

By Representative Bennett

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,
 15 qualifications, and staggering of terms of
 16 members of the new Board of Funeral Directors
 17 and Cemeteries; preserving the validity of
 18 judicial and administrative proceedings pending
 19 at the time of such transfer and the validity
 20 of licenses and registrations in effect at the
 21 time of such transfer; amending ss. 20.165,
 22 455.2226, 470.002, 497.005, and 497.105, F.S.;
 23 revising terminology and references, to
 24 conform; amending s. 215.321, F.S., relating to
 25 the Regulatory Trust Fund, to remove deposit
 26 therein of funds received pursuant to ch. 497,
 27 F.S.; amending s. 470.003, F.S.; revising board
 28 membership and qualifications; providing for
 29 board headquarters; revising terminology, to
 30 conform; amending s. 470.017, F.S.; increasing
 31 college credit course requirements for

1 registration as a direct disposer; amending s.
2 470.018, F.S.; increasing continuing education
3 requirements for renewal of registration as a
4 direct disposer; amending s. 470.0295, F.S.;
5 eliminating an exception to the requirement
6 that a licensed funeral director be present
7 during the disinterment and reinterment of
8 human remains; requiring a permit prior to the
9 disinterment of human remains; providing
10 rulemaking authority; providing a penalty;
11 amending s. 470.0355, F.S.; revising
12 requirements for the identification of human
13 remains; providing rulemaking authority;
14 providing administrative fines and penalties;
15 providing for recovery of actual and punitive
16 damages; amending s. 497.103, F.S.; requiring
17 the board to establish by rule reasonable times
18 for access to cemeteries; amending s. 497.117,
19 F.S.; providing for payment of fees and costs
20 of legal counsel to be paid from the
21 Professional Regulation Trust Fund, to conform;
22 revising terminology, to conform; amending ss.
23 497.201 and 497.253, F.S.; reducing the number
24 of contiguous acres required for a cemetery;
25 exempting certain cemeteries; revising
26 terminology, to conform; amending s. 497.305,
27 F.S.; prohibiting cemetery companies from
28 restricting cemetery access to authorized
29 installers of monuments and markers during the
30 access times established by board rule;
31 amending s. 497.325, F.S.; clarifying

1 applicability of certain illegal tying
2 arrangements to all entities owning and
3 operating a cemetery; amending s. 497.333,
4 F.S.; requiring each written contract provided
5 to a customer to include a complete description
6 of any grave space to be used for the interment
7 of human remains; repealing s. 497.361(5),
8 F.S., relating to requirements for delivery and
9 deadlines for installation of monuments;
10 amending s. 497.419, F.S.; providing that
11 failure to install a monument within a
12 specified period after interment constitutes
13 breach of contract; authorizing extension of
14 such period by written agreement; amending ss.
15 497.233 and 497.429, F.S.; conforming cross
16 references; creating s. 497.442, F.S.;
17 prohibiting the preneed sale of undeveloped
18 cemetery property prior to the filing of a site
19 plan for board approval; requiring site plans
20 for undeveloped cemetery property to be
21 completed by a professional surveyor and
22 mapper; providing penalties; repealing s.
23 497.101, F.S., relating to the Board of Funeral
24 and Cemetery Services, to conform; repealing s.
25 497.107, F.S., relating to the headquarters of
26 the board, to conform; repealing s. 497.109,
27 F.S., relating to organization and meetings of
28 the board, to conform; requiring death
29 certificates to include the location where the
30 body is buried; providing effective dates.
31

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

2

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

5 Section 2. All of the records, personnel, property,
6 and unexpended balances of appropriations, allocations, or
7 other funds for the administration of chapter 497, Florida
8 Statutes, shall be transferred by a type two transfer as
9 defined in s. 20.06(2), Florida Statutes, from the Department
10 of Banking and Finance to the Department of Business and
11 Professional Regulation.

12 Section 3. The transfer of regulatory authority over
13 chapter 497, Florida Statutes, provided by this act shall not
14 affect the validity of any judicial or administrative
15 proceeding pending as of September 30, 2002, and the
16 Department of Business and Professional Regulation shall be
17 substituted for the Department of Banking and Finance as a
18 party in interest.

19 Section 4. Notwithstanding the transfer of regulatory
20 authority over chapter 497, Florida Statutes, provided by this
21 act, all licenses and registrations issued pursuant to chapter
22 497, Florida Statutes, which are valid on September 30, 2001,
23 shall remain in effect subject to the provisions of chapter
24 497, Florida Statutes.

25 Section 5. (1) The terms of all current members of
26 the Board of Funeral Directors and Embalmers and of the Board
27 of Funeral and Cemetery Services shall expire on October 1,
28 2002. Members shall be appointed to the new Board of Funeral
29 Directors and Cemeteries pursuant to s. 470.003, Florida
30 Statutes, to terms beginning on October 1, 2002, and staggered
31 as follows, notwithstanding s. 470.003(3), Florida Statutes:

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

5 (b) Three members shall be appointed for terms of 3
6 years each, one of whom must be a funeral director member, one
7 of whom must be a cemetery owner or operator member, and one
8 of whom must be a consumer member.

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

13
14 As the terms of these members expire, the Governor shall
15 appoint their successors for terms of 4 years in accordance
16 with s. 470.003(3), Florida Statutes.

17 (2) This section shall take effect upon this act
18 becoming a law.

19 Section 6. Paragraph (a) of subsection (4) of section
20 20.165, Florida Statutes, is amended to read:

21 20.165 Department of Business and Professional
22 Regulation.--There is created a Department of Business and
23 Professional Regulation.

24 (4)(a) The following boards are established within the
25 Division of Professions:

26 1. Board of Architecture and Interior Design, created
27 under part I of chapter 481.

28 2. Florida Board of Auctioneers, created under part VI
29 of chapter 468.

30 3. Barbers' Board, created under chapter 476.
31

- 1 4. Florida Building Code Administrators and Inspectors
- 2 Board, created under part XII of chapter 468.
- 3 5. Construction Industry Licensing Board, created
- 4 under part I of chapter 489.
- 5 6. Board of Cosmetology, created under chapter 477.
- 6 7. Electrical Contractors' Licensing Board, created
- 7 under part II of chapter 489.
- 8 8. Board of Employee Leasing Companies, created under
- 9 part XI of chapter 468.
- 10 9. Board of Funeral Directors and Cemeteries
- 11 ~~Embalmers~~, created under chapter 470.
- 12 10. Board of Landscape Architecture, created under
- 13 part II of chapter 481.
- 14 11. Board of Pilot Commissioners, created under
- 15 chapter 310.
- 16 12. Board of Professional Engineers, created under
- 17 chapter 471.
- 18 13. Board of Professional Geologists, created under
- 19 chapter 492.
- 20 14. Board of Professional Surveyors and Mappers,
- 21 created under chapter 472.
- 22 15. Board of Veterinary Medicine, created under
- 23 chapter 474.
- 24 Section 7. Section 215.321, Florida Statutes, is
- 25 amended to read:
- 26 215.321 Regulatory Trust Fund.--All funds received
- 27 pursuant to ss. 494.001-494.0077, ~~chapter 497~~, chapter 516,
- 28 chapter 520, or part I of chapter 559 shall be deposited into
- 29 the Regulatory Trust Fund.
- 30 Section 8. Subsection (1) of section 455.2226, Florida
- 31 Statutes, is amended to read:

1 455.2226 Funeral directors and embalmers; instruction
2 on human immunodeficiency virus and acquired immune deficiency
3 syndrome.--

4 (1) The Board of Funeral Directors and Cemeteries
5 ~~Embalmers~~ shall require each person licensed or certified
6 under chapter 470 to complete a continuing educational course,
7 approved by the board, on human immunodeficiency virus and
8 acquired immune deficiency syndrome as part of biennial
9 relicensure or recertification. The course shall consist of
10 education on the modes of transmission, infection control
11 procedures, clinical management, and prevention of human
12 immunodeficiency virus and acquired immune deficiency
13 syndrome. Such course shall include information on current
14 Florida law on acquired immune deficiency syndrome and its
15 impact on testing, confidentiality of test results, and
16 treatment of patients.

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

19 470.002 Definitions.--As used in this chapter:

20 (2) "Board" means the Board of Funeral Directors and
21 Cemeteries ~~Embalmers~~.

22 Section 10. Section 470.003, Florida Statutes, is
23 amended to read:

24 470.003 Board of Funeral Directors and Cemeteries
25 ~~Embalmers~~; membership; appointment; terms; headquarters.--

26 (1) The Board of Funeral Directors and Cemeteries
27 ~~Embalmers~~ is created within the Department of Business and
28 Professional Regulation and shall consist of nine ~~seven~~
29 members appointed by the Governor and confirmed by the Senate.

30 (2) Three ~~Five~~ members of the board must be funeral
31 directors licensed under this chapter, ~~no more than two of~~

1 ~~whom may be associated with a cemetery company through~~
2 ~~ownership interests or through employment with a company which~~
3 ~~has an ownership interest in a cemetery.~~ Three members must
4 be owners or operators of a cemetery licensed under chapter
5 497. ~~The remaining~~ Two members must be residents of the state
6 who have never been licensed as funeral directors or embalmers
7 and who are in no way connected with a cemetery, the death
8 care industry, or the practice of embalming, funeral
9 directing, or direct disposition. One member must be a
10 monument dealer affiliated with a monument establishment
11 registered under chapter 497. At least one consumer member of
12 the board must be 60 years of age or older. No licensee on
13 the board may be associated by employment or ownership with a
14 funeral establishment or cemetery which is owned partly or
15 wholly by a person, business, corporation, or other entity
16 which is associated with another licensee on the board.

17 (3) The Governor shall appoint members for terms of 4
18 years, and such members shall serve until their successors are
19 appointed.

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

22 ~~(5)(4)~~ All provisions of chapter 455 and s. 20.165
23 relating to activities of regulatory boards shall apply.

24 Section 11. Paragraph (d) of subsection (2) of section
25 470.017, Florida Statutes, is amended to read:

26 470.017 Registration as a direct disposer.--

27 (2) Any person who desires to be registered as a
28 direct disposer shall file an application with the department
29 on a form furnished by the department. The department shall
30 register each applicant who has remitted a registration fee
31 set by the department, not to exceed \$200; has completed the

1 application form and remitted a nonrefundable application fee
2 set by the department, not to exceed \$50; and meets the
3 following requirements:

4 (d) Has received a passing grade in the following ~~a~~
5 college credit courses, as provided by rule of the board:
6 ~~course in Florida mortuary law, ethics,~~
7 microbiology/infectious diseases, thanatology, and accounting.

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

10 470.018 Renewal of registration of direct disposer.--

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

21 Section 13. Section 470.0295, Florida Statutes, is
22 amended to read:

23 470.0295 Disinterment; transportation; authorization
24 and notification.--

25 (1) The disinterment and reinterment of human remains
26 shall require the physical presence of a licensed funeral
27 director, ~~unless the reinterment is to be made in the same~~
28 ~~cemetery.~~

29 (2) In order to ensure that any disinterment or
30 transportation of a dead human body is conducted in a manner
31 that properly protects the public health, safety, and welfare,

1 the board may adopt rules to regulate the disinterment and
2 transportation of human remains.

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

8 (b) The department, in consultation with the
9 Department of Health, shall adopt rules governing the issuance
10 of disinterment permits.

11 (c) Any person who violates this subsection commits a
12 misdemeanor of the first degree, punishable as provided in s.
13 775.082 or s. 775.083.

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

16 (5) The removal of human remains from a designated
17 temporary storage area to a place of permanent burial within a
18 cemetery shall not be considered a disinterment or
19 reinterment.

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

22 470.0355 Identification of human remains.--

23 (1) The licensee or registrant in charge of the final
24 disposition of dead human remains shall, prior to final
25 disposition of such dead human remains, affix on the ankle or
26 wrist of the deceased, and affix on or otherwise attach to ~~or~~
27 ~~in~~ the casket and outer burial container or any alternative
28 container or cremation container, proper identification of the
29 dead human remains. The identification or tag shall be encased
30 in or consist of durable and long-lasting material containing
31 the name, date of birth, and date of death, ~~and social~~

1 ~~security number~~ of the deceased, if available. If the dead
2 human remains are cremated, proper identification shall be
3 placed in the container or urn containing the remains.

4 (2) Any licensee or registrant responsible for removal
5 of dead human remains to any establishment, facility, or
6 location shall ensure that the remains are identified by a tag
7 or other means of identification that is affixed to the ankle
8 or wrist of the deceased at the time the remains are removed
9 from the place of death or other location. The tag or other
10 identification shall not be removed from the human remains,
11 except to relocate the tag or other identification from the
12 ankle to the wrist or from the wrist to the ankle. The tag or
13 other identification must accompany the remains until final
14 disposition. When cremation is the final disposition, the tag
15 or other identification may be removed just prior to cremation
16 and in that event shall be maintained within the permanent
17 file.

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

21 (4) The board shall adopt rules pursuant to ss.
22 120.536(1) and 120.54 necessary to implement the requirements
23 and operating procedures for the identification of human
24 remains set forth in this section.

25 (5) The board may impose an administrative fine not to
26 exceed \$10,000 against any licensee or registrant who violates
27 this section or any rule adopted under this section. A
28 licensee or registrant is entitled to a hearing pursuant to
29 chapter 120 to contest the fine.

30 (6) In addition to any other remedies provided under
31 law, a party who is injured by a violation of this section may

1 file a civil action for recovery of actual and punitive
2 damages, including costs and attorney's fees. This subsection
3 does not limit any right or remedy provided under law.

4 (7) A person who violates this section commits a
5 felony of the third degree, punishable as provided in s.
6 775.082 or s. 775.083.

7 Section 15. Subsections (4) and (16) of section
8 497.005, Florida Statutes, are amended to read:

9 497.005 Definitions.--As used in this chapter:

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

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

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

16 497.103 Rulemaking authority of board and
17 department.--

18 (3) The board shall adopt and enforce rules governing
19 the operation of cemeteries in this state and arrange for the
20 preparation, publication, and dissemination to the public of
21 these rules and other information and material relevant to the
22 operation of cemeteries. Such rules shall include
23 establishing reasonable times for access to all cemeteries,
24 including the time of day and days of the week for access to
25 install monuments and markers.

26 Section 17. Section 497.105, Florida Statutes, is
27 amended to read:

28 497.105 ~~Department of Banking and Finance~~ Powers and
29 duties of department.--The department ~~of Banking and Finance~~
30 shall:

31

1 (1) Adopt rules establishing procedures for the
2 renewal of licenses, registrations, and certificates of
3 authority.

4 (2) Appoint the executive director of the board ~~of~~
5 ~~Funeral and Cemetery Services~~, subject to the approval of the
6 board.

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

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

15 (5) Adopt rules pursuant to ss. 120.536(1) and 120.54
16 to implement the provisions of this chapter conferring duties
17 upon it.

18 (6) Establish by rule procedures by which the
19 department shall use the expert or technical advice of the
20 board, for the purposes of investigation, inspection, audit,
21 evaluation of applications, other duties of the department, or
22 any other areas the department may deem appropriate.

23 (7) Require all proceedings of the board or panels
24 thereof within the department and all formal or informal
25 proceedings conducted by the department, an administrative law
26 judge, or a hearing officer with respect to licensing,
27 registration, certification, or discipline to be
28 electronically recorded in a manner sufficient to ensure the
29 accurate transcription of all matters so recorded.

30 (8) Select only those investigators approved by the
31 board. Such investigators shall report to and work in

1 coordination with the executive director of the board and are
2 responsible for all inspections and investigations other than
3 financial examinations.

4 Section 18. Section 497.117, Florida Statutes, is
5 amended to read:

6 497.117 Legal and investigative services.--

7 (1) The Department of Legal Affairs shall provide
8 legal services to the board ~~within the Department of Banking~~
9 ~~and Finance~~, but the primary responsibility of the Department
10 of Legal Affairs shall be to represent the interests of the
11 citizens of the state by vigorously counseling the board with
12 respect to its obligations under the laws of the state.

13 Subject to the prior approval of the Attorney General, the
14 board may retain independent legal counsel to provide legal
15 advice to the board on a specific matter. Fees and costs of
16 such counsel shall be paid from the Professional Regulation
17 ~~Regulatory~~ Trust Fund of the Department of Business and
18 Professional Regulation ~~Banking and Finance~~.

19 (2) The Department of Business and Professional
20 Regulation ~~Banking and Finance~~ may employ or utilize the legal
21 services of outside counsel and the investigative services of
22 outside personnel. However, no attorney employed or utilized
23 by the department shall prosecute a matter or provide legal
24 services to the board with respect to the same matter.

25 Section 19. Subsections (2) and (3) of section
26 497.201, Florida Statutes, are amended to read:

27 497.201 Cemetery companies; license; application;
28 fee.--

29 (2) The department may require any person desiring to
30 establish a cemetery company who applies for a license to
31 provide any information reasonably necessary to make a

1 determination of the applicant's eligibility for licensure.
2 Any person desiring to establish a cemetery company shall
3 first:

4 (a) File an application, which states the exact
5 location of the proposed cemetery, which site shall contain
6 not less than 15 ~~30~~ contiguous acres; provide a financial
7 statement signed by all officers of the company which attest
8 to a net worth of at least \$50,000, which net worth must be
9 continuously maintained as a condition of licensure; and pay
10 an application fee of \$5,000;

11 (b) Create a legal entity; and

12 (c) Demonstrate to the satisfaction of the board that
13 the applicant possesses the ability, experience, financial
14 stability, and integrity to operate a cemetery.

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

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

23 (b) The applicant has filed with the department
24 development plans which are sufficient to ensure the
25 department that the cemetery will provide adequate service to
26 the community and which have been approved by the appropriate
27 local governmental agency regulating zoning in the area of the
28 proposed cemetery.

29 (c) The applicant holds an unencumbered fee simple
30 title to at least 15 ~~30~~ contiguous acres of land.

31

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

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

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

11
12 NOTICE

13
14 The property described herein shall not be sold, conveyed,
15 leased, mortgaged, or encumbered without the prior written
16 approval of the Department of Business and Professional
17 Regulation ~~Banking and Finance~~, as provided in the Florida
18 Funeral and Cemetery Services Act.

19
20 Such notice shall be clearly printed in boldfaced type of not
21 less than 10 points and may be included on the face of the
22 deed of conveyance to the licensee or may be contained in a
23 separate recorded instrument which contains a description of
24 the property.

25 Section 20. Paragraph (x) of subsection (1) of section
26 497.233, Florida Statutes, is amended to read:

27 497.233 Disciplinary proceedings.--

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

30 (x) Sale of an irrevocable preneed contract to a
31 person who is not an applicant for or recipient of

1 Supplemental Security Income, Aid to Families with Dependent
2 Children, or Medicaid pursuant to s. 497.419~~(8)~~(7).

3 Section 21. Section 497.253, Florida Statutes, is
4 amended to read:

5 497.253 Minimum acreage; sale or disposition of
6 cemetery lands.--

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

11 (2) Any lands owned by a licensee and dedicated for
12 use by it as a cemetery, which are contiguous, adjoining, or
13 adjacent to the minimum of 15 ~~30~~ contiguous acres described in
14 subsection (1), may be sold, conveyed, or disposed of by the
15 licensee, after obtaining written approval of the department
16 pursuant to subsection (3), for use by the new owner for other
17 purposes than as a cemetery. All of the human remains which
18 have been previously interred therein shall first have been
19 removed from the lands proposed to be sold, conveyed, or
20 disposed of; however, the provisions of ss. 470.0295 and
21 497.515(7) must be complied with prior to any disinterment of
22 human remains. Any and all titles, interests, or burial rights
23 which may have been sold or contracted to be sold in lands
24 which are the subject of the sale shall be conveyed to and
25 revested in the licensee prior to consummation of any such
26 sale, conveyance, or disposition.

27 (3)(a) If the property to be sold, conveyed, or
28 disposed of under subsection (2) has been or is being used for
29 the permanent interment of human remains, the applicant for
30 approval of such sale, conveyance, or disposition shall cause
31 to be published, at least once a week for 4 consecutive weeks,

1 a notice meeting the standards of publication set forth in s.
2 125.66(4)(b)2. The notice shall describe the property in
3 question and the proposed noncemetery use and shall advise
4 substantially affected persons that they may file a written
5 request for a hearing pursuant to chapter 120, within 14 days
6 after the date of last publication of the notice, with the
7 department if they object to granting the applicant's request
8 to sell, convey, or dispose of the subject property for
9 noncemetery uses.

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

13 (c) If the property in question has been used for the
14 permanent interment of human remains, the department shall
15 approve the application, in writing, if it finds that it would
16 not be contrary to the public interest. In determining whether
17 to approve the application, the department shall consider any
18 evidence presented concerning the following:

19 1. The historical significance of the subject
20 property, if any.

21 2. The archaeological significance of the subject
22 property, if any.

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

25 4. The impact of the proposed change in use of the
26 subject property upon the reasonable expectations of the
27 families of the deceased regarding whether the cemetery
28 property was to remain as a cemetery in perpetuity.

29 5. Whether any living relatives of the deceased
30 actively oppose the relocation of their deceased's remains and
31 the conversion of the subject property to noncemetery uses.

1 6. The elapsed time since the last interment in the
2 subject property.

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

5 (d) Any deed, mortgage, or other conveyance by a
6 cemetery company or other owner pursuant to paragraphs
7 ~~subsections~~ (a) and (c) ~~above~~ must contain a disclosure in the
8 following or substantially similar form:

9
10 NOTICE: The property described herein was formerly used and
11 dedicated as a cemetery. Conveyance of this property and its
12 use for noncemetery purposes was authorized by the Florida
13 Department of Business and Professional Regulation ~~Banking and~~
14 ~~Finance~~ by Order No., dated

15
16 (e) The department shall adopt such rules as are
17 necessary to carry out the provisions of this section.

18 (4) A licensee may convey and transfer to a
19 municipality or county its real and personal property,
20 together with moneys deposited in trust funds pursuant to this
21 chapter, provided the municipality or county will accept
22 responsibility for maintenance thereof and prior written
23 approval of the department is obtained.

24 (5) The provisions of subsections (1) and (2) relating
25 to a requirement for minimum acreage do ~~shall~~ not apply to any
26 cemetery company licensed by the department on or before July
27 1, 2002 ~~2001~~, which owns a total of less than 30 acres of
28 land; however, no cemetery company shall dispose of any land
29 without the prior written consent of the department.

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

1 497.305 Cemetery companies; authorized functions.--

2 (3) A cemetery company may adopt bylaws establishing
3 minimum standards for burial merchandise or the installation
4 thereof. However, a cemetery company may not restrict access
5 to any cemetery by any person needing access to install a
6 monument or marker on behalf of a registered monument
7 establishment, provided such access is within the reasonable
8 times for access established by the board by rule.

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

11 497.325 Illegal tying arrangements.--

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

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

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

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

31

1 3. Waive liability with respect to damage caused by
2 cemetery employees or agents to a monument after installation,
3
4 where the monument or installation service is not purchased
5 from the person authorized to sell grave space or the cemetery
6 company or other legal entity providing grave space or from or
7 through any other person or corporation designated by the
8 person authorized to sell grave space or the cemetery company
9 or other legal entity providing grave space. No cemetery
10 company or other entity owning and operating a cemetery may be
11 held liable for the improper installation of a monument where
12 the monument is not installed by the cemetery company or its
13 agents or by such other entity or its agents.

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

16 497.333 Disclosure of information to public.--A
17 licensee offering to provide burial rights, merchandise, or
18 services to the public shall:

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

22 ~~(a)~~ The written contract shall be completed as to all
23 essential provisions prior to the signing of the contract by
24 the customer and must.

25 ~~(b)~~ The written contract shall provide:

26 (a) An itemization of the amounts charged for all
27 services, merchandise, and fees, which itemization shall be
28 clearly and conspicuously segregated from everything else on
29 the written contract.

30
31

1 **(b)**~~(c)~~ A description of the merchandise covered by the
2 contract to include, when applicable, model, manufacturer, and
3 other relevant specifications.

4 **(c)** A complete description of any grave space to be
5 used for the interment of human remains.

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

8 497.361 Registration of monument establishments.--

9 ~~(5) Monuments shall be delivered as established by
10 this chapter and installed no later than 120 days after the
11 date of sale. The establishment may request two 30-day
12 extensions. Extensions may be granted by the executive
13 director.~~

14 Section 26. Present subsections (6) through (10) of
15 section 497.419, Florida Statutes, are renumbered as
16 subsections (7) through (11), respectively, and a new
17 subsection (6) is added to said section to read:

18 497.419 Cancellation of, or default on, preneed
19 contracts.--

20 **(6) Failure to install a monument within 180 days**
21 **after interment shall be considered a breach of contract**
22 **unless the certificateholder has a written agreement to extend**
23 **the installation date. The purchaser shall be entitled to a**
24 **refund of all money paid for the merchandise. Such refund**
25 **shall be made within 30 days after receipt by the**
26 **certificateholder of the contract purchaser's written request**
27 **for a refund. Nothing in this subsection shall preclude the**
28 **purchase and installation of a new monument from any other**
29 **registered monument dealer.**

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

1 497.429 Alternative preneed contracts.--
2 (9) The contract may provide that the
3 certificateholder may cancel the contract, but only in the
4 event that the purchaser is more than 90 days in default of
5 the terms of the contract; and, unless subject to the
6 provisions of s. 497.419(7)(6), must provide that the
7 purchaser, or her or his representative, has the right, at any
8 time prior to the performance of the contract, to cancel the
9 preneed contract and revest title to all the funds paid on the
10 preneed contract, except for applicable liquidated damages,
11 and the certificateholder's rights in the net income of the
12 trust.

13 Section 28. Section 497.442, Florida Statutes, is
14 created to read:

15 497.442 Preneed sale of undeveloped cemetery
16 property.--The preneed sale of undeveloped cemetery property
17 prior to the filing of a site plan for board approval is
18 prohibited. Each site plan for undeveloped cemetery property
19 submitted to the board for approval must be completed by a
20 professional surveyor and mapper licensed under chapter 472.

21 Section 29. Sections 497.101, 497.107, and 497.109,
22 Florida Statutes, are repealed.

23 Section 30. Within 10 days after the interment of a
24 body in this state, the funeral director handling the
25 interment shall file with the local registrar an addendum to
26 the death certificate which provides the address of the
27 cemetery and specific location within the cemetery where the
28 body is buried.

29 Section 31. Except as otherwise provided herein, this
30 act shall take effect October 1, 2002.

31

HOUSE SUMMARY

Transfers the administration of ch. 497, F.S., relating to funeral and cemetery services, from the Department of Banking and Finance to the Department of Business and Professional Regulation, effective October 1, 2002. Ends the terms of current members of the Board of Funeral Directors and Embalmers and of the Board of Funeral and Cemetery Services on October 1, 2002, and provides for appointment, qualifications, and staggering of terms of members of the new Board of Funeral Directors and Cemeteries. Preserves the validity of judicial and administrative proceedings pending at the time of such transfer and the validity of licenses and registrations in effect at the time of such transfer. Provides that fees and costs of legal counsel shall be paid from the Professional Regulation Trust Fund rather than the Regulatory Trust Fund, and eliminates deposit into the Regulatory Trust Fund of funds received pursuant to ch. 497, F.S.

Increases college credit course requirements for registration as a direct disposer and continuing education requirements for renewal of such registration.

Eliminates an exception to the requirement that a licensed funeral director be present during the disinterment and reinterment of human remains. Requires a funeral director to obtain a disinterment permit from the local registrar of vital statistics prior to the disinterment and reinterment of a dead human body. Requires the Department of Business and Professional Regulation, in consultation with the Department of Health, to adopt rules governing the issuance of disinterment permits. Provides a penalty for persons who violate provisions regarding authorization and notification for disinterment and transportation.

Revises requirements for the identification of human remains. Authorizes the board to impose an administrative fine not to exceed \$10,000 against any licensee or registrant who violates such requirements. Provides that a licensee or registrant is entitled to an administrative hearing to contest the fine. Provides that a party injured by a violation of such requirements may file a civil suit for damages, costs, and fees, in addition to any other remedy provided under law. Provides that a person who violates such requirements commits a third-degree felony.

Requires the board to establish by rule reasonable times for access to cemeteries, and prohibits cemetery companies from restricting cemetery access to authorized installers of monuments and markers during such times.

750-135-02E

1 Requires that an applicant for a license to operate a
2 cemetery have a minimum of 15 contiguous acres for the
3 proposed cemetery. Provides that minimum acreage
4 requirements do not apply to any cemetery company
5 licensed before July 1, 2002, which owns less than 30
6 acres of land.

7 Clarifies applicability of certain illegal tying
8 arrangements not only to cemetery companies, but also to
9 other entities owning and operating a cemetery. Requires
10 each written contract provided to a customer to include a
11 complete description of any grave space to be used for
12 the interment of human remains. Repeals a provision
13 relating to requirements for delivery and deadlines for
14 installation of monuments. Provides that failure to
15 install a monument within a specified period after
16 interment constitutes breach of contract, and authorizes
17 extension of such period by written agreement. Prohibits
18 the preneed sale of undeveloped cemetery property prior
19 to the filing of a site plan for board approval, and
20 requires site plans for undeveloped cemetery property to
21 be completed by a professional surveyor and mapper.

22 Provides that, within a specified period after interment
23 of a body in this state, the funeral director handling
24 the interment must file with the local registrar an
25 addendum to the death certificate providing the address
26 of the cemetery and the specific location within the
27 cemetery where the body is buried.

28 See bill for details.

29
30
31