Item D(1) Rule 69K-8.006(6), F.A.C., as it Relates to a Licensee's Flexibility to Acquire Certain Merchandise at the Time of Need or Fulfillment

Statutes and Rules Relating to Issue

FLORIDA STATUTES:

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

(1) GENERAL PROVISIONS.—The generality of the provisions of this subsection shall not be deemed to be limited by the provisions of any other subsection.

(a) Violating any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Committing fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Failing while holding a license under this chapter to maintain one or more of the qualifications for such license.

(d) Refusing to sell or issue a contract or provide services to any person because of the person's race, color, creed, marital status, sex, or national origin.

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

(3) DISCIPLINARY ACTION BY OTHER AUTHORITIES.—Having a license or the authority to practice a profession or occupation revoked, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of another jurisdiction, including its agencies or subdivisions, for conduct that would constitute a violation of this chapter if committed in this state or upon grounds that directly relate to the ability to practice under this chapter. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the license shall be construed as action against the license.

(4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT AGENCIES.—

(a) Improperly interfering with an investigation or inspection authorized by statute or with any disciplinary proceeding.

(b) Failure to comply with a lawfully issued subpoena of the department.

(c) Refusal to produce records to the department or board in connection with any activity regulated pursuant to this chapter.

(d) Failing to report to the department any violation of this chapter by another person, which violation is known to the licensee to have created or be creating a serious and immediate danger to the public health, safety, or welfare.

(e) Knowingly concealing information relative to violations of this chapter.

(f) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, false or forged evidence, or misrepresentation or through an error of the department or board known to the applicant.

(g) Making or filing a report or statement to or with any government entity that the licensee knows or has reason to know to be false; or intentionally or negligently failing to file a report or record required to be filed with any government entity, or willfully impeding or obstructing another person to do so, or inducing another person to impede or obstruct such filing.

(h) Failing to perform any statutory or legal obligation placed upon a licensee.

(5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED PRACTICE.—

(a) Practicing or offering to practice beyond the scope permitted by this chapter and rules adopted under this chapter for the type of licensure held or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(b) Practicing or attempting to practice with a revoked, suspended, inactive, or delinquent license.

(c) Representing as her or his own the license of another.

(d) Aiding, assisting, procuring, employing, or advising any person or entity to practice a profession or occupation regulated by this chapter without required licensure under this chapter.

(e) Aiding, assisting, procuring, employing, or advising any person or entity to operate or in operating an establishment regulated by this chapter without the required licensure under this chapter.

(f) Delegating to any person the performance of professional activities, or contracting with any person for the performance of professional activities by such person, when the licensee knows or has reason to know the person is not qualified by training, experience, and authorization to perform such responsibilities.

(g) Using the name or title “funeral director,” “embalmer,” “direct disposer,” or other title suggesting licensure that the person using such name or title does not hold.

(h) Engaging by a direct disposer in the practice of direct burial or offering the at-need or preneed service of direct burial.

(6) EDUCATIONAL REQUIREMENTS.—

(a) Failing to comply with applicable educational course requirements pursuant to this chapter or rules adopted under this chapter regarding human immunodeficiency virus and acquired immune deficiency syndrome.

(b) Failing to timely comply with applicable continuing education requirements of this chapter.

(7) RELATIONS WITH OTHER LICENSEES.—

(a) Having been found liable in a civil proceeding for knowingly filing a false report or complaint against another licensee with the department or the board.

(b) Making any misleading statements or misrepresentations as to the financial condition of any person, or making statements that are falsely and maliciously critical of any person for the purpose of damaging that person's business regulated under this chapter.

(8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN REMAINS.—

(a) Violation of any state law or rule or any municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(b) Refusing to surrender promptly the custody of a dead human body upon the express order of the legally authorized person to such person's custody; however, this provision shall be subject to any state or local laws or rules governing custody or transportation of dead human bodies.

(c) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person. If oral permission is granted, the licensee shall obtain written permission within a reasonable time as established by rule.

(d) Embalming human remains without first having obtained written or oral permission from a legally authorized person; however, washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded. If oral permission is granted, the licensee shall obtain written permission within a reasonable time as established by board rule.

(e) Failing to obtain written authorization from a legally authorized person before entombment, interment, disinterment, disentombment, or disinurnment of the remains of any human being.

(9) SALES PRACTICES IN GENERAL.—

(a) Soliciting by the licensee, or by her or his agent, assistant, or employee, through the use of fraud, undue influence, intimidation, overreaching, or other means that takes advantage of a customer's ignorance or emotional vulnerability.

(b) Exercising undue influence on a client for the purpose of financial gain of the licensee or a third party in connection with any transaction regulated by this chapter.

(c) Discouraging a customer's purchase of any funeral merchandise or service that is advertised or offered for sale, with the purpose of encouraging the purchase of additional or more expensive merchandise or service, by disparaging its quality or appearance, except that true factual statements concerning features, design, or construction do not constitute disparagement; by misrepresenting its availability or any delay involved in obtaining it; or by suggesting directly or by implication that a customer's concern for price or expressed interest in inexpensive funeral merchandise or services is improper, inappropriate, or indicative of diminished respect or affection for the deceased.

(d) Misrepresenting the benefits, advantages, conditions, or terms of any contract to provide any services or merchandise regulated under this chapter.

(e) Advertising goods and services in a manner that is fraudulent, deceptive, or misleading in form or content.

(f) Directly or indirectly making any deceptive, misleading, or untrue representations, whether oral or written, or employing any trick, scheme, or artifice, in or related to the practice of a profession or occupation regulated under this chapter, including in the advertising or sale of any merchandise or services related to the practice of the profession or occupation.

(10) SPECIFIC MISREPRESENTATIONS.—

(a) Making any false or misleading statement of the legal requirement as to the necessity of any particular burial or funeral merchandise or services.

(b) Making any oral, written, or visual representations, directly or indirectly, that any funeral merchandise or service is offered for sale when such is not a bona fide offer to sell such merchandise or service.

(c) Making any misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any preneed contract or any life insurance policy pledged or assigned to secure payment for funeral or burial goods or services.

(d) Misrepresenting pertinent facts or prepaid contract provisions relating to funeral or burial merchandise or services.

(e) Misrepresenting the amount advanced on behalf of a customer for any item of service or merchandise, including, but not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates, described as cash advances, accommodations, or words of similar import on the contract, final bill, or other written evidence of agreement or obligation furnished to customers; however, nothing in this paragraph shall require disclosure of a discount or rebate that may accrue to a licensee subsequent to making a cash advance.

(f) Making any false or misleading statement or claim that natural decomposition or decay of human remains can be prevented or substantially delayed by embalming, use of a gasketed or ungasketed casket, or use of an adhesive or nonadhesive closure on an outer burial container.

(g) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of dead human bodies.

(h) Making any false or misleading statements of the legal requirement as to the conditions under which preservation of a dead human body is required or as to the necessity of a casket or outer burial container.

(11) SPECIFIC SALES PRACTICES.—

(a) Failing to furnish, for retention, to each purchaser of burial rights, burial or funeral merchandise, or burial or funeral services a written agreement, the form of which has been previously approved if and as required by this chapter, that lists in detail the items and services purchased together with the prices for the items and services purchased; the name, address, and telephone number of the licensee; the signatures of the customer and the licensee or her or his representative; and the date signed.

(b) Filling in any contract form for use with a particular customer using language that misrepresents the true nature of the contract.

(c) Selling an irrevocable preneed contract to a person who is not an applicant for or recipient of Supplemental Security Income or Aid to Families with Dependent Children or pursuant to s. 497.459(6)(a).

(d) Except as authorized in part IV of this chapter, guaranteeing the price of goods and services at a future date.

(e) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(f) When displaying any caskets for sale, failing to display the least expensive casket offered for sale or use in adult funerals in the same general manner as the funeral service industry member's other caskets are displayed.

(g) Assessing fees and costs that have not been disclosed to the customer in connection with any transaction regulated by this chapter.

(h) Failure by a cemetery licensed under this chapter to provide to any person, upon request, a copy of the cemetery bylaws.

(i) Requirements by a cemetery licensee that lot owners or current customers make unnecessary visits to the cemetery company office for the purpose of solicitation.

(12) DISCLOSURE REQUIREMENTS.—

(a) Failure to disclose, when such disclosure is desired, the components of the prices for alternatives offered by the licensee from whom disclosure is requested, such as graveside service, direct disposition, and body donation without any rites or ceremonies prior to the delivery of the body and prices of service if there are to be such after the residue has been removed following the use thereof.

(b) Failing to furnish, for retention, to anyone who inquires in person about burial rights, burial or funeral merchandise, or burial or funeral services, before any discussion of selection, a printed or typewritten list specifying the range of retail prices for such rights, merchandise, or services. At a minimum, the list shall itemize the highest and lowest priced product and service regularly offered and shall include the name, address, and telephone number of the licensee and statements that the customer may choose only the items the customer desires, that the customer will be charged for only those items selected, and that there may be other charges for other items or other services.

(c) Failing to reasonably provide by telephone, upon request, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that licensee.

(d) Failure by a funeral director to make full disclosure in the case of a funeral or direct disposition with regard to the use of funeral merchandise that is not to be disposed of with the body or failure to obtain written permission from a legally authorized person regarding disposition of such merchandise.

(e) Failure by any funeral director to fully disclose all of her or his available services and merchandise prior to the selection of a casket offered by a licensee. The full disclosure required shall identify what is included in the funeral or direct disposition and the prices of all services and merchandise provided by the licensee or registrant.

(f) Failing to have the price of any casket offered for sale clearly marked on or in the casket, whether the casket is displayed at a funeral establishment or at any other location, regardless of whether the licensee is in control of such location. If a licensee uses books, catalogs, brochures, or other printed display aids, the price of each casket shall be clearly marked.

(g) Failing to disclose all fees and costs the customer may incur to use the burial rights or merchandise purchased.

(13) CONTRACT OBLIGATIONS.—

(a) Failing without reasonable justification to timely honor contracts entered into by the licensee or under the licensee's license for funeral or burial merchandise or services.

(b) Failure to honor preneed contract cancellation requests and make refunds as required by the chapter.

(14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY CUSTOMERS.—

(a) Failing to adopt and implement standards for the proper investigation and resolution of claims and complaints received by a licensee relating to the licensee's activities regulated by this chapter.

(b) Committing or performing with such frequency as to indicate a general business practice any of the following:

1. Failing to acknowledge and act promptly upon communications from a licensee's customers and their representatives with respect to claims or complaints relating to the licensee's activities regulated by this chapter.

2. Denying claims or rejecting complaints received by a licensee from a customer or customer's representative, relating to the licensee's activities regulated by this chapter, without first conducting reasonable investigation based upon available information.

3. Attempting to settle a claim or complaint on the basis of a material document that was altered without notice to, or without the knowledge or consent of, the contract purchaser or a legally authorized person.

4. Failing within a reasonable time to affirm or deny coverage of specified services or merchandise under a contract entered into by a licensee upon written request of the contract purchaser or a legally authorized person.

5. Failing to promptly provide, in relation to a contract for funeral or burial merchandise or services entered into by the licensee or under the licensee's license, a reasonable explanation to the contract purchaser or a legally authorized person of the licensee's basis for denying or rejecting all or any part of a claim or complaint submitted.

(c) Making a material misrepresentation to a contract purchaser or a legally authorized person for the purpose and with the intent of effecting settlement of a claim or complaint or loss under a prepaid contract on less favorable terms than those provided in, and contemplated by, the prepaid contract.

(d) Failing to maintain a complete copy of every complaint received by the licensee since the date of the last examination of the licensee by the department. For purposes of this subsection, the term "complaint" means any written communication primarily expressing a grievance and which communication is from:

1. A representative or family member of a deceased person interred at the licensee's facilities or using the licensee's services, or which deceased's remains were the subject of any service provided by the licensee or licensee's business; or

2. A person, or such person's family member or representative, who inquired of the licensee or licensee's business concerning the purchase of, or who purchased or contracted to purchase, any funeral or burial merchandise or services from the licensee or licensee's business. For purposes of this subsection, the response of a customer recorded by the customer on a customer satisfaction questionnaire or survey form sent to the customer by the licensee, and returned by the customer to the licensee, shall not be deemed to be a complaint.

(15) MISCELLANEOUS FINANCIAL MATTERS.—

(a) Failing to timely pay any fee required by this chapter.

(b) Failing to timely remit as required by this chapter the required amounts to any trust fund required by this chapter. The board shall by rule provide criteria for identifying minor, nonwillful trust remittance deficiencies; and remittance deficiencies falling within such criteria,

if fully corrected within 30 days after notice to the licensee by the department, do not constitute grounds for disciplinary action or a fine.

(c) 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 any business regulated under this chapter, whether such payments are made or received by the licensee, or her or his agent, assistant, or employee; however, this provision shall not prohibit the payment of commissions by a funeral director, funeral establishment, cemetery, or monument establishment to its preneed agents licensed pursuant to this chapter or to licensees under this chapter.

History.—s. 22, ch. 2004-301; s. 90, ch. 2005-2; s. 13, ch. 2005-155; s. 9, ch. 2010-125; s. 4, ch. 2016-172.

497.282 Disclosure of information to public.—A licensee offering to provide burial rights, merchandise, or services to the public shall:

(1) Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by the licensee.

(2) Fully disclose all regularly offered services and merchandise prior to the selection of burial services or merchandise. The full disclosure required shall identify the prices of all burial rights, services, and merchandise provided by the licensee.

(3) Not make any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container.

(4) Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights, merchandise, or services purchased.

(5) Provide to the customer, upon request, a current copy of the bylaws of the licensee.

(6) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract, the form of which has been approved by the licensing authority pursuant to procedures specified by rule.

(a) The written contract shall be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) The written contract shall provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(c) A description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(7) Provide the licensee's policy on cancellation and refunds to each customer.

(8) In a manner established by rule of the licensing authority, provide on the signature page, clearly and conspicuously in boldfaced 10-point type or larger, the following:

(a) The words "purchase price."

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services, and cash advances.

(e) The toll-free number of the department which is available for questions or complaints.

(f) A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid for items not used.

(9) Display in its offices for free distribution to all potential customers, and provide to all customers at the time of sale, a brochure explaining how and by whom cemeteries and preneed sales are regulated; summarizing consumer rights under the law; and providing the name, address, and phone number of the department's consumer affairs division. The format and content of the brochure shall be as prescribed by rule. The licensing authority may cause the publication of such brochures and by rule establish requirements that cemetery and preneed licensees purchase and make available such brochures as so published, in the licensee's offices, to all potential customers.

(10) Provide to each customer a complete description of any monument, marker, or memorialization to be placed at the gravesite.

History.—s. 37, ch. 80-238; s. 2, ch. 81-318; s. 1, ch. 89-8; ss. 75, 122, ch. 93-399; s. 16, ch. 96-400; s. 63, ch. 2004-301; s. 72, ch. 2018-110.

Note.—Former s. 559.407; s. 497.046; s. 497.333.

497.454 Approval of preneed contract and related forms.—

(1) Preneed contract forms and related forms shall be filed with and approved by the licensing authority before use, pursuant to procedures specified by rule. The licensing authority may not approve any electronic or paper preneed contract that does not provide for sequential prenumbering thereon.

(2) A form filed for approval under this section shall be approved unless it is determined that it:

(a) Is in any respect in violation of, or does not comply with, this chapter.

(b) Contains, or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the benefits purportedly provided to the customer in the general terms of the contract.

(c) Has any title, heading, or other indication of its contents which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision substantially illegible, or contains variations in print size which de-emphasize provisions which limit or restrict the customer's rights under the contract.

(e) Contains provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation.

(f) Does not provide for the specification in reasonable detail of the type, size, and design of merchandise and the description of service to be delivered or performed.

History.—ss. 5, 32, ch. 83-316; s. 5, ch. 88-139; ss. 94, 122, ch. 93-399; s. 103, ch. 2004-301; s. 19, ch. 2016-172.

Note.—Former s. 639.105; s. 497.409.

497.467 Acceptability of funeral and burial merchandise.—Each person who engages in preneed sales of funeral or burial merchandise shall determine, and notify the purchaser in writing prior to the completion of the contract, that the merchandise being considered for purchase will be accepted in the cemetery of the purchaser's choice. The failure to comply with this chapter shall nullify the agreement, and all moneys paid in shall be returned, notwithstanding the existence of any liquidated damages provision otherwise applicable by contract or statute.

History.—s. 13, ch. 77-438; s. 2, ch. 81-318; ss. 21, 31, 32, ch. 83-316; ss. 108, 122, ch. 93-399; s. 116, ch. 2004-301.

Note.—Former s. 639.21; s. 497.441.

497.468 Disclosure of information to the public.—A preneed licensee offering to provide burial rights, merchandise, or services to the public shall:

(1) Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by the licensee.

(2) Fully disclose all regularly offered services and merchandise prior to the customer's selection of burial services or merchandise. The full disclosure required shall identify the prices of all burial rights, services, and merchandise provided by the licensee.

(3) Not make any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container.

(4) Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights, merchandise, or services purchased.

(5) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract the form of which has been approved by the licensing authority pursuant to procedures specified by rule. The written contract shall:

(a) Be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) Provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(c) Provide a description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(6) Provide the licensee's policy on cancellation and refunds to each customer.

(7) In a manner established by rule of the licensing authority, provide on the signature page of the written contract, clearly and conspicuously in boldfaced 10-point type or larger, the following:

(a) The words "purchase price."

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services, and cash advances.

(e) The toll-free number of the department which is available for questions or complaints.

(f) A statement that the customer shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid for items not used.

(8) Display in its offices for free distribution to all potential customers, and provide to all customers at the time of sale, a brochure explaining how and by whom preneed sales are regulated, summarizing consumer rights under the law, and providing the name, address, and phone number of the department's consumer affairs division. The format and content of the brochure shall be as prescribed by rule. The licensing authority may cause the publication of such brochures and by rule require that preneed licensees purchase and make available such brochures as so published, in the licensee's offices, to all potential customers.

(9) Provide to each customer a complete description of any monument, marker, or memorialization to be placed at the gravesite pursuant to the preneed contract.

History.—s. 39, ch. 2005-155; s. 73, ch. 2018-110.

FLORIDA ADMINISTRATIVE CODE:

69K-8.006 Description of Merchandise on Preneed Contracts.

(1) Preneed contracts shall contain a description of merchandise purchased with sufficient information to describe the merchandise to the purchaser or any other person. The description of merchandise can be included on an addendum form to the contract, provided the addendum form is approved by the Board of Funeral, Cemetery, and Consumer Services. The approval of the Board shall be conditioned upon the addendum form containing the applicable information required by subsections (2)-(5), and being presented in a clear and readable form.

(2) If the product is sold to the purchaser generically, then a general description shall be sufficient, providing the following information is included:

(a) For all types of merchandise.

Materials used in construction: type of wood, gauge of steel, marble, concrete, granite, bronze, fiberglass, plastic, etc.

(b) For caskets.

1. Types of handles: swing bar, fixed bar or no handles.
2. Color: exterior and interior.
3. Interior material.
4. Full or half couch.
5. Gasketed or non-gasketed.

(c) For memorials or monuments.

1. Size.
2. Design.

(d) For outer burial containers.

1. Lined (including types of lining).
2. Adhesive lid/non adhesive lid.

(3) If the sales presentation uses the manufacturer's name and specifications, then the name of manufacturer and model number shall be included on the contract in addition to color, materials and design.

(4) If subsection (3) applies, then for all contracts written after January 1, 1997, or the effective date of this rule, the preneed licensee shall deliver the specific product (manufacturer and model) which was sold if the product is available at the time of need or fulfillment unless the purchaser or next of kin authorizes the delivery of a different product.

(5) If at the time of need or fulfillment, the product which was sold is unavailable, the preneed licensee shall deliver a product which is of comparable or better quality and design.

(6) For the purposes of this rule, merchandise shall be considered available for delivery if the merchandise can be attained in the market place within twenty-four hours.

Rulemaking Authority 497.103(1) FS. Law Implemented 497.282(6)(c) FS. History–New 4-10-97, Amended 7-5-01, 2-18-03, Formerly 3F-8.006.