

By Representatives Mayfield, Baxley, Green, Weissman and Bean

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

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

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 31 Statutes, is repealed.

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

3 497.429 Alternative preneed contracts.--

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

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

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11 and 497.425, Florida Statutes, are repealed.

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

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

1 (3) This section shall take effect July 1, 2002.
2 Section 5. Section 497.423, Florida Statutes, reads:
3 497.423 Evidence of financial responsibility as
4 alternative to trust deposit.--
5 (1) In lieu of depositing funds into a trust as
6 required by s. 497.417(1) or s. 497.429, a certificateholder
7 may elect annually, at its discretion, to comply with this
8 section by filing annually a written request with, and
9 receiving annual approval from, the board.
10 (2) No certificateholder shall utilize this section
11 unless it has filed annually a written request with, and
12 received approval by, the board.
13 (3) The certificateholder receiving approval from the
14 board to comply with this section shall maintain compliance
15 with this section at all times during the period this election
16 is in effect.
17 (4) The certificateholder's request to be governed by
18 this section shall be in the form prescribed by the board and
19 shall be accompanied by, in addition to other information that
20 the board may require by rule, the surety bond, the audited
21 financial statements, and proof of the other requirements
22 specified in this section, all as described in this section.
23 (5) For each 12-month period, or any part thereof, in
24 which this section is applicable, the electing
25 certificateholder shall maintain a bond, issued by a surety
26 company admitted to do business in this state, in an amount at
27 least equal to the sum of all amounts not currently in trust,
28 an amount equal to the total purchase price for all installed
29 preneed contracts where the total purchase price has not been
30 collected, excluding those amounts already in trust, all
31 amounts the certificateholder intends to remove from trust if

1 the board approves the certificateholder's request to comply
2 with this section, and an amount equal to 70 percent of the
3 total purchase price for each preneed contract the
4 certificateholder expects to sell in the year for which the
5 certificateholder is electing to comply with this section.
6 The surety bond shall be conditioned in such a manner to
7 secure the faithful performance of all conditions of any
8 preneed contracts for which the certificateholder was required
9 to have covered by the amount of the bond, including refunds
10 requested pursuant to ss. 497.419 and 497.421. The surety
11 bond shall also guarantee the financial responsibility of such
12 certificateholder against its default arising out of any of
13 its preneed contracts. The terms of the surety bond shall
14 cover liabilities arising from all moneys received by the
15 electing certificateholder from preneed contracts for which
16 the certificateholder was required to have covered by the
17 amount of the bond during the time the bond is in effect, and
18 the liability of the surety shall continue until the contracts
19 thereunder are fulfilled. The bond shall be in favor of the
20 state for the benefit of any person damaged as a result of
21 purchasing a preneed contract from the certificateholder. The
22 aggregate liability of the surety to all persons for all
23 breaches of the conditions of the bonds shall in no event
24 exceed the amount of the bond. The per preneed contract
25 liability shall not exceed the amount of the funds received by
26 the certificateholder per preneed contract during the
27 effective period in which the bond is issued. The bond shall
28 be filed and maintained with the board.

29 (6) The amount of the surety bond shall, upon order of
30 the board, be increased if, in the board's discretion, it
31 finds such increase to be warranted by the volume of preneed

1 contracts handled, or expected to be handled, by the
2 certificateholder. The surety bond shall be in a form to be
3 approved by the board, and the board shall have the right to
4 disapprove any bond which does not provide assurance as
5 provided in, and required by, this section.

6 (7) The bond shall be maintained unimpaired for as
7 long as the certificateholder continues in business in this
8 state and continues to utilize this section. Whenever the
9 certificateholder notifies the board that it no longer desires
10 to be governed by this section and furnishes to the board
11 satisfactory proof that it has discharged or otherwise
12 adequately provided for all of its obligations to its preneed
13 contract purchasers covered by the bond, such as by evidence
14 satisfactory to the board demonstrating that s. 497.417 or s.
15 497.429 has been complied with, the board shall release the
16 bond to the entitled parties, provided said parties
17 acknowledge receipt of same.

18 (8) No surety bond used to comply with this section
19 shall be canceled or subject to cancellation unless at least
20 60 days' advance notice thereof, in writing, is filed with the
21 board, by the surety company. The cancellation of the bond
22 shall not relieve the obligation of the surety company for
23 claims arising out of contracts issued or otherwise covered
24 before cancellation of the bond. In the event that notice of
25 termination of the bond is filed with the board, the
26 certificateholder insured thereunder shall, within 30 days of
27 the filing of the notice of termination with the board,
28 provide the board with a replacement bond or with evidence
29 which is satisfactory to the board demonstrating that s.
30 497.417 or s. 497.429 has been fully complied with. If within
31 30 days of filing of the notice of termination with the board

1 no replacement bond acceptable to the board or no evidence
2 satisfactory to the board demonstrating that s. 497.417 or s.
3 497.429 has been complied with is filed with the board, the
4 board shall suspend the license of the certificateholder until
5 the certificateholder files a replacement bond acceptable to
6 the board or demonstrates to the satisfaction of the board
7 that it has complied with s. 497.417 or s. 497.429.

8 (9) In lieu of the surety bond, the board may provide
9 by rule for other forms of security or insurance.

10 (10) Every certificateholder electing to be governed
11 by this section shall have its financial statements, submitted
12 to the department pursuant to s. 497.407, audited by an
13 independent public accountant certified pursuant to chapter
14 473. The financial statements shall contain, in accordance
15 with generally accepted accounting principles, for two or more
16 consecutive annual periods, the following:

17 (a) The certified public accountant's unqualified
18 opinion or, in the case of a qualified opinion, a qualified
19 opinion acceptable to the board, and:

- 20 1. A balance sheet;
- 21 2. A statement of income and expenses; and
- 22 3. A statement of changes in financial position.

23 (b) Notes to the financial statements considered
24 customary or necessary for full disclosure and adequate
25 understanding of the financial statements, financial
26 condition, and operation of the certificateholder. The notes
27 shall include a schedule, based upon statutory accounting
28 principles, indicating that the certificateholder which has
29 held a certificate pursuant to this chapter for less than 10
30 years has a current ratio of no less than 3 to 1 of current
31 assets to current liabilities and net assets of at least

1 \$600,000 or that the certificateholder which has held a
2 certificate pursuant to this chapter for 10 years or more has
3 a current ratio of no less than 2 to 1 of current assets to
4 current liabilities and net assets of at least \$400,000.

5 (c) An indication that the certificateholder has
6 sufficient funds available to perform the obligations under
7 all its preneed contracts.

8 (11) The board may require that the audited financial
9 statements be prepared on a calendar-year basis.

10 (12) The electing certificateholder shall provide the
11 board interim unaudited financial statements on a quarterly
12 basis demonstrating financial compliance with this section.

13 (13) In lieu of subsections (4)-(11), a
14 certificateholder with net assets of at least \$25,000 may
15 request to comply with this section by providing a written
16 guarantee from a qualified guaranteeing organization. If the
17 certificateholder so elects, the certificateholder's requests
18 to be governed by this section shall be in the form prescribed
19 by the board and shall be accompanied by, in addition to other
20 information the board may require by rule, a written guarantee
21 approved by the board as meeting the requirements of this
22 section from a qualified guaranteeing organization, acceptable
23 to the board, which:

24 (a) Is either a certificateholder or servicing agent.

25 (b) Is a corporation formed under the laws of this
26 state or of another state, district, territory, or possession
27 of the United States.

28 (c) Has been in operation for 10 or more years.

29 (d) Submits to the board its annual financial
30 statements audited by an independent public accountant
31 certified pursuant to chapter 473. The financial statements

1 shall contain, in accordance with generally accepted
2 accounting principles, for two or more consecutive annual
3 periods, the following:

4 1. The certified public accountant's unqualified
5 opinion or, in the case of a qualified opinion, a qualified
6 opinion acceptable to the board, and:

7 a. A balance sheet;
8 b. A statement of income and expenses; and
9 c. A statement of changes in financial position.

10 2. Notes to the financial statements considered
11 customary or necessary for full disclosure and adequate
12 understanding of the financial statements, financial
13 condition, and operation of the certificateholder. The notes
14 shall include a schedule, based upon statutory accounting
15 principles, indicating that the guaranteeing organization has
16 a current ratio of no less than 2 to 1 of current assets to
17 current liabilities and net assets of at least \$250,000.

18 (e) Has sufficient funds available to perform the
19 obligations under its guarantees.

20 (f) Has complied with subsections (5), (6), (7), and
21 (8), except that the bond shall be maintained by the
22 guaranteeing organization in the minimum aggregate principal
23 amount of \$1 million.

24 (g) Has principals, including directors, officers,
25 stockholders, employees, and agents that are of good moral
26 character and have reputations for fair dealing in business
27 matters, both as determined by the board.

28 Section 6. Section 497.425, Florida Statutes, reads:
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 (b) The amount of the bond shall be based on a report
11 documenting the outstanding liabilities of the
12 certificateholder and shall be prepared by the
13 certificateholder using generally accepted accounting
14 principles and signed by the certificateholder's chief
15 financial officer.

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

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

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

30 (3)(a) A buyer of preneed merchandise or services who
31 does not receive such services or merchandise due to the

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

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

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

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 and shall be relieved of all liability under the
24 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.

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1 Section 7. Effective July 1, 2002, paragraph (c) of
2 subsection (2) of section 497.337, subsection (2) of section
3 497.409, and section 497.427, Florida Statutes, are repealed.

4 Section 8. Effective July 1, 2002, subsections (2) and
5 (7) of section 497.413, Florida Statutes, are amended to read:

6 497.413 Preneed Funeral Contract Consumer Protection
7 Trust Fund.--

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

21 (7) In any situation in which a delinquency proceeding
22 has not commenced, the board may, in its discretion, use the
23 trust fund for the purpose of providing restitution to any
24 consumer, owner, or beneficiary of a preneed contract or
25 similar regulated arrangement under this chapter entered into
26 after June 30, 1977. If, after investigation, the board
27 determines that a certificateholder has breached a preneed
28 contract by failing to provide benefits or an appropriate
29 refund, or that a provider, who is a former certificateholder
30 or an establishment which has been regulated under this
31 chapter or chapter 470, has sold a preneed contract and has

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

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

11 Section 9. Effective July 1, 2002, subsection (1) of
12 section 497.429, Florida Statutes, as amended by this act, is
13 amended to read:

14 497.429 Alternative preneed contracts.--

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

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

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

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HOUSE SUMMARY

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