetery may be
4 held liable for the improper installation of a monument where
5 the monument is not installed by the cemetery company or its
6 agents or by such other entity or its agents.

7 Section 24. Subsection (6) of section 497.333, Florida
8 Statutes, is amended to read:

9 497.333 Disclosure of information to public.--A
10 licensee offering to provide burial rights, merchandise, or
11 services to the public shall:

12 (6) Provide to the customer, upon the purchase of any
13 burial right, merchandise, or service, a written contract, the
14 form of which has been approved by the board.

15 (a) The written contract shall be completed as to all
16 essential provisions prior to the signing of the contract by
17 the customer.

18 (b) The written contract shall provide an itemization
19 of the amounts charged for all services, merchandise, and
20 fees, which itemization shall be clearly and conspicuously
21 segregated from everything else on the written contract.

22 (c) A description of the merchandise covered by the
23 contract to include, when applicable, model, manufacturer, and
24 other relevant specifications.

25 (d) A complete description of any grave space to be
26 used for the interment of human remains.

27 Section 25. Subsection (5) of section 497.361, Florida
28 Statutes, is repealed:

29 497.361 Registration of monument establishments.--

30 ~~(5) Monuments shall be delivered as established by~~
31 ~~this chapter and installed no later than 120 days after the~~

1 ~~date of sale. The establishment may request two 30-day~~
2 ~~extensions. Extensions may be granted by the executive~~
3 ~~director.~~

4 Section 26. Present subsections (6) through (10) of
5 section 497.419, Florida Statutes, are renumbered as
6 subsections (7) through (11), respectively, and a new
7 subsection (6) is added to that section to read:

8 497.419 Cancellation of, or default on, preneed
9 contracts.--

10 (6) Failure to install a monument within 180 days
11 after interment shall be considered a breach of contract
12 unless the certificateholder has a written agreement to extend
13 the installation date. The purchaser shall be entitled to a
14 refund of all money paid for the merchandise. Such refund
15 shall be made within 30 days after receipt by the
16 certificateholder of the contract purchaser's written request
17 for a refund. Nothing in this subsection shall preclude the
18 purchase and installation of a new monument from any other
19 registered monument dealer.

20 Section 27. Subsection (9) of section 497.429, Florida
21 Statutes, is amended to read:

22 497.429 Alternative preneed contracts.--

23 (9) The contract may provide that the
24 certificateholder may cancel the contract, but only in the
25 event that the purchaser is more than 90 days in default of
26 the terms of the contract; and, unless subject to the
27 provisions of s. 497.419(7)(6), must provide that the
28 purchaser, or her or his representative, has the right, at any
29 time prior to the performance of the contract, to cancel the
30 preneed contract and re-vest title to all the funds paid on the
31 preneed contract, except for applicable liquidated damages,

1 and the certificateholder's rights in the net income of the
2 trust.

3 Section 28. Section 497.442, Florida Statutes, is
4 created to read:

5 497.442 Preneed sale of undeveloped cemetery
6 property.--The preneed sale of undeveloped cemetery property
7 prior to the filing of a site plan for board approval is
8 prohibited. Each site plan for undeveloped cemetery property
9 submitted to the board for approval must be completed by a
10 professional surveyor and mapper licensed under chapter 472.

11 Section 29. Sections 497.101, 497.107, and 497.109,
12 Florida Statutes, are repealed.

13 Section 30. Within 10 days after the interment of a
14 body in this state, the funeral director handling the
15 interment shall file with the local registrar an addendum to
16 the death certificate which provides the address of the
17 cemetery and specific location within the cemetery where the
18 body is buried.

19 Section 31. Except as otherwise provided in this act,
20 this act shall take effect October 1, 2002.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2238

4 Amends s. 470.0295, F.S., to requires that, in addition to
5 existing requirements, a funeral director obtain a
6 disinterment permit from the local registrar of vital
7 statistics prior to the disinterment and reinterment of a dead
8 human body. Requires DBPR, in consultation with the Department
9 of Health, to adopt rules governing the issuance of
10 disinterment permits. Provides that any person who violates s.
11 470.0295, F.S., regarding authorization and notification for
12 disinterment and transportation, commits a first-degree
13 misdemeanor.

14 Adds subsections (5) through (7) to s. 470.0355, F.S.,
15 regarding the identification of human remains, to provide:

16 -(5) DBPR may file an action for civil penalties of \$10,000
17 against any person who violates this section or any rule
18 adopted hereunder. Provides that a licensee is entitled to a
19 hearing under ch. 120, F.S., to contest the penalty.

20 -(6) A party injured by a violation of this part may file a
21 civil suit for damages, costs, and fees, in addition to any
22 other remedy provided under law.

23 -(7) A person who violates this section commits a third-degree
24 felony.

25 Amends s. 497.201, F.S., to require that an applicant for a
26 license to operate a cemetery have a minimum of 15 contiguous
27 acres for the proposed cemetery. Amends s. 497.253, to make
28 conforming amendment regarding minimum acreage requirements
29 and provides that minimum acreage requirements do not apply to
30 any cemetery company licensed before July 1, 2002, which owns
31 less than 30 acres of land.

Creates an unnumbered section, which provides that within 10
days after interment of a body in this state, the funeral
director handling the interment must file with the local
registrar an addendum to the death certificate providing the
address of the cemetery and the specific location within the
cemetery where the body is buried.