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LEGISLATIVE ACTION

Senate

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House

The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 403 and 404

insert:

Section 11. Section 497.459, Florida Statutes, is amended to read:

497.459 Cancellation of, or default on, preneed contracts;
notice of intent to perform.—

(1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.—A purchaser, by providing written notice to the preneed licensee, may cancel



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11 a preneed contract within 30 days of the date that the contract
12 was executed provided that the burial rights, merchandise and
13 services have not yet been used. Upon providing such notice, the
14 purchaser shall be entitled to a complete refund of the amount
15 paid, except for the amount allocable to any burial rights,
16 merchandise or services that have been used, and shall be
17 released from all obligations under the contract. This
18 subsection shall apply to all items that are purchased as part
19 of a preneed contract, including burial rights, regardless of
20 whether such burial rights are purchased as part of a preneed
21 contract or purchased separately.

22 (2) CANCELLATION BY PURCHASER AFTER 30 DAYS.—

23 (a) A purchaser, by providing written notice to the preneed
24 licensee, may cancel the services, facilities, and cash advance
25 items portions of a preneed contract at any time, and shall be
26 entitled to a full refund of the purchase price allocable to
27 such items. Any accumulated earnings allocable to such preneed
28 contract shall be paid to the preneed licensee upon such
29 cancellation.

30 (b) Subject to subparagraphs 1. and 2., a purchaser may
31 cancel the merchandise portion of a preneed contract by
32 providing written notice to the preneed licensee, and shall be
33 entitled to a full refund of the purchase price allocable to the
34 specific item or items of merchandise that the preneed licensee
35 cannot or does not deliver in accordance with this subsection.

36 1. Such refund shall be provided only if at the time that
37 the preneed licensee is required to fulfill its obligations
38 under the preneed contract the preneed licensee does not or
39 cannot comply with the terms of the contract by actually



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40 delivering the merchandise, within a reasonable time, depending
41 upon the nature of the merchandise purchased, after having been
42 requested to do so.

43 2. In order to fulfill its obligations under the preneed
44 contract, a preneed licensee may elect either or both of the
45 following options:

46 a. Subcontract with a person located outside the preneed
47 licensee's market area to provide the merchandise; or

48 b. Provide other items of equal or greater quality.

49 (3) REQUIRED DISCLOSURE.—Each preneed licensee shall
50 provide in conspicuous type in its contract that the contract
51 purchaser may cancel the contract and receive a full refund
52 within 30 days of the date of execution of the contract. The
53 failure to make such provision shall not impair the contract
54 purchaser's right to cancellation and refund as provided in this
55 section.

56 (4) BREACH OF CONTRACT BY SELLER.—Upon breach of contract
57 or failure of the preneed licensee to provide funeral
58 merchandise or services under a preneed contract, the contract
59 purchaser shall be entitled to a refund of all money paid on the
60 contract. Such refund shall be made within 30 days after receipt
61 by the preneed licensee of the contract purchaser's written
62 request for refund.

63 (5) DEFAULT BY PURCHASER.—If a purchaser is 90 days past
64 due in making payments on a preneed contract, the contract shall
65 be considered to be in default, and the preneed licensee shall
66 be entitled to cancel the contract, withdraw all funds in trust
67 allocable to merchandise items, and retain such funds as
68 liquidated damages. Upon making such withdrawal, the preneed



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69 licensee shall return all funds in trust allocable to services,
70 facilities, or cash advance items to the purchaser, provided
71 that the preneed licensee has provided the purchaser with 30
72 days' written notice of its intention to exercise any of its
73 rights under this provision. The board may by rule specify the
74 required format and content of the notice required under this
75 subsection and the manner in which the notice shall be sent.

76 (6) OTHER PROVISIONS.—

77 (a) All preneed contracts are cancelable and revocable as
78 provided in this section, provided that a preneed contract does
79 not restrict any contract purchaser who is the beneficiary of
80 the preneed contract and who is a qualified applicant for, or a
81 recipient of, supplemental security income, temporary cash
82 assistance, or Medicaid from making her or his contract
83 irrevocable. A preneed contract that is made irrevocable
84 pursuant to this section may not be canceled during the life or
85 after the death of the contract purchaser or beneficiary as
86 described in this section. Any unexpended moneys paid on an
87 irrevocable contract shall be remitted to the Agency for Health
88 Care Administration for deposit into the Medical Care Trust Fund
89 after final disposition of the beneficiary.

90 (b) The amounts required to be refunded by this section for
91 contracts previously entered into shall be as follows:

92 1. For contracts entered into before October 1, 1993, the
93 refund amounts as amended by s. 7, chapter 83-316, Laws of
94 Florida, shall apply.

95 2. For contracts entered into on or after October 1, 1993,
96 the refund amounts as amended by s. 99, chapter 93-399, Laws of
97 Florida, shall apply.



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98 (c) Persons who purchase merchandise or burial rights
99 pursuant to this chapter shall have the right to sell, alienate,
100 or otherwise transfer the merchandise or burial rights subject
101 to and in accordance with rules adopted by the licensing
102 authority.

103 (d) All refunds required to be made under this section to a
104 purchaser who has canceled a contract must be made within 30
105 days after the date written notice of cancellation is received
106 by the preneed licensee.

107 (7) NOTICE OF INTENT TO PERFORM.—

108 (a) To facilitate the performance of a preneed contract, a
109 preneed licensee may provide to the purchaser or to the
110 beneficiary's legally authorized person written notice of the
111 preneed licensee's intent to perform upon the occurrence of the
112 earliest of any of the following events:

113 1. Fifty years after the date of execution of the preneed
114 contract by the purchaser.

115 2. The beneficiary of the preneed contract attains the age
116 of 105 years of age or older.

117 3. The social security number of the beneficiary of the
118 preneed contract, as shown on the contract, is contained within
119 the United States Social Security Administration Death Master
120 File.

121 (b) The notice in paragraph (a) must be mailed to the last
122 known mailing address of the purchaser as provided to the
123 preneed licensee. If the purchaser or the beneficiary's legally
124 authorized person fails to respond to such notice within 120
125 days after delivery of the notice, the funds held in trust must
126 be distributed in accordance with the terms of the preneed



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127 contract.

128 (c) This subsection does not affect a purchaser's rights to
129 cancel the preneed contract and receive a refund or a licensee's
130 obligations to refund established by this chapter.

131

132 ===== T I T L E A M E N D M E N T =====

133 And the title is amended as follows:

134 Delete lines 38 - 43

135 and insert:

136 certain rules; amending s. 497.458, F.S.; deleting a
137 requirement that trust companies must operate pursuant
138 to ch. 660, F.S., to enter into certain revocable
139 trust instruments; amending s. 497.459, F.S.;
140 authorizing preneed licensees, under certain
141 circumstances, to provide certain persons with a
142 written notice of intent to perform under the preneed
143 contract; specifying where such notice must be sent;
144 providing that funds held in trust must be distributed
145 in accordance with the contract terms if certain
146 persons fail to respond to the notice within a certain
147 timeframe; providing construction; amending s.
148 497.464, F.S.; deleting a requirement that trust
149 companies must operate pursuant to ch. 660, F.S., to
150 act as trustees for certain preneed contract
151 purchasers; amending s. 497.604, F.S.; revising