

By Representative Crist

1 A bill to be entitled
2 An act relating to funeral and cemetery
3 services; creating part II of chapter 497,
4 F.S., the "Neglected, Abandoned, and Unlicensed
5 Cemetery Act"; providing legislative findings
6 and intent; providing for retention of status
7 as a cemetery; providing exemptions; providing
8 for applicability of specified provisions of
9 part I; providing for investigation and
10 mediation; providing conversion procedures;
11 requiring licenses under part I for certain
12 activities; providing for care and maintenance;
13 providing for joint and severable liability;
14 providing for ingress and egress; providing a
15 definition of "local government"; providing
16 local government responsibilities; providing
17 procedures for declaring an unlicensed cemetery
18 abandoned; providing for declaration of an
19 unlicensed cemetery as neglected; providing for
20 private contracts; requiring a county registry
21 of cemeteries; requiring surveyors to file a
22 statement of cemetery location under certain
23 circumstances; providing for citizen input in
24 the county registry; providing for transfer of
25 small cemeteries under certain circumstances;
26 providing rulemaking authority to the
27 Department of Banking and Finance to implement
28 the act; amending s. 215.321, F.S.; providing
29 an exception to the deposit of certain funds
30 into the Regulatory Trust Fund; amending s.
31 267.021, F.S.; adding abandoned cemeteries to

1 the term "historic property" or "historic
2 resource"; amending s. 267.061, F.S.;
3 specifying responsibility of the Division of
4 Historical Resources with respect to
5 identifying abandoned cemeteries and submitting
6 grant applications for historic preservation
7 purposes; amending s. 380.507, F.S.; specifying
8 power of the Florida Communities Trust to give
9 annual notice to city managers and county
10 administrators of available funding for
11 maintenance of abandoned cemeteries; amending
12 s. 380.511, F.S.; providing for deposit of
13 certain moneys into the Florida Communities
14 Trust Fund and specifying uses of such moneys;
15 amending s. 380.512, F.S.; requiring the trust
16 to prepare and submit annually to the Board of
17 Funeral and Cemetery Services a report on such
18 moneys and their subsequent use; amending s.
19 497.527, F.S.; providing for deposit of
20 punitive damages into the Florida Communities
21 Trust Fund for specified purposes; creating s.
22 938.08, F.S.; providing for assessment of
23 additional costs in cases involving criminal
24 mischief and offenses concerning dead bodies
25 and graves; providing for disposition of funds
26 collected; amending s. 470.034, F.S.; requiring
27 licensees and registrants to give notice to
28 prospective purchasers of the ownership of the
29 business providing the merchandise or services;
30 requiring disclosures in advertisements and
31 contracts; providing for voidability of

1 contracts; amending ss. 497.201 and 497.213,
2 F.S.; requiring applications for cemetery
3 licenses and license renewals to contain
4 ownership information; amending s. 497.333,
5 F.S.; requiring sellers of burial rights,
6 merchandise, or services to give notice to
7 prospective purchasers of the ownership of the
8 business providing the rights, merchandise, or
9 services; requiring disclosures in
10 advertisements and contracts; providing for
11 voidability of contracts; requiring specified
12 state agencies to coordinate recordkeeping and
13 reporting of certain data; amending ss. 245.07,
14 470.002, 470.019, 470.025, 470.027, 470.028,
15 470.036, 497.001, 497.002, 497.003, 497.004,
16 497.005, 497.025, 497.101, 497.103, 497.105,
17 497.119, 497.123, 497.125, 497.127, 497.129,
18 497.131, 497.133, 497.135, 497.137, 497.205,
19 497.209, 497.229, 497.233, 497.237, 497.245,
20 497.253, 497.257, 497.301, 497.309, 497.329,
21 497.337, 497.353, 497.357, 497.361, 497.401,
22 497.403, 497.405, 497.407, 497.413, 497.415,
23 497.417, 497.419, 497.423, 497.427, 497.429,
24 497.431, 497.435, 497.439, 497.441, 497.443,
25 497.447, 497.515, 497.517, 497.519, 497.525,
26 497.529, 497.531, 501.022, 501.604, 626.785,
27 872.02, and 872.05, F.S.; correcting
28 references, to conform; providing an effective
29 date.
30
31

1 WHEREAS, hundreds of thousands of people relocate to
2 Florida to enjoy their remaining years in its famous climate
3 and cultural amenities, and

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

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

11 WHEREAS, 153,830 resident deaths were recorded in
12 Florida in 1997, and

13 WHEREAS, the number of burials in Florida cemeteries
14 has increased in the past and is expected to increase in the
15 future, and

16 WHEREAS, cemeteries are a critical part of Florida's
17 historical, cultural, and genealogical resources, and

18 WHEREAS, a significant portion of Florida's abandoned
19 cemeteries were established by Florida's early settlers, many
20 of whom were immigrants from a variety of ethnic backgrounds,
21 and

22 WHEREAS, a large number of the currently abandoned and
23 neglected cemeteries were originally established by the
24 African-American community and represent an important part of
25 African-American heritage, and

26 WHEREAS, the Task Force on Abandoned and Neglected
27 Cemeteries created by the Legislature in 1998 collected data
28 on 3,583 cemeteries, of which 170 are licensed cemeteries and
29 3,413 are unlicensed and unregulated, and

30
31

1 WHEREAS, based on its study, the task force estimated
2 that 40 percent to 50 percent of all cemeteries in the state
3 are abandoned or neglected, and

4 WHEREAS, the task force determined that the problem of
5 abandonment and neglect is sufficiently widespread to warrant
6 governmental intervention and that by protecting and enhancing
7 cemeteries such intervention can prevent the loss of important
8 genealogical data and prevent abandoned cemeteries from
9 becoming breeding grounds for public health hazards,
10 vandalism, and other crimes, and

11 WHEREAS, the cemeteries where our departed forefathers
12 are interred are deserving of protection from vandalism,
13 crime, and neglect, and

14 WHEREAS, the task force determined that a grants-in-aid
15 type program using matching funds would help ameliorate the
16 problems created by abandoned and neglected cemeteries, and

17 WHEREAS, the death-care industry in Florida is a
18 multibillion dollar industry, and

19 WHEREAS, competition is the cornerstone of the American
20 economic system, and

21 WHEREAS, the recent trend within the death-care
22 industry of acquisition of the small and independent
23 businesses by large private holding companies has eliminated
24 many of the local independent businesses from the competitive
25 marketplace, and

26 WHEREAS, funeral prices have risen three times faster
27 than the cost of living over the past 5 years, and

28 WHEREAS, in most cases the consumer is unaware, due to
29 lack of disclosure, that many of the local funeral homes and
30 cemeteries are actually owned and operated by the same
31 company, and

1 WHEREAS, funeral and cemetery services are typically
2 the third most expensive consumer purchase behind homes and
3 cars, and these purchases are usually made by vulnerable
4 consumers under the stress of heightened emotion and time
5 constraints, and

6 WHEREAS, public disclosure is necessary to inform the
7 consumers with whom funeral and cemetery companies are doing
8 business so that those consumers may determine whether they
9 are actually benefiting from competitive pricing, and

10 WHEREAS, it appears that in order to ensure that
11 consumers are benefiting from competitive pricing in making
12 important funeral and cemetery service purchases and in order
13 to clean up existing abandoned and neglected cemeteries and
14 thereby prevent further proliferation of this problem, Florida
15 law must mandate full disclosure of business ownership in the
16 death-care industry and must encourage state agencies, local
17 governments, and religious and civic organizations to work
18 together in taking an active role in acquiring grant funds to
19 assist them in their efforts to maintain abandoned and
20 neglected cemeteries, NOW, THEREFORE,

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Part II of chapter 497, Florida Statutes,
25 consisting of sections 497.601, 497.602, 497.603, 497.604,
26 497.605, 497.606, 497.607, 497.608, 497.609, 497.611, 497.612,
27 497.613, 497.614, 497.615, 497.616, 497.617, 497.618, 497.619,
28 497.621, 497.622, and 497.623, is created to read:

29 PART II

30 NEGLECTED, ABANDONED, AND UNLICENSED CEMETERIES

31

1 497.601 Short title.--This part may be cited as the
2 "Neglected, Abandoned, and Unlicensed Cemetery Act."
3 497.602 Legislative findings and intent.--
4 (1) All human burials should be accorded respect based
5 upon common human dignity without reference to ethnic origin,
6 cultural background, or religious affiliation. The burying
7 grounds of human remains should not become neglected to the
8 extent that the burying grounds become nuisances, public
9 health hazards, or places of reproach, desolation, or crime in
10 the community. Human dignity requires a degree of care for the
11 burial grounds, cemeteries, or final resting places of our
12 ancestors. In addition, human burial grounds are of
13 historical, archeological, or genealogical significance.
14 Therefore, it is incumbent upon society to provide care to
15 those burying grounds that become neglected and abandoned.
16 (2) City, county, and state officials should provide
17 leadership in the care of neglected and abandoned cemeteries.
18 (3) Local governments should encourage cooperation
19 among all levels of government, private citizens, private
20 businesses, industry, foundations, organizations, and other
21 entities to aid local governments to accomplish this task by
22 raising the funds necessary or providing manpower and skills
23 in lieu of funds.
24 (4) Local governments should take such actions as are
25 necessary to locate, protect, preserve, and provide care for
26 neglected and abandoned cemeteries located within their
27 jurisdiction.
28 497.603 Status.--A cemetery shall retain its status
29 and cannot be used for any other purpose unless and until such
30 time as all human remains have been removed from the land
31 pursuant to the laws of this state.

1 497.604 Exemptions.--
2 (1) All new cemeteries created in this state on or
3 after July 1, 1999, must be created and licensed under part I.
4 However, any unlicensed cemetery, not qualified under
5 subsection (2), existing on July 1, 1999, shall be permitted
6 to function, provided it is not in violation of any provision
7 of part I or this part.
8 (2) The provisions of this part, and rules adopted
9 pursuant thereto, shall apply to all cemeteries, except
10 cemeteries licensed under part I. Entities that qualify under
11 s. 497.003(1)(a) and (4), shall continue to function under
12 part I, unless declared neglected or abandoned under the
13 provisions of this part. All preneed agents of any of these
14 entities must be registered under s. 497.439.
15 497.605 Sections of part I effective in this
16 part.--Sections 497.005, 497.309(1), 497.321, 497.325,
17 497.341, and 497.345 shall apply to all cemeteries, licensed
18 or unlicensed.
19 497.606 Investigation and mediation.--The
20 investigation and mediation procedures established by the
21 department for consumer complaints under s. 497.003(3) apply
22 to all unlicensed cemeteries. These procedures shall provide
23 for the handling of consumer complaints at the lowest
24 authority level.
25 497.607 Conversion procedures.--When an unlicensed
26 cemetery wishes to convert to a licensed cemetery to be
27 operated under part I, it shall follow the conversion
28 procedures of part I.
29 497.608 Licenses required for certain cemeteries.--A
30 cemetery that sells burial rights or burial merchandise or
31 services must be operated under and comply with part I. A

1 cemetery that builds a mausoleum or columbarium must be
2 operated under and comply with part I.
3 497.609 Care and maintenance.--The owner of an
4 unlicensed cemetery shall provide proper care and maintenance,
5 which means the perpetual process of keeping a cemetery and
6 its lots, gravel, grounds, landscaping, roads, paths, other
7 means of access, parking lots, fences, buildings, vaults, and
8 other improvements, structures, and embellishments in a
9 well-cared-for and dignified condition, so that the cemetery
10 does not become a nuisance or place of reproach and desolation
11 in the community, in keeping with the definition of "care and
12 maintenance" in s. 497.005(8) and rules promulgated
13 thereunder. However, in the event a landowner, after purchase,
14 finds upon the land a cemetery, burying ground, or final
15 resting place of human remains, which the landowner did not
16 create or dedicate and which was not disclosed in the title
17 search or otherwise made known to him or her prior to
18 purchase, the landowner shall have 60 days from the date of
19 discovery of the cemetery to register it with the clerk of the
20 court and, within 6 months after registration, shall either
21 establish a care and maintenance program for the cemetery or
22 locate the boundaries of the cemetery and convey the cemetery
23 to the local government in lieu of any civil liability.
24 497.611 Civil liability.--An individual owner and the
25 officers and directors of a corporate owner of an unlicensed
26 cemetery shall be held personally liable, jointly and
27 severally, for failing to provide care and maintenance as set
28 forth in this part for the cemetery.
29 497.612 Ingress and egress.--In addition to the
30 provisions of s. 704.08, a representative designated by the
31 county or city in which the cemetery is located, a

1 representative designated by the sheriff in the county in
2 which the cemetery is located, and a representative designated
3 by the department shall have an easement or right of entry for
4 ingress and egress for the purpose of inspection of the
5 cemetery at reasonable times and in a reasonable manner to
6 determine compliance with this part and part I.

7 497.613 Definitions.--All of the definitions of s.
8 497.005 shall be effective in this part. In addition, for
9 purposes of this part, the term "local government" means any
10 county or municipality in this state.

11 497.614 Local government responsibilities.--Local
12 governments should encourage religious and civic organizations
13 that work within their jurisdiction to apply for available
14 grants and other funding for the adoption and maintenance of
15 abandoned cemeteries. On or after July 1, 1999, it shall be
16 the duty of each local government in this state to identify,
17 preserve, and protect all neglected and abandoned unlicensed
18 cemeteries within its jurisdiction and, for such purposes, may
19 budget annually an amount to accomplish this.

20 497.615 Abandonment.--Even though an unlicensed
21 cemetery shall not lose its character and status as a
22 cemetery, it may be declared an abandoned cemetery. The
23 procedure for declaring an unlicensed cemetery abandoned is as
24 follows:

25 (1) An application to declare a cemetery abandoned may
26 be made to the circuit court of the county in which the
27 cemetery is located. This application may be made by five
28 local citizens or the owner, after requesting assistance from
29 the local government, or it may be made by the local
30 government in which the cemetery is located if:

31 (a) The owner of the cemetery land:

- 1 1. Cannot be found or is unknown;
2 2. Does not maintain it in accordance with this part;
3 or
4 3. Was a corporation that has been dissolved; or
5 (b) The cemetery has not been registered or licensed
6 as a cemetery under part I or this part.
7 (2) Notice by the local government must be given to
8 the owner of record and all interested parties.
9 (3) Whether the local government is the applicant or
10 not, it shall be responsible for the cost of the application,
11 including the cost of any title search and a survey of the
12 cemetery.
13 (4) The court, upon determining that the cemetery
14 exists and that the cemetery is abandoned pursuant to this
15 part, shall, by order, declare the cemetery that is the
16 subject matter of the application to be abandoned, and that
17 order shall contain a prohibition against further burials in
18 the abandoned cemetery.
19 (5) Upon the recordation in the official records of
20 the county of the court's order declaring the cemetery
21 abandoned, the local government named in the order shall
22 immediately become the owner of the cemetery with all the
23 rights and obligations set forth in part I and this part, and
24 all the assets, funds, and trust accounts shall thereafter be
25 the property of the local government.
26 (6) The order of abandonment may contain other matters
27 which the court determines are needed and which are not in
28 violation of part I and this part.
29 (7) From the date of the order of abandonment, the
30 local government shall be responsible for the maintenance of
31 the cemetery in accordance with this part.

1 (8) If the court does not enter an order of
2 abandonment, it shall enter an order of denial of the
3 application.

4 497.616 Neglected cemetery.--An unlicensed cemetery
5 may be declared a neglected cemetery when the owner fails to
6 provide care and maintenance as defined in s. 497.609 for a
7 period of 6 months. From the date of notice to the owner by
8 the local government by due public notice as prescribed in s.
9 166.0415 that the cemetery does not present a well-cared-for
10 and dignified appearance, the owner shall have 30 days to
11 correct the violation, and may request and receive one 30-day
12 extension upon good cause shown. Whenever, after such period,
13 the board of county commissioners or the city council
14 determines, according to this part after public hearing, that
15 an unlicensed cemetery has failed to be maintained for 6
16 months or has received three notices of neglected status, the
17 cemetery shall be deemed neglected. The local government shall
18 provide for the proper and seasonable cutting of all weeds and
19 grass and the removal of all debris and shall have unlimited
20 access to perform those tasks. The local government may
21 maintain an action against the owner of the cemetery to
22 recover an amount equal to the value of such maintenance. Upon
23 failure of the owner to pay such amount, the local government
24 may proceed to the circuit court for an order of abandonment
25 in the same manner as that available in the case of abandoned
26 cemeteries. However, the owner and the officers and directors
27 of a corporate owner shall remain personally liable for such
28 costs, and no further burial rights may be issued in that
29 cemetery.

30 497.617 Private contracts.--Any local government
31 required under this part to care for an abandoned or neglected

1 cemetery may contract with any individual, firm, corporation,
2 or association for the care and maintenance of that cemetery,
3 or for the opening and closing of graves, or may use its
4 employees to perform those functions.

5 497.618 Registry of cemeteries.--The clerk of the
6 court of each county shall establish and maintain a registry
7 of cemeteries within the county. This registry shall contain
8 the physical location of each cemetery in the county and the
9 name, address, and phone number of the owner of the cemetery
10 and of the person responsible for the care and maintenance of
11 the cemetery. Such registry may include unmarked human
12 burials, including any burial mound or earthen or shell
13 monument containing human skeletal remains or associated
14 burial artifacts. This registry shall be available to the
15 public for review or copying upon request. The clerk of the
16 court may charge a fee for copies of the registry. Upon
17 receipt of registration information from any source, the clerk
18 of the court shall send a copy of each filing, with registry
19 number thereon, to the local government in which the cemetery
20 is located and a copy to the department. It shall be the
21 responsibility of the local government to investigate the
22 information disclosed in the filing to verify or determine the
23 proper legal description of the cemetery and, through the
24 search, to determine the owner. A declaration of the cemetery,
25 its proper legal description, and the owner thereof shall then
26 be recorded in the official records of the county. A copy of
27 this recorded declaration shall be forwarded to the department
28 for inclusion in the state database. Thereafter, the
29 department shall forward notice to the owner for registration
30 of the cemetery with the department. The owner shall be
31 required to file a copy of the registration with the

1 department to the clerk of the court for use to update the
2 registry.

3 497.619 Filings by surveyors.--If, in the course of a
4 land survey of property located in this state, a surveyor
5 licensed by the state locates any cemetery which has not been
6 previously registered, the surveyor shall file a statement
7 with the clerk of the court of the location of the cemetery.
8 The statement shall be filed on a form provided by the clerk
9 of the court and developed to fit the database of the
10 department. No fee shall be charged the surveyor for such
11 filing.

12 497.621 Filings by citizens.--Any person, family,
13 group, association, society, or county officer may submit to
14 the clerk of the court, on forms provided by the clerk, the
15 names and locations of any cemetery located in the county for
16 inclusion in the county registry. No fee shall be charged for
17 such submission.

18 497.622 Transfer of small cemeteries.--If an abandoned
19 cemetery, established in accordance with this part, contains
20 fewer than 20 burials, has no historial or archaeological
21 significance as determined by the Division of Historical
22 Resources and the local government, and is located in the path
23 of imminent development, the concerned developer, at the
24 developer's expense, shall be permitted to transfer the
25 remains of the buried persons to an abandoned cemetery being
26 maintained by the local government, provided the provisions of
27 ss. 470.0295 and 497.515(7) have been complied with prior to
28 any disinterment of human remains. If, after diligent search
29 by the property owner or developer, the next of kin or other
30 legally authorized person cannot be found, the board of county
31 commissioners or the city council, after public notice and

1 public hearing, may, by resolution, direct the disinterment of
2 the human remains and their reburial in a cemetery under the
3 control and maintenance of the local government, provided the
4 removal and reburial includes the removal of all stones,
5 markers, and other items of identification and their
6 establishment in the same configuration in their new location.

7 497.623 Rules.--The department has authority to adopt
8 rules pursuant to ss. 120.54 and 120.536(1) to implement this
9 part.

10 Section 2. Section 215.321, Florida Statutes, is
11 amended to read:

12 215.321 Regulatory Trust Fund.--All funds received
13 pursuant to ss. 494.001-494.0077; chapter 497, except as
14 otherwise provided in s. 497.527; chapter 516; chapter 520;
15 or part I of chapter 559 shall be deposited into the
16 Regulatory Trust Fund.

17 Section 3. Subsection (3) of section 267.021, Florida
18 Statutes, 1998 Supplement, is amended to read:

19 267.021 Definitions.--For the purpose of this act, the
20 term:

21 (3) "Historic property" or "historic resource" means
22 any prehistoric or historic district, site, building, object,
23 or other real or personal property of historical,
24 architectural, or archaeological value, and folklife
25 resources. These properties or resources may include, but are
26 not limited to, monuments, memorials, Indian habitations,
27 ceremonial sites, abandoned cemeteries, abandoned settlements,
28 sunken or abandoned ships, engineering works, treasure trove,
29 artifacts, or other objects with intrinsic historical or
30 archaeological value, or any part thereof, relating to the
31 history, government, and culture of the state.

1 Section 4. Paragraph (p) is added to subsection (3) of
2 section 267.061, Florida Statutes, to read:

3 267.061 Historic properties; state policy,
4 responsibilities.--

5 (3) DIVISION RESPONSIBILITY.--It is the responsibility
6 of the division to:

7 (p) Work with state agencies, local governments, and
8 private organizations and individuals in identifying abandoned
9 cemeteries and submitting semiannual grant applications
10 pursuant to s. 267.0617 in assisting the local governments in
11 carrying out their historic preservation responsibilities and
12 programs.

13 Section 5. Subsection (15) is added to section
14 380.507, Florida Statutes, to read:

15 380.507 Powers of the trust.--The trust shall have all
16 the powers necessary or convenient to carry out the purposes
17 and provisions of this part, including:

18 (15) To give annual notice to city managers and county
19 administrators of available funding for maintenance of
20 abandoned cemeteries. Such notice shall consist of information
21 pertaining to trust programs, including information that funds
22 are available for the identification and maintenance of
23 abandoned cemeteries, eligibility requirements for receiving
24 trust funds under this part, information regarding matching
25 dollar grants to local governments and nonprofit organizations
26 for the purposes set forth in s. 380.511(2), requests for
27 proposals, and potential moneys available for abandoned
28 cemeteries under the Historical Preservation Grant Program set
29 forth in chapter 267.

30 Section 6. Section 380.511, Florida Statutes, is
31 amended to read:

1 380.511 Florida Communities Trust Fund.--
2 (1) There is created the Florida Communities Trust
3 Fund as a nonlapsing, revolving fund for projects, activities,
4 acquisitions, and operating expenses necessary to carry out
5 this part. The fund shall be held and administered by the
6 trust. The following shall be credited to or deposited in the
7 Florida Communities Trust Fund:
8 (a) All moneys and revenue from the operation,
9 management, sale, lease, or other disposition of land, water
10 areas, related resources, and the facilities thereon acquired
11 or constructed under this part.
12 (b) Moneys accruing to any agency for the purposes
13 listed in this part.
14 (c) Proceeds from the sale of environmental license
15 plates authorized in s. 320.08058(5).
16 (d) Moneys collected pursuant to ss. 497.257 and
17 938.08.
18 ~~(e)~~(d) Other moneys as the Legislature authorizes.
19
20 All moneys so deposited into the Florida Communities Trust
21 Fund shall be trust funds for the uses and purposes set forth
22 in this section, within the meaning of s. 215.32(1)(b); and
23 such moneys shall not become or be commingled with the General
24 Revenue Fund of the state, as defined by s. 215.32(1)(a).
25 (2)(a) It is the intent of the Legislature that moneys
26 received under paragraph (1)(d) shall be held for matching
27 dollar grants for local initiatives by cities, counties, and
28 nonprofit organizations to adopt and care for abandoned
29 cemeteries. Such funds shall be deposited and held in the
30 Florida Communities Trust Fund for the 1999-2000 fiscal year,
31

1 and every fiscal year thereafter no less than 90 percent of
2 the moneys shall be appropriated for the following purposes:

- 3 1. Expenses of repair or reinterment.
4 2. Repair of vandalism and storm damage at cemeteries.
5 3. Essential maintenance at abandoned cemeteries,
6 including, but not limited to, construction and repair of
7 perimeter fences, placement of security lighting, replacement
8 of doors and locks, removal of dilapidated structures, and
9 other measures to protect public health and safety and provide
10 physical security.

11 (b) Up to 10 percent of the moneys received under
12 paragraph (1)(d) shall be used to pay all necessary expenses
13 to carry out the purposes of this part.

14 ~~(3)(2)~~ The trust may expend any moneys in the Florida
15 Communities Trust Fund to acquire land, water areas, and
16 related resources; to provide technical assistance to local
17 governments to establish transfer of development rights
18 programs within their jurisdictions; and to construct,
19 improve, enlarge, extend, operate, and maintain capital
20 improvements and facilities in accordance with this part,
21 except as limited by s. 380.510(7).

22 ~~(4)(3)~~ The trust may disburse moneys in the Florida
23 Communities Trust Fund to pay all necessary expenses to carry
24 out the purposes of this part, except as limited by s.
25 380.510(7).

26 Section 7. Section 380.512, Florida Statutes, is
27 amended to read:

28 380.512 Annual reports ~~report~~.--

29 (1) The trust shall submit to the Governor, the
30 Speaker of the House of Representatives, the President of the
31 Senate, and the minority leaders of the House of

1 Representatives and the Senate, within 3 months after the end
2 of its fiscal year, a complete and detailed report setting
3 forth:

4 ~~(a)(1)~~ Its operations and accomplishments.

5 ~~(b)(2)~~ Its receipts and expenditures during the fiscal
6 year, in accordance with the categories or classifications the
7 trust establishes for its operating and capital outlay
8 purposes.

9 ~~(c)(3)~~ Its assets and liabilities at the end of its
10 fiscal year and the status of reserve, special, or other
11 funds.

12 ~~(d)(4)~~ An evaluation of the effectiveness of the
13 projects undertaken in carrying out this part.

14 ~~(e)(5)~~ Identification of additional funding,
15 legislation, or other resources required to carry out the
16 objectives of this part more effectively.

17 ~~(f)(6)~~ An account of any other trust or department
18 duties established by this part.

19 (2) The trust shall also prepare and submit annually
20 to the Board of Funeral and Cemetery Services a report
21 documenting the amount of funds received under s.
22 380.511(1)(d), the amount of such funds spent under s.
23 380.511(2), and the recipients of the funds so spent.

24 Section 8. Section 497.527, Florida Statutes, 1998
25 Supplement, is amended to read:

26 497.527 Civil remedies.--The Attorney General or any
27 person may bring a civil action against a person or company
28 violating the provisions of this part ~~chapter~~ in the
29 appropriate court of the county in which the alleged violator
30 resides or has his or her or its principal place of business
31 or in the county wherein the alleged violation occurred. Upon

1 adverse adjudication, the defendant shall be liable for actual
2 damages caused by such violation. The court may, as provided
3 by common law, award punitive damages and may provide such
4 equitable relief as it deems proper or necessary, including
5 enjoining the defendant from further violations of this part
6 chapter. Any punitive damages recovered by the Attorney
7 General shall be deposited in the Florida Communities Trust
8 Fund created by s. 380.511, to be used for the purposes
9 enumerated in s. 380.511(2).

10 Section 9. Section 938.08, Florida Statutes, is
11 created to read:

12 938.08 Cases involving criminal mischief and offenses
13 concerning dead bodies and graves.--Any person who pleads
14 guilty or nolo contendere to, or is convicted of, criminal
15 mischief under s. 806.13 or any offense under chapter 872
16 shall pay an additional cost in the case, in addition to any
17 other cost required to be imposed by law, in the sum of \$100
18 for a felony and \$50 for a misdemeanor. All funds collected
19 from the costs assessed under this section shall be deposited
20 in the Florida Communities Trust Fund created by s. 380.511,
21 to be used for the purposes enumerated in s. 380.511(2).

22 Section 10. Section 470.034, Florida Statutes, is
23 amended to read:

24 470.034 Disclosure of information to public.--If a
25 licensee or registrant offers to provide services to the
26 public, she or he shall be subject to disciplinary action as
27 provided in this chapter if she or he:

28 (1) Fails to reasonably provide by telephone, upon
29 request, accurate information regarding the retail prices of
30 funeral merchandise and services offered for sale by that
31 licensee or registrant.

1 (2) Fails to fully disclose all of her or his
2 available services and merchandise prior to the selection of a
3 casket. The full disclosure required shall identify what is
4 included in the funeral or direct disposition and the prices
5 of all services and merchandise provided by the licensee or
6 registrant. Full disclosure shall also be made in the case of
7 a funeral or direct disposition with regard to the use of
8 funeral merchandise which is not to be disposed of with the
9 body, and written permission shall be obtained from the
10 purchaser.

11 (3) Makes any false or misleading statements of the
12 legal requirement as to the conditions under which
13 preservation of a dead human body is required or as to the
14 necessity of a casket or outer burial container.

15 (4) Fails to disclose, when such disclosure is
16 desired, the components of the prices for alternatives such
17 as:

18 (a) Graveside service.

19 (b) Direct disposition.

20 (c) Body donation without any rites or ceremonies
21 prior to the delivery of the body and prices of service if
22 there are to be such after the residue has been removed
23 following the use thereof.

24 (5) Fails to include in each advertisement for
25 merchandise or services a clear and conspicuous statement
26 identifying the owner of the business that would provide the
27 merchandise or services. If the owner is a corporation as
28 defined in this subsection, the name and headquarters address
29 of the corporation shall also be listed in all forms of
30 advertising and solicitation, including, but not limited to,
31 newspaper, direct mail, telephone, outdoor, Internet,

1 television, and radio advertising and solicitation used by the
2 funeral or direct disposal establishment. In print
3 advertisements, the type font used in the disclosure portion
4 shall be no smaller than the smallest type face used in the
5 main body of the advertisement. As used in this subsection,
6 the term "owner" includes, but is not limited to, a publicly
7 traded corporation owning more than 10 percent of a licensee
8 or registrant.

9 (6) Fails to identify any corporate owner on the main
10 exterior sign as required in this subsection. Where an
11 ownership interest of 10 percent or more in a funeral or
12 direct disposal establishment is held by a publicly traded
13 corporation, the main exterior sign shall identify the name of
14 the publicly traded corporation holding that ownership
15 interest, as listed on the New York, American, or other
16 domestic or foreign stock exchange where the stock of the
17 corporation is traded or sold. The name shall be a minimum of
18 4 inches in height.

19 (7) Fails to provide to each prospective purchaser of
20 merchandise or services, prior to the purchase, a clear and
21 conspicuous written statement identifying the owner of the
22 business that would provide the merchandise or services. As
23 used in this subsection, the term "owner" includes, but is not
24 limited to, a publicly traded corporation owning more than 10
25 percent of a licensee or registrant.

26 (8) Fails to include in each contract for purchase of
27 merchandise or services a clear and conspicuous statement
28 identifying the owner of each business that will provide the
29 merchandise or services. Additionally, if a contract does not
30 contain this disclosure, the contract is voidable by the
31 purchaser. In any action based on this subsection, the

1 licensee or registrant has the burden of proof to show that
2 the disclosure was made. As used in this subsection, the term
3 "owner" includes, but is not limited to, a publicly traded
4 corporation owning more than 10 percent of a licensee or
5 registrant.

6 Section 11. Subsections (1) and (2) of section
7 497.201, Florida Statutes, are amended to read:

8 497.201 Cemetery companies; license; application;
9 fee.--

10 (1) No person may operate a cemetery without first
11 obtaining a license from the department, unless specifically
12 exempted from this part ~~chapter~~.

13 (2) The department may require any person desiring to
14 establish a cemetery company who applies for a license to
15 provide any information reasonably necessary to make a
16 determination of the applicant's eligibility for licensure.
17 Any person desiring to establish a cemetery company shall
18 first:

19 (a) File an application that, ~~which~~ states the exact
20 location of the proposed cemetery, which site shall contain
21 not less than 15 contiguous acres, and that identifies the
22 business or corporation that will own the cemetery; provide a
23 financial statement signed by all officers of the company that
24 attests ~~which attest~~ to a net worth of at least \$50,000, which
25 net worth must be continuously maintained as a condition of
26 licensure; and pay an application fee of \$5,000;

27 (b) Create a legal entity; and

28 (c) Demonstrate to the satisfaction of the board that
29 the applicant possesses the ability, experience, financial
30 stability, and integrity to operate a cemetery.

31

1 Section 12. Section 497.213, Florida Statutes, is
2 amended to read:
3 497.213 Annual license fees.--
4 (1) The department shall collect from each cemetery
5 company operating under the provisions of this ~~part~~ chapter an
6 annual license fee as follows:
7 (a) For a cemetery with less than \$25,000 annual gross
8 sales.....\$250.
9 (b) For a cemetery with at least \$25,000 but less than
10 \$100,000 annual gross sales.....\$350.
11 (c) For a cemetery with annual gross sales of at least
12 \$100,000 but less than \$250,000.....\$600.
13 (d) For a cemetery with annual gross sales of at least
14 \$250,000 but less than \$500,000.....\$900.
15 (e) For a cemetery with annual gross sales of at least
16 \$500,000 but less than \$750,000.....\$1,350.
17 (f) For a cemetery with annual gross sales of at least
18 \$750,000 but less than \$1,000,000.....\$1,750.
19 (g) For a cemetery with annual gross sales of
20 \$1,000,000 or more.....\$2,650.
21 (2) An application for license renewal shall be
22 submitted, along with the applicable license fee, on or before
23 December 31 each year in the case of an existing cemetery
24 company and before any sale of cemetery property in the case
25 of a new cemetery company or a change of ownership or control
26 pursuant to ss. 497.205 and 497.209. The application must
27 identify the business or corporation that owns or will own the
28 cemetery. If the renewal application and fee are not received
29 by December 31, the department shall collect a penalty in the
30 amount of \$200 per month or fraction of a month for each month
31 delinquent. For the purposes of this subsection, a renewal

1 application and fee submitted by mail shall be considered
2 timely submitted and received if postmarked by December 31 of
3 the applicable year.

4 Section 13. Section 497.333, Florida Statutes, is
5 amended to read:

6 497.333 Disclosure of information to public.--A
7 licensee offering to provide burial rights, merchandise, or
8 services to the public shall:

9 (1) Provide by telephone, upon request, accurate
10 information regarding the retail prices of burial merchandise
11 and services offered for sale by the licensee.

12 (2) Fully disclose all regularly offered services and
13 merchandise prior to the selection of burial services or
14 merchandise. The full disclosure required shall identify the
15 prices of all burial rights, services, and merchandise
16 provided by the licensee.

17 (3) Not make any false or misleading statements of the
18 legal requirement as to the necessity of a casket or outer
19 burial container.

20 (4) Provide a good faith estimate of all fees and
21 costs the customer will incur to use any burial rights,
22 merchandise, or services purchased.

23 (5) Provide to the customer, upon request, a current
24 copy of the bylaws of the licensee.

25 (6) Provide to the customer, upon the purchase of any
26 burial right, merchandise, or service, a written contract, the
27 form of which has been approved by the board.

28 (a) The written contract shall be completed as to all
29 essential provisions prior to the signing of the contract by
30 the customer.

31

1 (b) The written contract shall provide an itemization
2 of the amounts charged for all services, merchandise, and
3 fees, which itemization shall be clearly and conspicuously
4 segregated from everything else on the written contract.

5 (c) A description of the merchandise covered by the
6 contract to include, when applicable, model, manufacturer, and
7 other relevant specifications.

8 (7) Provide the licensee's policy on cancellation and
9 refunds to each customer.

10 (8) In a manner established by rule of the board,
11 provide on the signature page, clearly and conspicuously in
12 boldfaced 10-point type or larger, the following:

13 (a) The words "purchase price."

14 (b) The amount to be trusted.

15 (c) The amount to be refunded upon contract
16 cancellation.

17 (d) The amounts allocated to merchandise, services,
18 and cash advances.

19 (e) The toll-free number of the department which is
20 available for questions or complaints.

21 (f) A statement that the purchaser shall have 30 days
22 from the date of execution of contract to cancel the contract
23 and receive a total refund of all moneys paid.

24 (9) Include in each advertisement for burial rights,
25 merchandise, or services a clear and conspicuous statement
26 identifying the owner of the business that would provide the
27 burial rights, merchandise, or services. If the owner is a
28 corporation as defined in this subsection, the name and
29 headquarters address of the corporation shall also be listed
30 in all forms of advertising and solicitation, including, but
31 not limited to, newspaper, direct mail, telephone, outdoor,

1 Internet, television, and radio advertising and solicitation
2 used by the funeral or direct disposal establishment. In print
3 advertisements, the type font used in the disclosure portion
4 shall be no smaller than the smallest type face used in the
5 main body of the advertisement. As used in this subsection,
6 the term "owner" includes, but is not limited to, a publicly
7 traded corporation owning more than 10 percent of a licensee
8 or registrant providing such rights, merchandise, or services.

9 (10) Identify any corporate owner on the main exterior
10 sign as required in this subsection. Where an ownership
11 interest of 10 percent or more in a funeral or direct disposal
12 establishment is held by a publicly traded corporation, the
13 main exterior sign shall identify the name of the publicly
14 traded corporation holding that ownership interest, as listed
15 on the New York, American, or other domestic or foreign stock
16 exchange where the stock of the corporation is traded or sold.
17 The name shall be a minimum of 4 inches in height.

18 (11) Provide to each prospective purchaser, prior to
19 the purchase, a clear and conspicuous written statement
20 identifying the owner of the business that would provide the
21 burial rights, merchandise, or services. As used in this
22 subsection, the term "owner" includes, but is not limited to,
23 a publicly traded corporation owning more than 10 percent of a
24 licensee or registrant providing such rights, merchandise, or
25 services.

26 (12) Include in each contract for purchase of burial
27 rights, merchandise, or services, a clear and conspicuous
28 statement identifying the owner of each business that will
29 provide the burial rights, merchandise, or services.
30 Additionally, if a contract does not contain this disclosure,
31 the contract is voidable by the purchaser. In any action based

1 on this subsection, the licensee or registrant has the burden
2 of proof to show that the disclosure was made. As used in this
3 subsection, the term "owner" includes, but is not limited to,
4 a publicly traded corporation owning more than 10 percent of a
5 licensee or registrant providing such rights, merchandise, or
6 services.

7 Section 14. In order to provide more useful
8 information to the Legislature and the public concerning
9 consumer complaints about the funeral and cemetery industries,
10 the Department of Business and Professional Regulation, the
11 Department of Banking and Finance, and the Department of
12 Agriculture and Consumer Services are to coordinate the method
13 in which they keep records of and report data on such
14 complaints, including the categories and the format used to
15 organize this data.

16 Section 15. Section 245.07, Florida Statutes, 1998
17 Supplement, is amended to read:

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

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

13 Section 16. Subsection (21) of section 470.002,
14 Florida Statutes, 1998 Supplement, is amended to read:

15 470.002 Definitions.--As used in this chapter:

16 (21) "Preneed sales agent" means any person who is
17 registered under part I of chapter 497 to sell preneed burial
18 or funeral service and merchandise contracts or direct
19 disposition contracts in this state.

20 Section 17. Paragraph (c) of subsection (2) of section
21 470.019, Florida Statutes, is amended to read:

22 470.019 Disciplinary actions against direct disposers
23 and direct disposal establishments.--

24 (2) The following shall be sufficient grounds for the
25 penalties imposed under subsection (1):

26 (c) Having been disciplined by a regulatory agency in
27 any jurisdiction for any offense that would constitute a
28 violation of this chapter, chapter 245, chapter 382, chapter
29 406, part I or part II of chapter 497, or chapter 872 or that
30 directly relates to the practice of direct disposition.

31

1 Section 18. Subsection (13) of section 470.025,
2 Florida Statutes, is amended to read:

3 470.025 Cinerator facility; licensure.--

4 (13) A cinerator facility shall not place human
5 remains in a retort unless the human remains are in an
6 alternative container or casket. Human remains may be
7 transported or stored if they are completely covered, and at
8 all times treated with dignity and respect. None of the
9 provisions contained in this subsection require the purchase
10 of a casket for cremation. This subsection applies to at-need
11 contracts and preneed contracts entered into pursuant to part
12 I of chapter 497 after June 1, 1996.

13 Section 19. Section 470.027, Florida Statutes, is
14 amended to read:

15 470.027 Exemption of certificateholder under part I of
16 chapter 497.--Nothing in this chapter shall prevent a
17 certificateholder under part I of chapter 497 from selling
18 preneed funerals and funeral merchandise through its agents
19 and employees.

20 Section 20. Subsections (1) and (2) of section
21 470.028, Florida Statutes, are amended to read:

22 470.028 Preneed sales; registration of agents.--

23 (1) All sales of preneed funeral service contracts or
24 direct disposition contracts shall be made pursuant to part I
25 of chapter 497.

26 (2) No person may act as an agent for a funeral
27 director, funeral establishment, direct disposer, or direct
28 disposer establishment with respect to the sale of preneed
29 contracts unless such person is registered pursuant to part I
30 of chapter 497.

31

1 Section 21. Paragraphs (q) and (x) of subsection (1)
2 of section 470.036, Florida Statutes, 1998 Supplement, are
3 amended to read:

4 470.036 Disciplinary proceedings.--

5 (1) The following acts constitute grounds for which
6 the disciplinary actions in subsection (2) may be taken:

7 (q) Paying to or receiving from any organization,
8 agency, or person, either directly or indirectly, any
9 commission, bonus, kickback, or rebate in any form whatsoever
10 for any of the activities regulated under this chapter, by the
11 licensee or registrant, or her or his agent, assistant, or
12 employee; however, this provision shall not prohibit the
13 payment of commissions by a funeral director, funeral
14 establishment, or cinerator facility to its preneed agents
15 registered pursuant to part I of chapter 497 or to licensees
16 under this chapter.

17 (x) Having been disciplined by a regulatory agency in
18 any jurisdiction for any offense that would constitute a
19 violation of this chapter, chapter 245, chapter 382, chapter
20 406, part I or part II of chapter 497, or chapter 872 or that
21 directly relates to the ability to practice under this
22 chapter.

23 Section 22. Section 497.001, Florida Statutes, is
24 amended to read:

25 497.001 Short title.--This part ~~chapter~~ may be cited
26 as the "Florida Funeral and Cemetery Services Act."

27 Section 23. Subsection (2) of section 497.002, Florida
28 Statutes, is amended to read:

29 497.002 Purpose and intent.--

30 (2) Subject to certain interests of society, the
31 Legislature finds that every competent adult has the right to

1 control the decisions relating to her or his own funeral
2 arrangements. Accordingly, unless otherwise stated herein, it
3 is the Legislature's express intent that nothing contained in
4 this part ~~chapter~~ should be construed or interpreted in any
5 manner as to subject preneed contract purchasers to federal
6 income taxation under the grantor trust rules contained in ss.
7 671 et seq. of the Internal Revenue Code of 1986, as amended.

8 Section 24. Subsections (1) and (3) of section
9 497.003, Florida Statutes, are amended to read:

10 497.003 Cemeteries; exemption; investigation and
11 mediation.--

12 (1) The provisions of this part ~~chapter~~ relating to
13 cemeteries and all rules adopted pursuant thereto shall apply
14 to all cemeteries except for:

15 (a) Church cemeteries of less than 5 acres which
16 provide only single-level ground burial.

17 (b) County and municipal cemeteries.

18 (c) Community and nonprofit association cemeteries
19 which provide only single-level ground burial and do not sell
20 burial spaces or burial merchandise.

21 (d) Cemeteries owned and operated or dedicated by
22 churches prior to June 23, 1976.

23 (e) Cemeteries beneficially owned and operated since
24 July 1, 1915, by a fraternal organization or its corporate
25 agent.

26 (f) A columbarium consisting of less than one-half
27 acre which is owned by and immediately contiguous to an
28 existing church facility and is subject to local government
29 zoning. The church establishing such a columbarium shall
30 ensure that the columbarium is perpetually kept and maintained
31 in a manner consistent with the intent of this part ~~chapter~~.

1 If the church relocates, the church shall relocate all of the
2 urns and remains placed in the columbarium which were placed
3 therein during its use by the church.

4 (g) Family cemeteries of less than 2 acres which do
5 not sell burial spaces or burial merchandise.

6 (h) A mausoleum consisting of 2 acres or less which is
7 owned by and immediately contiguous to an existing church or
8 synagogue facility and is subject to local government zoning.
9 The church or synagogue establishing such a mausoleum must
10 ensure that the mausoleum is kept and maintained in a manner
11 consistent with the intent of this part ~~chapter~~ and limit its
12 availability to members of the church or synagogue. The
13 church or synagogue establishing such a mausoleum must have
14 been incorporated for at least 25 years and must have
15 sufficient funds in an endowment fund to cover the costs of
16 construction of the mausoleum.

17 (3) All cemeteries exempted under this part ~~chapter~~
18 which are in excess of 5 acres must submit to the following
19 investigation and mediation procedure by the department in the
20 event of a consumer complaint:

21 (a) The exempt cemetery shall make every effort to
22 first resolve a consumer complaint;

23 (b) If the complaint is not resolved, the exempt
24 cemetery shall advise the consumer of the right to seek
25 investigation and mediation by the department;

26 (c) If the department receives a complaint, it shall
27 attempt to resolve it telephonically with the parties
28 involved;

29 (d) If the complaint still is not resolved, the
30 department shall conduct an investigation and mediate the
31 complaint;

1 (e) If the department conducts an onsite investigation
2 and face-to-face mediation with the parties, it may charge the
3 exempt cemetery a single investigation and mediation fee not
4 to exceed \$300, which fee shall be set by rule and shall be
5 calculated on an hourly basis; and

6 (f) If all attempts to resolve the consumer complaint
7 fail, the cemetery shall be subject to proceedings for
8 penalties and discipline under this part ~~chapter~~.

9 Section 25. Section 497.004, Florida Statutes, is
10 amended to read:

11 497.004 Existing companies, effect of this part
12 ~~chapter~~.--Cemetery companies existing on October 1, 1993,
13 shall continue in full force and effect but shall be operated
14 in accordance with the provisions of this part ~~chapter~~.

15 Section 26. Section 497.005, Florida Statutes, 1998
16 Supplement, is amended to read:

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

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

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

27 (3) "Belowground crypts" consist of interment space in
28 preplaced chambers, either side by side or multiple depth,
29 covered by earth and sod and known also as "lawn crypts,"
30 "westminsters," or "turf-top crypts."
31

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

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

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

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

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

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

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

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

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

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

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

31

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

4 (15) "Community" means the area within a 15-mile
5 radius surrounding the location or proposed location of a
6 cemetery.

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

12 (17) "Department" means the Department of Banking and
13 Finance.

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

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

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

25 (21) "Grave space" means a space of ground in a
26 cemetery intended to be used for the interment in the ground
27 of human remains.

28 (22) "Human remains" means the bodies of deceased
29 persons and includes bodies in any stage of decomposition and
30 cremated remains.

31

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

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

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

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

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

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

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

31

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

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

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

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

17 Section 27. Section 497.025, Florida Statutes, is
18 amended to read:

19 497.025 Liability.--The cemetery owners, or the
20 officers or directors of a cemetery company, may be held
21 jointly and severally liable for any income from the care and
22 maintenance trust fund which income is not used directly for
23 the care and maintenance of a cemetery. The department or the
24 receiver or administrator appointed pursuant to this part
25 ~~chapter~~ may bring suit in circuit court to recover such funds.

26 Section 28. Subsection (2) of section 497.101, Florida
27 Statutes, is amended to read:

28 497.101 Board of Funeral and Cemetery Services;
29 membership; appointment; terms.--

30 (2) Two members of the board must be funeral directors
31 licensed under chapter 470 who are not associated with a

1 cemetery company through ownership interests or through
2 employment with a company which has an ownership interest in a
3 cemetery. Two members must be owners or operators of a
4 cemetery licensed under this part ~~chapter~~. The remaining
5 three members must be residents of the state who have never
6 been licensed as funeral directors or embalmers and who are in
7 no way connected with a cemetery, the death care industry, or
8 the practice of embalming, funeral directing, or direct
9 disposition. At least one consumer member of the board must
10 be 60 years of age or older. No licensee on the board may be
11 associated by employment or ownership with a funeral
12 establishment or cemetery which is owned partly or wholly by a
13 person, business, corporation, or other entity which is
14 associated with another licensee on the board.

15 Section 29. Subsection (1) of section 497.103, Florida
16 Statutes, 1998 Supplement, is amended to read:

17 497.103 Rulemaking authority of board and
18 department.--

19 (1) The board has authority to adopt rules pursuant to
20 ss. 120.536(1) and 120.54 to implement provisions of this part
21 ~~chapter~~ conferring duties upon it. The department may adopt
22 rules pursuant to ss. 120.536(1) and 120.54 to administer
23 provisions of this part ~~chapter~~ conferring duties upon it.

24 Section 30. Subsections (4) and (5) of section
25 497.105, Florida Statutes, 1998 Supplement, are amended to
26 read:

27 497.105 Department of Banking and Finance; powers and
28 duties.--The Department of Banking and Finance shall:

29 (4) Develop a training program for persons newly
30 appointed to membership on the board. The program shall
31 familiarize such persons with the substantive and procedural

1 laws and rules which relate to the regulation under this part
2 ~~chapter~~ and with the structure of the department.

3 (5) Adopt rules pursuant to ss. 120.536(1) and 120.54
4 to implement the provisions of this part ~~chapter~~ conferring
5 duties upon it.

6 Section 31. Subsection (1) of section 497.119, Florida
7 Statutes, is amended to read:

8 497.119 Mediation.--

9 (1) Notwithstanding the provisions of s. 497.131, the
10 board may adopt rules to designate which violations of this
11 part ~~chapter~~ are appropriate for mediation. The board may
12 designate as mediation offenses those complaints where harm
13 caused by the licensee is economic in nature or can be
14 remedied by the licensee.

15 Section 32. Paragraph (a) of subsection (2) of section
16 497.123, Florida Statutes, is amended to read:

17 497.123 Powers to administer oaths and issue
18 subpoenas.--

19 (2)(a) In the event of substantial noncompliance with
20 a subpoena or subpoena duces tecum issued or caused to be
21 issued by the board or the department, the board or the
22 department may petition the circuit court or any other court
23 of competent jurisdiction of the county in which the person
24 subpoenaed resides or has its principal place of business for
25 an order requiring the subpoenaed person to appear and testify
26 and to produce such books, accounts, records, and other
27 documents as are specified in the subpoena duces tecum. The
28 court may grant injunctive relief restraining the person from
29 advertising, promoting, soliciting, entering into, offering to
30 enter into, continuing, or completing a contract pursuant to
31 the provisions of this part ~~chapter~~. The court may grant such

1 other relief, including, but not limited to, the restraint, by
2 injunction or appointment of a receiver, of any transfer,
3 pledge, assignment, or other disposition of the person's
4 assets or any concealment, alteration, destruction, or other
5 disposition of books, accounts, records, or other documents
6 and materials as the court deems appropriate, until the person
7 has fully complied with the subpoena duces tecum and the
8 department has completed its investigation or examination. In
9 addition, the court may order the refund of any fees collected
10 in a transaction whenever books and documents substantiating
11 the transaction are not produced or cannot be produced. The
12 department is entitled to the summary procedure provided in s.
13 51.011, and the court shall advance such cause on its
14 calendar. Attorney's fees and any other costs incurred by the
15 department to obtain an order granting, in whole or part, a
16 petition for enforcement of a subpoena or subpoena duces tecum
17 shall be taxed against the subpoenaed person, and failure to
18 comply with such order is a contempt of court.

19 Section 33. Section 497.125, Florida Statutes, is
20 amended to read:

21 497.125 Evidence; examiner's worksheets, investigative
22 reports, other related documents.--In any hearing in which the
23 financial examiner acting under authority of this part ~~chapter~~
24 is available for cross-examination, any official written
25 report, worksheet, or other related paper, or a duly certified
26 copy thereof, compiled, prepared, drafted, or otherwise made
27 by the financial examiner, after being duly authenticated by
28 the examiner, may be admitted as competent evidence upon the
29 oath of the examiner that the report, worksheet, or related
30 paper was prepared as a result of an examination of the books
31

1 and records of a licensee or other person conducted pursuant
2 to the authority of this part ~~chapter~~.

3 Section 34. Subsections (1) and (4) of section
4 497.127, Florida Statutes, are amended to read:

5 497.127 Injunction to restrain violations.--

6 (1) The board or the department may bring action
7 through its own counsel in the name and on behalf of the state
8 against any person who has violated or is about to violate any
9 provision of this part ~~chapter~~ or any rule or order of the
10 department issued under this part ~~chapter~~ to enjoin the person
11 from continuing in or engaging in any act in furtherance of
12 the violation.

13 (4) For the purpose of this section, the violation of
14 this part ~~chapter~~ by a person who is not licensed by the
15 department or the board or by any person who aids and abets
16 the unlicensed activity shall be presumed to be irreparable
17 harm to the public health, safety, or welfare.

18 Section 35. Subsection (1) of section 497.129, Florida
19 Statutes, is amended to read:

20 497.129 Cease and desist order; civil penalty;
21 enforcement.--

22 (1) The department or the board has the power to issue
23 and serve upon any person an order to cease and desist and to
24 take corrective action whenever it has reason to believe the
25 person is violating, has violated, or is about to violate any
26 provision of this part ~~chapter~~, any rule or order of the
27 department or the board issued under this part ~~chapter~~, or any
28 written agreement between the person and the department or the
29 board. All procedural matters relating to issuance and
30 enforcement of such a cease and desist order are governed by
31 the Administrative Procedure Act.

1 Section 36. Subsections (1) and (11) of section
2 497.131, Florida Statutes, are amended to read:

3 497.131 Disciplinary proceedings.--

4 (1) The department shall cause to be investigated any
5 complaint which is filed before it if the complaint is in
6 writing, signed by the complainant, and legally sufficient. A
7 complaint is legally sufficient if it contains ultimate facts
8 which show that a violation of this part ~~chapter~~, or of any
9 rule promulgated by the department or board has occurred. In
10 order to determine legal sufficiency, the department may
11 require supporting information or documentation. The
12 department may investigate or continue to investigate, and the
13 department and the board may take appropriate final action on,
14 a complaint even though the original complainant withdraws it
15 or otherwise indicates her or his desire not to cause the
16 complaint to be investigated or prosecuted to completion. The
17 department may investigate an anonymous complaint if the
18 complaint is in writing and is legally sufficient, if the
19 alleged violation of law or rules is substantial, and if the
20 department has reason to believe, after preliminary inquiry,
21 that the alleged violations in the complaint are true. The
22 department may investigate a complaint made by a confidential
23 informant if the complaint is legally sufficient, if the
24 alleged violation of law or rule is substantial, and if the
25 department has reason to believe, after preliminary inquiry,
26 that the allegations of the complainant are true. The
27 department may initiate an investigation if it has reasonable
28 cause to believe that a person has violated a state statute, a
29 rule of the department, or a rule of the board. When an
30 investigation of any person is undertaken, the department
31 shall promptly furnish to the person or her or his attorney a

1 copy of the complaint or document which resulted in the
2 initiation of the investigation. The person may submit a
3 written response to the information contained in such
4 complaint or document within 20 days after service to the
5 person of the complaint or document. The person's written
6 response shall be considered by the probable cause panel.
7 This right to respond shall not prohibit the department from
8 issuing a summary emergency order if necessary to protect the
9 public. However, if the Comptroller or her or his designee
10 and the chair of the board or the chair of its probable cause
11 panel agree in writing that such notification would be
12 detrimental to the investigation, the department may withhold
13 notification. The department may conduct an investigation
14 without notification to any person if the act under
15 investigation is a criminal offense.

16 (11) A privilege against civil liability is hereby
17 granted to any complainant or any witness with regard to
18 information furnished with respect to any investigation or
19 proceeding pursuant to this part ~~chapter~~, unless the
20 complainant or witness acted in bad faith or with malice in
21 providing such information.

22 Section 37. Subsection (1) of section 497.133, Florida
23 Statutes, is amended to read:

24 497.133 Disciplinary guidelines.--

25 (1) The board shall adopt, by rule, and periodically
26 review the disciplinary guidelines applicable to each ground
27 for disciplinary action which may be imposed by the board
28 pursuant to this part ~~chapter~~, and any rule of the board or
29 department.

30 Section 38. Section 497.135, Florida Statutes, is
31 amended to read:

1 497.135 Penalty for giving false information.--In
2 addition to, or in lieu of, any other discipline imposed
3 pursuant to this part ~~chapter~~, the act of knowingly giving
4 false information in the course of applying for or obtaining a
5 license from the department or the board, with intent to
6 mislead a public servant in the performance of his or her
7 official duties, or the act of attempting to obtain or
8 obtaining a license to practice by misleading statements or
9 knowing misrepresentations constitutes a felony of the third
10 degree, punishable as provided in s. 775.082, s. 775.083, or
11 s. 775.084.

12 Section 39. Subsections (1) and (3) of section
13 497.137, Florida Statutes, are amended to read:

14 497.137 Unlicensed activity; emergency cease and
15 desist order; administrative penalty; civil penalty;
16 enforcement; attorney's fees and costs.--

17 (1) In addition to other remedies provided to the
18 department or the board, when the department or the board has
19 probable cause to believe that any person who is not licensed
20 by the department or the board has violated any provision of
21 this part ~~chapter~~ or any rule adopted pursuant thereto, the
22 department or the board may issue and deliver to the person an
23 emergency order to cease and desist from such a violation. In
24 addition, the department or the board may issue and deliver an
25 emergency order to cease and desist to any person who aids and
26 abets the unlicensed activity. The issuance of the emergency
27 order to cease and desist shall be effective immediately upon
28 issuance and shall be subject to s. 120.68. For the purpose
29 of enforcing an emergency cease and desist order, the
30 department or the board may file a proceeding in the name of
31 the state seeking issuance of an injunction against any person

1 who violates any provisions of such an order. In addition to
2 the foregoing remedies, the department or the board may impose
3 an administrative penalty not to exceed \$5,000 per incident
4 pursuant to the provisions of chapter 120. If the department
5 or the board is required to seek enforcement of the agency
6 order for a penalty pursuant to s. 120.69, it shall be
7 entitled to collect reasonable attorney's fees and costs,
8 together with any reasonable costs of collecting the
9 attorney's fees and costs.

10 (3) For the purpose of this section, the violation of
11 this part ~~chapter~~ by a person who is not licensed by the
12 department or the board or by any person who aids and abets
13 the unlicensed activity shall be presumed to be an immediate
14 serious danger to the public health, safety, or welfare.

15 Section 40. Section 497.205, Florida Statutes, is
16 amended to read:

17 497.205 License not assignable or transferable.--

18 (1) A license issued to operate a cemetery pursuant to
19 this part ~~chapter~~ is not transferable or assignable, and a
20 licensee may not develop or operate any cemetery authorized by
21 this part ~~chapter~~ at any location other than that contained in
22 the application for the license.

23 (2) Any person who seeks to purchase or acquire
24 control of an existing licensed cemetery shall first apply to
25 the board for approval of the proposed change of ownership.
26 The application shall contain the name and address of the
27 proposed new owner, a financial statement signed by all
28 officers of the company attesting to a net worth of at least
29 \$50,000, and other information required by the board. The
30 board may approve a change of ownership only after it has
31 conducted an investigation of the applicant and determined

1 that the proposed new owner is qualified by character,
2 experience, and financial responsibility to control and
3 operate the cemetery in a legal and proper manner. The
4 department may examine the records of the cemetery company as
5 part of the investigation in accordance with this part
6 ~~chapter~~. The application shall be accompanied by an
7 investigation fee of \$5,000. Upon consummation of the purchase
8 or acquisition of control and upon receipt of all documents
9 required by the board, the department shall issue the new
10 license for that cemetery effective on the date of that
11 purchase or acquisition of control.

12 Section 41. Section 497.209, Florida Statutes, is
13 amended to read:

14 497.209 Application for change of control among
15 existing stockholders or partners; investigation fee.--Any
16 stockholders or partners who intend to acquire control of an
17 existing cemetery company from other stockholders or partners
18 shall first apply to the board for approval for the proposed
19 change of control. The application shall contain the names
20 and addresses of the stockholders or partners seeking to
21 acquire control and a financial statement signed by all
22 officers of the company attesting to a net worth of at least
23 \$50,000. The board may approve the change of control only
24 after it has conducted an investigation of the applicants and
25 determined that such individuals are qualified by character,
26 experience, and financial responsibility to control and
27 operate the cemetery company in a legal and proper manner and
28 that the interest of the public generally will not be
29 jeopardized by the change in ownership and management. The
30 department may examine the records of the cemetery company as
31 part of the investigation in accordance with this part

1 ~~chapter~~. The application shall be accompanied by an
2 investigation fee of \$2,500.

3 Section 42. Subsections (1) and (3) of section
4 497.229, Florida Statutes, 1998 Supplement, are amended to
5 read:

6 497.229 Courts; powers; abatement of nuisances.--

7 (1) In addition to all other means provided by law for
8 the enforcement of a temporary restraining order or an
9 injunction, the circuit court may impound the property of a
10 cemetery company, including books, papers, documents, and
11 records pertaining thereto, and may appoint a receiver or
12 administrator to prevent further violation of this part
13 ~~chapter~~.

14 (3) Any nonconforming physical condition in a cemetery
15 or component thereof which is the result of a violation of
16 this part ~~chapter~~ or of the rules of the board relating to
17 construction, physical operations, or care and maintenance at
18 the cemetery shall be deemed a public nuisance, and the
19 nonconforming physical conditions caused by such violation may
20 be abated as provided in s. 60.05.

21 Section 43. Paragraphs (a), (c), (d), (e), (f), (g),
22 (h), (i), (j), and (w) of subsection (1) and paragraphs (a),
23 (c), and (d) of subsection (5) of section 497.233, Florida
24 Statutes, are amended to read:

25 497.233 Disciplinary proceedings.--

26 (1) The following acts constitute grounds for which
27 the disciplinary actions in subsection (2) may be taken:

28 (a) Violating any provision of this part ~~chapter~~.

29 (c) Failing to pay the fees required by this part
30 ~~chapter~~.

31

1 (d) Failing to remit the required amounts to any trust
2 fund required by this part ~~chapter~~.

3 (e) Attempting to procure, or procuring, by bribery,
4 material misstatement, or fraudulent misrepresentation, a
5 license to operate a cemetery company, a certificate of
6 authority, or any other license or registration authorized by
7 this part ~~chapter~~.

8 (f) Having a license to operate a cemetery company, a
9 certificate of authority to sell preneed contracts, or a
10 registration to undertake any other activity which is
11 regulated by this part ~~chapter~~ revoked, suspended, or
12 otherwise acted against, including having a license denied, by
13 the licensing authority of another jurisdiction.

14 (g) Being convicted or found guilty in any
15 jurisdiction, regardless of adjudication, of a crime which
16 directly relates to the operation of a cemetery, the sale of
17 preneed contracts, or any other activity authorized by this
18 part ~~chapter~~.

19 (h) Making or filing a report required by this part
20 ~~chapter~~ which the licensee, certificateholder, or registrant
21 knows to be false or willfully failing to make or file a
22 report required by this part ~~chapter~~.

23 (i) Fraud, deceit, misrepresentation, incompetency, or
24 misconduct in the operation of a cemetery, the sale of preneed
25 contracts, or any other activity authorized by this part
26 ~~chapter~~.

27 (j) Negligence in the operation of a cemetery, the
28 sale of preneed contracts, or any other activity authorized by
29 this part ~~chapter~~.

30 (w) Refusal to produce records in connection with any
31 activity regulated pursuant to this part ~~chapter~~.

1 (5)(a) A suspension or revocation of a license shall
2 be by order of the board. A person whose license has been
3 suspended or revoked may not solicit or write any new preneed
4 contracts regulated by this part ~~chapter~~ in this state during
5 the period of any such suspension or revocation.

6 (c) During the period of suspension, the person whose
7 license has been suspended shall file the annual statement and
8 pay license fees as required under this part ~~chapter~~ as if the
9 license had continued in full force.

10 (d) Upon expiration of the suspension period, if
11 within such period the license has not otherwise terminated,
12 the suspended license shall automatically be reinstated unless
13 the board finds that the causes of the suspension have not
14 been resolved or that such person is otherwise not in
15 compliance with the requirements of this part ~~chapter~~. If not
16 reinstated automatically, the license shall be deemed to have
17 expired as of the end of the suspension period or upon the
18 failure of the licensee to continue the license during the
19 suspension period, whichever event occurs first.

20 Section 44. Subsections (2), (3), and (4) of section
21 497.237, Florida Statutes, are amended to read:

22 497.237 Care and maintenance trust fund; remedy of
23 department for noncompliance.--

24 (2) The cemetery company may appoint a person to
25 advise the trustee in the investment of the trust fund. The
26 board must approve the appointment of the initial trustee, and
27 any subsequent changes of the trustee shall also be approved
28 by the board. If a cemetery company refuses or otherwise
29 fails to provide or maintain an adequate care and maintenance
30 trust fund in accordance with the provisions of this part
31 ~~chapter~~, the board, after reasonable notice, shall enforce

1 compliance. However, a nonprofit cemetery corporation which
2 has been incorporated and engaged in the cemetery business
3 prior to and continuously since 1915 and which has current
4 trust assets exceeding \$2 million is not required to designate
5 a corporate trustee. The trust fund agreement shall specify
6 the following: the name, location, and address of both the
7 licensee and the trustee, showing the date of agreement,
8 together with the percentages required to be deposited
9 pursuant to this part ~~chapter~~.

10 (3) No person may withdraw or transfer any portion of
11 the corpus of the care and maintenance trust fund without
12 first obtaining written consent from the board. Funds
13 deposited pursuant to this part ~~chapter~~ may not be loaned to
14 any cemetery company or person who is directly or indirectly
15 engaged in the burial, funeral home, or cemetery business.

16 (4) The trustee of the trust established pursuant to
17 this section may only invest in investments as prescribed in
18 s. 497.417. The trustee shall take title to the property
19 conveyed to the trust for the purposes of investing,
20 protecting, and conserving it for the cemetery company;
21 collecting income; and distributing the principal and income
22 as prescribed in this part ~~chapter~~. The cemetery company is
23 prohibited from sharing in the discharge of the trustee's
24 responsibilities under this subsection, except that the
25 cemetery company may request the trustee to invest in tax-free
26 investments.

27 Section 45. Subsection (4) of section 497.245, Florida
28 Statutes, is amended to read:

29 497.245 Care and maintenance trust fund, percentage of
30 payments for burial rights to be deposited.--

31

1 (4) When a cemetery which is exempt from the
2 provisions of this part ~~chapter~~ changes ownership so as to
3 lose its exempt status, it shall establish and maintain a care
4 and maintenance trust fund pursuant to this part ~~chapter~~. The
5 initial deposit for establishment of this trust fund shall be
6 \$25 per space for all spaces either previously sold or
7 contracted for sale in the cemetery at the time of conversion
8 or \$50,000, whichever is greater.

9 Section 46. Paragraph (c) of subsection (3) and
10 subsection (4) of section 497.253, Florida Statutes, 1998
11 Supplement, are amended to read:

12 497.253 Minimum acreage; sale or disposition of
13 cemetery lands.--

14 (3)

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

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

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

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

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

31

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 part ~~chapter~~
11 that the department considers relevant to the public interest.

12 (4) A licensee may convey and transfer to a
13 municipality or county its real and personal property,
14 together with moneys deposited in trust funds pursuant to this
15 part ~~chapter~~, provided the municipality or county will accept
16 responsibility for maintenance thereof and prior written
17 approval of the department is obtained.

18 Section 47. Subsections (2) and (7) of section
19 497.257, Florida Statutes, 1998 Supplement, are amended to
20 read:

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

24 (2) A cemetery company which plans to offer for sale
25 space in a section of a mausoleum, columbarium, or bank of
26 belowground crypts prior to construction shall establish a
27 preconstruction trust fund by written instrument. The
28 preconstruction trust fund shall be administered by a
29 corporate trustee and operated in conformity with s. 497.417.
30 The preconstruction trust fund shall be separate from any
31 other trust funds that may be required by this part ~~chapter~~.

1 (7) On or before April 1 of each year, the trustee
2 shall file with the board in the form prescribed by the board
3 a full and true statement as to the activities of any trust
4 established by the board pursuant to this part ~~chapter~~ for the
5 preceding calendar year.

6 Section 48. Section 497.301, Florida Statutes, is
7 amended to read:

8 497.301 Toll-free telephone number for
9 complaints.--The department shall establish and operate a
10 toll-free telephone hotline to receive complaints and provide
11 information relating to the regulation under this part
12 ~~chapter~~.

13 Section 49. Subsection (3) of section 497.309, Florida
14 Statutes, is amended to read:

15 497.309 Records.--

16 (3) The board may prescribe the minimum information to
17 be shown in the books, accounts, records, and documents of a
18 cemetery company to enable the department to determine the
19 company's compliance with this part ~~chapter~~.

20 Section 50. Subsection (3) of section 497.329, Florida
21 Statutes, is amended to read:

22 497.329 Registration of brokers of burial rights.--

23 (3) This section shall not apply to persons otherwise
24 licensed or registered pursuant to this part ~~chapter~~.

25 Section 51. Subsection (1) and paragraph (a) of
26 subsection (2) of section 497.337, Florida Statutes, are
27 amended to read:

28 497.337 Prohibition on sale of personal property or
29 services.--

30 (1) This section applies to all cemetery companies
31 licensed pursuant to this part ~~chapter~~ that offer for sale or

1 sell personal property or services which may be used in a
2 cemetery in connection with the burial of human remains or the
3 commemoration of the memory of a deceased human being and also
4 to any person in direct written contractual relationship with
5 licensed cemetery companies.

6 (2)(a) Except as otherwise provided in this part
7 ~~chapter~~, no cemetery company shall directly or indirectly
8 enter into a contract for the sale of personal property or
9 services, excluding burial or interment rights, which may be
10 used in a cemetery in connection with disposing of human
11 remains, or commemorating the memory of a deceased human
12 being, if delivery of the personal property or performance of
13 the service is to be made more than 120 days after receipt of
14 final payment under the contract of sale, except as provided
15 in s. 497.417. This shall include, but not be limited to, the
16 sale for future delivery of burial vaults, grave liners, urns,
17 memorials, vases, foundations, memorial bases, and similar
18 merchandise and related services commonly sold or used in
19 cemeteries and interment fees but excluding burial or
20 interment rights.

21 Section 52. Subsection (2) of section 497.353, Florida
22 Statutes, is amended to read:

23 497.353 Owners to provide addresses; presumption of
24 abandonment; abandonment procedures; sale of abandoned unused
25 burial rights.--

26 (2) There is hereby created a presumption that burial
27 rights in any cemetery licensed under this part ~~chapter~~ have
28 been abandoned when an owner of unused burial rights has
29 failed to provide the cemetery with a current residence
30 address for a period of 50 consecutive years and the cemetery
31 is unable to communicate by certified letter with said owner

1 of unused burial rights for lack of address. No such
2 presumption of abandonment shall exist for burial rights held
3 in common ownership which are adjoining, whether in a grave
4 space, plot, mausoleum, columbarium, or other place of
5 interment, if any such burial rights have been used within
6 such common ownership.

7 Section 53. Subsection (1) of section 497.357, Florida
8 Statutes, is amended to read:

9 497.357 Report of identification of exempt
10 cemeteries.--

11 (1) All cemeteries in excess of 5 acres located in
12 this state that are exempt from the provisions of this part
13 ~~chapter~~ shall be required to file a report of identification
14 with the department and pay a \$25 fee. The department shall
15 maintain such reports as public records. Such report of
16 identification shall be refiled every 5 years pursuant to a
17 schedule set by board rule. Solely for purposes of chapter
18 120, such report of identification shall be considered a
19 registration with the department.

20 Section 54. Subsection (5) of section 497.361, Florida
21 Statutes, is amended to read:

22 497.361 Registration of monument establishments.--

23 (5) Monuments shall be delivered as established by
24 this part ~~chapter~~ and installed no later than 120 days after
25 the date of sale. The establishment may request two 30-day
26 extensions. Extensions may be granted by the executive
27 director.

28 Section 55. Section 497.401, Florida Statutes, is
29 amended to read:

30 497.401 Preneed sales; part ~~chapter~~ exclusive;
31 applicability of other laws.--Except as provided in this part

1 ~~chapter~~, preneed funeral merchandise or service contract
2 businesses and preneed burial merchandise or service contract
3 businesses shall be governed by this part ~~chapter~~ and shall be
4 exempt from all provisions of the Florida Insurance Code.

5 Section 56. Section 497.403, Florida Statutes, is
6 amended to read:

7 497.403 Insurance business not authorized.--Nothing in
8 the Florida Insurance Code or this part ~~chapter~~ shall be
9 deemed to authorize any preneed funeral merchandise or service
10 contract business or any preneed burial merchandise or service
11 business to transact any insurance business, other than that
12 of preneed funeral merchandise or service insurance or preneed
13 burial merchandise or service insurance, or otherwise to
14 engage in any other type of insurance unless it is authorized
15 under a certificate of authority issued by the Department of
16 Insurance under the provisions of the Florida Insurance Code.
17 Any insurance business transacted under this section must
18 comply with the provisions of s. 626.785.

19 Section 57. Paragraph (b) of subsection (1), paragraph
20 (c) of subsection (2), and subsection (3) of section 497.405,
21 Florida Statutes, are amended to read:

22 497.405 Certificate of authority required.--

23 (1)

24 (b) No person, including any cemetery exempt under s.
25 497.003, may sell services, merchandise, or burial rights on a
26 preneed basis unless such person is authorized pursuant to
27 this part ~~chapter~~ to provide such services, merchandise, or
28 burial rights on an at-need basis.

29 (2)

30 (c) The provisions of paragraph (a) do not apply to
31 any Florida corporation existing under chapter 607 acting as a

1 servicing agent hereunder in which the stock of such
2 corporation is held by 100 or more persons licensed pursuant
3 to chapter 470, provided no one stockholder holds, owns,
4 votes, or has proxies for more than 5 percent of the issued
5 stock of such corporation; provided the corporation has a
6 blanket fidelity bond, covering all employees handling the
7 funds, in the amount of \$50,000 or more issued by a licensed
8 insurance carrier in this state; and provided the corporation
9 processes the funds directly to and from the trustee within
10 the applicable time limits set forth in this part ~~chapter~~.

11 The department may require any person claiming that the
12 provisions of this paragraph exempt it from the provisions of
13 paragraph (a) to demonstrate to the satisfaction of the
14 department that it meets the requirements of this paragraph.

15 (3) No person may obtain a certificate of authority
16 under this part ~~chapter~~ for the preneed sale of services
17 unless such person or its agent, in the case of a corporate
18 entity, holds a license as a funeral establishment or cemetery
19 company or registration as a direct disposal establishment
20 under chapter 470.

21 Section 58. Paragraphs (c) and (d) of subsection (2)
22 and subsections (4), (5), (7), (8), (9), (11), and (12) of
23 section 497.407, Florida Statutes, are amended to read:

24 497.407 Certificate of authority; annual statement;
25 renewal; transfer.--

26 (2) The statement shall include the following:

27 (c) Evidence that the person offering the statement:

28 1. Has the ability to discharge her or his liabilities
29 as they become due in the normal course of business and has
30 sufficient funds available during the calendar year to perform
31 her or his obligations under her or his contract;

1 2. Has complied with the trust requirements for the
2 funds received under contracts issued by herself or himself as
3 hereinafter described;

4 3. Has disbursed interest, dividends, or accretions
5 earned by trust funds, in accordance with this part ~~chapter~~
6 and rules promulgated thereunder; and

7 4. Has complied with this part ~~chapter~~ and any rules
8 of the board and the department.

9 (d) Any other information considered necessary by the
10 board to meet its responsibilities under this part ~~chapter~~.

11 (4) The fee payable to the department for issuance of
12 the original certificate of authority and each annual renewal
13 thereof shall be set by the board at an amount not to exceed
14 \$500 and shall accompany each application for an original
15 certificate and, thereafter, each annual statement. Any
16 person or entity that is part of a common business enterprise
17 that has a certificate of authority issued pursuant to this
18 section and elects to operate under a name other than that of
19 the common business enterprise shall submit an application on
20 a form adopted by the board to become a branch registrant.
21 Upon the approval of the board that such entity qualifies to
22 sell preneed contracts under this part ~~chapter~~ except for the
23 requirements of subparagraph (2)(c)1. and if the
24 certificateholder meets the requirements of such subparagraph,
25 a branch registration shall be issued. Each branch registrant
26 may operate under the certificate of authority of the common
27 business enterprise upon the payment of a fee established by
28 the board not to exceed \$100 accompanying the application on
29 April 1 annually. The fee shall be payable to the Regulatory
30 Trust Fund under the Division of Finance.

31

1 (5) Upon the board being satisfied that the statement
2 and matters which may accompany it meet the requirements of
3 this parts ~~chapter~~ and of its rules, it shall issue or renew
4 the certificate of authority if upon investigation by the
5 board it appears that the principals, including directors,
6 officers, stockholders, employees, and agents of such person,
7 are of good moral character and have reputations for fair
8 dealing in business matters.

9 (7) An application for an initial certificate of
10 authority or for the annual renewal of the certificate shall
11 disclose the existence of all preneed contracts for service or
12 merchandise funded by any method other than a method permitted
13 by this part ~~chapter~~, which contracts are known to the
14 applicant and name the applicant or her or his business as the
15 beneficiary upon the death of the purchaser of the preneed
16 contract. Such disclosure shall include the name and address
17 of the contract purchaser, the name and address of the
18 institution where such funds are deposited, and the number
19 used by the institution to identify the account. With respect
20 to contracts entered into before January 1, 1983, the board
21 may not deny or refuse to renew a certificate of authority
22 solely on the basis of such disclosure. The board may not
23 require the purchaser of any such contract to liquidate the
24 account if such account was established before July 1, 1965.
25 The board may use the information disclosed to notify the
26 contract purchaser and the institution in which such funds are
27 deposited should the holder of a certificate of authority be
28 unable to fulfill the requirements of the contract.

29 (8) On or before April 1 of each year, the
30 certificateholder shall file with the board in the form
31 prescribed by the board a full and true statement as to the

1 activities of any trust established by it pursuant to this
2 part ~~chapter~~ for the preceding calendar year.

3 (9) In addition to any other penalty that may be
4 provided for under this part ~~chapter~~, the board may levy a
5 fine not to exceed \$50 a day for each day the
6 certificateholder fails to file its annual statement, and the
7 board may levy a fine not to exceed \$50 a day for each day the
8 certificateholder fails to file the statement of activities of
9 the trust. Upon notice to the certificateholder by the board
10 that the certificateholder has failed to file the annual
11 statement or the statement of activities of the trust, the
12 certificateholder's authority to sell preneed contracts shall
13 cease while such default continues. The board shall deposit
14 all sums collected under this section to the credit of the
15 Regulatory Trust Fund under the Division of Finance.

16 (11) The board may authorize the transfer of
17 certificates of authority and establish fees for the transfer
18 in an amount not to exceed \$100. Upon receipt of an
19 application for transfer, the executive director may grant a
20 temporary certificate of authority to the proposed transferee,
21 based upon criteria established by the board by rule, which
22 criteria shall promote the purposes of this part ~~chapter~~ in
23 protecting the consumer. Such a temporary certificate of
24 authority shall expire at the conclusion of the next regular
25 meeting of the board unless renewed by the board.

26 (12) Each certificateholder shall pay to the
27 Regulatory Trust Fund under the Division of Finance an amount
28 established by the board not to exceed \$5 for each preneed
29 contract entered into. This amount must be paid within 60 days
30 after the end of each quarter. These funds must be used to
31

1 defray the cost of the board and the department in
2 administering the provisions of this part ~~chapter~~.

3 Section 59. Subsections (3), (5), (6), (7), (8), and
4 (11) of section 497.413, Florida Statutes, are amended to
5 read:

6 497.413 Preneed Funeral Contract Consumer Protection
7 Trust Fund.--

8 (3) In addition to the amounts specified in subsection
9 (2), each remittance shall contain such other additional
10 information as needed by the board to carry out its
11 responsibilities under this part ~~chapter~~ and as prescribed by
12 rule of the board.

13 (5) The amounts remitted for deposit into the Preneed
14 Funeral Contract Consumer Protection Trust Fund shall not be
15 deemed proceeds from the sale of a preneed contract within the
16 meaning of this part ~~chapter~~.

17 (6) Upon the commencement of a delinquency proceeding
18 pursuant to this part ~~chapter~~ against a certificateholder, the
19 board may use up to 50 percent of the balance of the trust
20 fund not already committed to a prior delinquency proceeding
21 solely for the purpose of providing restitution to preneed
22 contract purchasers and their estates due to a
23 certificateholder's failure to provide the benefits of a
24 preneed contract or failure to refund the appropriate
25 principal amount by reason of cancellation thereof. The
26 balance of the trust fund shall be determined as of the date
27 of the delinquency proceeding.

28 (7) In any situation in which a delinquency proceeding
29 has not commenced, the board may, in its discretion, use the
30 trust fund for the purpose of providing restitution to any
31 consumer, owner, or beneficiary of a preneed contract or

1 similar regulated arrangement under this part ~~chapter~~ entered
2 into after June 30, 1977. If, after investigation, the board
3 determines that a certificateholder has breached a preneed
4 contract by failing to provide benefits or an appropriate
5 refund, or that a provider, who is a former certificateholder
6 or an establishment which has been regulated under this part
7 ~~chapter~~ or chapter 470, has sold a preneed contract and has
8 failed to fulfill the arrangement or provide the appropriate
9 refund, and such certificateholder or provider does not
10 provide or does not possess adequate funds to provide
11 appropriate refunds, payments from the trust fund may be
12 authorized by the board. In considering whether payments shall
13 be made or when considering who will be responsible for such
14 payments, the board shall consider whether the
15 certificateholder or previous provider has been acquired by a
16 successor who is or should be responsible for the liabilities
17 of the defaulting entity. With respect to preneed contracts
18 funded by life insurance, payments from the fund shall be
19 made: if the insurer is insolvent, but only to the extent that
20 funds are not available through the liquidation proceeding of
21 the insurer; or if the certificateholder is unable to perform
22 under the contract and the insurance proceeds are not
23 sufficient to cover the cost of the merchandise and services
24 contracted for. In no event shall the board approve payments
25 in excess of the insurance policy limits unless it determines
26 that at the time of sale of the preneed contract, the
27 insurance policy would have paid for the services and
28 merchandise contracted for. Such monetary relief shall be in
29 an amount as the board may determine and shall be payable in
30 such manner and upon such conditions and terms as the board
31 may prescribe. However, with respect to preneed contracts to

1 be funded pursuant to s. 497.417, s. 497.419, s. 497.423, or
2 s. 497.425, any restitution made pursuant to this subsection
3 shall not exceed, as to any single contract or arrangement,
4 the lesser of the gross amount paid under the contract or 4
5 percent of the uncommitted assets of the trust fund. With
6 respect to preneed contracts funded by life insurance
7 policies, any restitution shall not exceed, as to any single
8 contract or arrangement, the lesser of the face amount of the
9 policy, the actual cost of the arrangement contracted for, or
10 4 percent of the uncommitted assets of the trust fund. The
11 total of all restitutions made to all applicants under this
12 subsection in a single fiscal year shall not exceed the
13 greater of 30 percent of the uncommitted assets of the trust
14 fund as of the end of the most recent fiscal year or \$120,000.
15 The department may use moneys in the trust fund to contract
16 with independent vendors pursuant to chapter 287 to administer
17 the requirements of this subsection.

18 (8) All moneys deposited in the Preneed Funeral
19 Contract Consumer Protection Trust Fund together with all
20 accumulated income shall be used only for the purposes
21 expressed in this section and shall not be subject to any
22 liens, charges, judgments, garnishments, or other creditor's
23 claims against the certificateholder, any trustee utilized by
24 the certificateholder, any company providing a surety bond as
25 specified in this part ~~chapter~~, or any purchaser of a preneed
26 contract. No preneed contract purchaser shall have any vested
27 rights in the trust fund.

28 (11) No person shall make, publish, disseminate,
29 circulate, or place before the public, or cause, directly or
30 indirectly, to be made, published, disseminated, circulated,
31 or placed before the public, in a newspaper, magazine, or

1 other publication, or in the form of a notice, circular,
2 pamphlet, letter, or poster, or over any radio station or
3 television station, or in any other way, any advertisement,
4 announcement, or statement which uses the existence of the
5 Preneed Funeral Contract Consumer Protection Trust Fund for
6 the purpose of sales, solicitation, or inducement to purchase
7 any form of preneed contract covered under this part ~~chapter~~.

8 Section 60. Section 497.415, Florida Statutes, is
9 amended to read:

10 497.415 Ownership of proceeds received on contracts.--

11 (1) Subject to the provisions of this part ~~chapter~~,
12 all funds paid pursuant to a preneed contract by a purchaser
13 to a certificateholder shall be the sole property of, and
14 within the full dominion and control of, said
15 certificateholder.

16 (2) Subject to the provisions of this part ~~chapter~~,
17 the relationship between the purchaser of a preneed contract
18 and a certificateholder shall be deemed for all purposes as a
19 debtor-creditor relationship.

20 Section 61. Subsections (1), (3), and (5) and
21 paragraph (c) of subsection (4) of section 497.417, Florida
22 Statutes, 1998 Supplement, are amended to read:

23 497.417 Disposition of proceeds received on
24 contracts.--

25 (1) Any person who is paid, collects, or receives
26 funds under a preneed contract for funeral services or
27 merchandise or burial services or merchandise shall deposit in
28 this state an amount at least equal to the sum of 70 percent
29 of the purchase price collected for all services sold and
30 facilities rented; 100 percent of the purchase price collected
31 for all cash advance items sold; and 30 percent of the

1 purchase price collected or 110 percent of the wholesale cost,
2 whichever is greater, for each item of merchandise sold. The
3 method of determining wholesale cost shall be established by
4 rule of the board and shall be based upon the
5 certificateholder's stated wholesale cost for the 12-month
6 period beginning July 1 during which the initial deposit to
7 the preneed trust fund for the preneed contract is made. Such
8 deposits shall be made within 30 days after the end of the
9 calendar month in which payment is received, under the terms
10 of a revocable trust instrument entered into with a national
11 or state bank or savings and loan association having trust
12 powers or a trust company. The trustee shall take title to
13 the property conveyed to the trust for the purpose of
14 investing, protecting, and conserving it for the
15 certificateholder; collecting income; and distributing the
16 principal and income as prescribed in this part ~~chapter~~. The
17 certificateholder is prohibited from sharing in the discharge
18 of these responsibilities, except that the certificateholder
19 may request the trustee to invest in tax-free investments and
20 may appoint an adviser to the trustee. The trust agreement
21 shall be submitted to the board for approval and filing. The
22 funds shall be held in trust, both as to principal and income
23 earned thereon, and shall remain intact, except that the cost
24 of the operation of the trust or trust account authorized by
25 this section may be deducted from the income earned thereon.
26 The contract purchaser shall have no interest whatsoever in,
27 or power whatsoever over, funds deposited in trust pursuant to
28 this section. In no event may said funds be loaned to a
29 certificateholder, an affiliate of a certificateholder, or any
30 person directly or indirectly engaged in the burial, funeral
31 home, or cemetery business. Furthermore, the

1 certificateholder's interest in said trust shall not be
2 pledged as collateral for any loans, debts, or liabilities of
3 the certificateholder and shall not be transferred to any
4 person without the prior written approval from the department
5 and the trustee which shall not be unreasonably withheld.
6 Even though the certificateholder shall be deemed and treated
7 as the settlor and beneficiary of said trust for all purposes,
8 all of said trust funds are exempt from all claims of
9 creditors of the certificateholder except as to the claims of
10 the contract purchaser, her or his representative, the board,
11 or the department.

12 (3) The trustee shall make regular valuations of
13 assets it holds in trust and provide a report of such
14 valuations to the certificateholder at least quarterly. Any
15 person who withdraws appreciation in the value of trust, other
16 than the pro rata portion of such appreciation which may be
17 withdrawn upon the death of a contract beneficiary or upon
18 cancellation of a preneed contract, shall be required to make
19 additional deposits from her or his own funds to restore the
20 aggregate value of assets to the value of funds deposited in
21 trust, but excluding from the funds deposited those funds paid
22 out upon preneed contracts which such person has fully
23 performed or which have been otherwise withdrawn, as provided
24 for in this part ~~chapter~~. The certificateholder shall be
25 liable to third parties to the extent that income from the
26 trust is not sufficient to pay the expenses of the trust.

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

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

31

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

3 (5) The certificateholder, at her or his election,
4 shall have the right and power, at any time, to revest in it
5 title to the trust assets, or its pro rata share thereof,
6 provided it has complied with s. 497.423 or s. 497.425.

7 Notwithstanding anything contained in this part ~~chapter~~ to the
8 contrary, the certificateholder, via its election to sell or
9 offer for sale preneed contracts subject to this section,
10 shall represent and warrant, and is hereby deemed to have done
11 such, to all federal and Florida taxing authorities, as well
12 as to all potential and actual preneed contract purchasers,
13 that s. 497.423 or s. 497.425 is a viable option available to
14 it at any and all relevant times. If in the
15 certificateholder's opinion it does not have the ability to
16 select the financial responsibility alternative of s. 497.423
17 or s. 497.425, then it shall not have the right to sell or
18 solicit contracts pursuant to this section.

19 Section 62. Subsection (9) of section 497.419, Florida
20 Statutes, is amended to read:

21 497.419 Cancellation of, or default on, preneed
22 contracts.--

23 (9) Persons who purchase merchandise or burial rights
24 pursuant to this part ~~chapter~~ shall have the right to sell,
25 alienate, or otherwise transfer the merchandise or burial
26 rights subject to and in accordance with rules adopted by the
27 board.

28 Section 63. Paragraph (b) of subsection (10) of
29 section 497.423, Florida Statutes, is amended to read:

30 497.423 Evidence of financial responsibility as
31 alternative to trust deposit.--

1 (10) Every certificateholder electing to be governed
2 by this section shall have its financial statements, submitted
3 to the department pursuant to s. 497.407, audited by an
4 independent public accountant certified pursuant to chapter
5 473. The financial statements shall contain, in accordance
6 with generally accepted accounting principles, for two or more
7 consecutive annual periods, the following:

8 (b) Notes to the financial statements considered
9 customary or necessary for full disclosure and adequate
10 understanding of the financial statements, financial
11 condition, and operation of the certificateholder. The notes
12 shall include a schedule, based upon statutory accounting
13 principles, indicating that the certificateholder which has
14 held a certificate pursuant to this part ~~chapter~~ for less than
15 10 years has a current ratio of no less than 3 to 1 of current
16 assets to current liabilities and net assets of at least
17 \$600,000 or that the certificateholder which has held a
18 certificate pursuant to this part ~~chapter~~ for 10 years or more
19 has a current ratio of no less than 2 to 1 of current assets
20 to current liabilities and net assets of at least \$400,000.

21 Section 64. Section 497.427, Florida Statutes, is
22 amended to read:

23 497.427 Existing merchandise trust funds; proof of
24 compliance with law.--The certificateholder shall present to
25 the board prior to the implementation of the alternatives
26 provided in s. 497.425 documentation which demonstrates that
27 the existing merchandise trust fund complies with the law and
28 that the elected alternative plan conforms to the requirements
29 of this part ~~chapter~~.

30
31

1 Section 65. Subsections (1) and (2) of section
2 497.429, Florida Statutes, 1998 Supplement, are amended to
3 read:

4 497.429 Alternative preneed contracts.--

5 (1) Nothing in this part ~~chapter~~ shall prevent the
6 purchaser and the certificateholder from executing a preneed
7 contract upon the terms stated in this section. Such
8 contracts shall be subject to all provisions of this part
9 ~~chapter~~ except:

10 (a) Section 497.409(2).

11 (b) Section 497.415.

12 (c) Section 497.417(1), (3), and (5).

13 (d) Section 497.419(1), (2), and (5).

14 (e) Section 497.421.

15 (f) Section 497.423.

16 (g) Section 497.425.

17 (2) The contract must require that a trust be
18 established by the certificateholder on behalf of, and for the
19 use, benefit, and protection of, the purchaser and that the
20 trustee must be a national or state bank or savings and loan
21 association having trust powers or a trust company with the
22 same powers of investment as provided elsewhere in this part
23 ~~chapter~~.

24 Section 66. Section 497.431, Florida Statutes, is
25 amended to read:

26 497.431 Examinations and investigations.--The
27 department shall, as often as it may deem necessary but at
28 least once every 3 years, examine the business of any person
29 writing preneed contracts and any guaranteeing organization
30 existing under this part ~~chapter~~ to the extent applicable.
31 The examination shall be at the expense of the person or

1 organization examined as provided in this section and shall be
2 made by the designated representative or examiner of the
3 department. The written report of each such examination, when
4 completed, shall be filed in the office of the board and, when
5 so filed, shall constitute a public record. Any such person or
6 organization being examined shall produce, upon request, all
7 records of the company or organization. The designated
8 representative of the board may at any time examine the
9 records and affairs of any such person or organization,
10 whether in connection with a formal examination or not. The
11 board may waive the examination requirements of this section
12 if the certificateholder or guaranteeing organization submits
13 audited financial statements. The department may charge an
14 examination fee prescribed by rule, but such fee may not
15 exceed \$300 per 8-hour day for each examiner. Such
16 examination fee shall be calculated on an hourly basis and
17 shall be rounded to the nearest hour. For out-of-state
18 travel, the licensee shall also pay the travel expense and per
19 diem subsistence allowance provided for state employees under
20 s. 112.061. The department shall be entitled to recover the
21 reasonable and justifiable costs of investigation if the
22 investigation results in judicial or administrative
23 disciplinary action.

24 Section 67. Subsection (1) of section 497.435, Florida
25 Statutes, is amended to read:

26 497.435 Administrative fine in lieu of revocation or
27 suspension of certificate of authority.--

28 (1) If the board finds that one or more grounds exist
29 for the discretionary suspension or revocation of a
30 certificate of authority issued under this part ~~chapter~~, it
31 may, in lieu of such suspension or revocation, impose a fine

1 upon the certificateholder in an amount not to exceed \$1,000
2 for each nonwillful violation and in an amount not to exceed
3 \$10,000 for each willful violation.

4 Section 68. Subsections (1) and (3), paragraph (c) of
5 subsection (6), and paragraph (d) of subsection (7) of section
6 497.439, Florida Statutes, are amended to read:

7 497.439 Preneed sales agents.--

8 (1) All individuals who offer preneed contracts to the
9 public, or who execute preneed contracts on behalf of a
10 certificateholder, including all individuals who offer, sell,
11 or sign contracts for the preneed sale of burial rights, shall
12 be registered with the board as preneed sales agents, pursuant
13 to this section, unless such individuals are licensed as
14 funeral directors pursuant to this part ~~chapter~~.

15 (3) A certificateholder shall be responsible for the
16 activities of all preneed sales agents and all funeral
17 directors acting as preneed sales agents, who are affiliated
18 with the certificateholder and who perform any type of
19 preneed-related activity on behalf of the certificateholder.
20 In addition to the preneed sales agents and funeral directors
21 acting as preneed sales agents, each certificateholder shall
22 also be subject to discipline if its preneed sales agents or
23 funeral directors acting as preneed sales agents violate any
24 provision of this part ~~chapter~~.

25 (6) The qualifications for a preneed sales agent are
26 as follows:

27 (c) The applicant must not have any felony or
28 misdemeanor convictions that relate to any activity regulated
29 by this part ~~chapter~~.

30 (7) An application for registration as a preneed sales
31 agent shall be submitted to the department with an application

1 fee of \$100 by certified mail, return receipt requested, by
2 the certificateholder on a form that has been approved by the
3 board and shall contain, at a minimum, the following:
4 (d) A representation, signed by the certificateholder,
5 that the applicant is authorized to offer, sell, and sign
6 preneed contracts on behalf of the certificateholder, and that
7 the certificateholder has trained the applicant in the
8 provisions of this part ~~chapter~~ relating to preneed sales as
9 determined by the board, the provisions of the
10 certificateholder's preneed contract, and the nature of the
11 merchandise, services, or burial rights sold by the
12 certificateholder.
13 Section 69. Section 497.441, Florida Statutes, is
14 amended to read:
15 497.441 Acceptability of funeral and burial
16 merchandise.--Each person who engages in preneed sales of
17 funeral or burial merchandise shall determine, and notify the
18 purchaser in writing prior to the completion of the contract,
19 that the merchandise being considered for purchase will be
20 accepted in the cemetery of the purchaser's choice. The
21 failure to comply with this part ~~chapter~~ shall nullify the
22 agreement, and all moneys paid in shall be returned,
23 notwithstanding the existence of any liquidated damages
24 provision pursuant to s. 497.419(2).
25 Section 70. Section 497.443, Florida Statutes, is
26 amended to read:
27 497.443 Unfair methods of competition and unfair or
28 deceptive acts or practices prohibited.--No person shall
29 engage in this state in any trade practice which is defined in
30 this part ~~chapter~~ as, or determined pursuant to s. 497.445 to
31

1 be, an unfair method of competition or an unfair or deceptive
2 act or practice.

3 Section 71. Subsections (1) and (3) of section
4 497.447, Florida Statutes, are amended to read:

5 497.447 Prohibited practices; hearings, witnesses,
6 appearances, production of books, and service of process.--

7 (1) Whenever the board has reason to believe that any
8 person has engaged, or is engaging, in this state in any
9 unfair method of competition or any unfair or deceptive act or
10 practice as defined in s. 497.445, or is engaging in the sale
11 of preneed contracts without being properly licensed as
12 required by this part ~~chapter~~, and that a proceeding by the
13 board in respect thereto would be in the interest of the
14 public, the board shall conduct or cause to have conducted a
15 hearing in accordance with chapter 120.

16 (3) A statement of charges, notice, or order or other
17 process under this part ~~chapter~~ may be served by anyone duly
18 authorized by the department, either in the manner provided by
19 law for service of process in civil actions or by certifying
20 and mailing a copy thereof to the person affected by such
21 statement, notice, or order or other process at her or his or
22 its residence or principal office or place of business. The
23 verified return by the person so serving such statement,
24 notice, or order or other process, setting forth the manner of
25 the service, shall be proof of the service; and the return
26 postcard receipt for such statement, notice, or order or other
27 process, certified and mailed as provided in this subsection,
28 shall be proof of service of the statement, notice, or order
29 or other process.

30 Section 72. Section 497.515, Florida Statutes, is
31 amended to read:

1 497.515 Additional prohibited acts.--In addition to
2 the acts set forth elsewhere in this part ~~chapter~~, the
3 following acts are prohibited:

4 (1) Requiring lot owners or current customers to make
5 unnecessary visits to the cemetery company office for the
6 purpose of solicitation.

7 (2) Soliciting that overreaches and takes advantage of
8 a customer's ignorance or emotional vulnerability.

9 (3) Failing to disclose all fees and costs the
10 customer may incur to use the burial rights or merchandise
11 purchased.

12 (4) Failing to provide a detailed description on the
13 written contract of all burial merchandise purchased.

14 (5) Failing to honor cancellations and issue refunds
15 as provided by s. 497.419.

16 (6) Misrepresenting any burial merchandise or service
17 when offered for sale to the public.

18 (7) Failing to obtain written authorization from the
19 family or next of kin of the deceased prior to disinterment,
20 disentombment, or disinurnment.

21 Section 73. Subsection (1) of section 497.517, Florida
22 Statutes, is amended to read:

23 497.517 Attorney's fees.--

24 (1) In any civil litigation resulting from a
25 transaction involving a violation of this part ~~chapter~~, the
26 court may award to the prevailing party, after judgment in the
27 trial court and exhaustion of any appeal, reasonable
28 attorney's fees and costs from the nonprevailing party in an
29 amount to be determined by the trial court.

30 Section 74. Section 497.519, Florida Statutes, is
31 amended to read:

1 497.519 Penalties.--Any officer or director, or person
2 occupying similar status or performing similar functions, of a
3 certificateholder which fails to make required deposits to any
4 trust fund required by this part ~~chapter~~; any director,
5 officer, agent, or employee of a certificateholder who makes
6 any unlawful withdrawal of funds from any such account or who
7 knowingly discloses to the department or an employee thereof
8 any false report made pursuant to this part ~~chapter~~; or any
9 person who willfully violates any of the provisions of this
10 part ~~chapter~~ commits a felony of the third degree, punishable
11 as provided in s. 775.082, s. 775.083, or s. 775.084.

12 Section 75. Section 497.525, Florida Statutes, is
13 amended to read:

14 497.525 Disposition of fees and penalties.--All fees
15 and penalties collected pursuant to this part ~~chapter~~ shall be
16 deposited in the Regulatory Trust Fund of the department.

17 Section 76. Section 497.529, Florida Statutes, is
18 amended to read:

19 497.529 Civil liability.--The provisions of this part
20 ~~chapter~~ are cumulative to rights under the general civil and
21 common law, and no action of the department may abrogate such
22 rights to damages or other relief in any court.

23 Section 77. Section 497.531, Florida Statutes, is
24 amended to read:

25 497.531 Unauthorized arrangements.--

26 (1) Any arrangement to provide merchandise or services
27 as defined in this part ~~chapter~~, by which payment for such
28 merchandise or services is to be paid for through a financial
29 arrangement, other than as authorized pursuant to this part
30 ~~chapter~~, in which the provider of the merchandise or services
31

1 is a beneficiary, party, agent, or owner is in violation of
2 this part ~~chapter~~.

3 (2) Any person who provides merchandise or services
4 and who knowingly becomes a beneficiary, agent, party, or
5 coowner as described in subsection (1) is in violation of this
6 part ~~chapter~~.

7 Section 78. Paragraph (b) of subsection (1) of section
8 501.022, Florida Statutes, is amended to read:

9 501.022 Home solicitation sale; permit required.--

10 (1)

11 (b) The following are excluded from the operation of
12 this section:

13 1. Bona fide agents, business representatives, or
14 salespersons making calls or soliciting orders at the usual
15 place of business of a customer regarding products or services
16 for use in connection with the customer's business.

17 2. Solicitors, salespersons, or agents making a call
18 or business visit upon the express invitation, oral or
19 written, of an inhabitant of the premises or her or his agent.

20 3. Telephone solicitors, salespersons, or agents
21 making calls which involve transactions that are unsolicited
22 by the consumer and consummated by telephone and without any
23 other contact between the buyer and the seller or its
24 representative prior to delivery of the goods or performance
25 of the services.

26 4. Solicitors, salespersons, or agents conducting a
27 sale, lease, or rental of consumer goods or services by
28 sample, catalog, or brochure for future delivery.

29 5. Minors, as defined in s. 1.01(14), conducting home
30 solicitation sales under the supervision of an adult
31 supervisor who holds a valid home solicitation sale permit.

1 Minors excluded from operation of this section must, however,
2 carry personal identification which includes their full name,
3 date of birth, residence address, and employer and the name
4 and permit number of their adult supervisor.

5 6. Those sellers or their representatives that are
6 currently regulated as to the sale of goods and services by
7 chapter 470, chapter 475, or part I of chapter 497.

8 7. Solicitors, salespersons, or agents making calls or
9 soliciting orders on behalf of a religious, charitable,
10 scientific, educational, or veterans' institution or
11 organization holding a sales tax exemption certificate under
12 s. 212.08(7)(a).

13 Section 79. Subsection (15) of section 501.604,
14 Florida Statutes, is amended to read:

15 501.604 Exemptions.--The provisions of this part,
16 except s. 501.608, do not apply to:

17 (15) A person who is licensed pursuant to chapter 470
18 or part I of chapter 497 and who is soliciting within the
19 scope of the license.

20 Section 80. Paragraph (d) of subsection (1) of section
21 626.785, Florida Statutes, is amended to read:

22 626.785 Qualifications for license.--

23 (1) The department shall not grant or issue a license
24 as life agent to any individual found by it to be
25 untrustworthy or incompetent, or who does not meet the
26 following qualifications:

27 (d) Must not be a funeral director or direct disposer,
28 or an employee or representative thereof, or have an office
29 in, or in connection with, a funeral establishment, except
30 that a funeral establishment may contract with a life
31 insurance agent to sell a preneed contract as defined in part

1 I of chapter 497. Notwithstanding other provisions of this
2 chapter, such insurance agent may sell limited policies of
3 insurance covering the expense of final disposition or burial
4 of an insured in an amount not to exceed \$7,500.

5 Section 81. Subsection (3) of section 872.02, Florida
6 Statutes, 1998 Supplement, is amended to read:

7 872.02 Injuring or removing tomb or monument;
8 disturbing contents of grave or tomb; penalties.--

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

16 Section 82. Subsection (1) of section 872.05, Florida
17 Statutes, is amended to read:

18 872.05 Unmarked human burials.--

19 (1) LEGISLATIVE INTENT.--It is the intent of the
20 Legislature that all human burials and human skeletal remains
21 be accorded equal treatment and respect based upon common
22 human dignity without reference to ethnic origin, cultural
23 background, or religious affiliation. This section applies to
24 all human burials, human skeletal remains, and associated
25 burial artifacts not otherwise protected under part I or part
26 II of chapter 497 or other state law and found upon or within
27 any public or private land in the state, including submerged
28 lands.

29 Section 83. This act shall take effect July 1, 1999.
30
31

HOUSE SUMMARY

Creates part II of chapter 497, F.S., the "Neglected, Abandoned, and Unlicensed Cemetery Act." Provides legislative findings and intent. Provides for retention of status as a cemetery. Provides exemptions. Provides for applicability of specified provisions of part I. Provides for investigation and mediation. Provides conversion procedures. Requires licenses under part I for certain activities. Provides for care and maintenance. Provides for joint and severable liability. Provides for ingress and egress. Provides local government responsibilities. Provides procedures for declaring an unlicensed cemetery abandoned. Provides for declaration of an unlicensed cemetery as neglected. Provides for private contracts. Requires a county registry of cemeteries. Requires surveyors to file a statement of cemetery location under certain circumstances. Provides for citizen input in the county registry. Provides for transfer of small cemeteries under certain circumstances. Provides rulemaking authority to the Department of Banking and Finance to implement the act.

Adds abandoned cemeteries to the term "historic property" or "historic resource." Specifies responsibility of the Division of Historical Resources with respect to identifying abandoned cemeteries and submitting grant applications for historic preservation purposes. Specifies power of the Florida Communities Trust to give annual notice to city managers and county administrators of available funding for maintenance of abandoned cemeteries. Provides for deposit of certain moneys into the Florida Communities Trust Fund and specifying uses of such moneys. Requires the trust to prepare and submit annually to the Board of Funeral and Cemetery Services a report on such moneys and their subsequent use. Provides for deposit of certain punitive damages into the Florida Communities Trust Fund for specified purposes. Provides for assessment of additional costs in cases involving criminal mischief and offenses concerning dead bodies and graves. Provides for disposition of funds collected.

Requires sellers of funeral merchandise or services and sellers of burial rights, merchandise, or services to give notice to prospective purchasers of the ownership of the business providing the rights, merchandise, or services. Requires related disclosures in advertisements and contracts and on signs. Provides for voidability of contracts not containing such disclosure. Requires applications for cemetery licenses and license renewals to contain ownership information. Requires specified state agencies to coordinate recordkeeping and reporting of data on consumer complaints about the funeral and cemetery industries.