

1 A bill to be entitled
2 An act relating to funeral and cemetery industry
3 regulation; amending s. 497.101, F.S.; conforming a
4 reference; amending s. 497.141, F.S.; prohibiting certain
5 persons from conducting, maintaining, managing, owning, or
6 operating licensees under ch. 479; providing an exception;
7 amending s. 497.143, F.S.; revising regulation and
8 practice of limited licensees; amending s. 497.162, F.S.;
9 requiring certain employees to periodically complete a
10 course on communicable diseases; amending s. 497.260,
11 F.S.; requiring that a provision relating to the
12 installation of monuments applies to all cemeteries in the
13 state; amending s. 497.271, F.S.; requiring that certain
14 mausoleums contain pressure relief ventilation; amending
15 s. 497.367, F.S.; revising the frequency with which
16 licensed funeral directors and embalmers are required to
17 complete a continuing education course on HIV and AIDS;
18 amending s. 497.374, F.S.; revising qualifications for
19 licensure by endorsement for funeral directors; amending
20 s. 497.550, F.S.; replacing the term "monument dealer"
21 with "monument retailer"; creating s. 497.609, F.S.;
22 providing freedom from liability for direct disposers,
23 direct disposal establishments, funeral directors, funeral
24 establishments, and cinerator facilities performing
25 cremation under certain circumstances; amending s. 553.36,
26 F.S.; providing definitions; amending s. 553.73, F.S.;
27 providing exceptions to the Florida Building Code relating
28 to columbaria and mausoleums; amending ss. 316.515 and

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29 | 627.702, F.S.; conforming cross-references; providing an
 30 | effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Subsection (3) of section 497.101, Florida
 35 | Statutes, is amended to read:

36 | 497.101 Board of Funeral, Cemetery, and Consumer Services;
 37 | membership; appointment; terms.--

38 | (3) Board members shall be appointed for terms of 4 years,
 39 | and the State Health Officer shall serve as long as that person
 40 | holds that office. The designee of the State Health Officer
 41 | shall serve at the pleasure of the Governor. When the terms of
 42 | the initial board members expire, the Chief Financial Officer
 43 | shall stagger the terms of the successor members as follows: one
 44 | funeral director, one cemetery representative, the monument
 45 | retailer ~~dealer~~, and one consumer member shall be appointed for
 46 | terms of 2 years, and the remaining members shall be appointed
 47 | for terms of 4 years. All subsequent terms shall be for 4 years.

48 | Section 2. Paragraphs (e), (f), and (g) of subsection (12)
 49 | of section 497.141, Florida Statutes, are redesignated as
 50 | paragraphs (f), (g), and (h), respectively, and a new paragraph
 51 | (e) is added to that subsection, to read:

52 | 497.141 Licensing; general application procedures.--

53 | (12)

54 | (e)1. It is unlawful for any person regulated under
 55 | chapter 395, chapter 400, or chapter 429, or any officer,
 56 | administrator, or board member of such entity if the entity is a

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57 firm, corporation, partnership, or association, or any person
58 owning 5 percent or more of such entity to conduct, maintain,
59 manage, own, or operate a licensee under this chapter.

60 2. This paragraph does not apply to a board member of a
61 corporation or organization regulated under chapter 395, chapter
62 400, or chapter 429, if the board member serves solely in a
63 voluntary capacity, does not regularly take part in the day-to-
64 day operational decisions of the corporation or organization,
65 receives no remuneration for his or her services, and has no
66 financial interest and has no family members with a financial
67 interest in the corporation or organization.

68 Section 3. Section 497.143, Florida Statutes, is amended
69 to read:

70 497.143 Licensing; limited licenses for retired
71 professionals.--

72 (1) It is the intent of the Legislature that, absent a
73 threat to the health, safety, and welfare of the public, the use
74 of retired professionals in good standing to serve ~~the indigent,~~
75 ~~underserved, or critical need populations of this state~~ during
76 times of critical need should be encouraged. To that end, rules
77 may be adopted to permit practice by retired professionals as
78 limited licensees under this section.

79 (2) For purposes of this section, the term "critical need"
80 means:

81 (a) An executive order from the Governor declaring a state
82 of emergency in an area;

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83 (b) A request from the director of the Division of
84 Emergency Management, as state coordinating officer for the
85 state's comprehensive emergency management plan;

86 (c) A request from the Florida Emergency Mortuary
87 Operations Response System sponsored by the University of
88 Florida in collaboration with the Maples Center for Forensic
89 Medicine;

90 (d) A request from any district medical examiner; or

91 (e) Activation of a state continuity of operations plan.

92 (3)-(2) Any person desiring to obtain a limited license,
93 when permitted by rule, shall submit to the department an
94 application and fee, not to exceed \$300, and an affidavit
95 stating that the applicant has been licensed to practice in any
96 jurisdiction in the United States for at least 10 years in the
97 profession for which the applicant seeks a limited license. The
98 affidavit shall also state that the applicant has retired ~~or~~
99 ~~intends to retire~~ from the practice of that profession and
100 intends to practice only pursuant to the restrictions of the
101 limited license granted pursuant to this section. If the
102 applicant for a limited license submits a notarized statement
103 from the employer stating that the applicant will not receive
104 monetary compensation for any service involving the practice of
105 her or his profession, ~~the application and~~ all licensure fees
106 shall be waived. In no event may a person holding a limited
107 license under this section engage in preneed sales under such
108 limited license.

109 (4)-(3) Limited licensure may be denied to an applicant who
110 has committed, or is under investigation or prosecution for, any

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111 act which would constitute the basis for discipline under this
112 chapter.

113 ~~(5)(4) The recipient of a limited license may practice~~
114 ~~only in the employ of public agencies or institutions or~~
115 ~~nonprofit agencies or institutions which meet the requirements~~
116 ~~of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which~~
117 ~~provide professional liability coverage for acts or omissions of~~
118 ~~the limited licensee. A limited licensee may provide services~~
119 ~~only during times of to the indigent, underserved, or critical~~
120 ~~need populations within the state. The standard for determining~~
121 ~~indigency shall be that recognized by the Federal Poverty Income~~
122 ~~Guidelines produced by the United States Department of Health~~
123 ~~and Human Services. Rules may be adopted to define underserved~~
124 ~~and critical need areas and to ensure implementation of this~~
125 ~~section.~~

126 ~~(6)(5) The department may provide by rule for supervision~~
127 ~~of limited licensees to protect the health, safety, and welfare~~
128 ~~of the public.~~

129 ~~(7)(6) Each applicant granted a limited license is subject~~
130 ~~to all the provisions of this chapter under which the limited~~
131 ~~license is issued which are not in conflict with this section.~~

132 (8) All limited licensees shall work for an entity
133 licensed under this chapter.

134 Section 4. Section 497.162, Florida Statutes, is amended
135 to read:

136 497.162 Health and safety education.--All individuals not
137 licensed under this chapter who intend to be employed as
138 operational personnel affiliated with a direct disposal

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139 establishment, cinerator facility, removal service,
140 refrigeration facility, or centralized embalming facility, ~~as~~
141 ~~well as~~ all nonlicensed individuals who intend to be involved in
142 the removal or transportation of human remains on behalf of a
143 funeral establishment, direct disposal establishment, or
144 cinerator facility, and once every 6 years each person who is
145 not licensed under this chapter who is employed by an entity
146 licensed under this chapter shall complete one course approved
147 by the licensing authority on communicable diseases, within 10
148 days after the date that they begin functioning as operational
149 personnel on behalf of any entity that is regulated by this
150 chapter. The course shall not exceed 3 hours and shall be
151 offered at approved locations throughout the state. Such
152 locations may include establishments that are licensed under
153 this chapter. The licensing authority shall adopt rules to
154 implement and enforce this provision, which rules shall include
155 provisions that provide for the use of approved videocassette
156 courses and other types of audio, video, or home study courses
157 to fulfill the continuing education requirements of this
158 section.

159 Section 5. Subsection (2) of section 497.260, Florida
160 Statutes, is amended to read:

161 497.260 Cemeteries; exemption; investigation and
162 mediation.--

163 (2) Section 497.276(1) as to burial records, and ss.
164 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284
165 apply to all cemeteries in this state.

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166 Section 6. Paragraph (c) of subsection (2) of section
167 497.271, Florida Statutes, is amended to read:

168 497.271 Standards for construction and significant
169 alteration or renovation of mausoleums and columbaria.--

170 (2) The licensing authority shall adopt, by no later than
171 July 1, 1999, rules establishing minimum standards for all newly
172 constructed and significantly altered or renovated mausoleums
173 and columbaria; however, in the case of significant alterations
174 or renovations to existing structures, the rules shall apply
175 only, when physically feasible, to the newly altered or
176 renovated portion of such structures, except as specified in
177 subsection (4). In developing and adopting such rules, the
178 licensing authority may define different classes of structures
179 or construction standards, and may provide for different rules
180 to apply to each of said classes, if the designation of classes
181 and the application of different rules is in the public interest
182 and is supported by findings by the licensing authority based on
183 evidence of industry practices, economic and physical
184 feasibility, location, or intended uses; provided, that the
185 rules shall provide minimum standards applicable to all
186 construction. For example, and without limiting the generality
187 of the foregoing, the licensing authority may determine that a
188 small single-story ground level mausoleum does not require the
189 same level of construction standards that a large multistory
190 mausoleum might require; or that a mausoleum located in a low-
191 lying area subject to frequent flooding or hurricane threats
192 might require different standards than one located on high
193 ground in an area not subject to frequent severe weather

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194 threats. The licensing authority shall develop the rules in
195 cooperation with, and with technical assistance from, the
196 Florida Building Commission of the Department of Community
197 Affairs, to ensure that the rules are in the proper form and
198 content to be included as part of the State Minimum Building
199 Codes under part VII of chapter 553. If the Florida Building
200 Commission advises that some of the standards proposed by the
201 licensing authority are not appropriate for inclusion in such
202 building codes, the licensing authority may choose to include
203 those standards in a distinct chapter of its rules entitled
204 "Non-Building-Code Standards for Mausoleums" or "Additional
205 Standards for Mausoleums," or other terminology to that effect.
206 If the licensing authority elects to divide the standards into
207 two or more chapters, all such rules shall be binding on
208 licensees and others subject to the jurisdiction of the
209 licensing authority, but only the chapter containing provisions
210 appropriate for building codes shall be transmitted to the
211 Florida Building Commission pursuant to subsection (3). Such
212 rules may be in the form of standards for design and
213 construction; methods, materials, and specifications for
214 construction; or other mechanisms. Such rules shall encompass,
215 at a minimum, the following standards:

216 (c) Such structure must contain adequate provision for
217 drainage and ventilation. Private or family mausoleums with all
218 crypts bordering an exterior wall must contain pressure relief
219 ventilation from the crypts to the outside of the mausoleum
220 through the exterior wall.

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221 Section 7. Subsection (1) of section 497.367, Florida
 222 Statutes, is amended to read:

223 497.367 Instruction on HIV and AIDS, funeral directors and
 224 embalmers.--

225 (1) Each person licensed as a funeral director or embalmer
 226 under this chapter shall be required to complete an approved
 227 continuing educational course on human immunodeficiency virus
 228 and acquired immune deficiency syndrome as a prerequisite for
 229 every third biennial licensure renewal ~~at least every 2 years.~~

230 The course shall consist of education on the modes of
 231 transmission, infection control procedures, clinical management,
 232 and prevention of human immunodeficiency virus and acquired
 233 immune deficiency syndrome. Such course shall include
 234 information on current Florida law on acquired immune deficiency
 235 syndrome and its impact on testing, confidentiality of test
 236 results, and treatment of patients.

237 Section 8. Paragraph (b) of subsection (1) of section
 238 497.374, Florida Statutes, is amended to read:

239 497.374 Funeral directing; licensure as a funeral director
 240 by endorsement; licensure of a temporary funeral director.--

241 (1) The licensing authority shall issue a license by
 242 endorsement to practice funeral directing to an applicant who
 243 has remitted a fee set by rule of the licensing authority not to
 244 exceed \$200 and who:

245 (b)1. Holds a valid license to practice funeral directing
 246 in another state of the United States, provided that, when the
 247 applicant secured her or his original license, the requirements

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248 for licensure were substantially equivalent to or more stringent
 249 than those existing in this state; or

250 2. Meets the qualifications for licensure in s. 497.373
 251 and has, ~~within 10 years prior to the date of application,~~
 252 successfully completed a state, regional, or national
 253 examination in mortuary science, which, as determined by rule of
 254 the licensing authority, is substantially equivalent to or more
 255 stringent than the examination given by the licensing authority.

256 Section 9. Subsection (1) of section 497.550, Florida
 257 Statutes, is amended to read:

258 497.550 Licensure of monument establishments required;
 259 procedures and criteria.--

260 (1) LICENSE REQUIRED.--No person shall conduct, maintain,
 261 manage, or operate a monument establishment in this state unless
 262 the monument establishment is licensed pursuant to this part.

263 (a) The two categories of monument establishment licensure
 264 available in this state are:

- 265 1. Monument builder.
- 266 2. Monument retailer ~~dealer~~.

267 (b) An applicant for licensure as a monument establishment
 268 shall designate on the application form the category of monument
 269 establishment licensure for which he or she is applying.

270 (c) Each monument establishment that is licensed under
 271 this chapter at 11:59 p.m. on September 30, 2005, is, on and
 272 after October 1, 2005, licensed as a monument retailer ~~dealer~~
 273 subject to the requirements of this chapter. A person who
 274 becomes licensed as a monument retailer ~~dealer~~ by operation of
 275 this paragraph may apply to the board for licensure as a

276 monument builder and, upon payment of applicable application
 277 fees and the granting of such application and licensure as a
 278 monument builder, such person's licensure as a monument retailer
 279 ~~dealer~~ will expire.

280 (d) The requirements of this chapter apply to both
 281 monument retailers ~~dealers~~ and monument builders, except as
 282 provided in this paragraph. Each monument establishment shall be
 283 a physical structure that is located at a specific street
 284 address, in compliance with zoning regulations of the
 285 appropriate local government, and not located on property that
 286 is exempt from taxation, but a monument retailer ~~dealer~~ may not
 287 otherwise be required to comply with s. 497.552 or be subject to
 288 inspection under this chapter.

289 (e) A monument establishment that is not licensed under
 290 the monument-builder category is not eligible for a preneed
 291 sales license.

292 Section 10. Section 497.609, Florida Statutes, is created
 293 to read:

294 497.609 Liability of direct disposers, direct disposal
 295 establishments, funeral directors, funeral establishments, and
 296 cinerator facilities regarding cremation.--If a direct disposer,
 297 direct disposal establishment, funeral director, funeral
 298 establishment, or cinerator facility is given a copy of the
 299 deceased's declaration of intent to be cremated that is signed
 300 by the deceased and the deceased's human remains are
 301 subsequently cremated, or a court order directing the cremation
 302 of the deceased's human remains, no person may make a claim
 303 objecting to the cremation against that direct disposer, direct

304 disposal establishment, funeral director, funeral establishment,
 305 or cinerator facility. If a direct disposer, direct disposal
 306 establishment, funeral director, funeral establishment, or
 307 cinerator facility performs a cremation pursuant to the
 308 authorization of a legally authorized person who represents that
 309 she or he is not aware of any objection to the cremation of the
 310 deceased's human remains by others in the same class of the
 311 person making the representation or of any person in a higher
 312 priority class, and the deceased's human remains are
 313 subsequently cremated, no person may make a claim objecting to
 314 the cremation against that direct disposer, direct disposal
 315 establishment, funeral director, funeral establishment, or
 316 cinerator facility.

317 Section 11. Subsections (5) through (14) of section
 318 553.36, Florida Statutes, are renumbered as subsections (6)
 319 through (15), respectively, present subsections (15) and (16)
 320 are renumbered as subsections (17) and (18), respectively, and
 321 new subsections (5) and (16) are added to that section, to read:

322 553.36 Definitions.--The definitions contained in this
 323 section govern the construction of this part unless the context
 324 otherwise requires.

325 (5) "Columbarium" means a structure or building that is
 326 substantially exposed above the ground and that is intended to
 327 be used for the inurnment of cremated remains.

328 (16) "Private mausoleum" means a mausoleum as defined in
 329 s. 497.005(40) for the private use of a family or group of
 330 family members.

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331 Section 12. Paragraphs (j) and (k) are added to subsection
 332 (9) of section 553.73, Florida Statutes, to read:

333 553.73 Florida Building Code.--

334 (9) The following buildings, structures, and facilities
 335 are exempt from the Florida Building Code as provided by law,
 336 and any further exemptions shall be as determined by the
 337 Legislature and provided by law:

338 (j) Prefabricated or pre-assembled columbaria.

339 (k) Prefabricated or pre-assembled private mausoleums that
 340 are not walk-in.

341
 342 With the exception of paragraphs (a), (b), (c), and (f), in
 343 order to preserve the health, safety, and welfare of the public,
 344 the Florida Building Commission may, by rule adopted pursuant to
 345 chapter 120, provide for exceptions to the broad categories of
 346 buildings exempted in this section, including exceptions for
 347 application of specific sections of the code or standards
 348 adopted therein. The Department of Agriculture and Consumer
 349 Services shall have exclusive authority to adopt by rule,
 350 pursuant to chapter 120, exceptions to nonresidential farm
 351 buildings exempted in paragraph (c) when reasonably necessary to
 352 preserve public health, safety, and welfare. The exceptions must
 353 be based upon specific criteria, such as under-roof floor area,
 354 aggregate electrical service capacity, HVAC system capacity, or
 355 other building requirements. Further, the commission may
 356 recommend to the Legislature additional categories of buildings,
 357 structures, or facilities which should be exempted from the
 358 Florida Building Code, to be provided by law.

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359 Section 13. Subsection (14) of section 316.515, Florida
360 Statutes, is amended to read:

361 316.515 Maximum width, height, length.--

362 (14) MANUFACTURED BUILDINGS.--The Department of
363 Transportation may, in its discretion and upon application and
364 good cause shown therefor that the same is not contrary to the
365 public interest, issue a special permit for truck tractor-
366 semitrailer combinations where the total number of overwidth
367 deliveries of manufactured buildings, as defined in s.
368 553.36 (13) ~~(12)~~, may be reduced by permitting the use of an
369 overlength trailer of no more than 54 feet.

370 Section 14. Paragraph (a) of subsection (1) and subsection
371 (5) of section 627.702, Florida Statutes, are amended to read:

372 627.702 Valued policy law.--

373 (1) (a) In the event of the total loss of any building,
374 structure, mobile home as defined in s. 320.01(2), or
375 manufactured building as defined in s. 553.36 (13) ~~(12)~~, located
376 in this state and insured by any insurer as to a covered peril,
377 in the absence of any change increasing the risk without the
378 insurer's consent and in the absence of fraudulent or criminal
379 fault on the part of the insured or one acting in her or his
380 behalf, the insurer's liability under the policy for such total
381 loss, if caused by a covered peril, shall be in the amount of
382 money for which such property was so insured as specified in the
383 policy and for which a premium has been charged and paid.

384 (5) This section does not apply as to personal property or
385 any interest therein, except with respect to mobile homes as
386 defined in s. 320.01(2) or manufactured buildings as defined in

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387 s. 553.36 (13) ~~(12)~~. Nor does this section apply to coverage of an
388 appurtenant structure or other structure or any coverage or
389 claim in which the dollar amount of coverage available as to the
390 structure involved is not directly stated in the policy as a
391 dollar amount specifically applicable to that particular
392 structure.

393 Section 15. This act shall take effect July 1, 2007.