

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Banking offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

Section 1. Section 497.417, Florida Statutes, is amended to read:

497.417 Disposition of proceeds received on contracts.--

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

(a) s. 497.423 or

(b) for contracts written prior to July 1, 2001, section 497.425 or

(c) for any company authorized to do business in this state that has total bonded liability exceeding \$100,000,000 as of July 1, 2001, for contracts written prior to December 31, 2004, section 497.425.

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1           (6)Notwithstanding anything contained in this chapter  
2 to the contrary, the certificateholder, via its election to  
3 sell or offer for sale preneed contracts subject to this  
4 section, shall represent and warrant, and is hereby deemed to  
5 have done such, to all federal and Florida taxing authorities,  
6 as well as to all potential and actual preneed contract  
7 purchasers, that:

8           (a) section 497.423 is a viable option available to it  
9 at all relevant times or

10           (b) section 497.425 is a viable option available to it  
11 at all relevant times for contracts written prior to July 1,  
12 2001, for funds not held in trust as of July 1, 2001, or

13           (c) for any company authorized to do business in this  
14 state that has total bonded liability exceeding \$100,000,000  
15 as of July 1, 2001, section 497.425 is a viable option to it  
16 at all relevant times for contracts written prior to December  
17 31, 2004, for funds not held in trust as of July 1, 2001.

18           ~~(7)~~(6) This section, as amended by s. 6, chapter  
19 83-316, Laws of Florida, applies to preneed contracts entered  
20 into before October 1, 1993, and as amended by s. 98, chapter  
21 93-399, Laws of Florida, applies to preneed contracts entered  
22 into on or after October 1, 1993.

23           Section 2. Section 497.425, Florida Statutes, is  
24 amended to read:

25           497.425 Alternatives to deposits under s. 497.417.--

26           (1)(a) As an alternative to the requirements of s.  
27 497.417 that relate to trust funds for contracts written prior  
28 to July 1, 2001, or that relate to trust funds for contracts  
29 written prior to December 31, 2004, by any company authorized  
30 to do business in this state that has total bonded liability  
31 exceeding \$100,000,000 as of July 1, 2001, a certificateholder

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1 may purchase a surety bond for funds not held in trust as of  
2 July 1, 2001, in an amount not less than the aggregate value  
3 of outstanding liabilities on undelivered preneed contracts  
4 for merchandise and services. For the purpose of this  
5 section, the term "outstanding liabilities" means the gross  
6 replacement or wholesale value of the preneed merchandise and  
7 services. The bond shall be made payable to the State of  
8 Florida for the benefit of the board and all purchasers of  
9 preneed cemetery merchandise or services. The bond must be  
10 approved by the board.

11 (b) The amount of the bond shall be based on a report  
12 documenting the outstanding liabilities of the  
13 certificateholder and shall be prepared by the  
14 certificateholder using generally accepted accounting  
15 principles and signed by the certificateholder's chief  
16 financial officer.

17 (c) The report shall be compiled as of the end of the  
18 certificateholder's fiscal year and updated annually. The  
19 amount of the bond shall be increased or decreased as  
20 necessary to correlate with changes in the outstanding  
21 liabilities.

22 (d) If a certificateholder fails to maintain a bond  
23 pursuant to this section, the certificateholder shall cease  
24 the sale of preneed merchandise and services.

25 (2) Upon prior approval by the board, the  
26 certificateholder may file a letter of credit with the board  
27 in lieu of a surety bond. Such letter of credit must be in a  
28 form, and is subject to terms and conditions, prescribed by  
29 the board. It may be revoked only with the express approval of  
30 the board.

31 (3)(a) A buyer of preneed merchandise or services who

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1 does not receive such services or merchandise due to the  
2 economic failure, closing, or bankruptcy of the  
3 certificateholder must file a claim with the surety as a  
4 prerequisite to payment of the claim and, if the claim is not  
5 paid, may bring an action based on the bond and recover  
6 against the surety. In the case of a letter of credit or cash  
7 deposit that has been filed with the board, the buyer may file  
8 a claim with the board.

9 (b) In order to qualify for recovery on any claim  
10 under paragraph (a), the buyer must file the claim no later  
11 than 1 year after the date on which the certificateholder  
12 closed or bankruptcy was filed.

13 (c) The board may file a claim with the surety on  
14 behalf of any buyer under paragraph (a). The surety shall pay  
15 the amount of the claims to the board for distribution to  
16 claimants entitled to restitution and shall be relieved of  
17 liability to that extent.

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

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

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

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

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1 the prospective recipient.

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

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

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

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

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

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

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1           (12) Certificateholders may utilize the alternative to  
2 section 497.417 provided in this section only for contracts  
3 written prior to July 1, 2001, for funds not held in trust as  
4 of July 1, 2001, or for contracts written prior to December  
5 31, 2004 by any company authorized to do business in this  
6 state that has total bonded liability exceeding \$100,000,000  
7 as of July 1, 2001, for funds not held in trust as of July 1,  
8 2001.

9           Section 3. Except as otherwise provided herein, this  
10 act shall take effect July 1, 2001.

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13 ===== T I T L E   A M E N D M E N T =====

14 And the title is amended as follows:

15           On page 1, line 5,  
16 remove from the title of the bill: all of said lines,

17

18 and insert in lieu thereof:

19           and burial merchandise and services contracts;  
20           amending s. 497.417, F.S.; revising the  
21           authority of certificateholders offering  
22           preneed funeral and burial merchandise and  
23           services contracts to revest title to trust  
24           assets by posting a bond or using other forms  
25           of security or insurance; providing a time  
26           limitation on such authority; amending s.  
27           497.425, F.S.; to provide a time limitation on  
28           the authority to post certain bonds to secure  
29           preneed contract assets; providing an effective  
30           date.

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