

Bill No. CS for SB 1572

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Harris moved the following amendment:

**Senate Amendment (with title amendment)**  
Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Cemetery Preservation and Consumer Protection Act."

Section 2. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.--As used in this chapter:

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

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

(3)~~(8)~~ "Belowground crypts" consist of interment space

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1 in preplaced chambers, either side by side or multiple depth,  
2 covered by earth and sod and known also as "lawn crypts,"  
3 "westminsters," or "turf-top crypts."

4 ~~(4)(30)~~ "Board" means the Board of Funeral and  
5 Cemetery Services.

6 ~~(5)(12)~~ "Burial merchandise," "funeral merchandise,"  
7 or "merchandise" means any personal property offered or sold  
8 by any person for use in connection with the final  
9 disposition, memorialization, interment, entombment, or  
10 inurnment of human remains.

11 ~~(6)(11)~~ "Burial right" means the right to use a grave  
12 space, mausoleum, or columbarium for the interment,  
13 entombment, or inurnment of human remains.

14 ~~(7)(13)~~ "Burial service," "funeral service," or  
15 "service" means any service offered or provided by any person  
16 in connection with the final disposition, memorialization,  
17 interment, entombment, or inurnment of human remains.

18 ~~(8)~~ "Care and maintenance" means the perpetual process  
19 of keeping a cemetery and its lots, graves, grounds,  
20 landscaping, roads, paths, parking lots, fences, mausoleums,  
21 columbaria, vaults, crypts, utilities, and other improvements,  
22 structures, and embellishments in a well-cared-for and  
23 dignified condition, so that the cemetery does not become a  
24 nuisance or place of reproach and desolation in the community.  
25 As specified in the rules of the board, "care and maintenance"  
26 may include, but is not limited to, any or all of the  
27 following activities: mowing the grass at reasonable  
28 intervals; raking and cleaning the grave spaces and adjacent  
29 areas; pruning of shrubs and trees; suppression of weeds and  
30 exotic flora; and maintenance, upkeep, and repair of drains,  
31 water lines, roads, buildings, and other improvements. "Care

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1 and maintenance" may include, but is not limited to,  
 2 reasonable overhead expenses necessary for such purposes,  
 3 including maintenance of machinery, tools, and equipment used  
 4 for such purposes. "Care and maintenance" may also include  
 5 repair or restoration of improvements necessary or desirable  
 6 as a result of wear, deterioration, accident, damage, or  
 7 destruction. "Care and maintenance" does not include expenses  
 8 for the construction and development of new grave spaces or  
 9 interment structures to be sold to the public.

10 (9)(14) "Casket" means a rigid container which is  
 11 designed for the encasement of human remains and which is  
 12 usually constructed of wood or metal, ornamented, and lined  
 13 with fabric.

14 (10)(2) "Cemetery" means a place dedicated to and used  
 15 or intended to be used for the permanent interment of human  
 16 remains. A cemetery may contain land or earth interment;  
 17 mausoleum, vault, or crypt interment; a columbarium or other  
 18 structure or place used or intended to be used for the  
 19 interment of cremated human remains; or any combination of one  
 20 or more of such structures or places.

21 (11)(5) "Cemetery company" means any legal entity that  
 22 owns or controls cemetery lands or property.

23 (12)(31) "Certificateholder" or "licensee" means the  
 24 person or entity that is authorized under this chapter to sell  
 25 preneed funeral or burial services, preneed funeral or burial  
 26 merchandise, or burial rights. Each term shall include the  
 27 other, as applicable, as the context requires. For the  
 28 purposes of chapter 120, all certificateholders, licensees,  
 29 and registrants shall be considered licensees.

30 (13)(4) "Columbarium" means a structure or building  
 31 which is substantially exposed above the ground and which is

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1 intended to be used for the inurnment of cremated human  
2 remains.

3 (14)~~(32)~~ "Common business enterprise" means a group of  
4 two or more business entities that share common ownership in  
5 excess of 50 percent.

6 (15)~~(28)~~ "Community" means the area within a 15-mile  
7 radius surrounding the location or proposed location of a  
8 cemetery.

9 (16)~~(25)~~ "Cremation" includes any mechanical or  
10 thermal process whereby a dead human body is reduced to ashes.  
11 Cremation also includes any other mechanical or thermal  
12 process whereby human remains are pulverized, burned,  
13 reinterred, or otherwise further reduced in size or quantity.

14 (17)~~(7)~~ "Department" means the Department of Banking  
15 and Finance.

16 (18)~~(19)~~ "Direct disposer" means any person who is  
17 registered in this state to practice direct disposition  
18 pursuant to the provisions of chapter 470.

19 (19)~~(20)~~ "Final disposition" means the final disposal  
20 of a dead human body whether by interment, entombment, burial  
21 at sea, cremation, or any other means and includes, but is not  
22 limited to, any other disposition of remains for which a  
23 segregated charge is imposed.

24 (20)~~(21)~~ "Funeral director" means any person licensed  
25 in this state to practice funeral directing pursuant to the  
26 provisions of chapter 470.

27 (21)~~(6)~~ "Grave space" means a space of ground in a  
28 cemetery intended to be used for the interment in the ground  
29 of human remains.

30 (22)~~(1)~~ "Human remains" means the bodies of deceased  
31 persons and includes bodies in any stage of decomposition and

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1 cremated remains.

2 (23)~~(3)~~ "Mausoleum" means a structure or building  
3 which is substantially exposed above the ground and which is  
4 intended to be used for the entombment of human remains.

5 (24)~~(10)~~ "Mausoleum section" means any construction  
6 unit of a mausoleum which is acceptable to the department and  
7 which a cemetery uses to initiate its mausoleum program or to  
8 add to its existing mausoleum structures.

9 (25)~~(18)~~ "Monument" means any product used for  
10 identifying a grave site and cemetery memorials of all types,  
11 including monuments, markers, and vases.

12 (26)~~(27)~~ "Monument establishment" means a facility  
13 that operates independently of a cemetery or funeral  
14 establishment and that offers to sell monuments or monument  
15 services to the public for placement in a cemetery.

16 (27)~~(24)~~ "Net assets" means the amount by which the  
17 total assets of a certificateholder, excluding goodwill,  
18 franchises, customer lists, patents, trademarks, and  
19 receivables from or advances to officers, directors,  
20 employees, salespersons, and affiliated companies, exceed  
21 total liabilities of the certificateholder. For purposes of  
22 this definition, the term "total liabilities" does not include  
23 the capital stock, paid-in capital, or retained earnings of  
24 the certificateholder.

25 (28)~~(29)~~ "Net worth" means total assets minus total  
26 liabilities pursuant to generally accepted accounting  
27 principles.

28 (29)~~(16)~~ "Outer burial container" means an enclosure  
29 into which a casket is placed and includes, but is not limited  
30 to, vaults made of concrete, steel, fiberglass, or copper;  
31 sectional concrete enclosures; crypts; and wooden enclosures.

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1           ~~(30)(22)~~ "Preneed contract" means any arrangement or  
2 method, of which the provider of funeral merchandise or  
3 services has actual knowledge, whereby the funeral  
4 establishment, direct disposer, or certificateholder agrees to  
5 furnish funeral merchandise or service in the future.

6           ~~(31)(26)~~ "Servicing agent" means any person acting as  
7 an independent contractor whose fiduciary responsibility is to  
8 assist both the trustee and certificateholder hereunder in  
9 administrating their responsibilities pursuant to this  
10 chapter.

11           ~~(32)(15)~~ "Solicitation" means any communication which  
12 directly or implicitly requests an immediate oral response  
13 from the recipient.

14           ~~(33)(23)~~ "Statutory accounting" means generally  
15 accepted accounting principles, except as modified by this  
16 chapter.

17           Section 3. Section 497.0255, Florida Statutes, is  
18 created to read:

19           497.0255 Duty of care and maintenance of licensed  
20 cemetery.--Every cemetery company or other entity responsible  
21 for the care and maintenance of a licensed cemetery in this  
22 state shall ensure that the grounds, structures, and other  
23 improvements of the cemetery are well cared for and maintained  
24 in a proper and dignified condition. The board shall adopt, by  
25 no later than July 1, 1999, such rules as are necessary to  
26 implement and enforce this section. In developing and  
27 promulgating said rules, the board may define different  
28 classes of cemeteries or care and maintenance, and may provide  
29 for different rules to apply to each of said classes, if the  
30 designation of classes and the application of different rules  
31 is in the public interest and is supported by findings by the

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1 board based on evidence of industry practices, economic and  
2 physical feasibility, location, or intended uses; provided,  
3 that the rules shall provide minimum standards applicable to  
4 all cemeteries. For example, and without limiting the  
5 generality of the foregoing, the board may determine that a  
6 small rural cemetery with large trees and shade area does not  
7 require, and may not be able to attain, the same level of lawn  
8 care as a large urban cemetery with large open grassy areas  
9 and sprinkler systems.

10 Section 4. Section 497.229, Florida Statutes, is  
11 amended to read:

12 497.229 Courts; powers; abatement of nuisances.--

13 (1) In addition to all other means provided by law for  
14 the enforcement of a temporary restraining order or an  
15 injunction, the circuit court may impound the property of a  
16 cemetery company, including books, papers, documents, and  
17 records pertaining thereto, and may appoint a receiver or  
18 administrator to prevent further violation of this chapter.

19 (2) A court-appointed receiver or administrator may  
20 take any action to implement the provisions of the court  
21 order, to ensure the performance of the order, and to remedy  
22 any breach thereof.

23 (3) Any nonconforming physical condition in a cemetery  
24 or component thereof which is the result of a violation of  
25 this chapter or of the rules of the board relating to  
26 construction, physical operations, or care and maintenance at  
27 the cemetery shall be deemed a public nuisance, and the  
28 nonconforming physical conditions caused by such violation may  
29 be abated as provided in s. 60.05.

30 Section 5. Section 497.253, Florida Statutes, is  
31 amended to read:

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1           497.253 Minimum acreage; sale or disposition of  
2 cemetery lands.--

3           (1) Each licensee shall set aside a minimum of 15  
4 contiguous acres of land for use by the licensee as a cemetery  
5 and shall not sell, mortgage, lease, or encumber that property  
6 without prior written approval of the department.

7           (2) Any lands owned by a licensee and dedicated for  
8 use by it as a cemetery, which are contiguous, adjoining, or  
9 adjacent to the minimum of 15 contiguous acres described in  
10 subsection (1), may be sold, conveyed, or disposed of by the  
11 licensee, after obtaining written approval of the department  
12 pursuant to subsection (3), for use by the new owner for other  
13 purposes than as a cemetery. All of the human remains which  
14 have been previously interred therein shall first have been  
15 removed from the lands proposed to be sold, conveyed, or  
16 disposed of; however, the provisions of ss. 497.515(7) and  
17 470.0295 must be complied with prior to any disinterment of  
18 human remains. Any and all titles, interests, or burial rights  
19 which may have been sold or contracted to be sold in lands  
20 which are the subject of the sale shall be conveyed to and  
21 revested in the licensee prior to consummation of any such  
22 sale, conveyance, or disposition.

23           (3)(a) If the property to be sold, conveyed, or  
24 disposed of under subsection (2) has been or is being used for  
25 the permanent interment of human remains, the applicant for  
26 approval of such sale, conveyance, or disposition shall cause  
27 to be published, at least once a week for 4 consecutive weeks,  
28 a notice meeting the standards of publication set forth in s.  
29 125.66(4)(b)2. The notice shall describe the property in  
30 question and the proposed noncemetery use and shall advise  
31 substantially affected persons that they may file a written



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1 request for a hearing pursuant to chapter 120, within 14 days  
2 after the date of last publication of the notice, with the  
3 department if they object to granting the applicant's request  
4 to sell, convey, or dispose of the subject property for  
5 noncemetery uses.

6 (b) If the property in question has never been used  
7 for the permanent interment of human remains, no notice or  
8 hearing is required.

9 (c) If the property in question has been used for the  
10 permanent interment of human remains, the department shall  
11 approve the application, in writing, if it finds that it would  
12 not be contrary to the public interest. In determining whether  
13 to approve the application, the department shall consider any  
14 evidence presented concerning the following:

15 1. The historical significance of the subject  
16 property, if any.

17 2. The archaeological significance of the subject  
18 property, if any.

19 3. The public purpose, if any, to be served by the  
20 proposed use of the subject property.

21 4. The impact of the proposed change in use of the  
22 subject property upon the inventory of remaining cemetery  
23 facilities in the community and upon the other factors  
24 enumerated in s. 497.201(3).

25 5. The impact of the proposed change in use of the  
26 subject property upon the reasonable expectations of the  
27 families of the deceased regarding whether the cemetery  
28 property was to remain as a cemetery in perpetuity.

29 6. Whether any living relatives of the deceased  
30 actively oppose the relocation of their deceased's remains and  
31 the conversion of the subject property to noncemetery uses.

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1           7. The elapsed time since the last interment in the  
2 subject property.

3           8. Any other factor enumerated in this chapter that  
4 the department considers relevant to the public interest.

5           (d) Any deed, mortgage, or other conveyance by a  
6 cemetery company or other owner pursuant to paragraphs (a) and  
7 (c) must contain a disclosure in the following or  
8 substantially similar form:

9                   NOTICE: The property described herein was  
10                   formerly used and dedicated as a cemetery.  
11                   Conveyance of this property and its use for  
12                   noncemetery purposes was authorized by the  
13                   Florida Department of Banking and Finance by  
14                   Order No.....dated.....

15  
16           (e) The department shall adopt such rules as are  
17 necessary to carry out the provisions of this section.

18           ~~(4)(3)~~ A licensee may convey and transfer to a  
19 municipality or county its real and personal property,  
20 together with moneys deposited in trust funds pursuant to this  
21 chapter, provided the municipality or county will accept  
22 responsibility for maintenance thereof and prior written  
23 approval of the department is obtained.

24           ~~(5)(4)~~ The provisions of subsections (1) and (2)  
25 relating to a requirement for minimum acreage shall not apply  
26 to any cemetery company licensed by the department on or  
27 before July 1, 1965, which owns a total of less than 15 acres  
28 of land; however, no cemetery company shall dispose of any  
29 land without the prior written consent of the department.

30           Section 6. Section 497.255, Florida Statutes, is  
31 created to read:

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1           497.255 Standards for construction and significant  
2 alteration or renovation of mausoleums and columbaria.--

3           (1) All newly constructed and significantly altered or  
4 renovated mausoleums and columbaria must, in addition to  
5 complying with applicable building codes, conform to the  
6 standards adopted under this section.

7           (2) The board shall adopt, by no later than July 1,  
8 1999, rules establishing minimum standards for all newly  
9 constructed and significantly altered or renovated mausoleums  
10 and columbaria; however, in the case of significant  
11 alterations or renovations to existing structures, the rules  
12 shall apply only, when physically feasible, to the newly  
13 altered or renovated portion of such structures, except as  
14 specified in subsection (4). In developing and promulgating  
15 said rules, the board may define different classes of  
16 structures or construction standards, and may provide for  
17 different rules to apply to each of said classes, if the  
18 designation of classes and the application of different rules  
19 is in the public interest and is supported by findings by the  
20 board based on evidence of industry practices, economic and  
21 physical feasibility, location, or intended uses; providing,  
22 that the rules shall provide minimum standards applicable to  
23 all construction. For example, and without limiting the  
24 generality of the foregoing, the board may determine that a  
25 small single-story ground-level mausoleum does not require the  
26 same level of construction standards that a large multistory  
27 mausoleum might require; or that a mausoleum located in a  
28 low-lying area subject to frequent flooding or hurricane  
29 threats might require different standards than one located on  
30 high ground in an area not subject to frequent severe weather  
31 threats. The board shall develop the rules in cooperation

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1 with, and with technical assistance from, the Board of  
2 Building Codes and Standards of the Department of Community  
3 Affairs, to ensure that the rules are in the proper form and  
4 content to be included as part of the State Minimum Building  
5 Codes under part VII of chapter 553. If the Board of Building  
6 Codes and Standards advises that some of the standards  
7 proposed by the board are not appropriate for inclusion in  
8 such building codes, the board may choose to include those  
9 standards in a distinct chapter of its rules entitled  
10 "Non-Building-Code Standards for Mausoleums" or "Additional  
11 Standards for Mausoleums," or other terminology to that  
12 effect. If the board elects to divide the standards into two  
13 or more chapters, all such rules shall be binding on licensees  
14 and others subject to the jurisdiction of the board, but only  
15 the chapter containing provisions appropriate for building  
16 codes shall be transmitted to the Board of Building Codes and  
17 Standards pursuant to subsection (3). Such rules may be in the  
18 form of standards for design and construction; methods,  
19 materials, and specifications for construction; or other  
20 mechanisms. Such rules shall encompass, at a minimum, the  
21 following standards:

22 (a) No structure may be built or significantly altered  
23 for use for interment, entombment, or inurnment purposes  
24 unless constructed of such material and workmanship as will  
25 ensure its durability and permanence, as well as the safety,  
26 convenience, comfort, and health of the community in which it  
27 is located, as dictated and determined at the time by modern  
28 mausoleum construction and engineering science.

29 (b) Such structure must be so arranged that the  
30 exterior of any vault, niche, or crypt may be readily examined  
31 at any time by any person authorized by law to do so.

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1           (c) Such structure must contain adequate provision for  
2 drainage and ventilation.

3           (d) Such structure must be of fire-resistant  
4 construction. Notwithstanding the requirements of chapter 633  
5 and s. 553.895, any mausoleum or columbarium constructed of  
6 noncombustible materials, as defined in the Standard Building  
7 Code, shall not require a sprinkler system.

8           (e) Such structure must be resistant to hurricane and  
9 other storm damage to the highest degree provided under  
10 applicable building codes for buildings of that class.

11           (f) Suitable provisions must be made for securely and  
12 permanently sealing each crypt with durable materials after  
13 the interment or entombment of human remains, so that no  
14 effluvia or odors may escape therefrom except as provided by  
15 design and sanitary engineering standards. Panels for  
16 permanent seals must be solid and constructed of materials of  
17 sufficient weight, permanence, density, imperviousness, and  
18 strength as to ensure their durability and continued  
19 functioning. Permanent crypt sealing panels must be securely  
20 installed and set in with high quality fire-resistant,  
21 resilient, and durable materials after the interment or  
22 entombment of human remains. The outer or exposed covering of  
23 each crypt must be of a durable, permanent, fire-resistant  
24 material; however, plastic, fiberglass, and wood are not  
25 acceptable materials for such outer or exposed coverings.

26           (g) Interior and exterior fastenings for hangers,  
27 clips, doors, and other objects must be of copper, copper-base  
28 alloy, aluminum, or stainless steel of adequate gauges, or  
29 other materials established by rule which provide equivalent  
30 or better strength and durability, and must be properly  
31 installed.

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1           (3) The board shall transmit the rules as adopted  
2 under subsection (2), hereinafter referred to as the  
3 "mausoleum standards," to the Board of Building Codes and  
4 Standards, which shall initiate rulemaking under chapter 120  
5 to consider such mausoleum standards. If such mausoleum  
6 standards are not deemed acceptable, they shall be returned by  
7 the Board of Building Codes and Standards to the board with  
8 details of changes needed to make them acceptable. If such  
9 mausoleum standards are acceptable, the Board of Building  
10 Codes and Standards shall adopt a rule designating the  
11 mausoleum standards as an approved revision to the State  
12 Minimum Building Codes under part VII of chapter 553. When so  
13 designated by the Board of Building Codes and Standards, such  
14 mausoleum standards shall become a required element of the  
15 State Minimum Building Codes under s. 553.73(2) and shall be  
16 transmitted to each local enforcement agency, as defined in s.  
17 553.71(5). Such local enforcement agency shall consider and  
18 inspect for compliance with such mausoleum standards as if  
19 they were part of the local building code, but shall have no  
20 continuing duty to inspect after final approval of the  
21 construction pursuant to the local building code. Any further  
22 amendments to the mausoleum standards shall be accomplished by  
23 the same procedure. Such designated mausoleum standards, as  
24 from time to time amended, shall be a part of the State  
25 Minimum Building Codes under s. 553.73 until the adoption and  
26 effective date of a new statewide uniform minimum building  
27 code, which may supersede the mausoleum standards as provided  
28 by the law enacting the new statewide uniform minimum building  
29 code.

30           (4) In addition to the rules adopted under subsection  
31 (2), the board shall adopt rules providing that following all

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1 interments, inurnments, and entombments in mausoleums and  
2 columbaria occurring after the effective date of such rules,  
3 whether newly constructed or existing, suitable provision must  
4 be made, when physically feasible, for sealing each crypt in  
5 accordance with standards promulgated pursuant to paragraph  
6 (2)(f).

7 (5) For purposes of this section, the term  
8 "significant alteration or renovation" means any addition,  
9 renovation, or repair which results in the creation of new  
10 crypt of niche spaces.

11 Section 7. Section 497.257, Florida Statutes, is  
12 amended to read:

13 497.257 Construction of mausoleums, columbaria, and  
14 belowground crypts; preconstruction trust fund; compliance  
15 requirement.--

16 (1) A cemetery company shall start construction of  
17 that section of a mausoleum, columbarium, or bank of  
18 belowground crypts in which sales, contracts for sales,  
19 reservations for sales, or agreements for sales are being made  
20 within 4 years after the date of the first such sale or 50  
21 percent of the mausoleum, columbarium, or belowground crypts  
22 have been sold and the purchase price has been received,  
23 whichever occurs first. The construction shall be completed  
24 within 5 years after the date of the first sale made.  
25 However, extensions for completion, not to exceed 1 year, may  
26 be granted by the department for good cause shown. If the  
27 units have not been completely constructed at the time of need  
28 or the time specified herein, all moneys paid shall be  
29 refunded upon request, plus interest earned thereon for that  
30 portion of the moneys deposited in the trust fund and an  
31 amount equal to the interest that would have been earned on

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1 that portion of the moneys that were not in trust.

2 (2) A cemetery company which plans to offer for sale  
3 space in a section of a mausoleum, columbarium, or bank of  
4 belowground crypts prior to construction shall establish a  
5 preconstruction trust fund by written instrument. The  
6 preconstruction trust fund shall be administered by a  
7 corporate trustee and operated in conformity with s. 497.417.  
8 The preconstruction trust fund shall be separate from any  
9 other trust funds that may be required by this chapter.

10 (3) Before a sale, contract for sale, reservation for  
11 sale, or agreement for sale in a mausoleum section  
12 columbarium, or bank of belowground crypts may be made, the  
13 cemetery company shall compute the amount to be deposited to  
14 the preconstruction trust fund. The total amount to be  
15 deposited in the fund for each unit of the project shall be  
16 computed by dividing the cost of the project plus 10 percent  
17 of the cost, as computed by a licensed contractor, engineer,  
18 or architect, by the number of crypts in the section or bank  
19 of belowground crypts or the number of niches in the  
20 columbarium. When payments are received in installments, the  
21 percentage of the installment payment placed in trust must be  
22 identical to the percentage which the payment received bears  
23 to the total cost of the contract, including other merchandise  
24 and services purchased. Preconstruction trust fund payments  
25 shall be made within 30 days after the end of the month in  
26 which payment is received.

27 (4) When the cemetery company delivers a completed  
28 crypt or niche acceptable to the purchaser in lieu of the  
29 crypt or niche purchased prior to construction, all sums  
30 deposited to the preconstruction trust fund for that purchaser  
31 shall be paid to the cemetery company.



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1           (5) Each cemetery company may negotiate, at the time  
2 of establishment of the preconstruction trust fund, a  
3 procedure for withdrawal of the escrowed funds as a part of  
4 the construction cost of the mausoleum section, columbarium,  
5 or bank of belowground crypts contemplated, subject to the  
6 approval of the department. Upon completion of the mausoleum  
7 section, columbarium, or bank of belowground crypts, the  
8 cemetery company shall certify completion to the trustee and  
9 shall be entitled to withdraw all funds deposited to the  
10 account thereof.

11           (6) If the mausoleum section, columbarium, or bank of  
12 belowground crypts is not completed within the time limits set  
13 out in this section, the trustee shall contract for and cause  
14 the project to be completed and pay therefor from the trust  
15 funds deposited to the project's account paying any balance,  
16 less cost and expenses, to the cemetery company. The refund  
17 provisions of subsection (1) apply only to the extent there  
18 are funds remaining in excess of the costs to complete the  
19 facilities, prior to any payments to the cemetery company.

20           (7) On or before April 1 of each year, the trustee  
21 shall file with the board in the form prescribed by the board  
22 a full and true statement as to the activities of any trust  
23 established by the board pursuant to this chapter for the  
24 preceding calendar year.

25           (8) In lieu of the payments outlined hereunder to the  
26 preconstruction trust fund, the cemetery company may deliver  
27 to the department a performance bond in an amount and by a  
28 surety company acceptable to the department.

29           Section 8. Subsection (4) of section 497.417, Florida  
30 Statutes, is amended to read:

31           497.417 Disposition of proceeds received on

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1 contracts.--

2 (4) The trustee of the trust established pursuant to  
3 this section shall only have the power to:

4 (a) Invest in investments as prescribed in s. 215.47  
5 and exercise the powers set forth in part IV of chapter 737,  
6 provided that the board may by order require the trustee to  
7 liquidate or dispose of any investment within 30 days after  
8 such order.

9 ~~(b) Purchase from an insurance company, licensed by  
10 this state, life insurance policies or annuity contracts not  
11 to exceed the aggregate amount of \$250,000 on any one  
12 individual life.~~

13 (b)~~(c)~~ Borrow money up to an aggregate amount of 10  
14 percent of trust assets, at interest rates then prevailing  
15 from any individual, bank, insurance company, or other source,  
16 irrespective of whether any such person is then acting as  
17 trustee, and to create security interests in no more than 10  
18 percent of trust assets by mortgage, pledge, or otherwise,  
19 upon the terms and conditions and for such purposes as the  
20 trustee may deem advisable.

21 (c)~~(d)~~ Commingle the property of the trust with the  
22 property of any other trust established pursuant to this  
23 chapter and make corresponding allocations and divisions of  
24 assets, liabilities, income, and expenses.

25 Section 9. Subsection (12) of section 497.429, Florida  
26 Statutes, is repealed.

27 Section 10. Section 497.527, Florida Statutes, is  
28 amended to read:

29 497.527 Civil remedies.--The Attorney General or any  
30 person may bring a civil action against a person or company  
31 violating the provisions of this chapter in the appropriate

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1 ~~circuit~~ court of the county in which the alleged violator  
2 resides or has his or her or its principal place of business  
3 or in the county wherein the alleged violation occurred. Upon  
4 adverse adjudication, the defendant shall be liable for actual  
5 damages caused by such violation ~~or \$500, whichever is~~  
6 ~~greater~~. The court may, as provided by common law, award  
7 punitive damages and may provide such equitable relief as it  
8 deems proper or necessary, including enjoining the defendant  
9 from further violations of this chapter.

10 Section 11. Section 872.02, Florida Statutes, is  
11 amended to read:

12 872.02 Injuring or removing tomb or monument;  
13 disturbing contents of grave or tomb; penalties.--

14 (1) A person who willfully and knowingly destroys,  
15 mutilates, defaces, injures, or removes any tomb, monument,  
16 gravestone, burial mound, earthen or shell monument containing  
17 human skeletal remains or associated burial artifacts, or  
18 other structure or thing placed or designed for a memorial of  
19 the dead, or any fence, railing, curb, or other thing intended  
20 for the protection or ornamentation of any tomb, monument,  
21 gravestone, burial mound, earthen or shell monument containing  
22 human skeletal remains or associated burial artifacts, or  
23 other structure before mentioned, or for any enclosure for the  
24 burial of the dead, or willfully destroys, mutilates, removes,  
25 cuts, breaks, or injures any tree, shrub, or plant placed or  
26 being within any such enclosure, commits ~~is guilty of a~~  
27 ~~misdemeanor of the first degree, punishable as provided in s.~~  
28 ~~775.082 or s. 775.083. However, if the damage to such~~  
29 ~~property is greater than \$100 or if any property removed is~~  
30 ~~greater than \$100 in value, then the person is guilty of a~~  
31 felony of the third degree, punishable as provided in s.

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1 775.082, s. 775.083, or s. 775.084.

2 (2) A person who willfully and knowingly disturbs the  
3 contents of a tomb or grave commits ~~is guilty of~~ a felony of  
4 the second ~~third~~ degree, punishable as provided in s. 775.082,  
5 s. 775.083, or s. 775.084.

6 (3) This section shall not apply to any person acting  
7 under the direction or authority of the Division of Historical  
8 Resources of the Department of State, to cemeteries operating  
9 under chapter 497, or to any person otherwise authorized by  
10 law to remove or disturb a tomb, monument, gravestone, burial  
11 mound, or similar structure, or its contents, as described in  
12 subsection (1).

13 (4) For purposes of this section, the term "tomb"  
14 includes any mausoleum, columbarium, or belowground crypt.

15 Section 12. Section 245.07, Florida Statutes, is  
16 amended to read:

17 245.07 Retention of bodies before use; unfit or excess  
18 number of bodies, disposition procedure.--All bodies received  
19 by the anatomical board shall be retained in receiving vaults  
20 for a period of not less than 48 hours before allowing their  
21 use for medical science; if at any time more bodies are made  
22 available to the anatomical board than can be used for medical  
23 science under its jurisdiction, or if a body shall be deemed  
24 by the anatomical board to be unfit for anatomical purposes,  
25 the anatomical board may notify, in writing, the county  
26 commissioners or other legally authorized person, as defined  
27 in s. 470.002, ~~the person or entity in control of such body in~~  
28 the county where such person died, to cause it to be buried or  
29 cremated in accordance with the ~~already existing~~ rules, laws  
30 and practices for disposing of such unclaimed bodies ~~within~~  
31 ~~the confines of the said county.~~ However, prior to having any

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1 body buried or cremated, the county shall make a reasonable  
 2 effort to determine the identity of the body and shall further  
 3 make a reasonable effort to contact any relatives of the  
 4 deceased person. If a relative of the deceased person is  
 5 contacted and expresses a preference for either burial or  
 6 cremation, the county shall make a reasonable effort to  
 7 accommodate the request of the relative. For purposes of this  
 8 section, the county commissioners of the county where such  
 9 person died shall be considered a "legally authorized person"  
 10 as defined in ~~pursuant to~~ s. 470.002(18). A person licensed  
 11 under chapter 470 or chapter 497 shall not be liable for any  
 12 damages resulting from cremating or burying such body at the  
 13 direction of the county's legally authorized person ~~county~~  
 14 ~~commission.~~

15 Section 13. (1) There is created within the  
 16 Department of Banking and Finance the Task Force on Abandoned  
 17 and Neglected Cemeteries. The task force shall be composed of  
 18 11 members appointed by the Comptroller and representing the  
 19 following interests:

20 (a) A representative of the licensed cemetery  
 21 industry.

22 (b) A representative of preneed certificateholders who  
 23 is not associated with a cemetery company through an ownership  
 24 interest or through employment with a company which has an  
 25 ownership interest in a cemetery.

26 (c) A representative of church-owned cemeteries.

27 (d) A representative of cemeteries owned by nonprofit  
 28 organizations.

29 (e) A representative of consumer interests.

30 (f) A representative of the department.

31 (g) A person nominated by the Secretary of State as a

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1 representative of historic preservation and archaeological  
2 interests.

3 (h) A person nominated by the Florida League of Cities  
4 as a representative of municipally owned or maintained  
5 cemeteries.

6 (i) A person nominated by the Florida Association of  
7 Counties as a representative of county-owned or  
8 county-maintained cemeteries.

9 (j) Two citizen members.

10 (2) The members of the task force shall elect from  
11 among their number a chair and a vice chair.

12 (3) Members of the task force shall be appointed no  
13 later than 30 days after this act becomes a law. The task  
14 force shall serve from the time its members are appointed  
15 until adjournment sine die of the 1999 Regular Session of the  
16 Legislature.

17 (4) The members of the task force shall serve without  
18 compensation, but shall be reimbursed for per diem and travel  
19 expenses as provided in s. 112.061, Florida Statutes.

20 (5) The department shall provide administrative and  
21 staff support for the task force.

22 (6) The task force shall:

23 (a) Examine the extent to which some cemeteries in the  
24 state are abandoned and therefore have no existing responsible  
25 person or entity in charge, or are neglected and therefore are  
26 not receiving adequate care and maintenance.

27 (b) Examine the extent to which some cemeteries in the  
28 state, although they are owned and operated by some  
29 identifiable person or entity, are neglected due to a lack of  
30 sufficient funds to perform adequate care and maintenance or  
31 for other reasons.

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1           (c) Examine the extent to which neglected cemeteries  
2 in the state create problems for citizens and local  
3 governments due to vandalism, storm damage, dilapidation,  
4 public health concerns, public safety concerns, lack of  
5 enforceable standards, and strain on local government  
6 financial resources.

7           (d) Examine the extent to which neglected cemeteries  
8 in the state represent a loss of significant historic or  
9 archaeological resources.

10           (e) Examine whether or not bringing presently  
11 unlicensed operating cemeteries under state regulation as to  
12 physical facilities and care and maintenance may help  
13 ameliorate the problems caused by neglected cemeteries.

14           (f) Examine whether or not a program of grants to  
15 assist in providing adequate care and maintenance for  
16 abandoned and neglected cemeteries may help ameliorate the  
17 problems caused by neglected cemeteries and, if so, how the  
18 grant program should be structured, administered, and funded.

19           (g) Examine current governmental and nongovernmental  
20 programs that help or could help ameliorate the problems  
21 caused by neglected cemeteries, to see if some expansion or  
22 increased emphasis or support could do more to help ameliorate  
23 the problems caused by neglected cemeteries in a more  
24 cost-effective manner than a grant program.

25           (h) Report findings and make recommendations  
26 concerning solutions to problems found by the task force,  
27 including a draft of any legislation deemed advisable to  
28 implement recommended solutions.

29           (7) The task force shall produce a preliminary report  
30 by December 1, 1998, and a final report by January 15, 1999,  
31 detailing its findings and recommendations. Copies of each

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1 report shall be transmitted to the Comptroller, the President  
2 and the Minority Leader of the Senate, and the Speaker and the  
3 Minority Leader of the House of Representatives. Copies shall  
4 also be furnished to the Governor, the Secretary of State, the  
5 Attorney General, and the Office of Program Policy Analysis  
6 and Government Accountability. After submission of the final  
7 report, members of the task force may, with the approval of  
8 the chair, receive reimbursement pursuant to subsection (4)  
9 for travel necessary to consult with the department or the  
10 Legislature concerning issues raised by the final report or  
11 other work of the task force, until termination of the task  
12 force as provided in subsection (3).

13 (8) This section shall take effect upon this act  
14 becoming a law.

15 Section 14. There is hereby appropriated \$131,042 and  
16 one career service position for fiscal year 1998-1999 to the  
17 Department of Banking and Finance from the department's  
18 Regulatory Trust Fund for the purpose of enforcing the  
19 provisions of this act.

20 Section 15. Except as otherwise provided in this act,  
21 this act shall take effect July 1, 1998; however, the  
22 provisions of sections 497.0255 and 497.255, Florida Statutes,  
23 as created by this act, and the changes to section 497.253,  
24 Florida Statutes, as amended by this act, shall not be  
25 enforceable until the rules implementing those provisions have  
26 been adopted by the Board of Funeral and Cemetery Services or  
27 the Department of Banking and Finance, as applicable.

28  
29

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

31 And the title is amended as follows:



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1 Delete everything before the enacting clause

2

3 and insert:

4 A bill to be entitled

5 An act relating to funeral and cemetery  
6 services; providing a short title; amending s.  
7 497.005, F.S.; defining "care and maintenance";  
8 creating s. 497.0255, F.S.; providing a duty of  
9 care and maintenance of licensed cemeteries in  
10 this state; providing rulemaking authority to  
11 the Board of Funeral and Cemetery Services for  
12 such purpose; amending s. 497.229, F.S.;  
13 providing circumstances under which a cemetery  
14 or component thereof may be deemed a public  
15 nuisance and providing for abatement thereof;  
16 amending s. 497.253, F.S.; providing additional  
17 requirements with respect to the conveyance of  
18 cemetery property to noncemetery uses,  
19 including certain notice; creating s. 497.255,  
20 F.S.; providing standards for construction and  
21 significant alteration or renovation of  
22 mausoleums and columbaria; providing rulemaking  
23 authority with respect to such standards to the  
24 board, in conjunction with the Board of  
25 Building Codes and Standards, and providing for  
26 incorporation of a portion thereof in the State  
27 Minimum Building Codes; requiring all newly  
28 constructed and significantly altered or  
29 renovated mausoleums and columbaria to conform  
30 to such standards and applicable building  
31 codes; amending s. 497.257, F.S.; including

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1 columbaria in provisions relating to  
2 preconstruction requirements applicable to  
3 mausoleums and belowground crypts; amending s.  
4 497.417, F.S.; deleting authority of the  
5 trustee of a trust to purchase life insurance  
6 policies and annuity contracts; repealing s.  
7 497.429(12), F.S.; deleting the requirement  
8 that the trustee of an alternative preneed  
9 contract trust make valuations of assets and  
10 provide annual reports to the purchaser and the  
11 board; amending s. 497.527, F.S.; authorizing  
12 the Attorney General to bring a civil action  
13 for violation of chapter 497, relating to  
14 regulation of funeral and cemetery services, in  
15 the appropriate court; providing for damages;  
16 amending s. 872.02, F.S., relating to  
17 prohibitions against injuring or removing tombs  
18 or monuments or disturbing the contents of  
19 graves or tombs; increasing penalties;  
20 specifying that the term "tomb" includes any  
21 mausoleum, columbarium, and belowground crypt;  
22 amending s. 245.07, F.S.; revising provisions  
23 relating to retention and disposition of bodies  
24 received by an anatomical board; creating the  
25 Task Force on Abandoned and Neglected  
26 Cemeteries within the Department of Banking and  
27 Finance; providing for appointment of members  
28 and election of officers; authorizing  
29 reimbursement for per diem and travel;  
30 requiring the department to provide  
31 administrative and staff support; providing

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1           duties; requiring preliminary and final  
 2           reports; providing for termination of the task  
 3           force; providing an appropriation; providing  
 4           effective dates.

5  
 6           WHEREAS, Florida is the retirement state of choice for  
 7 most Americans, attracting hundreds of thousands of new  
 8 citizens who move to this state to live their remaining years  
 9 enjoying its famous climate and cultural amenities, and

10           WHEREAS, the number of Florida citizens over the age of  
 11 65 has dramatically increased and will continue to increase at  
 12 a rate faster than the growth in the state's population as a  
 13 whole, and

14           WHEREAS, the number of Florida citizens over the age of  
 15 85 has dramatically increased and will continue to increase  
 16 more than twice as fast as those over the age of 65, and

17           WHEREAS, in 1995 Florida had the second highest median  
 18 age in the nation, and

19           WHEREAS, Florida has the third highest unadjusted death  
 20 rate in the United States, and

21           WHEREAS, 154,734 persons died in Florida in 1996, and

22           WHEREAS, the number of burials in Florida cemeteries  
 23 will continue to increase in the future, and

24           WHEREAS, gross sales reported by Florida cemetery  
 25 licensees increased from \$175,393,887 in 1996 to \$194,427,476  
 26 in 1997, and

27           WHEREAS, Florida cemetery licensees paid less than  
 28 one-quarter of one percent of gross sales for their licenses  
 29 in 1996, and

30           WHEREAS, cemeteries are a critical part of Florida's  
 31 historical and cultural resources, and

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1           WHEREAS, the legislative purposes for regulation of the  
 2 cemetery industry set forth in s. 497.002(1), Florida  
 3 Statutes, encompass both the prevention of economic harm to  
 4 consumers and the prevention of significant emotional stress  
 5 resulting from the failure to properly maintain cemetery  
 6 grounds, yet the majority of the present statutory and  
 7 regulatory provisions relate to economic problems but not to  
 8 care and maintenance, and

9           WHEREAS, the families and loved ones of the deceased  
 10 who are interred in Florida deserve well-maintained cemetery  
 11 facilities which provide the highest dignity and respect  
 12 accorded to the deceased's final resting place that is  
 13 compatible with reasonable and practical economic constraints,  
 14 and

15           WHEREAS, inadequate care and maintenance of a cemetery  
 16 where a loved one is interred causes added stress and  
 17 emotional trauma to the deceased's family and friends, and

18           WHEREAS, a person who makes burial arrangements with a  
 19 Florida cemetery or preneed provider will receive assurances  
 20 concerning the care, dignity, and maintenance of the  
 21 deceased's final resting place, and

22           WHEREAS, a person who makes such arrangements may not  
 23 have family members in Florida to ensure that the proper care  
 24 and maintenance of the deceased's final resting place are  
 25 being performed, and

26           WHEREAS, the state may be the only entity available to  
 27 enforce minimum standards of care and maintenance to protect  
 28 the dignity of the deceased and the memories of the family and  
 29 loved ones, and

30           WHEREAS, Florida has fewer written standards regulating  
 31 the physical operations of cemeteries than other states,

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1 leading to some serious inconsistencies in the quality of  
2 cemetery facilities and their care and maintenance in Florida,  
3 and

4 WHEREAS, a large number of cemeteries in Florida have  
5 no entity responsible for their care and maintenance and have  
6 become abandoned, overgrown, dilapidated, and otherwise  
7 neglected, creating eyesores and decreasing neighboring  
8 property values, and

9 WHEREAS, neglected cemeteries become breeding grounds  
10 for mosquitoes, rats, and other vermin, raising serious public  
11 health concerns, and

12 WHEREAS, vandalism and other crimes associated with  
13 neglected cemeteries are increasing, making the neighborhoods  
14 in which they are located less safe for families, and

15 WHEREAS, inadequately maintained graves, crypts, and  
16 mausoleums at abandoned cemeteries can be broken open as a  
17 result of vandalism or storm damage, exposing human remains,  
18 and

19 WHEREAS, citizen complaints often cause local  
20 governments to take over or perform care and maintenance at  
21 abandoned and neglected cemeteries, leading to a strain on  
22 local government financial resources, and

23 WHEREAS, it is an affront to the dignity of our  
24 departed and a source of pain to their families when grave  
25 spaces are overgrown with weeds and tombstones are broken and  
26 scattered due to neglect, and

27 WHEREAS, cemeteries that have been abandoned and  
28 neglected for long periods can become obliterated, leading to  
29 a loss of important historical, genealogical, and  
30 archaeological information, and

31 WHEREAS, Florida's communities should be encouraged to

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1 assist in the preservation and protection which is due the  
2 final resting places of the deceased, and

3 WHEREAS, the cemeteries where our deceased loved ones  
4 are interred deserve at least as much protection from  
5 vandalism and other crime as construction sites and orange  
6 groves enjoy under current law, and

7 WHEREAS, the Legislature finds that it is necessary to  
8 improve the regulation of the physical facilities and  
9 operations of Florida cemeteries in order to honor the  
10 memories of deceased citizens, protect the families and  
11 friends of the deceased from significant emotional stress,  
12 safeguard the integrity of Florida cemeteries, protect the  
13 interests of consumers, preserve our historical heritage,  
14 protect the public health and welfare, and reduce the  
15 financial burden on local governments, NOW, THEREFORE,

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