

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 The Committee on Real Property & Probate offered the  
12 following:

14 **Amendment (with title amendment)**

15 On page 6, line 12,  
16 remove from the bill: everything after the enacting clause  
17  
18 and insert in lieu thereof:

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

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

23 497.005 Definitions.--As used in this chapter:  
24 (1)~~(17)~~ "At-need solicitation" means any uninvited  
25 contact by a licensee or her or his agent for the purpose of  
26 the sale of burial services or merchandise to the family or  
27 next of kin of a person after her or his death has occurred.

28 (2)~~(9)~~ "Bank of belowground crypts" means any  
29 construction unit of belowground crypts which is acceptable to  
30 the department and which a cemetery uses to initiate its  
31 belowground crypt program or to add to existing belowground

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1 crypt structures.

2 ~~(3)(8)~~ "Belowground crypts" consist of interment space  
3 in preplaced chambers, either side by side or multiple depth,  
4 covered by earth and sod and known also as "lawn crypts,"  
5 "westminsters," or "turf-top crypts."

6 ~~(4)(30)~~ "Board" means the Board of Funeral and  
7 Cemetery Services.

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

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

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

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

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

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

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

23 (11)(5) "Cemetery company" means any legal entity that  
24 owns or controls cemetery lands or property.

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

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1           ~~(13)(4)~~ "Columbarium" means a structure or building  
2 which is substantially exposed above the ground and which is  
3 intended to be used for the inurnment of cremated human  
4 remains.

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

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

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

16           ~~(17)(7)~~ "Department" means the Department of Banking  
17 and Finance.

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

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

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

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

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- 1            ~~(22)(1)~~ "Human remains" means the bodies of deceased  
2 persons and includes bodies in any stage of decomposition and  
3 cremated remains.
- 4            ~~(23)(3)~~ "Mausoleum" means a structure or building  
5 which is substantially exposed above the ground and which is  
6 intended to be used for the entombment of human remains.
- 7            ~~(24)(10)~~ "Mausoleum section" means any construction  
8 unit of a mausoleum which is acceptable to the department and  
9 which a cemetery uses to initiate its mausoleum program or to  
10 add to its existing mausoleum structures.
- 11           ~~(25)(18)~~ "Monument" means any product used for  
12 identifying a grave site and cemetery memorials of all types,  
13 including monuments, markers, and vases.
- 14           ~~(26)(27)~~ "Monument establishment" means a facility  
15 that operates independently of a cemetery or funeral  
16 establishment and that offers to sell monuments or monument  
17 services to the public for placement in a cemetery.
- 18           ~~(27)(24)~~ "Net assets" means the amount by which the  
19 total assets of a certificateholder, excluding goodwill,  
20 franchises, customer lists, patents, trademarks, and  
21 receivables from or advances to officers, directors,  
22 employees, salespersons, and affiliated companies, exceed  
23 total liabilities of the certificateholder. For purposes of  
24 this definition, the term "total liabilities" does not include  
25 the capital stock, paid-in capital, or retained earnings of  
26 the certificateholder.
- 27           ~~(28)(29)~~ "Net worth" means total assets minus total  
28 liabilities pursuant to generally accepted accounting  
29 principles.
- 30           ~~(29)(16)~~ "Outer burial container" means an enclosure  
31 into which a casket is placed and includes, but is not limited

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1 to, vaults made of concrete, steel, fiberglass, or copper;  
2 sectional concrete enclosures; crypts; and wooden enclosures.

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

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

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

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

19 Section 3. Section 497.0255, Florida Statutes, is  
20 created to read:

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

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

12 Section 4. Section 497.229, Florida Statutes, is  
13 amended to read:

14 497.229 Courts; powers; abatement of nuisances.--

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

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

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

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1           Section 5. Section 497.253, Florida Statutes, is  
2 amended to read:

3           497.253 Minimum acreage; sale or disposition of  
4 cemetery lands.--

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

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

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



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1 question and the proposed noncemetery use and shall advise  
2 substantially affected persons that they may file a written  
3 request for a hearing pursuant to chapter 120, within 14 days  
4 after the date of last publication of the notice, with the  
5 department if they object to granting the applicant's request  
6 to sell, convey, or dispose of the subject property for  
7 noncemetery uses.

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

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

17 1. The historical significance of the subject  
18 property, if any.

19 2. The archaeological significance of the subject  
20 property, if any.

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

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

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

31 6. Whether any living relatives of the deceased

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1 actively oppose the relocation of their deceased's remains and  
2 the conversion of the subject property to noncemetery uses.

3 7. The elapsed time since the last interment in the  
4 subject property.

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

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

11  
12 NOTICE: The property described herein was formerly used and  
13 dedicated as a cemetery. Conveyance of this property and its  
14 use for noncemetery purposes was authorized by the Florida  
15 Department of Banking and Finance by Order No. ...., dated  
16 .....

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

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

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

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1           Section 6. Section 497.255, Florida Statutes, is  
2 created to read:

3           497.255 Standards for construction and significant  
4 alteration or renovation of mausoleums and columbaria.--

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

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

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

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

31 (b) Such structure must be so arranged that the

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1 exterior of any vault, niche, or crypt may be readily examined  
2 at any time by any person authorized by law to do so.

3 (c) Such structure must contain adequate provision for  
4 drainage and ventilation.

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

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

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

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

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

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1           (4) In addition to the rules adopted under subsection  
2 (2), the board shall adopt rules providing that following all  
3 interments, inurnments, and entombments in mausoleums and  
4 columbaria occurring after the effective date of such rules,  
5 whether newly constructed or existing, suitable provision must  
6 be made, when physically feasible, for sealing each crypt in  
7 accordance with standards promulgated pursuant to paragraph  
8 (2)(f).

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

13           Section 7. Section 497.257, Florida Statutes, is  
14 amended to read:

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

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

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

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

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

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



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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 Section 8. Subsection (4) of section 497.417, Florida

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1 Statutes, is amended to read:

2 497.417 Disposition of proceeds received on  
3 contracts.--

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

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

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

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

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

27 Section 9. Subsection (12) of section 497.429, Florida  
28 Statutes, is hereby repealed.

29 Section 10. Section 497.527, Florida Statutes, is  
30 amended to read:

31 497.527 Civil remedies.--The Attorney General or any

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

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

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

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

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1 ~~greater than \$100 in value, then the person is guilty of a~~  
2 felony of the third degree, punishable as provided in s.  
3 775.082, s. 775.083, or s. 775.084.

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

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

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

17 Section 12. Section 245.07, Florida Statutes, is  
18 amended to read:

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

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

17 Section 13. (1) There is created within the  
18 Department of Banking and Finance the Task Force on Abandoned  
19 and Neglected Cemeteries. The task force shall be composed of  
20 11 members appointed by the Comptroller and representing the  
21 following interests:

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

24 (b) A representative of preneed certificateholders.

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

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

28 (e) A representative of consumer interests.

29 (f) A representative of the department.

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

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1 interests.

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

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

8 (j) Two citizen members.

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

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

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

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

21 (6) The task force shall:

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

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

31 (c) Examine the extent to which neglected cemeteries

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

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

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

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

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

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

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

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

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

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

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

27  
28

29 ===== T I T L E A M E N D M E N T =====  
30 And the title is amended as follows:

31 On page 1, line 2, through page 6, line 9,



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

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

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1 reports; providing for termination of the task  
2 force; providing an appropriation; providing  
3 effective dates.

4  
5 WHEREAS, Florida is the retirement state of choice for  
6 most Americans, attracting hundreds of thousands of new  
7 citizens who move to this state to live their remaining years  
8 enjoying its famous climate and cultural amenities, and

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

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

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

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

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

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

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

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

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

31 WHEREAS, the legislative purposes for regulation of the

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1 cemetery industry set forth in s. 497.002(1), Florida  
2 Statutes, encompass both the prevention of economic harm to  
3 consumers and the prevention of significant emotional stress  
4 resulting from the failure to properly maintain cemetery  
5 grounds, yet the majority of the present statutory and  
6 regulatory provisions relate to economic problems but not to  
7 care and maintenance, and  
8         WHEREAS, the families and loved ones of the deceased  
9 who are interred in Florida deserve well-maintained cemetery  
10 facilities which provide the highest dignity and respect  
11 accorded to the deceased's final resting place that is  
12 compatible with reasonable and practical economic constraints,  
13 and  
14         WHEREAS, inadequate care and maintenance of a cemetery  
15 where a loved one is interred causes added stress and  
16 emotional trauma to the deceased's family and friends, and  
17         WHEREAS, a person who makes burial arrangements with a  
18 Florida cemetery or preneed provider will receive assurances  
19 concerning the care, dignity, and maintenance of the  
20 deceased's final resting place, and  
21         WHEREAS, a person who makes such arrangements may not  
22 have family members in Florida to ensure that the proper care  
23 and maintenance of the deceased's final resting place are  
24 being performed, and  
25         WHEREAS, the state may be the only entity available to  
26 enforce minimum standards of care and maintenance to protect  
27 the dignity of the deceased and the memories of the family and  
28 loved ones, and  
29         WHEREAS, Florida has fewer written standards regulating  
30 the physical operations of cemeteries than other states,  
31 leading to some serious inconsistencies in the quality of

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1 cemetery facilities and their care and maintenance in Florida,  
2 and

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

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

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

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

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

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

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

30 WHEREAS, Florida's communities should be encouraged to  
31 assist in the preservation and protection which is due the

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1 final resting places of the deceased, and  
2           WHEREAS, the cemeteries where our deceased loved ones  
3 are interred deserve at least as much protection from  
4 vandalism and other crime as construction sites and orange  
5 groves enjoy under current law, and  
6           WHEREAS, the Legislature finds that it is necessary to  
7 improve the regulation of the physical facilities and  
8 operations of Florida cemeteries in order to honor the  
9 memories of deceased citizens, protect the families and  
10 friends of the deceased from significant emotional stress,  
11 safeguard the integrity of Florida cemeteries, protect the  
12 interests of consumers, preserve our historical heritage,  
13 protect the public health and welfare, and reduce the  
14 financial burden on local governments, NOW, THEREFORE,  
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