

By the Council for Competitive Commerce and Representatives Mayfield, Baxley, Green, Weissman, Bean, Kendrick, Allen, Detert, Greenstein, Pickens, Harrell, Spratt, Paul, Gottlieb, Romeo, Murman, Richardson, Argenziano and Kilmer

1 A bill to be entitled
2 An act relating to funeral and cemetery
3 services; amending s. 497.003, F.S.; revising
4 references relating to need determinations;
5 amending s. 497.005, F.S.; providing and
6 revising definitions; amending s. 497.201,
7 F.S.; increasing minimum acreage requirements
8 to establish a cemetery company; eliminating
9 need determinations for new cemeteries;
10 clarifying language with respect to authorized
11 trust companies, banks, and savings and loan
12 associations; revising experience requirements
13 for the general manager of a cemetery company;
14 amending s. 497.237, F.S.; authorizing care and
15 maintenance trust funds to be established with
16 a federal savings and loan association holding
17 trust powers in this state; amending s.
18 497.245, F.S.; revising language with respect
19 to burial rights; amending s. 497.253, F.S.;
20 revising minimum acreage requirements and
21 references, to conform; revising requirements
22 for sale or disposition of certain cemetery
23 lands, to conform; repealing s. 497.353(12),
24 F.S., relating to prohibiting the use in need
25 determinations of spaces or lots from burial
26 rights reacquired by a cemetery, to conform;
27 amending s. 497.405, F.S.; clarifying
28 authorized trust companies, banks, and savings
29 and loan associations; amending s. 497.417,
30 F.S.; clarifying authorized trust companies,
31 banks, and savings and loan associations;

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

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsection (4) of section 497.003, Florida
18 Statutes, is amended to read:

19 497.003 Cemeteries; exemption; investigation and
20 mediation.--

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

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

30 497.005 Definitions.--As used in this chapter:
31

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 and Cemetery
15 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 recremented, 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. Section 497.201, Florida Statutes, is
13 amended to read:

14 497.201 Cemetery companies; license; application;
15 fee.--

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

19 (2) The department may require any person desiring to
20 establish a cemetery company who applies for a license to
21 provide any information reasonably necessary to make a
22 determination of the applicant's eligibility for licensure.
23 Any person desiring to establish a cemetery company shall
24 first:

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

1 (b) Create a legal entity; and

2 (c) Demonstrate to the satisfaction of the board that
3 the applicant possesses the ability, experience, financial
4 stability, and integrity to operate a cemetery.

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

15 (3)(4) If the board finds that the applicant meets the
16 criteria established in subsection (2) ~~and the department~~
17 ~~determines that a need for the new cemetery in the community~~
18 ~~exists~~, the department shall notify the applicant that a
19 license will be issued when:

20 (a) The establishment of a care and maintenance trust
21 fund containing not less than \$50,000 has been certified by a
22 trust company operating pursuant to chapter 660, a state or
23 national bank holding trust powers, or a savings and loan
24 association holding trust powers as provided in s. 497.423
25 ~~licensed in this state.~~

26 (b) The applicant has filed with the department
27 development plans which are sufficient to ensure the
28 department that the cemetery will provide adequate service to
29 the community and which have been approved by the appropriate
30 local governmental agency regulating zoning in the area of the
31 proposed cemetery.

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

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

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

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

13
14 NOTICE

15
16 The property described herein shall not be sold, conveyed,
17 leased, mortgaged, or encumbered without the prior written
18 approval of the Department of Banking and Finance, as provided
19 in the Florida Funeral and Cemetery Services Act.

20
21 Such notice shall be clearly printed in boldfaced type of not
22 less than 10 points and may be included on the face of the
23 deed of conveyance to the licensee or may be contained in a
24 separate recorded instrument which contains a description of
25 the property.

26 (4)~~(5)~~ The department shall issue a license to operate
27 a cemetery company to any applicant who, within 12 months
28 after notice that a license may be issued, meets the criteria
29 of subsection(3)~~(4)~~. With respect to any application for
30 which the department has given notice under subsection(3)~~(4)~~
31 on or after January 1, 1984, the board may, for good cause

1 shown, grant up to two extensions of the 12-month period
2 within which the applicant must meet the criteria of
3 subsection(3)(4).

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

6 497.237 Care and maintenance trust fund; remedy of
7 department for noncompliance.--

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

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

28 497.245 Care and maintenance trust fund, percentage of
29 payments for burial rights to be deposited.--

30 (1) Each cemetery company shall set aside and deposit
31 in its care and maintenance trust fund the following

1 percentages or amounts for all sums received from sales of
2 burial rights:

3 (a) For burial rights ~~graves~~, 10 percent of all
4 payments received; however, for sales made after September 30,
5 1993, no deposit shall be less than \$25 per grave. For each
6 burial right, ~~grave, or space~~ which is provided without
7 charge, the deposit to the fund shall be \$25.

8 (b) For mausoleums or columbaria, 10 percent of
9 payments received.

10 (c) For general endowments for the care and
11 maintenance of the cemetery, the full amount of sums received
12 when received.

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

23 Section 6. Paragraph (c) of subsection (3) and
24 subsection (5) of section 497.253, Florida Statutes, are
25 amended to read:

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

28 (3)

29 (c) If the property in question has been used for the
30 permanent interment of human remains, the department shall
31 approve the application, in writing, if it finds that it would

1 not be contrary to the public interest. In determining whether
2 to approve the application, the department shall consider any
3 evidence presented concerning the following:

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

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

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

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

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

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

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

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

25 (d) Any deed, mortgage, or other conveyance by a
26 cemetery company or other owner pursuant to subsections (a)
27 and (c) above must contain a disclosure in the following or
28 substantially similar form:

29

30 NOTICE: The property described herein was formerly used and
31 dedicated as a cemetery. Conveyance of this property and its

1 use for noncemetery purposes was authorized by the Florida
2 Department of Banking and Finance by Order No., dated
3
4

5 (5) The provisions of subsections (1) and (2) relating
6 to a requirement for minimum acreage shall not apply to any
7 cemetery company licensed by the department on or before July
8 1, 2001 ~~1965~~, which owns a total of less than 30 ~~15~~ acres of
9 land; however, no cemetery company shall dispose of any land
10 without the prior written consent of the department.

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

13 Section 8. Paragraph (b) of subsection (2) of section
14 497.405, Florida Statutes, is amended to read:

15 497.405 Certificate of authority required.--

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

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

25 Section 9. Subsections (1), (5), and (6) of section
26 497.417, Florida Statutes, are amended to read:

27 497.417 Disposition of proceeds received on
28 contracts.--

29 (1) Any person who is paid, collects, or receives
30 funds under a preneed contract for funeral services or
31 merchandise or burial services or merchandise shall deposit ~~in~~

1 ~~this state~~ an amount at least equal to the sum of 70 percent
2 of the purchase price collected for all services sold and
3 facilities rented; 100 percent of the purchase price collected
4 for all cash advance items sold; and 30 percent of the
5 purchase price collected or 110 percent of the wholesale cost,
6 whichever is greater, for each item of merchandise sold. The
7 method of determining wholesale cost shall be established by
8 rule of the board and shall be based upon the
9 certificateholder's stated wholesale cost for the 12-month
10 period beginning July 1 during which the initial deposit to
11 the preneed trust fund for the preneed contract is made. Such
12 deposits shall be made within 30 days after the end of the
13 calendar month in which payment is received, under the terms
14 of a revocable trust instrument entered into with a trust
15 company operating pursuant to chapter 660, with a national or
16 state bank holding trust powers, or with a federal or state
17 savings and loan association holding ~~having~~ trust powers ~~or a~~
18 ~~trust company~~. The trustee shall take title to the property
19 conveyed to the trust for the purpose of investing,
20 protecting, and conserving it for the certificateholder;
21 collecting income; and distributing the principal and income
22 as prescribed in this chapter. The certificateholder is
23 prohibited from sharing in the discharge of these
24 responsibilities, except that the certificateholder may
25 request the trustee to invest in tax-free investments and may
26 appoint an adviser to the trustee. The trust agreement shall
27 be submitted to the board for approval and filing. The funds
28 shall be held in trust, both as to principal and income earned
29 thereon, and shall remain intact, except that the cost of the
30 operation of the trust or trust account authorized by this
31 section may be deducted from the income earned thereon. The

1 contract purchaser shall have no interest whatsoever in, or
2 power whatsoever over, funds deposited in trust pursuant to
3 this section. In no event may said funds be loaned to a
4 certificateholder, an affiliate of a certificateholder, or any
5 person directly or indirectly engaged in the burial, funeral
6 home, or cemetery business. Furthermore, the
7 certificateholder's interest in said trust shall not be
8 pledged as collateral for any loans, debts, or liabilities of
9 the certificateholder and shall not be transferred to any
10 person without the prior written approval from the department
11 and the trustee which shall not be unreasonably withheld.
12 Even though the certificateholder shall be deemed and treated
13 as the settlor and beneficiary of said trust for all purposes,
14 all of said trust funds are exempt from all claims of
15 creditors of the certificateholder except as to the claims of
16 the contract purchaser, her or his representative, the board,
17 or the department.

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

22 (a) Section 497.423;

23 (b) Contracts written prior to July 1, 2001, under s.
24 497.425; or

25 (c) Contracts written prior to December 31, 2004,
26 under s. 497.425 for any certificateholder authorized to do
27 business in this state that has total bonded liability
28 exceeding \$100 million as of July 1, 2001 ~~s. 497.423~~ ~~or s.~~
29 ~~497.425.~~

30 (6) Notwithstanding anything contained in this chapter
31 to the contrary, the certificateholder, via its election to

1 sell or offer for sale preneed contracts subject to this
2 section, shall represent and warrant, and is hereby deemed to
3 have done such, to all federal and Florida taxing authorities,
4 as well as to all potential and actual preneed contract
5 purchasers, that:

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

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

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

19 (7) If in the certificateholder's opinion it does not
20 have the ability to select the financial responsibility
21 alternative of s. 497.423 or s. 497.425, then it shall not
22 have the right to sell or solicit contracts pursuant to this
23 section.

24 (8)(6) This section, as amended by s. 6, chapter
25 83-316, Laws of Florida, applies to preneed contracts entered
26 into before October 1, 1993, and as amended by s. 98, chapter
27 93-399, Laws of Florida, applies to preneed contracts entered
28 into on or after October 1, 1993.

29 Section 10. Paragraph (a) of subsection (1) of section
30 497.425, Florida Statutes, is amended, and subsection (12) is
31 added to said section, to read:

1 497.425 Alternatives to deposits under s. 497.417.--
2 (1)(a) As an alternative to the requirements of s.
3 497.417 that relate to trust funds for contracts written prior
4 to July 1, 2001, or that relate to trust funds for contracts
5 written prior to December 31, 2004, by any certificateholder
6 authorized to do business in this state that has total bonded
7 liability exceeding \$100 million as of July 1, 2001, a
8 certificateholder may purchase a surety bond for funds not
9 held in trust as of July 1, 2001, in an amount not less than
10 the aggregate value of outstanding liabilities on undelivered
11 preneed contracts for merchandise and services. For the
12 purpose of this section, the term "outstanding liabilities"
13 means the gross replacement or wholesale value of the preneed
14 merchandise and services. The bond shall be made payable to
15 the State of Florida for the benefit of the board and all
16 purchasers of preneed cemetery merchandise or services. The
17 bond must be approved by the board.

18 (12) Certificateholders may utilize the bonding
19 alternatives to s. 497.417 provided in this section only for
20 contracts written prior to July 1, 2001, for funds not held in
21 trust as of July 1, 2001, or for contracts written prior to
22 December 31, 2004, by any certificateholder authorized to do
23 business in this state that has total bonded liability
24 exceeding \$100 million as of July 1, 2001, for funds not held
25 in trust as of July 1, 2001.

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

28 497.429 Alternative preneed contracts.--

29 (2) The contract must require that a trust be
30 established by the certificateholder on behalf of, and for the
31 use, benefit, and protection of, the purchaser and that the

1 trustee must be a trust company operating pursuant to chapter
2 660, a national or state bank holding trust powers, or a
3 federal or state savings and loan association holding ~~having~~
4 trust powers ~~or a trust company with the same powers of~~
5 ~~investment as provided elsewhere in this chapter.~~

6 Section 12. This act shall take effect July 1, 2001.

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