

By Senator Pruitt

27-934A-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 burial records and need
5 determinations; amending s. 497.005, F.S.;
6 providing and revising definitions; amending s.
7 497.101, F.S.; providing membership and terms
8 of the Board of Funeral Directors, Embalmers,
9 and Cemetery Services; amending s. 497.103,
10 F.S.; providing rulemaking authority; amending
11 s. 497.105, F.S.; providing for appointment of
12 the executive director of the board; amending
13 s. 497.107, F.S.; providing headquarters of the
14 board; amending s. 497.109, F.S.; conforming
15 provisions; amending s. 497.201, F.S.;
16 increasing minimum acreage requirements to
17 establish a cemetery company; eliminating need
18 determinations for new cemeteries; revising
19 experience requirements for the general manager
20 of a cemetery company; amending s. 497.237,
21 F.S.; authorizing care and maintenance trust
22 funds to be established with a federal savings
23 and loan association holding trust powers in
24 this state; amending s. 497.245, F.S.; revising
25 provisions establishing the percentage of
26 payments for burial rights to be deposited in
27 care and maintenance trust funds; amending s.
28 497.253, F.S.; revising minimum acreage
29 requirements and references, to conform;
30 amending s. 497.257, F.S.; requiring cemetery
31 companies to disclose to purchasers the month

1 and year of scheduled completion of units of
2 mausoleums, columbaria, or belowground crypts
3 under construction; creating s. 497.258, F.S.;
4 requiring permanent labels on containers used
5 for inurnment of human remains; amending s.
6 497.309, F.S.; applying recordkeeping
7 requirements to certificateholders; amending s.
8 497.337, F.S.; revising provisions relating to
9 delivery of the sale of personal property and
10 services; repealing s. 497.353(12), F.S.,
11 relating to prohibiting the use in need
12 determinations of spaces or lots from burial
13 rights reacquired by a cemetery, to conform;
14 amending s. 497.405, F.S.; requiring a
15 certificate of authority to guarantee funeral
16 merchandise or services in the future or offer
17 a preneed contract; amending s. 497.413, F.S.,
18 relating to the Preneed Funeral Contract
19 Consumer Protection Trust Fund; providing for
20 separate accounting of funds received pursuant
21 to s. 497.425, F.S., from bond sureties;
22 authorizing the Board of Funeral and Cemetery
23 Services to adopt rules for the distribution of
24 such separated funds; revising the total amount
25 of restitutions that may be made from the trust
26 fund in any fiscal year to certain applicants;
27 amending s. 497.417, F.S.; providing entities
28 with which deposits for a preneed trust fund
29 may be placed; providing a restriction on the
30 amount of trust assets of a preneed contract a
31 certificateholder may revest title to; amending

1 s. 497.425, F.S., relating to financial
2 responsibility alternatives to the placing in
3 trust of preneed contract funds; revising the
4 amount required to be secured by a surety bond;
5 authorizing the sale of preneed merchandise and
6 services under other forms of security;
7 revising requirements relating to the filing of
8 claims with such sureties; providing for
9 deposit in the Preneed Funeral Contract
10 Consumer Protection Trust Fund of sums received
11 by the board from sureties for payment to
12 claimants; providing for payment to such
13 claimants from the trust fund; amending s.
14 497.429, F.S.; revising requirements for
15 disbursement of trust funds discharging or
16 refunding a preneed contract; amending s.
17 470.002, F.S.; providing for future
18 redefinition of the terms "department" and
19 "board"; amending s. 470.003, F.S.; providing
20 for future placement of the Board of Funeral
21 Directors and Embalmers within the Department
22 of Banking and Finance; providing for future
23 transfer of all records, personnel, property,
24 and unexpended balances of appropriations,
25 allocations, or other funds for the
26 administration of ch. 470, F.S., relating to
27 funeral directing, embalming, and direct
28 disposition, from the Department of Business
29 and Professional Regulation to the Department
30 of Banking and Finance; preserving the validity
31 of judicial and administrative proceedings

1 pending at the time of such transfer and the
2 validity of licenses and registrations in
3 effect at the time of such transfer; requiring
4 the Department of Banking and Finance to submit
5 to the Governor, the President of the Senate,
6 and the Speaker of the House of Representatives
7 a report on the impact of merging the Board of
8 Funeral Directors and Embalmers with the Board
9 of Funeral and Cemetery Services, including
10 proposed legislation providing for the merger;
11 providing effective dates.

12

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

14

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

17 497.003 Cemeteries; exemption; investigation and
18 mediation.--

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

22 (4) Any religious-institution-owned cemetery that is
23 exempt under paragraph (1)(d), is located in a county with a
24 population of at least 1.3 million persons on July 1, 1996,
25 and was selling merchandise and services to the religious
26 institution's members prior to October 1, 1993, may establish
27 one additional exempt cemetery in such county after December
28 31, 2020, ~~without establishing need under s. 497.201.~~

29 Section 2. Section 497.005, Florida Statutes, is
30 amended to read:

31 497.005 Definitions.--As used in this chapter:

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

5 (2) "Bank of belowground crypts" means any
6 construction unit of belowground crypts which is acceptable to
7 the department and which a cemetery uses to initiate its
8 belowground crypt program or to add to existing belowground
9 crypt structures.

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

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

16 (5) "Burial merchandise," "funeral merchandise," or
17 "merchandise" means any personal property offered or sold by
18 any person for use in connection with the final disposition,
19 memorialization, interment, entombment, or inurnment of human
20 remains.

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

25 (7) "Burial service," "funeral service," or "service"
26 means any service offered or provided by any person in
27 connection with the final disposition, memorialization,
28 interment, entombment, or inurnment of human remains.

29 (8) "Care and maintenance" means the perpetual process
30 of keeping a cemetery and its lots, graves, grounds,
31 landscaping, roads, paths, parking lots, fences, mausoleums,

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

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

25 (10) "Cemetery" means a place dedicated to and used or
26 intended to be used for the permanent interment of human
27 remains. A cemetery may contain land or earth interment;
28 mausoleum, vault, or crypt interment; a columbarium, ossuary,
29 scattering garden, or other structure or place used or
30 intended to be used for the interment or disposition of
31

1 cremated human remains; or any combination of one or more of
2 such structures or places.

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

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

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

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

19 ~~(15) "Community" means the area within a 15-mile~~
20 ~~radius surrounding the location or proposed location of a~~
21 ~~cemetery.~~

22 (15)~~(16)~~ "Cremation" includes any mechanical or
23 thermal process whereby a dead human body is reduced to ashes.
24 Cremation also includes any other mechanical or thermal
25 process whereby human remains are pulverized, burned,
26 reinterred, or otherwise further reduced in size or quantity.

27 (16)~~(17)~~ "Department" means the Department of Banking
28 and Finance.

29 (17)~~(18)~~ "Direct disposer" means any person who is
30 registered in this state to practice direct disposition
31 pursuant to the provisions of chapter 470.

1 ~~(18)(19)~~ "Final disposition" means the final disposal
2 of a dead human body whether by interment, entombment, burial
3 at sea, cremation, or any other means and includes, but is not
4 limited to, any other disposition of remains for which a
5 segregated charge is imposed.

6 ~~(19)(20)~~ "Funeral director" means any person licensed
7 in this state to practice funeral directing pursuant to the
8 provisions of chapter 470.

9 ~~(20)(21)~~ "Grave space" means a space of ground in a
10 cemetery intended to be used for the interment in the ground
11 of human remains.

12 ~~(21)(22)~~ "Human remains" means the bodies of deceased
13 persons and includes bodies in any stage of decomposition and
14 cremated remains.

15 ~~(22)(23)~~ "Mausoleum" means a structure or building
16 which is substantially exposed above the ground and which is
17 intended to be used for the entombment of human remains.

18 ~~(23)(24)~~ "Mausoleum section" means any construction
19 unit of a mausoleum which is acceptable to the department and
20 which a cemetery uses to initiate its mausoleum program or to
21 add to its existing mausoleum structures.

22 ~~(24)(25)~~ "Monument" means any product used for
23 identifying a grave site and cemetery memorials of all types,
24 including monuments, markers, and vases.

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

29 ~~(26)(27)~~ "Net assets" means the amount by which the
30 total assets of a certificateholder, excluding goodwill,
31 franchises, customer lists, patents, trademarks, and

1 receivables from or advances to officers, directors,
2 employees, salespersons, and affiliated companies, exceed
3 total liabilities of the certificateholder. For purposes of
4 this definition, the term "total liabilities" does not include
5 the capital stock, paid-in capital, or retained earnings of
6 the certificateholder.

7 (27)~~(28)~~ "Net worth" means total assets minus total
8 liabilities pursuant to generally accepted accounting
9 principles.

10 (28) "Ossuary" means a receptacle used for the
11 communal placement of cremated human remains without benefit
12 of an urn or any other container. It may or may not include
13 memorialization.

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

18 (30) "Preneed contract" means any arrangement or
19 method, of which the provider of funeral merchandise or
20 services has actual knowledge, whereby any person ~~the funeral~~
21 ~~establishment, direct disposer, or certificateholder~~ agrees to
22 furnish funeral merchandise or service in the future.

23 (31) "Religious institution" means an organization
24 formed primarily for religious purposes which has qualified
25 for exemption from federal income tax as an exempt
26 organization under the provisions of s. 501(c)(3) of the
27 Internal Revenue Code of 1986, as amended.

28 (32) "Scattering garden" means a location set aside,
29 within a cemetery, which is used for the spreading or
30 broadcasting of cremated remains. It may or may not include
31 memorialization.

1 ~~(33)~~(32) "Servicing agent" means any person acting as
2 an independent contractor whose fiduciary responsibility is to
3 assist both the trustee and certificateholder hereunder in
4 administrating their responsibilities pursuant to this
5 chapter.

6 ~~(34)~~(33) "Solicitation" means any communication which
7 directly or implicitly requests an immediate oral response
8 from the recipient.

9 ~~(35)~~(34) "Statutory accounting" means generally
10 accepted accounting principles, except as modified by this
11 chapter.

12 Section 3. Effective January 1, 2002, section 497.101,
13 Florida Statutes, is amended to read:

14 497.101 Board of Funeral Directors, Embalmers,and
15 Cemetery Services; membership; appointment; terms.--

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

29 (2) Three ~~Two~~ members of the board must be funeral
30 directors licensed under chapter 470 ~~who are not associated~~
31 ~~with a cemetery company through ownership interests or through~~

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

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

1 ~~for terms of 4 years.~~All subsequent terms shall be for 4
2 years.

3 Section 4. Effective January 1, 2002, section 497.103,
4 Florida Statutes, is amended to read:

5 497.103 Rulemaking authority of board and
6 department.--

7 (1) The board has authority to adopt rules pursuant to
8 ss. 120.536(1) and 120.54 to implement provisions of chapters
9 470 and 497 ~~this chapter~~ conferring duties upon it. The
10 department may adopt rules pursuant to ss. 120.536(1) and
11 120.54 to administer provisions of this chapter conferring
12 duties upon it. The board or the department may also adopt
13 rules to allow for the electronic submission of any
14 applications, documents, or fees required by this chapter. The
15 board or the department may adopt rules to authorize the board
16 or the department to accept certification of compliance with
17 certain requirements of this chapter in lieu of requiring
18 submission of the documents.

19 (2) The board shall adopt rules which establish
20 requirements for inspection of cemeteries.

21 (3) The board shall adopt and enforce rules governing
22 the operation of cemeteries in this state and arrange for the
23 preparation, publication, and dissemination to the public of
24 these rules and other information and material relevant to the
25 operation of cemeteries.

26 (4) The department shall examine the financial affairs
27 of any cemetery company and any preneed sales
28 certificateholder.

29 Section 5. Effective January 1, 2002, subsection (2)
30 of section 497.105, Florida Statutes, is amended to read:

31

1 497.105 Department of Banking and Finance; powers and
2 duties.--The Department of Banking and Finance shall:

3 (2) Appoint the executive director of the Board of
4 Funeral Directors, Embalmers,and Cemetery Services, subject
5 to the approval of the board.

6 Section 6. Effective January 1, 2002, section 497.107,
7 Florida Statutes, is amended to read:

8 497.107 Headquarters.--The Board of Funeral Directors,
9 Embalmers,and Cemetery Services may be contacted through the
10 headquarters of the Department of Banking and Finance in the
11 City of Tallahassee.

12 Section 7. Effective January 1, 2002, section 497.109,
13 Florida Statutes, is amended to read:

14 497.109 Board of Funeral Directors, Embalmers,and
15 Cemetery Services; membership.--

16 (1) The Board of Funeral Directors, Embalmers,and
17 Cemetery Services shall comply with the provisions of this
18 section.

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

21 (3) The board shall hold such meetings during the year
22 as it may deem necessary, one of which shall be the annual
23 meeting. The chair or a quorum of the board may call other
24 meetings, and a quorum is necessary for the conduct of
25 business by the board. Unless otherwise provided by law, a
26 majority of the members of the board constitutes a quorum. A
27 vacancy shall occur upon the failure of a member of the board
28 to attend three consecutive meetings of the board or at least
29 half of the meetings of the board during any 12-month period.

30 (4) Unless otherwise provided by law, a board member
31 shall be compensated \$50 for each day the member attends an

1 official meeting of the board and for each day the member
2 participates in any other business involving the board. The
3 board shall adopt rules defining the phrase "other business
4 involving the board," but the phrase may not be defined to
5 include telephone conference calls. A board member is
6 entitled to reimbursement for expenses pursuant to s. 112.061,
7 but travel out of state requires the prior approval of the
8 Comptroller.

9 (5) The chair of the board may appoint committees
10 necessary to conduct the business of the board, including,
11 but not limited to, committees having responsibilities with
12 respect to rules, continuing education, and consumer
13 protection. Each committee must be chaired by a current or
14 former member of the board or a former member of the Board of
15 Funeral Directors and Embalmers or of the Board of Funeral and
16 Cemetery Services.

17 Section 8. Section 497.201, Florida Statutes, is
18 amended to read:

19 497.201 Cemetery companies; license; application;
20 fee.--

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

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

28 Any person desiring to establish a cemetery company shall
29 first:

30 (a) File an application, which states the exact
31 location of the proposed cemetery, which site shall contain

1 not less than 30 ~~15~~ contiguous acres; provide a financial
2 statement signed by all officers of the company which attest
3 to a net worth of at least \$50,000, which net worth must be
4 continuously maintained as a condition of licensure; and pay
5 an application fee of \$5,000;

6 (b) Create a legal entity; and

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

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

20 (3)(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~~, the department shall notify the applicant that a
24 license will be issued when:

25 (a) The establishment of a care and maintenance trust
26 fund containing not less than \$50,000 has been certified by a
27 trust company operating under chapter 660, a state or national
28 bank holding trust powers, or a savings and loan association
29 holding trust powers as provided in s. 497.237 ~~licensed in~~
30 ~~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 as defined by board rule, and the
12 ability to operate a cemetery.

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

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

19
20 NOTICE

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

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

1 ~~(4)(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~~(3)(4)~~. With respect to any application for
5 which the department has given notice under subsection~~(3)(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~~(3)(4)~~.

10 Section 9. Subsection (1) of section 497.237, Florida
11 Statutes, is amended to read:

12 497.237 Care and maintenance trust fund; remedy of
13 department for noncompliance.--

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

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

3 497.245 Care and maintenance trust fund, percentage of
4 payments for burial rights to be deposited.--

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

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

14 (b) For mausoleums or columbaria, 10 percent of
15 payments received.

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

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

29 Section 11. Section 497.253, Florida Statutes, is
30 amended to read:

31

1 497.253 Minimum acreage; sale or disposition of
2 cemetery lands.--

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

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

23 (3)(a) If the property to be sold, conveyed, or
24 disposed of under subsection (2) has been or is being used for
25 the permanent interment of human remains, the applicant for
26 approval of such sale, conveyance, or disposition shall cause
27 to be published, at least once a week for 4 consecutive weeks,
28 a notice meeting the standards of publication set forth in s.
29 125.66(4)(b)2. The notice shall describe the property in
30 question and the proposed noncemetery use and shall advise
31 substantially affected persons that they may file a written

1 request for a hearing pursuant to chapter 120, within 14 days
2 after the date of last publication of the notice, with the
3 department if they object to granting the applicant's request
4 to sell, convey, or dispose of the subject property for
5 noncemetery uses.

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

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

15 1. The historical significance of the subject
16 property, if any.

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

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

21 ~~4. The impact of the proposed change in use of the~~
22 ~~subject property upon the inventory of remaining cemetery~~
23 ~~facilities in the community and upon the other factors~~
24 ~~enumerated in s. 497.201(3).~~

25 4.5. The impact of the proposed change in use of the
26 subject property upon the reasonable expectations of the
27 families of the deceased regarding whether the cemetery
28 property was to remain as a cemetery in perpetuity.

29 5.6. Whether any living relatives of the deceased
30 actively oppose the relocation of their deceased's remains and
31 the conversion of the subject property to noncemetery uses.

1 6.7. The elapsed time since the last interment in the
2 subject property.

3 7.8. Any other factor enumerated in this chapter that
4 the department considers relevant to the public interest.

5 (d) Any deed, mortgage, or other conveyance by a
6 cemetery company or other owner pursuant to subsections (a)
7 and (c) above must contain a disclosure in the following or
8 substantially similar form:

9
10 NOTICE: The property described herein was formerly used and
11 dedicated as a cemetery. Conveyance of this property and its
12 use for noncemetery purposes was authorized by the Florida
13 Department of Banking and Finance by Order No., dated
14

15
16 (e) The department shall adopt such rules as are
17 necessary to carry out the provisions of this section.

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

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 12. Subsection (1) of section 497.257, Florida
31 Statutes, is amended to read:

1 497.257 Construction of mausoleums, columbaria, and
2 belowground crypts; preconstruction trust fund; compliance
3 requirement.--

4 (1) A cemetery company shall start construction of
5 that section of a mausoleum, columbarium, or bank of
6 belowground crypts in which sales, contracts for sales,
7 reservations for sales, or agreements for sales are being made
8 within 4 years after the date of the first such sale or 50
9 percent of the mausoleum, columbarium, or belowground crypts
10 have been sold and the purchase price has been received,
11 whichever occurs first. The construction shall be completed
12 within 5 years after the date of the first sale made.

13 However, extensions for completion, not to exceed 1 year, may
14 be granted by the department for good cause shown. If the
15 units have not been completely constructed at the time of need
16 or the time specified herein, all moneys paid shall be
17 refunded upon request, plus interest earned thereon for that
18 portion of the moneys deposited in the trust fund and an
19 amount equal to the interest that would have been earned on
20 that portion of the moneys which was ~~that were~~ not in trust.
21 The month and year in which construction is scheduled to be
22 completed must be disclosed to the purchaser.

23 Section 13. Section 497.258, Florida Statutes, is
24 created to read:

25 497.258 Permanent labels on containers used for final
26 disposition or inurnment of human remains.--

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

30 (2) Labels on permanent outer burial receptacles must
31 be placed in a conspicuous location on the receptacle.

1 (3) Labels on caskets must be placed in a conspicuous
2 location on the interior and exterior of the casket. Labels on
3 caskets must be attached prior to the funeral if a funeral is
4 held.

5 (4) Labels on urns must be placed on or attached to
6 any location on the urn. Labels must also be placed inside the
7 urn.

8 Section 14. Section 497.309, Florida Statutes, is
9 amended to read:

10 497.309 Records.--

11 (1)(a) A record shall be kept of every burial in the
12 cemetery of a cemetery company, showing the date of burial and
13 the name of the person buried, together with lot, plot, and
14 space and location as specified in paragraph (b)in which the
15 burial was made.

16 (b) The location of each opened grave must, prior to
17 the burial of a casket or permanent outer burial receptacle,
18 be determined and recorded to within a meter's accuracy or
19 better to the center of the burial site.

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

24 (b)(2) Notwithstanding the provisions of paragraph (a)
25 subsection (1), the board may, upon request, authorize a
26 cemetery company or certificateholder to maintain its
27 financial records at a location other than its principal place
28 of business and may, if necessary, require the company or
29 certificateholder to make its books, accounts, records, and
30 documents available at a reasonable and convenient location in
31 this state.

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

6 Section 15. Section 497.337, Florida Statutes, is
7 amended to read:

8 497.337 Delivery ~~Prohibition on sale~~ of personal
9 property or services.--

10 (1) This section applies to all cemetery companies and
11 certificate holders licensed pursuant to this chapter that
12 offer for sale or sell personal property or services that
13 ~~which~~ may be used in a cemetery in connection with the burial
14 of human remains or the commemoration of the memory of a
15 deceased human being and also to any person in direct written
16 contractual relationship with licensed cemetery companies.

17 (2)(a) Except as ~~otherwise~~ provided in s. 497.417 ~~this~~
18 ~~chapter, every~~ no cemetery company or certificate holder that
19 ~~shall~~ directly or indirectly enters ~~enter~~ into a contract for
20 the sale of personal property or services, excluding burial or
21 interment rights, shall deliver ~~which may be used in a~~
22 ~~cemetery in connection with disposing of human remains, or~~
23 ~~commemorating the memory of a deceased human being, if~~
24 ~~delivery of~~ the personal property or perform ~~performance of~~
25 the service ~~is~~ to be made more than 120 days after receipt of
26 final payment under the contract of sale, except as provided
27 in s. 497.417. This shall include, but not be limited to, the
28 ~~sale for future delivery~~ of burial vaults, grave liners, urns,
29 memorials, vases, foundations, memorial bases, and similar
30 merchandise and related services commonly sold or used in
31

1 cemeteries and interment fees but excludes ~~excluding~~ burial or
2 interment rights.

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

15 (c) In lieu of delivery as required by paragraphs (a)
16 and ~~paragraph~~ (b), for sales to cemetery companies and funeral
17 establishments, and only for such sales, the manufacturer of a
18 permanent outer burial receptacle which meets standards
19 adopted by the board may elect, at its discretion, to comply
20 with the delivery requirements of this section by annually
21 submitting, in writing, evidence of the manufacturer's
22 financial responsibility with the board for its review and
23 approval. The standards and procedures to establish evidence
24 of financial responsibility shall be those in s. 497.423 or s.
25 497.425, with the manufacturer of permanent outer burial
26 receptacles which meet national industry standards assuming
27 the same rights and responsibilities as those of a
28 certificateholder under s. 497.423 or s. 497.425.

29 (3) No nonprofit cemetery corporation which has been
30 incorporated and engaged in the cemetery business prior to and
31 continuously since 1915 and which has current care and

1 maintenance trust assets exceeding \$2 million shall be
2 required to designate a corporate trustee for its preneed
3 trust fund.

4 Section 16. Subsection (12) of section 497.353,
5 Florida Statutes, is repealed.

6 Section 17. Paragraph (a) of subsection (1) and
7 paragraph (b) of subsection (2) of section 497.405, Florida
8 Statutes, are amended to read:

9 497.405 Certificate of authority required.--

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

14 (2)

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

21 Section 18. Section 497.413, Florida Statutes, is
22 amended to read:

23 497.413 Preneed Funeral Contract Consumer Protection
24 Trust Fund.--

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

28 (2) Within 60 days after the end of each calendar
29 quarter, for each preneed contract written during the quarter
30 and not canceled within 30 days after the date of the
31 execution of the contract, each certificateholder, whether

1 funding preneed contracts by the sale of insurance or by
2 establishing a trust pursuant to s. 497.417 or s. 497.429,
3 shall remit the sum of \$2.50 for each preneed contract having
4 a purchase price of \$1,500 or less, and the sum of \$5 for each
5 preneed contract having a purchase price in excess of \$1,500;
6 and each certificateholder utilizing s. 497.423 or s. 497.425
7 shall remit the sum of \$5 for each preneed contract having a
8 purchase price of \$1,500 or less, and the sum of \$10 for each
9 preneed contract having a purchase price in excess of \$1,500.

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

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

18 (5) All funds received pursuant to s. 497.425 shall be
19 accounted for separately from other funds received pursuant to
20 this section. The board may adopt rules pursuant to ss.
21 120.536(1) and 120.54 for the distribution of funds received
22 pursuant to s. 497.425.

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

27 ~~(7)(6)~~ Upon the commencement of a delinquency
28 proceeding pursuant to this chapter against a
29 certificateholder, the board may use up to 50 percent of the
30 balance of the trust fund not already committed to a prior
31 delinquency proceeding or received pursuant to s. 497.425

1 solely for the purpose of providing restitution to preneed
2 contract purchasers and their estates due to a
3 certificateholder's failure to provide the benefits of a
4 preneed contract or failure to refund the appropriate
5 principal amount by reason of cancellation thereof. The
6 balance of the trust fund shall be determined as of the date
7 of the delinquency proceeding.

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

1 the insurer; or if the certificateholder is unable to perform
2 under the contract and the insurance proceeds are not
3 sufficient to cover the cost of the merchandise and services
4 contracted for. In no event shall the board approve payments
5 in excess of the insurance policy limits unless it determines
6 that at the time of sale of the preneed contract, the
7 insurance policy would have paid for the services and
8 merchandise contracted for. Such monetary relief shall be in
9 an amount as the board may determine and shall be payable in
10 such manner and upon such conditions and terms as the board
11 may prescribe. However, with respect to preneed contracts to
12 be funded pursuant to s. 497.417, s. 497.419, s. 497.423, or
13 s. 497.425, any restitution made pursuant to this subsection
14 shall not exceed, as to any single contract or arrangement,
15 the lesser of the gross amount paid under the contract or 4
16 percent of the uncommitted assets of the trust fund. With
17 respect to preneed contracts funded by life insurance
18 policies, any restitution shall not exceed, as to any single
19 contract or arrangement, the lesser of the face amount of the
20 policy, the actual cost of the arrangement contracted for, or
21 4 percent of the uncommitted assets of the trust fund. The
22 total of all restitutions made to all applicants under this
23 subsection in a single fiscal year shall not exceed the
24 greater of 30 percent of the uncommitted assets of the trust
25 fund as of the end of the most recent fiscal year or \$500,000
26 ~~\$120,000~~. The department may use moneys in the trust fund to
27 contract with independent vendors pursuant to chapter 287 to
28 administer the requirements of this subsection.

29 (9)~~(8)~~ All moneys deposited in the Preneed Funeral
30 Contract Consumer Protection Trust Fund together with all
31 accumulated income shall be used only for the purposes

1 expressed in this section and shall not be subject to any
2 liens, charges, judgments, garnishments, or other creditor's
3 claims against the certificateholder, any trustee utilized by
4 the certificateholder, any company providing a surety bond as
5 specified in this chapter, or any purchaser of a preneed
6 contract. No preneed contract purchaser shall have any vested
7 rights in the trust fund.

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

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

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

29 (13)~~(12)~~ Notwithstanding the fee structure in
30 subsection (2), the department shall review the status of the
31 trust fund annually, and if it determines that the uncommitted

1 trust fund balance exceeds \$1 million, the board may by rule
2 lower the required payments to the trust fund to an amount not
3 less than \$1 per preneed contract.

4 Section 19. Subsections (1) and (5) of section
5 497.417, Florida Statutes, are amended to read:

6 497.417 Disposition of proceeds received on
7 contracts.--

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

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

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

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

13 Section 20. Section 497.425, Florida Statutes, is
14 amended to read:

15 497.425 Alternatives to deposits under s. 497.417.--

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

31

1 (b) The amount of the bond shall be based on a report
2 documenting the outstanding liabilities of the
3 certificateholder and shall be prepared by the
4 certificateholder using generally accepted accounting
5 principles and signed by the certificateholder's chief
6 financial officer.

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

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

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

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

1 that has been filed with the board, the buyer may file a claim
2 with the board.

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

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

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

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

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

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

1 (6) This act does not relieve the certificateholder or
2 other entity from liability for nonperformance of contractual
3 terms unless the certificateholder cannot deliver the
4 merchandise or services because of a national emergency,
5 strike, or act of God.

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

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

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

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

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

31

1 Section 21. Subsections (2) and (7) of section
2 497.429, Florida Statutes, are amended to read:

3 497.429 Alternative preneed contracts.--

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

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

27 Section 22. Subsection (1) of section 470.002, Florida
28 Statutes, is amended to read:

29 470.002 Definitions.--As used in this chapter:

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

1 Section 23. Effective January 1, 2002, subsection (2)
2 of section 470.002, Florida Statutes, is amended to read:

3 470.002 Definitions.--As used in this chapter:

4 (2) "Board" means the Board of Funeral Directors,and
5 Embalmers, and Cemetery Services created in chapter 497.

6 Section 24. Effective January 1, 2002, subsections (1)
7 and (4) of section 470.003, Florida Statutes, are amended to
8 read:

9 470.003 Board of Funeral Directors and Embalmers;
10 membership; appointment; terms.--

11 (1) The Board of Funeral Directors and Embalmers is
12 created within the Department of Banking and Finance ~~Business~~
13 ~~and Professional Regulation~~ and shall consist of seven members
14 appointed by the Governor and confirmed by the Senate.

15 (4) Notwithstanding provisions of chapter 455 to the
16 contrary, chapter 455 applies to the department and the Board
17 of Funeral Directors and Embalmers as if the department were
18 the Department of Business and Professional Regulation ~~All~~
19 ~~provisions of chapter 455 and s. 20.165 relating to activities~~
20 ~~of regulatory boards shall apply.~~

21 Section 25. Effective January 1, 2002, all of the
22 records, personnel, property, and unexpended balances of
23 appropriations, allocations, or other funds for the
24 administration of chapter 470, Florida Statutes, shall be
25 transferred by a type two transfer as defined in section
26 20.06(2), Florida Statutes, from the Department of Business
27 and Professional Regulation to the Department of Banking and
28 Finance.

29 Section 26. Effective January 1, 2002, section
30 470.0396, Florida Statutes, is created to read:

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1 470.0396 Notwithstanding provisions to the contrary in
2 chapter 455, all applicable provisions of chapter 455 apply to
3 the Board of Funeral Directors, Embalmers, and Cemetery
4 Services and to the Department of Banking and Finance as if
5 the Department of Banking and Finance were the Department of
6 Business and Professional Regulation with respect to the
7 administration of chapter 470 to the extent that no conflict
8 exists with the general provisions creating the board under
9 chapter 497.

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

16 Section 28. Notwithstanding the transfer of regulatory
17 authority over chapter 470, Florida Statutes, provided by this
18 act, all licenses and registrations issued pursuant to chapter
19 470, Florida Statutes, which are valid on June 30, 2001, shall
20 remain in effect subject to the provisions of chapter 470,
21 Florida Statutes.

22 Section 29. Effective January 1, 2002, section
23 470.003, Florida Statutes, is repealed.

24 Section 30. Except as otherwise expressly provided in
25 this act, this act shall take effect July 1, 2001.

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LEGISLATIVE 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. Eliminates need determinations for new cemeteries. 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. 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. 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 future transfer of all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 470, F.S., relating to funeral directing, embalming, and direct disposition, from the Department of Business and Professional Regulation to the Department of Banking and Finance. Preserves the validity of judicial and administrative proceedings pending at the time of such transfer and the validity of licenses and registrations in effect at the time of such transfer. Provides for redefinition of the term "department" as used in ch. 470, F.S., and for placement of the Board of Funeral Directors and Embalmers within the Department of Banking and Finance at such future date, to conform. Requires the Department of Banking and Finance to submit to the Governor, the President of the Senate, and the Speaker of

1 | the House of Representatives a report on the impact of
2 | merging the Board of Funeral Directors and Embalmers with
3 | the Board of Funeral and Cemetery Services, including
4 | proposed legislation providing for the merger. (See bill
5 | for details.)
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