

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 providing for study courses using the Internet to fulfill
10 continuing education requirements; 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 builder 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

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 an executive order from the Governor or a federal order
 81 declaring a state of emergency in an area.

82 (3)~~(2)~~ Any person desiring to obtain a limited license,
 83 when permitted by rule, shall submit to the department an
 84 application and fee, not to exceed \$300, and an affidavit

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85 | stating that the applicant has been licensed to practice in any
86 | jurisdiction in the United States for at least 10 years in the
87 | profession for which the applicant seeks a limited license. The
88 | affidavit shall also state that the applicant has retired ~~or~~
89 | ~~intends to retire~~ from the practice of that profession and
90 | intends to practice only pursuant to the restrictions of the
91 | limited license granted pursuant to this section. If the
92 | applicant for a limited license submits a notarized statement
93 | from the employer stating that the applicant will not receive
94 | monetary compensation for any service involving the practice of
95 | her or his profession, ~~the application and~~ all licensure fees
96 | shall be waived. In no event may a person holding a limited
97 | license under this section engage in preneed sales under such
98 | limited license.

99 | (4)~~(3)~~ Limited licensure may be denied to an applicant who
100 | has committed, or is under investigation or prosecution for, any
101 | act which would constitute the basis for discipline under this
102 | chapter.

103 | (5)~~(4)~~ ~~The recipient of a limited license may practice~~
104 | ~~only in the employ of public agencies or institutions or~~
105 | ~~nonprofit agencies or institutions which meet the requirements~~
106 | ~~of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which~~
107 | ~~provide professional liability coverage for acts or omissions of~~
108 | ~~the limited licensee.~~ A limited licensee may provide services
109 | only during times of ~~to the indigent, underserved, or critical~~
110 | ~~need populations~~ within the state. ~~The standard for determining~~
111 | ~~indigency shall be that recognized by the Federal Poverty Income~~
112 | ~~Guidelines produced by the United States Department of Health~~

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113 ~~and Human Services. Rules may be adopted to define underserved~~
114 ~~and critical need areas and to ensure implementation of this~~
115 ~~section.~~

116 (6)~~(5)~~ The department may provide by rule for supervision
117 of limited licensees to protect the health, safety, and welfare
118 of the public.

119 (7)~~(6)~~ Each applicant granted a limited license is subject
120 to all the provisions of this chapter under which the limited
121 license is issued which are not in conflict with this section.

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

124 Section 4. Section 497.162, Florida Statutes, is amended
125 to read:

126 497.162 Health and safety education.--All individuals not
127 licensed under this chapter who intend to be employed as
128 operational personnel affiliated with a direct disposal
129 establishment, cinerator facility, removal service,
130 refrigeration facility, or centralized embalming facility, as
131 well as all nonlicensed individuals who intend to be involved in
132 the removal or transportation of human remains on behalf of a
133 funeral establishment, direct disposal establishment, or
134 cinerator facility shall complete one course approved by the
135 licensing authority on communicable diseases, within 10 days
136 after the date that they begin functioning as operational
137 personnel on behalf of any entity that is regulated by this
138 chapter. The course shall not exceed 3 hours and shall be
139 offered at approved locations throughout the state. Such
140 locations may include establishments that are licensed under

141 this chapter. The licensing authority shall adopt rules to
 142 implement and enforce this provision, which rules shall include
 143 provisions that provide for the use of approved videocassette
 144 courses and other types of audio, video, Internet, or home study
 145 courses to fulfill the continuing education requirements of this
 146 section.

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

149 497.260 Cemeteries; exemption; investigation and
 150 mediation.--

151 (2) Section 497.276(1) as to burial records, and ss.
 152 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284
 153 apply to all cemeteries in this state.

154 Section 6. Paragraph (c) of subsection (2) of section
 155 497.271, Florida Statutes, is amended to read:

156 497.271 Standards for construction and significant
 157 alteration or renovation of mausoleums and columbaria.--

158 (2) The licensing authority shall adopt, by no later than
 159 July 1, 1999, rules establishing minimum standards for all newly
 160 constructed and significantly altered or renovated mausoleums
 161 and columbaria; however, in the case of significant alterations
 162 or renovations to existing structures, the rules shall apply
 163 only, when physically feasible, to the newly altered or
 164 renovated portion of such structures, except as specified in
 165 subsection (4). In developing and adopting such rules, the
 166 licensing authority may define different classes of structures
 167 or construction standards, and may provide for different rules
 168 to apply to each of said classes, if the designation of classes

169 and the application of different rules is in the public interest
170 and is supported by findings by the licensing authority based on
171 evidence of industry practices, economic and physical
172 feasibility, location, or intended uses; provided, that the
173 rules shall provide minimum standards applicable to all
174 construction. For example, and without limiting the generality
175 of the foregoing, the licensing authority may determine that a
176 small single-story ground level mausoleum does not require the
177 same level of construction standards that a large multistory
178 mausoleum might require; or that a mausoleum located in a low-
179 lying area subject to frequent flooding or hurricane threats
180 might require different standards than one located on high
181 ground in an area not subject to frequent severe weather
182 threats. The licensing authority shall develop the rules in
183 cooperation with, and with technical assistance from, the
184 Florida Building Commission of the Department of Community
185 Affairs, to ensure that the rules are in the proper form and
186 content to be included as part of the State Minimum Building
187 Codes under part VII of chapter 553. If the Florida Building
188 Commission advises that some of the standards proposed by the
189 licensing authority are not appropriate for inclusion in such
190 building codes, the licensing authority may choose to include
191 those standards in a distinct chapter of its rules entitled
192 "Non-Building-Code Standards for Mausoleums" or "Additional
193 Standards for Mausoleums," or other terminology to that effect.
194 If the licensing authority elects to divide the standards into
195 two or more chapters, all such rules shall be binding on
196 licensees and others subject to the jurisdiction of the

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197 licensing authority, but only the chapter containing provisions
198 appropriate for building codes shall be transmitted to the
199 Florida Building Commission pursuant to subsection (3). Such
200 rules may be in the form of standards for design and
201 construction; methods, materials, and specifications for
202 construction; or other mechanisms. Such rules shall encompass,
203 at a minimum, the following standards:

204 (c) Such structure must contain adequate provision for
205 drainage and ventilation. Private or family mausoleums with all
206 crypts bordering an exterior wall must contain pressure relief
207 ventilation from the crypts to the outside of the mausoleum
208 through the exterior wall or roof.

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

211 497.367 Instruction on HIV and AIDS, funeral directors and
212 embalmers.--

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

218 The course shall consist of education on the modes of
219 transmission, infection control procedures, clinical management,
220 and prevention of human immunodeficiency virus and acquired
221 immune deficiency syndrome. Such course shall include
222 information on current Florida law on acquired immune deficiency
223 syndrome and its impact on testing, confidentiality of test
224 results, and treatment of patients.

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225 Section 8. Paragraph (b) of subsection (1) of section
 226 497.374, Florida Statutes, is amended to read:

227 497.374 Funeral directing; licensure as a funeral director
 228 by endorsement; licensure of a temporary funeral director.--

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

233 (b)1. Holds a valid license to practice funeral directing
 234 in another state of the United States, provided that, when the
 235 applicant secured her or his original license, the requirements
 236 for licensure were substantially equivalent to or more stringent
 237 than those existing in this state; or

238 2. Meets the qualifications for licensure in s. 497.373
 239 and has, ~~within 10 years prior to the date of application,~~
 240 successfully completed a state, regional, or national
 241 examination in mortuary science, which, as determined by rule of
 242 the licensing authority, is substantially equivalent to or more
 243 stringent than the examination given by the licensing authority.

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

246 497.550 Licensure of monument establishments required;
 247 procedures and criteria.--

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

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

253 1. Monument builder.

254 2. Monument retailer ~~dealer~~.

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

258 (c) Each monument establishment that is licensed under
 259 this chapter at 11:59 p.m. on September 30, 2005, is, on and
 260 after October 1, 2005, licensed as a monument retailer ~~dealer~~
 261 subject to the requirements of this chapter. A person who
 262 becomes licensed as a monument retailer ~~dealer~~ by operation of
 263 this paragraph may apply to the board for licensure as a
 264 monument builder and, upon payment of applicable application
 265 fees and the granting of such application and licensure as a
 266 monument builder, such person's licensure as a monument retailer
 267 ~~dealer~~ will expire.

268 (d) The requirements of this chapter apply to both
 269 monument retailers ~~dealers~~ and monument builders, except as
 270 provided in this paragraph. Each monument establishment shall be
 271 a physical structure that is located at a specific street
 272 address, in compliance with zoning regulations of the
 273 appropriate local government, and not located on property that
 274 is exempt from taxation, but a monument retailer ~~dealer~~ may not
 275 otherwise be required to comply with s. 497.552 or be subject to
 276 inspection under this chapter.

277 (e) A monument establishment that is not licensed under
 278 the monument-builder category is not eligible for a preneed
 279 sales license.

280 Section 10. Section 497.609, Florida Statutes, is created
 281 to read:

282 497.609 Liability of direct disposers, direct disposal
 283 establishments, funeral directors, funeral establishments, and
 284 cinerator facilities regarding cremation.--If a direct disposer,
 285 direct disposal establishment, funeral director, funeral
 286 establishment, or cinerator facility is given a copy of the
 287 deceased's declaration of intent to be cremated that is signed
 288 by the deceased and the deceased's human remains are
 289 subsequently cremated, or a court order directing the cremation
 290 of the deceased's human remains, no person may make a claim
 291 objecting to the cremation against that direct disposer, direct
 292 disposal establishment, funeral director, funeral establishment,
 293 or cinerator facility. If a direct disposer, direct disposal
 294 establishment, funeral director, funeral establishment, or
 295 cinerator facility performs a cremation pursuant to the
 296 authorization of a legally authorized person who represents that
 297 she or he is not aware of any objection to the cremation of the
 298 deceased's human remains by others in the same class of the
 299 person making the representation or of any person in a higher
 300 priority class, and the deceased's human remains are
 301 subsequently cremated, no person may make a claim objecting to
 302 the cremation against that direct disposer, direct disposal
 303 establishment, funeral director, funeral establishment, or
 304 cinerator facility.

305 Section 11. Subsections (5) through (14) of section
 306 553.36, Florida Statutes, are renumbered as subsections (6)
 307 through (15), respectively, present subsections (15) and (16)

308 are renumbered as subsections (17) and (18), respectively, and
 309 new subsections (5) and (16) are added to that section, to read:

310 553.36 Definitions.--The definitions contained in this
 311 section govern the construction of this part unless the context
 312 otherwise requires.

313 (5) "Columbarium" means a permanent structure consisting
 314 of niches.

315 (16) "Private mausoleum" means a structure intended for
 316 the private use of a family or group of family members.

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

319 553.73 Florida Building Code.--

320 (9) The following buildings, structures, and facilities
 321 are exempt from the Florida Building Code as provided by law,
 322 and any further exemptions shall be as determined by the
 323 Legislature and provided by law:

324 (j) Prefabricated or pre-assembled columbaria.

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

327

328 With the exception of paragraphs (a), (b), (c), and (f), in
 329 order to preserve the health, safety, and welfare of the public,
 330 the Florida Building Commission may, by rule adopted pursuant to
 331 chapter 120, provide for exceptions to the broad categories of
 332 buildings exempted in this section, including exceptions for
 333 application of specific sections of the code or standards
 334 adopted therein. The Department of Agriculture and Consumer
 335 Services shall have exclusive authority to adopt by rule,

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336 pursuant to chapter 120, exceptions to nonresidential farm
 337 buildings exempted in paragraph (c) when reasonably necessary to
 338 preserve public health, safety, and welfare. The exceptions must
 339 be based upon specific criteria, such as under-roof floor area,
 340 aggregate electrical service capacity, HVAC system capacity, or
 341 other building requirements. Further, the commission may
 342 recommend to the Legislature additional categories of buildings,
 343 structures, or facilities which should be exempted from the
 344 Florida Building Code, to be provided by law.

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

347 316.515 Maximum width, height, length.--

348 (14) MANUFACTURED BUILDINGS.--The Department of
 349 Transportation may, in its discretion and upon application and
 350 good cause shown therefor that the same is not contrary to the
 351 public interest, issue a special permit for truck tractor-
 352 semitrailer combinations where the total number of overwidth
 353 deliveries of manufactured buildings, as defined in s.
 354 553.36(13)~~(12)~~, may be reduced by permitting the use of an
 355 overlength trailer of no more than 54 feet.

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

358 627.702 Valued policy law.--

359 (1)(a) In the event of the total loss of any building,
 360 structure, mobile home as defined in s. 320.01(2), or
 361 manufactured building as defined in s. 553.36(13)~~(12)~~, located
 362 in this state and insured by any insurer as to a covered peril,
 363 in the absence of any change increasing the risk without the

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364 insurer's consent and in the absence of fraudulent or criminal
365 fault on the part of the insured or one acting in her or his
366 behalf, the insurer's liability under the policy for such total
367 loss, if caused by a covered peril, shall be in the amount of
368 money for which such property was so insured as specified in the
369 policy and for which a premium has been charged and paid.

370 (5) This section does not apply as to personal property or
371 any interest therein, except with respect to mobile homes as
372 defined in s. 320.01(2) or manufactured buildings as defined in
373 s. 553.36(13)(~~12~~). Nor does this section apply to coverage of an
374 appurtenant structure or other structure or any coverage or
375 claim in which the dollar amount of coverage available as to the
376 structure involved is not directly stated in the policy as a
377 dollar amount specifically applicable to that particular
378 structure.

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