

By the Committee on Regulated Industries; and Senator Crist

580-2333-07

1                                   A bill to be entitled  
2           An act relating to funeral and cemetery  
3           industry regulation; amending s. 497.101, F.S.;  
4           conforming a reference; amending s. 497.141,  
5           F.S.; prohibiting certain persons from  
6           conducting, maintaining, managing, owning, or  
7           operating licenses under ch. 479; providing an  
8           exception; amending s. 497.143, F.S.; revising  
9           regulation and practice of limited licensees;  
10          amending s. 497.162, F.S.; requiring certain  
11          employees to periodically complete a course on  
12          communicable diseases; amending s. 497.260,  
13          F.S.; requiring that a provision relating to  
14          the installation of monuments applies to all  
15          cemeteries in the state; amending s. 497.271,  
16          F.S.; requiring that certain mausoleums contain  
17          pressure relief ventilation; amending s.  
18          497.273, F.S.; providing for internment or  
19          entombment of a decedent with the remains of  
20          the decedent's pet; amending s. 497.367, F.S.;  
21          revising the frequency with which licensed  
22          funeral directors and embalmers are required to  
23          complete a continuing education course on HIV  
24          and AIDS; amending s. 497.374, F.S.; revising  
25          qualifications for licensure by endorsement for  
26          funeral directors; amending s. 497.550, F.S.;  
27          replacing the term "monument dealer" with  
28          "monument retailer"; creating s. 497.609, F.S.;  
29          providing freedom from liability for direct  
30          disposers, direct disposal establishments,  
31          funeral directors, funeral establishments, and

1 cinerator facilities performing cremation under  
2 certain circumstances; amending s. 553.36,  
3 F.S.; providing definitions; amending s.  
4 553.73, F.S.; providing exceptions to the  
5 Florida Building Code relating to columbaria  
6 and mausoleums; amending ss. 316.515 and  
7 627.702, F.S.; conforming cross-references;  
8 providing an effective date.  
9

10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Subsection (3) of section 497.101, Florida  
13 Statutes, is amended to read:

14 497.101 Board of Funeral, Cemetery, and Consumer  
15 Services; membership; appointment; terms.--

16 (3) Board members shall be appointed for terms of 4  
17 years, and the State Health Officer shall serve as long as  
18 that person holds that office. The designee of the State  
19 Health Officer shall serve at the pleasure of the Governor.  
20 When the terms of the initial board members expire, the Chief  
21 Financial Officer shall stagger the terms of the successor  
22 members as follows: one funeral director, one cemetery  
23 representative, the monument builder ~~dealer~~, and one consumer  
24 member shall be appointed for terms of 2 years, and the  
25 remaining members shall be appointed for terms of 4 years. All  
26 subsequent terms shall be for 4 years.

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

31 497.141 Licensing; general application procedures.--

1 (12)

2 (e)1. It is unlawful for any person regulated under  
3 chapter 395, chapter 400, or chapter 429, or any officer,  
4 administrator, or board member of such entity if the entity is  
5 a firm, corporation, partnership, or association, or any  
6 person owning 5 percent or more of such entity to conduct,  
7 maintain, manage, own, or operate a licensee under this  
8 chapter.

9 2. This paragraph does not apply to a board member of  
10 a corporation or organization regulated under chapter 395,  
11 chapter 400, or chapter 429 if the board member serves solely  
12 in a voluntary capacity, does not regularly take part in the  
13 day-to-day operational decisions of the corporation or  
14 organization, receives no remuneration for his or her  
15 services, and has no financial interest and has no family  
16 members with a financial interest in the corporation or  
17 organization.

18 Section 3. Section 497.143, Florida Statutes, is  
19 amended to read:

20 497.143 Licensing; limited licenses for retired  
21 professionals.--

22 (1) It is the intent of the Legislature that, absent a  
23 threat to the health, safety, and welfare of the public, the  
24 use of retired professionals in good standing to serve ~~the~~  
25 ~~indigent, underserved, or critical need populations~~ of this  
26 state during times of critical need should be encouraged. To  
27 that end, rules may be adopted to permit practice by retired  
28 professionals as limited licensees under this section.

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

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

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

6           (c) A request from the Florida Emergency Mortuary  
7 Operations Response System sponsored by the University of  
8 Florida in collaboration with the Maples Center for Forensic  
9 Medicine;

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

11           (e) Activation of a state continuity of operations  
12 plan.

13           ~~(3)(2)~~ Any person desiring to obtain a limited  
14 license, when permitted by rule, shall submit to the  
15 department an application and fee, not to exceed \$300, and an  
16 affidavit stating that the applicant has been licensed to  
17 practice in any jurisdiction in the United States for at least  
18 10 years in the profession for which the applicant seeks a  
19 limited license. The affidavit shall also state that the  
20 applicant has retired ~~or intends to retire~~ from the practice  
21 of that profession and intends to practice only pursuant to  
22 the restrictions of the limited license granted pursuant to  
23 this section. If the applicant for a limited license submits a  
24 notarized statement from the employer stating that the  
25 applicant will not receive monetary compensation for any  
26 service involving the practice of her or his profession, ~~the~~  
27 ~~application and~~ all licensure fees shall be waived. In no  
28 event may a person holding a limited license under this  
29 section engage in preneed sales under such limited license.

30           ~~(4)(3)~~ Limited licensure may be denied to an applicant  
31 who has committed, or is under investigation or prosecution

1 for, any act which would constitute the basis for discipline  
2 under this chapter.

3 ~~(5)(4) The recipient of a limited license may practice~~  
4 ~~only in the employ of public agencies or institutions or~~  
5 ~~nonprofit agencies or institutions which meet the requirements~~  
6 ~~of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which~~  
7 ~~provide professional liability coverage for acts or omissions~~  
8 ~~of the limited licensee. A limited licensee may provide~~  
9 services only during times of to the indigent, underserved, or  
10 critical need ~~populations~~ within the state. ~~The standard for~~  
11 ~~determining indigency shall be that recognized by the Federal~~  
12 ~~Poverty Income Guidelines produced by the United States~~  
13 ~~Department of Health and Human Services. Rules may be adopted~~  
14 ~~to define underserved and critical need areas and to ensure~~  
15 ~~implementation of this section.~~

16 ~~(6)(5)~~ The department may provide by rule for  
17 supervision of limited licensees to protect the health,  
18 safety, and welfare of the public.

19 ~~(7)(6)~~ Each applicant granted a limited license is  
20 subject to all the provisions of this chapter under which the  
21 limited license is issued which are not in conflict with this  
22 section.

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

25 Section 4. Section 497.162, Florida Statutes, is  
26 amended to read:

27 497.162 Health and safety education.--All individuals  
28 not licensed under this chapter who intend to be employed as  
29 operational personnel affiliated with a direct disposal  
30 establishment, cinerator facility, removal service,  
31 refrigeration facility, or centralized embalming facility, ~~as~~

1 ~~well as~~ all nonlicensed individuals who intend to be involved  
2 in the removal or transportation of human remains on behalf of  
3 a funeral establishment, direct disposal establishment, or  
4 cinerator facility, and once every 6 years each person who is  
5 not licensed under this chapter who is employed by an entity  
6 licensed under this chapter shall complete one course approved  
7 by the licensing authority on communicable diseases, within 10  
8 days after the date that they begin functioning as operational  
9 personnel on behalf of any entity that is regulated by this  
10 chapter. The course shall not exceed 3 hours and shall be  
11 offered at approved locations throughout the state. Such  
12 locations may include establishments that are licensed under  
13 this chapter. The licensing authority shall adopt rules to  
14 implement and enforce this provision, which rules shall  
15 include provisions that provide for the use of approved  
16 videocassette courses and other types of audio, video, or home  
17 study courses to fulfill the continuing education requirements  
18 of this section.

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

21 497.260 Cemeteries; exemption; investigation and  
22 mediation.--

23 (2) Section 497.276(1) as to burial records, and ss.  
24 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and  
25 497.284 apply to all cemeteries in this state.

26 Section 6. Paragraph (c) of subsection (2) of section  
27 497.271, Florida Statutes, is amended to read:

28 497.271 Standards for construction and significant  
29 alteration or renovation of mausoleums and columbaria.--

30 (2) The licensing authority shall adopt, by no later  
31 than July 1, 1999, rules establishing minimum standards for

1 all newly constructed and significantly altered or renovated  
2 mausoleums and columbaria; however, in the case of significant  
3 alterations or renovations to existing structures, the rules  
4 shall apply only, when physically feasible, to the newly  
5 altered or renovated portion of such structures, except as  
6 specified in subsection (4). In developing and adopting such  
7 rules, the licensing authority may define different classes of  
8 structures or construction standards, and may provide for  
9 different rules to apply to each of said classes, if the  
10 designation of classes and the application of different rules  
11 is in the public interest and is supported by findings by the  
12 licensing authority based on evidence of industry practices,  
13 economic and physical feasibility, location, or intended uses;  
14 provided, that the rules shall provide minimum standards  
15 applicable to all construction. For example, and without  
16 limiting the generality of the foregoing, the licensing  
17 authority may determine that a small single-story ground level  
18 mausoleum does not require the same level of construction  
19 standards that a large multistory mausoleum might require; or  
20 that a mausoleum located in a low-lying area subject to  
21 frequent flooding or hurricane threats might require different  
22 standards than one located on high ground in an area not  
23 subject to frequent severe weather threats. The licensing  
24 authority shall develop the rules in cooperation with, and  
25 with technical assistance from, the Florida Building  
26 Commission of the Department of Community Affairs, to ensure  
27 that the rules are in the proper form and content to be  
28 included as part of the State Minimum Building Codes under  
29 part VII of chapter 553. If the Florida Building Commission  
30 advises that some of the standards proposed by the licensing  
31 authority are not appropriate for inclusion in such building

1 codes, the licensing authority may choose to include those  
2 standards in a distinct chapter of its rules entitled  
3 "Non-Building-Code Standards for Mausoleums" or "Additional  
4 Standards for Mausoleums," or other terminology to that  
5 effect. If the licensing authority elects to divide the  
6 standards into two or more chapters, all such rules shall be  
7 binding on licensees and others subject to the jurisdiction of  
8 the licensing authority, but only the chapter containing  
9 provisions appropriate for building codes shall be transmitted  
10 to the Florida Building Commission pursuant to subsection (3).  
11 Such rules may be in the form of standards for design and  
12 construction; methods, materials, and specifications for  
13 construction; or other mechanisms. Such rules shall encompass,  
14 at a minimum, the following standards:

15 (c) Such structure must contain adequate provision for  
16 drainage and ventilation. Private or family mausoleums with  
17 all crypts bordering an exterior wall must contain pressure  
18 relief ventilation from the crypts to the outside of the  
19 mausoleum through the exterior wall.

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

22 497.273 Cemetery companies; authorized functions.--

23 (4) This chapter does not prohibit the interment or  
24 entombment of the inurned cremated animal remains of the  
25 decedent's pet or pets with the decedent's human remains or  
26 cremated human remains if:

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

29 (b) The interment or entombment with the inurned  
30 cremated animal remains is with the authorization of the  
31 decedent or other legally authorized person.



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

3           497.367 Instruction on HIV and AIDS, funeral directors  
4 and embalmers.--

5           (1) Each person licensed as a funeral director or  
6 embalmer under this chapter shall be required to complete an  
7 approved continuing educational course on human  
8 immunodeficiency virus and acquired immune deficiency syndrome  
9 as a prerequisite for every third biennial licensure renewal  
10 ~~at least every 2 years~~. The course shall consist of education  
11 on the modes of transmission, infection control procedures,  
12 clinical management, and prevention of human immunodeficiency  
13 virus and acquired immune deficiency syndrome. Such course  
14 shall include information on current Florida law on acquired  
15 immune deficiency syndrome and its impact on testing,  
16 confidentiality of test results, and treatment of patients.

17           Section 9. Paragraph (b) of subsection (1) of section  
18 497.374, Florida Statutes, is amended to read:

19           497.374 Funeral directing; licensure as a funeral  
20 director by endorsement; licensure of a temporary funeral  
21 director.--

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

26           (b)1. Holds a valid license to practice funeral  
27 directing in another state of the United States, provided  
28 that, when the applicant secured her or his original license,  
29 the requirements for licensure were substantially equivalent  
30 to or more stringent than those existing in this state; or  
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1           2. Meets the qualifications for licensure in s.  
2 497.373 and has, ~~within 10 years prior to the date of~~  
3 ~~application~~, successfully completed a state, regional, or  
4 national examination in mortuary science, which, as determined  
5 by rule of the licensing authority, is substantially  
6 equivalent to or more stringent than the examination given by  
7 the licensing authority.

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

10           497.550 Licensure of monument establishments required;  
11 procedures and criteria.--

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

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

- 18           1. Monument builder.
- 19           2. Monument retailer ~~dealer~~.

20           (b) An applicant for licensure as a monument  
21 establishment shall designate on the application form the  
22 category of monument establishment licensure for which he or  
23 she is applying.

24           (c) Each monument establishment that is licensed under  
25 this chapter at 11:59 p.m. on September 30, 2005, is, on and  
26 after October 1, 2005, licensed as a monument retailer ~~dealer~~  
27 subject to the requirements of this chapter. A person who  
28 becomes licensed as a monument retailer ~~dealer~~ by operation of  
29 this paragraph may apply to the board for licensure as a  
30 monument builder and, upon payment of applicable application  
31 fees and the granting of such application and licensure as a

1 monument builder, such person's licensure as a monument  
2 ~~retailer dealer~~ will expire.

3 (d) The requirements of this chapter apply to both  
4 monument ~~retailers dealers~~ and monument builders, except as  
5 provided in this paragraph. Each monument establishment shall  
6 be a physical structure that is located at a specific street  
7 address, in compliance with zoning regulations of the  
8 appropriate local government, and not located on property that  
9 is exempt from taxation, but a monument ~~retailer dealer~~ may  
10 not otherwise be required to comply with s. 497.552 or be  
11 subject to inspection under this chapter.

12 (e) A monument establishment that is not licensed  
13 under the monument-builder category is not eligible for a  
14 preneed sales license.

15 Section 11. Section 497.609, Florida Statutes, is  
16 created to read:

17 497.609 Liability of direct disposers, direct disposal  
18 establishments, funeral directors, funeral establishments, and  
19 cinerator facilities regarding cremation.--If a direct  
20 disposer, direct disposal establishment, funeral director,  
21 funeral establishment, or cinerator facility is given a copy  
22 of the deceased's declaration of intent to be cremated that is  
23 signed by the deceased and the deceased's human remains are  
24 subsequently cremated, or a court order directing the  
25 cremation of the deceased's human remains, no person may make  
26 a claim objecting to the cremation against that direct  
27 disposer, direct disposal establishment, funeral director,  
28 funeral establishment, or cinerator facility. If a direct  
29 disposer, direct disposal establishment, funeral director,  
30 funeral establishment, or cinerator facility performs a  
31 cremation pursuant to the authorization of a legally

1 authorized person who represents that she or he is not aware  
2 of any objection to the cremation of the deceased's human  
3 remains by others in the same class of the person making the  
4 representation or of any person in a higher priority class,  
5 and the deceased's human remains are subsequently cremated, no  
6 person may make a claim objecting to the cremation against  
7 that direct disposer, direct disposal establishment, funeral  
8 director, funeral establishment, or cinerator facility.

9           Section 12. Subsections (5) through (14) of section  
10 553.36, Florida Statutes, are renumbered as subsections (6)  
11 through (15), respectively, present subsections (15) and (16)  
12 are renumbered as subsections (17) and (18), respectively, and  
13 new subsections (5) and (16) are added to that section, to  
14 read:

15           553.36 Definitions.--The definitions contained in this  
16 section govern the construction of this part unless the  
17 context otherwise requires.

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

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

24           Section 13. Paragraphs (j) and (k) are added to  
25 subsection (9) of section 553.73, Florida Statutes, to read:

26           553.73 Florida Building Code.--

27           (9) The following buildings, structures, and  
28 facilities are exempt from the Florida Building Code as  
29 provided by law, and any further exemptions shall be as  
30 determined by the Legislature and provided by law:

31           (j) Prefabricated or pre-assembled columbaria.

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

3  
4 With the exception of paragraphs (a), (b), (c), and (f), in  
5 order to preserve the health, safety, and welfare of the  
6 public, the Florida Building Commission may, by rule adopted  
7 pursuant to chapter 120, provide for exceptions to the broad  
8 categories of buildings exempted in this section, including  
9 exceptions for application of specific sections of the code or  
10 standards adopted therein. The Department of Agriculture and  
11 Consumer Services shall have exclusive authority to adopt by  
12 rule, pursuant to chapter 120, exceptions to nonresidential  
13 farm buildings exempted in paragraph (c) when reasonably  
14 necessary to preserve public health, safety, and welfare. The  
15 exceptions must be based upon specific criteria, such as  
16 under-roof floor area, aggregate electrical service capacity,  
17 HVAC system capacity, or other building requirements. Further,  
18 the commission may recommend to the Legislature additional  
19 categories of buildings, structures, or facilities which  
20 should be exempted from the Florida Building Code, to be  
21 provided by law.

22           Section 14. Subsection (14) of section 316.515,  
23 Florida Statutes, is amended to read:

24           316.515 Maximum width, height, length.--

25           (14) MANUFACTURED BUILDINGS.--The Department of  
26 Transportation may, in its discretion and upon application and  
27 good cause shown therefor that the same is not contrary to the  
28 public interest, issue a special permit for truck  
29 tractor-semitrailer combinations where the total number of  
30 overwidth deliveries of manufactured buildings, as defined in  
31

1 s. 553.36(13) ~~s. 553.36(12)~~, may be reduced by permitting the  
2 use of an overlength trailer of no more than 54 feet.

3 Section 15. Paragraph (a) of subsection (1) and  
4 subsection (5) of section 627.702, Florida Statutes, are  
5 amended to read:

6 627.702 Valued policy law.--

7 (1)(a) In the event of the total loss of any building,  
8 structure, mobile home as defined in s. 320.01(2), or  
9 manufactured building as defined in s. 553.36(13) ~~s.~~  
10 ~~553.36(12)~~, located in this state and insured by any insurer  
11 as to a covered peril, in the absence of any change increasing  
12 the risk without the insurer's consent and in the absence of  
13 fraudulent or criminal fault on the part of the insured or one  
14 acting in her or his behalf, the insurer's liability under the  
15 policy for such total loss, if caused by a covered peril,  
16 shall be in the amount of money for which such property was so  
17 insured as specified in the policy and for which a premium has  
18 been charged and paid.

19 (5) This section does not apply as to personal  
20 property or any interest therein, except with respect to  
21 mobile homes as defined in s. 320.01(2) or manufactured  
22 buildings as defined in s. 553.36(13) ~~s. 553.36(12)~~. Nor does  
23 this section apply to coverage of an appurtenant structure or  
24 other structure or any coverage or claim in which the dollar  
25 amount of coverage available as to the structure involved is  
26 not directly stated in the policy as a dollar amount  
27 specifically applicable to that particular structure.

28 Section 16. This act shall take effect July 1, 2007.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2856

The committee substitute (CS) amends s. 497.101(3), F.S., to reference "monument builder" instead of "monument dealer."

The CS amends s. 497.101, F.S., to prohibit any officer, administrator, or board member, firm, corporation, partnership, or association that is regulated under chs. 395, 400, or 429, F.S., from operating or owning an entity licensed under ch. 497, F.S. It also changes the condition for the exemption that the board member must serve in a voluntary capacity, receive no remuneration and have no financial interest and have no family member with a financial interest in the regulated corporation or organization.

The CS amends s. 497.143, F.S., to include within the meaning of the term "critical need" a request from the director of the Division of Emergency Management; a request from the Florida Emergency Mortuary Operations Response System; a request from any district medical examiner; or activation of the state continuity of operations plan. It requires all limited licensees to work for an entity licensed under ch. 497, F.S.

The CS amends s. 497.162, F.S., to remove the provision authorizing that the communicable disease course for non-licensed operational personnel may be on the Internet. It provides that non-licensed operational personnel must complete the required course once every six years.

The CS removes the provision creating s. 497.279, F.S., relating to minimum standards for all newly installed monuments and markers.

The CS amends s. 497.273, F.S. to permit deceased persons to be interned or entombed with the cremated inurned remains of their pets.

The CS revises the provisions relating to limiting claims against certain licensees for cremating bodies and it provides a definition of private mausoleum.

The CS amends s. 627.702, F.S., to correct a cross reference to s. 553.36(13), F.S.