

By Senators Latvala, Wasserman Schultz, Lee, Sullivan and Mitchell

19-927-01

See HB

1                                   A bill to be entitled  
2           An act relating to preneed funeral contracts;  
3           repealing s. 497.417(5), F.S., to delete the  
4           authority of certificateholders offering  
5           preneed funeral merchandise and services to  
6           revest title to trust assets by posting a bond  
7           or using other forms of security or insurance;  
8           repealing ss. 497.423, 497.425, F.S.; providing  
9           for future repeal of provisions authorizing  
10          financial responsibility alternatives to the  
11          placing of preneed funeral contract proceeds in  
12          trust; providing for continued validity of  
13          surety bonds issued prior to the repeal date  
14          and prohibiting the use of bonds or other forms  
15          of security or insurance after that date;  
16          repealing ss. 497.337(2)(c), 497.409(2),  
17          497.427, F.S.; providing for future repeal of  
18          provisions relating to delivery requirements  
19          for manufacturers of outer burial receptacles,  
20          preneed contract disclosure requirements, and  
21          proof of compliance with the law with respect  
22          to existing merchandise trust funds,  
23          respectively, to conform; amending ss. 497.413,  
24          497.429, F.S.; conforming provisions; providing  
25          effective dates.

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27 Be It Enacted by the Legislature of the State of Florida:

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29           Section 1. Subsection (5) of section 497.417, Florida  
30 Statutes, is repealed.

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1           Section 2. Paragraph (c) of subsection (1) of section  
2 497.429, Florida Statutes, is amended to read:

3           497.429 Alternative preneed contracts.--

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

9           (c) Section 497.417(1) and ~~7(3), and (5).~~

10          Section 3. Effective July 1, 2002, sections 497.423  
11 and 497.425, Florida Statutes, are repealed.

12          Section 4. (1) All surety bonds entered into pursuant  
13 to section 497.423, Florida Statutes, prior to July 1, 2002,  
14 shall remain unimpaired until such time as all obligations  
15 secured pursuant to section 497.423(7), Florida Statutes, are  
16 fulfilled. A certificateholder may not secure any new preneed  
17 contract entered into after July 1, 2002, with the alternative  
18 method authorized by section 497.423, Florida Statutes, but  
19 shall be required to deposit funds into trust pursuant to  
20 section 497.417(1) or section 497.429, Florida Statutes.

21          (2) All surety bonds entered into pursuant to section  
22 497.425, Florida Statutes, prior to July 1, 2002, shall remain  
23 unimpaired until such time as all obligations secured pursuant  
24 to said section are fulfilled, and the requirements of section  
25 497.425(1), Florida Statutes, shall remain in effect until all  
26 obligations secured by the bond are fulfilled. A  
27 certificateholder may not secure any new preneed contract  
28 entered into after July 1, 2002, with the alternative method  
29 authorized by section 497.425, Florida Statutes, but shall be  
30 required to deposit funds into trust pursuant to section  
31 497.417(1) or section 497.429, Florida Statutes.

1           (3) This section shall take effect July 1, 2002.

2           Section 5. Effective July 1, 2002, paragraph (c) of  
3 subsection (2) of section 497.337, subsection (2) of section  
4 497.409, and section 497.427, Florida Statutes, are repealed.

5           Section 6. Effective July 1, 2002, subsections (2) and  
6 (7) of section 497.413, Florida Statutes, are amended to read:  
7           497.413 Preneed Funeral Contract Consumer Protection  
8 Trust Fund.--

9           (2) Within 60 days after the end of each calendar  
10 quarter, for each preneed contract written during the quarter  
11 and not canceled within 30 days after the date of the  
12 execution of the contract, each certificateholder, whether  
13 funding preneed contracts by the sale of insurance or by  
14 establishing a trust pursuant to s. 497.417 or s. 497.429,  
15 shall remit the sum of \$2.50 for each preneed contract having  
16 a purchase price of \$1,500 or less, and the sum of \$5 for each  
17 preneed contract having a purchase price in excess of \$1,500~~+~~  
18 ~~and each certificateholder utilizing s. 497.423 or s. 497.425~~  
19 ~~shall remit the sum of \$5 for each preneed contract having a~~  
20 ~~purchase price of \$1,500 or less, and the sum of \$10 for each~~  
21 ~~preneed contract having a purchase price in excess of \$1,500.~~

22           (7) In any situation in which a delinquency proceeding  
23 has not commenced, the board may, in its discretion, use the  
24 trust fund for the purpose of providing restitution to any  
25 consumer, owner, or beneficiary of a preneed contract or  
26 similar regulated arrangement under this chapter entered into  
27 after June 30, 1977. If, after investigation, the board  
28 determines that a certificateholder has breached a preneed  
29 contract by failing to provide benefits or an appropriate  
30 refund, or that a provider, who is a former certificateholder  
31 or an establishment which has been regulated under this

1 chapter or chapter 470, has sold a preneed contract and has  
2 failed to fulfill the arrangement or provide the appropriate  
3 refund, and such certificateholder or provider does not  
4 provide or does not possess adequate funds to provide  
5 appropriate refunds, payments from the trust fund may be  
6 authorized by the board. In considering whether payments shall  
7 be made or when considering who will be responsible for such  
8 payments, the board shall consider whether the  
9 certificateholder or previous provider has been acquired by a  
10 successor who is or should be responsible for the liabilities  
11 of the defaulting entity. With respect to preneed contracts  
12 funded by life insurance, payments from the fund shall be  
13 made: if the insurer is insolvent, but only to the extent that  
14 funds are not available through the liquidation proceeding of  
15 the insurer; or if the certificateholder is unable to perform  
16 under the contract and the insurance proceeds are not  
17 sufficient to cover the cost of the merchandise and services  
18 contracted for. In no event shall the board approve payments  
19 in excess of the insurance policy limits unless it determines  
20 that at the time of sale of the preneed contract, the  
21 insurance policy would have paid for the services and  
22 merchandise contracted for. Such monetary relief shall be in  
23 an amount as the board may determine and shall be payable in  
24 such manner and upon such conditions and terms as the board  
25 may prescribe. However, with respect to preneed contracts to  
26 be funded pursuant to s. 497.417 or s. 497.419, ~~s. 497.423,~~  
27 ~~or s. 497.425,~~ any restitution made pursuant to this  
28 subsection shall not exceed, as to any single contract or  
29 arrangement, the lesser of the gross amount paid under the  
30 contract or 4 percent of the uncommitted assets of the trust  
31 fund. With respect to preneed contracts funded by life

1 insurance policies, any restitution shall not exceed, as to  
2 any single contract or arrangement, the lesser of the face  
3 amount of the policy, the actual cost of the arrangement  
4 contracted for, or 4 percent of the uncommitted assets of the  
5 trust fund. The total of all restitutions made to all  
6 applicants under this subsection in a single fiscal year shall  
7 not exceed the greater of 30 percent of the uncommitted assets  
8 of the trust fund as of the end of the most recent fiscal year  
9 or \$120,000. The department may use moneys in the trust fund  
10 to contract with independent vendors pursuant to chapter 287  
11 to administer the requirements of this subsection.

12 Section 7. Effective July 1, 2002, subsection (1) of  
13 section 497.429, Florida Statutes, as amended by this act, is  
14 amended to read:

15 497.429 Alternative preneed contracts.--

16 (1) Nothing in this chapter shall prevent the  
17 purchaser and the certificateholder from executing a preneed  
18 contract upon the terms stated in this section. Such  
19 contracts shall be subject to all provisions of this chapter  
20 except:

- 21 (a) Section 497.409~~(2)~~.  
22 (b) Section 497.415.  
23 (c) Section 497.417(1) and (3).  
24 (d) Section 497.419(1), (2), and (5).  
25 (e) Section 497.421.  
26 ~~(f) Section 497.423.~~  
27 ~~(g) Section 497.425.~~

28 Section 8. Except as otherwise expressly provided in  
29 this act, this act shall take effect July 1, 2001.

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LEGISLATIVE SUMMARY

Repeals the authority of certificateholders offering preneed funeral merchandise and services to re-vest title to preneed contract trust assets by posting a bond or using other forms of security or insurance. Provides for future repeal of provisions authorizing financial responsibility alternatives to the placing of preneed funeral contract funds in trust. Provides for continued validity of surety bonds issued prior to the repeal date, and prohibits the use of bonds or other forms of security or insurance after that date. (See bill for details.)