

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 529 CS Funeral and Cemetery Industry Regulation
SPONSOR(S): Kreegel and others
TIED BILLS: HB 1469 **IDEN./SIM. BILLS:** SB 2346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>13 Y, 0 N</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Criminal Justice Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
3) <u>State Administration Appropriations Committee</u>	<u>10 Y, 0 N</u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Commerce Council</u>	<u>8 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Bohannon</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends ch. 497, F.S., relating to the funeral and cemetery industry. The bill follows the passage in 2004 of ch. 2004-301, L. O.F., which created the Board of Funeral, Cemetery and Consumer Services within the Department of Financial Services and empowered the board to enforce the provisions of chs. 470 and 497, F.S., as they relate to the regulation of funeral directors, embalming, cremation, cemeteries, monument establishments, direct disposers, cremation services, cemetery companies and preneed contracts for funeral merchandise or services. The bill completes the consolidation of funeral and cemetery regulation.

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

- Conforms the fingerprint, criminal records and application signature requirements across licensees.
- Differentiates the application and renewal fees for monument establishments based on whether they have preneed licenses.
- Substantially modifies the licensing of preneed sales agents.
- Increases the maximum fees for several licenses.
- Requires certain disclosure of consumer information by preneed licensees.
- Revises the requirements for the identification of human remains.
- Clarifies requirements for notices of change in ownership or location of licensees.
- Provides that the owners, officers, and directors of a licensee may only be liable for any deficiency in a trust fund if they intentionally or through gross negligence in the performance of their duties caused the deficiency or substantially contributed to conditions that allowed the deficiency to arise or increase.
- 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.
- Makes technical and clarifying changes to the law.
- Authorizes a \$10,000 penalty for violations of ch. 497, F.S., by unlicensed persons.

The bill has an insignificant fiscal impact on the Department of Financial Services. The department estimates that the private sector will encounter minimal costs of obtaining fingerprints for new applications for funeral directors, embalmer, and broker of burial rights as well as officers of funeral establishments.

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

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill modifies existing regulations regarding the funeral and cemetery industry, gives new or revised rulemaking authority to regulatory agencies and creates new regulatory fees.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Ch. 470, F.S., regulates funeral directors, embalmers, and the practice of cremating human remains. The Board of Funeral Directors and Embalmers, which consists of five members, within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of ch. 470, F.S. According to the DBPR, the board regulates approximately 5,000 individuals and establishments in funeral related services.

Ch. 497, F.S., is known as the Florida Funeral and Cemetery Services Act (act). The act regulates cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. The Board of Funeral and Cemetery Services, which consists of seven members, within the Department of Financial Services (DFS or department) administers and enforces the provisions of the act.

Ch. 2004-301, Laws of Florida (Certain provisions effective October 1, 2005)

Ch. 2004-301, L.O.F., creates the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services. It establishes the composition, powers, and duties for the Board of Funeral, Cemetery and Consumer Services. The new board will be composed of 10 members, who will be appointed by the governor from nominations made by the Chief Financial Officer (CFO). The new board will enforce the provisions of ch.s 470 and 497, F.S., and the provisions of ch. 455, F.S., that are necessary to enforce the provisions of ch. 470, F.S.

The new law creates the Division of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS). The director of the new division will be appointed by, and serve at the pleasure of, the CFO.

The new law transfers the statutory powers, duties, functions, records, personnel, property, and unexpended balances of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.

The new law defines new terms and clarifies current terms, used in ch.s. 470 and 497, F.S. The new law provides standards for adult grave spaces. It requires that a licensed cemetery prepare a map documenting establishment of recoverable internal survey reference markers. It provides identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries after October 1, 2004. The new law 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 ch. 470, F.S. It exempts from the 30-day refund requirement for cancelled contracts those amounts allocable to any burial rights, merchandise, or service that have been used by the purchaser. It authorizes the board to perform procedures it deems necessary incident to the surrender of a certificate of authority.

The new law increases from one to three years the period that an embalmer apprentice may serve in an apprentice capacity. The new law amends requirements relating to the practice of direct disposal. The new law establishes additional requirements for direct disposal establishments and operators of cinerators, including reporting, equipment, and business practice requirements. It provides for the direct disposal of fetal remains, including remains from fetal deaths of less than 20 weeks gestation. It increases from three to six the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration.

The new law provides for the proper identification of dead human remains in the casket, alternative container, or cremation container. It provides that all contracts with the public must be approved by the DFS and must include a complete description of any monument, marker or related product.

The new law provides for the regulation of monument establishments, and requires that they operate with a certificate of authority. It provides requirements for the operation of monument establishments, including minimum square footage requirements, and minimum net worth requirements. The new law provides for the regulation of preneed contract sales by monument establishments, including requiring a certificate of authority to conduct preneed sales.

The new law requires that multiple claims for a body must be prioritized in accordance with inheritance rules. It provides that an "unclaimed" body is one that is not claimed by a legally authorized person for interment at that person's expense. It provides that indigent relatives may claim a body in a manner consistent with the policy of the agency in possession or control of the body, and defines the term "indigent" to mean income at or below 100 percent of the federal poverty level.

Proposed Changes

The bill makes a number of clarifying, technical and substantive changes to ch. 497, F.S., as amended by ch. 2004-301, L.O.F.

Note: References to the "licensing authority" are intended as placeholders until the Department of Financial Services, in cooperation with industry representatives, can reach agreement on the bifurcation of regulatory oversight responsibilities of the department and the Board of Funeral, Cemetery and Consumer Services. Such references should be interpreted as including either the department or the board.

Funeral procession right-of-way (Section 1)

Section 316.1974, F.S., currently provides that all non-law enforcement funeral escort vehicles and funeral lead vehicles must be equipped with at least one lighted circulation lamp exhibiting an amber light. The bill amends this provision to allow for a purple light.

Definitions (Section 2)

The bill redefines the term "alternative container" to mean an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials or like materials. It removes an existing definition of "body parts." The bill removes the definition of "funeral merchandise."

The bill modifies the definition of the terms "burial right" and "cemetery" to include a reference to cremated remains.

The bill redefines a "centralized embalming facility" to mean a facility in which embalming takes place that operates independently of a funeral establishment licensee and that offers embalming services to

funeral directors for a fee. It removes a requirement in the definition that the facility not be physically connected with a funeral establishment.

The bill redefines the term "cinerator" to mean a facility where dead human bodies are subject to cremation, removing a more specific definition. The bill also redefines the term "cremation" to mean any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments, and includes any other mechanical or thermal process whereby human remains are pulverized, burned, recremented, or otherwise further reduced in size or quantity.

The bill redefines "cremation container" to include a casket or alternative container. The bill also removes existing definitions of "funeral" and "funeral merchandise" or "merchandise." It redefines the definition of "human remains" to exclude the residue of human bodies. The bill defines a "refrigeration facility" to mean a facility operated independently of a funeral establishment, etc., and includes direct disposers, direct disposal establishments, or crematories as customers of such facilities. The bill removes the existing requirement that a refrigeration facility not be physically connected with a funeral establishment, etc.

Finally, the bill redefines a "removal service" to mean a service that operates independently of a funeral establishment or direct disposal establishment.

Board of Funeral, Cemetery and Consumer Services (Section 3)

The bill clarifies that not more than two members of the Board of Funeral, Cemetery and Consumer Services shall be principals of the same company or partnership or group of companies or partnerships under common control. The bill also requires the department to adopt rules establishing forms for application for membership to the board and procedures for making such applications. The forms shall require disclosure of the existence and nature of all current and past employments or contracts with, and direct or indirect affiliations or interests in, any entity or business which at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or which is or was otherwise involved in the death care industry.

Rulemaking Authority of Board and Department (Section 4)

The bill revises the authority of the department to take emergency action against any licensee without prior consultation with the board if the department determines that there is an imminent danger to the health, safety or welfare of the citizens of the state. It also provides that the Chief Financial Officer (CFO) shall have no authority by recommendation or otherwise to set fees, rates or prices to be used by any licensee and that no licensee shall set fees, rates or prices in accordance with recommendation by the CFO.

Fees Set by the Board (Section 5)

The bill reduces the period in which the board shall take action on setting fees once the department notifies it that fees are projected to be inadequate to provide regulation required by the chapter from one year to six months. After that time, the department may step in and set fees. The bill also requires that any one-time assessment by the board to correct an inadequacy in fees be on or before October 1, 2007. The bill provides that a delinquency fee shall be charged and collected from a licensee for the failure to timely renew a license. Where no specific delinquency fee is specified in chapter 497, F.S., in relation to a particular category of licensure, the delinquency fee shall be \$50.

General Licensing Requirements (Section 6)

The bill clarifies that a social security number is required if the applicant is a natural person and otherwise a federal tax identification number is required.

The bill requires the following licenses to be applied for and issued solely to natural persons: embalmer apprentice, embalmer intern, funeral director intern, funeral director, funeral director and embalmer, direct disposer, monument establishment sales agent and preneed sales agent.

The bill requires the following licenses to be applied for and issued to natural persons, corporations, limited liability companies or partnerships: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, or preneed sales business. The bill limits a cemetery license only to corporations, partnerships or limited liability companies.

The bill prohibits the issuance of a license to an applicant organized as a corporation, limited liability company or partnership unless the applicant is organized and in good standing under the laws of Florida, or another state, and provides proof of such standing. The bill also requires the identification of all officers, managers, managing members, partners, general partners, limited partners, managing partners, directors, all stockholders controlling ten percent of the voting stock and any other person who can control the applicant. The bill also specifies signature requirements for each type of applicant, from a natural person to a limited liability company.

It authorizes the licensing authority to adopt rules to implement the application provisions, including forms. Finally, the bill prohibits the assignment or transfer of a license.

Fingerprint and Criminal Background Checks (Section 7)

The bill restricts the authority of the Florida Department of Law Enforcement (FDLE) to accept fingerprint cards from other than applicants under ch. 497, F.S.

The bill also specifies the nature of the criminal records that an applicant must provide. An applicant must disclose any felony or misdemeanor, no matter when committed, which was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations or cemetery monument or marker sales or installation; any other felony not already disclosed which was committed within 20 years immediately preceding the application; or any other misdemeanor not already disclosed which was committed within five years immediately preceding application.

Criminal disclosure must be made regardless of whether the conduct occurred inside or outside Florida, regardless of where the prosecution occurred and regardless of whether adjudication was entered. The bill sets forth parameters for determining a felony or misdemeanor-equivalent for other states and excludes speeding and other noncriminal traffic infractions from the reporting requirement.

The bill requires the following persons to report their criminal records: a natural person, only if he/she is the applicant; the officers and directors of a corporation; the members and managers of a limited liability company; the partners of a partnership; and an individual licensee who is in charge of an applicant. The bill authorizes the department to require disclosure by other persons if it believes that the employee or principal has committed any crime and that the person's relationship to the applicant may render the applicant a danger to the public if the license is issued. The bill authorizes the department to adopt rules specifying forms and procedures for disclosure of criminal records and to investigate any person regarding a disclosed criminal record.

The bill requires specific persons to submit fingerprints with a license application, including a natural person where the applicant is a natural person; the chief executive officer, president, chief financial officer, chief of operations, general counsel and board members of a corporation; the managers and members of a limited liability corporation; all partners of a partnership; and any other person if the department has grounds to believe that the person may have committed a crime and that the person's relationship to the applicant may render the applicant a danger to the public if the license is issued.

The bill authorizes the licensing authority may by rule establish forms, procedures and fees for submission and processing of fingerprint cards and provides for waiver of the fingerprint card requirement if a person has submitted a card within the preceding 24 months.

The bill provides that the cost for the fingerprint processing shall be paid to FDLE and may be borne by the Department of Financial Services, the employer or the person subject to the background check.

Licenses for Retired Professionals (Section 8)

The bill prohibits a person holding a license as a retired professional from engaging in preneed sales.

Licensing Examination Hearings – Attorneys’ Fees (Section 9)

The bill limits the award of attorneys’ fees to prevailing parties in license examination hearings to prevailing parties only in a hearing involving the challenge to a decision that the applicant’s examination answer was incorrect or involving a determination that the challenged question should be struck.

Continuing Education (Section 10)

Currently, the licensing authority is authorized to adopt rules to implement requirements regarding precensure training and continuing education requirements. The rules may establish conditions and requirements applicable to providers of the training or education. The bill removes the authority for the rules to have requirements for written contracts or agreements required to be entered into by providers with the licensing authority as a prerequisite to acceptance of training or education.

Consumer Complaints (Section 12)

The bill limits the complaint provisions of s. 497.151, F.S., to those involving licensed entities only. It also excludes from the definition of a complaint the response by a customer recorded by the customer on a customer satisfaction questionnaire or survey form sent to the customer by the licensee and returned by the customer to the licensee.

Disciplinary Grounds (Section 13)

The bill clarifies that s. 497.152, F.S., sets forth conduct which is grounds for the denial of any application, imposition or discipline or other enforcement actions against a licensee or other person. It clarifies that disciplinary action imposed by another state is grounds for discipline in Florida. It clarifies that the attempt to obtain, or to obtain or renew a license through error of the department, known to the applicant, is a basis for discipline. Further, failing to report to the department any violation of ch. 497, F.S., by another person, when the licensee knows the violation has created a serious and immediate danger to the public health, safety, or welfare is a basis for discipline. The bill includes as an unlawful sales practice the filling in of any contract form for use with a particular customer using language which misrepresents the true nature of the contract. This broadens the unlawful practice considerably from existing language. The bill excludes from the definition of “complaint” for purposes of the complaint recording requirement the response by a customer recorded by the customer on a customer satisfaction questionnaire or survey form sent to the customer by the licensee and returned by the customer to the licensee.

Currently, failure to timely remit as required by ch. 497, F.S., the requirement amounts to any trust fund required by the chapter is a basis for discipline. The bill provides that the board may by rule provide criteria for identifying minor, nonwillful trust remittance deficiencies; remittance deficiencies falling within such criteria, if fully corrected within 30 days after notice to the licensee by the department, will not constitute grounds for disciplinary action.

Disciplinary Procedures and Penalties (Section 14)

The bill clarifies references to the person or entity committing violations by using the general term "licensee." It provides that the department may present to the board a proposed settlement by consent order or otherwise and allows the board to execute and file the consent order as its final order in the matter or otherwise issue a final order in the matter. This will streamline the process for preparing and filing a consent/final order in disciplinary cases.

Civil Penalty for Unlicensed Persons (Section 15)

The bill authorizes a court to impose a \$10,000 fine per violation of ch. 497, F.S., on unlicensed persons. This bill conforms s. 497.158, F.S., to existing s. 497.157, F.S.

Crimes (Section 16)

The bill clarifies that the theft in whole or part or the unauthorized reproduction, circulation, or copying of any questions or answers on, from or for any prelicensure examination administered by the department or board is a third degree felony. It also clarifies that the initiation of an action on behalf of a licensee to terminate or limit any examination or investigation is not a crime. The bill also clarifies that any officer or director or similar person of a preneed licensee who fails to make required trust fund deposits or any such person or an employee of a preneed licensee who makes an unlawful withdrawal of funds from any such account or who knowingly discloses to the department or an employee any false report or who violates any provision of parts II (cemetery regulation), IV (preneed sales), or V (monument establishments) of ch. 497, F.S., commits a third-degree felony.

The bill also prohibits a cemetery company or other legal entity conducting or maintaining a public or private cemetery from denying space to a person because of race, creed, marital status, sex or national origin.

Rulemaking Transition (Section 17)

The bill removes a provision authorizing rules allowing the department to use the expertise of board members in the investigation or examination of a licensee without disqualifying the board member.

It also clarifies the extraordinary rulemaking authority granted to the licensing authority arising out of the 2004 merger of ch.s 470 and 497, F.S., as those chapters appeared in the 2003 statutes, correcting the dates of merger and prior publication of the chapters. It also provides that the changes will not be interpreted to deny standing to a licensee to challenge any rule under ch. 497, F.S., if the licensee would otherwise have standing.

Liability of Owners, Directors, and Officers Regarding Trust Funds (Section 18)

Currently, the 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 required by the chapter to the extent the deficiency arose during the period they were owners, officers, or directors of the licensee if their conduct or their negligence in the performance of their duties caused the deficiency or substantially contributed to conditions that allowed the deficiency to arise or increase. The bill modifies this to provide that the owners, officers and directors may only be liable if they intentionally or through gross negligence in the performance of their duties caused the deficiency or substantially contributed to conditions that allowed the deficiency to arise or increase.

Regulation of Preneed Sales (Section 19)

The bill clarifies that no person may act as an agent for a preneed licensee unless that person is licensed as a preneed sales agent or is a licensed funeral director acting as a preneed sales agent. It

also provides that the duty of a funeral director and direct disposer in charge is a duty of reasonable supervision and not absolute liability with respect to the control of an establishment's preneed sales agents. The responsibility of the funeral director or direct disposer in charge shall be in addition to the responsibility of the preneed licensee for the conduct of the preneed sales agents it employs.

Attorneys' Fees (Section 20)

The bill limits the prevailing party attorneys' fees provision of s. 497.169, F.S., to cases arising from violations of the ch. by cemetery companies or burial rights brokers licensed under part II, monument establishments licensed under part V or preneed entities or sales agents licensed under part IV. It also excludes the fees provision from cases involving funeral directors or embalmers licensed under part III or crematories or direct disposers licensed under part VI.

Identification of Human Remains (Section 21)

The bill creates new s. 497.171, F.S., detailing the requirements for identification of human remains. For funeral directors, embalmers and crematories and direct disposers, the bill requires the licensee in charge of the final disposition of dead human remains to affix on the ankle or wrist of the deceased, and on the casket or alternative container or cremation container a tag providing proper identification of the remains. It specifies the type of identification or tag and sets forth requirements for the contents of the identification. The bill gives the board rulemaking authority to prescribe the material for the identification tags, the acceptable locations for the tags and methods for affixing the tags. The bill requires identification in a container or urn containing cremated remains. The bill requires identification at the time of removal from the place of death.

For unlicensed cemeteries, the bill requires identification of human remains and places responsibility for the identification with the licensed funeral establishment in charge of the funeral arrangements. It gives the licensing authority rulemaking authority to prescribe the materials and location of the tags.

For cemetery licensees, the bill requires the placement on the outer burial container, cremation interment container or other container or on the inside of a crypt or niche a tag or permanent identifying marker containing the name of the decedent and the date of death. It gives the licensing authority rulemaking authority to prescribe the materials and location of the tag or marker. The bill also allows the licensed cemetery to rely on the identity stated on the burial transit permit or on identification supplied by another licensee to establish the identity of the human remains and shields them from liability for such reliance.

For direct disposal establishments, the bill requires the establishment of a system of identification of human remains received that must be designed to track the identify of the remains from the time of receipt until delivery to the authorized persons.

Finally, the bill allows a licensee with responsibility for identifying human remains to rely on the representation of a legally authorized person to establish the identity of the dead human remains.

Cemetery Regulation (Sections 22, 23 and 24)

The bill prohibits a cemetery company from denying a person a burial space on the basis of race, creed, marital status, sex, national origin, or color.

It also conforms the application procedures to the new criminal record, fingerprint and signature provisions of s. 497.142, F.S., and applies these same provisions to the purchase of a cemetery license.

Licensure of Burial Rights Brokers (Section 25)

The bill conforms the license application provisions relating to brokers of burial rights to the new criminal records, fingerprint and signature provisions of s. 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 records 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)

The bill provides that the board must prescribe by rule an application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for reactivation of a license. These fees may not exceed the biennial renewal fee established by the board for an active license. The department may not reactivate a license unless the inactive or delinquent licensee has paid any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

Licensure of Embalmers (Sections 27 and 28)

The bill requires 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., and 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, 30, 31 and 32)

The bill requires persons seeking to be licensed as funeral directors by examination or endorsement to comply with the new criminal records and fingerprint provisions of s. 497.142, F.S., and 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.

The bill also allows the issuance of a combined funeral director and embalmer license to persons meeting the separate requirements of those licenses and provides rulemaking authority for the licensing authority to adopt procedures for application and renewal and may by rule establish fees for the combined license which shall not exceed the maximum fees for the separate licenses.

The bill increases the maximum fee for renewal of a funeral director or embalmer license from \$250 to \$500.

Licensure of Funeral Establishments (Sections 33)

The bill requires an applicant for a funeral establishment license to meet the criminal records and fingerprint provisions of s. 497.142, F.S., and requires approval of a completed application accompanied by required fees if the applicant has passed an inspection pursuant to rule of the licensing authority and the authority determines 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 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 increases the maximum fee for renewal of a funeral establishment license from \$300 to \$500.

Licensure of Removal Services and Centralized Embalming Facilities (Section 34)

The bill requires an applicant to meet the criminal records and fingerprint provisions of s. 497.142, F.S., and requires approval of a completed application accompanied by required fees if the applicant has passed an inspection pursuant to rule of the licensing authority and the authority determines 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 the establishment 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 confers 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, 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 Applications (Section 35)

The bill requires a preneed license applicant to provide criminal records disclosure, submit fingerprints and sign the application pursuant to s. 497.142, 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 \$20,000. The bill allows the board to set higher net worth requirements by increment 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 additional evidence or oversight may include 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; or submission of a 12-month projected business plan with specific data; 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.

The bill clarifies the fees that apply to an application or renewal of a preneed license that is not held by a monument establishment and sets forth the fees that apply to the application or renewal of a preneed license held by a monument establishment, determined by its 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 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

The bill provides that branch licenses shall be renewed annually by payment of a renewal fee not to exceed \$500, rather than \$300. The bill also removes language providing that violations by a branch shall be deemed to be violations by its sponsoring preneed licensee, unless the licensing authority determines that extenuating circumstances indicate that it would be unjust to attribute the branch's misconduct to the sponsoring preneed licensee.

Preneed Funeral Contract Consumer Protection Trust Fund (Sections 36 and 37)

The bill allows 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. This will allow for the funds to be used to establish the receivership as well as provide restitution.

The bill also prohibits 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; 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 clarifies that the licensing authority may by rule exempt certain investments of trust funds.

Preneed Sales Agents (Section 38)

The bill substantially modifies the licensure requirements of preneed sales agents. The bill conforms the preneed sales license application provisions to the new criminal background check and fingerprint requirements of s. 497.142, F.S., and provides an exemption from the fingerprint submission requirement for applicants who have previously submitted fingerprint cards.

The bill clarifies that persons licensed as funeral directors may engage in preneed sales for the preneed licensee with whom they are affiliated without preneed sales agent licensure or appointment. The bill provides that a person may hold only one preneed sales agent license at a time. The application must include identification of the preneed licensee whom the applicant believes will initially appoint the applicant if a license is issued.

The bill provides that the application must be accompanied by a \$150 nonrefundable fee if made through the department's online licensing system or \$175 if made using paper forms. The licensing authority is authorized to increase the fees up to \$300.

A temporary preneed sales agent license shall be issued if the applicant is 18 or older, the applicant has not disciplinary or criminal record and the applicant has never previously held a temporary preneed sales agent license that lapsed for failure to submit required fingerprints. A temporary license will be valid for 120 days and cannot be renewed.

A temporary preneed sales agent licensee can obtain a permanent preneed sales agent license if the licensee submits his or her fingerprints within 90 days after issuance of the temporary license. Unless the department determines that the temporary licensee has a criminal or disciplinary record, the temporary license will be converted to a permanent license. A permanent license may not be issued to a person with a criminal or disciplinary record. If the department determines that a temporary licensee has such a record, the temporary license must be suspended and the department must notify the licensee and all preneed licensees who have the suspended preneed sales agent under appointment. The suspended licensee may petition the board for issuance of a license which the board is authorized to issue under certain circumstances and with certain conditions.

A permanent preneed sales agent license will remain in force without a requirement for renewal until the agent has not been appointed for 48 consecutive months, at which time the license will terminate. A former licensee can apply for issuance of a new preneed sales agent license.

A preneed sales agent licensee may be appointed by as many preneed licensees as desire to appoint the preneed sales agent licensee. The bill sets forth the method of appointment and provides that an appointment shall be effective for 24 months unless otherwise terminated. The appointment can be renewed. When a preneed sales agent licensee is appointed by a preneed licensee, the department must promptly give written notice to all other preneed licensees then having the same preneed sales agent under appointment. The preneed licensee is responsible for taking reasonable steps to ensure that the preneed sales agent licensees it appoints have adequate training regarding preneed sales.

Initial and renewal appointments fees will be \$150 if made through the department's online licensing system and \$175 if made using paper forms. The fees may be increased by the board up to \$300.

The bill specifies the process for terminating appointments. There will be no fee if the termination is done through the online licensing system but a \$25 fee if done using paper forms.

Disclosure of Information by Preneed Licensees (Section 39)

The bill requires a preneed licensee offering burial rights, merchandise or services to the public to provide by telephone, upon request, retail prices of merchandise; fully disclose all regularly offered services or merchandise, including prices, prior to the selection of such services or merchandise; not make any false or misleading statements regarding the legal requirements for a casket or outer burial container; provide a good faith estimate of all fees and costs a customer will incur; provide the customer with a written contract on a form approved by the licensing authority containing specific requirements; 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/Sales Representatives (Sections 40 - 45)

The bill creates two new classifications for monument establishment: monument builders and monument dealers.

The bill conforms the licensure application requirements for monument establishments to the criminal background check, fingerprint card and signature provisions of s. 497.142, F.S. It also requires inspection of the facility in accordance with department rule upon receipt of the application and fee.

The bill conforms the renewal fee provisions relating to monument establishments to remove references to those that have preneed licenses to conform to the preneed renewal provisions of section 35 of the bill. It also requires a monument establishment to have facilities on site for inscribing monuments and equipment to deliver and install markers and monuments.

The bill requires the board to set by rule an annual inspection fee not to exceed \$300, payable upon application for licensure and upon each renewal of such license.

The bill requires prompt reporting of a change in ownership of a monument establishment using forms and procedures specified by department rule and 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.

The bill conforms the license application provisions relating to monument establishment sales representatives to the criminal records and fingerprint requirements of s. 497.142, F.S., and requires payment of a new fee of up to \$250 set by rule of the licensing authority for sales agent license renewals.

The bill provides an effective date for the monument establishment sales agent provisions of October 1, 2006 to allow time for the licensees to comply with the new provisions.

The bill also provides for access by monument establishments to cemeteries pursuant to rule and requires compliance by these establishments.

Licensure of Direct Disposers (Section 46, 47, 48)

The bill conforms the license application provisions for direct disposers to the criminal records and fingerprint provisions of s. 497.142, F.S. It conforms similar provisions for direct disposal establishments and requires compliance with the new signature requirements of s. 497.142, F.S., as well. It also requires passage of an inspection prior to issuance of a license, in accordance with rules of the licensing authority.

The bill provides that a renewal fee for direct disposers shall not exceed \$500 rather than \$250.

The bill also requires notice pursuant to rule prior to any change in location or control of a direct disposer establishment. 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.

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

Licensure of Cinerator Facilities (Section 49)

The bill conforms the license application provisions for cinerator facilities to the criminal records, fingerprint and signature provisions of s. 497.142, F.S. It also requires passage of an inspection prior to issuance of a license, in accordance with rules of the licensing authority.

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.

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)

The bill removes a prohibition on the authority of a licensee to cremate body parts as defined in s. 497.005, F.S. The bill also provides that unclaimed human remains delivered to the control of the anatomical board headquartered at the University of Florida Health Science Center, may be finally disposed of through cremation by chemical means or otherwise when performed in facilities owned and operated by such anatomical board or the center.

Rules (Section 51)

The bill provides that the rules of the Board of Funeral Directors and Embalmers and the Department of Business and Professional Regulation relating to the Board of Funeral Directors and embalmers or 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 on the subjects which they address, the rules of the Department of Financial Services and the Board of Funeral, Cemetery and Consumer Services.

Life Insurance Agent Qualification for License (Section 52)

The bill allows certain persons 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 in a face amount not to exceed \$12,500 plus an annual percentage increase based on the Annual Consumer Price Index beginning with the index announced by the U.S. Department of Labor in 2003. This raises the face amount from \$7,500.

Repeals (Section 53)

The bill repeals s. 497.275, F.S., relating to the identification of human remains; s. 497.388, F.S., relating to the identification of human remains; and s. 497.556, F.S., relating to the licensure of monument establishments.

Effective date (Section 54)

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

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1974, F.S., relating to funeral procession right of way and liability.

Section 2. Amends s. 497.005, F.S., relating to definitions.

Section 3. Amends s. 497.101, F.S., relating to the Board of Funeral, Cemetery and Consumer Services (board).

Section 4. Amends s. 497.103, F.S., relating to rulemaking authority of the board and Department of Financial Services (department).

Section 5. Amends s. 497.140, F.S., relating to the power of the department to set fees.

Section 6. Amends s. 497.141, F.S., relating to licensing and application procedures.

Section 7. Amends s. 497.142, F.S., relating to fingerprinting and criminal background checks.

Section 8. Amends s. 497.143, F.S., relating to licenses for retired professionals.

- Section 9. Amends s. 497.144, F.S., relating to examination hearings.
- Section 10. Amends s. 497.147, F.S., relating to continuing education.
- Section 11. Amends s. 497.149, F.S., relating to investigations.
- Section 12. Amends s. 497.151, F.S., relating to complaints.
- Section 13. Amends s. 497.152, F.S., relating to disciplinary grounds.
- Section 14. Amends s. 497.153, F.S., relating to disciplinary procedures.
- Section 15. Amends s. 497.158, F.S., relating to fines for unlicensed persons.
- Section 16. Amends s. 497.159, F.S., relating to crimes.
- Section 17. Amends s. 497.161, F.S., relating to rulemaking provisions.
- Section 18. Amends s. 497.165, F.S., relating to liability of owners, directors and officers regarding trust funds.
- Section 19. Amends s. 497.166, F.S., relating to preneed sales.
- Section 20. Amends s. 497.169, F.S., relating to private causes of action.
- Section 21. Creates s. 497.171, F.S., relating to the identification of human remains.
- Section 22. Amends s. 497.260, F.S., relating to cemeteries and exemptions.
- Section 23. Amends s. 497.263, F.S., relating to cemetery companies licensure.
- Section 24. Amends s. 497.264, F.S., relating to assignment or transfer of a cemetery license.
- Section 25. Amends s. 497.281, F.S., relating to the licensure of brokers of burial rights.
- Section 26. Amends s. 497.365, F.S., relating to licensure; inactive and delinquent status.
- Section 27. Amends s. 497.368, F.S., relating to embalmers licensure by examination, provisional license.
- Section 28. Amends s. 497.369, F.S., relating to embalmers licensure by endorsement; licensure of temporary embalmer.
- Section 29. Amends s. 497.373, F.S., relating to licensure of funeral directors licensure by examination, provisional license.
- Section 30. Amends s. 497.374, F.S., relating to licensure of funeral directors licensure by endorsement; licensure of temporary funeral director.
- Section 31. Amends s. 497.376, F.S., relating to license as funeral director and embalmer; display of license.
- Section 32. Amends s. 497.378, F.S., relating to renewal of funeral director and embalmer licenses.
- Section 33. Amends s. 497.380, F.S., relating to the licensure of funeral establishments.
- Section 34. Amends s. 497.385, F.S., relating to removal services; refrigeration facilities; centralized embalming facilities.
- Section 35. Amends s. 497.453, F.S., relating to applications for preneed licenses.
- Section 36. Amends s. 497.456, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund for establishing a receivership.
- Section 37. Amends s. 497.458, F.S., relating to the disposition of funds received on preneed contracts.
- Section 38. Amends s. 497.466, F.S., relating to preneed sales agents, license required; and appointment of agents.
- Section 39. Creates s. 497.468, F.S., relating to the disclosure of information to the public regarding an offering to provide burial rights, merchandise or services.
- Section 40. Amends s. 497.550, F.S., relating to licensure of monument establishments.
- Section 41. Amends s. 497.551, F.S., relating to the renewal of monument establishment license.
- Section 42. Amends s. 497.552, F.S., relating to required facilities for monument establishments.
- Section 43. Amends s. 497.553, F.S., relating to regulation of monument establishments.
- Section 44. Amends s. 497.554, F.S., relating to monument establishment sales representatives.
- Section 45. Amends s. 497.555, F.S., relating to monument establishment required rules.
- Section 46. Amends s. 497.602, F.S., relating to licensure of direct disposers.
- Section 47. Amends s. 497.603, F.S., relating to the renewal of direct disposers license.
- Section 48. Amends s. 497.604, F.S., relating to licensure of direct disposal establishments.
- Section 49. Amends s. 497.606, F.S., relating to licensure of cinerator facilities.
- Section 50. Amends s. 497.607, F.S., relating to cremation procedures.
- Section 51. Amends s. 152 of ch. 2004.301, L.O.F., relating to the effectiveness of pre-existing rules.
- Section 52. Amends s. 626.785, F.S., relating to qualifications for agent's license .

Section 53. Repeals ss. 497.275, 497.388 and 497.556, F.S.
Section 54. Provides effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 2005-06	FY 2006-07	FY 2007-08
1. Revenues:			
Recurring:			
Monument Establishments			
Regulatory Trust Fund	\$0	\$0	\$31,750 (on a biennial basis)
2. Expenditures:			
See D. Fiscal Comments.			

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill does not appear to have any effect on local government revenues.
2. Expenditures:
The bill does not appear to have any effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Financial Services estimates that the private sector will encounter costs of obtaining fingerprints for new applications for funeral directors, embalmer, broker of burial rights as well as the officers of funeral establishments and other death care establishment applicants. The total estimated impact on the private sector is: FY 2005-06 of \$14,030, FY 2006-07 of \$18,727, and FY 2007-08 \$50,477.

D. FISCAL COMMENTS:

The Department of Financial Services reports that the various rulemaking requirements of the bill will create only costs of noticing proposed rules in the Florida Administrative Weekly. In addition, the costs of processing new fingerprint cards will be covered with current staffing.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill confers rulemaking authority on the Department of Financial Services or the appropriate licensing authority with respect to the following issues: applications, criminal records checks, fingerprint cards, licensing fees, the identification of human remains, minimum records required to be kept by burial rights brokers, inspections of licensed facilities, equipment for the operation of a centralized embalming facility, net worth of a preneed license applicant, exemption of investments of trust funds, notice of changes in location or ownership of a licensee, and access to cemeteries by monument establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted a strike-all amendment which made numerous technical, clarifying and substantive including the following:

- The amendment authorized the use of a purple light in a funeral procession.
- The amendment altered some of the definitions applicable to ch. 497, F.S.
- The amendment provided that the cost for the fingerprint processing must be paid to FDLE and may be borne by the Department of Financial Services, the employer or the person subject to the background check.
- The amendment provided that the owners, officers and directors of a licensee may only be liable for a deficiency in a trust fund if they intentionally or through gross negligence in the performance of their duties caused the deficiency or substantially contributed to conditions that allowed the deficiency to arise or increase.
- The amendment creates or increases several licensing fees throughout the ch.. For example, the maximum fee for renewal of a funeral director or embalmer license was changed from \$250 to \$500. Branch licenses renewal fees were increased from a maximum of \$300 to \$500. The amendment required the board to set by rule an annual inspection fee for monument establishments not to exceed \$300. The amendment provided that a renewal fee for direct disposers shall not exceed \$500 rather than \$250
- The amendment also removed language providing that violations by a branch shall be deemed to be violations by its sponsoring preneed licensee, unless the licensing authority determines that extenuating circumstances indicate that it would be unjust to attribute the branch's misconduct to the sponsoring preneed licensee.
- The amendment substantially modified the licensing of preneed sales agents as described in the analysis above.
- The amendment eliminated the requirement in the bill that the board promulgate rules by October 1, 2008 defining and regulating cremation by chemical means.

The Commerce Council adopted seven amendments to the bill on April 21, 2005. The amendments accomplish the following:

- Restores the definition of "funeral" and "funeral service" in current law;
- Provides that one member of the board be a monument establishment licensed under the law or eligible for licensure;
- Creates two new categories of monument licensure based on the type of the business;
- Provides that the amount of prearrangement insurance includes an annual percentage increase tied to the consumer price index;
- Provides that the state anatomical board may dispose of human remains by cremation or otherwise when done at its facilities; and
- Makes various technical changes.