Session Law 83-316

Florida Senate & House of Representatives

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Recommended Citation
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<th>Sess. Law #</th>
<th>Sec. #</th>
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<tr>
<td>SB 12-B</td>
<td>SB 12-B, HB 1086, HB 11-13</td>
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<th>JLMC Hist. Cites</th>
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### COMMITTEE RECORDS

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<td>Bill files: SIM B</td>
<td>19/1132</td>
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<td>Sunset materials: PCB, Ch. 659</td>
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### Senate/House Journals

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<th>Date</th>
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### Committee/Floor Tapes

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### Other Documentation

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**NOTES**

...
Honorable Tom Gustafson  
Chairman, House Insurance Committee  
18 House Office Building  
Tallahassee, Florida 32301  

Dear Mr. Chairman:

Enclosed is the Department of Insurance's sunset review recommendations relating to Chapter 639, Florida Statutes, Burial Insurance and Contracts.

My staff and I look forward to working with you and others in reviewing these areas in the upcoming workshop sessions. In the meantime, we will continue our review, and if we should have any additional recommended changes based on any additional information, we will forward them to you as soon as possible.

If you should have any questions, please contact me or any members of the Department's sunset team.

Sincerely,

Bill Gunter  
State Treasurer and Insurance Commissioner

BG/Wm  
Enclosure

AUG 6 1982
BURIAL INSURANCE AND CONTRACTS

Policy and Scope.

Contrary to public policy in any person receives, holds, controls, or manages funds or proceeds received from the sale of or from a contract to sell, burial supplies and equipment and funeral services, or any one or combination of them, where payments for same are made either outright or on an installment basis, prior to the demise of the person or persons so purchasing them, or for whom they are purchased, unless such person holds a license to operate a funeral home, chapel, mortuary, or funeral establishment or

History.-S. 2, ch. 28211, 1981; s. 1, ch. 65-391; s. 2, ch. 81-318.

Note.-Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 1.61 in advance of that date.

819 Definitions. As used in this chapter:

(1) "Person" means and shall include:

(a) Natural persons, partnerships, firms, associations, and corporations, including agents and employees thereof, residing in or doing business in the state, which person must be licensed by the laws of this state to engage in the profession of funeral directors when such person holds a license to operate a funeral home, chapel, mortuary, or funeral establishment; or

(b) Persons who are engaged in the preneed sale of burial supplies and who are not exempt under s. 619.20.

(2) "Preneed funeral service contract" means any contract other than a contract of insurance, under which, for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish funeral services or burial supplies and equipment.

(3) "Funeral service or services" as used in this chapter shall mean those services normally performed by funeral directors, including the sale of burial supplies and equipment, but shall not include those services normally performed by a cemetery, including the sale by the cemetery of lands or interests therein, caskets, vaults, or vaults constructed or to be constructed in a mausoleum or columbarium or affixed to the real property.

(4) "Department" means the Department of Insurance.

(5) "Preneed burial supply or services contract" means any contract under which, for specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish burial supplies or services.

History.-S. 1, ch. 28211, 1981; s. 2, 3, ch. 65-391; ss. 13, 15, ch. 64-106; s. 271, ch. 77-377; s. 1, ch. 77-438; s. 245, ch. 78-403; s. 19, ch. 80-238, s. 2, ch. 81-318.

Note.-Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 1.61 in advance of that date.

*All changes are intended to be editorial in nature to enhance the readability of the existing statutes unless indicated otherwise.
639.165 Administrative fine in lieu of revocation or suspension of certificate of authority.

(1) If the Department finds that one or more grounds exist for the discretionary suspension or revocation of a certificate of authority issued under this Chapter it may, in lieu of such suspension or revocation, impose a fine upon the certificate holder in an amount not to exceed $10,000 for each non-willful violation and a fine not to exceed $100,000 for each willful violation.

(2) The Department may grant not more than 30 days from the date of the order for the payment of any fine. The fine shall be deposited into the Insurance Commissioner's Regulatory Trust Fund.

Reason: The proposed change provides the Department with more flexibility in dealing with violations.
This chapter may make it a false, fraudulent, or deceptive practice to include, but not be limited to, a representation that the funeral services or supplies being offered have a value in excess of that which such funeral services or supplies are being offered to the public at large or any substantial group thereof.

History.--s. 15, ch. 65-183, s. 11, ch. 73-415; s. 2, ch. 81-318.

Note.--Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

639.185 Unfair Trade Practices. Every person holding a certificate of authority under the provisions of this chapter and his representatives and employees shall be subject to the provisions of part VII of chapter 626 (unfair insurance trade practices).

Reason: Burial insurance certificate holders are currently exempt from Little FTC Act New Section to make the Insurance Unfair Trade Practices Act applicable to burial insurance certificate holders.

Note: 639.19 and 639 20 transferred to page 1 as (2) and (3)

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Form and Rule. The administration and enforcement of the provision of this act are vested in the department which is hereby directed to prepare and furnish all forms necessary under this chapter, including forms for applications for certificates of authority, for annual statements, for any required reports, and for preneed funeral service contracts and preneed burial supply contracts. It is directed to promulgate such rules, within the standards of this act, considered by it to be necessary to effectuate the purposes of this chapter.

History. -- s. 1, ch. 28711, 1951; s. 24, ch. 57-1; s. 5, ch. 65-393; s. 11, 35, ch. 69-106; s. 2, ch. 77-348; s. 2, ch. 81-318.

Note. -- Amended effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

Certificate of Authority Required. No person shall receive, hold, control, or manage any funds received as payment on any preneed funeral service contract or preneed burial supply contract until such person has possessed of a certificate of authority, or annual thereof, issued by the department under the provisions hereinafter stated. An original certificate of authority shall expire on March 31 of every second year, and annually thereafter, or prior to March 31 of the year preceding renewal, shall be renewed under conditions hereinbefore set forth.

History. -- s. 4, ch. 28711, 1951; s. 24, ch. 57-1; s. 5, ch. 65-393; s. 13, 15, ch. 69-106; s. 3, ch. 77-348; s. 2, ch. 81-318.

Note. -- Amended effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

Certificate of Authority; Annual Statement; Renewal.

An application to the department for a certificate of authority shall be accompanied by the statement and other matters described below in the form prescribed by the department. Annually thereafter on or before March 1, the person engaged in the sale of preneed funeral service contracts shall file with the department a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31, together with information and data which may be required by the department.

Reason: To clarify that the financial statement filing requirement is for preceding calendar year ending December 31.

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(b) The name and address of the place of business of the person offering to write preneed funeral service contracts or preneed burial supply contracts.

(c) The person offering the statement:

1. Was sufficient funds available during the calendar year to perform his obligations under his contract;
2. Has maintained 100 percent of the funds received under contracts issued by himself as indicated above;
3. Has disclosed all interest, dividends, or accretions which have been earned by said funds, in accordance with this act and rules promulgated thereunder, and
4. Has complied with this act and applicable provisions of this chapter.

Reason: The change enhances minimum financial standards to become financially solvent and has.

Documentation that

the provisions of this chapter

applicable
Any
chapter
the
chapter

of authority
for renew the
any rules prescribed thereunder

1639.11 Disposition of proceeds received on contracts.

(1) All of the funds paid to or collected by any person for the preneed sale of, or from a preneed contract to sell, funeral services or burial supplies shall, within 30 days after receipt thereof by such person, be deposited in this state under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company. Said trust agreement shall be submitted to the department of insurance for approval and filing.

(2) Delivery of funeral merchandise or burial supplies prior to death of the person for whom they are purchased shall not constitute performance or fulfillment, either wholly or in part, of any preneed funeral service contract or preneed burial supply contract entered into after July 1, 1977.
1. At trustor's death, the trustee shall disburse income on and appreciation of trust funds to persons certified under "this act to issue or write preneed funeral service or burial supply contracts. Such disbursement of income and appreciation shall be made in accordance with the terms of the trust instrument and the preneed contract. The trustee shall make regular valuations of assets held in trust. Any person who withdraws appreciation in the value of trust, other than the pro rata portion of such appreciation which may be withdrawn upon the death of a contract beneficiary or upon cancellation of a preneed funeral service or burial supply contract, shall be required to make additional deposits from his own funds to restore the aggregate value of assets at the value of funds deposited in trust. The trustee shall provide a report of such valuation to the provider at least quarterly.

Reason To specify the purpose of the valuation.

Chapter 1639, 13 cancellation of or default on contracts.-

(1) Upon the termination by cancellation or default of a preneed funeral service or preneed burial supply contract, the contract purchaser may demand from a person authorized under this chapter to have authority to issue or write such contract a refund of the entire amount actually paid on such contract. Such refund shall be made within 30 days after receipt of the contract purchaser's written request. The refund shall be made within 30 days after receipt of the contract purchaser's written request. The expiration of a preneed funeral service or preneed burial supply contract may not cancel or void the contract unless the purchaser is in default.

(2) No preneed funeral service or preneed burial supply contract shall restrict any contract purchaser who is receiving public assistance from making his contract irrevocable in accordance with the rules of the Department of Health and Rehabilitative Services.

Chapter 1639, 13 payment of funds upon death of named beneficiary.-Disbursements of funds discharging any preneed funeral service or preneed burial supply contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified photocopy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral service or preneed burial supply contract has been fully performed.

In the event of any contract default by the contract purchaser, or in the event the contract service and supplies...
Reason. This change clarifies what examination expenses may be charged.

See 5A for new sections 639.16, 639.166, and 639.167

Reason. Strengthens and clarifies disciplinary provisions.
639.22 Penalty for violation.—Except as otherwise provided in this part, any person who knowingly makes a false or otherwise fraudulent application for license or registration under this part, or who knowingly violates any provision hereof, in addition to being subject to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each instance of violation shall be considered a separate offense.

Reason: New section providing a general penalty for persons knowingly violating provisions of the chapter.
639.16 Revocation or suspension of certificate of authority.

(1) The department shall deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed funeral service contracts or preneed burial supply contracts upon a determination that any one or more of the following applicable grounds exist:

(a) Lack of one or more of the qualifications for the certificate of authority;

(b) Material misstatement, misrepresentation, or fraud in obtaining the certificate of authority or in attempting to obtain same;

(c) Willfully used the certificate of authority to circumvent the provisions of this chapter;

(d) Willful misrepresentation of any preneed funeral service contract or any preneed burial supply contract.

(e) Fraudulent or dishonest practice in conduct of business under the certificate;

(f) Willfully failed to maintain the funds received from contracts in the unimpaired state, and disbursed income on, and appreciation of, trust or escrowed funds, as described in s. 639.11;

(g) Upon proper request, willfully failed to cancel a contract or refund that part of the amount paid on the contract as required by s. 639.13;

(h) Willfully failed to secure the release, upon the death of a beneficiary, of the entire amount received on a contract as required by s. 639.14; or

(i) Refused to produce records in connection with the business.

(2) The department may deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed funeral service contracts or preneed burial supply contracts upon a determination that the person has violated any provision of this chapter or rule or order of the department for which suspension is not mandatory.
639.166  Order, notice of suspension or revocation of certificate of authority; effect; publication.-

(1) Suspension or revocation of the certificate of authority shall be by the department's order. The suspended or revoked certificate holder shall not solicit or write any new business in this state during the period of any such suspension or revocation.

(2) In its discretion the department may cause notice of any such suspension or revocation to be published in one or more newspapers of general circulation published in this state.

(3) Upon revocation of a certificate of authority the department may institute proceedings in the Circuit of Leon County for liquidation or the appointment of a receiver appointed by the court for the protection of purchasers.

639.167  Duration of suspension; obligations during suspension period, reinstatement.-

(1) Suspension of a certificate of authority shall be for such period, not to exceed 1 year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order upon which the suspension is modified, rescinded or reversed.

(2) During the period of suspension the suspended certificate holder shall file its annual statement, pay license fees and taxes as required under this chapter as if the certificate had continued in full force.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not otherwise terminated) the suspended certificate holder's certificate of authority shall automatically reinstate unless the department finds that the causes of the suspension have not been removed or that the suspended certificate holder is otherwise not in compliance with the requirements of this chapter. If not so automatically reinstated, the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the suspended certificate holder to continue the certificate during the suspension period, whichever event first occurs.
### ISSUE

<table>
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<th>I. Registration of Preneed Agents</th>
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<td><strong>PRESENT SITUATION</strong></td>
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<td>Currently, section 470.028, F.S., requires that any person who sells preneed funeral service contracts or direct disposition contracts must register annually with the Department of Professional Regulation and pay a registration fee not to exceed $50.</td>
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<tr>
<td><strong>ALTERNATIVES</strong></td>
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<tr>
<td>1. Retain present situation.</td>
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<tr>
<td>2. Require all persons selling preneed contracts to register with the Department of Insurance biennially and pay a fee not to exceed $40. In addition, remove the requirement that such persons must also register with the Department of Professional Regulation.</td>
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<td>Source: Florida Funeral Directors Association. (Amendment #1)</td>
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<th>II. Annual Statement Proof of Financial Solvency</th>
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<td><strong>PRESENT SITUATION</strong></td>
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<tr>
<td>Section 639.10 - Currently, the person submitting the annual statement to the Department of Insurance must show that he had sufficient funds available during the calendar year to perform his contract obligations.</td>
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<td><strong>ALTERNATIVES</strong></td>
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<tr>
<td>1. Retain present situation.</td>
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<tr>
<td>2. Require the person submitting the annual statement to show proof that he is financially solvent and has sufficient funds available during the calendar year to perform his contract obligations.</td>
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<tr>
<td>Source: Department of Insurance. (Amendment #2)</td>
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<td>III. Examinations</td>
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<td>IV. Unfair Trade</td>
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<td>V. Injunctions</td>
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<td>ISSUE</td>
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| VI. Disclosure of Certain Trusts and Accounts. | Currently, there exist certain accounts and trusts which serve the purpose of providing for funeral services in the future. Such accounts and trusts often name the funeral home or the funeral director as the beneficiary. Many of these accounts and trusts were established without the knowledge or consent of the funeral director. There is no provision in chapter 639, F.S., which addresses these accounts and trusts. | 1. Retain present situation.  

2. Create a new section requiring the disclosure of such accounts and trusts when applying for an initial certificate of authority and thereafter on the annual statement. This disclosure would not disqualify an applicant from obtaining a certificate.  

Source: Florida Morticians Assn. |
| VII. Illegal Tying Arrangements | Currently, 559.409, F.S., makes it illegal to tie the purchase of any grave space to the purchase of a marker or monument. There is no provision in chapter 639, F.S., which specifically prohibits the tying of the purchase of funeral or direct disposition services to the purchase of funeral merchandise. | 1. Retain present situation.  

2. Specifically prohibit the tying of a purchase for funeral or direct disposition services to the purchase of funeral merchandise.  

Source: J. Paul Carbridge, President of Manasota Memorial Park. |
I. Registration of Preneed Agents

Currently, section 470.028, F.S., requires that any person who sells preneed funeral service contracts or direct disposition contracts must register annually with the Department of Professional Regulation and pay a registration fee not to exceed $50.

II. Annual Statement—Proof of Financial Solvency

Section 639.10—Currently, the person submitting the annual statement to the Department of Insurance must show that he had sufficient funds available during the calendar year to perform his contract obligations.

<table>
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</table>
| I. Registration of Preneed Agents | Currently, section 470.028, F.S., requires that any person who sells preneed funeral service contracts or direct disposition contracts must register annually with the Department of Professional Regulation and pay a registration fee not to exceed $50. | 1. Retain present situation.  
2. Require all persons selling preneed contracts to register with the Department of Insurance biennially and pay a fee not to exceed $40. In addition, remove the requirement that such persons must also register with the Department of Professional Regulation.  
Source: Florida Funeral Directors Association. (Amendment #1) |
| II. Annual Statement—Proof of Financial Solvency | Section 639.10—Currently, the person submitting the annual statement to the Department of Insurance must show that he had sufficient funds available during the calendar year to perform his contract obligations. | 1. Retain present situation.  
2. Require the person submitting the annual statement to show proof that he is financially solvent and has sufficient funds available during the calendar year to perform his contract obligations.  
Source: Department of Insurance. (Amendment #2) |
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<th>PRESENT SITUATION</th>
<th>ALTERNATIVES</th>
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| III. Examinations | Section 639.15 - Currently, the department is required to examine the business of any person writing preneed contracts at least once every 3 years. The examinations are to be conducted in the same manner as for insurance companies and at the expense of the person being examined. | 1. Retain present situation.  
2. Repeal the examination requirement.  
Source: Florida Mortician's Assn.  
(Amendment #3)                                                                                                                                                                                                 |
| IV. Unfair Trade Practices | Currently, part VII of chapter 626, F.S., Unfair Insurance Trade Practices, applies only to those areas regulated by the Department of Insurance within the Insurance Code (chapters 624 - 632, F.S.). In addition, section 510.212, F.S., provides that the "Little FTC Act" does not apply to any person or activity regulated by the Department of Insurance. | 1. Retain present situation.  
2. Specify, in chapter 639, F.S., certain unfair and deceptive acts or practices and provide the Department of Insurance with enforcement powers.  
Source: Department of Insurance.  
(Amendment #4)                                                                                                                                                                                                 |
| V. Injunctions | 639.16 - Currently, the Department of Insurance may revoke a certificate of authority under certain conditions. In addition, the department may request the Circuit Court of Leon County to issue an order to show cause why the business and affairs of the certificate holder should not be liquidated and a receiver appointed. The department may also request an injunction restraining such person from transacting further business. | 1. Retain present situation.  
2. Provide that the Department of Insurance may bring an action to enjoin a violation of chapter 639, F.S., by any person in the circuit court in and for the county in which the violation occurred.  
Source: Department of Insurance.  
(Amendment #5)                                                                                                                                                                                                 |
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<th>ALTERNATIVES</th>
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| VI. Disclosure of Certain Trusts and Accounts. | Currently, there exist certain accounts and trusts which serve the purpose of providing for funeral services in the future. Such accounts and trusts often name the funeral home or the funeral director as the beneficiary. Many of these accounts and trusts were established without the knowledge or consent of the funeral director. There is no provision in chapter 639, F.S., which addresses these accounts and trusts. | 1. Retain present situation.  
2. Create a new section requiring the disclosure of such accounts and trusts when applying for an initial certificate of authority and thereafter on the annual statement. This disclosure would not disqualify an applicant from obtaining a certificate.  
Source: Florida Morticians Assn. |
| VII. Illegal Tying Arrangements    | Currently, 559.409, F.S., makes it illegal to tie the purchase of any grave space to the purchase of a marker or monument. There is no provision in chapter 639, F.S., which specifically prohibits the tying of the purchase of funeral or direct disposition services to the purchase of funeral merchandise.                                                                 | 1. Retain present situation.  
2. Specifically prohibit the tying of a purchase for funeral or direct disposition services to the purchase of funeral merchandise.  
Source: J. Paul Carbridge, President of Manasota Memorial Park. |
Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session H

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
05/30/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; Iden., Sim., House Bill Substitute; Laid on Table Under Rule; Iden., Sim., Compare Bill Passed; Refer to HB 115 (Ch. 83-116) - SJ 00056

05/30/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; Iden., Sim., House Bill Substitute; Laid on Table Under Rule; Iden., Sim., Compare Bill Passed; Refer to HB 115 (Ch. 83-116) - SJ 00056
1983 SPECIAL SESSION "B"
JUNE 15 - JUNE 24

STATISTICS
CHAPTER NUMBERS AND EFFECTIVE DATES
HISTORY OF SENATE BILLS
HISTORY OF HOUSE BILLS
SPONSOR REPORT BY MEMBER
CITATOR - BILLS INTRODUCED
CITATOR - BILLS PASSED
  (REFER TO COMBINED PASSED BILL CITATOR FOR ALL SESSIONS)
SUBJECT INDEX - BILLS INTRODUCED
SUBJECT INDEX - BILLS PASSED
  (REFER TO COMBINED PASSED BILL SUBJECT INDEX FOR ALL SESSIONS)
HISTORY OF 1983 REGULAR SESSION VETOED BILLS

SPECIAL SESSION "B"
S 0009

GENERAL BILL BY JUWAN (SIMILAR CS/H 0017)

WORKERS' COMPENSATION: LIMITS CERTAIN ADVANCE PAYMENTS; MODIFIES CURRENT METHOD OF DERIVING ADMINISTRATIVE COSTS; MODIFIES MAXIMUM ASSESSMENT RATE; PROVIDES FOR PAYMENT OF SUPPLEMENTAL BENEFITS, ETC. AMENDS/REVIVES/REPEALS CH. 400.20, .515; CREATES 440.5151; REENACTS 440.5616; EFFECTIVE DATE: 07/08/83.

06/15/83 Senate filed; introduction allowed - SJ 00002; introduced, referred to commerce committee.

06/16/83 Senate introduced on calendar; read second time; passed, yeas 36 nays 0 - SJ 00004

06/18/83 Senate withdraw from commerce - SJ 00008; placed on special order calendar; passed; yeas 36 nays 0 - SJ 00010

06/18/83 Senate agreed to in messages; reception of committee reports. 07/07/83 approved by governor chapter no. 83-310

S 0010 GENERAL BILL BY THOMAS (IDENTICAL H 00008)

AMBULANCE SERVICE CONTRACTS: (SUNSET) PROVIDES EDITORIAL CHANGES RE RULES OF INSURANCE DEPT.; CHANGES RENEWAL DATE FOR CERTIFICATES OF AUTHORITY FOR AMBULANCE SERVICE ASSOCIATIONS; CHANGES REQUIREMENT FOR CERTIFICATES OF AUTHORITY, ETC. AMENDS/REVIVES/REPEALS CH. 638; REPEALS 638.24, .25; EFFECTIVE DATE: 10/01/83.

06/15/83 Senate note: similar to SB 86 & HB 1084 regular session; files introduction allowed; introduced, referred to commerce - SJ 00003

06/16/83 Senate withdraw from commerce - SJ 00010; placed on special order calendar; passed; yeas 36 nays 0 - SJ 00010

06/18/83 Senate agreed to in messages; reception of committee reports. 07/07/83 approved by governor chapter no. 83-317

S 0011 GENERAL BILL BY THOMAS (SIMILAR H 00116)

INSURANCE DEPARTMENT: (SUNSET) PROVIDES FOR HOSPITAL COST CONTAINMENT BD. WITHIN INSURANCE DEPT.; REDUCES NUMBER OF PERSONS WHO MAY FORM PHARMACEUTICAL SERVICE PLAN CORP.; PROVIDES CHANGES IN PROVISIONS RE RATES, ETC. AMENDS/REVIVES/REPEALS CH. 631; AMENDS 212.08, 212.09; EFFECTIVE DATE: 10/01/83.

06/15/83 Senate note: similar to SB 108 & HB 1059 regular session; files introduction allowed; introduced, referred to commerce - SJ 00003

06/16/83 Senate withdraw from commerce - SJ 00007; placed on special order calendar; passed; yeas 36 nays 0 - SJ 00017

06/18/83 Senate agreed to in messages; reception of committee reports. 07/07/83 approved by governor chapter no. 83-316

S 0012 GENERAL BILL BY THOMAS (SIMILAR H 00111)

BURIAL INSURANCE: (SUNSET) PROVIDES FOR EXPIRATION & RENEWAL OF CERTIFICATES OF AUTHORITY; PROVIDES CERTAIN DISCLOSURES; PROVIDES FOR APPROVAL OF FORMS; PROVIDES FOR DISPOSITION OF FUNDS RECEIVED ON PRENED CONTRACTS, ETC. AMENDS/REVIVES/REPEALS CH. 639; REPEALS 639.00, .18, .19; AMENDS CH. 490; EFFECTIVE DATE: 10/01/83.

06/15/83 Senate note: similar to SB 201 & HB 1086 regular session; files introduction allowed; introduced, referred to commerce - SJ 00009

06/16/83 Senate agreed to in messages; reception of committee reports. 07/07/83 approved by governor chapter no. 83-317

SPECIAL SESSION "B"
06/15/83 SENATE ORDERED EMBOLLED - SJ 00071
06/16/83 HOUSE IN MESSAGES; RECEIVED; INTRODUCTION ALLOWED; PLACED ON SPECIAL ORDER CALENDAR; READ SECOND TIME; READ THIRD TIME; PASSED; YEAS 31 NAYS 0 - SJ 00028
07/07/83 APPROVED BY GOVERNOR CHAPTER NO. 83-316

S 0013 GENERAL BILL BY THOMAS (IDENTICAL H 00055)
DENTAL SERVICE PLANS (SUNSET) REDUCES NUMBER OF PERSONS WHO MAY FORM OPTOMETRIC SERVICE PLAN CORPORATION; DELETES REQUIREMENT THAT INSURANCE DEPT. CONSENT TO CORP. CHARTER OR CERTIFICATE; PROVIDES CHANGES IN PROVISIONS RE DATES, ETC. AMENDS REVISED/SUNSET ACT CH. 637; AMENDS § 220.08; EFFECTIVE DATE: 10/01/83.
06/15/83 SENATE NOTE: SIMILAR TO SB 125 & HB 1058 REGULAR SESSION.
06/16/83 SENATE ORDERED EMBOLLED - SJ 00071
06/17/83 HOUSE IN MESSAGES; RECEIVED; INTRODUCTION ALLOWED; PLACED ON SPECIAL ORDER CALENDAR; READ SECOND TIME; READ THIRD TIME; PASSED; YEAS 31 NAYS 0 - SJ 00028
06/22/83 SENATE ORDERED EMBOLLED - SJ 00071
06/23/83 SENATE ORDERED EMBOLLED - SJ 00071
07/07/83 APPROVED BY GOVERNOR CHAPTER NO. 83-317

S 0014 GENERAL BILL BY BEARD (SIMILAR CS/H 0013)
MOTOR VEHICLE/MOBILE HOMES; PROVIDES FOR ADMINISTRATION & ENFORCEMENT BY H.S.W.P. DEPT.; MODIFIES REQUIREMENTS FOR MOTOR VEHICLE REGISTRATION; PROVIDES FOR REGISTRATION UNDER SPECIFIC TAX CODE; PROVIDES TAXES TO BE COLLECTED BY DEPARTMENT OF REVENUES TO BE SPLIT BETWEEN DEPARTMENT & COUNTY AS DEPARTMENT AGENTS; MODIFIES RECORD KEEPING REQUIREMENTS; AMENDS CH. 320; EFFECTIVE DATE: 10/01/83.
06/15/83 SENATE NOTE: SIMILAR TO SB 34 & § 376; AMENDS § 5-A (CH. 83-31); FILED; INTRODUCTION ALLOWED; INTRODUCED, REFERRED TO TRANSPORTATION - SJ 00044; ON COMMITTEE AGENDA - TRANSPORTATION 3/14/83, AM. 2 - SJ 00077; COMM. REPORTS: FAVORABLE, PLACED ON CALENDAR BY TRANSPORTATION - SJ 00029
06/16/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED AS AMENDED; YEAS 38 NAYS 0 - SJ 00028
06/16/83 HOUSE IN MESSAGES; RECEIVED; INTRODUCTION ALLOWED; PLACED ON SPECIAL ORDER CALENDAR; READ SECOND TIME; AMENDMENTS ADOPTED; READ THIRD TIME; PASSED AS AMENDED; YEAS 95 NAYS 15 - SJ 00004; RECONSIDERED TO BE PLACED ON SPECIAL ORDER CALENDAR; READ AS AMENDED; YEAS 99 NAYS 16 - SJ 00065
06/16/83 SENATE IN MESSAGES; CONCLUDED; PASSED AS AMENDED; YEAS 37 NAYS 0 - SJ 00028
07/07/83 APPROVED BY GOVERNOR CHAPTER NO. 83-318

S 0015 GENERAL BILL BY THOMAS (SIMILAR CS/H 0007)
CONTINUING CARE CONTRACTS; SUNSET; PROVIDES FOR DEPOSIT OF CERTAIN MONEYS INTO INSURANCE COMMISSIONER'S TRUST FUND; REQUIRES INSURANCE DEPT. APPROVAL FOR EXPANSION UNDER CERTAIN CONDITIONS; PROVIDES FOR CERTIFICATE OF AUTHORITY, ETC. AMENDS REVISED/ADAPTS CH. 631; AMENDS CH. 154 & 381; EFFECTIVE DATE: 10/01/83.
06/15/83 SENATE NOTE: SIMILAR TO SB 167 & HB 402 REGULAR SESSION.
06/16/83 SENATE WITHDRAWN FROM COMMERCE - SJ 00017; PLACED ON SPECIAL ORDER CALENDAR; READ AS AMENDED; YEAS 37 NAYS 0 - SJ 00028
06/24/83 SENATE Laid on Table Under Rule, IDEN./SIM./COMPARE BILL PASSED, REFER TO HB 7-8 (CH. 83-281) - SJ 00090

S 0016 GENERAL BILL BY MAXWELL (COMPARABLE H 0044)
EDUCATION: CREATES PLA. HIGH TECHNOLOGY & INDUSTRY COUNCIL, A NOT-FOR-PROFIT CORP. ESTABLISHES POWERS & DUTIES OF COUNCIL & PROVIDES CONTINUED ON NEXT PAGE

SPECIAL SESSION "M"
06/24/83 HOUSE DIED ON CALENDAR; REFER TO SB 23-8 (CH. 83-322)

H 0010 GENERAL BILL/C.S. BY COMMERCE, BILL (SIMILAR ENG'S 001/4)
H 0011 HOME WARRANTY ASSOCIATIONS (SUNSET) AMENDS PROVISIONS ON PRE-WARRANTIES AND RULES OF INSURANCE DEPT. & SECURITY DEPOSITS; PROVIDES FOR DEPOSIT OF AMOUNTS IN SECURE INSTITUTIONS UNDER CERTAIN CIRCUMSTANCES; REQUIRES NOTICE OF SURETY BOND TERMINATION, ETC. AMENDS/REVISES/READOPTS CH. 63; REPEALS 634.309, .316, EFFECTIVE DATE: 10/01/83.
06/14/83 HOUSE NOTE: SIMILAR TO HB 1067 & SB 207 REGULAR SESSION;
FILED
06/15/83 HOUSE INTRODUCTION ALLOWED; INTRODUCED, REFERRED TO COMMERCE
HJ 00007; ON COMMITTEE AGENDA --- COMMERCE, 413 C, 4:00 PM, 06/15/83.
06/10/83 HOUSE COMM. REPORT C/S PLACED ON CALENDAR BY COMMERCE
06/24/83 HOUSE DIED ON CALENDAR; REFER TO SB 24-6 (CH. 83-323)

H 0012 GENERAL BILL BY BELL (SIMILAR S 0012)
H 0013 BURIAL INSURANCE (SUNSET) PROVIDES FOR EXPIRATION & RENEWAL OF CERTIFICATES OF AUTHORITY; REQUIRES CERTAIN DISCLOSURES; PROVIDES FOR APPROVAL OF FORMS; PROVIDES FOR DISPOSITION OF FUNDS RECEIVED ON PRENEED CONTRACTS, ETC. AMENDS/REVISES/READOPTS CH. 63; REPEALS 639.06, 14.191, EFFECTIVE DATE: 10/01/83.
06/14/83 HOUSE NOTE: SIMILAR TO HB 1086 & LS 201 REGULAR SESSION;
FILED
06/15/83 HOUSE INTRODUCTION ALLOWED; INTRODUCED, REFERRED TO COMMERCE
HJ 00007; ON COMMITTEE AGENDA --- COMMERCE, 413 C, 4:00 PM, 06/15/83.
06/24/83 HOUSE COMM. REPORT FAVORABLE BY COMMITTEE
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR
06/24/83 HOUSE DIED ON CALENDAR; REFER TO SB 12-8 (CH. 83-316)

H 0013 GENERAL BILL BY BELL (SIMILAR ENG'S 0028)
H 0014 HEALTH CARE COST CONTAINMENT (SUNSET) ALLOWS INSURERS OR GROUPS OF INSURERS PROVIDING INDIVIDUAL HEALTH INSURANCE OR GROUP, BLANKET OR FRANCHISE HEALTH INSURANCE TO CONTRACT WITH LICENSED HEALTH CARE PROVIDERS FOR ALTERNATIVE RATES OF PAYMENT & LIMIT PAYMENTS TO CERTAIN RATES, ETC. AMENDS CH. 627, EFFECTIVE DATE: 10/01/83.
06/15/83 HOUSE DIED ON CALENDAR; REFER TO SB 34 & SB 376 REGULAR SESSION;
FILED
06/24/83 HOUSE COMM. REPORT FAVORABLE BY COMMITTEE
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR
06/15/83 HOUSE DIED ON CALENDAR; REFER TO SB 28-8 (CH. 83-342)

H 0013 GENERAL BILL/C.S BY TRANSPORTATION, GUSTAFSON (SIMILAR ENG'S 0014)
H 0014 MOTOR VEHICLE/MOBILE HOME; PROVIDES FOR ADMINISTRATION & ENFORCEMENT BY H.S.P.I.V. DEPT.; MODIFIES REQUIREMENTS FOR MOTOR VEHICLE REGISTRATION; PROVIDES FOR REGISTRATION UNDER FICTITIOUS NAME; SPECIFIES TAX COLLECTOR AS DEPARTMENT AGENT; MODIFIES RECORD KEEPING REQUIREMENTS, ETC. AMENDS CH. 320, EFFECTIVE DATE: 10/01/83.
06/14/83 HOUSE NOTE: SIMILAR TO SB 34 & SB 376 REGULAR SESSION;
FILED
06/24/83 HOUSE COMM. REPORT: C/S BY TRANSPORTATION
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR
06/24/83 HOUSE DIED ON CALENDAR; REFER TO SB 14-8 (CH. 83-316)

H 0014 GENERAL BILL/C.S BY REGULATED INDUSTRIES & LICENSING, OSKIN, KUTUM BUS MULLER BASE, AMENDS PROVISION RELATING TO MOTOR VEHICLE LICENSING; PROVIDES FOR REGISTRATION UNDER FICTITIOUS NAME; SPECIFIES TAX COLLECTOR AS DEPARTMENT AGENT; MODIFIES RECORD KEEPING REQUIREMENTS, ETC. AMENDS CH. 320, EFFECTIVE DATE: 10/01/83.
06/14/83 HOUSE NOTE: SIMILAR TO HB 935 REGULAR SESSION;
FILED
06/24/83 HOUSE COMM. REPORT: C/S BY TRANSPORTATION
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR
06/15/83 HOUSE DIED ON CALENDAR; REFER TO SB 14-8 (CH. 83-316)

H 0015 GENERAL BILL BY LIPPMA (SIMILAR S 0022)
H 0016 PHARMACEUTICAL SERVICE PLANS; SUNSET INCREASES PROVISION FOR LOCAL OPTION INSURANCE PLANS; LIMITSつき BURIAL INSURANCE TO CONTRACT WITH LICENSED HEALTH CARE PROVIDERS FOR ALTERNATIVE RATES OF PAYMENT & LIMIT PAYMENTS TO CERTAIN RATES, ETC. AMENDS CH. 327, EFFECTIVE DATE: 10/01/83.
06/15/83 HOUSE DIED ON CALENDAR; REFER TO SB 34 & SB 376 REGULAR SESSION;
FILED
06/16/83 HOUSE COMM. REPORT FAVORABLE BY COMMITTEE
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR

H 0017 GENERAL BILL/C.S BY COMMERCE, GUSTAFSON, GALLAGHER (SIMILAR S 0009)
H 0017 NURSING HOMES; AMENDS PROVISION RE PAYMENT OF COMPENSATION; MODIFIES CURRENT METHOD OF DRIVING ADMINISTRATIVE COSTS; LIMITS MAXIMUM ASSESSMENT RATE; PROVIDES FOR PAYMENT OF SUPPLEMENTAL FEES, ETC. AMENDS 440.20, .51; CREATES 440.5151; EFFECTIVE DATE: 07/01/83.
06/15/83 HOUSE NOTE: SIMILAR TO HB 1277 (CH. 83-305); FILED
06/16/83 HOUSE COMM. REPORT C/S BY COMMERCE
HJ 00007; NOW IN APPROPRIATIONS; WRITTEN FROM APPROPRIATIONS;
HJ 00030; PLACED ON CALENDAR
06/16/83 HOUSE DIED ON CALENDAR; REFER TO SB 11-8 (CH. 83-315)

H 0018 GENERAL BILL BY LIPPMA (SIMILAR S 0031)
H 0018 PROFESSIONAL REGULATORY AGENCIES; REQUIRES A DIVISION & BOARD IN PROFESSIONAL REG.
07/06/83 HOUSE VETOED BY GOVERNOR
07/12/83 HOUSE VETO MESSAGE RECEIVED IN SPECIAL SESSION
06/15/83 HOUSE DIED ON CALENDAR; REFER TO SB 30-8 (CH. 83-335)
GASOLINE "OIL see OIL GAS"

Hunting

INCOME PRODUCTION

EDUCA TIONAL CLOTHING

RUSSIAN MIGRANTS, SAILING REGULATIONS

COMMERCIAL ENERGY, OPTICAL EQUIPMENT

CIVIL RIGHTS, SCHOOL DAZE, SCHOOL DISCIPLINE

FEDERAL EXPENDITURE, SUBSIDY DEMAND

COMMUNICATIONS, PUBLIC RELATIONS

IRRIGATION, WATER CONTROL

FURNITURE, DALTON PLAN

AGRICULTURAL BUDGET, EMPLOYMENT

CIVIL RIGHTS, VOTERS DETERMINATION

FEDERAL PROPERTY, PLANNING

COMMERCIAL ENERGY, COLLABORATION

COMMUNION, COMMUNICATIONS

TELECOMMUNICATIONS, SATELLITE SERVICES

COMMUNITY, CIVIC ACTIVITIES

COMMUNICATIONS, TECHNOLOGY

COMMUNICATIONS, AIR TRAFFIC

COMMUNICATIONS, DATA PROCESSING

COMMUNICATIONS, TELECOMMUNICATIONS

COMMUNICATIONS, TELEGRAPHY

COMMUNICATIONS, CABLE TV

COMMUNICATIONS, BROADCASTING

COMMUNICATIONS, TELEPHONE

COMMUNICATIONS, RADIO

COMMUNICATIONS, TELECOMMUNICATIONS

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Bill Analysis

Florida's "Regulatory Sunset Act," (s. 11.61) adopted in 1976, mandates periodic review of statutes regulating various professions, businesses and industries. The act requires automatic repeal of each statute on a specified date, thereby forcing the Legislature to either reenact the statute or permit its expiration.

As stated in the act, in determining whether the statute should be reenacted, the Legislature considers the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare?

(c) Is there a less restrictive method of regulation available which would adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are any facets of the regulatory process designed for the purpose of benefiting, and do they have as their primary effect the benefit of, the regulated entity?
The Sunset Act establishes October 1, 1983 as the date of automatic repeal for Chapter 639, Florida Statutes, relating to burial insurance and contracts.

II. CURRENT LAW AND EFFECT OF CHANGES

Section 1. The definition section, s. 639.07, is substantially revised. The primary intent is to simplify the definitions and to make the terms consistent throughout the chapter. The bill deletes lengthy definitions for "preneed funeral service contract," "funeral service or services" and "preneed burial supply or services contract" and substitutes concise definitions for "funeral merchandise," "service," "final disposition," and "preneed contract." The bill would bring within the regulation of this chapter preneed contracts sold by a "direct disposer," such as cremation services. The present definition of "person" is deleted. The definition presently contains the requirement for the preneed sale of services that a certificate holder must be a licensed funeral establishment. This requirement is transferred to s. 639.09(3) in section 3 of the bill.

Section 2. Section 639.08 authorizes the department to promulgate rules and to prepare and furnish all forms necessary under this chapter. As amended, the department would no longer be required to prepare and furnish the forms for the preneed contracts themselves. (A new form approval section is created in section 5 of the bill.)

Section 3. Section 639.09 is technically revised to more clearly state that no person shall sell a preneed contract or receive any funds for payment on a preneed contract without first having a certificate of authority. It is clarified that a certificate of authority is not required for a financial institution receiving money in trust pursuant to the sale of a preneed contract. It is required that for the preneed sale of services, only licensed funeral or direct disposal establishments may obtain a certificate under this chapter. This requirement is currently contained in the definition of "person" in s. 639.07(1). Renewal provisions are transferred to s. 639.10, addressed below in section 4.

Section 4. Applicants and certificate holders (annually) must file a financial statement with the department. The bill eliminates the requirement that the financial statement contain an itemized listing of all outstanding preneed contracts. The bill adds the requirement that the statement include evidence that the applicant or certificate holder has the ability to discharge his liabilities as they become due in the normal course of business. This section is also amended to conform to the new trusting requirements contained in s. 639.11, addressed in section 6 of the bill. Certificates shall be renewed annually on June 1, or at such other time as the department may provide by rule.

The bill addresses the issue of "amnesty" for persons who have received funds for the sale of preneed funeral or burial contracts in a manner not authorized by this chapter. The bill requires an applicant or a certificate holder upon renewal to disclose all contracts funded by any method other than as permitted by this chapter. It provides that the department shall not deny or refuse to renew a certificate solely on the basis of such disclosure for contracts entered into prior to January 1, 1983. However, the department may require the purchaser to liquidate the account unless it was established prior to July 1, 1965. The requirement to place 100% of the funds received in trust became effective on June 25, 1965.
Section 5. A new section is created requiring all forms to be filed with and approved by the Department of Insurance, as provided in s. 627.410. This section requires forms to be approved by the department prior to use. Forms are deemed approved after 30 days if no department action is taken. Preneed contract forms are required to have sequential numbering.

Section 6. Section 639.11 is amended to lower the trust fund requirements for preneed contracts. Presently, 100% of the funds collected for the preneed sale of either services or merchandise must be deposited under the terms of a trust instrument with a national or state bank or trust company. As amended, 100% of the funds collected under a preneed contract for services would still be required to be placed in trust, but only 70% of the funds collected under a preneed contract for funeral merchandise would be required to be placed in trust. However, no interest may be withdrawn until an amount equal to 100% of all payments on the contract is maintained in the trust. The bill also authorizes deposit of the trust funds in a savings and loan association.

Section 7. Section 639.13 presently requires that upon cancellation or default of a preneed contract, a full refund must be made to the purchaser within 30 days. As amended, the certificate holder may, by contract, retain a certain percentage of the funds attributable to the sale of funeral merchandise as liquidated damages if the contract is cancelled within the first three years. The certificate holder may retain 30% of such funds if the contract is cancelled during the first year, 20% if cancelled during the second year, and 10% if cancelled during the third year.

The bill also authorizes the certificate holder to cancel the contract if the purchaser is more than 60 days in default. In such case the same liquidated damage provisions, described above, would apply.

Section 8. Section 639.14 provides procedures for the payment of funds upon the death of the named beneficiary. Technical changes are made to conform to the liquidated damage provisions, described above.

Section 9. Section 639.15 presently requires the Department of Insurance to, at least once every three years, examine the business of each certificate holder. The bill makes a cross-reference to s. 624.320 to clarify that the expense for such examinations shall be assessed against the person examined in the same manner as such expenses are assessed against insurance companies.

Section 10. Section 639.16 is substantially revised to expand the grounds for suspension or revocation of a certificate of authority. These grounds are similar to those for suspending or revoking the license of an insurance agent provided in s. 626.611. If a violation is not corrected within 30 days, the current statute requires the department to institute revocation proceedings or file a complaint in the Circuit Court of Leon County for an order to show cause why the business should not be liquidated. As amended, if a violation of a specific ground occurs, the department is required to suspend or revoke the certificate by department order. A new section is created, described below, authorizing the department to file for an injunction in circuit court.

Section 11. A new section is created exempting from the Public Records Law active investigation records of the department made pursuant to this chapter.
Section 12. A new section is created authorizing the department to bring an action to enjoin a violation or threatened violation of this chapter by any person in the circuit court of the county in which the violation occurred. Dissolution or liquidation of a certificate holder shall be under the supervision of the department as provided in chapter 631 with regard to insurance companies.

Section 13. A new section is created authorizing the department to impose a fine, in lieu of discretionary suspension or revocation of a certificate, not to exceed $1,000 for each non-willful violation or $10,000 for each willful violation.

Section 14. Technical amendments are made to s. 639.17 which provides that a violation of this chapter or rules promulgated thereunder is a third-degree felony.

Section 15. A new section is created requiring all persons selling preneed contracts to register with the department. A biennial registration fee of $40 is assessed. Each certificate holder will be subject to discipline if its sales agent violates any provision of this chapter. Presently, persons selling preneed funeral service contracts are registered with the Department of Professional Regulation (s. 470.028, Florida Statutes).

Sections 16-19. All provisions are eliminated relating to the registration with the Department of Professional Regulation of persons selling preneed funeral service contracts. Such persons must be registered with the Department of Insurance as of April 1, 1984, as provided in section 16 of this bill.

Section 20. Section 639.20 presently provides that this chapter does not apply to any person who is licensed under part IV of chapter 559 (Florida Cemetery Act) or to any person who is under a contractual relationship with such a person for transactions coming within the purview of that act. Cemetery companies are authorized under part IV of chapter 559 to sell preneed contracts for services or merchandise under the regulation of the Department of Banking and Finance (s. 559.441, Florida Statutes). Chapter 470 regulates funeral directing, embalming, and direct disposition. The bill clarifies that the preneed sale of contracts for such services, if performed by a person licensed under chapter 559, would be subject to the requirements of chapter 639.

Section 21. Technical and conforming changes are made to s. 639.21 which requires certificate holders to determine and notify the purchaser prior to completion of the contract that the funeral merchandise will be accepted in the cemetery of the purchaser's choice.

Sections 22.-30. New sections are created prohibiting certain unfair and deceptive trade practices. Currently, neither the Unfair Insurance Trade Practices Act (part VII of chapter 626) or the Deceptive and Unfair Trade Practices Act (part II of chapter 501) apply to the sale of preneed burial insurance contracts. The new provisions are similar to those in the Unfair Insurance Trade Practices Act and address such areas as misrepresentation and false advertising, defamation, false statements, unfair claim settlement practices, failure to maintain complaint handling procedures, and refusal to issue a contract. The department is authorized to seek an injunction in circuit court for a violation of any such acts in addition to other enforcement powers provided in this part. An individual's right under general civil and common law are not abrogated by department action.
Section 31. Reenacts chapter 639, as amended.

Section 32. Chapter 639 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 33. Sections 639.11 and 639.13, as amended, apply only to preneed contracts entered into on or after October 1, 1983. These are the sections that revise the trusting requirements and the refund provisions.

Section 34. This act takes effect October 1, 1983.

III. ECONOMIC IMPACT

A. PRIVATE SECTOR CONSIDERATIONS

Lowering the trust fund requirements in section 7 of the bill for preneed contracts for funeral merchandise will be to the financial benefit of certificate holders under this chapter and will allow them to compete on a relatively equal basis with cemeteries issuing preneed contracts for funeral merchandise under chapter 559. Cemetery companies are required to deposit 110% of the wholesale purchase price of merchandise or services sold on a preneed basis (s. 559.441, Florida Statutes). The bill lowers the trust fund requirement under chapter 639 from 100% to 70% of the funds collected for the preneed sale of funeral merchandise. This amount more closely equates to 110% of the wholesale purchase price required to be trusted by cemeteries.

The amended cancellation provisions in section 8 of the bill are to the financial benefit of certificate holders and to the detriment of contract purchasers by allowing certificate holders to keep as liquidated damages a certain percentage of the funds collected upon buyer default or cancellation during the first three years. (See Section 8., above.) Presently, all funds collected must be refunded upon cancellation.

The newly created fine section (section 14) and unfair trade practice provisions (section 21) expose certificate holders to financial penalties for violations of this chapter.

B. PUBLIC SECTOR CONSIDERATIONS

Revenues to the Department of Insurance realized from preneed burial contract providers license and filing fees were $8,150 for fiscal year 1981-82.

Regulation of preneed burial contract providers is within the Department's Bureau of Allied Lines. In fiscal year 1981-82, total Bureau expenditures were $323,130 and total revenues were $314,782. (The premium tax on auto warranty associations accounted for $309,531 of the revenue.) The Bureau is responsible for the regulation of 12 types of preneed contracts, including preneed burial contracts and insurance, but the Department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

The bill transfers registration of individuals selling preneed funeral service contracts or direct disposition contracts from the Department of Professional Regulation to the Department of Insurance. A 1982 amendment authorized DPR to assess a maximum $50 registration fee. The bill sets a biennial $40 registration fee to be paid to the Department of Insurance. There are currently 565 persons registered with DPR to sell preneed funeral service contracts or direct disposition contracts.
IV. COMMENTS

V. LEGISLATIVE HISTORY

A. ENACTED BILL

Senate Bill 12-B was not heard in committee. The bill was passed by the Senate on June 16, 1983, 31-0 (SJ 24) and by the House on the same date, 111-1 (HJ-58). The bill was substantially identical to CS/SB 201 in the Regular Session. The enacted bill was also similar to HB 1086 in the Regular Session, except for a civil remedy provision contained in HB 1086 that was not contained in SB 12-B.

Senate Bill 201 was originally PCB 8, first heard and approved by Senate Commerce Committee on February 1, 1983, and introduced. On April 6, 1983, the Commerce Committee considered the filed bill and approved a committee substitute.

On April 19, 1983, CS/SB 201 was passed by the Senate 37-0 (SJ 126). On May 30, 1983, the House substituted the Senate bill for HB 1086. Amendments were adopted which struck everything after the enacting clause and inserted the House bill. The only major difference between the two bills was the inclusion of a civil remedy provision in the Senate bill.

On June 1, 1983, the Senate amended the House amendments to CS/SB 201, which struck the civil remedy provision. The Senate passed the bill as amended, and requested the House to concur, 39-0 (SJ 608). On June 2, 1983, the House refused to concur. Later that same day the Senate refused to recede. The bill died in messages.

House Bill 1086 was originally PCB 83-6 approved on March 1, 1983, by the Subcommittee on Property and Casualty Insurance of the Commerce Committee. On April 5, 1983, the full Commerce Committee approved the proposed bill which was introduced as HB 1086. On May 30, 1983, CS/SB 201 was substituted for the House bill, as explained above.

B. DISPOSITION OF COMPANION

The companion measure in Special Session B, House Bill 11-B, was approved by the House Commerce Committee on June 15, 1983. The bill died on the House Calendar.

Prepared by: Brian J. Berfebaugh

Staff Director: Wyatt T. Martin
I. SUMMARY AND PURPOSE

Florida's "Regulatory Sunset Act," (s. 11.61) adopted in 1976, mandates periodic review of statutes regulating various professions, businesses and industries. The act requires automatic repeal of each statute on a specified date, thereby forcing the Legislature to either reenact the statute or permit its expiration.

As stated in the act, in determining whether the statute should be reenacted, the Legislature considers the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare?

(c) Is there a less restrictive method of regulation available which would adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are any facets of the regulatory process designed for the purpose of benefiting, and do they have as their primary effect the benefit of, the regulated entity?

The Sunset Act establishes October 1, 1983 as the date of automatic repeal for Chapter 639, Florida Statutes, relating to burial insurance and contracts. A review of this section was initiated by the House Insurance Committee (now the Commerce Committee) at the conclusion of the 1982 session. Through the process of "public workshops" attended by Legislators...
and representatives of the Department of Insurance and industry organizations, staff drafted the proposed legislation which is being presented for consideration by the 1983 Legislature. Where agreement on certain questions was not reached by the workshop participants, the issues are contained in the bill, designated as alternatives.

II. CURRENT LAW AND EFFECT OF CHANGES

Section 1. The policy and scope section, s. 639.06, is repealed. This is a technical change that is not intended to have a substantive effect.

Section 2. The definition section, s. 639.07, is substantially revised. The primary intent is to simplify the definitions and to make the terms consistent throughout the chapter. The bill deletes lengthy definitions for "preneed funeral service contract," "funeral service or services" and "preneed burial supply or services contract" and substitutes concise definitions for "funeral merchandise," "service," "final disposition," and "preneed contract." The bill would bring within the regulation of this chapter preneed contracts sold by a "direct disposer," such as cremation services. The present definition of "person" is deleted. The definition presently contains the requirement for the preneed sale of services that a certificate holder must be a licensed funeral establishment. This requirement is transferred to s. 639.09(3) in section 4 of the bill.

Section 3. Section 639.08 authorizes the department to promulgate rules and to prepare and furnish all forms necessary under this chapter. As amended, the department would no longer be required to prepare and furnish the forms for the preneed contracts themselves. (A new form approval section is created in section 6 of the bill.)

Section 4. Section 639.09 is technically revised to more clearly state that no person shall sell a preneed contract or receive any funds for payment on a preneed contract without first having a certificate of authority. It is clarified that a certificate of authority is not required for a financial institution receiving money in trust pursuant to the sale of a preneed contract. It is required that for the preneed sale of services, only licensed funeral or direct disposal establishments may obtain a certificate under this chapter. This requirement is currently contained in the definition of "person" in s. 639.07(1). Renewal provisions are transferred to s. 639.10, addressed below in section 5.

Section 5. Applicants and certificate holders (annually) must file a financial statement with the department. The bill eliminates the requirement that the financial statement contain an itemized listing of all outstanding preneed contracts. The bill adds the requirement that the statement include evidence that the applicant or certificate holder has the ability to discharge his liabilities as they become due in the normal course of business. This section is also amended to conform to the new trusting requirements contained in s. 639.11, addressed in section 7 of the bill. Certificates shall be renewed annually on June 1, or at such other time as the department may provide by rule.

The bill addresses the issue of "amnesty" for persons who have received funds for the sale of preneed funeral or burial contracts in a manner not authorized by this chapter. The bill requires an applicant or a certificate holder upon renewal to disclose all contracts funded by any method other than as permitted by this chapter. It provides that the department shall not renew a certificate solely on the basis of such disclosure for contracts entered into prior to January 1, 1983. However, the department may require the purchaser to liquidate the account unless it was established prior to July 1, 1965. The requirement to place 100% of the funds received in trust became effective on June 25, 1965.

Section 6. A new section is created requiring all forms to be filed with and approved by the Department of Insurance, as provided in s.
627.410. This section requires forms to be approved by the department prior to use. Forms are deemed approved after 30 days if no department action is taken. Preneed contract forms are required to have sequential numbering.

Section 7. Section 639.11 is amended to lower the trust fund requirements for preneed contracts. Presently, 100% of the funds collected for the preneed sale of either services or merchandise must be deposited under the terms of a trust instrument with a national or state bank or trust company. As amended, 100% of the funds collected under a preneed contract for services would still be required to be placed in trust, but only 70% of the funds collected under a preneed contract for funeral merchandise would be required to be placed in trust. However, no interest may be withdrawn until an amount equal to 100% of all payments on the contract is maintained in the trust. The bill also authorizes deposit of the trust funds in a savings and loan association.

Section 8. Section 639.13 presently requires that upon cancellation or default of a preneed contract, a full refund must be made to the purchaser within 30 days. As amended, the certificate holder may, by contract, retain a certain percentage of the funds attributable to the sale of funeral merchandise as liquidated damages if the contract is cancelled within the first three years. The certificate holder may retain 30% of such funds if the contract is cancelled during the first year, 20% if cancelled during the second year, and 10% if cancelled during the third year. The bill also authorizes the certificate holder to cancel the contract if the purchaser is more than 60 days in default. In such case the same liquidated damage provisions, described above, would apply.

Section 9. Section 639.14 provides procedures for the payment of funds upon the death of the named beneficiary. Technical changes are made to conform to the liquidated damage provisions, described above.

Section 10. Section 639.15 presently requires the Department of Insurance to, at least once every three years, examine the business of each certificate holder. The bill makes a cross-reference to s. 624.320 to clarify that the expense for such examinations shall be assessed against the person examined in the same manner as such expenses are assessed against insurance companies.

Section 11. Section 639.16 is substantially revised to expand the grounds for suspension or revocation of a certificate of authority. These grounds are similar to those for suspending or revoking the license of an insurance agent provided in s. 626.611. If a violation is not corrected within 30 days, the current statute requires the department to institute revocation proceedings or file a complaint in the Circuit Court of Leon County for an order to show cause why the business should not be liquidated. As amended, if a violation of a specific ground occurs, the department is required to suspend or revoke the certificate by department order. A new section is created, described below, authorizing the department to file for an injunction in circuit court.

Section 12. A new section is created exempting from the Public Records Law active investigation records of the department made pursuant to this chapter.

Section 13. A new section is created authorizing the department to bring an action to enjoin a violation or threatened violation of this chapter by any person in the circuit court of the county in which the violation occurred. Dissolution or liquidation of a certificate holder shall be under the supervision of the department as provided in chapter 631 with regard to insurance companies.

Section 14. A new section is created authorizing the department to impose a fine, in lieu of discretionary suspension or revocation of a
Section 15. Technical amendments are made to s. 639.17 which provides that a violation of this chapter or rules promulgated thereunder is a third-degree felony.

Section 16. The bill repeals s. 639.18 which prohibits certain fraudulent and deceptive advertising and selling practices. Such practices would be prohibited in the new unfair and deceptive trade practice provisions created in section 20 of the bill.

Section 17. A new section is created requiring all persons selling preneed contracts to register with the department. A biennial registration fee of $40 would be assessed. Each certificate holder would be subject to discipline if its sales agent violates any provision of this chapter. Presently, persons selling preneed funeral service contracts are registered with the Department of Professional Regulation (s. 470.028, Florida Statutes).

Section 18. The bill repeals s. 639.19 which provides legislative intent for the construction of the provisions of this chapter. The repeal of this section is intended to be technical.

Section 19. Section 639.20 presently provides that this chapter does not apply to any person who is licensed under part IV of chapter 559 (Florida Cemetery Act) or to any person who is under a contractual relationship with such person for transactions coming within the purview of that act. Cemetery companies are authorized under part IV of chapter 559 to sell preneed contracts for services or merchandise under the regulation of the Department of Banking and Finance (s. 559.441, Florida Statutes). Chapter 470 regulates funeral directing, embalming, and direct disposition. The bill clarifies that the preneed sale of contracts for such services, if performed by a person licensed under chapter 559, would be subject to the requirements of chapter 639.

Section 20. Technical and conforming changes are made to s. 639.21 which requires certificate holders to determine and notify the purchaser prior to completion of the contract that the funeral merchandise will be accepted in the cemetery of the purchaser's choice.

Section 21. New sections are created prohibiting certain unfair and deceptive trade practices. Currently, neither the Unfair Insurance Trade Practices Act (part VII of chapter 626) or the Deceptive and Unfair Trade Practices Act (part II of chapter 501) apply to the sale of preneed burial insurance contracts. The new provisions are similar to those in the Unfair Insurance Trade Practices Act and address such areas as misrepresentation and false advertising, defamation, false statements, unfair claim settlement practices, failure to maintain complaint handling procedures, and refusal to issue a contract. The department would be authorized to seek an injunction in circuit court for a violation of any such acts in addition to other enforcement powers provided in this part. An individual's right under general civil and common law are not abrogated by department action.

Sections 22-24. All provisions are eliminated relating to the registration with the Department of Professional Regulation of persons selling preneed funeral service contracts. Such persons would be registered with the Department of Insurance as of April 1, 1984, as provided in section 16 of this bill.

Section 25. Reenacts chapter 639, as amended.

Section 26. Chapter 639 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 27. Sections 639.11 and 639.13, as amended, apply only to preneed contracts entered into on or after October 1, 1981. These are the
sections that revise the trusting requirements and the refund provisions.

Section 20. This act takes effect October 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Lowering the trust fund requirements in section 7 of the bill for preneed contracts for funeral merchandise will be to the financial benefit of certificate holders under this chapter and will allow them to compete on a relatively equal basis with cemeteries issuing preneed contracts for funeral merchandise under chapter 559. Cemetery companies are required to deposit 110% of the wholesale purchase price of merchandise or services sold on a preneed basis (s. 559.441, Florida Statutes). The bill lowers the trust fund requirement under chapter 639 from 100% to 70% of the funds collected for the preneed sale of funeral merchandise. This amount more closely equates to 110% of the wholesale purchase price required to be trusted by cemeteries.

The amended cancellation provisions in section 8 of the bill are to the financial benefit of certificate holders and to the detriment of contract purchasers by allowing certificate holders to keep as liquidated damages a certain percentage of the funds collected upon buyer default or cancellation during the first three years. (See Section 8., above.) Presently, all funds collected must be refunded upon cancellation.

The newly created fine section (section 14) and unfair trade practice provisions (section 21) expose certificate holders to financial penalties for violations of this chapter.

B. PUBLIC SECTOR CONSIDERATIONS

Revenues to the Department of Insurance realized from preneed burial contract providers license and filing fees were $8,150 for fiscal year 1981-82.

Regulation of preneed burial contract providers is within the Department's Bureau of Allied Lines. In fiscal year 1981-82, total Bureau expenditures were $323,130 and total revenues were $514,782. (The premium tax on auto warranty associations accounted for $309,531 of the revenue.) The Bureau is responsible for the regulation of 12 types of preneed contracts, including preneed burial contracts and insurance, but the Department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

The bill transfers registration of individuals selling preneed funeral service contracts or direct disposition contracts from the Department of Professional Regulation to the Department of Insurance. A 1982 amendment authorized DPR to assess a maximum $50 registration fee. The bill sets a biennial $40 registration fee to be paid to the Department of Insurance. There are currently 565 persons registered with DPR to sell preneed funeral service contracts or direct disposition contracts.
SUMMARY OF HB 11-B (BURIAL INSURANCE CONTRACTS)

THIS IS A SUNSET BILL THAT REENACTS THE CHAPTER THAT REGULATES BURIAL INSURANCE CONTRACTS. THE ONLY DIFFERENCE BETWEEN THIS BILL AND THE HOUSE BILL THAT PASSED THE HOUSE EARLIER (HB 1086) IS THAT THIS BILL DOES NOT CONTAIN A CIVIL REMEDY PROVISION.

LIKE THE HOUSE BILL THAT PASSED EARLIER, THIS BILL:

---LOWERS THE TRUST FUND REQUIREMENTS FOR PRENEED CONTRACTS. PRESENTLY 100% OF ALL FUNDS COLLECTED MUST BE PLACED IN A TRUST FUND. THE BILL STILL REQUIRES 100% OF FUNDS COLLECTED FOR PRENEED SERVICES TO BE TRUSTED, BUT ONLY 70% OF FUNDS FOR PRENEED MERCHANDISE MUST BE TRUSTED.

---NEW SECTIONS ARE CREATED PROHIBITING CERTAIN UNFAIR AND DECEPTIVE TRADE PRACTICES. THE DEPARTMENT WOULD BE AUTHORIZED TO SEEK AN INJUNCTION IN CIRCUIT COURT FOR A VIOLATION OF ANY SUCH ACTS IN ADDITION TO OTHER ENFORCEMENT POWERS PROVIDED IN THIS CHAPTER.
BILL ACTION REPORT

3-75: File with Secretary of Senate

MMITTEE ON Commerce

TE April 6, 1983

ME 9:00 a.m. - 12 noon

ACE Room "A"

HER COMMITTEE REFERENCES: In order shown

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FINAL ACTION.

- Favorably with amendments
- Favorably with Committee Substitute
- Unfavorably

OTHER: __ Temporarily Passed
- Reconsidered
- Not Considered

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(Attach additional page if necessary)

Please Complete. The key sponsor appeared
A Senator appeared
Sponsor's aide appeared
Other appearance

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### ILL ACTION REPORT (Continued)

(To be used for additional amendments and motions)

**COMMITTEE ON** Commerce

The vote was:

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<th>SENATORS</th>
<th>Girardeau-- Amend. #6</th>
<th>Girardeau-- Amend #7</th>
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ILL ACTION REPORT (Continued)

(To be used for additional amendments and motions)

COMMITTEE ON Commerce

The Vote Was.

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Aye | Nay | Aye | Nay | Aye | Nay | Aye | Nay | Aye | Nay
The Committee on ... Commerce ........ recommended the following amendment which was moved by Senator ............ and adopted: and failed:

Amendment #1

On page ... 3 ... lines 29-31, and
On page ... 4 ... lines 1-8, strike
all of said lines and renumber subsequent subsection.
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #2

On page 5 between lines 3 & 4 strike

and insert:

(3) No person may obtain a certificate of authority under this chapter for the preneed sale of services unless such person holds a license as a funeral establishment or as a direct disposal establishment under chapter 470.

(Renumber subsequent subsection)

CODING: Words in struck through type are deletions from existing law, words underlined are additions.

* Amendment No. __, taken up by committee: Adopted *
* Offered by ___________________________ Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date ___/___/___)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #3

On page 4 lines 18-24 strike all of said lines and insert:

renewals thereof, for annual statements, and for other required reports, and-for-preneed-funeral-service-contracts and-preneed-burial-supply-contracts. The department may adopt reasonable rules necessary to effect any of the department's statutory duties pursuant to effectuate the purposes of this chapter.
The Committee on Commerce recommended the following amendment which was moved by Senator .......... and adopted:

Amendment #4

On page 7 between lines 18 & 19, strike

and insert:

Section 5. Section 639.105, Florida Statutes, is created to read:

639.105 Approval of forms.-- Preneed contract forms and related forms shall be filed with and approved by the department, as provided in s. 627.410. The department shall not approve any preneed contract form that does not provide for sequential numbering thereon.

(Renumber subsequent sections)
The Committee on Commerce... offered the following amendment which was moved by Senator... and adopted and failed:

Amendment

On page... line... strike

and insert:

1...(7)... An application for an initial certificate of...
2... authority or for the annual renewal of the certificate shall...
3... disclose the existence of all preneed contracts for service...
4... or merchandise funded by any method other than as permitted...
5... by this chapter, which are known to the applicant and by...
6... which the applicant or his business is named the beneficiary...
7... upon the death of the purchaser of the preneed contract...
8... Such disclosure shall include the name and address of the...
9... contract purchaser, the name and address of the institution...
10... where such funds are deposited, and the number used by the...
11... institution to identify the account. With respect to contracts...
12... entered into prior to January 1, 1983, the department shall...
13... not deny or refuse to renew a certificate of authority...
14... solely on the basis of such disclosure. The department shall...
15... not require the purchaser of any such contract to liquidate...
16... the account if such account was established prior to...
17... July 1, 1965. The department may use the information dis-...
closed to notify the contract purchaser and the institution
in which such funds are deposited should the holder of a
certificate of authority be unable to fulfill the require-
ments of the contract.

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S1(a)-74 5th copy may be removed  SENATE AMENDMENT
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #6

On page 15, lines 7-21, strike all of said lines

and insert:

639.165 Dissolution or liquidation.—Any dissolution or liquidation of a certificateholder shall be under the supervision of the department, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of companies pursuant to chapter 631, as applicable. The venue of delinquency proceedings against a certificateholder shall be in the circuit court in the judicial circuit of its principal place of business.
SENATE COMMITTEE AMENDMENT

The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #7

On page 16, lines 22-31, and
On page 17, lines 1-6, strike all of said lines and renumber subsequent sections.
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #8

On page 26, line 7, insert after "639.06", 639.18,
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Amendment #9

On page 17, between lines 6 & 7, strike

insert:

Section 14. Section 639.184, Florida Statutes, is created to read:

639.184 Illegal tying arrangements.-- No person authorized to sell preneed contracts shall tie the purchase of services to the purchase of funeral merchandise. Nor shall the seller of the preneed contract charge a set up charge, handling charge, or any other charge for the set up of funeral merchandise not purchased from the seller which is not the same as those charged by the seller and declared on his price disclosure sheet.

(Renumber subsequent sections)

CODING: Words in struck through type are deletions from existing law, words underlined are additions.

* Amendment No. ___, taken up by committee: Adopted *
* Offered by Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/___)
The Committee on ... Commerce .......... recommended the following amendment which was moved by Senator ................. and adopted:

Amendment #10

On page ...18....., line ...31....,

insert:

Section 16. Subsection (4) of section 470.002, Florida Statutes, 1982 Supplement, is amended to read:

470.002 Definitions.--As used in this chapter:

(4) "Practice of funeral directing" means making, at need or preneed, arrangements for, or directing the arrangements for, the preparation and transportation of dead human bodies for final disposition; or using, in connection with one's name the words "funeral director," "licensed funeral director," "undertaker," or "mortician"; or offering or holding oneself out as offering such services. However, nothing herein shall be construed to require a direct disposer or an agent registered under chapter 639 or 470.028 to be a funeral director.

Section 17. Paragraph (f) of subsection (2) of section 470.019 and paragraph (q) of subsection (1) of section 470.036, Florida Statutes, are amended to read:

470.019 Disciplinary actions against direct disposers.--

(2) The following shall be sufficient grounds for disciplining according to subsection (1):

CODING Words in struck through type are deletions from existing law, words underlined are additions.

* Amendment No. __, taken up by committee: Adopted *
* Offered by Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/ )
(f) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for direct disposing business, by the registrant or his agent, assistant, or employee; however, this shall not prohibit the payment of commissions by a direct disposer to his agents registered pursuant to chapter 639, s. 470.028 or to registrants hereunder.

470.036 Disciplinary proceedings.--

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(q) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for funeral directing business or embalming business, by the licensee, or his agent, assistant, or employee; however, this shall not prohibit the payment of commissions by a funeral director or funeral establishment to its agents registered pursuant to chapter 639, s. 470.028 or to licensees hereunder.

(Renumber subsequent sections)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Technical Title Amendment #11

In title, on page 2, line 16, strike 629.26 and insert 639.26

and insert:

639.26

CODING: Words in struck through type are deletions from existing law. Words underlined are additions.

* Amendment No. ___, taken up by committee: Adopted *
* Offered by ___ ___, Failed ___ ___, Date __/__/__

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/__)
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Title Amendment #12

In title, on page ..., line ..., strike

and insert after "solvency;":

creating s. 639.105, Florida Statutes;

providing for the approval of forms;
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Title Amendment #13

In title, on page 11, line 11, strike

and insert after "solvency;":

requiring certain disclosures;
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Title Amendment #14

In title, on page 1, line 25, strike injunctions; dissolutions, and insert:

  dissolutions
SENATE COMMITTEE AMENDMENT

The Committee on ... Commerce ....... recommended the following amendment which was moved by Senator ............ and adopted: and failed:

Title Amendment #15

In title, on page ... 1 ...., line .... 29, strike 639.18, and insert:

and failed:

Title Amendment #15

In title, on page ... 1 ...., line .... 29, strike 639.18, and insert:

(Advisory No. __ offered by - Adopted __/ __/ __)

CODING Words in struck through type are deletions from existing law, words underlined are additions

* Amendment No. __, taken up by committee: Adopted __/ __/ __
* Offered by - Failed __/ __/ __
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

Title Amendment #16

In title, on page 2, line 31,

insert after "policy;"

repealing s. 639.18, Florida Statutes; relating to false, fraudulent, and deceptive advertising and selling practices;
SENATE COMMITTEE AMENDMENT

The Committee on...Commerce...........recommended the following amendment which was moved by Senator............and adopted:

Title Amendment $17

In title, on page ...1......, line ....31........

insert after "language;"

creating s. 639.184, Florida Statutes;
prohibiting certain tying arrangements;
SENATE COMMITTEE AMENDMENT

The Committee on Commerce...........recommended the following amendment which was moved by Senator............and adopted: and failed:

Title Amendment #18

In title, on page 2, line 6.

Insert after "Regulation;"

amending s. 470.002, Florida Statutes, 1982
Supplement, and ss. 470.019(2)(f) and
470.036(1)(q), Florida Statutes; providing
conforming language;

CODING Words in struck through type are deletions from existing law, words underlined are additions.

* Amendment No. __, taken up by committee: Adopted *
* Offered by Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/__)
The Committee on Commerce... recommended the following amendment which was moved by Senator... and adopted; and failed:

Amendment #19

On page ..., line ..., strike This

and insert:

Sections 5 and 6 of this
The Committee on Commerce recommended the following amendment which was moved by Senator and adopted; and failed:

Amendment #20

On page ..., line ...

insert after the period:

Funds deposited pursuant to this section shall not be loaned to a certificateholder or to any person directly or indirectly engaged in the burial or cemetery business.
The Committee on Commerce recommended the following amendment which was moved by Senator ... and adopted:

Amendment #21

On page ..., lines 10 & 11., strike

and for which licensure and registration

under chapter 470 is not required

and insert:

except that preneed funeral services and direct
disposal services shall be made and proceeds trusted pursuant
to chapter 639.
I. SUMMARY:

A. Present Situation:

Chapter 639, Florida Statutes, provides for the regulation of Burial Insurance and Contracts. More specifically, it deals with contracts for funeral services and burial supplies in advance of need.

Currently, any funeral director desiring to sell preneed contracts for funeral services or burial supplies, or any one else selling preneed contracts for burial supplies, must first obtain a certificate of authority from the Department of Insurance. The sale of preneed burial supplies and services by a cemetery company which holds a certificate of authority from the Department of Banking and Finance pursuant to chapter 559, Florida Statutes, is exempt from the provisions of chapter 639, Florida Statutes.

Section 639.10, Florida Statutes, specifies what information and documents are to be presented to the department in order to obtain a certificate of authority. Basically, an application for a certificate of authority must be accompanied by the following:

1. Types of preneed funeral service contracts or preneed burial supply contracts proposed to be written;

2. Name and address of the place of business of the person offering to write such preneed contracts; and,

3. Certain evidence that the person proposing to write such contracts will be able to perform his obligations under the contract.

All of the funds received on such preneed contracts must be placed in trust with a national or state bank having trust powers. The trust agreements must be submitted to the department for its approval and filing.

Section 639.13, Florida Statutes, provides that a purchaser of a preneed burial supply or funeral service contract may cancel such contract by providing written notice to the seller. The seller, however, cannot cancel a contract unless the purchaser has defaulted.

Whenever a notice of cancellation is received, the seller has 30 days in which to refund the entire amount actually paid on the contract.

Upon receipt of a certified copy of the death certificate and sufficient evidence that the preneed contract has been fully performed, the trustee must release the funds discharging the
contract to the person issuing or writing the contract. In the event that the contract service or supplies are not desired by the heirs, section 639.14, Florida Statutes, provides for a refund of all the monies paid.

The department is required to examine the business of any person writing preneed contracts at least once every 3 years.

Chapter 639, Florida Statutes, also provides the grounds for which a certificate of authority may be revoked and the penalties for violations of the chapter.

Chapter 639, Florida Statutes, is scheduled to be repealed on October 1, 1983, pursuant to the Regulatory Sunset Act.

B. Effect of Proposed Changes:

This bill would revive and readopt chapter 639, Florida Statutes, with the following major modifications:

1. The definitions section is reworded to define the terms "direct disposer", "final disposition", "funeral director", "funeral merchandise", "service", "person", and "preneed contract".

2. Certificate holders are required to submit to the department an annual statement of their financial condition as of the preceding December 31, or at any other time as the department may provide by rule. Certain information previously required on the annual statement regarding outstanding contracts has been deleted. The statement must, among other things, supply evidence that the person offering the statement has the ability to discharge his liabilities as they become due in the normal course of business and has sufficient funds during the calendar year to meet his contract obligations.

3. All of the funds received under a preneed contract for services and 70 percent of all the funds received under a preneed contract for funeral merchandise must, within 30 days after the end of the calendar month in which payment is received, be deposited in trust with a national or state bank, savings and loan association or a trust company. The trustee must make regulation valuations of the assets it holds in trust and provide a report of such valuation to the certificate holder at least quarterly.

4. A certificate holder may provide in its contract for liquidated damages in the event of cancellation by the contract purchaser. The liquidated damages would pertain only to the preneed sale of funeral merchandise and not for the preneed sale of services. However, a preneed contract purchaser may cancel his contract within 30 days of the date of execution of the contract without payment of such damages. Such a provision must be in conspicuous type in the contract.

5. Grounds are provided for the revocation or suspension of a certificate of authority. A person whose certificate has been suspended or revoked cannot write any new business during the period of suspension or revocation. The period of suspension may not exceed 1 year unless the department modifies, rescinds, or reverses its order. The bill also provides for reinstatement of the certificate.

6. An administrative fine in lieu of suspension or revocation of a certificate of authority is provided.

7. The department may bring an action to enjoin a violation of the chapter by any person in the circuit court in and for the county in which the violation occurred.
8. Transfer the registration of preneed agents from the Department of Professional Regulation to the Department of Insurance.

9. Unfair and deceptive trade practices sections are added to the chapter.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Currently, there is some confusion in the funeral industry as to exactly who is covered by the provisions of chapter 639, Florida Statutes. Some direct disposers question whether or not they are covered by this chapter. As a result, they are not certificated by the Department of Insurance and, therefore, are not conforming to the trusting provisions of chapter 639, Florida Statutes. This bill explicitly provides that direct disposers selling preneed contracts must comply fully with the provisions of chapter 639, Florida Statutes. It is not known, at this time, how many such persons will be affected.

The change in the trusting and refund provisions is expected to improve, to some extent, the cash flow positions of the funeral directors and others selling preneed funeral merchandise. These persons would have the immediate use of a portion of the proceeds from the contracts instead of having to wait until they received the interest income from the trust fund. However, such an impact cannot be determined at this time.

B. Government:

The department will now have the responsibility to register all preneed agents. This is not expected to impact significantly on the department's workload.

III. COMMENTS:

Technical errors -- none noted.

IV. AMENDMENTS:
1. Deletes the definition of person.

2. Requires that no person may obtain a certificate of authority for the preneed sales of services unless that person holds a license as a funeral home or a direct disposal establishment under chapter 470, Florida Statutes.

3. Requires the department to furnish the forms for the application of a certificate, the annual statement, and other required reports.

4. Requires the department to approve all forms. Such forms must provide for sequential numbering.

5. Provides for disclosure of certain preneed contracts for the sale of funeral merchandise or services that are funded by any other method other than the trust requirements of chapter 639, Florida Statutes.

6. Provides that the provisions of the bill relating to the disposition of proceeds received on preneed contracts and the cancellation of such contracts shall apply only to preneed contracts entered into on or after October 1, 1983.

7. Provides that trust funds cannot be loaned to a certificate holder or any person directly or indirectly engaged in the burial or cemetery business.

8. For persons licensed under both chapter 639, Florida Statutes and Part IV, chapter 559, the trusting of funds for preneed service contracts shall be in accordance with chapter 639, Florida Statutes.