

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/CS/SB 2346

SPONSOR: Criminal Justice Committee, Banking and Insurance Committee, Regulated Industries Committee and Senator Haridopolos

SUBJECT: Funeral and Cemetery Industry

DATE: April 27, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 2346 amends several provisions of ch. 497, F.S., as amended by ch. 2004-301, L.O.F., relating to the funeral and cemetery industry. Chapter 2004-301, L.O.F., created the Board of Funeral, Cemetery and Consumer Services (board) within the Department of Financial Services and empowered the board to enforce the provisions of ch. 470 and 497, F.S., as they relate to the regulation of funeral directors, embalming, cremation, cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. Chapter 2004-301, L.O.F., has an effective date of October 1, 2005.

The bill provides the following changes to ch. 497, F.S.:

- It requires the use of an amber or purple light on non-law enforcement lead and escort funeral procession vehicles.
- It creates the monument builder and monument dealer licensure categories.
- It provides that the monument establishment representative on the board shall be a licensed monument builder.
- It conforms the fingerprint, criminal records and application signature requirements across licensees.
- It differentiates the application and renewal fees for monument establishments based on whether they have preneed licenses.
- It requires certain disclosure of consumer information by preneed licensees.
- It revises the requirements for the identification of human remains.
- It clarifies requirements for notices of change in ownership or location of licensees.

- It authorizes rulemaking by the department or licensing authority with respect to many areas of regulation, including applications, criminal background checks and fingerprint cards, inspections, license fees, the identification of human remains, the investment of trust funds, preneed licensee net worth requirements, and chemical cremation.
- It increases the policy coverage limit from \$7,500 to \$12,500 which will be increased annually based on the Annual Consumer Price Index for insurance policies that funeral directors, direct disposers, or employees of a funeral establishment may sell.
- It increases the maximum amount of the renewal fee for a funeral director, embalmer, and direct disposer license from \$250 to \$500, and increases the maximum amount of the renewal fee for a funeral establishment, and each branch licensee of a preneed licensee from \$300 to \$500.
- It provides for licensure and appointment of preneed licensees and sales agents.
- It makes technical and clarifying changes to the law.

The bill authorizes a \$10,000 penalty for violations of ch. 497, F.S., by unlicensed persons and creates authority for a fee of up to \$250 for the renewal of monument establishment sales agents.

The bill has an effective date of October 1, 2005.

This bill substantially amends the following sections of the Florida Statutes: 316.1974, 497.005, 497.101, 497.103, 497.140, 497.141, 497.142, 497.143, 497.144, 497.149, 497.151, 497.152, 497.153, 497.158, 497.159, 497.161, 497.165, 497.166, 497.169, 497.171, 497.260, 497.263, 497.264, 497.281, 497.365, 497.368, 497.369, 497.373, 497.374, 497.376, 497.378, 497.380, 497.385, 497.453, 497.456, 497.458, 497.466, 497.550, 497.551, 497.552, 497.553, 497.554, 497.555, 497.602, 497.603, 497.604, 497.606, 497.607, and 626.785.

This bill substantially amends section 152 of chapter 2004-301, Laws of Florida.

This bill creates sections 497.171 and 497.468, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 497.275, 497.388, and 497.556.

II. Present Situation:

The Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of ch. 470, F.S., which regulates funeral directors, embalming, and the practice of cremating human remains. The Board of Funeral and Cemetery Services within the Department of Financial Services (DFS) administers and enforces the provisions of ch. 497, F.S., which provides for the regulation of cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services.

Merger of the Boards

During the 2004 Regular Session, the Legislature passed CS/CS/SB 528 by the Banking and Insurance Committee, the Regulated Industries Committee, Senator Pruitt, and others.¹ The bill

¹ Chapter 2004-301, L.O.F.

is codified in chs. 470 and 497, F.S., along with other minor sections, and may be cited as the Florida Funeral, Cemetery, and Consumer Services Act or the Senator Howard E. Futch Act (“the act”). Effective October 1, 2005, the act merges funeral and cemetery regulation into one board under the Department of Financial Services (DFS or department), and consolidates all cemetery and funeral provisions into one chapter.

Section 497.101, F.S., provides that the Board of Funeral, Cemetery, and Consumer Services (board), is composed of the following members:

- Two members must be funeral directors licensed under part III of this chapter who are associated with a funeral establishment;
- One member must be a funeral director licensed under part III of ch. 497, F.S., who is associated with a funeral establishment licensed under part III of ch. 497, F.S., which has a valid preneed license issued pursuant to that chapter, and who owns or operates a cinerator facility approved under ch. 403, F.S., and licensed under part VI of ch. 497, F.S.;
- Two members must be persons whose primary occupation is associated with a cemetery company licensed pursuant to ch. 497, F.S.;
- Three members must be consumers who are residents of the state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, F.S., and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition.
 - one of the consumer members must be at least 60 years of age, and
 - one must be licensed as a certified public accountant under ch. 473, F.S.;
- One member must be a monument dealer licensed under ch. 497, F.S.; and
- One member must be the State Health Officer or her or his designee.

Section 497.101, F.S., also provides that there shall not be two or more board members who are directors, employees, partners, shareholders, or members of the same company or partnership or group of companies or partnerships under common control.

Merger of the Chapters 470 and 497, F.S.

The act merges the provisions of ch. 470, F.S., into ch. 497, F.S. It also duplicates and incorporates into ch. 497, F.S., relevant provisions from ch. 455, F.S., that relate to the administration of ch. 470, F.S. The bill also consolidates duplicative provisions from chs. 470 and 497, F.S. It creates the Board of Funeral, Cemetery, and Consumer Services (board) and the Division of Funeral, Cemetery, and Consumer Services within the DFS. The act abolishes the Board of Funeral Directors and Embalmers within the DBPR and the Board of Funeral and Cemetery Services within the DFS. The act sets forth the authority of the new board and the department, including each entity’s rulemaking authority. It also provides extensive investigatory and examination authority to the department and board.

The act divides ch. 497, F.S., into six parts with each part corresponding to similar regulatory matters:

- Part I relates to general provisions common to all parts;

- Part II relates to cemetery regulation;
- Part II relates to funeral directors and embalmers;
- Part IV relates to preneed sales;
- Part V relates to monument establishments; and
- Part VI relates to cremation, crematories and direct disposition.

In addition to merging the two death care industry boards, ch. 2004-301, L.O.F. (the act), provides several substantive provisions relating to the regulation of funeral and cemetery services. It also provides a procedure for placing into receivership a cemetery with a revoked license, including the process of closing the affairs of the cemetery and protecting the interests of consumers and family members of the deceased.

The act requires the proper identification of dead human remains in the casket, alternative container, or cremation container, and provides minimum dimension standards for adult grave spaces. It also requires that licensed cemeteries prepare a map documenting the survey reference markers to show the number of grave spaces available for sale, the location of each grave space, the number designation assigned each grave space, and the dimensions of a standard adult grave space.

The act provides for the regulation of preneed contract sales by requiring a certificate of authority to conduct such sales. The act also provides for the regulation of monument establishments, including minimum financial requirements for licensure.

Identification of human remains.

Section 497.275, F.S.,² as created by the act, to provide identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries on or after October 1, 2004. It requires a tag or a permanent identifying marker containing the name of the decedent and the date of death, if available, on the outer burial container, cremation container, or other container, or on the inside of the crypt or niche.

Section 497.275, F.S., as amended by the act, also provides that a licensed cemetery company may rely entirely on the identity stated on the burial transmit permit or on the identification supplied by a person licensed under part III of ch. 497, F.S. It further provides that a cemetery company is not liable for any differences shown on the burial transmit permit or other identification and the actual identity of the dead human remains delivered to and buried in the cemetery.

Section 497.388, F.S.,³ as amended by the act, require the proper identification of dead human remains in the casket, alternative container, or cremation container. A licensed funeral establishment in charge of funeral arrangements in an unlicensed cemetery would be responsible for the identification of dead human remains. The bill sets forth requirements for the identification of dead human remains in unlicensed and licensed cemeteries. A tag or permanent identifying mark containing the name of the decedent and the date of death, if available, must be placed on the burial container, cremation interment container, or other container or on the inside

² Section 497.275, F.S., is in part II of ch. 497, F.S., relating to cemetery regulation.

³ Section 497.388, F.S., is in part III of ch. 497, F.S., relating to funeral directing, embalming, and related services.

of the crypt or niche. The board is authorized to make rules specifying the materials and locations of the identifying tag or marker. Each licensed cemetery may rely entirely on the identity stated on the burial transit permit or the identification supplied.

Section 497.388, F.S., also requires direct disposal establishments⁴ 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 department and legally authorized persons.

Industry Group

Since the enactment of ch. 2004-301, L.O.F., the department and the following industry and consumer representatives have been reviewing the act to correct errors or omissions and conducting discussions regarding matters of additional concern:

- Alderwoods;
- Florida Funeral and Cemetery Consumer Advocacy (FFCCA);
- Florida Association of Retired Persons (FL-AARP);
- Florida Funeral and Cemetery Alliance (FCA);
- Florida Funeral Directors Association (FFDA);
- Florida Monument Builders Association (FMBA);
- Florida Morticians Association (FMA);
- Funeral Services, Inc. (FSI);
- Independent Funeral Directors of Florida (IFDF);
- Service Corporation International (SCI);
- Stewart Enterprises; and
- Trust 100.

Alderwoods, Stewart Enterprises, and Service Corporation International are companies that own funeral homes and cemeteries throughout the United States and internationally. According to industry representatives, these companies are known as the “Big 3” of the death care industry.

III. Effect of Proposed Changes:

Except for sections 46 and 47 of the bill, which amend ss. 626.785 and 316.1974, F.S., respectively, all of the provisions of this legislation relate to ch. 497, F.S., as amended by ch. 2004-301, L.O.F. (the act).

Funeral Procession Right-of-way and Liability

Section 1 amends s. 316.1974(2), F.S., to require all non-law enforcement funeral escort vehicles and funeral lead vehicles to be equipped with at least one circulating lamp of amber or purple light, which may only be used in a funeral procession. Current law only requires an amber light.

⁴ Although this provision is in part III of ch. 497, F.S., direct disposal establishments are regulated under part VI of ch. 497, F.S.,

Definitions

Section 2 amends s. 497.005, F.S., to revise several definitions. It amends the definition of the term “alternative container” in s. 497.005(1), F.S., to provide that the term means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining. The proposal further provides that this container is designed for the encasement of human remains and is made of fiberboard, pressed wood, composition materials, with or without an outside covering, or like materials.

The bill deletes the definition in current law that defines an “alternative container” as a nonmetal receptacle or enclosure which is less expensive than a casket and of sufficient strength to hold and transport a dead human body.⁵ According to industry representatives, alternative containers vary in style and workmanship, and, contrary to the current definition, are not always the least expensive container. Further, according to the industry representatives, these containers are not always suitable for transportation, e.g., a cardboard/fiberboard container commonly used for cremation.

The bill deletes the definition of “body parts” in s. 497.005(6), F.S. According to industry representatives, the effect of this definition and s. 497.607(3), F.S., is to discourage the donation of human bodies for medical research purposes. Section 497.607(3), F.S., provides that at the request of a legally authorized person, and incidental to final disposition, cremation may be performed on *parts of human remains*, but provides that the cremation of *body parts* is not authorized by this provision. The DFS also represented that the intent of the definition of “body parts” in current law is unclear.

The bill amends the definitions of the terms “burial right,” “funeral service,” “service,” “cemetery,” and “final disposition” to reference human or cremated remains. Current law only references human remains.

The bill amends the definition for the terms “burial merchandise,” “funeral merchandise,” and “merchandise,” to include merchandise intended for human remains or cremated remains. The bill also lists several other types of merchandise, including flowers, urns, benches, vases, and clothing. The bill also deletes the definition for “funeral merchandise” or “merchandise.”⁶ According to industry representatives, ch. 2004-301, L.O.F., consolidated the definitions for “funeral merchandise,” “funeral” or “funeral service,” or “merchandise,” and “burial merchandise,” and that this amendment would further clarify that consolidation.⁷

The bill amends the definition of “centralized embalming facility” to delete the provision that the facility is not physically connected with a funeral establishment. It provides that such a facility operate independently of a funeral establishment licensee, and offers embalming services to funeral directors for a fee.

The bill amends the definition of “cinerator” to mean a facility where dead human bodies are subject to cremation. The bill deletes the definition in current law that provides that the term

⁵ See s. 497.005, F.S., as amended by ch. 2004-301, L.O.F.

⁶ See s. 497.005(33) and (36), F.S., as amended by ch. 2004-301, L.O.F.

⁷ See s. 470.002(13), F.S. (2003), which defines “funeral merchandise,” and s. 497.055(7), F.S. (2003), which defines “burial merchandise.”

means a facility where dead human bodies are reduced to a residue, including bone fragments, by direct flame, also known as “cremation,” or by intense heat, also known as “calcination.”

The bill deletes the current definition of “cremation” and provides that the term means any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments, or are pulverized, burned, re Cremated, or otherwise further reduced in size or quantity.⁸

The bill amends the definition of “cremation container” to include the casket or alternative container. Current law only references the term container.

The bill amends the definition of the terms “human remains,” “remains,” “dead human body,” and “dead human bodies” to delete the provision that the terms include residue of cremated human bodies.

The bill amends the definition of “refrigeration facility” to delete the provision that such a facility is not physically connected to a funeral establishment, crematory, or direct disposal establishment. The bill provides that such a facility is operated independently of those establishments. It also provides that such a facility offers its services for a fee to direct disposers, direct disposal establishments, or crematories, in addition to the funeral directors and funeral establishments provided in current law. According to industry representatives, this provision more accurately describes the operation of these facilities.

The bill amends the definition of “removal service,” which is a service that handles the initial removal of dead human bodies independently of funeral establishments. The bill provides that such a service operates independently of a direct disposal establishment, in addition to the funeral establishment referenced in current law.

Board of Funeral, Cemetery and Consumer Services

Section 3 amends s. 497.101, F.S., which provides the membership of the Board of Funeral, Cemetery, and Consumer Services, to revise the board’s membership. The bill deletes the requirement for a monument dealer on the board, and requires that a member must be a licensed monument builder. For appointment to the board made before June 1, 2006, a licensed monument establishment must be certified by the board to be eligible for licensure as a monument builder.⁹

The bill also provides that two or more board members shall not be principals or employees of the same company or partnership or group of companies or partnerships under common control. The bill deletes the provisions that two or more members shall not be directors, partners, or shareholders or members of the listed business entities. According to industry representatives, current law would permit one board member to buy one share of stock in all of his or her competitors and thereby effectively prevent those competitors from being on the board. The term “principal” is defined in s. 497.005(58), F.S., to include all directors, partners, and LLC

⁸ See s. 497.005(21), F.S., as amended by ch. 2004-301, L.O.F.

⁹ See section 39 of the bill, which amends s. 497.550, F.S., and creates two categories of monument establishment, the monument builder and monument dealer. The bill does not provide for board membership by a monument dealer.

members, but includes only “shareholders” controlling more than 10 percent of the voting stock of the company or who otherwise exercise “control.”

The bill authorizes the DFS to adopt by rule the forms for applying for board membership. The form must require disclosure of past and present interests, direct or indirect, in any entity or business licensed by the board or either of its predecessor boards, or is or was otherwise involved in the death care industry.

Rulemaking Authority of Board and Department

Section 4 amends s. 497.103, F.S., to revise the authority of the DFS, without prior consultation with the board, to take emergency action against a licensee. The bill provides that such emergency action may be taken when the department determines that there is an imminent danger to the health, safety, or welfare of the citizens of the state.

The bill limits the authority of the Chief Financial Officer (CFO). It provides that the CFO has no authority to recommend or otherwise set fees, rates, or prices for any license under ch. 497, F.S. The bill also provides that no licensee may be required to set fees, rates, or prices in accordance with any recommendation of the CFO. This provision is unclear because there is no authority in current law for a licensee to set fees, rates or prices for licenses. That authority rests with the board.¹⁰

Fees Set by the Board

Section 5 amends s. 497.140, F.S., to decrease from one year to six-months the period of time after which the department may take action to increase license fees after it has notified the board that the projected license fees are inadequate to cover anticipated costs and the board has not taken sufficient action based on the department notice. Current law and the bill do not define what criteria the department must use to determine whether the board has taken sufficient action.

The bill also provides that after October 1, 2007, the board may not assess and collect a one-time fee from each active and each voluntary inactive licensee when the fees are inadequate to implement the requirements in ch. 497, F.S. The bill deletes the provision that authorizes the board to make such an assessment in any four year period without specific legislative authorization.

The bill also provides for the charging and collection of a delinquency fee for failure to timely renew a license. The bill sets a delinquency fee of \$50, unless a specific amount is specified for a particular category of licensure.

General Licensing Requirements

Section 6 amends s. 497.141, F.S., to require on the application for licensure that applicants provide a social security number if the applicant is a natural person, or a federal tax identification number if the applicant is not a natural person. Current law only requires that an applicant provide a social security number. The bill provides that the following licenses may only be issued to natural persons:

- Embalmer apprentice;

¹⁰ See s. 497.103(1)(bb), F.S., as amended by ch. 2004-301, L.O.F.

- Embalmer intern;
- Funeral director intern;
- Funeral director;
- Funeral director and embalmer;
- Direct disposer;
- Monument establishment sales agent; and
- Preneed sales agent.

The bill provides that the following licenses may be issued to a natural person, a corporation, a limited liability company, or a partnership:

- Funeral establishment;
- Centralized embalming facility;
- Refrigeration facility;
- Direct disposal establishment;
- Monument establishment;
- Cinerator facility;
- Removal service; and
- Preneed sales business under s. 497.453, F.S.

The bill provides that a cemetery license may only be applied for or issued to a corporation, a limited liability company, or a partnership. The bill also establishes several licensure requirements for applicants that are a corporation, a limited liability company, or a partnership, including being organized and in good standing under Florida law. It requires signatures, and the identification on the application of a business entity's owners and management.

The bill deletes photographs as one of the types of information and materials that the department may require to be submitted for initial licensure and licensure renewal. However, the bill provides that after an application for licensure has been approved, the licensing authority may require that the successful applicant submit a photograph for permanent lamination onto the licensed car of the applicant.

The bill authorizes the board to adopt rules to implement this section. The bill also provides that no license issued under ch. 497, F.S., is assignable or transferable except as provided in ch. 497, F.S. According to the department, all licenses issued under chs. 470 and 497, F.S., are understood by the industry and the department to be nontransferable. According to the department most license classifications expressly state this requirement, but this provision would make the limitation uniform.

Fingerprints and Criminal Background Checks

Section 7 amends s. 497.142, F.S., to revise fingerprint requirements in licensure applications. The bill deletes subsection (6) of s. 497.142, F.S., which authorizes the Florida Department of Law Enforcement to accept fingerprints. The bill deletes the terms certificate of authority and certification in subsection (7), to provide that criminal records may be used by the board and the department to issue, deny, suspend, or revoke a license. Current law references a certificate of authority, certification, or license.

The bill requires that every applicant for licensure disclose his or her criminal records. It requires disclosure of any crime that the person or entity has been convicted of, or has entered a no contest plea. This disclosure is required regardless of whether adjudication was entered or withheld by the court. The bill provides several specific crimes that must be disclosed, including any felony or misdemeanor, no matter when committed, which was directly or indirectly involving any aspect of the practice or business of funeral directing, embalming, direct disposal, cremation, funeral or cemetery preneed sales, funeral or cemetery operations, or cemetery monument or marker sales or installation.

Regarding corporate applicants, all officers and directors of the corporation must disclose their criminal records. All managers and members of a limited liability company must also so disclose. The bill also prescribes who must provide fingerprints. The bill authorizes the department to, on a case by case basis, require the fingerprints from any other employee of the applicant that it has grounds to believe may have committed a crime and that the persons relationship with the applicant may render the applicant a danger to the public if the license were to be issued.

Licenses for Retired Professionals

Section 8 amends s. 497.143, F.S., which provides a limited license to retired professionals to serve the indigent, underserved, or critical need populations of the state. The bill would prohibit persons holding this limited license from engaging in preneed sales.

Licensing Examination Hearings – Attorney’s Fees

Section 9 amends s. 497.144, F.S., which provides that any licensed applicant who fails to attend an examination hearing must pay reasonable attorney’s fees, costs, and court costs of the department unless the applicant gives notice to the department at least five days before the hearing that he or she could not attend or can demonstrate an extreme emergency for failing to attend. The bill provides that this provision applies when an applicant requests a hearing to challenge a decision that the applicant’s answer to any licensure test question was not a correct answer or seeks to strike the challenged question.

Continuing Education

Section 10 amends s. 497.147, F.S., to remove a provision granting rulemaking authority to the Board of Funeral and Cemetery Services relating to written contracts or agreements required to be entered into by providers with the licensing authority as a prerequisite to acceptance of training or continuing education provided by such provider for credit under ch. 497, F.S.

Inspection of Licensee Accounts and Records

Section 11 amends s. 497.149, F.S., which provides for department inspection of licensee accounts and records, to revise terminology by replacing the term “her or him” with the term “licensee.”

Consumer Complaints

Section 12 amends s. 497.151, F.S., which requires that all licensees, except preneed sales agent licensees, to maintain a continuous written log of all complaints. The bill deletes the exception for preneed sales agent licensees. The bill also provides that a customer’s response on a customer satisfaction questionnaire or survey shall not be deemed a complaint.

Disciplinary Grounds

Section 13 amends s. 497.152, F.S., which sets forth prohibited conduct. It amends s. 497.152(4)(d), F.S., which provides for licensee discipline for failure to report to the department any person who the licensee knows is in violation of ch. 497, F.S., and that violation is known to the licensee to have created or be creating a serious and immediate danger to the public health safety of welfare.

The bill amends s. 497.152(4)(f), F.S., which provides that a licensee cannot attempt to obtain, obtain, or renew a license by, among other stated reasons, an error of the department or board known to the applicant.

It deletes the disciplinary ground in s. 497.152(11)(b), F.S., that prohibits using any name or title in any contract regulated under ch. 497, F.S., which misrepresents the true nature of the contract. The bill would prohibit filling in any contract form for use with a particular customer, using language that misrepresents the true nature of the contract.

The bill also amends s. 497.152(14)(d), F.S., which provides a disciplinary basis for failure to maintain a copy of every complaint received by the licensee, to provide that a customer's response on a customer satisfaction questionnaire or survey shall not be deemed to be a complaint.

The bill amends s. 497.152(15)(b), F.S., which provides a disciplinary basis for failure to remit required amounts to any trust fund required by ch. 497, F.S., to provide that the board, may by rule, provide criteria for identifying minor, nonwillful trust remittance deficiencies. The bill provides that deficiencies falling within the board's rule-established criteria do not constitute a disciplinary violation if corrected within 30 days after notice to the licensee by the department.

Disciplinary Procedures and Penalties

Section 14 amends s. 497.153, F.S., to provide that the department may at any time after a finding of probable cause present to the board a proposed settlement by consent order or otherwise. Current law only references presentation of a settlement after a finding of probable cause. The bill authorizes the board to execute and file the consent order as its final order or to issue a final order in the matter. Current law only authorizes the board to issue a final order.

The bill also revises terminology in this section by replacing the term "her or him" with the term "licensee."

Civil Penalty for Unlicensed Persons

Section 15 amends s. 497.158, F.S., to provide a separate and increased fine for persons not licensed under ch. 497, F.S., in an action for injunctive or other relief. The bill provides a fine of up to \$10,000 on any person not licensed under ch. 497, F.S. Current law authorizes a fine of up to \$5,000, but does not distinguish between licensed and unlicensed persons. The bill maintains the current \$5,000 fine for licensed persons who violate ch. 497, F.S. Section 497.157, F.S., authorizes the department to impose a \$10,000 fine for unlicensed activity. The bill would make these provisions consistent in this regard.

Crimes

Section 16 amends s. 497.159, F.S., to revise criminal provisions relating to precicensure examinations, willful obstruction, trust funds, and other specified violations. The bill amends s. 497.159(1), F.S., to prohibit, as a third degree felony, the circulating of any questions or answers on, from, or for any precicensure examination administered by the department or the board. Current law only prohibits reproducing or copying the examination.

The bill amends s. 497.159(3), F.S., which prohibits as a second degree misdemeanor willfully obstructing the department or its examiner in any examination or investigation. The bill provides that the initiation of any court action by any licensee to terminate or limit any examination or investigation under ch. 497, F.S., shall not constitute a violation of this provision. This provision does not address whether such a court action by a non-licensee, including applicants for licensure and examination, would constitute a violation.

The bill amends s. 497.159(4), F.S., to prohibit any officer or director of a preneed licensee from making a required deposit to any trust fund. The bill deletes the application of this prohibition to a licensee under ch. 497, F.S. The bill also prohibits as a third degree felony the unlawful withdrawal of funds, disclosing a false report to the department or its employees, and willfully violating any provisions of parts II, IV, or V, F.S. The bill also deletes the prohibitions against failing to report to the department that required deposits are not being made when the licensee knows of the violation.

Rulemaking Transition

Section 17 amends s. 497.161, F.S., to delete a provision allowing board members, if authorized by rule of the board, to serve as experts in investigations and financial examinations, provided the board member is disqualified from voting on final action in the matter.

The bill also amends subsection (3) of s. 497.161, F.S., which grants standing under ch. 120, F.S., to the board and the department to challenge rules or proposed rules issued under ch. 497, F.S. The bill provides that this provision shall not be interpreted to deny standing to a licensee to challenge any rule if the licensee would otherwise have standing.

Liability of Owners, Directors, and Officers Regarding Trust Funds

Section 18 amends s. 497.165, F.S., which provides that owners, officers, and directors of any licensee under ch. 497, F.S., may be held jointly and severally liable for any deficiency in any trust fund, if their conduct or their negligence in the performance of their duties caused the deficiency or substantially contributed to the conditions that caused the deficiency to arise or increase. The bill limits the liability of these persons to instances of intentional or gross negligence.

Regulation of Preneed Sales

Section 19 amends s. 497.166, F.S., to provide that no person may act as a preneed sales agent unless so licensed under part IV of ch. 497, F.S. The bill also permits a licensee who is a funeral director acting as a preneed sales agent to conduct preneed sales. The bill deletes the reference to a funeral establishment and direct disposal establishment, which limits the preneed licensure requirement to preneed contracts from those establishments.

Section 497.166(3)(a), F.S., provides that a direct disposer in charge or a funeral director acting as a direct disposer in charge of a direct disposal establishment is responsible for control and activities of the establishment's preneed sales agents. A new subsection (c) provides that this responsibility is a duty of reasonable supervision and not absolute liability, and in addition to the responsibility of the preneed licensee for the conduct of the preneed sales agents it employs.

Attorney's Fees

Section 20 amends 497.169(2), F.S., to limit the provision for awarding attorney's fees and court costs in certain actions. Section 497.169(1), F.S., authorizes the Attorney General or any person to bring a civil action against any person or company violating the provisions of ch. 497, F.S. Subsection (2) of s. 497.169, F.S., authorizes the court to award reasonable attorney's fees and costs to the prevailing party in any civil litigation resulting from a transaction involving a violation of ch. 497, F.S. The bill limits the ability of the prevailing party to obtain attorney's fees and costs to violations by a cemetery company or burial rights broker licensed under part II of ch. 497, F.S., a monument establishment licensed under part V of ch. 497, F.S., or a preneed entity or preneed sales agent licensed under part IV of ch. 497, F.S. The bill provides that subsection (2) of s. 497.169, F.S., does not apply to licenses licensed under part III (funeral directing embalming and related services) or part VI (cremation, crematories, and direct disposition) of ch. 497, F.S.

Before the consolidation of chs. 470 and 497, F.S., by the act, s. 497.519, F.S., made licensed cemeteries, monument establishments, preneed businesses, preneed sales agents, and burial brokers liable for attorney's fees and costs in successful actions against them. Chapter 2004-301, L.O.F., expanded the applicability of the provision to all licensees. The bill would return the provision to the status quo before the act.

Identification of Human Remains

Section 21 creates s. 497.171, F.S., to provide requirements for the identification of human remains. This provision merges the provisions in ss. 497.275 and 497.388, F.S., relating to the identification of human remains by direct disposal establishments, unlicensed and licensed cemeteries, and licensed funeral establishments, into a single section of the Florida Statutes.¹¹ According to the department and industry representatives, consolidation of these provisions would avoid any confusion that may arise from the existence of multiple or similar provisions.

Cemetery Regulation

Section 22 amends s. 497.260(6)(b), F.S., to provide that no cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space because of race, creed, marital status, sex, national origin, or color. Current law only references the denial of burial space on the basis of race or color.

Section 23 amends s. 497.263(2), F.S., to conform licensure provisions related to cemetery companies that establish requirements related to disclosure of criminal records on licensure applications, submission of fingerprints with applications, and signatures on applications. The bill amends s. 497.263(2)(m), F.S., to reference the criminal records requirements in s. 497.142, F.S., which is amended by section 7 of the bill, and deletes provisions establishing requirements

¹¹ See also section 48 of the bill that repeals the duplicative provisions in ss. 497.275 and 497.388, F.S.

related to disclosure of criminal records on licensure applications. It amends s. 497.263(2)(o), F.S., to also reference the fingerprint requirements in s. 497.142, F.S., and deletes provisions requiring fingerprints with licensure applications. It amends s. 497.263(2)(q), F.S., to also reference the signature requirements in s. 497.141(12), F.S., and deletes provisions requiring that the licensure application be signed.

Section 24 amends s. 497.264, F.S., to conform application requirements related to the purchase or acquisition of control of a licensed cemetery to the criminal records requirements in s. 497.142, F.S., the fingerprint requirements in s. 497.142, F.S., and the signature requirements in s. 497.141(12), F.S.

Licensure of Burial Rights Brokers

Section 25 amends s. 497.281, F.S., to conform the license application provisions relating to brokers of burial rights to the criminal records, fingerprint and signature provisions of ss. 497.141(12) and 497.142, F.S. It also requires an applicant to disclose whether the applicant or any principal of the applicant ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied or otherwise acted against or disciplined by the licensing authority of any jurisdiction. The bill requires the applicant to show, by clear and convincing evidence, that the applicant has the ability, experience and integrity to act as a burial broker, and, if the applicant is an entity, that its principals are of good character.

The bill provides rulemaking authority to the licensing authority to establish requirements for minimum records to be maintained by burial broker licensees to prevent confusion as to the location of burial rights, their status as sold or unsold and the identity of the owner. It also provides rulemaking authority for required records and inspection. The bill excludes other licensees under ch. 497, F.S., from the burial broker license requirements but applies the required records and inspections rules to apply to such licensees.

Licensure; Inactive and Delinquent Status

Section 26 amends s. 497.365, F.S., to provide that the board shall, by rule, prescribe an application fee for inactive status, a delinquency fee, and a fee for reactivation of a license. The amount of any fee may not exceed the amount of the biennial renewal fee for an active license. The bill further provides that the department may not reactivate a license unless the inactive or delinquent licensee has paid any applicable biennial renewal fee or delinquency fee, or both, and a reactivation fee.

Licensure of Embalmers

Sections 27 and 28 amend ss. 497.368 and 497.369, F.S., respectively, to require persons seeking to be licensed as embalmers by examination or endorsement to comply with the new criminal records and fingerprint provisions of s. 497.142, F.S. It also provides that they may not be licensed until the licensing authority determines that they are of good character and have demonstrated no history of a lack of trustworthiness or integrity in business or professional matters.

Licensure of Funeral Directors

Sections 29 and 30 amend ss. 497.373 and 497.374, F.S., respectively, to require persons seeking to be licensed as a funeral director by examination to comply with the new criminal

records and fingerprint provisions of s. 497.142, F.S. It also provides that they may not be licensed until the licensing authority determines that they are of good character and have demonstrated no history of a lack of trustworthiness or integrity in business or professional matters.

Section 31 amends s. 497.376, F.S., to allow the issuance of a combined funeral director and embalmer license to persons meeting the separate requirements of those licenses. It provides rulemaking authority for the licensing authority to adopt procedures for application and renewal. The licensing authority may by rule establish fees for the combined license which shall not exceed the maximum fees for the separate licenses.

Renewal of Funeral Director and Embalmer Licenses

Section 32 amends s. 497.378 F.S., to increase from \$250 to \$500 the maximum amount of the renewal fee that the board must, by rule, set for renewal of a funeral director or embalmer license.

Licensure of Funeral Establishments and Removal Services

Sections 33 and 34 amend ss. 497.380 and 497.385, F.S., to revise the application requirements for licensure as a funeral establishment and centralized embalming facility, respectively. The bill requires an applicant to meet the criminal records and fingerprint provisions of s. 497.142, F.S. The bill requires licensing authority approval of a completed application accompanied by required fees if the applicant has passed an inspection pursuant to rule of the licensing authority. The licensing authority must also determine that the applicant is of good character and has demonstrated no history of a lack of trustworthiness or integrity in business or professional matters and is otherwise in compliance with ch. 497, F.S.

The bill also requires prompt reporting of the change in location of a funeral establishment or centralized embalming facility pursuant to procedures established by rule and prohibits the establishment from commencing operations until it is inspected and the establishment has passed inspection.

The bill also amends s. 497.380, F.S., to increase the maximum amount of the renewal fee for a funeral establishment license from \$300 to \$500.

The bill also amends s. 497.385, F.S., to confer rulemaking authority on the licensing authority to establish equipment or other requirements for operation of a centralized embalming facility. It also requires that centralized embalming facilities be subject to inspection before issuance of a license and annually thereafter and upon change in location. It requires the facility to notify the licensing authority of a change in location and requires prompt notification of a change in ownership, which may require relicensure, or reinspection and payment of applicable fees as required by rule. The bill confers rulemaking authority on the licensing authority with respect to inspections and ownership changes.

Preneed License Application

Section 35 amends s. 497.453, F.S., to require a preneed license applicant to provide criminal records disclosure, and submit fingerprints pursuant to s. 497.142, and sign the application pursuant s. 497.141(12), F.S.

The bill also provides that the net worth required by rule to obtain or renew a preneed license and write and carry up to \$100,000 in total retail value of outstanding preneed contracts shall not exceed \$200,000. The bill allows the board to set higher net worth requirements by increments for total retail value of outstanding preneed contracts carried in excess of \$100,000.

Applicants that cannot demonstrate the required initial minimum net worth may voluntarily submit and request acceptance of alternative evidence of financial stability or agree to additional oversight in lieu of required net worth. The bill provides several examples of acceptable types of evidence of financial stability or additional oversight, including an agreement to submit monthly financial statements, an agreement to submit quarterly financial statements, an appraisal of the entity's property or broker's opinion of the entity's assets, a credit report of the entity or its principals, a subordination-of-debt agreement, an indemnification or subrogation agreement binding the entity and its principals, a guarantee agreement for the entity from its principals, a written explanation of past financial activity, submission of a 12-month projected business plan with specific data, or submission of previous department examination reports or an agreement of 100 percent voluntary trust.

The licensing authority may accept alternative evidence or arrangements only if it determines that they are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the applicant or licensee in its retail sales agreements. The bill provides that the rules for net worth apply to the renewal of a preneed license.

Current law provides the applicable fees for a renewal of a preneed license are determined by the number of preneed contracts during the preceding year. The bill clarifies that the fees do apply to an application or renewal of a preneed license that is not held by a monument establishment.

The bill also sets forth the fees that apply to the application or renewal of a preneed license that is held by a monument establishment. The amount of this fee would be determined by the gross aggregate at-need and preneed retail sales for the 12 month period ending two full calendar months prior to the month in which the renewal is required. The applicable fees are as follows:

- Total sales of \$1 to \$50,000, renewal fee \$1,000;
- Total sales of \$50,001 to \$250,000, renewal fee \$1,500;
- Total sales of \$250,001 to \$500,000, renewal fee \$2,000;
- Total sales over \$500,000, renewal fee \$2,500.

These renewal fees are identical to the renewal fees for a monument establishment making preneed sales in s. 497.551, F.S., which is also amended in section 40 of the bill in order to conform these provisions.

The bill also amends s. 497.453(7), F.S., to increase the maximum amount of the annual renewal fee for each branch licensee from \$300 to \$500. Section 497.453(7), F.S., provides for a branch license for a person or entity that is a part of a common business enterprise that has a preneed license and desires to operate by a different name than that of the common business enterprise. The bill deletes s. 497.453(7)(d), F.S., which provides that violation by a branch are deemed violations by the sponsoring preneed licensee, unless extenuating circumstances indicate that it would be unjust to do so.

Preneed Funeral Contract Consumer Protection Trust Fund

Section 36 amends s. 497.456, F.S., which relates to the use of the Preneed Funeral Contract Consumer Protection Trust Fund, to allow the licensing authority to use up to 50 percent of the balance of the trust fund not already committed to a prior delinquency proceeding for the purpose of establishing a receivership and providing restitution to preneed contract purchasers and their estates under certain circumstances. Current law only permits the funds to be used to provide restitution.

Section 37 amends s. 497.458, F.S., to prohibit the loaning of trust funds, directly or indirectly, to a preneed licensee, any entity under any degree of common control with the preneed licensee, any employee, director, full or partial owner, or principal of the preneed licensee, or any person related by blood or marriage to any of those persons. It also prohibits the investment of trust funds, directly or indirectly with or loaned to any business or business venture in which any of the following persons have an interest:

- The preneed licensee;
- Any entity under any degree of common control with the preneed licensee; and
- Any employee, director, full or partial owner, or principal of the preneed licensee; or any person related by blood or marriage to any of those persons.

The bill deletes the provisions that would permit such loans or investment of trust funds with prior approval of the licensing authority. However, the bill also provides that the licensing authority may by rule exempt certain investments of trust funds from these limitations.

Preneed Sales Agents

Section 38 amends s. 497.466, F.S., to require licensure as a preneed sales agent for persons who offer, sell, or sign preneed sales contracts for burial rights. Funeral directors may engage in preneed sales without licensure or appointment.

The bill provides that an individual may hold only one preneed sales agent license at one time. A preneed sales agent must be at least 18 years of age. The bill specifies several types of information that must be included in the application for licensure as a preneed sales agent, including whether the applicant has ever had a license of any type denied or sanctions, and disclosure of the applicant's criminal record.

The bill requires a nonrefundable application and appointment fee of \$150 if the application is made through the department's online licensing system, or \$175 if made using paper forms. The applicant is entitled to one additional appointment without payment of further fees. The bill provides a licensing authority may increase the fee, but not to exceed \$300.

The bill provides that a temporary preneed sales agent license shall be issued upon application and payment of the applicable fee to any person, if that person is over 18 years of age, does not have a criminal or disciplinary record, and has not had a preneed sales agent license lapse for failure to submit fingerprints as required by the section. The temporary preneed sales agent license is valid for only 120 days from the date issued.

If an applicant for a preneed sales agent license is, for any reason, unable to make the license permanent, that person may reapply but may not receive another temporary license unless fingerprints are provided, the Florida Department of Law Enforcement advises that the person has no criminal record, and the applicant is otherwise determined to be qualified.

The bill provides that a person with a criminal or disciplinary record is ineligible for a temporary or permanent sales agent license. However, the bill provides that a person with a criminal or disciplinary record may be eligible for a sales agent license upon approval of the board. The bill provides criteria for the board to consider before granting such an approval. The bill provides that references to criminal records in this section are limited to include only crimes required to be disclosed under s. 497.142, F.S.

The bill provides that a preneed sales agent license does not have to be renewed. However, if the licensee has no appointments for 48 consecutive months, the permanent preneed sales agent license will terminate. A preneed sales agent licensee may have multiple appointments, but must give written notice to all other licensees who have previously appointed the licensee. Appointments are effective when made and expire 24 months after the last day of month in which made.

The bill provides that each person who holds one or more preneed sales agents license in good standing as of 11:59 p.m. on September 30, 2005, shall be deemed as of October 1, 2005, to hold a permanent preneed sales agent license and to be appointed effective on October 1, 2005. Appointments shall expire on the same date as the preneed sales agent license would have expired under the law in effect at 11:59 p.m. on September 30, 2005.

The bill provides that a preneed licensee shall be responsible, and subject to discipline for violations by, all preneed sales agents, who are affiliated with the licensee and who perform any type of preneed-related activity on behalf of the licensee.

Disclosure of Information of Preneed Sales Licensees

Section 39 creates s. 497.468, F.S., to require a preneed licensee offering burial rights, merchandise or services to the public to provide by telephone, upon request, retail prices of merchandise and to fully disclose all regularly offered services or merchandise, including prices, prior to the selection of such services or merchandise. The bill prohibits a preneed licensee offering burial rights from making any false or misleading statements regarding the legal requirements for a casket or outer burial container. The licensee must provide a good faith estimate of all fees and costs a customer will incur and provide the customer with a written contract on a form approved by the licensing authority containing specific requirements.

The bill also requires that a preneed licensee offering burial rights must provide the licensee's policy on cancellation and refunds, and provide specific disclosures on the signature page including the amount to be trusted, the amount to be refunded on cancellation of the contract, the amounts allocated to merchandise, services and cash advances, a toll-free number for the department, and a statement regarding the 30 day right to cancel.

The bill requires that beginning on October 1, 2006, the preneed licensee shall display in its offices a free brochure explaining the regulation of preneed sales, summarizing consumer rights,

and providing department contact information on a form prescribed by rule. The bill also requires the licensee to provide to each customer a complete description of any monument, marker or memorialization to be placed at the gravesite pursuant to a preneed contract.

Licensure of Monument Establishments and Sales Representatives

Section 40 amends s. 497.550, F.S., to create two categories of monument establishment licensure; the monument builder and the monument dealer. The bill provides that each monument establishment licensed under ch. 497, on September 30, 2005, would be licensed as a monument dealer on and after October 1, 2005. However, if a person becomes a licensed monument dealer because of this provision but wishes to be a licensed monument builder, he or she may apply to the board, and upon payment of the applicable fee, change his or her classification to monument builder. The bill provides that a monument builder is not eligible for a preneed sales license.

The bill revises application procedures for licensure as a monument establishment by conforming the licensure application requirements for monument establishments to the criminal background check and fingerprint requirements in s. 497.142, F.S., and the signature provisions of s. 497.141(12), F.S. It also requires, upon receipt of the application and fee, that the licensing authority inspect the monument establishment's facility in accordance with the rules of the licensing authority.

Section 41 amends s. 497.551, F.S., to revise the requirements for renewal of monument establishment licensure by conforming to the preneed renewal provisions of s. 497.453, F.S., in section 34 of the bill. The bill conforms these renewal fee provisions by removing the renewal fees established in this section. The bill does not affect the amount of any renewal fee applicable under current law.

Section 42 amends s. 497.552, F.S., to require a monument establishment to have facilities on site for inscribing monuments. Current law requires such facilities, but does not require that the facilities be on site.

Section 43 amends s. 497.553(1), F.S., to provide that the board shall set by rule an annual inspection fee not to exceed \$300. The fee is payable upon application for licensure and upon each renewal.

The bill amends s. 497.553(6), F.S., to require prompt reporting of a change in ownership of a monument establishment using forms and procedures specified by department rule. It provides that a change of ownership may require relicensure, reinspection, and payment of applicable fees, as required by rule. The bill also requires changes in location to be promptly reported according to rule and prohibits operations at a new location from commencing until the facility has been inspected, pursuant to rule, and has passed the inspection.

Current law requires a 30 day refund by monument establishment if it timely fails to purchase and install a purchased monument or marker, and also provides that the refund requirements in this subsection do not preclude the purchase and installation of a new monument from any other registered monument establishment or preneed sales licensee. The bill deletes the reference to preneed sales licensee.

Section 44 amends s. 497.554, F.S., to revise the application procedure and renewal requirements for monument establishment sales representatives by conforming the license application provisions to the criminal records and fingerprint requirements of s. 497.142, F.S. The bill also requires payment of a new fee of up to \$250 for sales agent license renewals.

The bill deletes the provision that a license of a monument establishment sales agent who is not licensed to make preneed sales does not have to be renewed. The bill provides an effective date for the monument establishment sales agent provisions in s. 497.554, F.S., of October 1, 2006.

Section 45 amends s. 497.555, F.S., to require that monument establishments and cemeteries comply with the rules authorized by this section that establish minimum access to all cemeteries by monument establishments. Current law only requires compliance by cemeteries.

Licensure of Direct Disposers

Section 46 amends s. 497.602, F.S., to revise application procedures for direct disposer licensure by conforming the criminal records and fingerprint provisions to s. 497.142, F.S.

Section 47 amends s. 497.603, F.S., to increase the maximum amount of the renewal fee for a direct disposer from \$250 to \$500.

Section 48 amends s. 497.604, F.S., to revise provisions concerning direct disposal establishment licensure and application for licensure to conform to, and require compliance with, the new signature requirements of s. 497.142(12), F.S. It also requires passage of an inspection prior to issuance of a license.

The bill also requires notice pursuant to rule prior to any change in location or control of the licensee or licensed person in charge of operations. A change in control is subject to approval by the licensing authority and to reasonable conditions imposed by the authority for the protection of the public. Operations at the new location may not commence until an inspection has been conducted, pursuant to rule, and the location has passed an inspection.

The bill requires a direct disposal establishment to retain signed contracts for a period of two years.

Licensure of Cinerator Facilities

Section 49 amends s. 497.606, F.S., to revise provisions concerning cinerator facility licensure and application by conforming the license application provisions to the criminal records and fingerprint provisions of s. 497.142, F.S., and the signature provisions of s. 497.141(12), F.S. It also requires passage of an inspection prior to issuance of a license.

The bill also requires pursuant to rule notice to the licensing authority prior to any change in location or control of the licensee or licensed person in charge of operations. A change in control is subject to approval by the licensing authority and to reasonable conditions imposed by the authority for the protection of the public. Operations at the new location may not commence until an inspection has been conducted and the location has passed the inspection.

The bill requires that each cinerator facility have sufficient refrigeration space for the average daily number of bodies stored. With regards to this requirement, the bill deletes the reference in current law to the term “number of shelves” and inserts the term “refrigeration space.”

The bill removes an authorization for rulemaking to establish criteria for acceptable cremation and alternative containers and clarifies that a cinerator facility must maintain sufficient refrigerated space if unembalmed bodies are kept on site. It also removes a requirement that the facility retain all signed contracts for at least two years.

Cremation

Section 50 amends s. 497.607(3), F.S., to delete the prohibition on the authority of a licensee to cremate body parts as defined in s. 497.005. It requires the licensing authority to adopt, no later than October 1, 2008, rules regarding the chemical cremation of human remains. It provides for cremation by chemical means of unclaimed human remains performed at the University of Florida Health Science Center

The bill amends s. 497.607(4), F.S., to provide that the provisions of this chapter shall not be construed to prohibit the state’s anatomical board, which is located at the University of Florida Health Science Center, to cause the final disposition of human remains through cremation or otherwise using such procedures as the anatomical board determines are proper and adequate.

Rules of the Board of Funeral Director and Embalmers

Section 51 amends s. 152 of ch. 2004-301, L.O.F., which provides that the rules of the Board of Funeral Directors and Embalmers and the DBPR relating to that board or the implementation of ch. 470, and the rules of the Board of Funeral and Cemetery Services which were in effect at 11:59 p.m. on the day prior to the effectiveness date of ch. 2004-301, L.O.F., shall become the rules of the Department of Financial Services and the Board of Funeral, Cemetery and Consumer Services. The bill clarifies that the effect of the DBPR’s and the prior board’s rules shall be on the subjects which they address.

Life Insurance Agent Qualification for License

Section 52 amends s. 626.785, F.S., which authorizes a funeral director, a direct disposer, or an employee of a funeral establishment holding a certificate of authority under s. 497.405, F.S., to obtain an insurance agent’s license to sell life policies covering the expense of a prearrangement for funeral services or merchandise. The bill increases the maximum face amount of life insurance (from \$7,500 to \$12,500) that may be sold by a funeral director who is a licensed insurance agent to cover the pre-need expense of funerals and further provides that this amount would be annually increased based on the Annual Consumer Price Index compiled by the U.S. Dept. of Labor, beginning with the Annual Consumer Price Index announced by the U. S. Dept. of Labor for 2003.

Repeals

Section 53 repeals s. 497.275, F.S., relating to the identification of human remains in licensed cemeteries, and s. 497.388, F.S., relating to the identification of human remains licensees or registrants in charge of the final disposition of dead human remains. The provisions of these sections were consolidated in s. 497.171, which is created by section 20 of this bill.

The bill also repeals s. 497.556, F.S., relating to preneed sales by monument establishments. Section 34 of the bill transfers the provisions of this section to s. 497.453, F.S.

Effective Date

Section 54 provides an effect date for the act of October 1, 2005, which is also the effective date for ch. 2004-301, L.O.F., and the merger of the two boards.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department estimates that the new biennial renewal fee for monument establishment sales representatives will have the following impact:

<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>
\$14,030	\$18,727	\$50,477

The department also reports that there will be higher application fees through the cost of obtaining fingerprints for certain new individual license applicants and the officers and directors of certain establishment licensees. The department did not estimate these increased fees.

C. Government Sector Impact:

The department estimates the effect on recurring revenues of the bill as follows:

<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>
\$0	\$0	\$31,750 (on a biennial basis)

The Criminal Justice Estimating Conference, which provides the official estimate of the prison bed impact, if any, of legislation, has not met to consider the prison bed impact of

the third degree felony penalties in the bill. However, because the penalties are applicable in very limited circumstances and are not ranked, it appears that the bill will not have any prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
