

By the Committee on Banking and Insurance and Senator Harris

311-2056A-98

1 A bill to be entitled
2 An act relating to funeral and cemetery
3 services; providing a short title; amending s.
4 497.005, F.S.; defining "care and maintenance";
5 creating s. 497.0255, F.S.; providing a duty of
6 care and maintenance of licensed cemeteries in
7 this state; providing rulemaking authority to
8 the Board of Funeral and Cemetery Services for
9 such purpose; amending s. 497.229, F.S.;
10 providing circumstances under which a cemetery
11 or component thereof may be deemed a public
12 nuisance and providing for abatement thereof;
13 amending s. 497.253, F.S.; providing additional
14 requirements with respect to the conveyance of
15 cemetery property to noncemetery uses,
16 including certain notice; creating s. 497.255,
17 F.S.; providing standards for construction and
18 significant alteration or renovation of
19 mausoleums and columbaria; providing rulemaking
20 authority with respect to such standards to the
21 board, in conjunction with the Board of
22 Building Codes and Standards, and providing for
23 incorporation of a portion thereof in the State
24 Minimum Building Codes; requiring all newly
25 constructed and significantly altered or
26 renovated mausoleums and columbaria to conform
27 to such standards and applicable building
28 codes; amending s. 497.257, F.S.; including
29 columbaria in provisions relating to
30 preconstruction requirements applicable to
31 mausoleums and belowground crypts; amending s.

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

28
29 WHEREAS, Florida is the retirement state of choice for
30 most Americans, attracting hundreds of thousands of new
31

1 citizens who move to this state to live their remaining years
2 enjoying its famous climate and cultural amenities, and

3 WHEREAS, the number of Florida citizens over the age of
4 65 has dramatically increased and will continue to increase at
5 a rate faster than the growth in the state's population as a
6 whole, and

7 WHEREAS, the number of Florida citizens over the age of
8 85 has dramatically increased and will continue to increase
9 more than twice as fast as those over the age of 65, and

10 WHEREAS, in 1995 Florida had the second highest median
11 age in the nation, and

12 WHEREAS, Florida has the third highest unadjusted death
13 rate in the United States, and

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

15 WHEREAS, the number of burials in Florida cemeteries
16 will continue to increase in the future, and

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

20 WHEREAS, Florida cemetery licensees paid less than
21 one-quarter of one percent of gross sales for their licenses
22 in 1996, and

23 WHEREAS, cemeteries are a critical part of Florida's
24 historical and cultural resources, and

25 WHEREAS, the legislative purposes for regulation of the
26 cemetery industry set forth in s. 497.002(1), Florida
27 Statutes, encompass both the prevention of economic harm to
28 consumers and the prevention of significant emotional stress
29 resulting from the failure to properly maintain cemetery
30 grounds, yet the majority of the present statutory and
31

1 regulatory provisions relate to economic problems but not to
2 care and maintenance, and

3 WHEREAS, the families and loved ones of the deceased
4 who are interred in Florida deserve well-maintained cemetery
5 facilities which provide the highest dignity and respect
6 accorded to the deceased's final resting place that is
7 compatible with reasonable and practical economic constraints,
8 and

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

12 WHEREAS, a person who makes burial arrangements with a
13 Florida cemetery or preneed provider will receive assurances
14 concerning the care, dignity, and maintenance of the
15 deceased's final resting place, and

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

20 WHEREAS, the state may be the only entity available to
21 enforce minimum standards of care and maintenance to protect
22 the dignity of the deceased and the memories of the family and
23 loved ones, and

24 WHEREAS, Florida has fewer written standards regulating
25 the physical operations of cemeteries than other states,
26 leading to some serious inconsistencies in the quality of
27 cemetery facilities and their care and maintenance in Florida,
28 and

29 WHEREAS, approximately 2,000 cemeteries in Florida have
30 no entity responsible for their care and maintenance and have
31 become abandoned, overgrown, dilapidated, and otherwise

1 neglected, creating eyesores and decreasing neighboring
2 property values, and

3 WHEREAS, neglected cemeteries become breeding grounds
4 for mosquitoes, rats, and other vermin, raising serious public
5 health concerns, and

6 WHEREAS, vandalism and other crimes associated with
7 neglected cemeteries are increasing, making the neighborhoods
8 in which they are located less safe for families, and

9 WHEREAS, inadequately maintained graves, crypts, and
10 mausoleums at abandoned cemeteries can be broken open as a
11 result of vandalism or storm damage, exposing human remains,
12 and

13 WHEREAS, citizen complaints often cause local
14 governments to take over or perform care and maintenance at
15 abandoned and neglected cemeteries, leading to a strain on
16 local government financial resources, and

17 WHEREAS, it is an affront to the dignity of our
18 departed and a source of pain to their families when grave
19 spaces are overgrown with weeds and tombstones are broken and
20 scattered due to neglect, and

21 WHEREAS, cemeteries that have been abandoned and
22 neglected for long periods can become obliterated, leading to
23 a loss of important historical, genealogical, and
24 archaeological information, and

25 WHEREAS, Florida's communities should be encouraged to
26 assist in the preservation and protection which is due the
27 final resting places of the deceased, and

28 WHEREAS, the cemeteries where our deceased loved ones
29 are interred deserve at least as much protection from
30 vandalism and other crime as construction sites and orange
31 groves enjoy under current law, and

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

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. This act may be cited as the "Cemetery
14 Preservation and Consumer Protection Act."

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

17 497.005 Definitions.--As used in this chapter:

18 ~~(1)(17)~~ "At-need solicitation" means any uninvited
19 contact by a licensee or her or his agent for the purpose of
20 the sale of burial services or merchandise to the family or
21 next of kin of a person after her or his death has occurred.

22 ~~(2)(9)~~ "Bank of belowground crypts" means any
23 construction unit of belowground crypts which is acceptable to
24 the department and which a cemetery uses to initiate its
25 belowground crypt program or to add to existing belowground
26 crypt structures.

27 ~~(3)(8)~~ "Belowground crypts" consist of interment space
28 in preplaced chambers, either side by side or multiple depth,
29 covered by earth and sod and known also as "lawn crypts,"
30 "westminsters," or "turf-top crypts."

31

1 ~~(4)(30)~~ "Board" means the Board of Funeral and
2 Cemetery Services.

3 ~~(5)(12)~~ "Burial merchandise," "funeral merchandise,"
4 or "merchandise" means any personal property offered or sold
5 by any person for use in connection with the final
6 disposition, memorialization, interment, entombment, or
7 inurnment of human remains.

8 ~~(6)(11)~~ "Burial right" means the right to use a grave
9 space, mausoleum, or columbarium for the interment,
10 entombment, or inurnment of human remains.

11 ~~(7)(13)~~ "Burial service," "funeral service," or
12 "service" means any service offered or provided by any person
13 in connection with the final disposition, memorialization,
14 interment, entombment, or inurnment of human remains.

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

1 for such purposes. "Care and maintenance" may also include
2 repair or restoration of improvements necessary or desirable
3 as a result of wear, deterioration, accident, damage, or
4 destruction. "Care and maintenance" does not include expenses
5 for the construction and development of new grave spaces or
6 interment structures to be sold to the public.

7 (9)~~(14)~~ "Casket" means a rigid container which is
8 designed for the encasement of human remains and which is
9 usually constructed of wood or metal, ornamented, and lined
10 with fabric.

11 (10)~~(2)~~ "Cemetery" means a place dedicated to and used
12 or intended to be used for the permanent interment of human
13 remains. A cemetery may contain land or earth interment;
14 mausoleum, vault, or crypt interment; a columbarium or other
15 structure or place used or intended to be used for the
16 interment of cremated human remains; or any combination of one
17 or more of such structures or places.

18 (11)~~(5)~~ "Cemetery company" means any legal entity that
19 owns or controls cemetery lands or property.

20 (12)~~(31)~~ "Certificateholder" or "licensee" means the
21 person or entity that is authorized under this chapter to sell
22 preneed funeral or burial services, preneed funeral or burial
23 merchandise, or burial rights. Each term shall include the
24 other, as applicable, as the context requires. For the
25 purposes of chapter 120, all certificateholders, licensees,
26 and registrants shall be considered licensees.

27 (13)~~(4)~~ "Columbarium" means a structure or building
28 which is substantially exposed above the ground and which is
29 intended to be used for the inurnment of cremated human
30 remains.

31

1 ~~(14)~~(32) "Common business enterprise" means a group of
2 two or more business entities that share common ownership in
3 excess of 50 percent.
4 ~~(15)~~(28) "Community" means the area within a 15-mile
5 radius surrounding the location or proposed location of a
6 cemetery.
7 ~~(16)~~(25) "Cremation" includes any mechanical or
8 thermal process whereby a dead human body is reduced to ashes.
9 Cremation also includes any other mechanical or thermal
10 process whereby human remains are pulverized, burned,
11 reinterred, or otherwise further reduced in size or quantity.
12 ~~(17)~~(7) "Department" means the Department of Banking
13 and Finance.
14 ~~(18)~~(19) "Direct disposer" means any person who is
15 registered in this state to practice direct disposition
16 pursuant to the provisions of chapter 470.
17 ~~(19)~~(20) "Final disposition" means the final disposal
18 of a dead human body whether by interment, entombment, burial
19 at sea, cremation, or any other means and includes, but is not
20 limited to, any other disposition of remains for which a
21 segregated charge is imposed.
22 ~~(20)~~(21) "Funeral director" means any person licensed
23 in this state to practice funeral directing pursuant to the
24 provisions of chapter 470.
25 ~~(21)~~(6) "Grave space" means a space of ground in a
26 cemetery intended to be used for the interment in the ground
27 of human remains.
28 ~~(22)~~(1) "Human remains" means the bodies of deceased
29 persons and includes bodies in any stage of decomposition and
30 cremated remains.
31

1 (23)~~(3)~~ "Mausoleum" means a structure or building
2 which is substantially exposed above the ground and which is
3 intended to be used for the entombment of human remains.

4 (24)~~(10)~~ "Mausoleum section" means any construction
5 unit of a mausoleum which is acceptable to the department and
6 which a cemetery uses to initiate its mausoleum program or to
7 add to its existing mausoleum structures.

8 (25)~~(18)~~ "Monument" means any product used for
9 identifying a grave site and cemetery memorials of all types,
10 including monuments, markers, and vases.

11 (26)~~(27)~~ "Monument establishment" means a facility
12 that operates independently of a cemetery or funeral
13 establishment and that offers to sell monuments or monument
14 services to the public for placement in a cemetery.

15 (27)~~(24)~~ "Net assets" means the amount by which the
16 total assets of a certificateholder, excluding goodwill,
17 franchises, customer lists, patents, trademarks, and
18 receivables from or advances to officers, directors,
19 employees, salespersons, and affiliated companies, exceed
20 total liabilities of the certificateholder. For purposes of
21 this definition, the term "total liabilities" does not include
22 the capital stock, paid-in capital, or retained earnings of
23 the certificateholder.

24 (28)~~(29)~~ "Net worth" means total assets minus total
25 liabilities pursuant to generally accepted accounting
26 principles.

27 (29)~~(16)~~ "Outer burial container" means an enclosure
28 into which a casket is placed and includes, but is not limited
29 to, vaults made of concrete, steel, fiberglass, or copper;
30 sectional concrete enclosures; crypts; and wooden enclosures.

31

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 adopting
27 such rules, the board may define different classes of
28 cemeteries for care and maintenance, and may provide for
29 different rules to apply to each of the 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

1 board based on evidence of industry practices, economic and
2 physical feasibility, location, or intended uses; however, the
3 rules must provide minimum standards applicable to all
4 cemeteries. For example, and without limiting the generality
5 of the foregoing, the board may determine that a small rural
6 cemetery with large trees and shade area does not require, and
7 may not be capable of sustaining, the same level of lawn care
8 as a large urban cemetery with large open grassy areas and
9 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 cemetery or component thereof which is
24 constructed, physically operated, or maintained in violation
25 of or contrary to the provisions of this chapter, or in
26 violation of the rules of the board, shall be deemed a public
27 nuisance, and such violation may be abated as provided in s.
28 60.05.

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

31

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

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.

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:

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 adopting the
15 rules, the board may define different classes of structures or
16 construction standards, and may provide for different rules to
17 apply to each of the classes, if the designation of classes
18 and the application of different rules is in the public
19 interest and is supported by findings by the board based on
20 evidence of industry practices, economic and physical
21 feasibility, location, or intended uses; however, the rules
22 must provide minimum standards applicable to all construction.
23 For example, and without limiting the generality of the
24 foregoing, the board may determine that a small single-story
25 ground-level mausoleum does not require the same level of
26 construction standards that a large multistory mausoleum might
27 require; or that a mausoleum located in a low-lying area
28 subject to frequent flooding or hurricane threats might
29 require different standards than one located on high ground in
30 an area not subject to frequent severe weather threats. The
31 board shall develop the rules in cooperation with, and with

1 technical assistance from, the Board of Building Codes and
2 Standards of the Department of Community Affairs, to ensure
3 that the rules are in the proper form and content to be
4 included as part of the State Minimum Building Codes under
5 part VII of chapter 553. If the Board of Building Codes and
6 Standards advises that some of the standards proposed by the
7 board are not appropriate for inclusion in such building
8 codes, the board may choose to include those standards in a
9 distinct chapter of its rules entitled "Non-Building-Code
10 Standards for Mausoleums" or "Additional Standards for
11 Mausoleums," or other terminology to that effect. If the board
12 elects to divide the standards into two or more chapters, all
13 such rules shall be binding on licensees and others subject to
14 the jurisdiction of the board, but only the chapter containing
15 provisions appropriate for building codes shall be transmitted
16 to the Board of Building Codes and Standards pursuant to
17 subsection (3). Such rules may be in the form of standards for
18 design and construction; methods, materials, and
19 specifications for construction; or other mechanisms. Such
20 rules shall encompass, at a minimum, the following standards:
21 (a) No structure may be built or significantly altered
22 for use for interment, entombment, or inurnment purposes
23 unless constructed of such material and workmanship as will
24 ensure its durability and permanence, as well as the safety,
25 convenience, comfort, and health of the community in which it
26 is located, as dictated and determined at the time by modern
27 mausoleum construction and engineering science.
28 (b) Such structure must be so arranged that the
29 exterior of any vault, niche, or crypt may be readily examined
30 at any time by any person authorized by law to do so.
31

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.

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

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 that 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

1 amount equal to the interest that would have been earned on
2 that portion of the moneys that were not in trust.

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

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

28 (4) When the cemetery company delivers a completed
29 crypt or niche acceptable to the purchaser in lieu of the
30 crypt or niche purchased prior to construction, all sums
31

1 deposited to the preconstruction trust fund for that purchaser
2 shall be paid to the cemetery company.

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

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

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

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

31

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

3 497.417 Disposition of proceeds received on
4 contracts.--

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

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

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

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

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

28 Section 9. Section 497.527, Florida Statutes, is
29 amended to read:

30 497.527 Civil remedies.--The Attorney General or any
31 person may bring a civil action against a person or company

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

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

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

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

1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

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

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

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

16 Section 11. Section 245.07, Florida Statutes, is
17 amended to read:

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

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

16 Section 12. (1) There is created within the
17 Department of Banking and Finance the Task Force on Abandoned
18 and Neglected Cemeteries. The task force shall be composed of
19 11 members appointed by the Comptroller and representing the
20 following interests:

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

23 (b) A representative of preneed certificateholders.

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

25 (d) A representative of cemeteries owned by nonprofit
26 organizations.

27 (e) A representative of consumer interests.

28 (f) A representative of the department.

29 (g) A person nominated by the Secretary of State as a
30 representative of historic preservation and archaeological
31 interests.

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

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

7 (j) Two citizen members.

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

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

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

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

20 (6) The task force shall:

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

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

30 (c) Examine the extent to which neglected cemeteries
31 in the state create problems for citizens and local

1 governments due to vandalism, storm damage, dilapidation,
2 public health concerns, public safety concerns, lack of
3 enforceable standards, and strain on local government
4 financial resources.

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

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

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

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

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

27 (7) The task force shall produce a preliminary report
28 by December 1, 1998, and a final report by January 15, 1999,
29 detailing its findings and recommendations. Copies of each
30 report shall be transmitted to the Comptroller, the President
31 and the Minority Leader of the Senate, and the Speaker and the

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

11 (8) This section shall take effect upon this act
12 becoming a law.

13 Section 13. There is hereby appropriated to the
14 Department of Banking and Finance from the department's
15 Regulatory Trust Fund an amount sufficient to carry out the
16 purposes of this act.

17 Section 14. Except as otherwise provided in this act,
18 this act shall take effect July 1, 1998; however, the
19 provisions of sections 497.0255 and 497.255, Florida Statutes,
20 as created by this act, and the changes to section 497.253,
21 Florida Statutes, as amended by this act, shall not be
22 enforceable until the rules implementing those provisions have
23 been adopted by the Board of Funeral and Cemetery Services or
24 the Department of Banking and Finance, as applicable.

25
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1572

Authorizes the Board of Funeral and Cemetery Services within the Department of Banking and Finance to define and promulgate rules for different classes of cemeteries and different construction standards for mausoleums and columbaria.

Deletes the word "cell" and replaces it with the word "niche" for purposes of chapter 497, Florida Statutes.

Provides that mausoleums and columbarium are not required to provide sprinkler systems if constructed of noncombustible materials.

Removes the investment authority of trustees who possess the fiduciary authority for preneed trusts to invest in life insurance policies and annuity contracts.