

By the Committee on Banking and Insurance; and Senators  
Latvala, Wasserman Schultz, Lee, Sullivan, Mitchell, Miller,  
Lawson, Peaden, Posey and Cowin

311-1865-01

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 need determinations;  
5           amending s. 497.005, F.S.; providing and  
6           revising definitions; amending s. 497.201,  
7           F.S.; increasing minimum acreage requirements  
8           to establish a cemetery company; eliminating  
9           need determinations for new cemeteries;  
10          clarifying provisions governing authorized  
11          trust companies, banks, and savings and loan  
12          associations; revising experience requirements  
13          for the general manager of a cemetery company;  
14          amending s. 497.237, F.S.; authorizing care and  
15          maintenance trust funds to be established with  
16          a federal savings and loan association holding  
17          trust powers in this state; amending s.  
18          497.245, F.S.; revising provisions governing  
19          burial rights; amending s. 497.253, F.S.;  
20          revising minimum acreage requirements and  
21          references, to conform; revising requirements  
22          for sale or disposition of certain cemetery  
23          lands, to conform; repealing s. 497.353(12),  
24          F.S., relating to prohibiting the use in need  
25          determinations of spaces or lots from burial  
26          rights reacquired by a cemetery, to conform;  
27          amending s. 497.405, F.S.; clarifying  
28          provisions relating to authorized trust  
29          companies, banks, and savings and loan  
30          associations; amending s. 497.417, F.S.;  
31          clarifying provisions relating to authorized

1 trust companies, banks, and savings and loan  
2 associations; revising the authority of  
3 certificateholders offering preneed funeral and  
4 burial merchandise and services contracts to  
5 revest title to trust assets by posting a bond  
6 or using other forms of security or insurance;  
7 providing a time limitation on such authority;  
8 amending s. 497.425, F.S.; providing a time  
9 limitation on the authority to post certain  
10 bonds to secure preneed contract assets;  
11 amending s. 497.429, F.S.; clarifying  
12 provisions relating to authorized trust  
13 companies, banks, and savings and loan  
14 associations with respect to alternative  
15 preneed contracts; amending s. 470.002, F.S.;  
16 redefining the term "legally authorized person"  
17 for purposes of ch. 470, F.S.; providing an  
18 effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Subsection (4) of section 497.003, Florida  
23 Statutes, is amended to read:

24 497.003 Cemeteries; exemption; investigation and  
25 mediation.--

26 (4) Any religious-institution-owned cemetery that is  
27 exempt under paragraph (1)(d), is located in a county with a  
28 population of at least 1.3 million persons on July 1, 1996,  
29 and was selling merchandise and services to the religious  
30 institution's members prior to October 1, 1993, may establish

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1 one additional exempt cemetery in such county after December  
2 31, 2020, ~~without establishing need under s. 497.201.~~

3 Section 2. Section 497.005, Florida Statutes, is  
4 amended to read:

5 497.005 Definitions.--As used in this chapter:

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

10 (2) "Bank of belowground crypts" means any  
11 construction unit of belowground crypts which is acceptable to  
12 the department and which a cemetery uses to initiate its  
13 belowground crypt program or to add to existing belowground  
14 crypt structures.

15 (3) "Belowground crypts" consist of interment space in  
16 preplaced chambers, either side by side or multiple depth,  
17 covered by earth and sod and known also as "lawn crypts,"  
18 "westminsters," or "turf-top crypts."

19 (4) "Board" means the Board of Funeral and Cemetery  
20 Services.

21 (5) "Burial merchandise," "funeral merchandise," or  
22 "merchandise" means any personal property offered or sold by  
23 any person for use in connection with the final disposition,  
24 memorialization, interment, entombment, or inurnment of human  
25 remains.

26 (6) "Burial right" means the right to use a grave  
27 space, mausoleum, ~~or~~ columbarium, ossuary, or scattering  
28 garden for the interment, entombment, ~~or~~ inurnment, or other  
29 disposition of human remains.

30 (7) "Burial service," "funeral service," or "service"  
31 means any service offered or provided by any person in

1 connection with the final disposition, memorialization,  
2 interment, entombment, or inurnment of human remains.

3 (8) "Care and maintenance" means the perpetual process  
4 of keeping a cemetery and its lots, graves, grounds,  
5 landscaping, roads, paths, parking lots, fences, mausoleums,  
6 columbaria, vaults, crypts, utilities, and other improvements,  
7 structures, and embellishments in a well-cared-for and  
8 dignified condition, so that the cemetery does not become a  
9 nuisance or place of reproach and desolation in the community.  
10 As specified in the rules of the board, "care and maintenance"  
11 may include, but is not limited to, any or all of the  
12 following activities: mowing the grass at reasonable  
13 intervals; raking and cleaning the grave spaces and adjacent  
14 areas; pruning of shrubs and trees; suppression of weeds and  
15 exotic flora; and maintenance, upkeep, and repair of drains,  
16 water lines, roads, buildings, and other improvements. "Care  
17 and maintenance" may include, but is not limited to,  
18 reasonable overhead expenses necessary for such purposes,  
19 including maintenance of machinery, tools, and equipment used  
20 for such purposes. "Care and maintenance" may also include  
21 repair or restoration of improvements necessary or desirable  
22 as a result of wear, deterioration, accident, damage, or  
23 destruction. "Care and maintenance" does not include expenses  
24 for the construction and development of new grave spaces or  
25 interment structures to be sold to the public.

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

30 (10) "Cemetery" means a place dedicated to and used or  
31 intended to be used for the permanent interment of human

1 remains. A cemetery may contain land or earth interment;  
2 mausoleum, vault, or crypt interment; a columbarium, ossuary,  
3 scattering garden, or other structure or place used or  
4 intended to be used for the interment or disposition of  
5 cremated human remains; or any combination of one or more of  
6 such structures or places.

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

9 (12) "Certificateholder" or "licensee" means the  
10 person or entity that is authorized under this chapter to sell  
11 preneed funeral or burial services, preneed funeral or burial  
12 merchandise, or burial rights. Each term shall include the  
13 other, as applicable, as the context requires. For the  
14 purposes of chapter 120, all certificateholders, licensees,  
15 and registrants shall be considered licensees.

16 (13) "Columbarium" means a structure or building which  
17 is substantially exposed above the ground and which is  
18 intended to be used for the inurnment of cremated human  
19 remains.

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

23 ~~(15) "Community" means the area within a 15-mile~~  
24 ~~radius surrounding the location or proposed location of a~~  
25 ~~cemetery.~~

26 (15)~~(16)~~ "Cremation" includes any mechanical or  
27 thermal process whereby a dead human body is reduced to ashes.  
28 Cremation also includes any other mechanical or thermal  
29 process whereby human remains are pulverized, burned,  
30 reinterred, or otherwise further reduced in size or quantity.

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1           (16)~~(17)~~ "Department" means the Department of Banking  
2 and Finance.

3           (17)~~(18)~~ "Direct disposer" means any person who is  
4 registered in this state to practice direct disposition  
5 pursuant to the provisions of chapter 470.

6           (18)~~(19)~~ "Final disposition" means the final disposal  
7 of a dead human body whether by interment, entombment, burial  
8 at sea, cremation, or any other means and includes, but is not  
9 limited to, any other disposition of remains for which a  
10 segregated charge is imposed.

11           (19)~~(20)~~ "Funeral director" means any person licensed  
12 in this state to practice funeral directing pursuant to the  
13 provisions of chapter 470.

14           (20)~~(21)~~ "Grave space" means a space of ground in a  
15 cemetery intended to be used for the interment in the ground  
16 of human remains.

17           (21)~~(22)~~ "Human remains" means the bodies of deceased  
18 persons and includes bodies in any stage of decomposition and  
19 cremated remains.

20           (22)~~(23)~~ "Mausoleum" means a structure or building  
21 which is substantially exposed above the ground and which is  
22 intended to be used for the entombment of human remains.

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

27           (24)~~(25)~~ "Monument" means any product used for  
28 identifying a grave site and cemetery memorials of all types,  
29 including monuments, markers, and vases.

30           (25)~~(26)~~ "Monument establishment" means a facility  
31 that operates independently of a cemetery or funeral

1 establishment and that offers to sell monuments or monument  
2 services to the public for placement in a cemetery.

3 (26)~~(27)~~ "Net assets" means the amount by which the  
4 total assets of a certificateholder, excluding goodwill,  
5 franchises, customer lists, patents, trademarks, and  
6 receivables from or advances to officers, directors,  
7 employees, salespersons, and affiliated companies, exceed  
8 total liabilities of the certificateholder. For purposes of  
9 this definition, the term "total liabilities" does not include  
10 the capital stock, paid-in capital, or retained earnings of  
11 the certificateholder.

12 (27)~~(28)~~ "Net worth" means total assets minus total  
13 liabilities pursuant to generally accepted accounting  
14 principles.

15 (28) "Ossuary" means a receptacle used for the  
16 communal placement of cremated human remains without benefit  
17 of an urn or any other container. It may or may not include  
18 memorialization.

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

23 (30) "Preneed contract" means any arrangement or  
24 method, of which the provider of funeral merchandise or  
25 services has actual knowledge, whereby any person ~~the funeral~~  
26 ~~establishment, direct disposer, or certificateholder~~ agrees to  
27 furnish funeral merchandise or service in the future.

28 (31) "Religious institution" means an organization  
29 formed primarily for religious purposes which has qualified  
30 for exemption from federal income tax as an exempt  
31

1 organization under the provisions of s. 501(c)(3) of the  
2 Internal Revenue Code of 1986, as amended.

3 (32) "Scattering garden" means a location set aside,  
4 within a cemetery, which is used for the spreading or  
5 broadcasting of cremated remains. It may or may not include  
6 memorialization.

7 (33)~~(32)~~ "Servicing agent" means any person acting as  
8 an independent contractor whose fiduciary responsibility is to  
9 assist both the trustee and certificateholder hereunder in  
10 administrating their responsibilities pursuant to this  
11 chapter.

12 (34)~~(33)~~ "Solicitation" means any communication which  
13 directly or implicitly requests an immediate oral response  
14 from the recipient.

15 (35)~~(34)~~ "Statutory accounting" means generally  
16 accepted accounting principles, except as modified by this  
17 chapter.

18 Section 3. Section 497.201, Florida Statutes, is  
19 amended to read:

20 497.201 Cemetery companies; license; application;  
21 fee.--

22 (1) No person may operate a cemetery without first  
23 obtaining a license from the department, unless specifically  
24 exempted from this chapter.

25 (2) The department may require any person desiring to  
26 establish a cemetery company who applies for a license to  
27 provide any information reasonably necessary to make a  
28 determination of the applicant's eligibility for licensure.  
29 Any person desiring to establish a cemetery company shall  
30 first:

31



1 (a) File an application, which states the exact  
2 location of the proposed cemetery, which site shall contain  
3 not less than 30 ~~±5~~ contiguous acres; provide a financial  
4 statement signed by all officers of the company which attest  
5 to a net worth of at least \$50,000, which net worth must be  
6 continuously maintained as a condition of licensure; and pay  
7 an application fee of \$5,000;

8 (b) Create a legal entity; and

9 (c) Demonstrate to the satisfaction of the board that  
10 the applicant possesses the ability, experience, financial  
11 stability, and integrity to operate a cemetery.

12 ~~(3) The department shall determine the need for a new~~  
13 ~~cemetery by considering the adequacy of existing cemetery~~  
14 ~~facilities, licensed and unlicensed, within the community; the~~  
15 ~~solvency of the trust funds of the existing facilities; and~~  
16 ~~the relationship between population, rate of population~~  
17 ~~growth, death rate, and ratio of burials to deaths to meet the~~  
18 ~~projected need for burial spaces for a period of 30 years. In~~  
19 ~~order to promote competition, the department may waive the~~  
20 ~~criteria of this subsection so that each county may have at~~  
21 ~~least six cemeteries operated by different licensees.~~

22 (3)~~(4)~~ If the board finds that the applicant meets the  
23 criteria established in subsection (2) ~~and the department~~  
24 ~~determines that a need for the new cemetery in the community~~  
25 ~~exists~~, the department shall notify the applicant that a  
26 license will be issued when:

27 (a) The establishment of a care and maintenance trust  
28 fund containing not less than \$50,000 has been certified by a  
29 trust company operating pursuant to chapter 660, a state or  
30 national bank holding trust powers, or a savings and loan  
31

1 association holding trust powers as provided in s. 497.423  
2 ~~licensed in this state.~~

3 (b) The applicant has filed with the department  
4 development plans which are sufficient to ensure the  
5 department that the cemetery will provide adequate service to  
6 the community and which have been approved by the appropriate  
7 local governmental agency regulating zoning in the area of the  
8 proposed cemetery.

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

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

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

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

21  
22 NOTICE

23  
24 The property described herein shall not be sold, conveyed,  
25 leased, mortgaged, or encumbered without the prior written  
26 approval of the Department of Banking and Finance, as provided  
27 in the Florida Funeral and Cemetery Services Act.

28  
29 Such notice shall be clearly printed in boldfaced type of not  
30 less than 10 points and may be included on the face of the  
31 deed of conveyance to the licensee or may be contained in a

1 separate recorded instrument which contains a description of  
2 the property.

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

12 Section 4. Subsection (1) of section 497.237, Florida  
13 Statutes, is amended to read:

14 497.237 Care and maintenance trust fund; remedy of  
15 department for noncompliance.--

16 (1) No cemetery company may establish a cemetery, or  
17 operate a cemetery if already established, without providing  
18 for the future care and maintenance of the cemetery, for which  
19 a care and maintenance trust fund shall be established, to be  
20 known as "the care and maintenance trust fund of ....." The  
21 trust fund shall be established with a trust company operating  
22 pursuant to chapter 660,~~or~~ with a state or national bank  
23 holding trust powers, or with a federal or state savings and  
24 loan association holding trust powers. Trust funds which are  
25 with a state or national bank or savings and loan association  
26 licensed in this state on October 1, 1993, shall remain in  
27 force; however, when the amount of any such trust fund exceeds  
28 the amount that is insured by an agency of the Federal  
29 Government, the cemetery company shall transfer that trust  
30 fund to a trust company operating pursuant to chapter 660,~~or~~  
31 to a state or national bank holding trust powers, or to a

1 federal or state savings and loan association holding trust  
2 powers.

3 Section 5. Subsection (1) of section 497.245, Florida  
4 Statutes, is amended to read:

5 497.245 Care and maintenance trust fund, percentage of  
6 payments for burial rights to be deposited.--

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

11 (a) For burial rights ~~graves~~, 10 percent of all  
12 payments received; however, for sales made after September 30,  
13 1993, no deposit shall be less than \$25 per grave. For each  
14 burial right, ~~grave, or space~~ which is provided without  
15 charge, the deposit to the fund shall be \$25.

16 (b) For mausoleums or columbaria, 10 percent of  
17 payments received.

18 (c) For general endowments for the care and  
19 maintenance of the cemetery, the full amount of sums received  
20 when received.

21 (d) For special endowments for a specific lot or grave  
22 or a family mausoleum, memorial, marker, or monument, the  
23 cemetery company may set aside the full amount received for  
24 this individual special care in a separate trust fund or by a  
25 deposit to a savings account in a bank or savings and loan  
26 association located within and authorized to do business in  
27 the state; however, if the licensee does not set up a separate  
28 trust fund or savings account for the special endowment, the  
29 full amount thereof shall be deposited into the care and  
30 maintenance trust fund as required of general endowments.

31

1           Section 6. Subsections (1), (2), and (5) and paragraph  
2 (c) of subsection (3) and subsection (5) of section 497.253,  
3 Florida Statutes, are amended to read:

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

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

10          (2) Any lands owned by a licensee and dedicated for  
11 use by it as a cemetery, which are contiguous, adjoining, or  
12 adjacent to the minimum of 30 ~~15~~ contiguous acres described in  
13 subsection (1), may be sold, conveyed, or disposed of by the  
14 licensee, after obtaining written approval of the department  
15 pursuant to subsection (3), for use by the new owner for other  
16 purposes than as a cemetery. All of the human remains which  
17 have been previously interred therein shall first have been  
18 removed from the lands proposed to be sold, conveyed, or  
19 disposed of; however, the provisions of ss. 470.0295 and  
20 497.515(7) must be complied with prior to any disinterment of  
21 human remains. Any and all titles, interests, or burial rights  
22 which may have been sold or contracted to be sold in lands  
23 which are the subject of the sale shall be conveyed to and  
24 revested in the licensee prior to consummation of any such  
25 sale, conveyance, or disposition.

26          (3)

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

3 1. The historical significance of the subject  
4 property, if any.

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

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

9 ~~4. The impact of the proposed change in use of the~~  
10 ~~subject property upon the inventory of remaining cemetery~~  
11 ~~facilities in the community and upon the other factors~~  
12 ~~enumerated in s. 497.201(3).~~

13 ~~4.5.~~ The impact of the proposed change in use of the  
14 subject property upon the reasonable expectations of the  
15 families of the deceased regarding whether the cemetery  
16 property was to remain as a cemetery in perpetuity.

17 ~~5.6.~~ Whether any living relatives of the deceased  
18 actively oppose the relocation of their deceased's remains and  
19 the conversion of the subject property to noncemetery uses.

20 ~~6.7.~~ The elapsed time since the last interment in the  
21 subject property.

22 ~~7.8.~~ Any other factor enumerated in this chapter that  
23 the department considers relevant to the public interest.

24 (5) The provisions of subsections (1) and (2) relating  
25 to a requirement for minimum acreage shall not apply to any  
26 cemetery company licensed by the department on or before July  
27 1, 2001 ~~1965~~, which owns a total of less than 30 ~~15~~ acres of  
28 land; however, no cemetery company shall dispose of any land  
29 without the prior written consent of the department.

30 Section 7. Subsection (12) of section 497.353, Florida  
31 Statutes, is repealed.

1           Section 8. Paragraph (b) of subsection (2) of section  
2 497.405, Florida Statutes, is amended to read:

3           497.405 Certificate of authority required.--

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

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

13           Section 9. Subsections (1), (5), and (6) of section  
14 497.417, Florida Statutes, are amended to read:

15           497.417 Disposition of proceeds received on  
16 contracts.--

17           (1) Any person who is paid, collects, or receives  
18 funds under a preneed contract for funeral services or  
19 merchandise or burial services or merchandise shall deposit ~~in~~  
20 ~~this state~~ an amount at least equal to the sum of 70 percent  
21 of the purchase price collected for all services sold and  
22 facilities rented; 100 percent of the purchase price collected  
23 for all cash advance items sold; and 30 percent of the  
24 purchase price collected or 110 percent of the wholesale cost,  
25 whichever is greater, for each item of merchandise sold. The  
26 method of determining wholesale cost shall be established by  
27 rule of the board and shall be based upon the  
28 certificateholder's stated wholesale cost for the 12-month  
29 period beginning July 1 during which the initial deposit to  
30 the preneed trust fund for the preneed contract is made. Such  
31 deposits shall be made within 30 days after the end of the

1 calendar month in which payment is received, under the terms  
2 of a revocable trust instrument entered into with a trust  
3 company operating pursuant to chapter 660, with a national or  
4 state bank holding trust powers, or with a federal or state  
5 savings and loan association holding ~~having~~ trust powers ~~or a~~  
6 ~~trust company~~. The trustee shall take title to the property  
7 conveyed to the trust for the purpose of investing,  
8 protecting, and conserving it for the certificateholder;  
9 collecting income; and distributing the principal and income  
10 as prescribed in this chapter. The certificateholder is  
11 prohibited from sharing in the discharge of these  
12 responsibilities, except that the certificateholder may  
13 request the trustee to invest in tax-free investments and may  
14 appoint an adviser to the trustee. The trust agreement shall  
15 be submitted to the board for approval and filing. The funds  
16 shall be held in trust, both as to principal and income earned  
17 thereon, and shall remain intact, except that the cost of the  
18 operation of the trust or trust account authorized by this  
19 section may be deducted from the income earned thereon. The  
20 contract purchaser shall have no interest whatsoever in, or  
21 power whatsoever over, funds deposited in trust pursuant to  
22 this section. In no event may said funds be loaned to a  
23 certificateholder, an affiliate of a certificateholder, or any  
24 person directly or indirectly engaged in the burial, funeral  
25 home, or cemetery business. Furthermore, the  
26 certificateholder's interest in said trust shall not be  
27 pledged as collateral for any loans, debts, or liabilities of  
28 the certificateholder and shall not be transferred to any  
29 person without the prior written approval from the department  
30 and the trustee which shall not be unreasonably withheld.  
31 Even though the certificateholder shall be deemed and treated



1 as the settlor and beneficiary of said trust for all purposes,  
2 all of said trust funds are exempt from all claims of  
3 creditors of the certificateholder except as to the claims of  
4 the contract purchaser, her or his representative, the board,  
5 or the department.

6 (5) The certificateholder, at her or his election,  
7 shall have the right and power, at any time, to revest in it  
8 title to the trust assets, or its pro rata share thereof,  
9 provided it has complied with:

10 (a) Section 497.423;

11 (b) Contracts written prior to July 1, 2001, under s.  
12 497.425; or

13 (c) Contracts written prior to December 31, 2004,  
14 under s. 497.425 for any certificateholder authorized to do  
15 business in this state that has total bonded liability  
16 exceeding \$100 million as of July 1, 2001 ~~s. 497.423 or s.~~  
17 ~~497.425.~~

18 (6) Notwithstanding anything contained in this chapter  
19 to the contrary, the certificateholder, via its election to  
20 sell or offer for sale preneed contracts subject to this  
21 section, shall represent and warrant, and is hereby deemed to  
22 have done such, to all federal and Florida taxing authorities,  
23 as well as to all potential and actual preneed contract  
24 purchasers, that:

25 (a) Section 497.423 is a viable option available to it  
26 at any and all relevant times;

27 (b) Section 497.425 is a viable option available to it  
28 at any and all relevant times for contracts written prior to  
29 July 1, 2001, for funds not held in trust as of July 1, 2001;  
30 or

31

1           (c) For any certificateholder authorized to do  
2 business in this state that has total bonded liability  
3 exceeding \$100 million as of July 1, 2001, s. 497.425 is a  
4 viable option to it at any and all relevant times for  
5 contracts written prior to December 31, 2004, for funds not  
6 held in trust as of July 1, 2001 ~~s. 497.423 or s. 497.425 is a~~  
7 ~~viable option available to it at any and all relevant times.~~

8           (7) If in the certificateholder's opinion it does not  
9 have the ability to select the financial responsibility  
10 alternative of s. 497.423 or s. 497.425, then it shall not  
11 have the right to sell or solicit contracts pursuant to this  
12 section.

13           ~~(8)(6)~~ This section, as amended by s. 6, chapter  
14 83-316, Laws of Florida, applies to preneed contracts entered  
15 into before October 1, 1993, and as amended by s. 98, chapter  
16 93-399, Laws of Florida, applies to preneed contracts entered  
17 into on or after October 1, 1993.

18           Section 10. Paragraph (a) of subsection (1) of section  
19 497.425, Florida Statutes, is amended, and subsection (12) is  
20 added to that section, to read:

21           497.425 Alternatives to deposits under s. 497.417.--

22           (1)(a) As an alternative to the requirements of s.  
23 497.417 that relate to trust funds for contracts written prior  
24 to July 1, 2001, or that relate to trust funds for contracts  
25 written prior to December 31, 2004, by any certificateholder  
26 authorized to do business in this state that has total bonded  
27 liability exceeding \$100 million as of July 1, 2001, a  
28 certificateholder may purchase a surety bond for funds not  
29 held in trust as of July 1, 2001, in an amount not less than  
30 the aggregate value of outstanding liabilities on undelivered  
31 preneed contracts for merchandise and services. For the

1 purpose of this section, the term "outstanding liabilities"  
2 means the gross replacement or wholesale value of the preneed  
3 merchandise and services. The bond shall be made payable to  
4 the State of Florida for the benefit of the board and all  
5 purchasers of preneed cemetery merchandise or services. The  
6 bond must be approved by the board.

7 (12) Certificateholders may utilize the bonding  
8 alternatives to s. 497.417 provided in this section only for  
9 contracts written prior to July 1, 2001, for funds not held in  
10 trust as of July 1, 2001, or for contracts written prior to  
11 December 31, 2004, by any certificateholder authorized to do  
12 business in this state that has total bonded liability  
13 exceeding \$100 million as of July 1, 2001, for funds not held  
14 in trust as of July 1, 2001.

15 Section 11. Subsection (2) of section 497.429, Florida  
16 Statutes, is amended to read:

17 497.429 Alternative preneed contracts.--

18 (2) The contract must require that a trust be  
19 established by the certificateholder on behalf of, and for the  
20 use, benefit, and protection of, the purchaser and that the  
21 trustee must be a trust company operating pursuant to chapter  
22 660, a national or state bank holding trust powers, or a  
23 federal or state savings and loan association holding ~~having~~  
24 ~~trust powers or a trust company with the same powers of~~  
25 ~~investment as provided elsewhere in this chapter.~~

26 Section 12. Subsection (18) of section 470.002,  
27 Florida Statutes, is amended to read:

28 470.002 Definitions.--As used in this chapter:

29 (18) "Legally authorized person" means, in the  
30 priority listed, the decedent, when written inter vivos  
31 authorizations and directions are provided by the decedent,

1 the surviving spouse, unless the spouse has been arrested for  
2 committing against the deceased an act of violence as defined  
3 in s. 741.28(1), a son or daughter who is 18 years of age or  
4 older, a parent, a brother or sister 18 years of age or over,  
5 a grandchild who is 18 years of age or older, or a  
6 grandparent; or any person in the next degree of kinship. In  
7 addition, the term may include, if no family exists or is  
8 available, the following: the guardian of the dead person at  
9 the time of death; the personal representative of the  
10 deceased; the attorney in fact of the dead person at the time  
11 of death; the health surrogate of the dead person at the time  
12 of death; a public health officer; the medical examiner,  
13 county commission or administrator acting under chapter 245,  
14 or other public administrator; a representative of a nursing  
15 home or other health care institution in charge of final  
16 disposition; or a friend or other person not listed in this  
17 subsection who is willing to assume the responsibility as  
18 authorized person.

19 Section 13. This act shall take effect July 1, 2001.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 1610  
4 Removes the provisions which repealed the authority for  
5 funeral and cemetery businesses offering preneed funeral  
6 merchandise and services to purchase surety bonds as security  
7 for funds collected on preneed funeral contracts under ss.  
8 497.423 and 497.425, F.S.  
9  
10 Requires the phasing out of the use of "payment-type" surety  
11 bonds under s. 497.425, F.S., but provides hold harmless  
12 provisions as to the current surety bonding arrangements  
13 utilized by certificateholders.  
14 Eliminates the responsibility of the Department of Banking and  
15 Finance to make a determination as to the need for new  
16 cemeteries in localities.  
17  
18 Authorizes federal or state savings and loan associations  
19 holding trust powers to handle trust accounts for funeral and  
20 cemetery preneed funds and cemetery care and maintenance  
21 funds.  
22  
23 Raises the acreage requirement for new cemeteries from 15 to  
24 30 contiguous acres and increases the number of years from 1  
25 to 3 for cemetery management experience required for managers  
26 of new cemeteries.  
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