

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1641 Funeral Directing, Embalming, & Direct Disposition
SPONSOR(S): Representative(s) Dean
TIED BILLS: **IDEN./SIM. BILLS:** SB 2016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, & Reg. Business (Sub)</u>	<u>6 Y, 0 N</u>	<u>Livingston/Gallen</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>19 Y, 8 N</u>	<u>Livingston/Gallen</u>	<u>Liepshutz</u>
3) <u>Commerce</u>		<u>Cutchins</u>	<u>Whitfield</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends chapter 470, F.S., and addresses several areas relating to consumer concerns in the regulation of funeral directors, embalmers, direct disposers, and their establishments.

The bill revises and creates definitions. The bill establishes additional requirements for direct disposal establishments and operators of incinerators, including reporting, equipment, and business practice requirements. The bill revises and creates additional requirements for cinerator facilities and limits liability of cinerator facility operators for unintentional or incidental commingling of human remains.

The bill expands the responsibilities of funeral directors and amends requirements for funeral establishments. The bill revises the requirements of the embalmer apprentice program and creates rules and control measures for preneed agents.

The bill creates requirements for the proper identification of human remains and reduces the liability of licensed cemeteries in circumstances of mistaken identity.

The bill is not anticipated to have a significant fiscal impact on the state or local government.

The act will take effect on October 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1641c.com.doc
DATE: April 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 470, F.S., provides authority to the Department of Business and Professional Regulation (DBPR) and the Board of Funeral Directors and Embalmers (Board) to regulate, through licensure, registration and inspection, funeral directors, embalmers, direct disposers and the facilities each operates. Practitioners must meet established criteria regarding education and training, pass an examination, and maintain continuing education credits. Establishments must register with DBPR. Funeral directors may also be owners and operators of cemeteries and may be involved in contracting for the sale of preneed¹ services and merchandise. This regulatory program is designed for the primary purpose of protecting the public against incompetent and unskilled practitioners.

Requirements:

Embalmer by Examination: 18 years of age, high school diploma or equivalent, completion of a one year course in mortuary science, one year of internship under a licensed embalmer, passage of the required examination, passage of National Board science section, and completion of a board approved communicable disease and HIV/AIDS state course.

Funeral Director by Examination: 18 years of age, high school diploma or equivalent, associate of arts degree in mortuary science, one year of internship under a licensed funeral director, passage of the required examination, passage of National Board science and arts section, and completion of a board approved communicable disease and HIV/AIDS state course.

Direct Disposer: 18 years of age, high school diploma or equivalent, completion of a college credit course in Florida mortuary law, passage of the required examination, and completion of a board approved communicable disease and HIV/AIDS course.

Establishments: Funeral establishments, cinerator facilities, direct disposal establishments, removal services, refrigeration services, and centralized embalming facilities must provide name, specific location, owners, and person(s) in charge. Funeral establishments must consist of at least 1,250 contiguous interior square feet and must maintain suitable capacity for the refrigeration and storage of dead human bodies or a preparation room equipped with necessary ventilation and drainage containing necessary instruments for embalming dead human bodies.

Board Composition:

¹ Section 470.002, F.S., defines "preneed sales agents" as any person who is registered under chapter 497, F.S., to sell preneed burial or funeral service and merchandise contracts or direct disposition contracts in this state.

7 Members – 5 licensed funeral directors; 2 Florida residents with no connection to the industry. One consumer member of the board must be at least 60 years of age. Term of office: four years.

Maximum Statutory Penalty:

Criminal: Violations of certain provisions of the practice range between first and second-degree misdemeanors. Violation of Section 455.2275, F.S., constitutes a third degree felony.

Unlicensed Activity: Notice to cease and desist, an administrative or civil fine of not less than \$500 or more than \$5,000 for each offense.

Administrative: Up to \$5,000 and revocation, plus cost of investigation.

Staffs from the Council on Competitive Commerce, the Banking Committee, and the Business Regulation Committee were directed to monitor the 13 meetings held by a group of industry representatives (Legislative Partnership Committee of 2003 or LPC03) which formed to work towards consensus on a number of funeral and cemetery regulation issues. At the initial meeting of the LPC03, four representatives of the Florida Funeral Director's Association (FFDA), four representatives of the Florida Funeral & Cemetery Alliance (formerly FCA), four representatives of the Florida Morticians Association (FMA), and four representatives of the Independent Funeral Director's of Florida met and outlined a proposed purpose and work plan. The Independent Funeral Director's of Florida voted to not formally associate with the partnership at its June 9 board meeting.

After the LPC03 compiled its legislative recommendations into report form, committee staff conducted a meeting to discuss the potential consensus and controversy surrounding these issues². The meeting was attended by representatives from the LPC03, the regulatory agencies, and individuals representing the Board of Funeral Directors & Embalmers and the Independent Funeral Directors Association. Staff presented each issue and took testimony on whether there was consensus on the issue or whether it was still subject to controversy between the groups represented. The provisions of this bill reflect those issues covered by chapter 470, F.S., which were not objected to by any person in attendance at the [staff conducted] meeting.

Effect of Proposed Changes

The bill amends section 470.002, F.S., to provide definitions for the terms "body parts," "closed container," "cremated remains," "cremation chamber," "cremation container," "cremation interment container," "niche," "processing," "pulverization," "temporary container," and "urn."

The bill amends the definition of "casket" to provide that a casket is constructed of materials that may or may not be combustible. The definition of "cremation" is redefined. The term "funeral merchandise" is amended to include cremation interment containers. The bill clarifies and amends the definition of "legally authorized person."

The bill requires the embalmer apprentice program to allow an embalmer apprentice to serve in an apprentice capacity for no longer than 3 years or for a period of no longer than 5 years if the apprentice is enrolled in other specified educational programs.

The bill requires direct disposal establishments to practice in a fixed location of at least 625 interior contiguous square feet. The facility must maintain or make arrangements for suitable capacity for the refrigeration and storage of dead bodies. Each cinerator facility is required to be inspected prior to renewal or issuance of its license, and the facility is required to maintain one or more retorts for the reduction of dead bodies, maintain refrigeration that satisfies set standards which contain sufficient shelving, maintain sufficient pollution control equipment to comply with annual certification, have available sufficient sealed containers for transportation of bodies, maintain clean and sanitary

² Full report available at www.legislativepartnership.com

premises, have appropriate Department of Environmental Protection permits, and retain all signed contracts for at least 2 years.

The bill requires that a funeral establishment must maintain a preparation room equipped with necessary ventilation, drainage, and necessary instruments for embalming, or the funeral establishment must make arrangements for a preparation room as established by the Board of Funeral Directors and Embalmers.

The bill amends section 470.025, F.S., to provide that an operator of a cinerator facility "shall be entitled to rely on the permission of a legally authorized person to cremate more than one human body" at one time. The bill provides cremation containers as acceptable devices for the placement of human remains in cinerator facilities, and includes body parts as human remains that are prohibited from being placed in a retort or cremation chamber without a proper container.

The bill also provides that cremation may include the processing and pulverization of bone fragments. The bill requires the operator of a cinerator facility to establish written procedures for the removal of human remains and bone fragments resulting from cremation. The operator of the facility would not be liable for the unintentional or incidental commingling of human remains and bone fragments. A copy of the procedures must be available, upon request, to the DBPR and legally authorized persons.

Cremation may be performed on parts of human remains upon the request of a legally authorized person; however, this does not authorize the cremation of body parts as defined in section 470.002, F.S.

Funeral directors in charge of funeral establishments or funeral directors acting as direct disposers in charge of a direct disposal establishment are responsible for the control and activities of the establishment's preneed agents. A direct disposer in charge of a direct disposal establishment is responsible for the control and activities of the establishment's preneed agents.

This bill changes the date from the 10th to the 20th of each month as the day that each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility must report to the DBPR the name of the deceased and other information required with respect to each dead human handled by the facility.

The bill establishes that legally authorized persons may dispose of fetal remains of less than 20 weeks gestation in circumstances when fetal death certificates are not issued. Prior to final disposition of dead human remains, proper identification of the human remains must be in the casket or alternative container or cremation container, and must be affixed to the ankle or wrist of the deceased.

The bill prohibits price guarantees for goods and services to be provided at a future date.

The bill amends section 470.0355, F.S., to require the proper identification of human remains in the casket, alternative container, or cremation container. Effective October 1, 2003, a licensed funeral establishment in charge of funeral arrangements in an unlicensed cemetery is responsible for the identification of human remains. The bill sets forth requirements for the identification of human remains in unlicensed and licensed cemeteries. The board is authorized to make rules specifying the materials and locations of the identifying markers.

A licensed cemetery is not liable for any inconsistency between the identity shown on the burial transit permit or other identification and the actual identity of the remains. The cemetery can rely on the identity stated on the burial transit permit or on the identification supplied by a person licensed under chapter 470, F.S.

The bill requires direct disposal establishments to establish a system for the identification of dead human remains received, and for tracking the human remains from the time received until the time of

delivery to authorized persons. A copy of the identification procedures must be made available, upon request, to the DPBR and legally authorized persons.

C. SECTION DIRECTORY:

Section 1: Amends Section 470.002, to revise and create definitions.

Section 2: Amends Section 470.0085, to revise requirements for the embalmer apprentice program.

Section 3: Amends Section 470.021, to revise standards of direct disposal establishments.

Section 4: Amends Section 470.024, to revise licensure requirements of funeral establishments.

Section 5: Amends Section 470.025, to create and revise licensure requirements for cinerator facilities.

Section 6: Amends Section 470.0255, to create additional procedural requirements for cremation.

Section 7: Amends Section 470.028, to establish responsibilities for control and supervision of preneed agents.

Section 8: Amends Section 470.029, to revise the date when establishment reports are due.

Section 9: Amends Section 470.0294, to create additional rights for legally authorized persons.

Section 10: Amends Section 470.031, to create additional prohibitions under this act.

Section 11: Amends Section 470.0355, to create additional requirements for the identification of human remains.

Section 12: Amends Section 470.036, to provide for reenactment of disciplinary proceedings.

Section 13: Provides for an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is not anticipated to be significant.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES