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# **Insurance, Business & Financial Affairs Policy Committee**

**Wednesday, February 17, 2010  
2:45 PM  
212 Knott Bldg.**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance, Business & Financial Affairs Policy Committee

**Start Date and Time:** Wednesday, February 17, 2010 02:45 pm

**End Date and Time:** Wednesday, February 17, 2010 04:45 pm

**Location:** Webster Hall (212 Knott)

**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 327 Community Associations by Robaina

HB 501 Administration of Life Insurance Contracts by Hukill

HB 527 Florida Funeral, Cemetery, and Consumer Services Act by Roberson, K.

HB 557 Heavy Equipment Rental Property by Workman

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 pm, Tuesday, February 16, 2010.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Tuesday, February 16, 2010.

**NOTICE FINALIZED on 02/10/2010 16:24 by Reshard.Debra**





## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.<sup>1</sup>

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase, because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including a foreclosing mortgagee.<sup>2</sup> The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

#### Definitions

The bill amends the definition of "developer," s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than

<sup>1</sup> Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

<sup>2</sup> For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of the Department of Business and Professional Regulation (DBPR) over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

### **Assignment and Assumption of Developer Rights**

The bill creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.
- Funding converter reserves for a unit not acquired by the bulk assignee.
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.
- Providing a cumulative audit of income and expenses during the period prior to assignment.
- Any actions taken by the board prior to the bulk assignee appointing a majority of the board.
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer, if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.<sup>3</sup>

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

### **Transfer to Unit Owner-Controlled Board**

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turn over items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer and must list materials that the bulk assignee was unable to obtain.

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<sup>3</sup> The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

## **Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer**

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes within the DBPR:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 718.103, F.S., amending the definition of "developer."

Section 2 creates Part VII of ch. 718, F.S., relating to distressed condominium relief.

Section 3 provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.



1 A bill to be entitled  
2 An act relating to community associations; amending s.  
3 718.103, F.S.; revising the definition of ~~the~~ term  
4 "developer" to exclude a bulk assignee or bulk buyer;  
5 creating part VII of ch. 718, F.S., relating to distressed  
6 condominium relief; providing a short title; providing  
7 legislative findings and intent; defining the terms "bulk  
8 assignee" and "bulk buyer"; providing for the assignment  
9 of developer rights to and the assumption of developer  
10 rights by a bulk assignee; specifying liabilities of bulk  
11 assignees and bulk buyers; providing exceptions; providing  
12 additional responsibilities of bulk assignees and bulk  
13 buyers; authorizing certain entities to assign developer  
14 rights to a bulk assignee; limiting the number of bulk  
15 assignees at any given time; providing for the transfer of  
16 control of a board of administration; providing effects of  
17 such transfer on parcels acquired by a bulk assignee;  
18 providing obligations of a bulk assignee upon the transfer  
19 of control of a board of administration; requiring that a  
20 bulk assignee certify certain information in writing;  
21 providing for the resolution of a conflict between  
22 specified provisions of state law; providing that the  
23 failure of a bulk assignee or bulk buyer to comply with  
24 specified provisions of state law results in the loss of  
25 certain protections and exemptions; requiring that a bulk  
26 assignee or bulk buyer file certain information with the  
27 Division of Florida Condominiums, Timeshares, and Mobile  
28 Homes of the Department of Business and Professional

29 Regulation before offering any units for sale or lease in  
 30 excess of a specified term; requiring that a copy of such  
 31 information be provided to a prospective purchaser;  
 32 requiring that certain contracts and disclosure statements  
 33 contain specified statements; requiring that a bulk  
 34 assignee or bulk buyer comply with certain disclosure  
 35 requirements; prohibiting a bulk assignee from taking  
 36 certain actions on behalf of an association while the bulk  
 37 assignee is in control of the board of administration of  
 38 the association and requiring that such bulk assignee  
 39 comply with certain requirements; requiring that a bulk  
 40 assignee or bulk buyer comply with certain requirements  
 41 regarding certain contracts; providing unit owners with  
 42 specified protections regarding certain contracts;  
 43 requiring that a bulk buyer comply with certain  
 44 requirements regarding the transfer of a unit; prohibiting  
 45 a person from being classified as a bulk assignee or bulk  
 46 buyer unless condominium parcels were acquired before a  
 47 specified date; providing for the determination of the  
 48 date of acquisition of a parcel; providing that the  
 49 assignment of developer rights to a bulk assignee or bulk  
 50 buyer does not release a developer from certain  
 51 liabilities; preserving certain liabilities for certain  
 52 parties; providing an effective date.

53  
 54 Be It Enacted by the Legislature of the State of Florida:

55  
 56 Section 1. Subsection (16) of section 718.103, Florida

57 Statutes, is amended to read:

58 718.103 Definitions.--As used in this chapter, the term:

59 (16) "Developer" means a person who creates a condominium  
60 or offers condominium parcels for sale or lease in the ordinary  
61 course of business, but does not include:

62 (a) An owner or lessee of a condominium or cooperative  
63 unit who has acquired the unit for his or her own occupancy;  
64 ~~nor does it include~~

65 (b) A cooperative association ~~that~~ which creates a  
66 condominium by conversion of an existing residential cooperative  
67 after control of the association has been transferred to the  
68 unit owners if, following the conversion, the unit owners will  
69 be the same persons who were unit owners of the cooperative and  
70 no units are offered for sale or lease to the public as part of  
71 the plan of conversion;  
72

73 (c) A bulk assignee or bulk buyer as defined in s.  
74 718.703; or

75 (d) A state, county, or municipal entity ~~is not a~~  
76 ~~developer for any purposes under this act when it is acting as a~~  
77 ~~lessor and not otherwise named as a developer in the~~ declaration  
78 of condominium association.

79 Section 2. Part VII of chapter 718, Florida Statutes,  
80 consisting of sections 718.701, 718.702, 718.703, 718.704,  
81 718.705, 718.706, 718.707, and 718.708, is created to read:

82 PART VII

83 DISTRESSED CONDOMINIUM RELIEF

84 718.701 Short title.--This part may be cited as the  
"Distressed Condominium Relief Act."

85 718.702 Legislative intent.--

86 (1) The Legislature acknowledges the massive downturn in  
 87 the condominium market which has transpired throughout the state  
 88 and the impact of such downturn on developers, lenders, unit  
 89 owners, and condominium associations. Numerous condominium  
 90 projects have either failed or are in the process of failing,  
 91 whereby the condominium has a small percentage of third-party  
 92 unit owners as compared to the unsold inventory of units. As a  
 93 result of the inability to find purchasers for this inventory of  
 94 units, which results in part from the devaluing of real estate  
 95 in this state, developers are unable to satisfy the requirements  
 96 of their lenders, leading to defaults on mortgages.  
 97 Consequently, lenders are faced with the task of finding a  
 98 solution to the problem in order to be paid for their  
 99 investments.

100 (2) The Legislature recognizes that all of the factors  
 101 listed in this section lead to condominiums becoming distressed,  
 102 resulting in detriment to the unit owners and the condominium  
 103 association on account of the resulting shortage of assessment  
 104 moneys available to support the financial requirements for  
 105 proper maintenance of the condominium. Such shortage and the  
 106 resulting lack of proper maintenance further erode property  
 107 values. The Legislature finds that individuals and entities  
 108 within Florida and in other states have expressed interest in  
 109 purchasing unsold inventory in one or more condominium projects,  
 110 but are reticent to do so because of the potential of  
 111 accompanying liabilities inherited from the original developer,  
 112 which are potentially by definition imputed to the successor

113 purchaser, including a foreclosing mortgagee. This results in  
 114 the potential purchaser having unknown and unquantifiable risks,  
 115 and potential successor purchasers are unwilling to accept such  
 116 risks. The result is that condominium projects stagnate, leaving  
 117 all parties involved at an impasse without the ability to find a  
 118 solution.

119 (3) The Legislature finds and declares that it is the  
 120 public policy of this state to protect the interests of  
 121 developers, lenders, unit owners, and condominium associations  
 122 with regard to distressed condominiums, and that there is a need  
 123 for relief from certain provisions of the Florida Condominium  
 124 Act geared toward enabling economic opportunities within these  
 125 condominiums for successor purchasers, including foreclosing  
 126 mortgagees, while at the same time clarifying the ambiguity in  
 127 the law. Such relief would benefit existing unit owners and  
 128 condominium associations. The Legislature further finds and  
 129 declares that this situation cannot be open-ended without  
 130 potentially prejudicing the rights of unit owners and  
 131 condominium associations, and thereby declares that the  
 132 provisions of this part shall be used by purchasers of  
 133 condominium inventory for a specific and defined period.

134 718.703 Definitions.--As used in this part, the term:

135 (1) "Bulk assignee" means a person who:

136 (a) Acquires more than seven condominium parcels in a  
 137 single condominium as set forth in s. 718.707; and

138 (b) Receives an assignment of all or substantially all of  
 139 the rights of the developer as are set forth in the declaration  
 140 of condominium or in this chapter by a written instrument

141 recorded as an exhibit to the deed or as a separate instrument  
 142 in the public records of the county in which the condominium is  
 143 located.

144 (2) "Bulk buyer" means a person who acquires more than  
 145 seven condominium parcels in a single condominium as set forth  
 146 in s. 718.707 but who does not receive an assignment of any  
 147 developer rights other than, at the bulk buyer's option, the  
 148 right to conduct sales, leasing, and marketing activities within  
 149 the condominium; the right to be exempt from the payment of  
 150 working capital contributions to the condominium association  
 151 arising out of or in connection with the bulk buyer's  
 152 acquisition of a bulk number of units; and the right to be  
 153 exempt from any rights of first refusal which may be held by the  
 154 condominium association and would otherwise be applicable to  
 155 subsequent transfers of title from the bulk buyer to any third-  
 156 party purchaser concerning one or more units.

157 718.704 Assignment of developer rights to and assumption  
 158 of developer rights by bulk assignee; bulk buyer.--

159 (1) A bulk assignee shall be deemed to have assumed and is  
 160 liable for all duties and responsibilities of a developer under  
 161 the declaration and this chapter, except:

162 (a) Warranties of a developer under s. 718.203(1) or s.  
 163 718.618, except for design, construction, development, or repair  
 164 work performed by or on behalf of such bulk assignee.

165 (b) The obligation to:

166 1. Fund converter reserves under s. 718.618 for a unit  
 167 that was not acquired by the bulk assignee; or

168 2. Provide converter warranties on any portion of the

169 condominium property except as may be expressly provided by the  
 170 bulk assignee in the contract for purchase and sale executed  
 171 with a purchaser and pertaining to any design, construction,  
 172 development, or repair work performed by or on behalf of the  
 173 bulk assignee.

174 (c) The requirement to provide the association with a  
 175 cumulative audit of the association's finances from the date of  
 176 formation of the condominium association as required by s.  
 177 718.301. However, the bulk assignee shall provide an audit for  
 178 the period for which the bulk assignee elects a majority of the  
 179 members of the board of administration.

180 (d) Any liability arising out of or in connection with  
 181 actions taken by the board of administration or the developer-  
 182 appointed directors before the bulk assignee elects a majority  
 183 of the members of the board of administration.

184 (e) Any liability for or arising out of the developer's  
 185 failure to fund previous assessments or to resolve budgetary  
 186 deficits in relation to a developer's right to guarantee  
 187 assessments, except as otherwise provided in subsection (2).

188  
 189 Further, the bulk assignee is responsible for delivering  
 190 documents and materials in accordance with s. 718.705(3). A bulk  
 191 assignee may expressly assume some or all of the obligations of  
 192 the developer described in paragraphs (a)-(e).

193 (2) A bulk assignee receiving the assignment of the rights  
 194 of the developer to guarantee the level of assessments and fund  
 195 budgetary deficits pursuant to s. 718.116 shall be deemed to  
 196 have assumed and is liable for all obligations of the developer

197 with respect to such guarantee, including any applicable funding  
 198 of reserves to the extent required by law, for as long as the  
 199 guarantee remains in effect. A bulk assignee not receiving an  
 200 assignment of the right of the developer to guarantee the level  
 201 of assessments and fund budgetary deficits pursuant to s.  
 202 718.116 or a bulk buyer is not deemed to have assumed and is not  
 203 liable for the obligations of the developer with respect to such  
 204 guarantee, but is responsible for payment of assessments in the  
 205 same manner as all other owners of condominium parcels.

206 (3) A bulk buyer is liable for the duties and  
 207 responsibilities of the developer under the declaration and this  
 208 chapter only to the extent provided in this part, together with  
 209 any other duties or responsibilities of the developer expressly  
 210 assumed in writing by the bulk buyer.

211 (4) An acquirer of condominium parcels is not considered a  
 212 bulk assignee or a bulk buyer if the transfer to such acquirer  
 213 was made prior to the effective date of this Distressed  
 214 Condominium Relief Act or was made with the intent to hinder,  
 215 delay, or defraud any purchaser, unit owner, or the association,  
 216 or if the acquirer is a person who would constitute an insider  
 217 under s. 726.102(7).

218 (5) An assignment of developer rights to a bulk assignee  
 219 may be made by the developer, a previous bulk assignee, or a  
 220 court of competent jurisdiction acting on behalf of the  
 221 developer or the previous bulk assignee. At any particular time,  
 222 there may be no more than one bulk assignee within a  
 223 condominium, but there may be more than one bulk buyer. If more  
 224 than one acquirer of condominium parcels in the same condominium



225 receives an assignment of developer rights from the same person,  
 226 the bulk assignee is the acquirer whose instrument of assignment  
 227 is recorded first in applicable public records.

228 718.705 Board of administration; transfer of control.--

229 (1) For purposes of determining the timing for transfer of  
 230 control of the board of administration of the association to  
 231 unit owners other than the developer under s. 718.301(1)(a) and  
 232 (b), if a bulk assignee is entitled to elect a majority of the  
 233 members of the board, any condominium parcel acquired by the  
 234 bulk assignee shall not be deemed to be conveyed to a purchaser,  
 235 or to be owned by an owner other than the developer, until such  
 236 condominium parcel is conveyed to an owner who is not a bulk  
 237 assignee.

238 (2) Unless control of the board of administration of the  
 239 association has already been relinquished pursuant to s.  
 240 718.301(1), the bulk assignee is obligated to relinquish control  
 241 of the association in accordance with s. 718.301(1) or (2) and  
 242 this part as if the bulk assignee were the developer.

243 (3) When a bulk assignee relinquishes control of the board  
 244 of administration, the bulk assignee shall deliver all of those  
 245 items required by s. 718.301(4). However, the bulk assignee is  
 246 not required to deliver items and documents not in the  
 247 possession of the bulk assignee during the period during which  
 248 the bulk assignee was entitled to elect not less than a majority  
 249 of the members of the board of administration. In conjunction  
 250 with the acquisition of condominium parcels, a bulk assignee  
 251 shall undertake a good faith effort to obtain the documents and  
 252 materials required to be provided to the association pursuant to

253 s. 718.301(4). To the extent the bulk assignee is not able to  
 254 obtain all of such documents and materials, the bulk assignee  
 255 shall certify in writing to the association the names or  
 256 descriptions of the documents and materials that were not  
 257 obtainable by the bulk assignee. Delivery of the certificate  
 258 relieves the bulk assignee of responsibility for the delivery of  
 259 the documents and materials referenced in the certificate as  
 260 otherwise required under ss. 718.112 and 718.301 and this part.  
 261 The responsibility of the bulk assignee for the audit required  
 262 by s. 718.301(4) shall commence as of the date on which the bulk  
 263 assignee elected a majority of the members of the board of  
 264 administration.

265 (4) If a conflict arises between the provisions or  
 266 application of this section and s. 718.301, this section shall  
 267 prevail.

268 (5) Failure of a bulk assignee or bulk buyer to  
 269 substantially comply with all the requirements contained in this  
 270 part shall result in the loss of all protections or exemptions  
 271 provided under this part.

272 718.706 Specific provisions pertaining to offering of  
 273 units by a bulk assignee or bulk buyer.--

274 (1) Before offering any units for sale or for lease for a  
 275 term exceeding 5 years, a bulk assignee or a bulk buyer shall  
 276 file the following documents with the division and provide such  
 277 documents to a prospective purchaser or tenant:

278 (a) An updated prospectus or offering circular, or a  
 279 supplement to the prospectus or offering circular, filed by the  
 280 creating developer prepared in accordance with s. 718.504, which

281 shall include the form of contract for purchase and sale in  
 282 compliance with s. 718.503(1)(a);

283 (b) An updated Frequently Asked Questions and Answers  
 284 sheet;

285 (c) The executed escrow agreement if required under s.  
 286 718.202; and

287 (d) The financial information required by s. 718.111(13).  
 288 However, if a financial information report does not exist for  
 289 the fiscal year before acquisition of title by the bulk assignee  
 290 or bulk buyer, or accounting records cannot be obtained in good  
 291 faith by the bulk assignee or the bulk buyer which would permit  
 292 preparation of the required financial information report, the  
 293 bulk assignee or bulk buyer is excused from the requirement of  
 294 this paragraph. However, the bulk assignee or bulk buyer must  
 295 include in the purchase contract the following statement in  
 296 conspicuous type:

297  
 298 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER  
 299 SECTION 718.111(13), FLORIDA STATUTES, FOR THE  
 300 IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION  
 301 IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS  
 302 A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE  
 303 ASSOCIATION.

304  
 305 (2) Before offering any units for sale or for lease for a  
 306 term exceeding 5 years, a bulk assignee shall file with the  
 307 division and provide to a prospective purchaser a disclosure  
 308 statement that must include, but is not limited to:

309 (a) A description of any rights of the developer which  
 310 have been assigned to the bulk assignee;

311 (b) The following statement in conspicuous type:  
 312

313 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE  
 314 DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618,  
 315 FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN,  
 316 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY  
 317 OR ON BEHALF OF SELLER.

318  
 319 (c) If the condominium is a conversion subject to part VI,  
 320 the following statement in conspicuous type:

321  
 322 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER  
 323 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER  
 324 SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF  
 325 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY  
 326 REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE  
 327 AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND  
 328 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT,  
 329 OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE  
 330 SELLER.

331  
 332 (3) In addition to the requirements set forth in  
 333 subsection (1), a bulk assignee or bulk buyer must comply with  
 334 the nondeveloper disclosure requirements set forth in s.  
 335 718.503(2) before offering any units for sale or for lease for a  
 336 term exceeding 5 years.

337 (4) While in control of the board of administration of the  
 338 association, a bulk assignee may not authorize, on behalf of the  
 339 association:

340 (a) The waiver of reserves or the reduction of funding of  
 341 the reserves in accordance with s. 718.112(2)(f)2., unless  
 342 approved by a majority of the voting interests not controlled by  
 343 the developer, bulk assignee, and bulk buyer; or

344 (b) The use of reserve expenditures for other purposes in  
 345 accordance with s. 718.112(2)(f)3., unless approved by a  
 346 majority of the voting interests not controlled by the  
 347 developer, bulk assignee, and bulk buyer.

348 (5) A bulk assignee or bulk buyer shall comply with all  
 349 the requirements of s. 718.302 regarding any contracts entered  
 350 into by the association during the period the bulk assignee or  
 351 bulk buyer maintains control of the board of administration.  
 352 Unit owners shall be afforded all the protections contained in  
 353 s. 718.302 regarding agreements entered into by the association  
 354 before unit owners other than the developer, bulk assignee, or  
 355 bulk buyer elected a majority of the board of administration.

356 (6) A bulk buyer shall comply with the requirements  
 357 contained in the declaration regarding any transfer of a unit,  
 358 including sales, leases, and subleases. A bulk buyer is not  
 359 entitled to any exemptions afforded a developer or successor  
 360 developer under this chapter regarding any transfer of a unit,  
 361 including sales, leases, or subleases.

362 718.707 Time limitation for classification as bulk  
 363 assignee or bulk buyer.--A person acquiring condominium parcels  
 364 may not be classified as a bulk assignee or bulk buyer unless

365 the condominium parcels were acquired before July 1, 2012. The  
 366 date of such acquisition shall be determined by the date of  
 367 recording of a deed or other instrument of conveyance for such  
 368 parcels in the public records of the county in which the  
 369 condominium is located or by the date of issuance of a  
 370 certificate of title in a foreclosure proceeding with respect to  
 371 such condominium parcels.

372 718.708 Liability of developers and others.--An assignment  
 373 of developer rights to a bulk assignee or bulk buyer does not  
 374 release the creating developer from any liabilities under the  
 375 declaration or this chapter. This part does not limit the  
 376 liability of the creating developer for claims brought by unit  
 377 owners, bulk assignees, or bulk buyers for violations of this  
 378 chapter by the creating developer, unless specifically excluded  
 379 in this part. Nothing contained within this part waives,  
 380 releases, compromises, or limits the liability of contractors,  
 381 subcontractors, materialmen, manufacturers, architects,  
 382 engineers, or any participant in the design or construction of a  
 383 condominium for any claim brought by an association, unit  
 384 owners, bulk assignees, or bulk buyers arising from the design  
 385 of the condominium, construction defects, misrepresentations  
 386 associated with condominium property, or violations of this  
 387 chapter, unless specifically excluded in this part.

388 Section 3. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 501

Administration of Life Insurance Contracts

**SPONSOR(S):** Hukill

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 926

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly <i>RJA</i>	Cooper <i>CC</i>
2)	Civil Justice & Courts Policy Committee			
3)	General Government Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

An irrevocable life insurance trust (ILIT) is an estate planning tool that can be used to exclude a life insurance policy from the insured's estate for tax purposes. With an ILIT, a trust, rather than the insured, owns the life insurance policy, which is payable to the trust upon the insured's death. The settlor (the person who creates or contributes property to the trust) selects the insurance company, the type of life insurance policy to be purchased, the trustee, the beneficiaries of the trust, and pays premiums for the policy through the trust.

A trustee's duties are set forth in ch. 736, F.S., the Florida Trust Code. A trustee has a duty to administer the trust solely in the interests of the beneficiaries. As a fiduciary, a trustee is also subject to the prudent investor rule, s. 518.11, F.S., and has a duty to invest and manage trust assets as a prudent investor would.

House Bill 501 creates s. 736.092, F.S., "Nonapplication of prudent investor rule." The section relieves trustees of ILITs from certain duties relating to life insurance policies insuring the life of a "qualified person," and exempts trustees from liability to trust beneficiaries and others for losses sustained with respect to these policies. Specifically, absent contrary language in the trust instrument, when the insured or the insured's spouse provides the trustee with funds to acquire or pay premiums for life insurance policies on either or both of their lives, the trustee has no duty to determine whether the trust has an insurable interest in their lives. If the trust instrument, by reference, makes this section applicable to such life insurance contracts or qualified beneficiaries are given notice of its applicability, the trustee is also relieved of the following duties, if the trust instrument does not provide otherwise:

- To determine whether any life insurance contract is or remains a proper investment.
- To investigate the financial strength of the life insurance company.
- To determine whether to exercise any policy option available under the life insurance contract.
- To diversify any life insurance contract or diversify the trust assets with respect to the life insurance contract.
- To inquire about or investigate the health or financial condition of any insured.

When a qualified beneficiary (or a representative) objects in writing within 30 days of receiving notice, the trustee remains responsible for all duties listed in s. 736.092, F.S., except for determining the existence of an insurable interest, until the objection is withdrawn. The section does not apply to life insurance policies purchased from an affiliate of the trustee or from which the trustee or an affiliate received any commission unless the trustee's duties have been delegated to another person pursuant to s. 518.112, F.S.

The bill also expands the list of investment functions that fiduciaries that administer life insurance contracts can delegate under s. 518.112, F.S., to include all duties specified in s. 736.092, F.S., and corrects inconsistencies in the notice provisions of the Prudent Investor Act, the Trust Code, and the Probate Code.

The bill is effective upon becoming law and does not appear to have a fiscal impact on state and local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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 DATE: 1/26/2010



## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

#### Trusts

A trust is generally defined as:

a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it....<sup>1</sup>

A valid trust involves specific property, reflects the settlor's intent, and is created for a lawful purpose.<sup>2</sup> There must be a trustee, a beneficiary, and trust property.<sup>3</sup> The Florida Trust Code, ch. 736, F.S., defines a "settlor" as a person who creates or contributes property to a trust, and includes a testator; a "beneficiary" as a person who has a present or future beneficial interest in a trust or who holds a power of appointment over trust property in a capacity other than trustee; and "trustee" as the original trustee, any additional trustee, any successor trustee, and any cotrustee.

#### Duties of Trustees

A trustee has a duty to administer the trust solely in the interests of the beneficiaries.<sup>4</sup> Specific duties include the duty of loyalty; to administer the trust impartially when there are multiple beneficiaries; to administer the trust prudently; to incur only reasonable expenses; and to use special skills.

As fiduciaries,<sup>5</sup> trustees are subject to the prudent investor rule, s. 518.11, F.S., which details a fiduciary's duty to invest and manage investment assets.<sup>6</sup> Briefly, the prudent investor rule requires a fiduciary to:

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<sup>1</sup> 55A Fla. Jur. 2d Trusts s. 1.

<sup>2</sup> Black's Law Dictionary 1647 (9th ed. 2009).

<sup>3</sup> *Id.* at 1648, citing Restatement (Third) of Trusts s. 2 cmt. f (2003).

<sup>4</sup> See generally s. 736.0802(1), F.S.

- Invest and manage investment assets as a prudent investor would.
- Diversify investments, unless it is reasonably believed that diversification is not in the beneficiary's interests and does not further the purposes of the trust.
- Review the investment portfolio within a reasonable time after acceptance of the trust, and make and implement decisions concerning preexisting investments.
- Pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the fiduciary's duty of impartiality and the purposes of the trust.

In making investment decisions, fiduciaries may consider factors such as general economic strategies, the role each investment plays within the overall portfolio, the expected total return, and the duty to incur only reasonable and appropriate costs. These decisions are to be judged in terms of the fiduciary's reasonable business judgment concerning the anticipated effect on the investment portfolio as a whole based on prevailing facts and circumstances at the time of the action or decision.

## Irrevocable Life Insurance Trusts

An irrevocable life insurance trust (ILIT) is a common estate planning tool that can be used to exclude a life insurance policy from an insured's estate for tax purposes. With an ILIT, a trust, rather than the insured, owns the life insurance policy, which is payable to the trust upon the insured's death.<sup>7</sup> The settlor of the trust selects the insurance company, the specific type of life insurance policy to be purchased, the trustee, the beneficiaries of the trust, and pays premiums for the policy through the trust.<sup>8</sup> An ILIT can be funded by the transfer of existing life insurance policies to the trust<sup>9</sup> or the trustee may apply for the policies as the original owner.<sup>10</sup> When the trustee applies for the policy, premiums are paid through the trust by funds provided by the settlor.

Pursuant to s. 518.112(2)(a), F.S., fiduciaries that administer insurance contracts on the lives of others are authorized to delegate certain investment functions with respect to these insurance contracts to an investment agent and do not have a continuing obligation to review the agent's actions. With respect to trusts, upon providing 30 days' written notice to trust beneficiaries eligible to receive distributions from the trust (or their legal representatives),<sup>11</sup> a trustee may delegate the responsibilities for:

- Determining whether any insurance contract is or remains a proper investment.
- Determining whether or not to exercise available policy options.
- Determining whether or not to diversify such contracts relative to one another or to other assets administered by the fiduciary.
- Inquiring about changes in the health or financial condition of the insured or insureds relative to any such contract.

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<sup>5</sup> A fiduciary is defined as a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor. See Black's Law Dictionary, *supra* note 2, at 702.

<sup>6</sup> See generally s. 518.11(1), F.S.

<sup>7</sup> 13 Brian V. McAvoy et al., *Florida Estate Planning* 463 (2007-08 ed.).

<sup>8</sup> Estate and Trust Tax Committee, Real Property, Probate and Trust Law Section of the Florida Bar, "Fiduciary Duties in Insurance Trusts" (2009). A copy of the white paper is on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>9</sup> When life insurance policies are transferred to an ILIT, the insured must live for at least three years after the transfer for the proceeds of any transferred policy to be excluded from the insured's estate. See McAvoy et al., *supra* note 7, at 464. See also 26 USC 2035.

<sup>10</sup> See McAvoy et al., *supra* note 7, at 463.

<sup>11</sup> Unless notice is waived by the beneficiaries.

## Life Insurance Policies Insuring a Person Other than the Owner

### Insurable Interest Requirement

A person with legal capacity may insure his/her life for the benefit of any other person. However, when a person seeks to insure the life of another person, benefits under the policy must be payable to the insured, the insured's personal representative, or a person with a sufficient interest, known as an "insurable interest,"<sup>12</sup> in the continued life or health of the insured. The insurable interest must exist at the time the contract is made, but can subsequently cease to exist without affecting the validity of the policy.<sup>13</sup> The insurable interest requirement prevents a person from purchasing a life insurance policy on the life of another when the only effect of the policy would be to enrich a beneficiary who is disinterested in the continued life or health of the insured; thus, creating an incentive for the beneficiary to bring about the demise of the insured. Such transactions are considered "wagering contracts," and are void as contrary to public policy.<sup>14</sup>

Section 627.404, F.S., lists interests that create an insurable interest for purposes of life, health, and disability insurance policies. Among these,

- A trust, or the trustee of a trust, has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust, or the trustee of the trust acting in a fiduciary capacity, if the insured is the grantor<sup>15</sup> of the trust; an individual closely related by blood or law to the grantor; or an individual in whom the grantor otherwise has an insurable interest, if... the life insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the life of the insured.
- A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the person has an insurable interest so long as the life insurance proceeds are primarily for the benefit of persons having an insurable interest in the life of the insured.

Individuals also have an insurable interest in themselves; in close family members in whom they have a substantial interest engendered by love and affection; and in another person if there is the expectation of a substantial pecuniary advantage in the continued life, health and safety of that other person or that the individual will have a substantial pecuniary loss upon the death, illness or disability of that other person. Parties to the contract for the purchase or sale of a business entity have an insurable interest in the lives of other parties to the contract solely for purposes of the contract. Charitable organizations have an insurable interest in the life of any person who consents in writing to the organization's ownership or purchase of insurance on that person, and employee benefit and retirement plans have an insurable interest in the life of any plan participant who consents in writing to issuance of a policy insuring that participant. Business entities have an insurable interest in owners of the business and key employees if the person's written consent is obtained before the insurance is purchased.

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<sup>12</sup>A detailed history of the insurable interest requirement is provided in the Florida Office of Insurance Regulation's report, "Stranger-Originated Life Insurance ('STOLI') and the Use of Fraudulent Activity to Circumvent the Intent of Florida's Insurable Interest Law" (January 2009). Available at: <http://www.flor.com> (last accessed February 8, 2010).

<sup>13</sup> Accordingly, viatical settlement transactions are permissible. In these transactions, a person who has purchased life insurance in good faith as life insurance, with no prearrangement to sell the policy to another, later decides to sell the policy to another for less than the expected death benefit under the policy.

<sup>14</sup> Florida Office of Insurance Regulation, *supra* note 12, at 7.

<sup>15</sup> Grantor is defined in s. 731.201(19), F.S., as one who creates or adds to a trust, and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

## Stranger-Originated Life Insurance (STOLI) Policies<sup>16</sup>

In a STOLI transaction, a person with no insurable interest in another persuades the other person (generally a senior citizen) to obtain life insurance with the understanding that after a certain time the insured will sell the policy to the stranger. In Florida, STOLI promoters generally wait two years before selling the policy in the secondary market.<sup>17</sup> Typically, STOLI promoters and investors will establish an irrevocable trust to obtain a premium finance loan, obtain an insurance policy on the senior citizen, and pay the life insurance policy premiums for two years. Additionally, the person to be insured may be offered a significant cash payment when they allow the policy to be sold to a viatical settlement provider.

The Office of Insurance Regulation (OIR) held a public informational hearing on STOLIs on August 28, 2008 and issued its report in January 2009.<sup>18</sup> Based on the testimony presented at the hearing, the OIR reported that STOLI transactions may involve varying degrees of insurance fraud and the violation of laws that were intended to protect consumers. Further, STOLI transactions were found to harm senior consumers<sup>19</sup> as follows:

- Seniors may exhaust their life insurance purchasing capability.
- The incentives used to lure seniors to participate in STOLI schemes are taxable as ordinary income.
- Seniors may subject themselves or their estates to potential liability if the life insurance policy is rescinded by an insurer who discovers fraud.
- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.
- The premiums paid by the promoters, which may be represented as providing the senior with “free” insurance, may subject the senior to tax based on the economic value of the coverage.
- Seniors have to give the purchaser, and subsequent purchasers, access to their medical records when they sell their life insurance policy in the secondary market.
- STOLIs may lead to an increase in insurance rates for the over 65 population.

### **Effect of the Bill**

House Bill 501 creates s. 736.092, F.S., of the Florida Trust Code, “Nonapplication of prudent investor rule.” The section relieves trustees of ILITs from certain duties relating to life insurance policies acquired or retained by the trust that insure the life of a “qualified person,”<sup>20</sup> and exempts trustees from liability to trust beneficiaries and others for losses sustained with respect to life insurance policies to which the section applies. Specifically, unless otherwise provided in the trust instrument, when the insured or the insured’s spouse has provided the trustee with funds that are used to acquire or pay premiums for life insurance policies that insure either or both of their lives, the trustee does not have a duty to determine whether the trust has an insurable interest in the life of the insured.

Further, if the trust instrument, by reference, makes s. 736.092, F.S., applicable to these life insurance contracts or the trustee provides notice to qualified beneficiaries<sup>21</sup> (or their representatives) of the section’s applicability, the trustee, may also be relieved of the following duties, unless the trust provides otherwise:

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<sup>16</sup> Florida Office of Insurance Regulation, *supra* note 12, at 12.

<sup>17</sup> Section 626.99287, F.S. provides that viatical settlement contracts entered into within two years of when the insurance policy was issued are void and unenforceable by either party (subject to certain exemptions).

<sup>18</sup> Florida Office of Insurance Regulation, *supra* note 12.

<sup>19</sup> 17.6% of Floridians are 65 years of age or older. See U.S. Census Bureau, “The 65 Years and Over Population; 2000,” Census 2000 Brief, issued October 2001. Found at: <http://www.census.gov> (last accessed February 11, 2010).

<sup>20</sup> A “qualified person” is any person, or the spouse of any person, who has provided the trustee with funds that are used to acquire or pay premiums with respect to a policy of insurance on the life of that person, on the life of the spouse of that person, or on the lives of that person and the spouse of that person.

<sup>21</sup> A “qualified beneficiary” is a living beneficiary who, on the date the beneficiary’s qualification is determined: (a) Is a distributee or permissible distributee of trust income or principal; (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) terminated on that date without causing the trust to terminate; or (c)

- To determine whether any life insurance contract is or remains a proper investment.
- To investigate the financial strength of the life insurance company.
- To determine whether to exercise any policy option available under the life insurance contract.
- To diversify any such life insurance contract or diversify the trust assets with respect to the life insurance contract.
- To inquire about or investigate the health or financial condition of any insured or insureds.

Notice must be provided pursuant to s. 736.0109, F.S. (which permits notice to be sent by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message, among other means). The bill also creates a rebuttable presumption that notice sent by United States mail is received 3 days after it has been mailed with proper postage.

If a qualified beneficiary (or their representative) objects in writing within 30 days of receiving notice, the trustee remains responsible for all duties listed in s. 736.092, F.S., except for determining the existence of an insurable interest, until the objection is withdrawn.

Section 736.092, F.S., does not apply to any life insurance policy purchased from an affiliate of the trustee<sup>22</sup> or from which the trustee or an affiliate receives any commission, unless the trustee's duties have been delegated to another person in accordance with s. 518.112, F.S.

The bill also expands the list of investment functions that fiduciaries that administer life insurance contracts on the lives of others are authorized to delegate to an investment agent under s. 518.112, F.S., without a continuing obligation to review the investment agent's actions. The bill includes as delegable investment functions the responsibility for determining whether the owner of any insurance contract has an insurable interest in the life of the insured and for investigating the financial strength of the life insurance company. Thus, all duties from which a trustee may be relieved under s. 736.092, F.S., are also delegable under s. 518.112, F.S. Additionally, the notice provisions of s. 518.112, F.S. have been amended to eliminate inconsistencies in existing law and to require fiduciaries to provide written notice of their intention to begin delegating investment functions as provided in part III of ch. 731, F.S., as to estates and in accordance with s. 736.0109, F.S., and part III of ch. 736, F.S., as to trusts.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 518.112, F.S., to expand the list of investment functions that may be delegated by fiduciaries.

**Section 2.** Creates s. 736.092, F.S., "Nonapplication of prudent investor rule."

**Section 3.** Provides for the bill to take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date. See s. 736.0103(14), F.S.

<sup>22</sup> Under the bill, an "affiliate" of the trustee is defined as any person who controls, is controlled by, or is under common control with the trustee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill encourages the formation of trusts in Florida, it may have a positive financial impact.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is supported by the Florida Bankers Association and the Real Property, Probate, and Trust Law Section of the Florida Bar. It is the position of the Florida Bankers Association that the bill will facilitate the business of trusts in Florida and eliminate unnecessary administrative expenses currently incurred by trustees.<sup>23</sup> It is the position of the Real Property, Probate and Trust Law Section of the Florida Bar that it is appropriate to relieve the trustee of liability for certain decisions pertaining to life insurance contracts that are made by the settlor.<sup>24</sup>

The American Council of Life Insurers and the Florida Insurance Council oppose the bill. It is the position of these organizations that relieving trustees, in certain circumstances, of responsibility for determining whether trusts have an insurable interest in the life of the insured will facilitate the use of stranger-originated life insurance policies.<sup>25</sup>

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<sup>23</sup> As per telephone conversations between Insurance, Business & Financial Affairs Policy Committee staff and Russ Hale (Florida Bankers Association) on February 12 and 15, 2010.

<sup>24</sup> See Estate and Trust Tax Committee, Real Property, Probate and Trust Law Section of the Florida Bar, *supra* note 8.

<sup>25</sup> As per telephone conversation between Insurance, Business & Financial Affairs Policy Committee staff and Paul Sanford on February 12, 2010.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to administration of life insurance  
 3           contracts; amending s. 518.112, F.S.; providing additional  
 4           delegable investment functions for fiduciaries relating to  
 5           life insurance contract administration; revising notice  
 6           requirements and criteria for delegation by a fiduciary of  
 7           investment functions to an investment agent; creating s.  
 8           736.0902, F.S.; specifying certain activities trustees are  
 9           under no duty to undertake relating to administration of  
 10          certain contracts for life insurance; specifying absence  
 11          of liability of trustees to trust beneficiaries for  
 12          certain losses; specifying criteria for application of  
 13          certain provisions; providing for certain notice  
 14          requirements; specifying nonapplication to certain  
 15          contracts of life insurance; providing definitions;  
 16          providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Paragraph (b) of subsection (2) and paragraph  
 21           (b) of subsection (3) of section 518.112, Florida Statutes, are  
 22           amended to read:

23           518.112 Delegation of investment functions.—

24           (2)

25           (b) The delegable investment functions under this  
 26           subsection include:

27           1. A determination of whether any insurance contract is or  
 28           remains a proper investment;



29 2. A determination of whether or not to exercise any  
30 policy option available under any insurance ~~such~~ contracts;

31 3. A determination of whether or not to diversify such  
32 contracts relative to one another or to other assets, if any,  
33 administered by the fiduciary; ~~or~~

34 4. An inquiry about changes in the health or financial  
35 condition of the insured or insureds relative to any such  
36 contract; ~~or~~

37 5. A determination of whether the owner of any insurance  
38 contract has an insurable ~~interest~~ interest in the life of the insured;  
39 or

40 6. An investigation of the financial strength of the life  
41 insurance company.

42 (3) A fiduciary may delegate investment functions to an  
43 investment agent under subsection (1) or subsection (2), if:

44 (b) In the case of a trust or estate, the fiduciary has  
45 given written notice, of its intention to begin delegating  
46 investment functions under this section, to all beneficiaries,  
47 or their legal representative, eligible to receive distributions  
48 from the trust or estate within 30 days of the delegation unless  
49 such notice is waived by the eligible beneficiaries entitled to  
50 receive such notice. This notice shall thereafter, until or  
51 unless the beneficiaries eligible to receive income from the  
52 trust or distributions from the estate at the time are notified  
53 to the contrary, authorize the trustee or legal representative  
54 to delegate investment functions pursuant to this subsection.  
55 This discretion to revoke the delegation does not imply under  
56 subsection (2) any continuing obligation to review the agent's

57 actions.

58 1. Notice to beneficiaries eligible to receive  
 59 distributions from the trust from the estate, or their legal  
 60 representatives shall be sufficient notice to all persons who  
 61 may join the eligible class of beneficiaries in the future.

62 2. Additionally, as used herein, legal representative  
 63 includes one described in s. 731.303, without any requirement of  
 64 a court order, an attorney-in-fact under a durable power of  
 65 attorney sufficient to grant such authority, a legally appointed  
 66 guardian, or equivalent under applicable law, any living,  
 67 natural guardian of a minor child, or a guardian ad litem.

68 3. Written notice shall be given as provided in part III  
 69 of chapter 731 as to an estate and as provided in s. 736.0109  
 70 and part III of chapter 736 as to a trust.+

71 ~~a. By any form of mail or by any commercial delivery~~  
 72 ~~service, approved for service of process by the chief judge of~~  
 73 ~~the judicial circuit in which the trust has its principal place~~  
 74 ~~of business at the date of notice, requiring a signed receipt;~~

75 ~~b. As provided by law for service of process; or~~

76 ~~c. By an elisor as may be provided in the Florida Rules of~~  
 77 ~~Civil Procedure.~~

78  
 79 ~~Notice by mail or by approved commercial delivery service is~~  
 80 ~~complete on receipt of notice. Proof of notice must be by~~  
 81 ~~verified statement of the person mailing or sending notice, and~~  
 82 ~~there must be attached thereto the signed receipt or other~~  
 83 ~~satisfactory evidence that delivery was effected on the~~  
 84 ~~addressee or on the addressee's agent. Proof of notice must be~~

85 ~~maintained among the trustee's permanent records.~~

86 Section 2. Section 736.0902, Florida Statutes, is created  
87 to read:

88 736.0902 Nonapplication of prudent investor rule.-

89 (1) Notwithstanding the provisions of s. 518.11 or s.  
90 736.0804, with respect to any contract of life insurance  
91 acquired or retained on the life of a qualified person, a  
92 trustee has no duty to:

93 (a) Determine whether the trust has an insurable interest  
94 in the life of the insured;

95 (b) Determine whether any contract of life insurance is or  
96 remains a proper investment;

97 (c) Investigate the financial strength of the life  
98 insurance company;

99 (d) Determine whether to exercise any policy option  
100 available under the contract of life insurance;

101 (e) Diversify any such contract of life insurance or  
102 diversify the assets of the trust with respect to the contract  
103 of life insurance; or

104 (f) Inquire about or investigate the health or financial  
105 condition of any insured or insureds.

106 (2) For purposes of this section, the term "qualified  
107 person" means any person, or the spouse of any person, who has  
108 provided the trustee with funds that are used to acquire or pay  
109 premiums with respect to a policy of insurance on the life of  
110 that person, on the life of the spouse of that person, or on the  
111 lives of that person and the spouse of that person.

112 (3) In all cases in which this section applies, the

113 trustee is not liable to the beneficiaries of the trust or any  
 114 other person for any loss sustained with respect to such  
 115 contract of life insurance.

116 (4) Unless otherwise provided in the trust instrument,  
 117 paragraph (1)(a) applies to any contract of life insurance on  
 118 the life of a qualified person.

119 (5) Unless otherwise provided in the trust instrument,  
 120 paragraphs (1)(b)-(f) apply if:

121 (a) The trust instrument, by reference to this section,  
 122 makes this section applicable to contracts of life insurance  
 123 held by the trust; or

124 (b) The trustee has provided notice that this section  
 125 applies to a contract of life insurance held by the trust. For  
 126 any notice provided under this paragraph:

127 1. The notice shall be given to the qualified  
 128 beneficiaries and shall contain a copy or restatement of this  
 129 section.

130 2. A notice given to a person who represents the interests  
 131 of any of the persons set forth in subparagraph 1., pursuant to  
 132 any of the provisions of part III of this chapter, shall be  
 133 treated as notice to the person so represented.

134 3. The notice shall be provided pursuant to s. 736.0109.

135 4. If any person notified pursuant to this paragraph  
 136 objects to the application of this section in a writing  
 137 delivered to the trustee within 30 days after the date such  
 138 notice was received, paragraphs (1)(b)-(f) shall not apply until  
 139 the objection is withdrawn.

140 5. There is a rebuttable presumption that any notice sent

141 by United States mail is received 3 days after placing the  
 142 notice in the United States mail with proper postage paid.

143 (6) This section does not apply to any contract of life  
 144 insurance purchased from any affiliate of the trustee or with  
 145 respect to which the trustee or any affiliate of the trustee  
 146 receives any commission unless the trustee's duties have been  
 147 delegated to another person in accordance with s. 518.112. For  
 148 purposes of this subsection, the term "affiliate" of the trustee  
 149 means any person who controls, is controlled by, or is under  
 150 common control with the trustee.

151 Section 3. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 527 Florida Funeral, Cemetery, and Consumer Services Act  
**SPONSOR(S):** Roberson and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Vickroy <i>LV</i>	Cooper <i>PC</i>
2) Government Operations Appropriations Committee			
3) General Government Policy Council			
4) _____			
5) _____			

**SUMMARY ANALYSIS**

Current law provides for the classifications of funeral director only, embalmer only, and combination funeral director and embalmer license. Persons wishing to obtain a funeral director only license must take courses in funeral service arts and mortuary science, the same courses required for combination licenses. Mortuary science courses are required for learning the process of embalming which funeral director only licensees are not permitted to practice. The bill allows for persons wishing to obtain a funeral director only license to take only the funeral service arts courses. This may encourage more individuals to enter the profession as they may not have an interest in learning to embalm dead bodies, but may be attracted to the personal interaction aspect of the industry.

Once an applicant for a funeral director only or combination license completes the required coursework, he or she must then complete a one-year internship under the direct supervision of a licensed funeral director, as well as pass the state and federal laws and rules exam related to the disposition of dead human bodies, and the National Board Examination. The bill would allow applicants who currently hold an associate's degree or higher who are currently enrolled in required coursework and have passed a course in mortuary law to begin their internships. It would also allow for the renewal of the internship for an additional year if the applicant meets certain requirements. Furthermore, the bill would allow interns who have met certain requirements to complete their internships under general supervision. This may be attractive to individuals who may desire to continue working part-time while completing their coursework and may allow interns to receive a higher wage as general supervision would likely increase their value to the funeral establishment.

Current law allows either a direct disposer or funeral director to serve as the direct disposer in charge of a direct disposal establishment. The bill would require a funeral director to serve as the direct disposer in charge. However, there would be a grandfather provision to allow direct disposers currently serving as direct disposers in charge to continue to do so provided they meet certain requirements. This may discourage persons from obtaining a direct disposer license as they will not be able to serve as the direct disposer in charge of a direct disposer establishment.

Current law allows either a funeral director only licensee or combination licensee to serve as the full-time funeral director in charge (FDIC) of a licensed funeral establishment. The bill would require the full-time FDIC to have a combination license. However, there would be a grandfather provision to allow current funeral director only licensees to continue to serve as the full-time FDIC. Especially if the educational provisions of the bill become law, this may be an important requirement as funeral director only licensees will not have any mortuary science background, and funeral establishments practice embalming.

The bill provides for the certain waivers and modifications of ch. 497 in the event of a public emergency. It also modifies some of the health and safety education requirements for licensees, as well as some of the preneed contract provisions. Finally, the bill allows cemeteries to require monument establishments to provide proof of liability as required by law, but prohibits cemeteries from specifying a certain additional amount of insurance, or requiring the monument establishment to obtain a bond.

The bill may have a positive impact on job creation in the funeral directing profession, but may also have a negative impact on the direct disposer profession. It would likely have no fiscal impact on state government beyond the cost of rulemaking and a small increase in revenues generated from additional inspection fees.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Education for Funeral Director Only License (Section 16)**

###### Current Situation

For persons wishing to enter the funeral directing profession, three licenses are relevant: funeral director only licenses, embalmer only licenses, and combined funeral director and embalmer licenses. According to the Division of Funeral, Cemetery, and Consumer Services, (hereafter, the Division) there are 78 funeral director only licensees, 39 embalmer only licensees, and 2450 combined funeral director and embalmer licensees within the state of Florida.<sup>1</sup>

Persons who wish to gain an embalmer only license must take approved courses in mortuary science,<sup>2</sup> complete a one-year internship, pass examinations relating to state and federal laws and rules relating to the disposition of dead human bodies, as well as pass the Funeral Services Science section of the National Board Examination prepared by the Conference of Funeral Service Examining Boards (CFSEB).<sup>3</sup> These persons do not have to take courses in funeral service arts. Persons who wish to gain a combination license must meet the requirements for an embalmer's license listed above, as well as take approved courses in funeral service arts,<sup>4</sup> and pass the Funeral Services Arts section of the National Board Examination prepared by the CFSEB.<sup>5</sup>

Similarly, persons wishing to gain a funeral director only license must take classes in both mortuary science and funeral service arts required for the combined funeral director and embalmer license, whether or not the student wishes to gain an embalming license or practice embalming. They must also complete a one-year internship,<sup>6</sup> pass the state and federal laws and rules examination relating to the disposition of dead human bodies, and the Funeral Services Arts section of the National Board Examination.<sup>7</sup> This may explain why so few funeral director only licenses exist in Florida; if people must take the required mortuary science courses regardless, they may be more inclined to take the Funeral Services Science section of the National Board Examination. However, some people may be

<sup>1</sup>Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, [http://www.myfloridacfo.com/funeralcemetery/fc\\_who\\_we\\_regulate.htm](http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm) (last visited Jan. 20, 2010).

<sup>2</sup> Section 497.368(1)(d), F.S.

<sup>3</sup> F.A.C. 69K-16.0001.

<sup>4</sup> Section 497.373(1)(d)(1)-(2), F.S.

<sup>5</sup> Section 497.376(1), F.S.

<sup>6</sup> See Funeral Director Internship.

<sup>7</sup> F.A.C. 69K-16.002.



discouraged from becoming funeral directors because of the mortuary science course requirement as they may enjoy working with families and counseling, but may dislike the science aspect of the industry.

Furthermore, cremation, rather than embalming and traditional burial, has begun to increase throughout Florida and the country.<sup>8</sup> Approximately 50.47% of all dead bodies in the state of Florida are projected to be cremated this year.<sup>9</sup> This exceeds the projected national average of 38.15%<sup>10</sup> and represents an increasing percentage of all dead bodies.<sup>11</sup> Thus, the industry need for funeral directors to have the scientific background in embalming may be less important than it once was.

Finally, the oldest members of the Baby Boomer population will begin turning 65 in 2011. Florida already has the highest proportion over 65 citizens in the country with 19% of the total population.<sup>12</sup> As these members age and eventually die, the demand for funeral directors may increase.

### Effect of Proposed Changes

The bill would not require individuals seeking a funeral director only license to take courses in mortuary science, and they would not be tested on mortuary science subjects, such as embalming. These individuals would still be required to take courses in funeral service arts, and pass the Funeral Services Arts section of the National Board Examination, as well as the state and federal laws and rules examination relating to the disposition of dead human bodies. Thus, individuals who may otherwise be discouraged from becoming funeral directors because of the required science education may be encouraged to become licensed funeral directors. This may have an impact on the overall number of licensed funeral directors in the future and accommodate the expected increase in total number of deaths in the state.

### **Funeral Director Internship (Section 1, 16, 17, 18)**

#### Current Situation

There are two main ways to become a licensed funeral director. First, a person must first complete the required formal educational courses.<sup>13</sup> These courses consist of at least sixty hours and up to ninety hours of semester course credit.<sup>14</sup> Thus, the course work would likely take at least two years of fulltime study to complete. Upon completion of the coursework, a person must then complete a one-year internship under the direct supervision of a licensed funeral director,<sup>15</sup> as well as pass the state and federal laws and rules examination relating to the disposition of dead human bodies and the National Board Examination.<sup>16</sup> Unless illness or personal injury prevents him or her, an intern must complete the internship within the year, or else he or she must pay an additional fee and repeat the entire internship.<sup>17</sup> According to Division rule, direct supervision means that the supervising funeral director must be physically present or on the premises at all times while the intern is performing services, and the licensed funeral director must provide both initial direction, as well as periodic inspection of arrangements.<sup>18</sup>

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<sup>8</sup> Don Conkey, *As Cremations Rise, So Do Options on Where to Spend*, available at: <http://www.cremationassociation.org> (last visited Jan. 25, 2010).

<sup>9</sup> U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan 20, 2010).

<sup>10</sup> *Id.*

<sup>11</sup> Florida Funeral Home Statistics – 1998 through 2008, Funeral Industry Consultants, Inc., 717 (2008).

<sup>12</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 Jan. 25, 2010).

<sup>13</sup> F.A.C. 69K-18.002(2).

<sup>14</sup> F.A.C. 69K-15.002(1).

<sup>15</sup> Section 497.375(1)(d), F.S.

<sup>16</sup> Section 497.373(2), F.S.

<sup>17</sup> F.A.C. 69K-18.002(5).

<sup>18</sup> F.A.C. 69K-18.002(3).

Thus, through this method the entire process of becoming a licensed funeral director takes at least approximately three years during which the person will likely not be able to work while completing course work, and must be under the direct control at all times while completing the internship. This may be unattractive to individuals who are interested in funeral directing as second careers, but may not be able to afford to stop working for that amount of time.

The second method for becoming a licensed funeral director is by endorsement.<sup>19</sup> Here, a person who is currently licensed as a funeral director in another state and who has successfully completed a state, regional, or national examination in mortuary science which is substantially equivalent or more stringent than the mortuary science examination required in Florida, may gain a license as a funeral director in Florida.<sup>20</sup> Thus, persons who hold licenses in other states who have only successfully completed a state, regional, or national examination in funeral service arts will not be eligible for a license by endorsement.

### Effect of Proposed Changes

The bill would allow certain persons to begin their internships before the completion of formal education requirements. Persons currently enrolled in required funeral director courses who already hold an associate degree or higher in any field from a college or university accredited and recognized by the United States Department of Education and who have taken and passed a college credit course in mortuary or funeral service law and ethics may begin their internships. This may attract second career individuals, who otherwise may not have the financial capability to stop working to return to school.

The bill defines direct supervision to require the licensed funeral director to be physically present or on the premises while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for direct supervision of an embalmer intern by a licensed embalmer. It also defines general supervision to require the licensed funeral director to be reasonably available and in the position to provide direction and guidance by being physically present, on the premises, or available by telephone or other electronic communication while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for general supervision of an embalmer intern by a licensed embalmer.

The bill would allow funeral director interns who have graduated from an approved course of study in mortuary science or funeral service arts and passed the laws and rules examination to complete their internship under general supervision if the funeral director in charge of the funeral director internship agency certifies after six months of direct supervision that the intern is competent to complete the internship under general supervision. This may allow them to earn a higher wage for the remainder of their internship as they will be able to carry out more funeral directing functions without the licensed funeral director needing to be as directly involved in their tasks and functions.

Furthermore, the bill would allow funeral director interns who have been certified by the funeral director in charge of the funeral director training agency to have completed at least one half of the required coursework to renew their internship license. This would be attractive to people who began their internships prior to completing all course work under the proposed changes in section 16 of the bill. The bill would also allow the intern to renew his or her license if he or she can demonstrate that the failure to complete was due to illness, personal injury, or substantial hardship, or that he or she is waiting to take the National Board Examination. The licensing authority would be allowed to charge a nonrefundable fee for the renewal of the intern license.

Finally, the bill would allow persons who have otherwise met the qualifications for license by endorsement who have taken and passed a funeral services arts examination that is substantially equivalent or more stringent than the Funeral Services Arts section of the National Board Examination, the examination required in Florida, to gain a funeral director license by endorsement.

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<sup>19</sup> Section 497.374, F.S.

<sup>20</sup> Section 497.374(1)(b)(2), F.S.

## Direct Disposers and Direct Disposer Establishments (Sections 25, 26, 27)

### Current Situation

Currently, the state of Florida has 162 licensed direct disposers and 60 direct disposer establishments.<sup>21</sup> Direct disposers may only remove human remains from the place of death and then transport and store them in a registered direct disposal establishment, secure pertinent information to file the death certificate and permit for direct disposition, and refrigerate remains prior to direct disposition.<sup>22</sup> Direct disposition means the cremation of human remains without preparation of the human remains by embalming and without any attendant services or rites such as funeral or graveside services, or making the arrangements for final disposition.<sup>23</sup> Thus, direct disposers may not embalm human remains or engage in any activities considered to be within the realm of funeral directing.<sup>24</sup>

Direct disposal establishments must maintain a refrigeration facility for the dead bodies<sup>25</sup> and may also be a cinerator facility that performs cremations.<sup>26</sup> There are currently 142 cinerator facilities in the state,<sup>27</sup> and all cinerator facilities must be supervised by a licensed funeral director or licensed direct disposer.<sup>28</sup> Of the 82,652 cremations performed in 2008, 8,171 were performed by a direct disposer, or approximately 10% of all cremations.<sup>29</sup> Direct disposal establishments must also be supervised by a full-time licensed direct disposer or licensed funeral director acting as a direct disposer in charge of the establishment.<sup>30</sup> He or she may only be in charge of one direct disposal establishment.<sup>31</sup>

Beyond application disclosure requirements, an applicant for license as a direct disposer must receive a passing grade in a college credit course in Florida mortuary law and communicable diseases, and pass an examination prepared by the department on state and federal laws and rules relating to the disposition of dead human bodies.<sup>32</sup> Thus, compared to the funeral director license and embalmer license, a direct disposer license has relatively less educational requirements.

Finally, to renew a direct disposal license, which occurs every two years, a licensee must have six hours of continuing education credit.<sup>33</sup> Current law states that a course in communicable diseases may be a part of this requirement; however, it is not required.<sup>34</sup>

### Effect of Proposed Changes

The bill would require applicants to receive a passing grade in a college credit course in ethics along with the mortuary law and communicable disease courses to receive their licenses. Similarly, it would also require a course in communicable diseases as part of the continuing education requirement.

The bill would require direct disposal establishments to have a licensed funeral director as the direct disposer in charge of the establishment. However, direct disposers currently serving as the direct disposer in charge of an establishment may continue to do so provided:

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<sup>21</sup> Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, [http://www.myfloridacfo.com/funeralcemetery/fc\\_who\\_we\\_regulate.htm](http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm) (last visited Jan. 20, 2010).

<sup>22</sup> Section 497.601(1), F.S.

<sup>23</sup> Section 497.005(51), F.S.

<sup>24</sup> Section 497.601(2)-(3), F.S.

<sup>25</sup> F.A.C. 69K-23.004(2).

<sup>26</sup> Section 497.604(1), F.S.

<sup>27</sup> Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, [http://www.myfloridacfo.com/funeralcemetery/fc\\_who\\_we\\_regulate.htm](http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm) (last visited Jan. 20, 2010).

<sup>28</sup> Section 497.606(2)(c), F.S.

<sup>29</sup> Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

<sup>30</sup> Section 497.604(8), F.S.

<sup>31</sup> Section 497.604(8), F.S.

<sup>32</sup> Section 497.602(3), F.S.

<sup>33</sup> F.A.C. 69K-17.0034(4)(b).

<sup>34</sup> Section 497.603(2), F.S.

- they do not become employed by a different direct disposal establishment;
- their license does not become inactive; and
- they meet the naming requirements for issuance, renewal, or notice of change.

Thus, this grandfather provision does not prevent a direct disposer who is presumably qualified to serve as the direct disposer in charge of the establishment from continuing to do so. However, the bill continues to allow either a licensed direct disposer or licensed funeral director to serve as the direct disposer in charge of a cinerator facility. Thus, a cinerator facility, which may also be a direct disposal establishment, would not require a licensed funeral director acting as the direct disposer in charge, but other direct disposal establishments would require a licensed funeral director to serve in that capacity.

The bill may discourage people from becoming licensed as a direct disposer as they will not be qualified to serve as the direct disposer in charge of a direct disposal establishment. As direct disposers represent approximately 10% of all cremations performed in the state<sup>35</sup> and cremation rates are expected to increase,<sup>36</sup> this may result in more concentrated profits for existing direct disposal establishments and existing direct disposers, or it may make it more difficult to obtain a cremation from a direct disposal establishment.

It is also unclear if there will be a benefit to industry service or quality by requiring a licensed funeral director to act as the direct disposer in charge. There may be some benefit from the counseling and personal interaction funeral directors are trained for, however, if the education requirements for direct disposers and funeral director only licenses outlined above become law, a person with a funeral director only license will have the same communicable disease background as direct disposers and will not have any other mortuary science background. Thus, both licensees will have the same expertise in the area of communicable diseases and state and federal laws and rules relating to the disposition of dead human bodies, which are the most directly applicable expertise requirements for direct disposers.

## **Preneed Contracts (Sections 22, 23, 24)**

### Current Situation

The Florida legislature established the Preneed Funeral Contract Consumer Protection Trust Fund (hereafter, the Trust Fund) to provide restitution for people who entered into a preneed contract and never received the contracted services or merchandise.<sup>37</sup> A preneed contract is essentially a contract for future funeral services or merchandise, or burial services or merchandise that is paid for in advance.<sup>38</sup> Current law allows the licensing authority to have rulemaking authority to determine what forms, procedures, and information is needed to support a claim for restitution under the Trust Fund.<sup>39</sup>

Preneed licensees, persons licensed to sell preneed contracts,<sup>40</sup> often charge the purchaser of a preneed contract a processing, filing, or archiving fee. There is currently no expressed regulation of processing fees for preneed contracts. 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 as and when the goods or services in the preneed contract are actually provided.<sup>41</sup> They must be placed in trust to ensure that the seller of the contract does not simply take the purchaser's money or defraud him or her in some way. However, a processing fee related to the sale of the preneed contract is considered earned almost immediately and so may be withdrawn almost immediately. Thus, preneed licensees have an incentive to cite as much of the contract price as possible within the processing fee so that the money may be withdrawn immediately, rather than when the services or merchandise are actually disbursed.

<sup>35</sup> Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

<sup>36</sup> U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan. 25, 2010).

<sup>37</sup> Section 497.456(6), F.S.

<sup>38</sup> Section 497.005(54), F.S.

<sup>39</sup> Section 497.456(13), F.S.

<sup>40</sup> Section 497.452(1)(a), F.S.

<sup>41</sup> Section 497.458(1), F.S.

Current law requires that alternative preneed contracts require the purchaser of the contract make all payments required by the contract directly to the trustee, or its qualified servicing agent, and deposit the funds in the state of Florida.<sup>42</sup> Furthermore, the preneed trust is required to be a trust company operating pursuant to ch. 660, a national bank or state bank holding trust powers, or a federal or state savings and loan association holding trust powers.<sup>43</sup> However, these types of firms sometimes have no physical offices in which to deposit the funds within the state of Florida. Thus, they are not eligible to receive the trust deposits. The utility of this requirement may have decreased in recent years as the result of internet banking.

Finally, current law requires disbursement of funds by the trustee to the person issuing or writing the preneed contract upon receipt of the contract beneficiary's death certificate.<sup>44</sup> There is also no provision directing the trustee on what to do with the funds in the event of partial performance.

### Effect of Proposed Changes

The bill requires that claims by consumers or licensees against the Trust Fund be sworn or affirmed and notarized. This may lessen fraud on the part of either the consumer making the claim, or the licensee against whom the claim is made.

The bill specifically authorizes a preneed licensee to charge a processing, filing, archiving, or other administrative fee related to the sale of a preneed contract. It requires the preneed licensee to disclose these charges to the purchaser of the contract and include them on a standard price list. Finally, it exempts these charges from the trust deposit requirements that are required for the funeral service or merchandise or burial service or merchandise provisions of the preneed contract. It is unclear whether this provision will lessen the instance of fraud. It may only further encourage abuse by preneed licensees as the funds will not go into the trust at all.

The bill allows persons to deposit funds into trusts in banks with physical locations outside the state of Florida. This will increase the number of banks that are eligible to hold funds in trust.

Finally, the bill allows the trustee to disburse funds to the person issuing or writing the preneed contract upon the trustee's receipt of satisfactory evidence that the preneed contract has been performed in whole or in part, not solely because the trustee has received the contract beneficiary's death certificate. The bill grants rulemaking authority to the licensing authority to define what satisfactory evidence means. Furthermore, it provides that in the event of partial performance, the trustee shall disburse only the amount that covers the portion of the contract actually performed.

### **Funeral Director in Charge and Funeral Directing Activities (Sections 15, 21)**

#### Current Situation

Current law states that phoning in or faxing of obituary notices, ordering flowers, delivering death certificates, clerical preparation of death certificates, furnishing standard price lists, removing or transporting dead bodies, arranging or coordinating with removal services, or refrigeration or embalming facilities, making preneed contracts, or performing functions of cemetery or crematory personnel do not constitute activities of a funeral director.<sup>45</sup>

Current law also requires a licensed funeral establishment to have one full-time funeral director in charge (FDIC). This person may hold a funeral director only license and may not be a full-time FDIC for any other funeral establishment or direct disposal establishment.<sup>46</sup> Current law also states that the licensed funeral establishment must have a licensed funeral director reasonably available to the public

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<sup>42</sup> Section 497.464(3), F.S.

<sup>43</sup> Section 497.464(2), F.S.

<sup>44</sup> Section 497.464(7), F.S.

<sup>45</sup> Section 497.276(2), F.S.

<sup>46</sup> Section 497.380(7), F.S.

during normal business hours.<sup>47</sup> Division rule requires the full-time FDIC to be responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules of the Board of Funeral, Cemetery, and Consumer Services.<sup>48</sup> However, it is unclear whether the Division has rulemaking authority to establish this requirement for the full-time FDIC.

### Effect of Proposed Changes

The bill would add electronic transmission of obituary notices and the clerical processing of death certificates to the activities that are not considered to constitute activities of a funeral director. While these additions may be unnecessary as the inclusion of other forms of transmission of obituary notices are already listed and preparation of death certificates may encompass processing, these additions will at least clarify what other duties non licensed funeral establishment personnel may engage in.

The bill would require the full-time FDIC to hold a combination funeral director and embalmer license. However, persons currently serving as full-time FDICs who currently hold a funeral director only license may continue to serve as the full-time FDIC for a funeral establishment if:

- the funeral establishment and the funeral director both hold active and valid licenses; and
- the funeral director's name was included in the funeral establishment's most recent application for issuance or renewal of its license, or was included in the establishment's report of change.

This grandfather provision would allow full-time FDICs who already have the experience serving as full-time FDICs to continue to do so, but would prevent persons without the knowledge or expertise in embalming from being in charge of the funeral establishment. Especially if the education requirements for funeral director only licenses outlined above become law, this may be an important precaution in ensuring industry safety and compliance with rules and regulations related to embalming and handling of dead human remains as funeral director only licensees will not have the background in mortuary science to ensure compliance.

Finally, the bill makes clear that the full-time FDIC is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. This language mostly tracks the Division rule, however, it requires the full-time FDIC to not only ensure compliance with Board laws and rules, but all state and federal laws and rules. However, while the Division rule states that this full-time FDIC responsibility shall not be construed to absolve funeral establishments or other persons from liability for their violations of such laws and rules, the bill has no such language. Thus, it is unclear whether this provision may make full-time FDICs liable for violations, but not funeral establishments themselves.

### **Public Emergencies (Sections 3, 7, 10)**

#### Current Situation

Current law does not provide procedures or rulemaking authority for the licensing authority to waive or modify any provisions of chapter 497 in the event of an emergency. However, current law does provide that limited licenses may be issued during times of "critical need."<sup>49</sup> These limited licenses are for retired professionals who have an embalmer's license, funeral director only license, or combination license and would only be valid during the time of critical need.<sup>50</sup> The rule does not specify that the retirees must be from the state of Florida.

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<sup>47</sup> Section 497.380(7), F.S.

<sup>48</sup> F.A.C. 69K-21.007.

<sup>49</sup> Section 497.143(5), F.S.

<sup>50</sup> F.A.C. 69K-25.004.

## Effect of Proposed Changes

The bill allows the licensing authority to temporarily waive any provisions of chapter 497 during a state of emergency declared by the Governor. Furthermore, it specifies that retired Florida licensees, rather than any retired licensee, as well as active licensees from other states be allowed to serve during times of critical need. It also deletes the fee requirement for these limited licenses in all circumstances. Finally, it grants rulemaking authority to the licensing authority to temporarily waive provisions, and it grants rulemaking authority to the Department of Financial Services to establish rules and procedures for the event of an emergency situation. It specifies that the emergency rules and procedures may be adopted prior to an actual emergency and may stay in effect for a limited time after the state of emergency is terminated.

### **Placement of Monuments in Cemeteries (Section 14)**

#### Current Situation

A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.<sup>51</sup> Both cemeteries and monument establishments sell and install grave markers and monuments. Thus, cemeteries have a financial interest in restricting monument establishments' access to cemeteries. They also have an interest in ensuring that their property is not damaged by monument establishments that deliver, install, place, or set monuments on their property. The prohibition on requiring insurance, bonds, pledges, etc. from monument establishments by cemeteries seems to indicate a legislative preference for unrestricted access to the cemeteries and in turn, lower prices charged by monument establishments for their products. As of March 1, 2008 there were 99 licensed monument establishments and 172 licensed cemeteries.<sup>52</sup>

#### Effect of Proposed Changes

The bill would require people or firms delivering, installing, placing, or setting a monument to show proof of liability insurance coverage and worker's compensation insurance coverage as required by law. The cemetery may not specify the amount of insurance required or require the person or firm to obtain a bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry or access. This means cemeteries would not be allowed to require more insurance than the law already requires.

Thus, the bill would allow cemeteries some assurances against property damage as the result of delivery, installation, placement, or setting of the monuments, but would also prevent cemeteries from requiring more insurance than is required by law and thereby restricting monument establishments' access to the property.

### **Process Fees Charged to Customers by Cemeteries (Section 13)**

#### Current Situation

Current law prohibits cemeteries from charging fees for anything but the sale of burial rights, burial merchandise, and burial service except for:

- Opening and closing a grave or vault installation;
- Transferring burial rights;
- Sales, documentary excise or other taxes actually and necessarily paid to a public official;
- Credit life and credit disability insurance; and

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<sup>51</sup> Section 497.278(3), F.S.

<sup>52</sup> Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, [http://www.myfloridafo.com/funeralcemetery/fc\\_who\\_we\\_regulate.htm](http://www.myfloridafo.com/funeralcemetery/fc_who_we_regulate.htm) (last visited Jan. 20, 2010).

- Interest on unpaid balances pursuant to ch. 687.<sup>53</sup>

### Effect of Proposed Changes

The bill allows for the charge of a processing fee to customers by cemeteries for processing, filing, and archiving, and other administrative duties. These fees must be disclosed to the customer and must be shown on the cemetery's standard price lists.

However, the bill stipulates that these processing fees may not be charged in regards to sales contracts for the opening and closing of a grave or other burial right, or for the installation of a vault in a grave for which burial rights were previously purchased. This provision appears to address preneed contracts and prohibits that processing fees may be charged by cemeteries for these kinds of sales contracts.

Finally, the bill states that the charges are not subject to trusting under section 497.458, F.S. This may be redundant as the language of the bill seems to indicate that no processing fees may be charged for these forms of preneed contracts, and the trusting requirement of section 497.458, F.S. only applies to preneed contracts for the purposes of the Trust Fund.

### **Disclosure of Criminal Record (Sections 5, 6, 9)**

#### Current Situation

Current law requires that all licensees disclose their criminal records when applying for a license.<sup>54</sup> The licensee must disclose crimes for which the person was convicted of, or plead no contest to.<sup>55</sup> The crimes that are required to be listed are:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involved any aspect of the business of funeral directing, embalming, direct disposition, cremation, preneed sales, funeral or cemetery establishment operations, or cemetery monument or maker sales or installation;
- Any felony committed immediately preceding twenty years before the application; and
- Any misdemeanor committed immediately preceding five years before the application.<sup>56</sup>

Similarly, being convicted, or found guilty of, or entering a plea of no contest to, regardless of the adjudication, for a crime related to the practice of the licensee's profession constitutes grounds for disciplinary action under ch. 497.<sup>57</sup>

While current law does require disclosure of criminal records,<sup>58</sup> it does not specify what the consequences of having a criminal record to the applicant for an initial or renewed license are or should be.

### Effect of Proposed Changes

The bill would require licensees to disclose their criminal records when applying for or renewing their licenses. However, the current language of Section 6 may be somewhat unclear as to which crimes must be disclosed depending on whether it is the initial or renewed license.

Furthermore, it would require the disclosure of all crimes to be listed under section 497.142(10)(c), F.S. for which the applicant plead guilty. This may represent the correction of a drafting error as generally if a person is required to disclose crimes for which he or she was convicted of, or plead no contest to, he

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<sup>53</sup> Section 497.277(1)-(5), F.S.

<sup>54</sup> Section 497.142(10)(a), F.S.

<sup>55</sup> Section 497.142(10)(b), F.S.

<sup>56</sup> Section 497.142(10)(c), F.S.

<sup>57</sup> Section 497.152(2), F.S.

<sup>58</sup> Section 497.142(10)(a), F.S.



or she would seem to need to disclose crimes for which he or she plead guilty to as well.<sup>59</sup> Section 9 of the bill also adds a plea of guilty to the list of specified crimes that are grounds for disciplinary action under ch. 497.

The bill would prohibit the licensing authority from issuing or renewing a license to an applicant who has a criminal record that is required to be disclosed, unless the applicant demonstrates that the issuance or renewal of the license does not constitute a threat to the public. Thus, this section specifies the consequences of having a criminal record. However, there may be some concern that the rulemaking authority granted to the licensing authority may not be sufficient as the bill does not define "threat to the public," or provide the licensing authority with guidelines in determining what "threat to the public" should mean.

## **Health and Safety Education (Sections 11, 20, 28)**

### Current Situation

Current law states that all individuals not licensed under ch. 497 who intend to be employed as operational personnel affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, or who intend to be involved in the removal or transportation of human remains must complete one course approved by the licensing authority on communicable diseases within ten days of beginning employment.<sup>60</sup>

Current Division rules define operational personnel as "individuals who come in direct contact with or remove or transport dead human remains, or those individuals who come in direct contact with blood or other body fluids."<sup>61</sup> However, the statute itself does not define operational personnel.

Current law also states that as part of the continuing education credit requirement, licensees must complete a course on communicable diseases that specifically includes a course on HIV/AIDS.<sup>62</sup> HIV/AIDS is one type of communicable disease.<sup>63</sup>

### Effect of Proposed Changes

The bill limits the education requirement to operational personnel "who have direct contact with" human remains. Thus, the bill may relax the requirements under current Division rule as the rules also specify direct contact with blood or other body fluids.

The bill would delete the separate requirement that continuing education credit requires a course dealing specifically with HIV/AIDS. It would not repeal the requirement for a course on communicable diseases in general, however. As HIV/AIDS is one particular type of communicable disease, it appears that a separate distinction and course focus may not be necessary.

## **Board Composition and Continuing Education Requirement for Licensees (Sections 2, 8)**

### Current Situation

The Board of Funeral, Cemetery, and Consumer Services consists of ten members, nine of whom are nominated by the Chief Financial Officer and appointed by the Governor, and one of whom must be the State Health Officer or his or her designee.<sup>64</sup> Current law states that one member of the board must be

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<sup>59</sup> Throughout Florida Statutes this seems to be the norm. For example, section 633.081(2)(b), F.S. excludes all persons who have been found guilty of, or having pled guilty or nolo contendere to, (no contest to) a felony or crime punishable by imprisonment of one year or more under federal law or the state law of any state from being certified to conduct a firesafety inspection.

<sup>60</sup> Section 497.162, F.S.

<sup>61</sup> F.A.C. 69K-15.005.

<sup>62</sup> Section 497.378(1), F.S.

<sup>63</sup> Center for Disease Control and Prevention, Basic Information Topics: HIV/AIDS, <http://www.cdc.gov/hiv/topics/basic/index.htm> (last visited Feb. 10, 2010).

<sup>64</sup> Section 497.101(1), F.S.

a monument establishment licensee.<sup>65</sup> As monument licensees are often corporations, not individual people, this seems to indicate that a corporation may be appointed as a board member.<sup>66</sup>

The Board is authorized by rule to provide up to five hours of continuing education credit per continuing education reporting period for licensees who attend board meetings.<sup>67</sup> All licensees governed by ch. 497 are required to complete Board approved continuing education.<sup>68</sup> Current law limits the number of continuing education credit hours a licensee may receive by attending a board meeting to five.<sup>69</sup> Current law also states that the Board may limit the number of times such credit may be utilized by the licensee.<sup>70</sup> Finally, current law states that the Board may require more than five hours of attendance to receive five hours of credit.<sup>71</sup>

Currently, funeral directors and embalmers are required to complete twelve hours of continuing education credit, while registered direct disposers are required to complete six hours.<sup>72</sup> Of the required credits, one credit must be a course in communicable disease and HIV/AIDS, while all other credits may be obtained on various subjects related to the various licenses, including ethics, rules, basic theory and practice, and technical subjects, including mortuary science.<sup>73</sup>

### Effect of Proposed Changes

The bill inserts the words "a principle of" before "a monument establishment licensed under this chapter as a monument builder" to indicate that a single person, rather than a corporation, shall be appointed to the Board. Chapter 497 defines "principle" as:

"The sole proprietor of a sole proprietorship; all partners of a partnership; all members of a limited liability company; regarding a corporation, all directors and officers, and all stockholders controlling more than 10 percent of the voting stock; and all other persons who can exercise control over the person or entity."<sup>74</sup>

The bill also liberalizes the requirements for obtaining continuing education credit hours by attending board meetings. The bill deletes language prohibiting licensees from obtaining more than five continuous education credit hours, as well as the limitations on the number of times such credit may be utilized by the licensee, and the ability of the Board to require more than five hours of attendance to get five hours of credit.

While this provision may encourage licensees to participate and be more active within the profession through attendance at the meetings, it may also decrease the amount of technical, ethical, and practical educational credit licensees obtain. This may negatively impact the ongoing expertise of the licensees within their profession.

### **Online Licensing Systems (Section 5)**

#### Current Situation

To apply for an initial or renewal license under ch. 497, applicants must fill out paper applications and mail them to the Division.<sup>75</sup>

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<sup>65</sup> Section 497.101(2), F.S.

<sup>66</sup> See Section 497.141(12)(b), F.S.

<sup>67</sup> Section 497.147(5), F.S.

<sup>68</sup> F.A.C. 69K-17.0034(2).

<sup>69</sup> Section 497.147(5), F.S.

<sup>70</sup> Section 497.147(5), F.S.

<sup>71</sup> Section 497.147(5), F.S.

<sup>72</sup> F.A.C. 69K-17.0034(4).

<sup>73</sup> Florida Department of Financial Services, CE Requirements, *available at*: [https://fac.fldfs.com/public/pb\\_cereq\\_1st.asp](https://fac.fldfs.com/public/pb_cereq_1st.asp) (last visited Feb. 2, 2010).

<sup>74</sup> Section 497.005(56), F.S.

<sup>75</sup> F.A.C. 69K-1.001.

## Effect of Proposed Changes

The bill would grant rulemaking authority to the licensing authority to require applicants to apply for an initial or renewal license in an online format. It also specifies that the online electronic format for renewal of a license must not allow submission of an improperly prepared renewal application and that the applicant must be allowed to print a receipt of the properly prepared renewal application.

Finally, the bill authorizes the licensing authority to impose up to a \$25 fee on licensees filing paper applications whenever an online system is available. This fee may incentivize applicants to utilize the available online system.

## **Display of License (Sections 19, 21, 27)**

### Current Situation

Current law requires licensed funeral directors and embalmers to display their licenses and a recent photo so that they are visible to the public and may facilitate inspection by the licensing authority.<sup>76</sup> Although the statute does not specify how old the photo may be, Division rules require the photo to be less than two years old.<sup>77</sup>

Furthermore, Division rules state that funeral establishments must have their current licenses displayed so they are visible to the public and to facilitate inspection by the licensing authority.<sup>78</sup> Rules also require licensees employed at multiple establishments to have a copy of their license readily available at all locations.<sup>79</sup> This indicates that an original license certificate is not necessary for display purposes. It also appears that the rules as written do not require the display of copies of licenses for licensees employed at multiple establishments.

### Effect of Proposed Changes

Although section 497.376(2) requiring the display of each type of license under ch. 497 is deleted, it is reinserted into section 497.380 in a modified form. The bill specifies that a funeral establishment and each funeral director and embalmer working at the establishment must display their current license in a conspicuous place visible to the public and to facilitate inspection by the licensing authority. It requires funeral directors and embalmers employed at the establishment to display photos of themselves that are no more than six years old, and it requires licensees who are employed by more than one establishment to display copies of their licenses and photos at those additional establishments.

Thus, the bill appears to allow the display of older photos than are currently allowed by rule and requires the actual display of copied licenses and photos for licensees employed at more than one establishment.

## **Inspection Fees (Section 4)**

### Current Situation

Currently a direct disposal establishment licensee is charged for the annual inspection performed by the Division.<sup>80</sup> Additional inspections are required when a direct disposal establishment relocates, there is a consumer complaint filed, or there is a change in ownership or control of the establishment.<sup>81</sup> However, current law does not allow for an inspection fee on the additional inspection. Thus, the Division incurs additional costs for inspections of these establishments.

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<sup>76</sup> Section 497.376(2), F.S.

<sup>77</sup> F.A.C. 69K-21.005(3).

<sup>78</sup> F.A.C. 69K-21.005(1).

<sup>79</sup> F.A.C. 69K-21.005(2).

<sup>80</sup> F.A.C. 69K-23.004(7).

<sup>81</sup> F.A.C. 69K-23.004(3).

## Effect of Proposed Changes

The bill would authorize the licensing authority to impose an inspection fee for conducting inspections of establishments that have changed ownership or control, or changed location. However, it would not allow the licensing authority to charge a fee for an inspection because of a consumer complaint. This would allow the licensing authority to recoup the cost of the additional inspections and could not exceed the amount of the licensee's annual inspection fee.

### B. SECTION DIRECTORY:

None.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There may be a modest increase in revenues as a result of the additional inspection fees collected under section 4. The bill may also result in some cost savings because of the emphasis on online licensing systems under section 5.

#### 2. Expenditures:

There may be some cost associated with the additional rulemaking granted.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of individuals willing and able to become licensed funeral directors. It may also discourage individuals from becoming licensed direct disposers.

### D. FISCAL COMMENTS:

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

None.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to the Florida Funeral, Cemetery, and  
 3           Consumer Services Act; amending s. 497.005, F.S.; defining  
 4           the terms "direct supervision" and "general supervision"  
 5           as they relate to supervision by funeral directors and  
 6           embalmers; amending s. 497.101, F.S.; revising  
 7           qualifications for the membership of the Board of ~~Funeral~~,  
 8           Cemetery, and Consumer Services; amending s. 497.103,  
 9           F.S.; authorizing the waiver of certain provisions during  
 10          a state of emergency; amending s. 497.140, F.S.;  
 11          authorizing fees for certain inspections of licensees;  
 12          amending s. 497.141, F.S.; prohibiting the issuance or  
 13          renewal of a license to an applicant that has specified  
 14          criminal records under certain ~~circumstances~~; authorizing  
 15          a licensing authority of the Department of Financial  
 16          Services to adopt rules; authorizing the licensing  
 17          authority to require the submission of applications in an  
 18          online electronic format; authorizing fees for  
 19          applications submitted in a paper format; amending s.  
 20          497.142, F.S.; requiring an applicant for renewal of a  
 21          license to disclose certain criminal records; requiring an  
 22          applicant for issuance or renewal of a license to disclose  
 23          certain criminal pleas; requiring the licensing authority  
 24          to adopt rules for the disclosure of criminal records;  
 25          authorizing an exception from disclosure requirements for  
 26          previously disclosed criminal records; amending s.  
 27          497.143, F.S.; revising legislative intent; authorizing  
 28          the licensing authority to adopt rules for the issuance of

29 | limited licenses to certain persons licensed outside the  
 30 | state; revising eligibility and application requirements  
 31 | for a limited license; amending s. 497.147, F.S.; deleting  
 32 | limits on the continuing education credit provided for  
 33 | attendance at board meetings; amending s. 497.152, F.S.;  
 34 | providing that certain criminal pleas are a ground for  
 35 | denial of an application or discipline of a licensee under  
 36 | chapter 497, F.S.; amending s. 497.161, F.S.; authorizing  
 37 | the department to adopt rules that temporarily suspend or  
 38 | modify certain provisions during and following a state of  
 39 | emergency; amending s. 497.162, F.S.; revising which  
 40 | nonlicensed personnel are required to complete a course on  
 41 | communicable diseases; extending time for completion of  
 42 | the course; amending s. 497.166, F.S.; conforming  
 43 | terminology to changes made by the act; amending s.  
 44 | 497.277, F.S.; authorizing a cemetery company to charge a  
 45 | fee for performing specified duties related to certain  
 46 | cemetery sales contracts; requiring disclosure of the  
 47 | charges; exempting charges from certain trust deposit  
 48 | requirements; authorizing the department to adopt rules;  
 49 | amending s. 497.278, F.S.; authorizing a cemetery company  
 50 | to require certain persons and firms to show proof of  
 51 | certain insurance coverage; prohibiting a cemetery company  
 52 | from setting certain insurance coverage limits; amending  
 53 | s. 497.372, F.S.; revising the acts which are exempt from  
 54 | regulation as the practice of funeral directing; amending  
 55 | s. 497.373, F.S.; revising the educational and examination  
 56 | requirements for licensure of funeral directors by

57 examination; revising requirements for supervision of  
 58 provisional licensees; amending s. 497.374, F.S.; revising  
 59 the examination requirements for licensure of funeral  
 60 directors by endorsement; amending s. 497.375, F.S.;  
 61 establishing educational requirements for funeral director  
 62 intern licenses; revising the application requirements for  
 63 funeral director intern licensees; revising requirements  
 64 for supervision of funeral director interns; providing for  
 65 the expiration of funeral director intern licenses;  
 66 prohibiting the renewal of funeral director intern  
 67 licenses except ~~under~~ certain circumstances; authorizing  
 68 rules for the renewal of funeral director intern licenses;  
 69 providing for license renewal fees; amending s. 497.376,  
 70 F.S.; deleting provisions requiring ~~rules~~ for the display  
 71 of certain licenses; amending s. 497.378, F.S.; conforming  
 72 the continuing education requirements for funeral  
 73 directors and embalmers to the repeal by the act of  
 74 provisions requiring a course on HIV and AIDS; authorizing  
 75 the licensing authority to adopt rules for the renewal of  
 76 funeral director and embalmer licenses; amending s.  
 77 497.380, F.S.; providing duties of a funeral director in  
 78 charge of a funeral establishment; requiring a funeral  
 79 director in charge to have an embalmer license and  
 80 providing exceptions; requiring the reporting of a change  
 81 in the funeral director in charge of a funeral  
 82 establishment; requiring certain licensees to display  
 83 their licenses in funeral establishments; creating s.  
 84 497.4555, F.S.; authorizing a preneed licensee to charge a



85 fee for performing certain duties related to a preneed  
 86 contract; requiring disclosure of the charges; exempting  
 87 charges from certain trust deposit requirements;  
 88 authorizing the department to adopt rules; amending s.  
 89 497.456, F.S.; authorizing requirements that certain  
 90 claims forms be sworn and notarized; amending s. 497.464,  
 91 F.S.; deleting a requirement that trust payments for  
 92 preneed contracts be deposited in this state; requiring  
 93 that funds discharging a preneed contract be disbursed  
 94 from the trust under certain circumstances; amending s.  
 95 497.602, F.S.; revising the course requirements for a  
 96 direct disposer license; deleting provisions requiring  
 97 rules for the display of certain licenses; amending s.  
 98 497.603, F.S.; requiring the licensing authority to adopt  
 99 rules for the renewal of direct disposer licenses;  
 100 requiring a course on communicable diseases; conforming  
 101 the continuing education requirements for direct disposers  
 102 to the repeal by the act of provisions requiring a course  
 103 on HIV and AIDS; amending s. 497.604, F.S.; requiring a  
 104 direct disposal establishment to have a licensed funeral  
 105 director act as the direct disposer in charge and  
 106 providing exceptions; requiring certain licensees to  
 107 display their licenses in direct disposal establishments;  
 108 repealing s. 497.367, F.S., relating to a continuing  
 109 education course required for funeral directors and  
 110 embalmers on HIV and AIDS; providing an effective date.

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

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Section 1. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter, the term:

(1) "Alternative container" means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of human remains and that is made of fiberboard, pressed wood, composition materials (with or without an outside covering), or like materials.

(2) "At-need solicitation" means any uninvited contact by a licensee or her or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after her or his death has occurred.

(3) "Bank of belowground crypts" means any construction unit of belowground crypts that is acceptable to the department and that a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.

(4) "Belowground crypts" consist of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as "lawn crypts," "westminsters," or "turf-top crypts."

(5) "Board" means the Board of Funeral, Cemetery, and Consumer Services.

(6) "Burial merchandise," "funeral merchandise," or "merchandise" means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or inurnment of human

141 | remains or cremated remains, including, but not limited to,  
 142 | caskets, outer burial containers, alternative containers,  
 143 | cremation containers, cremation interment containers, urns,  
 144 | monuments, private mausoleums, flowers, benches, vases,  
 145 | acknowledgment cards, register books, memory folders, prayer  
 146 | cards, and clothing.

147 |       (7) "Burial right" means the right to use a grave space,  
 148 | mausoleum, columbarium, ossuary, or scattering garden for the  
 149 | interment, entombment, inurnment, or other disposition of human  
 150 | remains or cremated remains.

151 |       (8) "Burial service" or "service" means any service  
 152 | offered or provided in connection with the final disposition,  
 153 | memorialization, interment, entombment, or inurnment of human  
 154 | remains or cremated remains.

155 |       (9) "Care and maintenance" means the perpetual process of  
 156 | keeping a cemetery and its lots, graves, grounds, landscaping,  
 157 | roads, paths, parking lots, fences, mausoleums, columbaria,  
 158 | vaults, crypts, utilities, and other improvements, structures,  
 159 | and embellishments in a well-cared-for and dignified condition,  
 160 | so that the cemetery does not become a nuisance or place of  
 161 | reproach and desolation in the community. As specified in the  
 162 | rules of the licensing authority, "care and maintenance" may  
 163 | include, but is not limited to, any or all of the following  
 164 | activities: mowing the grass at reasonable intervals; raking and  
 165 | cleaning the grave spaces and adjacent areas; pruning of shrubs  
 166 | and trees; suppression of weeds and exotic flora; and  
 167 | maintenance, upkeep, and repair of drains, water lines, roads,  
 168 | buildings, and other improvements. "Care and maintenance" may

169 include, but is not limited to, reasonable overhead expenses  
 170 necessary for such purposes, including maintenance of machinery,  
 171 tools, and equipment used for such purposes. "Care and  
 172 maintenance" may also include repair or restoration of  
 173 improvements necessary or desirable as a result of wear,  
 174 deterioration, accident, damage, or destruction. "Care and  
 175 maintenance" does not include expenses for the construction and  
 176 development of new grave spaces or interment structures to be  
 177 sold to the public.

178 (10) "Casket" means a rigid container that is designed for  
 179 the encasement of human remains and that is usually constructed  
 180 of wood or metal, ornamented, and lined with fabric.

181 (11) "Cemetery" means a place dedicated to and used or  
 182 intended to be used for the permanent interment of human remains  
 183 or cremated remains. A cemetery may contain land or earth  
 184 interment; mausoleum, vault, or crypt interment; a columbarium,  
 185 ossuary, scattering garden, or other structure or place used or  
 186 intended to be used for the interment or disposition of cremated  
 187 remains; or any combination of one or more of such structures or  
 188 places.

189 (12) "Cemetery company" means any legal entity that owns  
 190 or controls cemetery lands or property.

191 (13) "Centralized embalming facility" means a facility in  
 192 which embalming takes place that operates independently of a  
 193 funeral establishment licensee and that offers embalming  
 194 services to funeral directors for a fee.

195 (14) "Cinerator" means a facility where dead human bodies  
 196 are subjected to cremation.

197 (15) "Closed container" means any container in which  
 198 cremated remains can be placed and closed in a manner so as to  
 199 prevent leakage or spillage of the remains.

200 (16) "Columbarium" means a structure or building that is  
 201 substantially exposed above the ground and that is intended to  
 202 be used for the inurnment of cremated remains.

203 (17) "Common business enterprise" means a group of two or  
 204 more business entities that share common ownership in excess of  
 205 50 percent.

206 (18) "Control" means the possession, directly or  
 207 indirectly, through the ownership of voting shares, by contract,  
 208 arrangement, understanding, relationship, or otherwise, of the  
 209 power to direct or cause the direction of the management and  
 210 policies of a person or entity. However, a person or entity  
 211 shall not be deemed to have control if the person or entity  
 212 holds voting shares, in good faith and not for the purpose of  
 213 circumventing this definition, as an agent, bank, broker,  
 214 nominee, custodian, or trustee for one or more beneficial owners  
 215 who do not individually or as a group have control.

216 (19) "Cremated remains" means all the remains of the human  
 217 body recovered after the completion of the cremation process,  
 218 including processing or pulverization that leaves only bone  
 219 fragments reduced to unidentifiable dimensions and may include  
 220 the residue of any foreign matter, including casket material,  
 221 bridgework, or eyeglasses that were cremated with the human  
 222 remains.

223 (20) "Cremation" means any mechanical or thermal process  
 224 whereby a dead human body is reduced to ashes and bone

225 fragments. Cremation also includes any other mechanical or  
 226 thermal process whereby human remains are pulverized, burned,  
 227 cremated, or otherwise further reduced in size or quantity.

228 (21) "Cremation chamber" means the enclosed space within  
 229 which the cremation process takes place. Cremation chambers  
 230 covered by these procedures shall be used exclusively for the  
 231 cremation of human remains.

232 (22) "Cremation container" means the casket or alternative  
 233 container in which the human remains are transported to and  
 234 placed in the cremation chamber for a cremation. A cremation  
 235 container should meet substantially all of the following  
 236 standards:

237 (a) Be composed of readily combustible or consumable  
 238 materials suitable for cremation.

239 (b) Be able to be closed in order to provide a complete  
 240 covering for the human remains.

241 (c) Be resistant to leakage or spillage.

242 (d) Be rigid enough to be handled with ease.

243 (e) Be able to provide protection for the health, safety,  
 244 and personal integrity of crematory personnel.

245 (23) "Cremation interment container" means a rigid outer  
 246 container that, subject to a cemetery's rules and regulations,  
 247 is composed of concrete, steel, fiberglass, or some similar  
 248 material in which an urn is placed prior to being interred in  
 249 the ground and that is designed to support the earth above the  
 250 urn.

251 (24) "Department" means the Department of Financial  
 252 Services.

253 (25) "Direct disposal establishment" means a facility  
 254 licensed under this chapter where a direct disposer practices  
 255 direct disposition.

256 (26) "Direct disposer" means any person licensed under  
 257 this chapter to practice direct disposition in this state.

258 (27) "Direct supervision" means supervision by a licensed:

259 (a) Funeral director who provides initial direction and  
 260 periodic inspection of the arrangements and who is physically  
 261 present or on the premises of the funeral establishment at all  
 262 times when the tasks, functions, and duties relating to funeral  
 263 directing are performed; or

264 (b) Embalmer who provides initial direction and  
 265 instruction regarding the preservation of a dead human body in  
 266 its entirety or in part and who is physically present or on the  
 267 premises of the funeral establishment or embalming facility at  
 268 all times when the tasks, functions, and duties relating to  
 269 embalming are performed.

270 ~~(28)~~ ~~(27)~~ "Director" means the director of the Division of  
 271 Funeral, Cemetery, and Consumer Services.

272 ~~(29)~~ ~~(28)~~ "Disinterment" means removal of a dead human body  
 273 from earth interment or aboveground interment.

274 ~~(30)~~ ~~(29)~~ "Division" means the Division of Funeral,  
 275 Cemetery, and Consumer Services within the Department of  
 276 Financial Services.

277 ~~(31)~~ ~~(30)~~ "Embalmer" means any person licensed under this  
 278 chapter to practice embalming in this state.

279 ~~(32)~~ ~~(31)~~ "Final disposition" means the final disposal of a  
 280 dead human body by earth interment, aboveground interment,

281 cremation, burial at sea, or delivery to a medical institution  
 282 for lawful dissection if the medical institution assumes  
 283 responsibility for disposal. "Final disposition" does not  
 284 include the disposal or distribution of cremated remains and  
 285 residue of cremated remains.

286 (33)~~(32)~~ "Funeral" or "funeral service" means the  
 287 observances, services, or ceremonies held to commemorate the  
 288 life of a specific deceased human being and at which the human  
 289 remains are present.

290 (34)~~(33)~~ "Funeral director" means any person licensed  
 291 under this chapter to practice funeral directing in this state.

292 (35)~~(34)~~ "Funeral establishment" means a facility licensed  
 293 under this chapter where a funeral director or embalmer  
 294 practices funeral directing or embalming.

295 (36) "General supervision" means supervision by a  
 296 licensed:

297 (a) Funeral director who is reasonably available and in a  
 298 position to provide direction and guidance by being physically  
 299 present, being on the premises of the funeral establishment, or  
 300 being in proximity to the funeral establishment and available  
 301 telephonically or by electronic communication at all times when  
 302 the tasks, functions, and duties relating to funeral directing  
 303 are performed; or

304 (b) Embalmer who is reasonably available and in a position  
 305 to provide direction and guidance by being physically present,  
 306 being on the premises of the funeral establishment or embalming  
 307 facility, or being in proximity to the funeral establishment or  
 308 embalming facility and available telephonically or by electronic



309 communication at all times when the tasks, functions, and duties  
 310 relating to embalming are performed.

311 ~~(37)~~~~(35)~~ "Grave space" means a space of ground in a  
 312 cemetery intended to be used for the interment in the ground of  
 313 human remains.

314 ~~(38)~~~~(36)~~ "Human remains" or "remains," or "dead human  
 315 body" or "dead human bodies," means the body of a deceased human  
 316 person for which a death certificate or fetal death certificate  
 317 is required under chapter 382 and includes the body in any stage  
 318 of decomposition.

319 ~~(39)~~~~(37)~~ "Legally authorized person" means, in the  
 320 priority listed, the decedent, when written inter vivos  
 321 authorizations and directions are provided by the decedent; the  
 322 surviving spouse, unless the spouse has been arrested for  
 323 committing against the deceased an act of domestic violence as  
 324 defined in s. 741.28 that resulted in or contributed to the  
 325 death of the deceased; a son or daughter who is 18 years of age  
 326 or older; a parent; a brother or sister who is 18 years of age  
 327 or older; a grandchild who is 18 years of age or older; a  
 328 grandparent; or any person in the next degree of kinship. In  
 329 addition, the term may include, if no family member exists or is  
 330 available, the guardian of the dead person at the time of death;  
 331 the personal representative of the deceased; the attorney in  
 332 fact of the dead person at the time of death; the health  
 333 surrogate of the dead person at the time of death; a public  
 334 health officer; the medical examiner, county commission, or  
 335 administrator acting under part II of chapter 406 or other  
 336 public administrator; a representative of a nursing home or

337 other health care institution in charge of final disposition; or  
 338 a friend or other person not listed in this subsection who is  
 339 willing to assume the responsibility as the legally authorized  
 340 person. Where there is a person in any priority class listed in  
 341 this subsection, the funeral establishment shall rely upon the  
 342 authorization of any one legally authorized person of that class  
 343 if that person represents that she or he is not aware of any  
 344 objection to the cremation of the deceased's human remains by  
 345 others in the same class of the person making the representation  
 346 or of any person in a higher priority class.

347 (40)~~(38)~~ "License" includes all authorizations required or  
 348 issued under this chapter, except where expressly indicated  
 349 otherwise, and shall be understood to include authorizations  
 350 previously referred to as registrations or certificates of  
 351 authority in chapters 470 and 497 as those chapters appeared in  
 352 the 2004 edition of the Florida Statutes.

353 (41)~~(39)~~ "Licensee" means the person or entity holding any  
 354 license or other authorization issued under this chapter, except  
 355 where expressly indicated otherwise.

356 (42)~~(40)~~ "Mausoleum" means a structure or building that is  
 357 substantially exposed above the ground and that is intended to  
 358 be used for the entombment of human remains.

359 (43)~~(41)~~ "Mausoleum section" means any construction unit  
 360 of a mausoleum that is acceptable to the department and that a  
 361 cemetery uses to initiate its mausoleum program or to add to its  
 362 existing mausoleum structures.

363 (44)~~(42)~~ "Monument" means any product used for identifying  
 364 a grave site and cemetery memorials of all types, including

365 monuments, markers, and vases.

366       (45)~~(43)~~ "Monument establishment" means a facility that  
 367 operates independently of a cemetery or funeral establishment  
 368 and that offers to sell monuments or monument services to the  
 369 public for placement in a cemetery.

370       (46)~~(44)~~ "Net assets" means the amount by which the total  
 371 assets of a licensee, excluding goodwill, franchises, customer  
 372 lists, patents, trademarks, and receivables from or advances to  
 373 officers, directors, employees, salespersons, and affiliated  
 374 companies, exceed total liabilities of the licensee. For  
 375 purposes of this definition, the term "total liabilities" does  
 376 not include the capital stock, paid-in capital, or retained  
 377 earnings of the licensee.

378       (47)~~(45)~~ "Net worth" means total assets minus total  
 379 liabilities pursuant to generally accepted accounting  
 380 principles.

381       (48)~~(46)~~ "Niche" means a compartment or cubicle for the  
 382 memorialization or permanent placement of a container or urn  
 383 containing cremated remains.

384       (49)~~(47)~~ "Ossuary" means a receptacle used for the  
 385 communal placement of cremated remains without benefit of an urn  
 386 or any other container in which cremated remains may be  
 387 commingled with other cremated remains and are nonrecoverable.  
 388 It may or may not include memorialization.

389       (50)~~(48)~~ "Outer burial container" means an enclosure into  
 390 which a casket is placed and includes, but is not limited to,  
 391 vaults made of concrete, steel, fiberglass, or copper; sectional  
 392 concrete enclosures; crypts; and wooden enclosures.

393            (51)~~(49)~~ "Person," when used without qualification such as  
 394 "natural" or "individual," includes both natural persons and  
 395 legal entities.

396            (52)~~(50)~~ "Personal residence" means any residential  
 397 building in which one temporarily or permanently maintains her  
 398 or his abode, including, but not limited to, an apartment or a  
 399 hotel, motel, nursing home, convalescent home, home for the  
 400 aged, or a public or private institution.

401            (53)~~(51)~~ "Practice of direct disposition" means the  
 402 cremation of human remains without preparation of the human  
 403 remains by embalming and without any attendant services or rites  
 404 such as funeral or graveside services or the making of  
 405 arrangements for such final disposition.

406            (54)~~(52)~~ "Practice of embalming" means disinfecting or  
 407 preserving or attempting to disinfect or preserve dead human  
 408 bodies by replacing certain body fluids with preserving and  
 409 disinfecting chemicals.

410            (55)~~(53)~~ "Practice of funeral directing" means the  
 411 performance by a licensed funeral director of any of those  
 412 functions authorized by s. 497.372.

413            (56)~~(54)~~ "Preneed contract" means any arrangement or  
 414 method, of which the provider of funeral merchandise or services  
 415 has actual knowledge, whereby any person agrees to furnish  
 416 funeral merchandise or service in the future.

417            (57)~~(55)~~ "Preneed sales agent" means any person who is  
 418 licensed under this chapter to sell preneed burial or funeral  
 419 service and merchandise contracts or direct disposition  
 420 contracts in this state.

421           (58)~~(56)~~ "Principal" means and includes the sole  
 422 proprietor of a sole proprietorship; all partners of a  
 423 partnership; all members of a limited liability company;  
 424 regarding a corporation, all directors and officers, and all  
 425 stockholders controlling more than 10 percent of the voting  
 426 stock; and all other persons who can exercise control over the  
 427 person or entity.

428           (59)~~(57)~~ "Processing" means the reduction of identifiable  
 429 bone fragments after the completion of the cremation process to  
 430 unidentifiable bone fragments by manual means.

431           (60)~~(58)~~ "Profession" and "occupation" are used  
 432 interchangeably in this chapter. The use of the word  
 433 "profession" in this chapter with respect to any activities  
 434 regulated under this chapter shall not be deemed to mean that  
 435 such activities are not occupations for other purposes in state  
 436 or federal law.

437           (61)~~(59)~~ "Pulverization" means the reduction of  
 438 identifiable bone fragments after the completion of the  
 439 cremation and processing to granulated particles by manual or  
 440 mechanical means.

441           (62)~~(60)~~ "Refrigeration facility" means a facility that is  
 442 operated independently of a funeral establishment, crematory, or  
 443 direct disposal establishment, that maintains space and  
 444 equipment for the storage and refrigeration of dead human  
 445 bodies, and that offers its service to funeral directors,  
 446 funeral establishments, direct disposers, direct disposal  
 447 establishments, or crematories for a fee.

448           (63)~~(61)~~ "Religious institution" means an organization

449 formed primarily for religious purposes that has qualified for  
 450 exemption from federal income tax as an exempt organization  
 451 under the provisions of s. 501(c)(3) of the Internal Revenue  
 452 Code of 1986, as amended.

453 (64)~~(62)~~ "Removal service" means any service that operates  
 454 independently of a funeral establishment or a direct disposal  
 455 establishment, that handles the initial removal of dead human  
 456 bodies, and that offers its service to funeral establishments  
 457 and direct disposal establishments for a fee.

458 (65)~~(63)~~ "Rules" refers to rules adopted under this  
 459 chapter unless expressly indicated to the contrary.

460 (66)~~(64)~~ "Scattering garden" means a location set aside,  
 461 within a cemetery, that is used for the spreading or  
 462 broadcasting of cremated remains that have been removed from  
 463 their container and can be mixed with or placed on top of the  
 464 soil or ground cover or buried in an underground receptacle on a  
 465 commingled basis and that are nonrecoverable. It may or may not  
 466 include memorialization.

467 (67)~~(65)~~ "Servicing agent" means any person acting as an  
 468 independent contractor whose fiduciary responsibility is to  
 469 assist both the trustee and licensee in administrating their  
 470 responsibilities pursuant to this chapter.

471 (68)~~(66)~~ "Solicitation" means any communication that  
 472 directly or implicitly requests an immediate oral response from  
 473 the recipient.

474 (69)~~(67)~~ "Statutory accounting" means generally accepted  
 475 accounting principles, except as modified by this chapter.

476 (70)~~(68)~~ "Temporary container" means a receptacle for

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477 cremated remains usually made of cardboard, plastic, or similar  
 478 material designated to hold the cremated remains until an urn or  
 479 other permanent container is acquired.

480 (71)~~(69)~~ "Urn" means a receptacle designed to permanently  
 481 encase cremated remains.

482 Section 2. Subsection (2) of section 497.101, Florida  
 483 Statutes, is amended to read:

484 497.101 Board of Funeral, Cemetery, and Consumer Services;  
 485 membership; appointment; terms.—

486 (2) Two members of the board shall be funeral directors  
 487 licensed under part III of this chapter who are associated with  
 488 a funeral establishment. One member of the board shall be a  
 489 funeral director licensed under part III of this chapter who is  
 490 associated with a funeral establishment licensed under part III  
 491 of this chapter that has a valid preneed license issued pursuant  
 492 to this chapter and who owns or operates a cinerator facility  
 493 approved under chapter 403 and licensed under part VI of this  
 494 chapter. Two members of the board shall be persons whose primary  
 495 occupation is associated with a cemetery company licensed  
 496 pursuant to this chapter. Three members of the board shall be  
 497 consumers who are residents of the state, have never been  
 498 licensed as funeral directors or embalmers, are not connected  
 499 with a cemetery or cemetery company licensed pursuant to this  
 500 chapter, and are not connected with the death care industry or  
 501 the practice of embalming, funeral directing, or direct  
 502 disposition. One of the consumer members shall be at least 60  
 503 years of age, and one shall be licensed as a certified public  
 504 accountant under chapter 473. One member of the board shall be a

505 principal of a monument establishment licensed under this  
 506 chapter as a monument builder ~~or, for board appointments made~~  
 507 ~~before June 1, 2006, a licensed monument establishment certified~~  
 508 ~~by the department to be eligible for licensure as a monument~~  
 509 ~~builder.~~ One member shall be the State Health Officer or her or  
 510 his designee. There shall not be two or more board members who  
 511 are principals or employees of the same company or partnership  
 512 or group of companies or partnerships under common control.

513 Section 3. Subsection (8) is added to section 497.103,  
 514 Florida Statutes, to read:

515 497.103 Authority of board and department; Chief Financial  
 516 Officer recommendations.-

517 (8) STATE-OF-EMERGENCY WAIVER.-The licensing authority may  
 518 temporarily waive any provision of this chapter during a state  
 519 of emergency declared pursuant to s. 252.36 in any threatened  
 520 area or areas specified in the Governor's executive order or  
 521 proclamation.

522 Section 4. Subsection (9) is added to section 497.140,  
 523 Florida Statutes, to read:

524 497.140 Fees.-

525 (9) The licensing authority may impose a fee upon a  
 526 licensee for conducting an inspection of the licensee's  
 527 facilities if required under this chapter following a change in  
 528 ownership or control or a change in location. The fee may not  
 529 exceed the amount of the licensee's annual inspection fee.

530 Section 5. Subsection (5) of section 497.141, Florida  
 531 Statutes, is amended, and subsection (13) is added to that  
 532 section, to read:



533 497.141 Licensing; general application procedures.—

534 (5) (a) The licensing authority may not issue, and  
 535 effective July 1, 2011, may not renew, a license under this  
 536 chapter to an applicant that has a criminal record required to  
 537 be disclosed under s. 497.142(10) unless the applicant  
 538 demonstrates that issuance of the license, according to rules  
 539 adopted by the licensing authority, does not create a threat to  
 540 the public. This paragraph does not require a licensee who  
 541 previously disclosed a criminal record upon initial application  
 542 or renewal of a license to redisclose the criminal record.

543 (b) The board may refuse to rule on an initial application  
 544 for licensure by any applicant who is under investigation or  
 545 prosecution in any jurisdiction for an action which there is  
 546 reasonable cause to believe would constitute a violation of this  
 547 chapter if committed in this state, until such time as such  
 548 investigation or prosecution is completed and the results of the  
 549 investigation or prosecution are reviewed by the board.

550 (13) (a) The licensing authority may adopt rules that  
 551 require applicants for any category of licensure under this  
 552 chapter to apply for the issuance or renewal of their licenses  
 553 in an online electronic format.

554 (b) The online electronic format for renewal of a license  
 555 must not allow submission of an improperly prepared renewal  
 556 application. Upon an applicant's submission of his or her  
 557 renewal application, the online electronic format must allow the  
 558 applicant to print a receipt of the properly prepared renewal  
 559 application.

560           (c) The rules may allow an applicant to submit a paper  
 561 form in lieu of the online electronic format and may impose an  
 562 additional fee not to exceed \$25 per form for submitting the  
 563 paper form.

564           Section 6. Paragraphs (a), (b), and (g) of subsection (10)  
 565 of section 497.142, Florida Statutes, are amended to read:

566           497.142 Licensing; fingerprinting and criminal background  
 567 checks.—

568           (10)(a) When applying for any license, or renewal of any  
 569 license, under this chapter, every applicant must ~~shall be~~  
 570 ~~required to~~ disclose the applicant's criminal records in  
 571 accordance with this subsection.

572           (b) The criminal record required to be disclosed shall be  
 573 any crime listed in paragraph (c) for ~~of~~ which the person or  
 574 entity required to make disclosure has been convicted or to  
 575 which that person or entity entered a plea ~~in the nature of~~  
 576 guilty or no contest. Disclosure is ~~shall be~~ required ~~pursuant~~  
 577 ~~to this subsection regardless of~~ whether adjudication is ~~was~~  
 578 entered or withheld by the court ~~in which the case was~~  
 579 ~~prosecuted.~~

580           (g) The licensing authority shall ~~may~~ adopt rules  
 581 specifying forms and procedures to be used ~~utilized~~ by persons  
 582 required to disclose criminal records under this subsection. The  
 583 rules may require a licensee to disclose only those criminal  
 584 records that have not previously been disclosed under this  
 585 subsection at the renewal of his or her license or, if the  
 586 license has not been renewed, at the initial issuance of the  
 587 license. The licensing authority may conduct investigation and

588 further inquiry of any person regarding any criminal record  
 589 disclosed pursuant to this section.

590 Section 7. Subsections (1), (2), and (3) of section  
 591 497.143, Florida Statutes, are amended to read:

592 497.143 Licensing; limited licenses for times of critical  
 593 need ~~retired professionals.~~

594 (1) It is the intent of the Legislature that, absent a  
 595 threat to the health, safety, and welfare of the public, ~~the use~~  
 596 ~~of retired Florida licensees professionals~~ in good standing and  
 597 active licensees in good standing from other jurisdictions, be  
 598 able to serve this state during times of critical need ~~should be~~  
 599 ~~encouraged. To that end, rules may be adopted to permit practice~~  
 600 ~~by retired professionals as limited licensees under this~~  
 601 ~~section.~~

602 (2) As used in ~~For purposes of~~ this section, the term  
 603 "critical need" means an executive order of ~~from~~ the Governor or  
 604 a federal order declaring that a state of emergency exists in an  
 605 area.

606 (3) The licensing authority may adopt rules for the  
 607 issuance of limited licenses in accordance with this section. A  
 608 ~~Any person seeking~~ ~~desiring to obtain~~ a limited license, when  
 609 permitted by rule, shall submit to the department an application  
 610 ~~and fee, not to exceed \$300,~~ and an affidavit stating that the  
 611 applicant is a retired Florida licensee or holds an active  
 612 license ~~has been licensed~~ to practice in another ~~any~~  
 613 jurisdiction of ~~in~~ the United States ~~for at least 10 years in~~  
 614 the profession for which the applicant seeks the a limited  
 615 license. The affidavit shall also state that the applicant ~~has~~

616 ~~retired from the practice of that profession and intends to~~  
 617 ~~practice only pursuant to the restrictions of the limited~~  
 618 ~~license granted under pursuant to this section. If the applicant~~  
 619 ~~for a limited license submits a notarized statement from the~~  
 620 ~~employer stating that the applicant will not receive monetary~~  
 621 ~~compensation for any service involving the practice of her or~~  
 622 ~~his profession, all licensure fees shall be waived. In no event~~  
 623 ~~may~~ A person holding a limited license under this section may  
 624 not engage in preneed sales under the ~~such~~ limited license.

625 Section 8. Subsection (5) of section 497.147, Florida  
 626 Statutes, is amended to read:

627 497.147 Continuing education; general provisions.-

628 (5) The board may by rule provide ~~up to 5 hours of~~  
 629 continuing education credit for each ~~per~~ continuing education  
 630 reporting period for licensees attending board meetings or  
 631 selected types or portions of board meetings, as specified by  
 632 such rules. ~~The rules may limit the number of times such credit~~  
 633 ~~may be utilized by a licensee.~~ The rules may include provisions  
 634 that establish ~~as to~~ the minimum amount of time that must be  
 635 spent in the board meeting room viewing proceedings, ~~which may~~  
 636 ~~be more than 5 hours of attendance,~~ requirements for advance  
 637 notice by licensees to department staff of proposed attendance,  
 638 requirements to sign in and out of the meeting room on lists  
 639 maintained at the meeting site by department staff, forms that  
 640 must be completed by the licensee to obtain such credit, and  
 641 such other requirements deemed by the board to be advisable or  
 642 necessary to prevent abuse of such rules and to ensure that  
 643 useful information is obtained by licensees as a result of

644 attendance. Procedural requirements of such rules requiring  
 645 action by the department are ~~shall be~~ subject to approval by the  
 646 department before ~~prior to~~ promulgation.

647 Section 9. Subsection (2) of section 497.152, Florida  
 648 Statutes, is amended to read:

649 497.152 Disciplinary grounds.—This section sets forth  
 650 conduct that is prohibited and that shall constitute grounds for  
 651 denial of any application, imposition of discipline, or other  
 652 enforcement action against the licensee or other person  
 653 committing such conduct. For purposes of this section, the  
 654 requirements of this chapter include the requirements of rules  
 655 adopted under authority of this chapter. No subsection heading  
 656 in this section shall be interpreted as limiting the  
 657 applicability of any paragraph within the subsection.

658 (2) CRIMINAL ACTIVITY.—Being convicted or found guilty of,  
 659 or entering a plea of guilty or nolo contendere to, regardless  
 660 of adjudication, a crime in any jurisdiction that relates to the  
 661 practice of, or the ability to practice, a licensee's profession  
 662 or occupation under this chapter.

663 Section 10. Subsection (4) is added to section 497.161,  
 664 Florida Statutes, to read:

665 497.161 Other rulemaking provisions.—

666 (4) The department may, subject to approval by the board,  
 667 adopt rules that temporarily suspend or modify any provision of  
 668 this chapter during a state of emergency declared pursuant to s.  
 669 252.36. The rules may only allow the suspension or modification  
 670 of a provision which is necessary or advisable to allow  
 671 licensees under this chapter to provide essential services to

672 | the public under the emergency conditions. The rules may be  
 673 | adopted before any emergency exists but may not take effect  
 674 | until the Governor issues an executive order or proclamation  
 675 | declaring a state of emergency. The rules may remain in effect  
 676 | after a state of emergency is terminated but only for the  
 677 | limited period necessary to allow transition back to normal  
 678 | operations under the nonemergency requirements of this chapter.  
 679 | However, a rule suspending or modifying any provision of this  
 680 | chapter may not remain in effect for more than 12 months after  
 681 | the state of emergency is terminated.

682 |       Section 11. Section 497.162, Florida Statutes, is amended  
 683 | to read:

684 |       497.162 Health and safety education.—All individuals not  
 685 | licensed under this chapter who intend to be employed as  
 686 | operational personnel affiliated with a direct disposal  
 687 | establishment, cinerator facility, removal service,  
 688 | refrigeration facility, or centralized embalming facility who  
 689 | have direct contact with, ~~as well as all nonlicensed individuals~~  
 690 | ~~who intend to be involved in the removal or transportation of~~  
 691 | human remains on behalf of a funeral establishment, direct  
 692 | disposal establishment, or cinerator facility shall complete one  
 693 | course approved by the licensing authority on communicable  
 694 | diseases, within 30 ~~10~~ days after the date that they begin  
 695 | functioning as operational personnel on behalf of any entity  
 696 | that is regulated by this chapter. The course shall not exceed 3  
 697 | hours and shall be offered at approved locations throughout the  
 698 | state. Such locations may include establishments that are  
 699 | licensed under this chapter. The licensing authority shall adopt

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700 rules to implement and enforce this provision, which rules shall  
 701 include provisions that provide for the use of approved  
 702 videocassette courses and other types of audio, video, Internet,  
 703 or home study courses to fulfill the continuing education  
 704 requirements of this section.

705 Section 12. Paragraphs (a) and (b) of subsection (3) of  
 706 section 497.166, Florida Statutes, are amended to read:

707 497.166 Preneed sales.—

708 (3) (a) The funeral director in charge of a funeral  
 709 establishment is ~~shall be~~ responsible for the control and  
 710 activities of the establishment's preneed sales agents.

711 (b) The direct disposer in charge or a funeral director  
 712 acting as the ~~a~~ direct disposer in charge of a direct disposal  
 713 establishment is ~~shall be~~ responsible for the control and  
 714 activities of the establishment's preneed sales agents.

715 Section 13. Subsection (6) is added to section 497.277,  
 716 Florida Statutes, to read:

717 497.277 Other charges.—Other than the fees for the sale of  
 718 burial rights, burial merchandise, and burial services, no other  
 719 fee may be directly or indirectly charged, contracted for, or  
 720 received by a cemetery company as a condition for a customer to  
 721 use any burial right, burial merchandise, or burial service,  
 722 except for:

723 (6) Charges paid for processing, filing, and archiving a  
 724 cemetery sales contract and for performing other administrative  
 725 duties related to the contract. However, these charges may not  
 726 be imposed on a cemetery sales contract for the opening and  
 727 closing of a grave or other burial right or for the installation

728 of a vault in a grave for which burial rights were previously  
 729 purchased. A cemetery company must disclose these charges to the  
 730 customer and include them on its standard printed price lists  
 731 and other disclosure information provided to the public under s.  
 732 497.282. These charges are not subject to the trust deposit  
 733 requirements in s. 497.458. The department may, subject to  
 734 approval by the board, adopt rules to administer this  
 735 subsection.

736 Section 14. Subsection (3) of section 497.278, Florida  
 737 Statutes, is amended to read:

738 497.278 Monuments; installation fees.-

739 (3) A cemetery company may ~~not~~ require any person or firm  
 740 that delivers, installs, places, or sets a monument to show  
 741 proof of liability ~~obtain any form of insurance coverage and, if~~  
 742 required by law, workers' compensation insurance coverage.  
 743 However, a cemetery company may not set liability insurance  
 744 coverage limits or require any person or firm to obtain any form  
 745 of bond, or surety, or make any form of pledge, deposit, or  
 746 monetary guarantee, as a condition for entry on or access to  
 747 cemetery property.

748 Section 15. Paragraph (a) of subsection (2) of section  
 749 497.372, Florida Statutes, is amended to read:

750 497.372 Funeral directing; conduct constituting funeral  
 751 directing.-

752 (2) The practice of funeral directing shall not be  
 753 construed to consist of the following functions:

754 (a) The phoning-in, ~~or~~ faxing, or electronic transmission  
 755 of obituary notices; ordering of flowers or merchandise;



756 delivery of death certificates to attending physicians; or  
 757 clerical preparation and processing of death certificates,  
 758 insurance forms, and any clerical tasks that record the  
 759 information compiled by the funeral director or that are  
 760 incidental to any of the functions specified above.

761 Section 16. Paragraph (d) of subsection (1) and  
 762 subsections (2) and (3) of section 497.373, Florida Statutes,  
 763 are amended to read:

764 497.373 Funeral directing; licensure as a funeral director  
 765 by examination; provisional license.—

766 (1) Any person desiring to be licensed as a funeral  
 767 director shall apply to the licensing authority to take the  
 768 licensure examination. The licensing authority shall examine  
 769 each applicant who has remitted an examination fee set by rule  
 770 of the licensing authority not to exceed \$200 plus the actual  
 771 per applicant cost to the licensing authority for portions of  
 772 the examination and who the licensing authority certifies has:

773 (d)1. Received an associate in arts degree, associate in  
 774 science degree, or an associate in applied science degree in  
 775 mortuary science approved by the licensing authority; or

776 2. Holds an associate degree or higher from a college or  
 777 university accredited by a regional accrediting agency  
 778 ~~association of colleges and schools~~ recognized by the United  
 779 States Department of Education and is a graduate of a ~~at least~~  
 780 ~~an approved 1-year~~ course of study in mortuary science or  
 781 funeral service arts approved by the licensing authority from a  
 782 college or university accredited by the American Board of  
 783 Funeral Service Education.

784 (2) The licensing authority shall license the applicant as  
 785 a funeral director if she or he:

786 (a) Passes an examination on ~~the subjects of~~ the theory  
 787 and practice of funeral directing and funeral service arts,  
 788 ~~public health and sanitation, and local, state, and federal laws~~  
 789 ~~and rules relating to the disposition of dead human bodies;~~  
 790 however, the licensing authority may approve ~~there may be~~  
 791 ~~approved~~ by rule the use of a national examination, such as the  
 792 funeral service arts examination prepared by the Conference of  
 793 Funeral Service Examining Boards, in lieu of ~~part of~~ this  
 794 examination requirement.

795 (b) Passes an examination approved by the department on  
 796 the local, state, and federal laws and rules relating to the  
 797 disposition of dead human bodies.

798 (c) ~~(b)~~ Completes a 1-year internship under a licensed  
 799 funeral director.

800 (3) Any applicant who has completed the required 1-year  
 801 internship and has been approved for examination as a funeral  
 802 director may qualify for a provisional license to work in a  
 803 licensed funeral establishment, under the direct supervision of  
 804 a licensed funeral director for ~~a limited period of~~ 6 months as  
 805 provided by rule of the licensing authority. However, a  
 806 provisional licensee may work under the general supervision of a  
 807 licensed funeral director upon passage of the laws-and-rules  
 808 examination required under paragraph (2) (b). The fee for  
 809 provisional licensure shall be set by rule of the licensing  
 810 authority but may not exceed \$200. The fee required in this  
 811 subsection shall be nonrefundable and in addition to the fee

812 required by subsection (1). This provisional license may be  
 813 renewed no more than one time.

814 Section 17. Paragraph (b) of subsection (1) of section  
 815 497.374, Florida Statutes, is amended to read:

816 497.374 Funeral directing; licensure as a funeral director  
 817 by endorsement; licensure of a temporary funeral director.—

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

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

827 2. Meets the qualifications for licensure in s. 497.373  
 828 and has successfully completed a state, regional, or national  
 829 examination in mortuary science or funeral service arts, which,  
 830 as determined by rule of the licensing authority, is  
 831 substantially equivalent to or more stringent than the  
 832 examination given by the licensing authority.

833 Section 18. Section 497.375, Florida Statutes, is amended  
 834 to read:

835 497.375 Funeral directing; licensure of a funeral director  
 836 intern.—

837 (1) (a) Any person desiring to become a funeral director  
 838 intern must apply to the licensing authority ~~shall make~~  
 839 ~~application~~ on forms prescribed ~~as required~~ by rule of the

840 licensing authority, together with a nonrefundable fee set as  
 841 ~~determined~~ by rule of the licensing authority ~~but~~ not to exceed  
 842 \$200.

843 (b)1. Except as provided in subparagraph 2., an applicant  
 844 must hold the educational credentials required for licensure of  
 845 a funeral director under s. 497.373(1)(d).

846 2. An applicant who has not completed the educational  
 847 credentials required for a funeral director license is eligible  
 848 for licensure as a funeral director intern if the applicant:

849 a. Holds an associate degree or higher in any field from a  
 850 college or university accredited by a regional accrediting  
 851 agency recognized by the United States Department of Education.

852 b. Is currently enrolled in and attending a licensing  
 853 authority-approved course of study in mortuary science or  
 854 funeral service arts required for licensure of a funeral  
 855 director under s. 497.373(1)(d)2.

856 c. Has taken and received a passing grade in a college  
 857 credit course in mortuary law or funeral service law and has  
 858 taken and received a passing grade in a college credit course in  
 859 ethics.

860 (c) An ~~The~~ application must include ~~shall indicate~~ the  
 861 name and address of the ~~licensed~~ funeral director licensed under  
 862 s. 497.373 or s. 497.374(1) under whose supervision the intern  
 863 will receive training and the name of the licensed funeral  
 864 establishment where the such training will ~~is to~~ be conducted.

865 (d) A ~~The~~ funeral director intern may perform only the  
 866 tasks, functions, and duties relating to funeral directing that  
 867 are performed ~~shall intern~~ under the direct supervision of a

868 licensed funeral director who has an active, valid license under  
 869 s. 497.373 or s. 497.374(1). However, a funeral director intern  
 870 may perform those tasks, functions, and duties under the general  
 871 supervision of a licensed funeral director upon graduation from  
 872 a licensing authority-approved course of study in mortuary  
 873 science or funeral service arts required under s.  
 874 497.373(1)(d)2. and passage of the laws-and-rules examination  
 875 required under s. 497.373(2)(b), if the funeral director in  
 876 charge of the funeral director internship training agency, after  
 877 6 months of direct supervision, certifies to the licensing  
 878 agency that the intern is competent to complete the internship  
 879 under general supervision.

880 (2) Rules shall be adopted establishing a funeral director  
 881 internship program and criteria for funeral director intern  
 882 training agencies and supervisors. Any funeral establishment  
 883 where funeral directing is conducted may apply to the licensing  
 884 authority for approval as a funeral director intern training  
 885 agency.

886 (3) A funeral establishment designated as a funeral  
 887 director intern training agency may not exact a fee from any  
 888 person obtaining intern training at such funeral establishment.

889 (4)(a) A funeral director intern license expires 1 year  
 890 after issuance and, except as provided in paragraph (b) or  
 891 paragraph (c), may not be renewed.

892 (b) A funeral director intern who is eligible for  
 893 licensure under subparagraph (1)(b)2. may renew his or her  
 894 funeral director intern license for an additional 1-year period  
 895 if the funeral director in charge of the funeral director intern

896 training agency certifies to the licensing authority that the  
 897 intern has completed at least one-half of the course of study in  
 898 mortuary science or funeral service arts.

899 (c) The licensing authority may adopt rules that allow a  
 900 funeral director intern to renew his or her funeral director  
 901 intern license for an additional 1-year period if the funeral  
 902 director intern demonstrates his or her failure to complete the  
 903 internship before expiration of the license due to illness,  
 904 personal injury, or other substantial hardship beyond his or her  
 905 reasonable control or demonstrates that he or she has completed  
 906 the requirements for licensure as a funeral director but is  
 907 awaiting the results of a licensure examination. However, a  
 908 funeral director intern who renews his or her license under  
 909 paragraph (b) is not eligible to renew the license under this  
 910 paragraph.

911 (d) The licensing authority may require payment of a  
 912 nonrefundable fee for the renewal of any funeral director intern  
 913 license. The fee shall be set by rule of the licensing authority  
 914 but may not exceed the fee set pursuant to paragraph (1)(a) for  
 915 an initial funeral director intern license.

916 Section 19. Section 497.376, Florida Statutes, is amended  
 917 to read:

918 497.376 License as funeral director and embalmer  
 919 permitted; ~~display of license.~~

920 ~~(1) Nothing in This chapter does not may be construed to~~  
 921 prohibit a person from holding a license as an embalmer and a  
 922 license as a funeral director at the same time. There may be  
 923 issued and renewed by the licensing authority a combination

924 license as both funeral director and embalmer to persons meeting  
 925 the separate requirements for both licenses as set forth in this  
 926 chapter. The licensing authority may adopt rules providing  
 927 procedures for applying for and renewing such combination  
 928 license. The licensing authority may by rule establish  
 929 application, renewal, and other fees for such combination  
 930 license, which fees shall not exceed the sum of the maximum fees  
 931 for the separate funeral director and embalmer license  
 932 categories as provided in this chapter. Persons holding a  
 933 combination license as a funeral director and an embalmer shall  
 934 be subject to regulation under this chapter both as a funeral  
 935 director and an embalmer.

936 ~~(2) There shall be adopted rules which require each~~  
 937 ~~license issued under this chapter to be displayed in such a~~  
 938 ~~manner as to make it visible to the public and to facilitate~~  
 939 ~~inspection by the licensing authority. However, each licensee~~  
 940 ~~shall permanently affix a recent photograph of the licensee to~~  
 941 ~~each displayed license issued to that licensee as a funeral~~  
 942 ~~director or embalmer.~~

943 Section 20. Subsection (1) of section 497.378, Florida  
 944 Statutes, is amended to read:

945 497.378 Renewal of funeral director and embalmer  
 946 licenses.—

947 (1) The licensing authority ~~There shall~~ renew ~~be renewed~~ a  
 948 funeral director or embalmer license upon receipt of the renewal  
 949 application and fee set by the licensing authority, not to  
 950 exceed \$500. The licensing authority may adopt rules for the  
 951 renewal of a funeral director or embalmer license. The rules may

952 | require ~~prescribe by rule~~ continuing education ~~requirements~~ of  
 953 | up to 12 classroom hours and may ~~by rule~~ establish criteria for  
 954 | accepting alternative nonclassroom continuing education on an  
 955 | hour-for-hour basis, in addition to a licensing authority-  
 956 | approved course on communicable diseases ~~that includes the~~  
 957 | ~~course on human immunodeficiency virus and acquired immune~~  
 958 | ~~deficiency syndrome required by s. 497.367,~~ for the renewal of a  
 959 | funeral director or embalmer license. The rules ~~rule~~ may also  
 960 | provide for the waiver of continuing education requirements in  
 961 | circumstances that would justify the waiver, such as hardship,  
 962 | disability, or illness. The continuing education requirement is  
 963 | not required for a licensee who is over the age of 75 years if  
 964 | the licensee does not qualify as the sole person in charge of an  
 965 | establishment or facility.

966 | Section 21. Subsections (7) and (12) of section 497.380,  
 967 | Florida Statutes, are amended, and subsection (15) is added to  
 968 | that section, to read:

969 | 497.380 Funeral establishment; licensure; display of  
 970 | license.-

971 | (7) Each licensed funeral establishment shall have one  
 972 | full-time funeral director in charge and shall have a licensed  
 973 | funeral director reasonably available to the public during  
 974 | normal business hours for the ~~that~~ establishment. The full-time  
 975 | funeral director in charge is responsible for ensuring that the  
 976 | facility, its operation, and all persons employed in the  
 977 | facility comply with all applicable state and federal laws and  
 978 | rules. The full-time funeral director in charge must have an  
 979 | active license and may not be the full-time funeral director in



980 charge of any other funeral establishment or of any other direct  
 981 disposal establishment. Effective October 1, 2010, the full-time  
 982 funeral director in charge must hold an active, valid embalmer  
 983 license or combination license as a funeral director and an  
 984 embalmer. However, a funeral director may continue as the full-  
 985 time funeral director in charge without an embalmer or  
 986 combination license if, as of September 30, 2010:

987 (a) The funeral establishment and the funeral director  
 988 both have active, valid licenses.

989 (b) The funeral director is currently the full-time  
 990 funeral director in charge of the funeral establishment.

991 (c) The name of the funeral director was included, as  
 992 required in subsection (4), in the funeral establishment's most  
 993 recent application for issuance or renewal of its license or was  
 994 included in the establishment's report of change provided under  
 995 paragraph (12) (c).

996 (12) (a) A change in ownership of a funeral establishment  
 997 shall be promptly reported pursuant to procedures established by  
 998 rule and shall require the relicensure of the funeral  
 999 establishment, including reinspection and payment of applicable  
 1000 fees.

1001 (b) A change in location of a funeral establishment shall  
 1002 be promptly reported to the licensing authority pursuant to  
 1003 procedures established by rule. Operations by the licensee at a  
 1004 new location may not commence until an inspection by the  
 1005 licensing authority of the facilities, pursuant to rules of the  
 1006 licensing authority, has been conducted and passed at the new  
 1007 location.

1008        (c) A change in the funeral director in charge of a  
 1009 funeral establishment shall be promptly reported pursuant to  
 1010 procedures established by rule.

1011        (15)(a) A funeral establishment and each funeral director  
 1012 and, if applicable, embalmer employed at the establishment must  
 1013 display their current licenses in a conspicuous place within the  
 1014 establishment in such a manner as to make the licenses visible  
 1015 to the public and to facilitate inspection by the licensing  
 1016 authority. If a licensee is simultaneously employed at more than  
 1017 one location, the licensee may display a copy of the license in  
 1018 lieu of the original.

1019        (b) Each licensee shall permanently affix a photograph  
 1020 taken of the licensee within the previous 6 years to each  
 1021 displayed license issued to that licensee as a funeral director  
 1022 or embalmer.

1023        Section 22. Section 497.4555, Florida Statutes, is created  
 1024 to read:

1025        497.4555 Charges for preneed contract.—A preneed licensee  
 1026 may charge the purchaser of a preneed contract for processing,  
 1027 filing, and archiving the contract and for performing other  
 1028 administrative duties related to the contract. A preneed  
 1029 licensee must disclose these charges to the purchaser and  
 1030 include them on its standard printed price lists and other  
 1031 disclosure information provided to the public under s. 497.468.  
 1032 These charges are not subject to the trust deposit requirements  
 1033 in s. 497.458. The department may, subject to approval by the  
 1034 board, adopt rules to administer this section.

1035 Section 23. Paragraph (a) of subsection (13) of section  
 1036 497.456, Florida Statutes, is amended to read:

1037 497.456 Preneed Funeral Contract Consumer Protection Trust  
 1038 Fund.—

1039 (13) Regarding the Preneed Funeral Contract Consumer  
 1040 Protection Trust Fund, the licensing authority shall have  
 1041 authority to adopt rules for the implementation of this section,  
 1042 including:

1043 (a) Forms to be used in filing claims against the trust  
 1044 fund, which may require that the claims be sworn to or affirmed,  
 1045 and that the forms be signed, before a notary public.

1046 Section 24. Subsections (3) and (7) of section 497.464,  
 1047 Florida Statutes, are amended to read:

1048 497.464 Alternative preneed contracts.—

1049 (3) The contract must require that the purchaser make all  
 1050 payments required by the contract directly to the trustee or its  
 1051 qualified servicing agent ~~and that the funds shall be deposited~~  
 1052 ~~in this state,~~ subject to the terms of a trust instrument  
 1053 approved by the licensing authority. The licensing authority may  
 1054 adopt rules establishing procedures and forms for the submission  
 1055 of trust instruments for approval by the licensing authority,  
 1056 establishing criteria for the approval of such trust  
 1057 instruments, and specifying information required to be provided  
 1058 by the applicant in connection with submission of a trust  
 1059 instrument for approval. A copy of the trust instrument shall be  
 1060 made available to the purchaser, at any reasonable time, upon  
 1061 request.

1062           (7) The trustee shall disburse ~~Disbursement of funds~~  
 1063 ~~discharging a any preneed contract shall be made by the trustee~~  
 1064 ~~to the person issuing or writing the such contract upon the~~  
 1065 trustee's receipt of a certified copy of the contract  
 1066 beneficiary's death certificate or satisfactory of the contract  
 1067 ~~beneficiary and evidence, as the licensing authority shall~~  
 1068 define by rule, satisfactory to the trustee that the preneed  
 1069 contract has been fully performed in whole or in part. However,  
 1070 if the contract is only partially performed, the disbursement  
 1071 shall only cover that portion of the contract performed. In the  
 1072 event of any contract default by the contract purchaser, or in  
 1073 the event that the funeral merchandise or service contracted for  
 1074 is not provided or is not desired by the purchaser or the heirs  
 1075 or personal representative of the contract beneficiary, the  
 1076 trustee shall return, within 30 days after its receipt of a  
 1077 written request therefor, funds paid on the contract to the  
 1078 contract purchaser or to her or his assigns, heirs, or personal  
 1079 representative, subject to the lawful liquidation damage  
 1080 provision in the contract.

1081           Section 25. Paragraph (b) of subsection (3) and subsection  
 1082 (5) of section 497.602, Florida Statutes, are amended to read:

1083           497.602 Direct disposers, license required; licensing  
 1084 procedures and criteria; regulation.-

1085           (3) ACTION CONCERNING APPLICATIONS.-A duly completed  
 1086 application for licensure under this section, accompanied by the  
 1087 required fees, shall be approved if the licensing authority  
 1088 determines that the following conditions are met:

1089 (b) The applicant has taken and received a passing grade  
 1090 in a college credit course in ~~Florida~~ mortuary law and has taken  
 1091 and received a passing grade in a college credit course in  
 1092 ethics.

1093 ~~(5) DISPLAY OF LICENSE. There shall be adopted rules which~~  
 1094 ~~require each license issued under this section to be displayed~~  
 1095 ~~in such a manner as to make it visible to the public and to~~  
 1096 ~~facilitate inspection by the department. Each licensee shall~~  
 1097 ~~permanently affix a recent photograph of the licensee to each~~  
 1098 ~~displayed license issued to that licensee as a direct disposer.~~

1099 Section 26. Subsection (2) of section 497.603, Florida  
 1100 Statutes, is amended to read:

1101 497.603 Direct disposers, renewal of license.-

1102 (2) The licensing authority ~~There shall adopt be adopted~~  
 1103 ~~rules establishing~~ procedures, forms, and a schedule ~~and forms~~  
 1104 ~~and procedure~~ for the biennial renewal of direct disposer  
 1105 ~~licenses as direct disposers.~~ The rules ~~There shall require be~~  
 1106 ~~adopted by rule~~ continuing education ~~requirements~~ of up to 6  
 1107 classroom hours, including, but not limited to, a course on  
 1108 communicable diseases approved by the licensing authority, and  
 1109 ~~there may establish by rule be established~~ criteria for  
 1110 accepting alternative nonclassroom continuing education on an  
 1111 hour-for-hour basis, ~~in addition to an approved course on~~  
 1112 ~~communicable diseases that includes the course on human~~  
 1113 ~~immunodeficiency virus and acquired immune deficiency syndrome~~  
 1114 ~~required by s. 497.367, for the renewal of a license as a direct~~  
 1115 ~~disposer.~~

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1116 Section 27. Paragraph (c) of subsection (2), subsection  
 1117 (8), and paragraph (d) of subsection (9) of section 497.604,  
 1118 Florida Statutes, are amended, and subsection (10) is added to  
 1119 that section, to read:

1120 497.604 Direct disposal establishments, license required;  
 1121 licensing procedures and criteria; license renewal; regulation;  
 1122 display of license.-

1123 (2) APPLICATION PROCEDURES.-

1124 (c) The application shall name the licensed direct  
 1125 disposer or licensed funeral director ~~who will be acting as the~~  
 1126 a direct disposer in charge of the direct disposal  
 1127 establishment.

1128 (8) SUPERVISION OF FACILITIES.-

1129 (a) Effective October 1, 2010, each direct disposal  
 1130 establishment shall have one full-time ~~licensed direct disposer~~  
 1131 ~~or~~ licensed funeral director acting as the a direct disposer in  
 1132 charge. However, a licensed direct disposer may continue acting  
 1133 as the direct disposer in charge, if, as of September 30, 2010:

1134 1. The direct disposal establishment and the licensed  
 1135 direct disposer both have active, valid licenses.

1136 2. The licensed direct disposer is currently acting as the  
 1137 direct disposer in charge of the direct disposal establishment.

1138 3. The name of the licensed direct disposer was included,  
 1139 as required in paragraph (2)(c), in the direct disposal  
 1140 establishment's most recent application for issuance or renewal  
 1141 of its license or was included in the establishment's notice of  
 1142 change provided under subsection (7).

1143           (b) The licensed funeral director or licensed direct  
 1144 disposer in charge of a direct disposal establishment must be  
 1145 ~~and~~ reasonably available to the public during normal business  
 1146 hours for ~~the that~~ establishment ~~and~~. ~~Such person~~ may be in  
 1147 charge of only one direct disposal establishment facility. The  
 1148 ~~Such~~ licensed funeral director or licensed direct disposer in  
 1149 charge of the establishment is ~~shall be~~ responsible for making  
 1150 sure the facility, its operations, and all persons employed in  
 1151 the facility comply with all applicable state and federal laws  
 1152 and rules.

1153           (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.-

1154           (d) Each direct disposal establishment must display at the  
 1155 public entrance the name of the establishment and the name of  
 1156 the licensed direct disposer or licensed funeral director acting  
 1157 as ~~the a~~ direct disposer in charge of the ~~responsible for that~~  
 1158 establishment. A direct disposal establishment must transact its  
 1159 business under the name by which it is licensed.

1160           (10) DISPLAY OF LICENSE.-

1161           (a) A direct disposer establishment and each direct  
 1162 disposer, or funeral director acting as a direct disposer,  
 1163 employed at the establishment must display their current  
 1164 licenses in a conspicuous place within the establishment in such  
 1165 a manner as to make the licenses visible to the public and to  
 1166 facilitate inspection by the licensing authority. If a licensee  
 1167 is simultaneously employed at more than one location, the  
 1168 licensee may display a copy of the license in lieu of the  
 1169 original.

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1170        (b) Each licensee shall permanently affix a photograph  
1171 taken of the licensee within the previous 6 years to each  
1172 displayed license issued to that licensee as a direct disposer  
1173 or funeral director acting as a direct disposer.

1174        Section 28. Section 497.367, Florida Statutes, is  
1175 repealed.

1176        Section 29. This act shall take effect July 1, 2010.



**INSURANCE, BUSINESS &  
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 527 by Rep. Roberson  
Funeral, Cemetery, and Consumer Services Act**

**AMENDMENT SUMMARY**

**February 17, 2010**

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Amendment 1 (**lines 534-542**) by Rep. Roberson. Replaces the phrase "threat to the public" with "danger to the public" for consistency with existing statutory language. Clarifies criminal record disclosure requirements for license renewal applications.

Amendment 2 (**lines 568-589**) by Rep. Roberson. Clarifies criminal record disclosure requirements for license renewal applications, and removes redundant language.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 527 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Roberson offered the following: remove lines  
4 534-542 and insert:

5 (5) (a) The licensing authority may not issue, and effective  
6 July 1, 2011, may not renew, a license under this chapter to an  
7 applicant that has a criminal record required to be disclosed  
8 under s. 497.142(10) unless the applicant demonstrates that  
9 issuance of the license, according to rules adopted by the  
10 licensing authority, does not create a danger to the public.  
11 This paragraph does not require a licensee who previously  
12 disclosed a criminal record upon initial application or renewal  
13 of a license to disclose crimes for which he or she has been  
14 convicted, or has entered a plea of guilty or no contest, unless  
15 those crimes have occurred since the date of the initial  
16 application or renewal of a license, depending upon which is the  
17 most recent.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 527 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Roberson offered the following: remove lines  
4 568-589 and insert:

5 (10) (a) When applying for any license under this chapter, every  
6 applicant must disclose the applicant's criminal records in  
7 accordance with this subsection. When applying for renewal of  
8 any license under this chapter, every licensee shall only be  
9 required to disclose crimes required to be disclosed under this  
10 subsection since the issuance of the most recent license.

11 (b) The criminal record required to be disclosed shall be any  
12 crime listed in paragraph (c) for ~~of~~ which the person or entity  
13 required to make disclosure has been convicted or to which that  
14 person or entity entered a plea ~~in the nature of~~ guilty or no  
15 contest. Disclosure is ~~shall be~~ required ~~pursuant to this~~  
16 ~~subsection regardless of~~ whether adjudication is ~~was~~ entered or  
17 withheld by the court ~~in which the case was prosecuted.~~

18 (g) The licensing authority shall ~~may~~ adopt rules specifying  
19 forms and procedures to be used ~~utilized~~ by persons required to

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 527 (2010)

Amendment No. 2

20 disclose criminal records under this subsection. The licensing  
21 authority may conduct investigation and further inquiry of any  
22 person regarding any criminal record disclosed pursuant to this  
23 section.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557

Heavy Equipment Rental Property

SPONSOR(S): Workman

TIED BILLS:

IDEN./SIM. BILLS: SB 1170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Livingston	Cooper
2) Finance & Tax Council			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) provides a list of business activities that are taxable. A partial list includes:

- Sales of taxable items at retail.
- Rental or lease of personal property (for example, vehicles, machinery, equipment, or other goods).

Currently, "tangible personal property" is defined to mean all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

Property owners who lease, lend, or rent tangible personal property must file a tangible personal property return with the local property appraiser by April 1 each year. The DOR is authorized by statute to prepare and maintain guidelines to assist the local property appraisers in assessing the value of this taxable property for each particular county.

The bill authorizes an equipment rental company that rents heavy equipment to collect a fee on the rental of the equipment as a method of recovering the cost of tangible personal property taxes that are otherwise due as a result of the rental transaction.

The bill specifies that the purpose of the fee is to allow the rental company to recover annual tangible personal property taxes imposed upon such equipment. The bill further specifies that the fee may not exceed the amount of the tangible personal property tax imposed on such property by the county in which the property is located.

The bill defines the term "heavy equipment property" to mean industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS), code 532412.

The bill is not anticipated to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Before business may be conducted in Florida, an individual or other entity must first find out if the business activity or products used will be subject to taxation. If it is, it must be registered, in order to collect and pay the appropriate tax. The Department of Revenue (DOR) provides a list of activities and products that are taxable. A partial list includes:

- Sales of taxable items at retail.
- Rental or lease of personal property (for example, vehicles, machinery, equipment, or other goods).<sup>1</sup>

Currently, equipment described under the North American Industry Classification System (NAICS), code 532412, include:

53241 Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing

This industry comprises establishments primarily engaged in renting or leasing one or more of the following without operators: heavy construction, off-highway transportation, mining, and forestry machinery and equipment. Establishments in this industry may rent or lease products, such as aircraft, railroad cars, steamships, tugboats, bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.<sup>2</sup>

Currently, "personal property" for purposes of ad valorem taxation in Florida, is divided into four categories: "household goods," "intangible personal property," "inventory," and "tangible personal property" (also referred to as TPP). TPP as defined in s. 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return with

<sup>1</sup> [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html)

<sup>2</sup> <http://www.census.gov/econ/census02/naics/sector53/53241.htm>, February 9, 2010.

the local property appraiser by April 1 each year (See 193.062, F.S.). Property owners who lease, lend or rent property must also file.

Sections 195.032 and 195.062(1), F.S., authorize the Department of Revenue (DOR) to prepare and maintain guidelines to assist the local property appraisers in assessing the value of taxable property which is located in the appraisers county. The guidelines are intended to assist in the assessment of property. Section 195.002, F.S., specifies, in part:

The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. It shall also have supervision over tax collection and all other aspects of the administration of such taxes. The supervision of the department shall consist primarily of aiding and assisting county officers in the assessing and collection functions, with particular emphasis on the more technical aspects.

Currently, each sale, admission, storage, or rental charge is taxable unless the transaction is specifically exempt. Chapter 196, F.S., specifies numerous tax exemptions that apply to various activities and entities but does not exempt the tangible personal property taxes due on the rental of heavy equipment property.

Pursuant to chapter 212, F.S., sales tax is added to the price of taxable goods or services and is collected from the purchaser at the time of sale. Section 212.05, F.S., states, in part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

Florida's general sales tax rate is 6 percent.

The DOR does not distinguish between the terms "rental" or "lease" for purposes relating to "rental" of "heavy equipment property." For purposes of sales tax provisions, s. 212.02(10)(g), F.S., specifies:

(g) "Lease," "let," or "rental" also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without the transfer of the title of such property..."

Currently, chapter 196, F.S., does not contain any provision that grants specific authority to companies that rent heavy equipment property to charge a fee designed specifically to recover annual tangible personal property taxes paid upon the rental property.

### **Effect of Proposed Changes**

The bill authorizes an equipment rental company that rents "heavy equipment" to collect a fee on the rental of such equipment as a method of recovering the cost of tangible personal property taxes that are otherwise due as a result of the rental transaction.

The bill specifies that the purpose of the fee is to allow the rental company to recover annual tangible personal property taxes imposed upon such equipment. The bill further specifies that the fee may not exceed the amount of the tangible personal property tax imposed on such property by the county in which the property is located.

The bill defines the term "heavy equipment property" to mean "industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS), code 532412.



**B. SECTION DIRECTORY:**

Section 1. Creates s. 196.186, F.S., to statutorily authorize heavy equipment rental companies to charge and collect a fee to recover annual tangible personal property taxes imposed on the rental equipment.

Section 2. Effective date – July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Not anticipated to be significant if any. Indeterminate increase in sales tax collections may be recognized should the cost of renting heavy equipment increase due to the addition of the new fee as a part of the overall cost of the rental agreement and this charge exceeds current overhead costs that are reflected in rental charges pursuant to a rental agreement.

**2. Expenditures:**

The DOR anticipates no operational impact resulting from the provisions of the bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None anticipated.

**2. Expenditures:**

None anticipated.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The DOR notes that "The fee proposed by this section would be paid by one private party to another private party. This fee would need to be included in the private contractual arrangement of the two private parties."<sup>3</sup>

**D. FISCAL COMMENTS:**

The DOR comments that "This fee would not be paid to, paid by, or administered by the property appraiser, tax collector, or any other public entity involved in assessing, administering, or collection of property taxes. The DOR has no authority to administer or enforce the fees collected by rental companies."<sup>4</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

<sup>3</sup> DOR 2010 Bill Analysis, HB 557, DOR Legislative and Cabinet Services, dated 02/02/2010, page 1, available in committee files.

<sup>4</sup> Id.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DOR opines that "This provision is not relevant to any other provision of Chapter 196, F.S. As such, this provision does not belong in Chapter 196, F.S."<sup>5</sup>

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>5</sup> Id.

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A bill to be entitled  
 An act relating to heavy equipment rental property;  
 creating s. 196.186, F.S.; authorizing certain rental  
 companies to collect a fee on certain heavy equipment  
 property rentals for certain purposes; providing a  
 limitation; providing a definition; providing an effective  
 date.

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

Section 1. Section 196.186, Florida Statutes, is created  
 to read:

196.186 Heavy equipment rental property tax recovery fee.—  
An equipment rental company that rents heavy equipment may  
collect a property tax recovery fee on the rental of such  
equipment. The purpose of the fee is to allow the company to  
recover annual tangible personal property taxes imposed upon  
such equipment and collected. The fee may not exceed the amount  
of the tangible personal property tax imposed on such property  
by the county in which the property is located. For purposes of  
this section, the term "heavy equipment property" means  
industrial or construction equipment and includes, but is not  
limited to, equipment described under North American Industry  
Classification System (NAICS) code 532412.

Section 2. This act shall take effect July 1, 2010.

**INSURANCE, BUSINESS &  
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 557 by Rep. Workman  
Heavy Equipment Rental Property**

**AMENDMENT SUMMARY**

**February 17, 2010**

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Strike all amendment by Rep. Workman with title amendment

The strike all continues to authorize a fee to be charged on heavy equipment rental property, in order to recover the expenses of paying tangible personal property taxes on the rental equipment.

The strike all differs from the bill, as filed, in the following areas:

- creates an unnumbered section of the statutes;
- requires disclosure of the fee in the rental agreement;
- bases the calculation of the tax on the county where the business is located rather than the county where the rental property is located; and
- defines "short term rental" to mean an agreement for a term of less than one year.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **HB 557**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Insurance, Business, &  
 2 Financial Affairs Policy Committee  
 3 Representative Workman offered the following:

**Amendment (with title amendments)**

Remove everything after the enacting clause and insert:

4  
 5 **Amendment (with title amendments)**  
 6 Remove everything after the enacting clause and insert:  
 7 Section 1. Heavy equipment rental; tangible personal  
 8 property tax recovery fee. A person who engages in the business  
 9 of renting heavy equipment under short term rental agreements  
 10 may collect a tangible personal property tax recovery fee on the  
 11 rental of heavy equipment. The purpose of the fee is to allow  
 12 the owner of the heavy equipment to recover the tangible  
 13 personal property taxes imposed upon the equipment. The amount  
 14 of the fee must be disclosed in the rental agreement. The rate  
 15 of the property tax recovery fee shall not exceed the rate of  
 16 the tangible personal property tax imposed on such property by  
 17 the county in which the equipment rental business is located.  
 18 For purposes of this section, the term "heavy equipment" means  
 19 industrial or construction equipment and includes, but is not  
 20 limited to, equipment described in North American Industry  
 21 Classification System (NAICS) Code 532412, as published in 2007

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

22 by the Office of Management and Budget, Executive Office of the  
23 President. For purposes of this section, the term "short term  
24 rental agreement" includes only those lease or rental agreements  
25 for a term of less than 365 days or an at-will contract that  
26 does not specify the length of time of the contract. "Short term  
27 rental agreement" does not include any extension or renewal of a  
28 lease contract with an original term of one year or more.

29 Section 2. This act shall take effect July 1, 2010.

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**T I T L E A M E N D M E N T**

33

Remove the entire title and insert:

34

An act relating to tangible personal property tax transparency;  
35 authorizing a person who rents heavy equipment to disclose the  
36 tangible personal property tax recovery fee in the rental  
37 agreement; defining the term "heavy equipment"; providing an  
38 effective date.