

By Representative Lynn

1 A bill to be entitled
 2 An act relating to funeral and cemetery
 3 services; amending s. 497.003, F.S.; revising
 4 references relating to burial records and need
 5 determinations; amending s. 497.005, F.S.;
 6 providing and revising definitions; amending
 7 ss. 497.101, 497.103, 497.105, 497.107, and
 8 497.109, F.S.; replacing the Board of Funeral
 9 and Cemetery Services and the Board of Funeral
 10 Directors and Embalmers with the Board of
 11 Funeral Directors, Embalmers, and Cemetery
 12 Services at a future date; providing for
 13 membership and terms; providing rulemaking
 14 authority; providing for board headquarters;
 15 providing for appointment of committees to
 16 conduct board business as needed; amending s.
 17 497.201, F.S.; increasing minimum acreage
 18 requirements to establish a cemetery company;
 19 eliminating need determinations for new
 20 cemeteries; clarifying authorized trust
 21 companies, banks, and savings and loan
 22 associations; revising experience requirements
 23 for the general manager of a cemetery company;
 24 amending s. 497.237, F.S.; authorizing care and
 25 maintenance trust funds to be established with
 26 a federal savings and loan association holding
 27 trust powers in this state; amending s.
 28 497.245, F.S.; revising provisions establishing
 29 the percentage of payments for burial rights to
 30 be deposited in care and maintenance trust
 31 funds; amending s. 497.253, F.S.; revising

1 minimum acreage requirements and references, to
2 conform; revising requirements for sale or
3 disposition of certain cemetery lands, to
4 conform; amending s. 497.257, F.S.; requiring
5 cemetery companies to disclose to purchasers
6 the month and year of scheduled completion of
7 units of mausoleums, columbaria, or belowground
8 crypts under construction; creating s. 497.259,
9 F.S.; requiring and providing for placement of
10 permanent labels on containers used for final
11 disposition or inurnment of human remains;
12 amending s. 497.309, F.S.; providing grave
13 location recordkeeping requirements; applying
14 certain recordkeeping requirements to
15 certificateholders; amending s. 497.333, F.S.;
16 requiring each customer purchasing a burial
17 right to be provided a copy of a map reflecting
18 the location of the burial right; amending s.
19 497.337, F.S.; revising provisions relating to
20 prohibition on the sale of personal property
21 and services to provide delivery requirements
22 for such property and services; repealing s.
23 497.353(12), F.S., relating to prohibiting the
24 use in need determinations of spaces or lots
25 from burial rights reacquired by a cemetery, to
26 conform; amending s. 497.405, F.S.; requiring a
27 certificate of authority to guarantee funeral
28 merchandise or services in the future or offer
29 a preneed contract; clarifying authorized trust
30 companies, banks, and savings and loan
31 associations; amending s. 497.413, F.S.,

1 relating to the Preneed Funeral Contract
2 Consumer Protection Trust Fund; providing for
3 separate accounting of funds received pursuant
4 to s. 497.425, F.S., from bond sureties;
5 authorizing the Board of Funeral and Cemetery
6 Services to adopt rules for the distribution of
7 such separated funds; revising the total amount
8 of restitutions that may be made from the trust
9 fund in any fiscal year to certain applicants;
10 amending s. 497.417, F.S.; clarifying
11 authorized trust companies, banks, and savings
12 and loan associations; providing a restriction
13 on the amount of trust assets of a preneed
14 contract a certificateholder may revest title
15 to; amending s. 497.425, F.S., relating to
16 financial responsibility alternatives to the
17 placing in trust of preneed contract funds;
18 revising the amount required to be secured by a
19 surety bond; authorizing the sale of preneed
20 merchandise and services under other forms of
21 security; revising requirements relating to the
22 filing of claims with such sureties; providing
23 for deposit in the Preneed Funeral Contract
24 Consumer Protection Trust Fund of sums received
25 by the board from sureties for payment to
26 claimants; providing for payment to such
27 claimants from the trust fund; amending s.
28 497.429, F.S.; clarifying authorized trust
29 companies, banks, and savings and loan
30 associations; revising requirements for
31 disbursement of trust funds discharging or

1 refunding a preneed contract; amending s.
2 470.002, F.S.; revising the definition of the
3 term "department"; amending s. 470.003, F.S.;
4 providing for placement of the Board of Funeral
5 Directors and Embalmers within the Department
6 of Banking and Finance; providing application
7 of ch. 455, F.S.; providing for trust fund
8 references; providing for transfer of all
9 records, personnel, property, and unexpended
10 balances of appropriations, allocations, or
11 other funds for the administration of ch. 470,
12 F.S., relating to funeral directing, embalming,
13 and direct disposition, from the Department of
14 Business and Professional Regulation to the
15 Department of Banking and Finance; preserving
16 the validity of judicial and administrative
17 proceedings pending at the time of such
18 transfer and the validity of licenses and
19 registrations in effect at the time of such
20 transfer; amending s. 215.321, F.S.; providing
21 for deposit of funds received pursuant to ch.
22 470, F.S., into the Regulatory Trust Fund of
23 the Department of Banking and Finance in a
24 separate account; amending ss. 20.165,
25 455.2226, and 470.002, F.S., and repealing s.
26 470.003, F.S., to abolish the Board of Funeral
27 Directors and Embalmers and eliminate
28 references thereto at a future date, to
29 conform; providing effective dates.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsections (2) and (4) of section 497.003,
2 Florida Statutes, are amended to read:

3 497.003 Cemeteries; exemption; investigation and
4 mediation.--

5 (2) Sections ~~Section~~ 497.309(1) ~~as to burial records,~~
6 ~~and ss.~~497.321, 497.325, 497.341, and 497.345 apply to all
7 cemeteries in this state.

8 (4) Any religious-institution-owned cemetery that is
9 exempt under paragraph (1)(d), is located in a county with a
10 population of at least 1.3 million persons on July 1, 1996,
11 and was selling merchandise and services to the religious
12 institution's members prior to October 1, 1993, may establish
13 one additional exempt cemetery in such county after December
14 31, 2020, ~~without establishing need under s. 497.201.~~

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

17 497.005 Definitions.--As used in this 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, ossuary, or scattering
10 garden for the interment, entombment, ~~or~~ inurnment, or other
11 disposition of human remains.

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

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

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

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

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

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

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

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

31

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

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

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

9 (15)~~(16)~~ "Cremation" includes any mechanical or
10 thermal process whereby a dead human body is reduced to ashes.
11 Cremation also includes any other mechanical or thermal
12 process whereby human remains are pulverized, burned,
13 reinterred, or otherwise further reduced in size or quantity.

14 (16)~~(17)~~ "Department" means the Department of Banking
15 and Finance.

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

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

24 (19)~~(20)~~ "Funeral director" means any person licensed
25 in this state to practice funeral directing pursuant to the
26 provisions of chapter 470.

27 (20)~~(21)~~ "Grave space" means a space of ground in a
28 cemetery intended to be used for the interment in the ground
29 of human remains.

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1 (21)~~(22)~~ "Human remains" means the bodies of deceased
2 persons and includes bodies in any stage of decomposition and
3 cremated remains.

4 (22)~~(23)~~ "Mausoleum" means a structure or building
5 which is substantially exposed above the ground and which is
6 intended to be used for the entombment of human remains.

7 (23)~~(24)~~ "Mausoleum section" means any construction
8 unit of a mausoleum which is acceptable to the department and
9 which a cemetery uses to initiate its mausoleum program or to
10 add to its existing mausoleum structures.

11 (24)~~(25)~~ "Monument" means any product used for
12 identifying a grave site and cemetery memorials of all types,
13 including monuments, markers, and vases.

14 (25)~~(26)~~ "Monument establishment" means a facility
15 that operates independently of a cemetery or funeral
16 establishment and that offers to sell monuments or monument
17 services to the public for placement in a cemetery.

18 (26)~~(27)~~ "Net assets" means the amount by which the
19 total assets of a certificateholder, excluding goodwill,
20 franchises, customer lists, patents, trademarks, and
21 receivables from or advances to officers, directors,
22 employees, salespersons, and affiliated companies, exceed
23 total liabilities of the certificateholder. For purposes of
24 this definition, the term "total liabilities" does not include
25 the capital stock, paid-in capital, or retained earnings of
26 the certificateholder.

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

30 (28) "Ossuary" means a receptacle used for the
31 communal placement of cremated human remains without benefit

1 of an urn or any other container. It may or may not include
2 memorialization.

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

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

12 (31) "Religious institution" means an organization
13 formed primarily for religious purposes which has qualified
14 for exemption from federal income tax as an exempt
15 organization under the provisions of s. 501(c)(3) of the
16 Internal Revenue Code of 1986, as amended.

17 (32) "Scattering garden" means a location set aside,
18 within a cemetery, which is used for the spreading or
19 broadcasting of cremated remains. It may or may not include
20 memorialization.

21 (33)~~(32)~~ "Servicing agent" means any person acting as
22 an independent contractor whose fiduciary responsibility is to
23 assist both the trustee and certificateholder hereunder in
24 administrating their responsibilities pursuant to this
25 chapter.

26 (34)~~(33)~~ "Solicitation" means any communication which
27 directly or implicitly requests an immediate oral response
28 from the recipient.

29 (35)~~(34)~~ "Statutory accounting" means generally
30 accepted accounting principles, except as modified by this
31 chapter.

1 Section 3. Effective January 1, 2002, subsection (4)
2 of section 497.005, Florida Statutes, is amended to read:

3 497.005 Definitions.--As used in this chapter:

4 (4) "Board" means the Board of Funeral Directors,
5 Embalmers, and Cemetery Services.

6 Section 4. Effective January 1, 2002, section 497.101,
7 Florida Statutes, is amended to read:

8 497.101 Board of Funeral Directors, Embalmers, and
9 Cemetery Services; membership; appointment; terms.--

10 (1) The Board of Funeral Directors, Embalmers, and
11 Cemetery Services is created within the Department of Banking
12 and Finance and shall consist of nine ~~seven~~ members appointed
13 by the Governor, from nominations made by the Comptroller, and
14 confirmed by the Senate. The Comptroller shall nominate three
15 persons for each vacancy on the board, and the Governor shall
16 fill each vacancy on the board by appointing one of the three
17 persons nominated by the Comptroller to fill that vacancy. If
18 the Governor objects to each of the three nominations for a
19 vacancy, she or he shall inform the Comptroller in writing.
20 Upon notification of an objection by the Governor, the
21 Comptroller shall submit three additional nominations for that
22 vacancy until the vacancy is filled.

23 (2) Three ~~Two~~ members of the board must be funeral
24 directors licensed under chapter 470 ~~who are not associated~~
25 ~~with a cemetery company through ownership interests or through~~
26 ~~employment with a company which has an ownership interest in a~~
27 ~~cemetery.~~ Three ~~Two~~ members must be owners or operators of a
28 cemetery licensed under this chapter. Of the six members of
29 the board who are funeral directors or owners or operators of
30 a cemetery, one must be the sole owner of a cemetery or
31 funeral home. The remaining three members must be residents

1 of the state who have never been licensed as funeral directors
2 or embalmers and who are in no way connected with a cemetery,
3 the death care industry, or the practice of embalming, funeral
4 directing, or direct disposition. At least one consumer
5 member of the board must be 60 years of age or older. No
6 licensee on the board may be associated by employment or
7 ownership with a funeral establishment or cemetery which is
8 owned partly or wholly by a person, business, corporation, or
9 other entity which is associated with another licensee on the
10 board.

11 (3) The Governor shall appoint members for terms of 4
12 years, and such members shall serve until their successors are
13 appointed. The initial board shall consist of at least one
14 funeral director who was a member of the former Board of
15 Funeral Directors and Embalmers, one owner or operator of a
16 cemetery who was a member of the former Board of Funeral and
17 Cemetery Services, and one former member of either the former
18 Board of Funeral Directors and Embalmers or the former Board
19 of Funeral and Cemetery Services. The terms of two of the
20 funeral directors, two of the owners or operators of
21 cemeteries, and one consumer member who are members of the
22 initial board shall be for 4 years. The terms of the
23 remaining members of the initial board shall be for 2 years.
24 ~~When the terms of the initial board members expire, the~~
25 ~~Governor shall stagger the terms of the successor members as~~
26 ~~follows: one funeral director, one cemetery company~~
27 ~~representative, and one consumer member shall be appointed for~~
28 ~~terms of 2 years, and the remaining members shall be appointed~~
29 ~~for terms of 4 years. All subsequent terms shall be for 4~~
30 years.
31

1 Section 5. Effective January 1, 2002, subsection (1)
2 of section 497.103, Florida Statutes, is amended to read:

3 497.103 Rulemaking authority of board and
4 department.--

5 (1) The board has authority to adopt rules pursuant to
6 ss. 120.536(1) and 120.54 to implement provisions of chapter
7 470 and this chapter conferring duties upon it. The department
8 may adopt rules pursuant to ss. 120.536(1) and 120.54 to
9 administer provisions of this chapter conferring duties upon
10 it. The board or the department may also adopt rules to allow
11 for the electronic submission of any applications, documents,
12 or fees required by this chapter. The board or the department
13 may adopt rules to authorize the board or the department to
14 accept certification of compliance with certain requirements
15 of this chapter in lieu of requiring submission of the
16 documents.

17 Section 6. Effective January 1, 2002, subsection (2)
18 of section 497.105, Florida Statutes, is amended to read:

19 497.105 Department of Banking and Finance; powers and
20 duties.--The Department of Banking and Finance shall:

21 (2) Appoint the executive director of the Board of
22 Funeral Directors, Embalmers,and Cemetery Services, subject
23 to the approval of the board.

24 Section 7. Effective January 1, 2002, section 497.107,
25 Florida Statutes, is amended to read:

26 497.107 Headquarters.--The Board of Funeral Directors,
27 Embalmers,and Cemetery Services may be contacted through the
28 headquarters of the Department of Banking and Finance in the
29 City of Tallahassee.

30 Section 8. Effective January 1, 2002, section 497.109,
31 Florida Statutes, is amended to read:

1 497.109 Board of Funeral Directors, Embalmers,and
2 Cemetery Services; membership.--

3 (1) The Board of Funeral Directors, Embalmers,and
4 Cemetery Services shall comply with the provisions of this
5 section.

6 (2) The board shall annually elect from among its
7 number a chair and a vice chair.

8 (3) The board shall hold such meetings during the year
9 as it may deem necessary, one of which shall be the annual
10 meeting. The chair or a quorum of the board may call other
11 meetings, and a quorum is necessary for the conduct of
12 business by the board. Unless otherwise provided by law, a
13 majority of the members of the board constitutes a quorum. A
14 vacancy shall occur upon the failure of a member of the board
15 to attend three consecutive meetings of the board or at least
16 half of the meetings of the board during any 12-month period.

17 (4) Unless otherwise provided by law, a board member
18 shall be compensated \$50 for each day the member attends an
19 official meeting of the board and for each day the member
20 participates in any other business involving the board. The
21 board shall adopt rules defining the phrase "other business
22 involving the board," but the phrase may not be defined to
23 include telephone conference calls. A board member is
24 entitled to reimbursement for expenses pursuant to s. 112.061,
25 but travel out of state requires the prior approval of the
26 Comptroller.

27 (5) The chair of the board is empowered to appoint
28 such committees as needed to conduct the business of the
29 board, including, but not limited to, committees on rules,
30 continuing education, and consumer protection. Each committee
31 shall be chaired by a current or former member of the board or

1 a former member of the former Board of Funeral Directors and
2 Embalmers or the former Board of Funeral and Cemetery
3 Services.

4 Section 9. Section 497.201, Florida Statutes, is
5 amended to read:

6 497.201 Cemetery companies; license; application;
7 fee.--

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

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

17 (a) File an application, which states the exact
18 location of the proposed cemetery, which site shall contain
19 not less than 30 ~~15~~ contiguous acres; provide a financial
20 statement signed by all officers of the company which attest
21 to a net worth of at least \$50,000, which net worth must be
22 continuously maintained as a condition of licensure; and pay
23 an application fee of \$5,000;

24 (b) Create a legal entity; and

25 (c) Demonstrate to the satisfaction of the board that
26 the applicant possesses the ability, experience, financial
27 stability, and integrity to operate a cemetery.

28 ~~(3) The department shall determine the need for a new~~
29 ~~cemetery by considering the adequacy of existing cemetery~~
30 ~~facilities, licensed and unlicensed, within the community; the~~
31 ~~solvency of the trust funds of the existing facilities; and~~

1 ~~the relationship between population, rate of population~~
2 ~~growth, death rate, and ratio of burials to deaths to meet the~~
3 ~~projected need for burial spaces for a period of 30 years. In~~
4 ~~order to promote competition, the department may waive the~~
5 ~~criteria of this subsection so that each county may have at~~
6 ~~least six cemeteries operated by different licensees.~~

7 (3)~~(4)~~ If the board finds that the applicant meets the
8 criteria established in subsection (2) ~~and the department~~
9 ~~determines that a need for the new cemetery in the community~~
10 ~~exists~~, the department shall notify the applicant that a
11 license will be issued when:

12 (a) The establishment of a care and maintenance trust
13 fund containing not less than \$50,000 has been certified by a
14 trust company operating pursuant to chapter 660, a state or
15 national bank holding trust powers, or a savings and loan
16 association holding trust powers licensed in this state.

17 (b) The applicant has filed with the department
18 development plans which are sufficient to ensure the
19 department that the cemetery will provide adequate service to
20 the community and which have been approved by the appropriate
21 local governmental agency regulating zoning in the area of the
22 proposed cemetery.

23 (c) The applicant holds an unencumbered fee simple
24 title to at least 30 ~~15~~ contiguous acres of land.

25 (d) The applicant has designated as general manager a
26 person who has integrity, 3 years ~~1 year~~ of cemetery
27 management experience as defined by board rule, and the
28 ability to operate a cemetery.

29 (e) The applicant has fully developed not less than 2
30 acres for use as burial space, such development to include a
31 paved road from a public roadway to the developed section.

1 (f) The applicant has recorded, in the public records
2 of the county in which the land is located, a notice which
3 contains the following language:

4
5 NOTICE
6

7 The property described herein shall not be sold, conveyed,
8 leased, mortgaged, or encumbered without the prior written
9 approval of the Department of Banking and Finance, as provided
10 in the Florida Funeral and Cemetery Services Act.

11
12 Such notice shall be clearly printed in boldfaced type of not
13 less than 10 points and may be included on the face of the
14 deed of conveyance to the licensee or may be contained in a
15 separate recorded instrument which contains a description of
16 the property.

17 (4)~~(5)~~ The department shall issue a license to operate
18 a cemetery company to any applicant who, within 12 months
19 after notice that a license may be issued, meets the criteria
20 of subsection(3)~~(4)~~. With respect to any application for
21 which the department has given notice under subsection(3)~~(4)~~
22 on or after January 1, 1984, the board may, for good cause
23 shown, grant up to two extensions of the 12-month period
24 within which the applicant must meet the criteria of
25 subsection(3)~~(4)~~.

26 Section 10. Subsection (1) of section 497.237, Florida
27 Statutes, is amended to read:

28 497.237 Care and maintenance trust fund; remedy of
29 department for noncompliance.--

30 (1) No cemetery company may establish a cemetery, or
31 operate a cemetery if already established, without providing

1 for the future care and maintenance of the cemetery, for which
2 a care and maintenance trust fund shall be established, to be
3 known as "the care and maintenance trust fund of" The
4 trust fund shall be established with a trust company operating
5 pursuant to chapter 660,or with a state or national bank
6 holding trust powers, or with a federal or state savings and
7 loan association holding trust powers. Trust funds which are
8 with a state or national bank or savings and loan association
9 licensed in this state on October 1, 1993, shall remain in
10 force; however, when the amount of any such trust fund exceeds
11 the amount that is insured by an agency of the Federal
12 Government, the cemetery company shall transfer that trust
13 fund to a trust company operating pursuant to chapter 660,or
14 to a state or national bank holding trust powers, or to a
15 federal or state savings and loan association holding trust
16 powers.

17 Section 11. Subsection (1) of section 497.245, Florida
18 Statutes, is amended to read:

19 497.245 Care and maintenance trust fund, percentage of
20 payments for burial rights to be deposited.--

21 (1) Each cemetery company shall set aside and deposit
22 in its care and maintenance trust fund the following
23 percentages or amounts for all sums received from sales of
24 burial rights:

25 (a) For burial rights ~~graves~~, 10 percent of all
26 payments received; however, for sales made after September 30,
27 1993, no deposit shall be less than \$25 per grave. For each
28 burial right, ~~grave, or space~~ which is provided without
29 charge, the deposit to the fund shall be \$25.

30 (b) For mausoleums or columbaria, 10 percent of
31 payments received.

1 (c) For general endowments for the care and
2 maintenance of the cemetery, the full amount of sums received
3 when received.

4 (d) For special endowments for a specific lot or grave
5 or a family mausoleum, memorial, marker, or monument, the
6 cemetery company may set aside the full amount received for
7 this individual special care in a separate trust fund or by a
8 deposit to a savings account in a bank or savings and loan
9 association located within and authorized to do business in
10 the state; however, if the licensee does not set up a separate
11 trust fund or savings account for the special endowment, the
12 full amount thereof shall be deposited into the care and
13 maintenance trust fund as required of general endowments.

14 Section 12. Section 497.253, Florida Statutes, is
15 amended to read:

16 497.253 Minimum acreage; sale or disposition of
17 cemetery lands.--

18 (1) Each licensee shall set aside a minimum of 30 ~~15~~
19 contiguous acres of land for use by the licensee as a cemetery
20 and shall not sell, mortgage, lease, or encumber that property
21 without prior written approval of the department.

22 (2) Any lands owned by a licensee and dedicated for
23 use by it as a cemetery, which are contiguous, adjoining, or
24 adjacent to the minimum of 30 ~~15~~ contiguous acres described in
25 subsection (1), may be sold, conveyed, or disposed of by the
26 licensee, after obtaining written approval of the department
27 pursuant to subsection (3), for use by the new owner for other
28 purposes than as a cemetery. All of the human remains which
29 have been previously interred therein shall first have been
30 removed from the lands proposed to be sold, conveyed, or
31 disposed of; however, the provisions of ss. 470.0295 and

1 497.515(7) must be complied with prior to any disinterment of
2 human remains. Any and all titles, interests, or burial rights
3 which may have been sold or contracted to be sold in lands
4 which are the subject of the sale shall be conveyed to and
5 revested in the licensee prior to consummation of any such
6 sale, conveyance, or disposition.

7 (3)(a) If the property to be sold, conveyed, or
8 disposed of under subsection (2) has been or is being used for
9 the permanent interment of human remains, the applicant for
10 approval of such sale, conveyance, or disposition shall cause
11 to be published, at least once a week for 4 consecutive weeks,
12 a notice meeting the standards of publication set forth in s.
13 125.66(4)(b)2. The notice shall describe the property in
14 question and the proposed noncemetery use and shall advise
15 substantially affected persons that they may file a written
16 request for a hearing pursuant to chapter 120, within 14 days
17 after the date of last publication of the notice, with the
18 department if they object to granting the applicant's request
19 to sell, convey, or dispose of the subject property for
20 noncemetery uses.

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

24 (c) If the property in question has been used for the
25 permanent interment of human remains, the department shall
26 approve the application, in writing, if it finds that it would
27 not be contrary to the public interest. In determining whether
28 to approve the application, the department shall consider any
29 evidence presented concerning the following:

30 1. The historical significance of the subject
31 property, if any.

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

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

5 ~~4. The impact of the proposed change in use of the~~
6 ~~subject property upon the inventory of remaining cemetery~~
7 ~~facilities in the community and upon the other factors~~
8 ~~enumerated in s. 497.201(3).~~

9 4.5. The impact of the proposed change in use of the
10 subject property upon the reasonable expectations of the
11 families of the deceased regarding whether the cemetery
12 property was to remain as a cemetery in perpetuity.

13 5.6. Whether any living relatives of the deceased
14 actively oppose the relocation of their deceased's remains and
15 the conversion of the subject property to noncemetery uses.

16 ~~6.7.~~ The elapsed time since the last interment in the
17 subject property.

18 ~~7.8.~~ Any other factor enumerated in this chapter that
19 the department considers relevant to the public interest.

20 (d) Any deed, mortgage, or other conveyance by a
21 cemetery company or other owner pursuant to subsections (a)
22 and (c) above must contain a disclosure in the following or
23 substantially similar form:

24
25 NOTICE: The property described herein was formerly used and
26 dedicated as a cemetery. Conveyance of this property and its
27 use for noncemetery purposes was authorized by the Florida
28 Department of Banking and Finance by Order No., dated
29

30
31

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

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

9 (5) The provisions of subsections (1) and (2) relating
10 to a requirement for minimum acreage shall not apply to any
11 cemetery company licensed by the department on or before July
12 1, 2001 ~~1965~~, which owns a total of less than 30 ~~15~~ acres of
13 land; however, no cemetery company shall dispose of any land
14 without the prior written consent of the department.

15 Section 13. Subsection (1) of section 497.257, Florida
16 Statutes, is amended to read:

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

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

1 or the time specified herein, all moneys paid shall be
2 refunded upon request, plus interest earned thereon for that
3 portion of the moneys deposited in the trust fund and an
4 amount equal to the interest that would have been earned on
5 that portion of the moneys that were not in trust. The month
6 and year in which construction is scheduled to be completed
7 must be disclosed to the purchaser.

8 Section 14. Section 497.259, Florida Statutes, is
9 created to read:

10 497.259 Permanent labels on containers used for final
11 disposition or inurnment of human remains.--

12 (1) All permanent outer burial receptacles, caskets,
13 and urns must be affixed with a permanent label identifying
14 the full name of the deceased and the date of death.

15 (2)(a) Labels on permanent outer burial receptacles
16 must be placed in a conspicuous location.

17 (b) Labels on caskets must be placed in a conspicuous
18 location on the interior and exterior. Labels on caskets must
19 be attached prior to the funeral if a funeral is held.

20 (c) Labels on urns must be placed on or attached to
21 any location on the urn. Labels must also be placed inside
22 the urn.

23 Section 15. Section 497.309, Florida Statutes, is
24 amended to read:

25 497.309 Records.--

26 (1)(a) A record shall be kept of every burial in the
27 cemetery of a cemetery company, showing the date of burial and
28 the name of the person buried, together with lot, plot, ~~and~~
29 space, and location as specified in paragraph (b)in which the
30 burial was made.

31

1 (b) The location of each open grave prior to the
2 burial of a casket or permanent outer burial receptacle shall
3 be determined and recorded to within a meter or less of the
4 center of the burial site.

5 (2)(a) All financial records of the cemetery company
6 or certificateholder shall be available at its principal place
7 of business in this state and shall be readily available at
8 all reasonable times for examination by the department.

9 (b)(2) Notwithstanding the provisions of paragraph (a)
10 subsection (1), the board may, upon request, authorize a
11 cemetery company or certificateholder to maintain its
12 financial records at a location other than its principal place
13 of business and may, if necessary, require the company or
14 certificateholder to make its books, accounts, records, and
15 documents available at a reasonable and convenient location in
16 this state.

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

22 Section 16. Subsection (9) is added to section
23 497.333, Florida Statutes, to read:

24 497.333 Disclosure of information to public.--A
25 licensee offering to provide burial rights, merchandise, or
26 services to the public shall:

27 (9) Provide the customer, upon the purchase of any
28 burial right, a copy of a map reflecting the location of the
29 burial right.

30 Section 17. Section 497.337, Florida Statutes, is
31 amended to read:

1 497.337 Delivery ~~Prohibition on sale~~ of personal
2 property or services.--

3 (1) This section applies to all cemetery companies and
4 certificateholders licensed pursuant to this chapter that
5 offer for sale or sell personal property or services which may
6 be used in a cemetery in connection with the burial of human
7 remains or the commemoration of the memory of a deceased human
8 being and also to any person in direct written contractual
9 relationship with licensed cemetery companies.

10 (2)(a) Except as ~~otherwise~~ provided in s. 497.417 ~~this~~
11 ~~chapter, a~~ no cemetery company or certificateholder that shall
12 directly or indirectly enters ~~enter~~ into a contract for the
13 sale of personal property or services, excluding burial or
14 interment rights, must deliver ~~which may be used in a cemetery~~
15 ~~in connection with disposing of human remains, or~~
16 ~~commemorating the memory of a deceased human being, if~~
17 ~~delivery of~~ the personal property or perform ~~performance of~~
18 the service contracted for at the point of sale, at the time
19 of need, or at the request of the owner or the owner's agent
20 ~~is to be made more than 120 days after receipt of final~~
21 ~~payment under the contract of sale, except as provided in s.~~
22 ~~497.417.~~ This shall include, but not be limited to, the sale
23 ~~for future delivery~~ of burial vaults, grave liners, urns,
24 memorials, vases, foundations, memorial bases, and similar
25 merchandise and related services commonly sold or used in
26 cemeteries and interment fees but excluding burial or
27 interment rights.

28 (b) ~~For the purposes of this section, the term~~
29 ~~"delivery" means actual delivery and installation at the time~~
30 ~~of need or at the request of the owner or the owner's agent.~~
31 Merchandise is not considered delivered under paragraph (a) if

1 it is stored on the grounds of the cemetery or at a storage
2 facility except for monuments, markers, and permanent outer
3 burial receptacles that are stored in a protected environment
4 and are comprised of materials designed to withstand
5 prolonged, protected storage without adversely affecting the
6 structural integrity or aesthetic characteristics of such
7 permanent outer burial receptacles.

8 (c) In lieu of delivery as required by paragraphs (a)
9 and paragraph (b), for sales to cemetery companies and funeral
10 establishments, and only for such sales, the manufacturer of a
11 permanent outer burial receptacle which meets standards
12 adopted by the board may elect, at its discretion, to comply
13 with the delivery requirements of this section by annually
14 submitting, in writing, evidence of the manufacturer's
15 financial responsibility with the board for its review and
16 approval. The standards and procedures to establish evidence
17 of financial responsibility shall be those in s. 497.423 or s.
18 497.425, with the manufacturer of permanent outer burial
19 receptacles which meet national industry standards assuming
20 the same rights and responsibilities as those of a
21 certificateholder under s. 497.423 or s. 497.425.

22 (3) No nonprofit cemetery corporation which has been
23 incorporated and engaged in the cemetery business prior to and
24 continuously since 1915 and which has current care and
25 maintenance trust assets exceeding \$2 million shall be
26 required to designate a corporate trustee for its preneed
27 trust fund.

28 Section 18. Subsection (12) of section 497.353,
29 Florida Statutes, is repealed.

30
31

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

4 497.405 Certificate of authority required.--

5 (1)(a) No person, including any cemetery exempt under
6 s. 497.003, may guarantee funeral merchandise or services in
7 the future or offer ~~sell~~ a preneed contract without first
8 having a valid certificate of authority.

9 (2)(a) No person may receive any funds for payment on
10 a preneed contract who does not hold a valid certificate of
11 authority.

12 (b) The provisions of paragraph (a) do not apply to a
13 ~~any~~ trust company operating pursuant to chapter 660, or to a
14 ~~any~~ national or state bank holding trust powers, or to a
15 federal or state savings and loan association having trust
16 powers which company, bank, or association receives any money
17 in trust pursuant to the sale of a preneed contract.

18 Section 20. Section 497.413, Florida Statutes, is
19 amended to read:

20 497.413 Preneed Funeral Contract Consumer Protection
21 Trust Fund.--

22 (1) There is hereby created in the department the
23 Preneed Funeral Contract Consumer Protection Trust Fund to be
24 administered and regulated by the board.

25 (2) Within 60 days after the end of each calendar
26 quarter, for each preneed contract written during the quarter
27 and not canceled within 30 days after the date of the
28 execution of the contract, each certificateholder, whether
29 funding preneed contracts by the sale of insurance or by
30 establishing a trust pursuant to s. 497.417 or s. 497.429,
31 shall remit the sum of \$2.50 for each preneed contract having

1 a purchase price of \$1,500 or less, and the sum of \$5 for each
2 preneed contract having a purchase price in excess of \$1,500;
3 and each certificateholder utilizing s. 497.423 or s. 497.425
4 shall remit the sum of \$5 for each preneed contract having a
5 purchase price of \$1,500 or less, and the sum of \$10 for each
6 preneed contract having a purchase price in excess of \$1,500.

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

12 (4) All funds received by the board or the department
13 pursuant to this section shall be deposited into the Preneed
14 Funeral Contract Consumer Protection Trust Fund.

15 (5) All funds received pursuant to s. 497.425 shall be
16 accounted for separately from other funds received pursuant to
17 this section. The board may adopt rules pursuant to ss.
18 120.536(1) and 120.54 for the distribution of funds received
19 pursuant to s. 497.425.

20 ~~(6)~~~~(5)~~ The amounts remitted for deposit into the
21 Preneed Funeral Contract Consumer Protection Trust Fund shall
22 not be deemed proceeds from the sale of a preneed contract
23 within the meaning of this chapter.

24 ~~(7)~~~~(6)~~ Upon the commencement of a delinquency
25 proceeding pursuant to this chapter against a
26 certificateholder, the board may use up to 50 percent of the
27 balance of the trust fund not already committed to a prior
28 delinquency proceeding or received pursuant to s. 497.425
29 solely for the purpose of providing restitution to preneed
30 contract purchasers and their estates due to a
31 certificateholder's failure to provide the benefits of a

1 preneed contract or failure to refund the appropriate
2 principal amount by reason of cancellation thereof. The
3 balance of the trust fund shall be determined as of the date
4 of the delinquency proceeding.

5 (8)~~(7)~~ In any situation in which a delinquency
6 proceeding has not commenced, the board may, in its
7 discretion, use the trust fund for the purpose of providing
8 restitution to any consumer, owner, or beneficiary of a
9 preneed contract or similar regulated arrangement under this
10 chapter entered into after June 30, 1977. If, after
11 investigation, the board determines that a certificateholder
12 has breached a preneed contract by failing to provide benefits
13 or an appropriate refund, or that a provider, who is a former
14 certificateholder or an establishment which has been regulated
15 under this chapter or chapter 470, has sold a preneed contract
16 and has failed to fulfill the arrangement or provide the
17 appropriate refund, and such certificateholder or provider
18 does not provide or does not possess adequate funds to provide
19 appropriate refunds, payments from the trust fund may be
20 authorized by the board. In considering whether payments shall
21 be made or when considering who will be responsible for such
22 payments, the board shall consider whether the
23 certificateholder or previous provider has been acquired by a
24 successor who is or should be responsible for the liabilities
25 of the defaulting entity. With respect to preneed contracts
26 funded by life insurance, payments from the fund shall be
27 made: if the insurer is insolvent, but only to the extent that
28 funds are not available through the liquidation proceeding of
29 the insurer; or if the certificateholder is unable to perform
30 under the contract and the insurance proceeds are not
31 sufficient to cover the cost of the merchandise and services

1 contracted for. In no event shall the board approve payments
2 in excess of the insurance policy limits unless it determines
3 that at the time of sale of the preneed contract, the
4 insurance policy would have paid for the services and
5 merchandise contracted for. Such monetary relief shall be in
6 an amount as the board may determine and shall be payable in
7 such manner and upon such conditions and terms as the board
8 may prescribe. However, with respect to preneed contracts to
9 be funded pursuant to s. 497.417, s. 497.419, s. 497.423, or
10 s. 497.425, any restitution made pursuant to this subsection
11 shall not exceed, as to any single contract or arrangement,
12 the lesser of the gross amount paid under the contract or 4
13 percent of the uncommitted assets of the trust fund. With
14 respect to preneed contracts funded by life insurance
15 policies, any restitution shall not exceed, as to any single
16 contract or arrangement, the lesser of the face amount of the
17 policy, the actual cost of the arrangement contracted for, or
18 4 percent of the uncommitted assets of the trust fund. The
19 total of all restitutions made to all applicants under this
20 subsection in a single fiscal year shall not exceed the
21 greater of 30 percent of the uncommitted assets of the trust
22 fund as of the end of the most recent fiscal year or \$500,000
23 ~~\$120,000~~. The department may use moneys in the trust fund to
24 contract with independent vendors pursuant to chapter 287 to
25 administer the requirements of this subsection.

26 (9)~~(8)~~ All moneys deposited in the Preneed Funeral
27 Contract Consumer Protection Trust Fund together with all
28 accumulated income shall be used only for the purposes
29 expressed in this section and shall not be subject to any
30 liens, charges, judgments, garnishments, or other creditor's
31 claims against the certificateholder, any trustee utilized by

1 the certificateholder, any company providing a surety bond as
2 specified in this chapter, or any purchaser of a preneed
3 contract. No preneed contract purchaser shall have any vested
4 rights in the trust fund.

5 (10)~~(9)~~ If restitution is paid to a preneed contract
6 purchaser or her or his estate in accordance with this
7 section, the amount of restitution paid shall not exceed the
8 gross amount of the principal payments made by the purchaser
9 on its contract.

10 (11)~~(10)~~ Whenever the board makes payments from the
11 trust fund to a purchaser or its estate, the board shall be
12 subrogated to the purchaser's rights under the contract, and
13 any amounts so collected by the board shall be deposited in
14 the Preneed Funeral Contract Consumer Protection Trust Fund.

15 (12)~~(11)~~ No person shall make, publish, disseminate,
16 circulate, or place before the public, or cause, directly or
17 indirectly, to be made, published, disseminated, circulated,
18 or placed before the public, in a newspaper, magazine, or
19 other publication, or in the form of a notice, circular,
20 pamphlet, letter, or poster, or over any radio station or
21 television station, or in any other way, any advertisement,
22 announcement, or statement which uses the existence of the
23 Preneed Funeral Contract Consumer Protection Trust Fund for
24 the purpose of sales, solicitation, or inducement to purchase
25 any form of preneed contract covered under this chapter.

26 (13)~~(12)~~ Notwithstanding the fee structure in
27 subsection (2), the department shall review the status of the
28 trust fund annually, and if it determines that the uncommitted
29 trust fund balance exceeds \$1 million, the board may by rule
30 lower the required payments to the trust fund to an amount not
31 less than \$1 per preneed contract.

1 Section 21. Subsections (1) and (5) of section
2 497.417, Florida Statutes, are amended to read:

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

5 (1) Any person who is paid, collects, or receives
6 funds under a preneed contract for funeral services or
7 merchandise or burial services or merchandise shall deposit ~~in~~
8 ~~this state~~ an amount at least equal to the sum of 70 percent
9 of the purchase price collected for all services sold and
10 facilities rented; 100 percent of the purchase price collected
11 for all cash advance items sold; and 30 percent of the
12 purchase price collected or 110 percent of the wholesale cost,
13 whichever is greater, for each item of merchandise sold. The
14 method of determining wholesale cost shall be established by
15 rule of the board and shall be based upon the
16 certificateholder's stated wholesale cost for the 12-month
17 period beginning July 1 during which the initial deposit to
18 the preneed trust fund for the preneed contract is made. Such
19 deposits shall be made within 30 days after the end of the
20 calendar month in which payment is received, under the terms
21 of a revocable trust instrument entered into with a trust
22 company operating pursuant to chapter 660, with a national or
23 state bank holding trust powers, or with a federal or state
24 savings and loan association holding ~~having~~ trust powers ~~or a~~
25 ~~trust company~~. The trustee shall take title to the property
26 conveyed to the trust for the purpose of investing,
27 protecting, and conserving it for the certificateholder;
28 collecting income; and distributing the principal and income
29 as prescribed in this chapter. The certificateholder is
30 prohibited from sharing in the discharge of these
31 responsibilities, except that the certificateholder may

1 request the trustee to invest in tax-free investments and may
2 appoint an adviser to the trustee. The trust agreement shall
3 be submitted to the board for approval and filing. The funds
4 shall be held in trust, both as to principal and income earned
5 thereon, and shall remain intact, except that the cost of the
6 operation of the trust or trust account authorized by this
7 section may be deducted from the income earned thereon. The
8 contract purchaser shall have no interest whatsoever in, or
9 power whatsoever over, funds deposited in trust pursuant to
10 this section. In no event may said funds be loaned to a
11 certificateholder, an affiliate of a certificateholder, or any
12 person directly or indirectly engaged in the burial, funeral
13 home, or cemetery business. Furthermore, the
14 certificateholder's interest in said trust shall not be
15 pledged as collateral for any loans, debts, or liabilities of
16 the certificateholder and shall not be transferred to any
17 person without the prior written approval from the department
18 and the trustee which shall not be unreasonably withheld.
19 Even though the certificateholder shall be deemed and treated
20 as the settlor and beneficiary of said trust for all purposes,
21 all of said trust funds are exempt from all claims of
22 creditors of the certificateholder except as to the claims of
23 the contract purchaser, her or his representative, the board,
24 or the department.

25 (5) The certificateholder, at her or his election,
26 shall have the right and power, at any time, to revest in it
27 title to no more than 50 percent of the trust assets, or 50
28 percent of its pro rata share thereof, provided it has
29 complied with s. 497.423 or s. 497.425. Notwithstanding
30 anything contained in this chapter to the contrary, the
31 certificateholder, via its election to sell or offer for sale

1 preneed contracts subject to this section, shall represent and
2 warrant, and is hereby deemed to have done such, to all
3 federal and Florida taxing authorities, as well as to all
4 potential and actual preneed contract purchasers, that s.
5 497.423 or s. 497.425 is a viable option available to it at
6 any and all relevant times. If in the certificateholder's
7 opinion it does not have the ability to select the financial
8 responsibility alternative of s. 497.423 or s. 497.425, then
9 it shall not have the right to sell or solicit contracts
10 pursuant to this section.

11 Section 22. Section 497.425, Florida Statutes, is
12 amended to read:

13 497.425 Alternatives to deposits under s. 497.417.--

14 (1)(a) As an alternative to the requirements of s.
15 497.417 that relate to trust funds, a certificateholder may
16 purchase a surety bond in an amount not less than the
17 aggregate value of outstanding liabilities on undelivered
18 preneed contracts for merchandise and services, so long as the
19 amount secured by the surety bond does not exceed 50 percent
20 of the sum of the amount maintained in trust pursuant to ss.
21 497.417 and 497.429 and the amount secured pursuant to this
22 section. For the purpose of this section, the term
23 "outstanding liabilities" means the gross replacement or
24 wholesale value of the preneed merchandise and services. The
25 bond shall be made payable to the State of Florida for the
26 benefit of the board and all purchasers of preneed cemetery
27 merchandise or services. The bond must be approved by the
28 board.

29 (b) The amount of the bond shall be based on a report
30 documenting the outstanding liabilities of the
31 certificateholder and shall be prepared by the

1 certificateholder using generally accepted accounting
2 principles and signed by the certificateholder's chief
3 financial officer.

4 (c) The report shall be compiled as of the end of the
5 certificateholder's fiscal year and updated annually. The
6 amount of the bond shall be increased or decreased as
7 necessary to correlate with changes in the outstanding
8 liabilities.

9 (d) If a certificateholder fails to maintain a bond
10 pursuant to this section, the certificateholder shall cease
11 the sale of preneed merchandise and services until another
12 form of security is provided to the board. At no time shall
13 outstanding liabilities be unsecured.

14 (2) Upon prior approval by the board, the
15 certificateholder may file a letter of credit with the board
16 in lieu of a surety bond. Such letter of credit must be in a
17 form, and is subject to terms and conditions, prescribed by
18 the board. It may be revoked only with the express approval of
19 the board.

20 (3)(a) A buyer of preneed merchandise or services who
21 does not receive such services or merchandise due to the
22 economic failure, closing, or bankruptcy of the
23 certificateholder must file a claim with the surety as a
24 prerequisite to payment of the claim and, if the claim is not
25 paid, may bring an action based on the bond and recover
26 against the surety. The buyer's claim shall not exceed the
27 amount paid to the certificateholder under the preneed
28 contract. In the case of a letter of credit or cash deposit
29 that has been filed with the board, the buyer may file a claim
30 with the board.

31

1 (b) In order to qualify for recovery on any claim with
2 the surety under paragraph (a), the buyer must file the claim
3 no later than 1 year after the date ~~on which~~ the merchandise
4 and services contracted for under the preneed contract with
5 the certificateholder have been fully provided by another
6 certificateholder closed or bankruptcy was filed.

7 (c) The board may file a claim with the surety on
8 behalf of any buyer under paragraph (a). The surety shall pay
9 the amount of the claims to the board for distribution to
10 claimants entitled to restitution and shall be relieved of
11 liability to that extent. Any amount received by the board
12 pursuant to this section shall be deposited in the Preneed
13 Funeral Contract Consumer Protection Trust Fund and
14 distributed pursuant to s. 497.413(5).

15 (d) The liability of the surety under any bond may not
16 exceed the aggregate amount of the bond, regardless of the
17 number or amount of claims filed.

18 (e) If the total value of the claims filed exceeds the
19 amount of the bond, the surety shall pay the amount of the
20 bond to the board for distribution to claimants entitled to
21 restitution in accordance with s. 497.413 and shall be
22 relieved of all liability under the bond.

23 (4) The certificateholder shall maintain accurate
24 records of the bond and premium payments on it, which records
25 shall be open to inspection by the board.

26 (5) For purposes of this section, a preneed contract
27 is a contract calling for the delivery of merchandise and
28 services in the future and entered into before the death of
29 the prospective recipient.

30 (6) This act does not relieve the certificateholder or
31 other entity from liability for nonperformance of contractual

1 terms unless the certificateholder cannot deliver the
2 merchandise or services because of a national emergency,
3 strike, or act of God.

4 (7) The board may require the holder of any assets of
5 the certificateholder to furnish written verification of the
6 financial report required to be submitted by the
7 certificateholder or other entity.

8 (8) Any preneed contract which promises future
9 delivery of merchandise at no cost constitutes a paid-up
10 contract. Merchandise which has been delivered is not covered
11 by the required performance bond or letter of credit even
12 though the contract is not completely paid. The
13 certificateholder may not cancel a contract unless the
14 purchaser is in default according to the terms of the
15 contract. A contract sold, discounted, and transferred to a
16 third party constitutes a paid-up contract for the purposes of
17 the performance bond or letter of credit.

18 (9) Each contract must state the type, size, and
19 design of merchandise and the description of service to be
20 delivered or performed.

21 (10) A purchaser and a certificateholder who are
22 parties to a preneed contract executed prior to July 2, 1988,
23 may enter into an amended preneed contract which is made
24 subject to this section.

25 (11) The board may adopt forms and rules necessary to
26 implement this section, including, but not limited to, rules
27 which ensure that the surety bond and line of credit provide
28 liability coverage for preneed merchandise and services.

29 Section 23. Subsections (2) and (7) of section
30 497.429, Florida Statutes, are amended to read:

31 497.429 Alternative preneed contracts.--

1 (2) The contract must require that a trust be
2 established by the certificateholder on behalf of, and for the
3 use, benefit, and protection of, the purchaser and that the
4 trustee must be a trust company operating pursuant to chapter
5 660, a national or state bank holding trust powers, or a
6 federal or state savings and loan association holding ~~having~~
7 trust powers ~~or a trust company with the same powers of~~
8 ~~investment as provided elsewhere in this chapter.~~

9 (7) Disbursement of funds discharging any preneed
10 contract shall be made by the trustee to the person issuing or
11 writing such contract upon receipt of a certified copy of the
12 death certificate of the contract beneficiary or ~~and~~ evidence
13 satisfactory to the trustee that the preneed contract has been
14 fully performed. In the event of any contract default or
15 cancellation by the contract purchaser, or in the event that
16 the funeral merchandise or service contracted for is not
17 provided or is not desired by the purchaser or the heirs or
18 personal representative of the contract beneficiary, the
19 trustee shall return, within 30 days after its receipt of a
20 written request therefor, funds paid on the contract to the
21 contract purchaser or to her or his assigns, heirs, or
22 personal representative, subject to the lawful liquidation
23 damage provision in the contract.

24 Section 24. Subsection (1) of section 470.002, Florida
25 Statutes, is amended to read:

26 470.002 Definitions.--As used in this chapter:

27 (1) "Department" means the Department of Banking and
28 Finance ~~Business and Professional Regulation.~~

29 Section 25. Subsections (1) and (4) of section
30 470.003, Florida Statutes, are amended to read:

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1 470.003 Board of Funeral Directors and Embalmers;
2 membership; appointment; terms; applicability of ch. 455.--

3 (1) The Board of Funeral Directors and Embalmers is
4 created within the Department of Banking and Finance ~~Business~~
5 ~~and Professional Regulation~~ and shall consist of seven members
6 appointed by the Governor and confirmed by the Senate.

7 (4) Notwithstanding any provision of chapter 455 to
8 the contrary, chapter 455 shall apply to the department and
9 the board as if the department were the Department of Business
10 and Professional Regulation and the board were a board
11 regulated by that department. In addition, references to the
12 Professional Regulation Trust Fund in chapter 455 shall be
13 considered references to the Regulatory Trust Fund of the
14 Department of Banking Finance for purposes of the department's
15 administration of this chapter.~~All provisions of chapter 455~~
16 ~~and s. 20.165 relating to activities of regulatory boards~~
17 ~~shall apply.~~

18 Section 26. Effective July 1, 2001, all of the
19 records, personnel, property, and unexpended balances of
20 appropriations, allocations, or other funds for the
21 administration of chapter 470, Florida Statutes, shall be
22 transferred by a type two transfer as defined in s. 20.06(2),
23 Florida Statutes, from the Department of Business and
24 Professional Regulation to the Department of Banking and
25 Finance.

26 Section 27. The transfer of regulatory authority over
27 chapter 470, Florida Statutes, provided by this act shall not
28 affect the validity of any judicial or administrative
29 proceeding pending as of June 30, 2001, and the Department of
30 Banking and Finance shall be substituted for the Department of
31 Business and Professional Regulation as a party in interest.

1 Section 28. Notwithstanding the transfer of regulatory
2 authority over chapter 470, Florida Statutes, provided by this
3 act, all licenses and registrations issued pursuant to chapter
4 470, Florida Statutes, which are valid on June 30, 2001, shall
5 remain in effect subject to the provisions of chapter 470,
6 Florida Statutes.

7 Section 29. Section 215.321, Florida Statutes, is
8 amended to read:

9 215.321 Regulatory Trust Fund.--All funds received
10 pursuant to chapter 470, ss. 494.001-494.0077, chapter 497,
11 chapter 516, chapter 520, or part I of chapter 559 shall be
12 deposited into the Regulatory Trust Fund. Funds received
13 pursuant to chapter 470 shall be maintained in a separate
14 account within the trust fund.

15 Section 30. Effective January 1, 2002, paragraph (a)
16 of subsection (4) of section 20.165, Florida Statutes, is
17 amended to read:

18 20.165 Department of Business and Professional
19 Regulation.--There is created a Department of Business and
20 Professional Regulation.

21 (4)(a) The following boards are established within the
22 Division of Professions:

23 1. Board of Architecture and Interior Design, created
24 under part I of chapter 481.

25 2. Florida Board of Auctioneers, created under part VI
26 of chapter 468.

27 3. Barbers' Board, created under chapter 476.

28 4. Florida Building Code Administrators and Inspectors
29 Board, created under part XII of chapter 468.

30 5. Construction Industry Licensing Board, created
31 under part I of chapter 489.

1 6. Board of Cosmetology, created under chapter 477.

2 7. Electrical Contractors' Licensing Board, created
3 under part II of chapter 489.

4 8. Board of Employee Leasing Companies, created under
5 part XI of chapter 468.

6 ~~9. Board of Funeral Directors and Embalmers, created
7 under chapter 470.~~

8 9.10. Board of Landscape Architecture, created under
9 part II of chapter 481.

10 ~~10.11.~~ Board of Pilot Commissioners, created under
11 chapter 310.

12 ~~11.12.~~ Board of Professional Engineers, created under
13 chapter 471.

14 ~~12.13.~~ Board of Professional Geologists, created under
15 chapter 492.

16 ~~13.14.~~ Board of Professional Surveyors and Mappers,
17 created under chapter 472.

18 ~~14.15.~~ Board of Veterinary Medicine, created under
19 chapter 474.

20 Section 31. Effective January 1, 2002, subsection (1)
21 of section 455.2226, Florida Statutes, is amended to read:

22 455.2226 Funeral directors and embalmers; instruction
23 on human immunodeficiency virus and acquired immune deficiency
24 syndrome.--

25 (1) The Board of Funeral Directors, ~~and~~ Embalmers, and
26 Cemetery Services shall require each person licensed or
27 certified under chapter 470 to complete a continuing
28 educational course, approved by the board, on human
29 immunodeficiency virus and acquired immune deficiency syndrome
30 as part of biennial relicensure or recertification. The
31 course shall consist of education on the modes of

1 transmission, infection control procedures, clinical
2 management, and prevention of human immunodeficiency virus and
3 acquired immune deficiency syndrome. Such course shall include
4 information on current Florida law on acquired immune
5 deficiency syndrome and its impact on testing, confidentiality
6 of test results, and treatment of patients.

7 Section 32. Effective January 1, 2002, subsection (2)
8 of section 470.002, Florida Statutes, is amended to read:

9 470.002 Definitions.--As used in this chapter:

10 (2) "Board" means the Board of Funeral Directors,and
11 Embalmers, and Cemetery Services created under s. 497.101.

12 Section 33. Effective January 1, 2002, section
13 470.003, Florida Statutes, is repealed.

14 Section 34. Except as otherwise provided herein, this
15 act shall take effect July 1, 2001.

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HOUSE SUMMARY

Revises various provisions of ch. 497, F.S., relating to funeral and cemetery services. Provides and revises definitions. Replaces the Board of Funeral and Cemetery Services and the Board of Funeral Directors and Embalmers with the Board of Funeral Directors, Embalmers, and Cemetery Services at a future date. Provides for membership and terms. Provides rulemaking authority. Provides for board headquarters. Provides for appointment of committees to conduct board business as needed. Increases minimum acreage requirements to establish a cemetery company. Eliminates need determinations for new cemeteries. Clarifies authorized trust companies, banks, and savings and loan associations. Revises experience requirements for the general manager of a cemetery company. Authorizes care and maintenance trust funds to be established with a federal savings and loan association holding trust powers in this state. Revises provisions establishing the percentage of payments for burial rights to be deposited in care and maintenance trust funds. Requires cemetery companies to disclose to purchasers the month and year of scheduled completion of units of mausoleums, columbaria, or belowground crypts under construction. Requires and provides for placement of permanent labels on containers used for final disposition or inurnment of human remains. Provides grave location recordkeeping requirements. Applies certain recordkeeping requirements to certificateholders. Requires each customer purchasing a burial right to be provided a copy of a map reflecting the location of the burial right. Revises provisions relating to prohibition on the sale of personal property and services to provide delivery requirements for such property and services. Requires a certificate of authority to guarantee funeral merchandise or services in the future or offer a preneed contract. Provides for separate accounting of funds in the Preneed Funeral Contract Consumer Protection Trust Fund that were received from bond sureties under certain circumstances. Authorizes the Board of Funeral and Cemetery Services to adopt rules for the distribution of such separated funds. Revises the total amount of restitutions that may be made from the trust fund in any fiscal year to certain applicants. Provides a restriction on the amount of trust assets of a preneed contract a certificateholder may revest title to. Revises provisions relating to financial responsibility alternatives to the placing in trust of preneed contract funds to revise the amount required to be secured by a surety bond, authorize the sale of preneed merchandise and services under other forms of security, revise requirements relating to the filing of claims with such sureties, provide for deposit in the Preneed Funeral Contract Consumer Protection Trust Fund of sums received by the board from sureties for payment to claimants, and provide for payment to such claimants from the trust fund. Revises requirements for disbursement of trust funds discharging or refunding a preneed contract. Provides for transfer of all records, personnel,

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1 property, and unexpended balances of appropriations,
2 allocations, or other funds for the administration of ch.
3 470, F.S., relating to funeral directing, embalming, and
4 direct disposition, from the Department of Business and
5 Professional Regulation to the Department of Banking and
6 Finance. Preserves the validity of judicial and
7 administrative proceedings pending at the time of such
8 transfer and the validity of licenses and registrations
9 in effect at the time of such transfer. Provides for
10 redefinition of the term "department" as used in ch. 470,
11 F.S., and for placement of the Board of Funeral Directors
12 and Embalmers within the Department of Banking and
13 Finance, to conform. Provides for deposit of funds
14 received pursuant to ch. 470, F.S., into the Regulatory
15 Trust Fund of the Department of Banking and Finance in a
16 separate account. Abolishes the Board of Funeral
17 Directors and Embalmers and eliminates references thereto
18 at a future date, to conform. See bill for details.
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