



## Important Changes to Chapter 497 Made by 2024 Florida Legislature

*By Wendy Russell Wiener, Managing Member, WRW Legal*

The 2024 legislative session resulted in significant changes to Florida's deathcare law, Chapter 497, Florida Statutes. Five significant revisions were made. Each change is spelled out below with guidance as to how licensees are impacted.

### 1. **Section 497.101, Florida Statutes – Board Members**

**What's New?** The Chief Financial Officer is now responsible for all Board appointments – taking the Governor out of the mix. The Board will still be comprised of 10 members, but the requirement that one member be affiliated with a cinerator facility was stricken from the law, which, in my opinion, was a mistake given the ever-increasing cremation rate and importance of cinerator facilities to Florida's deathcare industry. One other noteworthy change to the law is in new subsection (7) which now may prohibit a Board member from voting on any "measure which would inure to his or her private gain or loss".

**What the Change Means to You.** Previously, Board members could declare their affiliation with or interest in a particular applicant, licensee or matter and state that that attachment would not impact his or her vote. The way the new law is written, that "work around" is no longer acceptable and the Board member must abstain from voting on any measure which might potentially result in a gain or loss to the Board member. More on this as we see the new law in action.

### 2. **Sections 497.153 and 497.155, Florida Statutes – Service of Administrative Complaints and Citations**

**What's New?** Service of process of administrative complaints and citations must be made in the following ways, either by process server or certified mail, return receipt requested. But, if the certified mail fails, then the Department may serve the licensee via e-mail using the last e-mail address provided to the Department.

**What the Change Means to You.** You must keep your current mailing address and e-mail address up to date with the Division. If you fail to do so and you are served at your last known address, that service starts a clock for you to respond to the administrative complaint or citation and when the time runs, you will not be able to respond based upon the fact that the Department used the wrong address. So, update the Department and keep proof of the update.

### 3. **Section 497.172, Florida Statutes – Disclosure of Private Information**

**What's New?** Private Information may be disclosed to a probable cause panel, to law enforcement, in the case of imminent danger to health, safety and welfare and now in an Emergency Order is issued.

**What the Change Means to You.** This change is not functionally impactful for most licensees.



L E G A L

**4. 497.386, Florida Statutes – Care of Human Remains**

**What's New?** This change is in direct response to the recent situation in Jacksonville involving an abandoned facility. Additional language was added to the law to give the Department the right to enter an abandoned facility to secure and remove human and cremated remains. It makes clear that a facility that *then* takes such human or cremated remains into its care is not liable for the condition of the remains upon receipt. However, in what might, perhaps, create unintended consequences it makes it a felony to retain unembalmed human remains for more than 24 hours without refrigeration at 40 degrees Fahrenheit or below and to violate the Department's rules on the handling and storage of dead human bodies or to transport or store uncovered human remains or to fail to treat human remains with dignity and respect.

**What the Change Means to You.** The real day to day impact of the new language is that now it would seem that a cooler failure could result in a felony charge. During recent Board meetings, Board members have shied away from significant penalties for licensees that suffer a cooler failure, unless aggravating factors are present. But based on the new language, it would seem the Division may direct the Board toward harsher treatment for licensees. Also, make sure to know Rule Chapter 69K – as violating some of the rules will now be cause for a felony charge.

**5. Section 497.469, Florida Statutes – Fulfillment of Preneed Contracts**

**What's New?** Prior to this new provision of Chapter 497, each preneed licensee could certify fulfillment of a preneed contract and receive the funds in trust related to the contract. However, also as a direct result of the Jacksonville licensee's alleged fraud, the law now eliminates that method of requesting a disbursement for a preneed funeral agreement.

**What the Change Means to You.** Instead, one of the following proofs of fulfillment is required:

- Certified Copy of Death Certificate of Preneed Contract Beneficiary; OR
- An invoice for merchandise reflecting the name of the purchaser or beneficiary and the preneed contract number; OR
- Acknowledgement by the purchaser or legally authorized person for the beneficiary of fulfillment of the preneed contract; OR
- A burial permit or other document provided to a governmental agency.

A cemetery, however, may continue to submit a certification of fulfillment as proof sufficient to request a disbursement from trust. And, all proof of fulfillment documentation must be retained until the preneed licensee is examined.

*FSI provided a new Trust Disbursement Request form and instructions relating to fulfillments. Note that our protocols are fluid as we streamline the process and obtain feedback from firms and the state.*

It is your responsibility to know the law. And, we are here to help. Feel free to reach out with questions about the impacts of any of these changes or any other provision of the Florida laws and rules.