

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 s.
7 497.201, F.S.; increasing minimum acreage
8 requirements to establish a cemetery company;
9 replacing need determinations with surety bond
10 requirements after a specified date; revising
11 experience requirements for the general manager
12 of a cemetery company; amending s. 497.245,
13 F.S.; revising provisions establishing the
14 percentage of payments for burial rights to be
15 deposited in care and maintenance trust funds;
16 amending s. 497.249, F.S.; providing that
17 trustees who fail to provide timely and
18 accurate reports may be subject to disciplinary
19 action; amending s. 497.253, F.S.; revising
20 minimum acreage requirements and references, to
21 conform; amending s. 497.257, F.S.; requiring
22 contracts for construction of mausoleums,
23 columbaria, and belowground crypts to disclose
24 the month and year construction is scheduled to
25 begin; amending s. 497.309, F.S.; applying
26 recordkeeping requirements to
27 certificateholders; amending s. 497.337, F.S.;
28 revising provisions relating to prohibition on
29 the sale of personal property and services;
30 amending s. 497.353, F.S.; providing for future
31 repeal of a provision prohibiting the use in

1 need determinations of spaces or lots from
2 burial rights reacquired by a cemetery, to
3 conform; amending s. 497.405, F.S.; requiring a
4 certificate of authority to guarantee funeral
5 merchandise or services in the future or offer
6 a preneed contract; amending s. 497.425, F.S.;
7 revising the definition of the term
8 "outstanding liabilities" for purposes of the
9 purchase of a surety bond sufficient to cover
10 undelivered preneed contracts for merchandise
11 and services; amending s. 497.429, F.S.;
12 revising requirements for disbursement of trust
13 funds discharging or refunding a preneed
14 contract; amending s. 497.431, F.S.; requiring
15 the Department of Banking and Finance to
16 examine the business of any licensed cemetery
17 company writing preneed contracts; amending s.
18 497.445, F.S.; declaring certain activity
19 relating to inducement to purchase a preneed
20 contract from another certificateholder an
21 unfair method of competition or an unfair or
22 deceptive act or practice; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsections (2) and (4) of section 497.003,
28 Florida Statutes, are amended to read:

29 497.003 Cemeteries; exemption; investigation and
30 mediation.--

31

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

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

12 Section 2. Section 497.005, Florida Statutes, is
13 amended to read:

14 497.005 Definitions.--As used in this chapter:

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

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

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

28 (4) "Board" means the Board of Funeral and Cemetery
29 Services.

30 (5) "Burial merchandise," "funeral merchandise," or
31 "merchandise" means any personal property offered or sold by

1 any person for use in connection with the final disposition,
2 memorialization, interment, entombment, or inurnment of human
3 remains.

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

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

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

1 destruction. "Care and maintenance" does not include expenses
2 for the construction and development of new grave spaces or
3 interment structures to be sold to the public.

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

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

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

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

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

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

- 1 (15) "Community" means the area within a 15-mile
2 radius surrounding the location or proposed location of a
3 cemetery.
- 4 (16) "Cremation" includes any mechanical or thermal
5 process whereby a dead human body is reduced to ashes.
6 Cremation also includes any other mechanical or thermal
7 process whereby human remains are pulverized, burned,
8 reinterred, or otherwise further reduced in size or quantity.
- 9 (17) "Department" means the Department of Banking and
10 Finance.
- 11 (18) "Direct disposer" means any person who is
12 registered in this state to practice direct disposition
13 pursuant to the provisions of chapter 470.
- 14 (19) "Final disposition" means the final disposal of a
15 dead human body whether by interment, entombment, burial at
16 sea, cremation, or any other means and includes, but is not
17 limited to, any other disposition of remains for which a
18 segregated charge is imposed.
- 19 (20) "Funeral director" means any person licensed in
20 this state to practice funeral directing pursuant to the
21 provisions of chapter 470.
- 22 (21) "Grave space" means a space of ground in a
23 cemetery intended to be used for the interment in the ground
24 of human remains.
- 25 (22) "Human remains" means the bodies of deceased
26 persons and includes bodies in any stage of decomposition and
27 cremated remains.
- 28 (23) "Mausoleum" means a structure or building which
29 is substantially exposed above the ground and which is
30 intended to be used for the entombment of human remains.
31

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

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

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

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

21 (28) "Net worth" means total assets minus total
22 liabilities pursuant to generally accepted accounting
23 principles.

24 (29) "Ossuary" means a receptacle used for the
25 communal placement of cremated human remains without benefit
26 of an urn or any other container. It may or may not include
27 memorialization.

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

1 (31)~~(30)~~ "Preneed contract" means any arrangement or
2 method, of which the provider of funeral merchandise or
3 services has actual knowledge, whereby any person ~~the funeral~~
4 ~~establishment, direct disposer, or certificateholder~~ agrees to
5 furnish funeral merchandise or service in the future.

6 (32)~~(31)~~ "Religious institution" means an organization
7 formed primarily for religious purposes which has qualified
8 for exemption from federal income tax as an exempt
9 organization under the provisions of s. 501(c)(3) of the
10 Internal Revenue Code of 1986, as amended.

11 (33) "Scattering garden" means a location set aside,
12 within a cemetery, which is used for the spreading or
13 broadcasting of cremated remains. It may or may not include
14 memorialization.

15 (34)~~(32)~~ "Servicing agent" means any person acting as
16 an independent contractor whose fiduciary responsibility is to
17 assist both the trustee and certificateholder hereunder in
18 administrating their responsibilities pursuant to this
19 chapter.

20 (35)~~(33)~~ "Solicitation" means any communication which
21 directly or implicitly requests an immediate oral response
22 from the recipient.

23 (36)~~(34)~~ "Statutory accounting" means generally
24 accepted accounting principles, except as modified by this
25 chapter.

26 Section 3. Section 497.201, Florida Statutes, is
27 amended to read:

28 497.201 Cemetery companies; license; application;
29 fee.--

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

4 (2) The department may require any person desiring to
5 establish a cemetery company who applies for a license to
6 provide any information reasonably necessary to make a
7 determination of the applicant's eligibility for licensure.
8 Any person desiring to establish a cemetery company shall
9 first:

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

17 (b) Create a legal entity; and

18 (c) Demonstrate to the satisfaction of the board that
19 the applicant possesses the ability, experience, financial
20 stability, and integrity to operate a cemetery.

21 (3) The department shall determine the need for a new
22 cemetery by considering the adequacy of existing cemetery
23 facilities, licensed and unlicensed, within the community; the
24 solvency of the trust funds of the existing facilities; and
25 the relationship between population, rate of population
26 growth, death rate, and ratio of burials to deaths to meet the
27 projected need for burial spaces for a period of 30 years. In
28 order to promote competition, the department may waive the
29 criteria of this subsection so that each county may have at
30 least six cemeteries operated by different licensees.

31

1 (4) Effective January 1, 2007, and henceforth, in lieu
2 of the need determination, all applicants for a new cemetery
3 establishment shall produce a surety bond sufficient to cover
4 operating costs for a minimum of 5 years, to be used in the
5 event of failure of the company. The bond shall be good for 5
6 years and shall be renewable each year no later than December
7 31. The initial amount of the bond shall be calculated on the
8 projected operating expenses as defined in the cemetery's
9 business plan at the time of application for licensure or an
10 appropriate amount determined by the board. Thereafter, the
11 cemetery shall base the bond amount upon the operating
12 expenses current year and projected to cover 5 years of
13 operation. The new bond shall be submitted with the
14 cemetery's annual license renewal application, which shall
15 also include the cemetery's most recent financial statements.
16 The bond shall be purchased from an established insurance
17 company licensed to do business in this state. The board
18 shall adopt rules pursuant to ss. 120.536(1) and 120.54 for
19 the requirements of the establishment of the bond.

20 ~~(5)~~(4) If the board finds that the applicant meets the
21 criteria established in subsection (2) and the department
22 determines that a need for the new cemetery in the community
23 exists or, effective January 1, 2007, that the applicant has
24 purchased the surety bond as required in subsection (4), the
25 department shall notify the applicant that a license will be
26 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, a state or national bank, or a savings and loan
30 association licensed in this state.

31

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

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

9 (d) The applicant has designated as general manager a
10 person who has integrity, 3 years ~~1 year~~ of cemetery
11 management experience, and the ability to operate a cemetery.

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

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

18
19 NOTICE

20
21 The property described herein shall not be sold, conveyed,
22 leased, mortgaged, or encumbered without the prior written
23 approval of the Department of Banking and Finance, as provided
24 in the Florida Funeral and Cemetery Services Act.

25
26 Such notice shall be clearly printed in boldfaced type of not
27 less than 10 points and may be included on the face of the
28 deed of conveyance to the licensee or may be contained in a
29 separate recorded instrument which contains a description of
30 the property.

31

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

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

12 497.245 Care and maintenance trust fund, percentage of
13 payments for burial rights to be deposited.--

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

18 (a) For burial rights ~~graves~~, 10 percent of all
19 payments received; however, for sales made after September 30,
20 1993, no deposit shall be less than \$25 per grave. For each
21 burial right, ~~grave, or space~~ which is provided without
22 charge, the deposit to the fund shall be \$25.

23 (b) For mausoleums or columbaria, 10 percent of
24 payments received.

25 (c) For general endowments for the care and
26 maintenance of the cemetery, the full amount of sums received
27 when received.

28 (d) For special endowments for a specific lot or grave
29 or a family mausoleum, memorial, marker, or monument, the
30 cemetery company may set aside the full amount received for
31 this individual special care in a separate trust fund or by a

1 deposit to a savings account in a bank or savings and loan
2 association located within and authorized to do business in
3 the state; however, if the licensee does not set up a separate
4 trust fund or savings account for the special endowment, the
5 full amount thereof shall be deposited into the care and
6 maintenance trust fund as required of general endowments.

7 Section 5. Section 497.249, Florida Statutes, is
8 amended to read:

9 497.249 Care and maintenance trust fund; financial
10 reports.--

11 (1) On or before April 1 of each year, the trustee
12 shall furnish adequate financial reports with respect to the
13 care and maintenance trust fund on forms provided by the
14 department. However, the department may require the trustee
15 to make such additional financial reports as it deems
16 necessary. In order to ensure that the proper deposits to the
17 trust fund have been made, the department shall examine the
18 status of the trust fund of the company on a semiannual basis
19 for the first 2 years of the trust fund's existence.

20 (2) Failure of a trustee to provide timely and
21 accurate reports may subject the trustee to disciplinary
22 action as provided under this chapter.

23 Section 6. Section 497.253, Florida Statutes, is
24 amended to read:

25 497.253 Minimum acreage; sale or disposition of
26 cemetery lands.--

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

31

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

17 (3)(a) If the property to be sold, conveyed, or
18 disposed of under subsection (2) has been or is being used for
19 the permanent interment of human remains, the applicant for
20 approval of such sale, conveyance, or disposition shall cause
21 to be published, at least once a week for 4 consecutive weeks,
22 a notice meeting the standards of publication set forth in s.
23 125.66(4)(b)2. The notice shall describe the property in
24 question and the proposed noncemetery use and shall advise
25 substantially affected persons that they may file a written
26 request for a hearing pursuant to chapter 120, within 14 days
27 after the date of last publication of the notice, with the
28 department if they object to granting the applicant's request
29 to sell, convey, or dispose of the subject property for
30 noncemetery uses.

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

4 (c) If the property in question has been used for the
5 permanent interment of human remains, the department shall
6 approve the application, in writing, if it finds that it would
7 not be contrary to the public interest. In determining whether
8 to approve the application, the department shall consider any
9 evidence presented concerning the following:

10 1. The historical significance of the subject
11 property, if any.

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

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

16 4. The impact of the proposed change in use of the
17 subject property upon the inventory of remaining cemetery
18 facilities in the community and upon the other factors
19 enumerated in s. 497.201~~(3)~~.

20 5. The impact of the proposed change in use of the
21 subject property upon the reasonable expectations of the
22 families of the deceased regarding whether the cemetery
23 property was to remain as a cemetery in perpetuity.

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

27 7. The elapsed time since the last interment in the
28 subject property.

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

31

1 (d) Any deed, mortgage, or other conveyance by a
2 cemetery company or other owner pursuant to subsections (a)
3 and (c) above must contain a disclosure in the following or
4 substantially similar form:

5
6 NOTICE: The property described herein was formerly used and
7 dedicated as a cemetery. Conveyance of this property and its
8 use for noncemetery purposes was authorized by the Florida
9 Department of Banking and Finance by Order No., dated
10

11
12 (e) The department shall adopt such rules as are
13 necessary to carry out the provisions of this section.

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

20 (5) The provisions of subsections (1) and (2) relating
21 to a requirement for minimum acreage shall not apply to any
22 cemetery company licensed by the department on or before July
23 1, 2001 ~~1965~~, which owns a total of less than 30 ~~15~~ acres of
24 land; however, no cemetery company shall dispose of any land
25 without the prior written consent of the department.

26 Section 7. Subsection (1) of section 497.257, Florida
27 Statutes, is amended to read:

28 497.257 Construction of mausoleums, columbaria, and
29 belowground crypts; preconstruction trust fund; compliance
30 requirement.--
31

1 (1) A cemetery company shall start construction of
2 that section of a mausoleum, columbarium, or bank of
3 belowground crypts in which sales, contracts for sales,
4 reservations for sales, or agreements for sales are being made
5 within 4 years after the date of the first such sale or 50
6 percent of the mausoleum, columbarium, or belowground crypts
7 have been sold and the purchase price has been received,
8 whichever occurs first. The construction shall be completed
9 within 5 years after the date of the first sale made.
10 However, extensions for completion, not to exceed 1 year, may
11 be granted by the department for good cause shown. If the
12 units have not been completely constructed at the time of need
13 or the time specified herein, all moneys paid shall be
14 refunded upon request, plus interest earned thereon for that
15 portion of the moneys deposited in the trust fund and an
16 amount equal to the interest that would have been earned on
17 that portion of the moneys that were not in trust. The month
18 and year in which construction is scheduled to begin must be
19 disclosed on the contract.

20 Section 8. Section 497.309, Florida Statutes, is
21 amended to read:

22 497.309 Records.--

23 (1) A record shall be kept of every burial in the
24 cemetery of a cemetery company, showing the date of burial and
25 the name of the person buried, together with lot, plot, and
26 space in which the burial was made.

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

31

1 ~~(b)(2)~~ Notwithstanding the provisions of paragraph (a)
2 ~~subsection (1)~~, the board may, upon request, authorize a
3 cemetery company or certificateholder to maintain its
4 financial records at a location other than its principal place
5 of business and may, if necessary, require the company or
6 certificateholder to make its books, accounts, records, and
7 documents available at a reasonable and convenient location in
8 this state.

9 (3) The board may prescribe the minimum information to
10 be shown in the books, accounts, records, and documents of a
11 cemetery company or certificateholder to enable the department
12 to determine the company's or certificateholder's compliance
13 with this chapter.

14 Section 9. Section 497.337, Florida Statutes, is
15 amended to read:

16 497.337 Prohibition on sale of personal property or
17 services.--

18 (1) This section applies to all cemetery companies
19 licensed pursuant to this chapter that offer for sale or sell
20 personal property or services which may be used in a cemetery
21 in connection with the burial of human remains or the
22 commemoration of the memory of a deceased human being and also
23 to any person in direct written contractual relationship with
24 licensed cemetery companies.

25 (2)(a) Except as otherwise provided in this chapter,
26 no cemetery company shall directly or indirectly enter into a
27 contract for the sale of personal property or services,
28 excluding burial or interment rights, which may be used in a
29 cemetery in connection with disposing of human remains, or
30 commemorating the memory of a deceased human being, unless if
31 ~~delivery~~ of the personal property or performance of the

1 service is delivered as provided in paragraph (b)~~to be made~~
2 ~~more than 120 days after receipt of final payment under the~~
3 ~~contract of sale, except as provided in s. 497.417.~~ This
4 shall include, but not be limited to, the sale ~~for future~~
5 ~~delivery~~ of burial vaults, grave liners, urns, memorials,
6 vases, foundations, memorial bases, and similar merchandise
7 and related services commonly sold or used in cemeteries and
8 interment fees but excluding burial or interment rights.

9 (b) For the purposes of this section, the term
10 "delivery" or "delivered" means actual delivery and
11 installation at the time of need or at the request of the
12 owner or the owner's agent. Merchandise is not considered
13 delivered under paragraph (a) if it is stored on the grounds
14 of the cemetery or at a storage facility except for monuments,
15 markers, and permanent outer burial receptacles that are
16 stored in a protected environment and are comprised of
17 materials designed to withstand prolonged, protected storage
18 without adversely affecting the structural integrity or
19 aesthetic characteristics of such permanent outer burial
20 receptacles.

21 (c) In lieu of delivery as required by paragraphs (a)
22 and paragraph (b), for sales to cemetery companies and funeral
23 establishments, and only for such sales, the manufacturer of a
24 permanent outer burial receptacle which meets standards
25 adopted by the board may elect, at its discretion, to comply
26 with the delivery requirements of this section by annually
27 submitting, in writing, evidence of the manufacturer's
28 financial responsibility with the board for its review and
29 approval. The standards and procedures to establish evidence
30 of financial responsibility shall be those in s. 497.423 or s.
31 497.425, with the manufacturer of permanent outer burial

1 receptacles which meet national industry standards assuming
2 the same rights and responsibilities as those of a
3 certificateholder under s. 497.423 or s. 497.425.

4 (3) No nonprofit cemetery corporation which has been
5 incorporated and engaged in the cemetery business prior to and
6 continuously since 1915 and which has current care and
7 maintenance trust assets exceeding \$2 million shall be
8 required to designate a corporate trustee for its preneed
9 trust fund.

10 Section 10. Subsection (12) of section 497.353,
11 Florida Statutes, is amended to read:

12 497.353 Owners to provide addresses; presumption of
13 abandonment; abandonment procedures; sale of abandoned unused
14 burial rights.--

15 (12) No burial rights reacquired pursuant to this
16 section by a cemetery may be included in determining available
17 inventory of burial spaces or lots in the evaluation of need
18 for new cemeteries pursuant to s. 497.201. This subsection
19 expires January 1, 2007.

20 Section 11. Paragraph (a) of subsection (1) of section
21 497.405, Florida Statutes, is amended to read:

22 497.405 Certificate of authority required.--

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

27 Section 12. Paragraph (a) of subsection (1) of section
28 497.425, Florida Statutes, is amended to read:

29 497.425 Alternatives to deposits under s. 497.417.--

30 (1)(a) As an alternative to the requirements of s.
31 497.417 that relate to trust funds, a certificateholder may

1 purchase a surety bond in an amount not less than the
2 aggregate value of outstanding liabilities on undelivered
3 preneed contracts for merchandise and services. For the
4 purpose of this section, the term "outstanding liabilities"
5 means the gross replacement ~~or wholesale~~ value of the preneed
6 merchandise and services. The bond shall be made payable to
7 the State of Florida for the benefit of the board and all
8 purchasers of preneed cemetery merchandise or services. The
9 bond must be approved by the board.

10 Section 13. Subsection (7) of section 497.429, Florida
11 Statutes, is amended to read:

12 497.429 Alternative preneed contracts.--

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

28 Section 14. Section 497.431, Florida Statutes, is
29 amended to read:

30 497.431 Examinations and investigations.--The
31 department shall, as often as it may deem necessary but at

1 least once every 3 years, examine the business of any licensed
2 cemetery company or other certificateholder ~~person~~ writing
3 preneed contracts and any guaranteeing organization existing
4 under this chapter to the extent applicable. The examination
5 shall be made by designated representatives or examiners of
6 the department. The written report of each such examination,
7 when completed, shall be filed in the office of the board and,
8 when so filed, shall constitute a public record. Any such
9 company ~~person~~ or organization being examined shall produce,
10 upon request, all records of the company or organization. The
11 designated representative of the board may at any time examine
12 the records and affairs of any such company ~~person~~ or
13 organization, whether in connection with a formal examination
14 or not. The board may waive the examination requirements of
15 this section if the company ~~certificateholder~~ or guaranteeing
16 organization submits audited financial statements. The company
17 ~~person~~ or organization examined shall pay the travel expense
18 and per diem subsistence allowance provided for state
19 employees under s. 112.061 for out-of-state travel incurred by
20 department representatives or examiners in connection with an
21 examination. The department shall be entitled to recover the
22 reasonable and justifiable costs of investigation if the
23 investigation results in judicial or administrative
24 disciplinary action.

25 Section 15. Subsection (4) of section 497.445, Florida
26 Statutes, is amended to read:

27 497.445 Unfair methods of competition and unfair or
28 deceptive acts or practices defined.--Unfair methods of
29 competition and unfair or deceptive acts or practices are
30 defined as the following:

31 (4) FALSE STATEMENTS AND ENTRIES.--Knowingly:

- 1 (a) Filing any false statement with any supervisory or
2 other public official;
- 3 (b) Making, publishing, disseminating, or circulating
4 any false statement;
- 5 (c) Delivering any false statement to any person;
- 6 (d) Placing any false statement before the public;
- 7 (e) Causing, directly or indirectly, any false
8 statement to be made, published, disseminated, circulated,
9 delivered to any person, or placed before the public; ~~or~~
- 10 (f) Making any false entry of a material fact in any
11 book, report, or statement of any person; ~~or~~
- 12 (g) Making any misleading representation or incomplete
13 or fraudulent comparisons or fraudulent material omissions of
14 or with respect to any preneed contract or certificateholder
15 for the purpose of inducing, or tending to induce, any person
16 to lapse, forfeit, surrender, cancel, or convert any preneed
17 contract to purchase another preneed contract in another
18 certificateholder.

19 Section 16. This 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. Increases minimum acreage requirements to establish a cemetery company. Replaces need determinations with surety bond requirements after a specified date. Revises experience requirements for the general manager of a cemetery company. Revises provisions establishing the percentage of payments for burial rights to be deposited in care and maintenance trust funds. Provides that trustees who fail to provide timely and accurate reports may be subject to disciplinary action. Requires contracts for construction of mausoleums, columbaria, and belowground crypts to disclose the month and year construction is scheduled to begin. Applies recordkeeping requirements to certificateholders. Revises provisions relating to prohibition on the sale of personal property and services. Requires a certificate of authority to guarantee funeral merchandise or services in the future or offer a preneed contract. Revises the definition of the term "outstanding liabilities" for purposes of the purchase of a surety bond sufficient to cover undelivered preneed contracts for merchandise and services. Revises requirements for disbursement of trust funds discharging or refunding a preneed contract. Requires the Department of Banking and Finance to examine the business of any licensed cemetery company writing preneed contracts. Declares certain activity relating to inducement to purchase a preneed contract from another certificateholder an unfair method of competition or an unfair or deceptive act or practice. See bill for details.