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CS/HB 1177, Engrossed 1

2007 Legislature

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.; revising a reference to
14 a building code in which standards for newly constructed
15 and significantly altered or renovated mausoleums and
16 columbaria may be included; requiring that certain
17 mausoleums contain pressure relief ventilation; amending
18 s. 497.273, F.S.; providing for interment or entombment of
19 a decedent with the remains of the decedent's pet;
20 amending s. 497.367, F.S.; revising the frequency with
21 which licensed funeral directors and embalmers are
22 required to complete a continuing education course on HIV
23 and AIDS; amending s. 497.374, F.S.; revising
24 qualifications for licensure by endorsement for funeral
25 directors; amending s. 497.550, F.S.; replacing the term
26 "monument dealer" with "monument retailer"; creating s.
27 497.609, F.S.; providing freedom from liability for direct
28 disposers, direct disposal establishments, funeral

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29 directors, funeral establishments, and cinerator
 30 facilities performing cremation under certain
 31 circumstances; amending s. 553.36, F.S.; providing
 32 definitions; amending ss. 316.515 and 627.702, F.S.;
 33 conforming cross-references; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Subsection (3) of section 497.101, Florida
 38 Statutes, is amended to read:

39 497.101 Board of Funeral, Cemetery, and Consumer Services;
 40 membership; appointment; terms.--

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

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

55 497.141 Licensing; general application procedures.--

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57 (e)1. It is unlawful for any person regulated under
 58 chapter 395, chapter 400, or chapter 429, or any officer,
 59 administrator, or board member of such entity if the entity is a
 60 firm, corporation, partnership, or association, or any person
 61 owning 5 percent or more of such entity to conduct, maintain,
 62 manage, own, or operate a licensee under this chapter.

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

71 Section 3. Section 497.143, Florida Statutes, is amended
 72 to read:

73 497.143 Licensing; limited licenses for retired
 74 professionals.--

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

82 (2) For purposes of this section, the term "critical need"
 83 means an executive order from the Governor or a federal order
 84 declaring a state of emergency in an area.

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85 (3)~~(2)~~ Any person desiring to obtain a limited license,
 86 when permitted by rule, shall submit to the department an
 87 application and fee, not to exceed \$300, and an affidavit
 88 stating that the applicant has been licensed to practice in any
 89 jurisdiction in the United States for at least 10 years in the
 90 profession for which the applicant seeks a limited license. The
 91 affidavit shall also state that the applicant has retired ~~or~~
 92 ~~intends to retire~~ from the practice of that profession and
 93 intends to practice only pursuant to the restrictions of the
 94 limited license granted pursuant to this section. If the
 95 applicant for a limited license submits a notarized statement
 96 from the employer stating that the applicant will not receive
 97 monetary compensation for any service involving the practice of
 98 her or his profession, ~~the application and~~ all licensure fees
 99 shall be waived. In no event may a person holding a limited
 100 license under this section engage in preneed sales under such
 101 limited license.

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

106 (5)~~(4)~~ ~~The recipient of a limited license may practice~~
 107 ~~only in the employ of public agencies or institutions or~~
 108 ~~nonprofit agencies or institutions which meet the requirements~~
 109 ~~of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which~~
 110 ~~provide professional liability coverage for acts or omissions of~~
 111 ~~the limited licensee.~~ A limited licensee may provide services
 112 only during times of ~~to the indigent, underserved, or critical~~

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113 need ~~populations~~ within the state. ~~The standard for determining~~
 114 ~~indigency shall be that recognized by the Federal Poverty Income~~
 115 ~~Guidelines produced by the United States Department of Health~~
 116 ~~and Human Services. Rules may be adopted to define underserved~~
 117 ~~and critical need areas and to ensure implementation of this~~
 118 ~~section.~~

119 (6)~~(5)~~ The department may provide by rule for supervision
 120 of limited licensees to protect the health, safety, and welfare
 121 of the public.

122 (7)~~(6)~~ Each applicant granted a limited license is subject
 123 to all the provisions of this chapter under which the limited
 124 license is issued which are not in conflict with this section.

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

127 Section 4. Section 497.162, Florida Statutes, is amended
 128 to read:

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

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141 chapter. The course shall not exceed 3 hours and shall be
 142 offered at approved locations throughout the state. Such
 143 locations may include establishments that are licensed under
 144 this chapter. The licensing authority shall adopt rules to
 145 implement and enforce this provision, which rules shall include
 146 provisions that provide for the use of approved videocassette
 147 courses and other types of audio, video, Internet, or home study
 148 courses to fulfill the continuing education requirements of this
 149 section.

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

152 497.260 Cemeteries; exemption; investigation and
 153 mediation.--

154 (2) Section 497.276(1) as to burial records, and ss.
 155 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284
 156 apply to all cemeteries in this state.

157 Section 6. Paragraph (c) of subsection (2) of section
 158 497.271, Florida Statutes, is amended to read:

159 497.271 Standards for construction and significant
 160 alteration or renovation of mausoleums and columbaria.--

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

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

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197 terminology to that effect. If the licensing authority elects to
 198 divide the standards into two or more chapters, all such rules
 199 shall be binding on licensees and others subject to the
 200 jurisdiction of the licensing authority, but only the chapter
 201 containing provisions appropriate for building codes shall be
 202 transmitted to the Florida Building Commission pursuant to
 203 subsection (3). Such rules may be in the form of standards for
 204 design and construction; methods, materials, and specifications
 205 for construction; or other mechanisms. Such rules shall
 206 encompass, at a minimum, the following standards:

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

212 Section 7. Subsection (4) is added to section 497.273,
 213 Florida Statutes, to read:

214 497.273 Cemetery companies; authorized functions.--

215 (4) This chapter does not prohibit the interment or
 216 entombment of the inurned cremated animal remains of the
 217 decedent's pet or pets with the decedent's human remains or
 218 cremated human remains if:

219 (a) The human remains or cremated human remains are not
 220 commingled with the inurned cremated animal remains; and

221 (b) The interment or entombment with the inurned cremated
 222 animal remains is with the authorization of the decedent or
 223 other legally authorized person.

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224 Section 8. Subsection (1) of section 497.367, Florida
 225 Statutes, is amended to read:

226 497.367 Instruction on HIV and AIDS, funeral directors and
 227 embalmers.--

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

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

240 Section 9. Paragraph (b) of subsection (1) of section
 241 497.374, Florida Statutes, is amended to read:

242 497.374 Funeral directing; licensure as a funeral director
 243 by endorsement; licensure of a temporary funeral director.--

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

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

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

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

259 Section 10. Subsection (1) of section 497.550, Florida
 260 Statutes, is amended to read:

261 497.550 Licensure of monument establishments required;
 262 procedures and criteria.--

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

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

- 268 1. Monument builder.
- 269 2. Monument retailer ~~dealer~~.

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

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

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

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

292 (e) A monument establishment that is not licensed under
 293 the monument-builder category is not eligible for a preneed
 294 sales license.

295 Section 11. Section 497.609, Florida Statutes, is created
 296 to read:

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

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

320 Section 12. Subsections (5) through (14) of section
 321 553.36, Florida Statutes, are renumbered as subsections (6)
 322 through (15), respectively, present subsections (15) and (16)
 323 are renumbered as subsections (17) and (18), respectively, and
 324 new subsections (5) and (16) are added to that section, to read:

325 553.36 Definitions.--The definitions contained in this
 326 section govern the construction of this part unless the context
 327 otherwise requires.

328 (5) "Columbarium" means a permanent structure consisting
 329 of niches.

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

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

334 316.515 Maximum width, height, length.--

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335 (14) MANUFACTURED BUILDINGS.--The Department of
 336 Transportation may, in its discretion and upon application and
 337 good cause shown therefor that the same is not contrary to the
 338 public interest, issue a special permit for truck tractor-
 339 semitrailer combinations where the total number of overwidth
 340 deliveries of manufactured buildings, as defined in s.
 341 553.36 (13) ~~(12)~~, may be reduced by permitting the use of an
 342 overlength trailer of no more than 54 feet.

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

345 627.702 Valued policy law.--

346 (1)(a) In the event of the total loss of any building,
 347 structure, mobile home as defined in s. 320.01(2), or
 348 manufactured building as defined in s. 553.36 (13) ~~(12)~~, located
 349 in this state and insured by any insurer as to a covered peril,
 350 in the absence of any change increasing the risk without the
 351 insurer's consent and in the absence of fraudulent or criminal
 352 fault on the part of the insured or one acting in her or his
 353 behalf, the insurer's liability under the policy for such total
 354 loss, if caused by a covered peril, shall be in the amount of
 355 money for which such property was so insured as specified in the
 356 policy and for which a premium has been charged and paid.

357 (5) This section does not apply as to personal property or
 358 any interest therein, except with respect to mobile homes as
 359 defined in s. 320.01(2) or manufactured buildings as defined in
 360 s. 553.36 (13) ~~(12)~~. Nor does this section apply to coverage of an
 361 appurtenant structure or other structure or any coverage or
 362 claim in which the dollar amount of coverage available as to the

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363 structure involved is not directly stated in the policy as a
364 dollar amount specifically applicable to that particular
365 structure.

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