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

1 force; providing an appropriation; providing  
2 effective dates.

3  
4 WHEREAS, Florida is the retirement state of choice for  
5 most Americans, attracting hundreds of thousands of new  
6 citizens who move to this state to live their remaining years  
7 enjoying its famous climate and cultural amenities, and

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

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

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

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

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

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

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

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

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

30 WHEREAS, the legislative purposes for regulation of the  
31 cemetery industry set forth in s. 497.002(1), Florida

1 Statutes, encompass both the prevention of economic harm to  
2 consumers and the prevention of significant emotional stress  
3 resulting from the failure to properly maintain cemetery  
4 grounds, yet the majority of the present statutory and  
5 regulatory provisions relate to economic problems but not to  
6 care and maintenance, and

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

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

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

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

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

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

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

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

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

17  
18 Be It Enacted by the Legislature of the State of Florida:

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

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

24 497.005 Definitions.--As used in this chapter:

25 (1)~~(17)~~ "At-need solicitation" means any uninvited  
26 contact by a licensee or her or his agent for the purpose of  
27 the sale of burial services or merchandise to the family or  
28 next of kin of a person after her or his death has occurred.

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

1 belowground crypt program or to add to existing belowground  
2 crypt structures.

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

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

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

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

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

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

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

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

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

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

26 (12)~~(31)~~ "Certificateholder" or "licensee" means the  
27 person or entity that is authorized under this chapter to sell  
28 preneed funeral or burial services, preneed funeral or burial  
29 merchandise, or burial rights. Each term shall include the  
30 other, as applicable, as the context requires. For the

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1 purposes of chapter 120, all certificateholders, licensees,  
2 and registrants shall be considered licensees.

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

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

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

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

18 (17)~~(7)~~ "Department" means the Department of Banking  
19 and Finance.

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

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

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

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1           (21)~~(6)~~ "Grave space" means a space of ground in a  
2 cemetery intended to be used for the interment in the ground  
3 of human remains.

4           (22)~~(1)~~ "Human remains" means the bodies of deceased  
5 persons and includes bodies in any stage of decomposition and  
6 cremated remains.

7           (23)~~(3)~~ "Mausoleum" means a structure or building  
8 which is substantially exposed above the ground and which is  
9 intended to be used for the entombment of human remains.

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

14           (25)~~(18)~~ "Monument" means any product used for  
15 identifying a grave site and cemetery memorials of all types,  
16 including monuments, markers, and vases.

17           (26)~~(27)~~ "Monument establishment" means a facility  
18 that operates independently of a cemetery or funeral  
19 establishment and that offers to sell monuments or monument  
20 services to the public for placement in a cemetery.

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

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1           ~~(28)(29)~~ "Net worth" means total assets minus total  
2 liabilities pursuant to generally accepted accounting  
3 principles.

4           ~~(29)(16)~~ "Outer burial container" means an enclosure  
5 into which a casket is placed and includes, but is not limited  
6 to, vaults made of concrete, steel, fiberglass, or copper;  
7 sectional concrete enclosures; crypts; and wooden enclosures.

8           ~~(30)(22)~~ "Preneed contract" means any arrangement or  
9 method, of which the provider of funeral merchandise or  
10 services has actual knowledge, whereby the funeral  
11 establishment, direct disposer, or certificateholder agrees to  
12 furnish funeral merchandise or service in the future.

13           ~~(31)(26)~~ "Servicing agent" means any person acting as  
14 an independent contractor whose fiduciary responsibility is to  
15 assist both the trustee and certificateholder hereunder in  
16 administrating their responsibilities pursuant to this  
17 chapter.

18           ~~(32)(15)~~ "Solicitation" means any communication which  
19 directly or implicitly requests an immediate oral response  
20 from the recipient.

21           ~~(33)(23)~~ "Statutory accounting" means generally  
22 accepted accounting principles, except as modified by this  
23 chapter.

24           Section 3. Section 497.0255, Florida Statutes, is  
25 created to read:

26           497.0255 Duty of care and maintenance of licensed  
27 cemetery.--Every cemetery company or other entity responsible  
28 for the care and maintenance of a licensed cemetery in this  
29 state shall ensure that the grounds, structures, and other  
30 improvements of the cemetery are well cared for and maintained  
31 in a proper and dignified condition. The board shall adopt, by

1 no later than July 1, 1999, such rules as are necessary to  
2 implement and enforce this section. In developing and  
3 promulgating said rules, the board may define different  
4 classes of cemeteries or care and maintenance, and may provide  
5 for different rules to apply to each of said classes, if the  
6 designation of classes and the application of different rules  
7 is in the public interest and is supported by findings by the  
8 board based on evidence of industry practices, economic and  
9 physical feasibility, location, or intended uses; provided,  
10 that the rules shall provide minimum standards applicable to  
11 all cemeteries. For example, and without limiting the  
12 generality of the foregoing, the board may determine that a  
13 small rural cemetery with large trees and shade area does not  
14 require, and may not be able to attain, the same level of lawn  
15 care as a large urban cemetery with large open grassy areas  
16 and sprinkler systems.

17 Section 4. Section 497.229, Florida Statutes, is  
18 amended to read:

19 497.229 Courts; powers; abatement of nuisances.--

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

26 (2) A court-appointed receiver or administrator may  
27 take any action to implement the provisions of the court  
28 order, to ensure the performance of the order, and to remedy  
29 any breach thereof.

30 (3) Any non-conforming physical condition in a  
31 cemetery or component thereof which is the result of a

1 violation of this chapter or of the rules of the board  
2 relating to construction, physical operations, or care and  
3 maintenance at the cemetery shall be deemed a public nuisance,  
4 and the non-conforming physical conditions caused by such  
5 violation may be abated as provided in s. 60.05.

6 Section 5. Section 497.253, Florida Statutes, is  
7 amended to read:

8 497.253 Minimum acreage; sale or disposition of  
9 cemetery lands.--

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

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

30 (3)(a) If the property to be sold, conveyed, or  
31 disposed of under subsection (2) has been or is being used for

1 the permanent interment of human remains, the applicant for  
2 approval of such sale, conveyance, or disposition shall cause  
3 to be published, at least once a week for 4 consecutive weeks,  
4 a notice meeting the standards of publication set forth in s.  
5 125.66(4)(b)2. The notice shall describe the property in  
6 question and the proposed noncemetery use and shall advise  
7 substantially affected persons that they may file a written  
8 request for a hearing pursuant to chapter 120, within 14 days  
9 after the date of last publication of the notice, with the  
10 department if they object to granting the applicant's request  
11 to sell, convey, or dispose of the subject property for  
12 noncemetery uses.

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

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

22 1. The historical significance of the subject  
23 property, if any.

24 2. The archaeological significance of the subject  
25 property, if any.

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

28 4. The impact of the proposed change in use of the  
29 subject property upon the inventory of remaining cemetery  
30 facilities in the community and upon the other factors  
31 enumerated in s. 497.201(3).

1           5. The impact of the proposed change in use of the  
2 subject property upon the reasonable expectations of the  
3 families of the deceased regarding whether the cemetery  
4 property was to remain as a cemetery in perpetuity.

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

8           7. The elapsed time since the last interment in the  
9 subject property.

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

12           (d) Any deed, mortgage, or other conveyance by a  
13 cemetery company or other owner pursuant to subsections (a)  
14 and (c) above must contain a disclosure in the following or  
15 substantially similar form:

16  
17 NOTICE: The property described herein was formerly used and  
18 dedicated as a cemetery. Conveyance of this property and its  
19 use for noncemetery purposes was authorized by the Florida  
20 Department of Banking and Finance by Order No. ...., dated  
21 .....

22  
23           (e) The department shall adopt such rules as are  
24 necessary to carry out the provisions of this section.

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

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

7           Section 6. Section 497.255, Florida Statutes, is  
8 created to read:

9           497.255 Standards for construction and significant  
10 alteration or renovation of mausoleums and columbaria.--

11           (1) All newly constructed and significantly altered or  
12 renovated mausoleums and columbaria must, in addition to  
13 complying with applicable building codes, conform to the  
14 standards adopted under this section.

15           (2) The board shall adopt, by no later than July 1,  
16 1999, rules establishing minimum standards for all newly  
17 constructed and significantly altered or renovated mausoleums  
18 and columbaria; however, in the case of significant  
19 alterations or renovations to existing structures, the rules  
20 shall apply only, when physically feasible, to the newly  
21 altered or renovated portion of such structures, except as  
22 specified in subsection (4). In developing and promulgating  
23 said rules, the board may define different classes of  
24 structures or construction standards, and may provide for  
25 different rules to apply to each of said classes, if the  
26 designation of classes and the application of different rules  
27 is in the public interest and is supported by findings by the  
28 board based on evidence of industry practices, economic and  
29 physical feasibility, location, or intended uses; provided,  
30 that the rules shall provide minimum standards applicable to  
31 all construction. For example, and without limiting the



1 generality of the foregoing, the board may determine that a  
2 small single-story ground level mausoleum does not require the  
3 same level of construction standards that a large multi-story  
4 mausoleum might require; or that a mausoleum located in a  
5 low-lying area subject to frequent flooding or hurricane  
6 threats might require different standards than one located on  
7 high ground in an area not subject to frequent severe weather  
8 threats. The board shall develop the rules in cooperation  
9 with, and with technical assistance from, the Board of  
10 Building Codes and Standards of the Department of Community  
11 Affairs, to ensure that the rules are in the proper form and  
12 content to be included as part of the State Minimum Building  
13 Codes under part VII of chapter 553. If the Board of Building  
14 Codes and Standards advises that some of the standards  
15 proposed by the board are not appropriate for inclusion in  
16 such building codes, the board may choose to include those  
17 standards in a distinct chapter of its rules entitled  
18 "Non-Building-Code Standards for Mausoleums" or "Additional  
19 Standards for Mausoleums," or other terminology to that  
20 effect. If the board elects to divide the standards into two  
21 or more chapters, all such rules shall be binding on licensees  
22 and others subject to the jurisdiction of the board, but only  
23 the chapter containing provisions appropriate for building  
24 codes shall be transmitted to the Board of Building Codes and  
25 Standards pursuant to subsection (3). Such rules may be in the  
26 form of standards for design and construction; methods,  
27 materials, and specifications for construction; or other  
28 mechanisms. Such rules shall encompass, at a minimum, the  
29 following standards:  
30 (a) No structure may be built or significantly altered  
31 for use for interment, entombment, or inurnment purposes

1 unless constructed of such material and workmanship as will  
2 ensure its durability and permanence, as well as the safety,  
3 convenience, comfort, and health of the community in which it  
4 is located, as dictated and determined at the time by modern  
5 mausoleum construction and engineering science.

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

9 (c) Such structure must contain adequate provision for  
10 drainage and ventilation.

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

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

19 (f) Suitable provisions must be made for securely and  
20 permanently sealing each crypt with durable materials after  
21 the interment or entombment of human remains, so that no  
22 effluvia or odors may escape therefrom except as provided by  
23 design and sanitary engineering standards. Panels for  
24 permanent seals must be solid and constructed of materials of  
25 sufficient weight, permanence, density, imperviousness, and  
26 strength as to ensure their durability and continued  
27 functioning. Permanent crypt sealing panels must be securely  
28 installed and set in with high quality fire-resistant,  
29 resilient, and durable materials after the interment or  
30 entombment of human remains. The outer or exposed covering of  
31 each crypt must be of a durable, permanent, fire-resistant

1 material; however, plastic, fiberglass, and wood are not  
2 acceptable materials for such outer or exposed coverings.

3 (g) Interior and exterior fastenings for hangers,  
4 clips, doors, and other objects must be of copper, copper-base  
5 alloy, aluminum, or stainless steel of adequate gauges, or  
6 other materials established by rule which provide equivalent  
7 or better strength and durability, and must be properly  
8 installed.

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

1 from time to time amended, shall be a part of the State  
2 Minimum Building Codes under s. 553.73 until the adoption and  
3 effective date of a new statewide uniform minimum building  
4 code, which may supersede the mausoleum standards as provided  
5 by the law enacting the new statewide uniform minimum building  
6 code.

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

15 (5) For purposes of this section, "significant  
16 alteration or renovation" means any addition, renovation or  
17 repair which results in the creation of new crypt or niche  
18 spaces.

19 Section 7. Section 497.257, Florida Statutes, is  
20 amended to read:

21 497.257 Construction of mausoleums, columbaria, and  
22 belowground crypts; preconstruction trust fund; compliance  
23 requirement.--

24 (1) A cemetery company shall start construction of  
25 that section of a mausoleum, columbarium, or bank of  
26 belowground crypts in which sales, contracts for sales,  
27 reservations for sales, or agreements for sales are being made  
28 within 4 years after the date of the first such sale or 50  
29 percent of the mausoleum, columbarium, or belowground crypts  
30 have been sold and the purchase price has been received,  
31 whichever occurs first. The construction shall be completed

1 within 5 years after the date of the first sale made.  
2 However, extensions for completion, not to exceed 1 year, may  
3 be granted by the department for good cause shown. If the  
4 units have not been completely constructed at the time of need  
5 or the time specified herein, all moneys paid shall be  
6 refunded upon request, plus interest earned thereon for that  
7 portion of the moneys deposited in the trust fund and an  
8 amount equal to the interest that would have been earned on  
9 that portion of the moneys that were not in trust.

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

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

1 and services purchased. Preconstruction trust fund payments  
2 shall be made within 30 days after the end of the month in  
3 which payment is received.

4 (4) When the cemetery company delivers a completed  
5 crypt or niche acceptable to the purchaser in lieu of the  
6 crypt or niche purchased prior to construction, all sums  
7 deposited to the preconstruction trust fund for that purchaser  
8 shall be paid to the cemetery company.

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

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

28 (7) On or before April 1 of each year, the trustee  
29 shall file with the board in the form prescribed by the board  
30 a full and true statement as to the activities of any trust  
31

1 established by the board pursuant to this chapter for the  
2 preceding calendar year.

3 (8) In lieu of the payments outlined hereunder to the  
4 preconstruction trust fund, the cemetery company may deliver  
5 to the department a performance bond in an amount and by a  
6 surety company acceptable to the department.

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

9 497.417 Disposition of proceeds received on  
10 contracts.--

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

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

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

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

30 (c)(d) Commingle the property of the trust with the  
31 property of any other trust established pursuant to this

1 chapter and make corresponding allocations and divisions of  
2 assets, liabilities, income, and expenses.

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

5 Section 10. Section 497.527, Florida Statutes, is  
6 amended to read:

7 497.527 Civil remedies.--The Attorney General or any  
8 person may bring a civil action against a person or company  
9 violating the provisions of this chapter in the appropriate  
10 ~~circuit~~ court of the county in which the alleged violator  
11 resides or has his or her or its principal place of business  
12 or in the county wherein the alleged violation occurred. Upon  
13 adverse adjudication, the defendant shall be liable for actual  
14 damages caused by such violation ~~or \$500, whichever is~~  
15 ~~greater~~. The court may, as provided by common law, award  
16 punitive damages and may provide such equitable relief as it  
17 deems proper or necessary, including enjoining the defendant  
18 from further violations of this chapter.

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

21 872.02 Injuring or removing tomb or monument;  
22 disturbing contents of grave or tomb; penalties.--

23 (1) A person who willfully and knowingly destroys,  
24 mutilates, defaces, injures, or removes any tomb, monument,  
25 gravestone, burial mound, earthen or shell monument containing  
26 human skeletal remains or associated burial artifacts, or  
27 other structure or thing placed or designed for a memorial of  
28 the dead, or any fence, railing, curb, or other thing intended  
29 for the protection or ornamentation of any tomb, monument,  
30 gravestone, burial mound, earthen or shell monument containing  
31 human skeletal remains or associated burial artifacts, or



1 other structure before mentioned, or for any enclosure for the  
2 burial of the dead, or willfully destroys, mutilates, removes,  
3 cuts, breaks, or injures any tree, shrub, or plant placed or  
4 being within any such enclosure, commits ~~is guilty of a~~  
5 ~~misdemeanor of the first degree, punishable as provided in s.~~  
6 ~~775.082 or s. 775.083. However, if the damage to such~~  
7 ~~property is greater than \$100 or if any property removed is~~  
8 ~~greater than \$100 in value, then the person is guilty of a~~  
9 felony of the third degree, punishable as provided in s.  
10 775.082, s. 775.083, or s. 775.084.

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

15 (3) This section shall not apply to any person acting  
16 under the direction or authority of the Division of Historical  
17 Resources of the Department of State, to cemeteries operating  
18 under chapter 497, or to any person otherwise authorized by  
19 law to remove or disturb a tomb, monument, gravestone, burial  
20 mound, or similar structure, or its contents, as described in  
21 subsection (1).

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

24 Section 12. Section 245.07, Florida Statutes, is  
25 amended to read:

26 245.07 Retention of bodies before use; unfit or excess  
27 number of bodies, disposition procedure.--All bodies received  
28 by the anatomical board shall be retained in receiving vaults  
29 for a period of not less than 48 hours before allowing their  
30 use for medical science; if at any time more bodies are made  
31 available to the anatomical board than can be used for medical

1 science under its jurisdiction, or if a body shall be deemed  
2 by the anatomical board to be unfit for anatomical purposes,  
3 the anatomical board may notify, in writing, the county  
4 commissioners or other legally authorized person, as defined  
5 in s. 470.002,~~the person or entity in control of such body in~~  
6 the county where such person died, to cause it to be buried or  
7 cremated in accordance with the ~~already existing~~ rules, laws  
8 and practices for disposing of such unclaimed bodies ~~within~~  
9 ~~the confines of the said county~~. However, prior to having any  
10 body buried or cremated, the county shall make a reasonable  
11 effort to determine the identity of the body and shall further  
12 make a reasonable effort to contact any relatives of the  
13 deceased person. If a relative of the deceased person is  
14 contacted and expresses a preference for either burial or  
15 cremation, the county shall make a reasonable effort to  
16 accommodate the request of the relative. For purposes of this  
17 section, the county commissioners of the county where such  
18 person died shall be considered a "legally authorized person"  
19 as defined in pursuant to s. 470.002(18). A person licensed  
20 under chapter 470 or chapter 497 shall not be liable for any  
21 damages resulting from cremating or burying such body at the  
22 direction of the county's legally authorized person ~~county~~  
23 ~~commission~~.

24 Section 13. (1) There is created within the  
25 Department of Banking and Finance the Task Force on Abandoned  
26 and Neglected Cemeteries. The task force shall be composed of  
27 11 members appointed by the Comptroller and representing the  
28 following interests:

29 (a) A representative of the licensed cemetery  
30 industry.

31

1           (b) A representative of preneed certificateholders who  
2 is not associated with a cemetery company through an ownership  
3 interest or through employment with a company which has an  
4 ownership interest in a cemetery.

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

6           (d) A representative of cemeteries owned by nonprofit  
7 organizations.

8           (e) A representative of consumer interests.

9           (f) A representative of the department.

10           (g) A person nominated by the Secretary of State as a  
11 representative of historic preservation and archaeological  
12 interests.

13           (h) A person nominated by the Florida League of Cities  
14 as a representative of municipally owned or maintained  
15 cemeteries.

16           (i) A person nominated by the Florida Association of  
17 Counties as a representative of county-owned or  
18 county-maintained cemeteries.

19           (j) Two citizen members.

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

22           (3) Members of the task force shall be appointed no  
23 later than 30 days after this act becomes a law. The task  
24 force shall serve from the time its members are appointed  
25 until adjournment sine die of the 1999 Regular Session of the  
26 Legislature.

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

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

1           (6) The task force shall:

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

6           (b) Examine the extent to which some cemeteries in the  
7 state, although they are owned and operated by some  
8 identifiable person or entity, are neglected due to a lack of  
9 sufficient funds to perform adequate care and maintenance or  
10 for other reasons.

11           (c) Examine the extent to which neglected cemeteries  
12 in the state create problems for citizens and local  
13 governments due to vandalism, storm damage, dilapidation,  
14 public health concerns, public safety concerns, lack of  
15 enforceable standards, and strain on local government  
16 financial resources.

17           (d) Examine the extent to which neglected cemeteries  
18 in the state represent a loss of significant historic or  
19 archaeological resources.

20           (e) Examine whether or not bringing presently  
21 unlicensed operating cemeteries under state regulation as to  
22 physical facilities and care and maintenance may help  
23 ameliorate the problems caused by neglected cemeteries.

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

29           (g) Examine current governmental and nongovernmental  
30 programs that help or could help ameliorate the problems  
31 caused by neglected cemeteries, to see if some expansion or

1 increased emphasis or support could do more to help ameliorate  
2 the problems caused by neglected cemeteries in a more  
3 cost-effective manner than a grant program.

4 (h) Report findings and make recommendations  
5 concerning solutions to problems found by the task force,  
6 including a draft of any legislation deemed advisable to  
7 implement recommended solutions.

8 (7) The task force shall produce a preliminary report  
9 by December 1, 1998, and a final report by January 15, 1999,  
10 detailing its findings and recommendations. Copies of each  
11 report shall be transmitted to the Comptroller, the President  
12 and the Minority Leader of the Senate, and the Speaker and the  
13 Minority Leader of the House of Representatives. Copies shall  
14 also be furnished to the Governor, the Secretary of State, the  
15 Attorney General, and the Office of Program Policy Analysis  
16 and Government Accountability. After submission of the final  
17 report, members of the task force may, with the approval of  
18 the chair, receive reimbursement pursuant to subsection (4)  
19 for travel necessary to consult with the department or the  
20 Legislature concerning issues raised by the final report or  
21 other work of the task force, until termination of the task  
22 force as provided in subsection (3).

23 (8) This section shall take effect upon this act  
24 becoming a law.

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

30 Section 15. Except as otherwise provided herein, this  
31 act shall take effect July 1 of the year in which enacted;

1 however, the provisions of sections 497.0255 and 497.255,  
2 Florida Statutes, as created by this act, and the changes to  
3 section 497.253, Florida Statutes, as amended by this act,  
4 shall not be enforceable until the rules implementing those  
5 provisions have been adopted by the Board of Funeral and  
6 Cemetery Services or the Department of Banking and Finance, as  
7 applicable.

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