

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

**BILL:** CS/CS/SB 1152

**INTRODUCER:** Regulated Industries Committee, Banking and Insurance Committee, and Senator Bennett

**SUBJECT:** Funeral, Cemetery, and Consumer Services Act

**DATE:** April 13, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Fav/CS
2.	Oxamendi	Imhof	RI	Fav/CS
3.			GA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Current law sets forth the order of priority of persons who are authorized to direct the disposition of human remains. The bill includes on the priority list the person indentified by a U.S. military service person on a Department of Defense form as designated to direct the disposition of their remains if they die while serving. The bill places such person as second in order of priority after the person identified in an *inter vivos* authorized by the decedent and ahead of the decedent's surviving spouse.

Current law requires a license to provide services as a funeral director or embalmer. The bill requires persons wishing to obtain a funeral director license to take courses in funeral service arts in addition to the currently required courses in mortuary science. Mortuary science courses are required for learning the process of embalming, which funeral director licensees are not permitted to practice. This bill permits applicants for a funeral director license to take only the funeral service arts courses.

Current law allows for either an embalmer or a funeral director to serve as the direct disposer in charge of a direct disposal establishment. The bill would require that the person in charge of a

funeral establishment must be a licensed embalmer or a licensed with a combination embalmer and funeral director license. However, the bill provides a grandfather provision to allow direct disposers currently serving as direct disposers in charge of a funeral facility to continue to do so provided they meet certain requirements.

Current law allows either a licensed direct disposer or a licensed funeral director licensee to serve as the person in charge of a licensed direct disposal establishment which provide services related to the removal and storage of human remains. The bill would require that person in charge of the direct disposal facility must be a full-time funeral director. However, the bill provides a grandfather provision to permit current direct disposer licensees to continue to serve as the full-time person in charge of the facility .

The bill provides for certain waivers and modifications to the requirements of ch. 497, F.S., in the event of a declared state of emergency. It modifies health and safety education requirements for licensees and requirements for preneed contracts. The bill requires monument establishments to provide proof of liability insurance as required by law.

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.101, 497.103, 497.140, 497.141, 497.142, 497.143, 497.147, 497.152, 497.161, 497.162, 497.166, 497.277, 497.278, 497.365, 497.372, 497.373, 497.374, 497.375, 497.376, 497.378, 497.380, 497.456, 497.464, 497.602, 497.603, 497.604.

This bill creates section 497.4555, Florida Statutes.

This bill repeals section 497.367, Florida Statutes.

## II. Present Situation:

Funeral and cemetery services are regulated under ch. 497, F.S., which may be cited as the “Florida Funeral, Cemetery, and Consumer Services Act” (act).<sup>1</sup> The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (department) is responsible for the administration and enforcement of the act. Division of Funeral, Cemetery, and Consumer Services (division) performs the board’s administrative functions. Chapter 497, F.S., refers to the board by the term “licensing authority.”

The practices of funeral services is divided into three relevant licenses. Persons may be licensed as a funeral director,<sup>2</sup> an embalmer,<sup>3</sup> or with a combination license for the practice of funeral directing and embalming.<sup>4</sup> According to the division, there are 78 funeral director licensees, 39 embalmer licensees, and 2,450 funeral director and embalmer licensees within the State of Florida.

Applicants for an embalmer license must take courses in mortuary science, complete a one-year internship, pass state and federal law examinations, and pass the Funeral Services Science

---

<sup>1</sup> Section 497.001, F.S.

<sup>2</sup> Section 497.372, F.S.

<sup>3</sup> Section 497.368, F.S.

<sup>4</sup> Section 497.376, F.S.

section of the national board examination prepared by the Conference of Funeral Service Examining Boards (CFSEB).<sup>5</sup> These applicants do not have to take courses in funeral service arts.

Applicants for a combination funeral directing and embalmer license must meet the requirements for an embalmer's license, as well as take approved courses in funeral service arts, and pass the funeral services arts section of the national board examination.<sup>6</sup>

Similarly, applicants for a funeral director-only license are required to take classes in both mortuary science and funeral service arts whether or not the student wishes to apply for an embalming license or practice embalming. They must also complete a one-year internship, pass the state and federal laws and rules examination relating to the disposition of human remains, and pass the funeral services arts section of the national board examination.<sup>7</sup>

Furthermore, the practice of cremation, rather than embalming and traditional burial, has increased throughout Florida and the country.<sup>8</sup> Approximately 50 percent of all human remains in the state are projected to be cremated this year.<sup>9</sup> This exceeds the projected national average of 38.15 percent and represents an increasing percentage for the disposition of human remains by cremation.<sup>10</sup> According to the division, the industry's need for funeral directors with a scientific background in embalming may be less important than before.

Finally, the oldest members of the baby boomer population will begin turning 65 in 2011. Florida already has the highest proportion of citizens over 65 in the country with 19 percent of the total population.<sup>11</sup> As these members age and eventually die, the demand for funeral directors will increase.

Florida law dictates the preferential order to select a person responsible for determining the disposition of human remains. The Florida Funeral, Cemetery, and Consumer Services Act<sup>12</sup> provides that a "legally authorized individual" shall have the power to make this decision.<sup>13</sup> The statute provides that the preferential order for choosing the person responsible for directing disposition is (in descending order):

- An *inter vivos* authorization<sup>14</sup> made by the deceased;

---

<sup>5</sup> Section 497.368, F.S.

<sup>6</sup> See s. 497.376(1), F.S.

<sup>7</sup> Section 497.373, F.S.

<sup>8</sup> Don Conkey, *As Cremations Rise, So Do Options on Where to Spend*, available at: <http://www.cremationassociation.org> (Last visited April 9, 2010).

<sup>9</sup> U.S. Cremation Statistics available at: <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (Last visited April 13, 2010).

<sup>10</sup> Funeral Industry Consultants, Inc., *Florida Funeral Home Statistics – 1998 through 2008*, p. 717 (2008).

<sup>11</sup> Frank B. Hobbs, *The Elderly Population*, U.S. Bureau of Statistics, available at: <http://www.census.gov/population/www/pop-profile/elderpop.html> (Last visited April 9, 2010).

<sup>12</sup> Ch. 497, F.S.

<sup>13</sup> S. 497.005(37), F.S.

<sup>14</sup> An *inter vivos* authorization is one made during the life of the decedent (deceased). See Black's Law Dictionary; It is unclear whether this provision includes a will, which is considered testamentary in nature. See James W. Martin, *Is the Law of the Body a Body of Law*, Lawyers.com (discussing whether a will is valid for determining the disposition of the body under

- The surviving spouse;
- A son or daughter of majority age;
- A parent;
- A sibling of majority age;
- A grandchild of majority age;
- A grandparent; or
- Another person in the next degree of kinship.

During their period of military service, all service members in the Army, Navy, Air Force, and Marine Corps are required to complete the United States Department of Defense Record of Emergency Data form (DD Form 93).<sup>15</sup> The form is also applicable to members of the Coast Guard when operating as a service within the Department of the Navy.<sup>16</sup>

United States Department of Defense Record of Emergency Data, DD Form 93, requires United States military personnel to designate a person authorized to direct disposition (PADD). The form requires that the service member must state the name of the person and the person's relationship to the service member. The instruction to the form limit the designated PADD to the surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these persons can be found, the service member may designate a person standing in loco parentis, i.e., in place of the parents.

The DD Form 93 also relates to who service members wished to be contacted in case of death and benefits-related information. The form allows service members to designate the spouse or a relative to be the person authorized to dispose of the service member's remains if the service member dies during military service (regardless of deployment status).

At present, Florida law does not explicitly recognize the DD Form 93 as a method for determining the legally authorized person to direct disposition of remains. However, Florida law would likely treat the form as an *inter vivos* authorization and give effect to it as such.<sup>17</sup>

Federal law, in 10 U.S.C. s. 1481(a)(1)-(8), lists the persons whom the Secretary of Defense may provide for the recovery, care, and disposition of remains. The list includes any members of the armed forces who die while on active duty, any members of the reserves while on active duty or inactive-duty training, an accepted applicant for enlistment, any retired or active service members who die during continuous hospitalization that began while the person was on active duty, any military prisoner who dies while in custody, and any retired members of the armed

---

this statute). Available at: <http://wills-probate.lawyers.com/blogs/archives/789-Is-the-Law-of-the-Body-a-Body-of-Law.html>. (Last visited April 13, 2010).

<sup>15</sup> Military service members were authorized by Public Law 109-163, 119 Stat. 3270, to designate a person authorized to direct disposition of remains. Additionally, the execution of the DD Form 93 is required to be witnessed by a disinterested party.

<sup>16</sup> Department of Defense Instruction 1300.18. Available at : <http://www.dtic.mil/whs/directives/corres/pdf/130018p.pdf> (Last visited April 13, 2010).

<sup>17</sup> See *Arthur v. Milstein*, 949 So.2d 1163, 1166 (Fla. 4th DCA 1163) (noting that the statute first gives effect to the wishes of the decedent through an *inter vivos* authorization); See also *Cohen v. Guardianship of Cohen*, 896 So.2d 950, 952-53 (Fla. 4th DCA 2005) (finding that an oral *inter vivos* declaration of burial disposition can overcome the written terms of a will and resulting in a conclusion that effect should be given to the desires of the decedent).

services who dies while outside the US or any individual who dies while outside the U.S. while a dependent of such service member.

### III. Effect of Proposed Changes:

**Section 1** amends s. 497.005, F.S., to define the terms “direct supervision” and “general supervision.” “Direct supervision” is defined as requiring either initial direction or periodic inspection while with the supervised person or while on the premises when the tasks are being performed. This definition is contrasted with the newly defined term “general supervision,” which is defined as being in proximity to the supervised person and available at all times. The definition relates to direct supervision by funeral directors and embalmers. The department has indicated that these definitions will clarify regulatory requirements for licensees.

The bill amends s. 497.005(39), F.S., to revise the definition of the term “legally authorized person.” This provision sets forth the order of priority of persons who are authorized to direct the disposition of human remains. The bill amends the definition to include the person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564,<sup>18</sup> as listed on the decedent’s United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard.

The bill places the person indentified on DD Form 93 as the second person in order of priority after the person authorized by the decedent in an *inter vivos* authorization and ahead of the decedent’s surviving spouse.

**Section 2** amends s. 497.101, F.S., to require that a member of the board must be a principal of a monument establishment licensee. Current law requires appointment of a monument establishment licensee. However, the division states that most monument establishment licensees are corporations or limited liability companies (LLC) and that it is not practical to appoint a corporation or LLC as a board member.

The bill also deletes the provision relating to the appointment of the monument establishment member of the board before June 1, 2006.

**Section 3** amends s. 497.103, F.S., to authorize the licensing authority to waive provisions of ch. 497, F.S., during declared emergencies under s. 252.36, F.S., in any threatened area or areas specified in the Governor’s executive order or proclamation.

**Section 4** amends s. 497.140, F.S., to authorize the licensing authority to charge a fee for inspections of a licensed facility following a change in ownership, control, or location. The fee may not exceed the amount of the licensee’s annual inspection fee. The bill does not specify the amount of the fee or the maximum amount that may be assessed.

---

<sup>18</sup> Pub. L. No. 109-163, s. 564 directs the United States Secretary of Defense to complete, and the secretaries of the various military services to implement, a Department of Defense instruction requiring service members to designate a person authorized to direct disposition of their remains should they become a casualty.

**Section 5** amends s. 497.141(5), F.S., to prohibit the issuance or renewal of a license when the applicant has a criminal record. The bill provides an exception when the applicant or licensee demonstrates that issuance or renewal of a license will not create a public threat. Currently ch. 497, F.S., requires the disclosure of an applicant's criminal history on an application for a new license, but not at renewal.

This section also authorizes the licensing authority to provide a system for issuing and renewing licenses in an online electronic format. The bill authorizes a fee of up to \$25 for the use of paper forms if the licensing authority allows paper forms to be used when an online system is also available. According to the division, online application and renewal systems generally result in lower costs of regulation and, either because of inertia or traditional practices, a significant number of licensees need to be persuaded to use online systems by making it slightly more expensive to use paper systems.

**Section 6** amends s. 497.142(10), F.S., to require, prior to an applicant becoming licensed, the disclosure of any crimes to which the applicant pled guilty. The division considers this a correction of a previous oversight. The division believes that the legislature intended that applicant's should disclose crimes to which they pled guilty because crimes that were pled "no contest" must be disclosed.

The bill also requires that the criminal history disclosure requirements for license renewals shall be the same as the requirements for initial licensure.

**Section 7** amends s. 497.143, F.S., to authorize temporary licenses under ch. 497, F.S., during times of critical need. The bill permits temporary licenses for retired Florida licensees and active licensees in good standing from other states. This section also eliminates license fees for temporary licenses that are granted under this section.

**Section 8** amends s. 497.147, F.S., to delete the 5-hour limit on the number of credits of continuing education that licensees, including board members, may receive to satisfy the continuing education requirements in ch. 497, F.S., for time spent attending board meetings.

**Section 9** amends s. 497.152, F.S., to provide that a plea of guilty to specified crimes is grounds for disciplinary action under ch. 497, F.S. This bill authorizes the suspension or revocation of a license for a person who enters a pleas of guilty. This is also considered a correction of a previous oversight. The division believes that the legislature intended that persons who plead guilty should be should be subject to discipline because licensee who plead "no contest" are subject to discipline.

**Section 10** amends s. 497.161, F.S., to authorize the licensing authority, during declared emergencies, to suspend or modify any provisions in ch. 497, F.S., to allow licensees to provide essential services. Any suspension or modification of ch. 497, F.S., may not remain in effect for more than 12 months after the state of emergency is terminated.

**Section 11** amends s. 497.162, F.S., regarding health and safety education, to require individuals employed in a centralized embalming facility "who have direct contact with" human remains to complete the required course within 30 days after the date the employee begins the function.

Current law requires the training within 10 days. The bill deletes the reference to all non-licensed individuals who intend to be involved in the removal or transportation of human remains.

**Section 12** amends s. 497.166, F.S., to revise the provision to conform to current bill drafting conventions.

**Section 13** creates subsection (6) of s. 497.277, F.S., to provide requirements for processing fees charged to customers by cemeteries. These new provisions require that:

- Processing fees may be charged for processing, filing, and archiving or other administrative duties;
- Processing fees may not be charged in regard to opening or closing a grave or vault installation;
- Processing fees must be disclosed to the consumer;
- Processing fees must be shown on a cemetery's standard price list;
- Processing fees are not subject to trusting under s. 497.458, F.S.; and
- The department, subject to the approval of the board, has rulemaking authority with regard to the administration of this provision.

Currently there is no express regulation of processing fees in ch. 497, F.S. In a related provision, the bill creates s. 497.4555, F.S., to authorize a preneed licensee to charge a processing fee in preneed contracts.

**Section 14** amends s. 497.278, F.S., relating to grave markers and monument providers. Current practice permits a cemetery to compete with monument establishment companies for business with regard to buying and installing grave markers and monuments. The bill provides that cemeteries may require monument establishment companies to show proof of liability insurance, and workers compensation coverage "required by law," but cemeteries may not specify the amount of liability insurance and cemeteries may not require a surety bond.

**Section 15** creates subsection (13) of s. 497.365, F.S., to provide that a person may not embalm human remains unless licensed as an embalmer, funeral director and embalmer, or an embalmer intern or an embalmer apprentice while under direct or general supervision of a licensee.

**Section 16** amends s. 497.372, F.S., to provide that funeral services must be provided through affiliation with a licensed funeral establishment.

**Section 17** amends s. 497.373, F.S., which specifies education requirements for a funeral director licensee, to provide that the required associate degree or higher degree must be in the study of mortuary science or funeral director arts. Current law only requires a degree in mortuary science. It also provides that the degree must be from a college of university accredited by the American Board of Funeral Services Education. It also requires that applicants for licensure as a funeral director must pass an examination in funeral service arts.

Under current law, an applicant who has completed the required 1-year internship and has been approved to sit for the license examination may work for 6 months under the direct supervision of a licensed funeral director. The bill would permit a provisional licensee who has passed the

laws-and-rules examination required by s. 497.373(2)(b), F.S., to work under the general supervision of a licensed funeral director.

**Section 18** amends s. 497.374, F.S., relating to licensure by endorsement as a funeral director, to provide that applicants for licensure by endorsement are required to take and pass the funeral services examination. Current law only references the mortuary science examination.

**Section 19** amends s. 497.375, F.S., to permit funeral director interns to earn an income while they obtain formal education and complete the required internship. The bill:

- Permits an intern, under specified conditions, to complete formal education coursework simultaneously with the internship. Currently they must complete their formal education before the internship;
- Permits the intern to work under the general supervision of a fully licensed funeral director. Currently the intern may only work under direct supervision; and
- Permits an intern two years to complete the internship. Currently the internship must be completed in one year. This will allow the intern an additional year to complete the formal education, while interning, and working under general supervision.

The bill authorizes the licensing authority to require payment of a nonrefundable fee for the renewal of the funeral director intern license.

**Section 20** deletes subsection (2) of s. 497.376, F.S., which authorizes the board to adopt rules that require licensees to visibly display their licenses. However, the bill amends s. 497.380, F.S., to require the display of the funeral director or embalmer license.

**Section 21** amends s. 497.378, F.S., to remove the requirement for a continuing education course in human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) for renewal of a funeral director or embalmer license. The bill retains the current requirement for a general continuing education course concerning communicable diseases. According to the division, the general course on communicable diseases addresses HIV/AIDS issues.

**Section 22** amends s. 497.380, F.S., to require that a funeral director in charge of a funeral facility must maintain a valid embalmer license or a valid combination license as an embalmer and funeral director. However, a grandfathering provision is included to allow funeral director-only licensees acting as a funeral director in charge as of September 30, 2010 to continue as a funeral director in charge. The bill also increases the responsibility and requirements of the funeral director in charge of an establishment and makes the funeral director in charge responsible for ensuring that the facility and all staff comply with applicable laws and rules.

The bill also requires each funeral director or embalmer licensee to permanently affix a photograph to each funeral director or embalmer license and display each license prominently within the establishment.

**Section 23** creates s. 497.4555, F.S., to authorize a preneed licensee to charge a processing fee in preneed contracts. The bill provides that the processing fees:

- May be charged for processing, filing, and archiving or other administrative duties;



- May not be charged in regard to opening or closing a grave or vault installation;
- Must be disclosed to the consumer;
- Must be included in the standard printed price list;
- Are not subject to trusting under s. 497.458, F.S.; and

The bill grants the department, subject to the approval of the board, rulemaking authority to administer s. 497.4555, F.S.

Under current law a specified percentage of the proceeds of the sale of a preneed contract must be placed in trust, but can be withdrawn when the goods or services in the preneed contract are actually provided.<sup>19</sup> A processing fee related to initial sale and setup of the preneed contract file is considered earned almost immediately and so it can generally be withdrawn immediately. However, according to the division, processing fees are subject to potential abuse by preneed sellers. There is an economic incentive for the preneed seller to shift as much of the preneed contract price as possible to the processing fee heading. This results in the seller getting a larger portion of the sale proceeds in their pocket at an earlier time. Currently there is no express regulation of processing fees in ch. 497, F.S.

**Section 24** amends s. 497.456, F.S., relating to the Preneed Consumer Protection Trust Fund, to authorize the licensing authority to require that claims by consumers or licensees against the Preneed Consumer Protection Trust Fund must be sworn or affirmed and notarized.

**Section 25** amends s. 497.464, F.S., relating to “alternative preneed contracts,” to authorize the licensing authority to specify, by rule, documentation other than a death certificate that a preneed trustee may accept as grounds for disbursing funds from the trust to the preneed licensee upon the representation of the preneed licensee that the preneed contract beneficiary has died and the contract has been performed. Under current law, a death certificate is required in every case as a condition of disbursing trust funds to the preneed licensee. Opponents of this provision believe that the requirement for a death certificate is unnecessary and adds to the cost which is ultimately passed on to the consumer. The bill specifies that in the event of partial performance, the trustee may make only a partial disbursement.

**Section 26** amends s. 497.602, F.S., to delete the requirement for the public license display of a direct disposers license. However, the bill also amends s. 497.604, F.S., to require the display of the direct disposer license.

**Section 27:** amends s. 497.603, F.S., to require that the continuing education requirement for licenses direct disposers must include a course on communicable diseases.

**Section 28** amends s. 497.604, F.S., to provide new requirements to operate a direct disposal establishment. Effective October 1, 2010, the bill requires that all direct disposal establishments have a licensed funeral director in charge of the direct disposal establishment. Current law requires the direct disposal establishment to have a licensed funeral director or a licensed direct disposer acting as the professional in charge of the direct disposal establishment. The bill provides that a direct disposer is not permitted to serve as the professional in charge of the direct

---

<sup>19</sup> Section 497.458(1), F.S.

disposal establishment. However, a direct disposer currently serving as professional in charge of a direct disposal establishment may, under specified criteria in the bill, continue indefinitely to serve as the professional in charge at that particular direct disposal establishment through the grandfather provision in this section.

The bill also specifies that direct disposal establishments and all licensees working at such establishments must display their licenses to the public. This requirement specifies that each licensee must affix a photo of themselves to the displayed licenses and that the photo may not be more than 6 years old.

**Section 29** repeals s. 497.367, F.S., which requires funeral director and embalmer licensees to complete a training course on HIV-AIDS once every six years.

**Section 29** provides an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

A non-refundable fee for renewal of a funeral director license is required by the bill. As provided in s. 497.140, F.S., the operators of facilities licensed under ch. 497, F.S., may be charged a fee for inspections of a licensed facility following a change in ownership, control, or location. The fee may not exceed the amount of the licensee's annual inspection fee. The bill does not specify the amount of the fee or the maximum amount that may be assessed.

B. Private Sector Impact:

The operators of facilities licensed under ch. 497, F.S., may be charged a fee for inspections of a licensed facility following a change in ownership, control, or location. The bill allows a preneed licensee to charge a processing fee for preneed contracts.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on April 13, 2010:**

This committee substitute amends s. 497.005(39), F.S., to revise the definition of the term “legally authorized person.”

**CS by Banking and Insurance on April 7, 2010:**

This committee substitute conforms language to align with the House companion; the committee substitute makes no substantive changes.

- B. **Amendments:**

None.