

By Senator Wasserman Schultz

32-661-02

See HB 421

1 A bill to be entitled
2 An act relating to funeral and cemetery
3 services; amending ss. 497.201, 497.253, F.S.;
4 reducing minimum acreage requirements for
5 cemeteries; amending s. 497.245, F.S.; revising
6 requirements for the purchase of burial rights
7 and for the deposit of payments from sales of
8 burial rights into care and maintenance trust
9 funds; amending s. 497.405, F.S.; restricting
10 the preneed sale of services on behalf of a
11 certificateholder to licensed funeral
12 directors; amending s. 497.417, F.S.; revising
13 the amounts required to be placed in trust for
14 services and merchandise under a preneed
15 contract; providing for earlier phasing out of
16 the option to secure preneed contracts by means
17 of payment bonds; amending ss. 497.419,
18 497.429, F.S.; providing for payment of
19 accumulated earnings or net income to the
20 purchaser rather than the certificateholder
21 upon cancellation of a preneed contract;
22 eliminating provisions authorizing liquidated
23 damages; creating s. 497.424, F.S.; providing a
24 limit on the interest that may be held in an
25 insurance company providing security on or
26 acting as a servicing agent for a preneed
27 contract; amending s. 497.425, F.S.; providing
28 for earlier phasing out of the option to secure
29 preneed contracts by means of payment bonds;
30 amending s. 497.441, F.S.; removing a reference
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1 to liquidated damages, to conform; providing an
2 effective date.

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

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6 Section 1. Subsections (2) and (3) of section 497.201,
7 Florida Statutes, are amended to read:

8 497.201 Cemetery companies; license; application;
9 fee.--

10 (2) The department may require any person desiring to
11 establish a cemetery company who applies for a license to
12 provide any information reasonably necessary to make a
13 determination of the applicant's eligibility for licensure.
14 Any person desiring to establish a cemetery company must ~~shall~~
15 first:

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

23 (b) Create a legal entity; and

24 (c) Demonstrate to the satisfaction of the board that
25 the applicant possesses the ability, experience, financial
26 stability, and integrity to operate a cemetery.

27 (3) If the board finds that the applicant meets the
28 criteria established in subsection (2), the department shall
29 notify the applicant that a license will be issued when the
30 following conditions have been met:

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1 (a) The establishment of a care and maintenance trust
2 fund containing not less than \$50,000 has been certified by a
3 trust company operating pursuant to chapter 660, a state or
4 national bank holding trust powers, or a savings and loan
5 association holding trust powers as provided in s. 497.423.

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

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

14 (d) The applicant has designated as general manager a
15 person who has integrity, 3 years of cemetery management
16 experience as defined by board rule, and the ability to
17 operate a cemetery.

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

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

24
25 NOTICE

26
27 The property described herein shall not be sold, conveyed,
28 leased, mortgaged, or encumbered without the prior written
29 approval of the Department of Banking and Finance, as provided
30 in the Florida Funeral and Cemetery Services Act.

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1 Such notice shall be clearly printed in boldfaced type of not
2 less than 10 points and may be included on the face of the
3 deed of conveyance to the licensee or may be contained in a
4 separate recorded instrument which contains a description of
5 the property.

6 Section 2. Paragraphs (a) and (b) of subsection (1) of
7 section 497.245, Florida Statutes, are amended to read:

8 497.245 Care and maintenance trust fund, percentage of
9 payments for burial rights to be deposited.--

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

14 (a) For graves ~~burial rights~~, 25 ~~10~~ percent of the
15 retail cost of the right to the grave, to be paid at the time
16 of purchase as a surcharge on the retail cost of the right to
17 the grave all payments received; however, for sales made after
18 September 30, 1993, no deposit shall be less than \$25 per
19 grave. For each burial right which is provided without
20 charge, the deposit to the fund shall be \$25.

21 (b) For mausoleums or columbaria, 25 ~~10~~ percent of the
22 retail cost of the right to the mausoleum or columbarium, to
23 be paid at the time of purchase as a surcharge on the retail
24 cost of the right to the mausoleum or columbarium ~~payments~~
25 ~~received~~.

26 Section 3. Subsections (1), (2), and (5) of section
27 497.253, Florida Statutes, are amended to read:

28 497.253 Minimum acreage; sale or disposition of
29 cemetery lands.--

30 (1) Each licensee shall set aside a minimum of 15 ~~30~~
31 contiguous acres of land for use by the licensee as a cemetery

1 and shall not sell, mortgage, lease, or encumber that property
2 without prior written approval of the department.

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

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

25 Section 4. Subsection (3) of section 497.405, Florida
26 Statutes, is amended to read:

27 497.405 Certificate of authority required.--

28 (3) No person may obtain a certificate of authority
29 under this chapter for the preneed sale of services unless
30 such person or its agent, in the case of a corporate entity,
31 holds a license as a funeral establishment or cemetery company

1 or registration as a direct disposal establishment under
2 chapter 470, and no person may sell services on a preneed
3 basis on behalf of such a certificateholder unless such person
4 is a funeral director licensed under chapter 470.

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

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

9 (1) Any person who is paid, collects, or receives
10 funds under a preneed contract for funeral services or
11 merchandise or burial services or merchandise shall deposit an
12 amount at least equal to the sum of 100 ~~70~~ percent of the
13 purchase price collected for all services sold and facilities
14 rented; 100 percent of the purchase price collected for all
15 cash advance items sold; and 85 ~~30~~ percent of the purchase
16 ~~price collected or 110~~ percent of the retail ~~wholesale~~ cost,
17 ~~whichever is greater,~~ for each item of merchandise sold. ~~The~~
18 ~~method of determining wholesale cost shall be established by~~
19 ~~rule of the board and shall be based upon the~~
20 ~~certificateholder's stated wholesale cost for the 12-month~~
21 ~~period beginning July 1 during which the initial deposit to~~
22 ~~the preneed trust fund for the preneed contract is made.~~ Such
23 deposits shall be made within 30 days after the end of the
24 calendar month in which payment is received, under the terms
25 of a revocable trust instrument entered into with a trust
26 company operating pursuant to chapter 660, with a national or
27 state bank holding trust powers, or with a federal or state
28 savings and loan association holding trust powers. The
29 trustee shall take title to the property conveyed to the trust
30 for the purpose of investing, protecting, and conserving it
31 for the certificateholder; collecting income; and distributing

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

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

1 (a) Section 497.423;

2 (b) Contracts written prior to July 1, 2001, under s.
3 497.425; or

4 (c) Contracts written prior to December 31, 2002 ~~2004~~,
5 under s. 497.425 for any certificateholder authorized to do
6 business in this state that has total bonded liability
7 exceeding \$100 million as of July 1, 2001.

8 (6) Notwithstanding anything contained in this chapter
9 to the contrary, the certificateholder, via its election to
10 sell or offer for sale preneed contracts subject to this
11 section, shall represent and warrant, and is hereby deemed to
12 have done such, to all federal and Florida taxing authorities,
13 as well as to all potential and actual preneed contract
14 purchasers, that:

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

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

21 (c) For any certificateholder authorized to do
22 business in this state that has total bonded liability
23 exceeding \$100 million as of July 1, 2001, s. 497.425 is a
24 viable option to it at any and all relevant times for
25 contracts written prior to December 31, 2002 ~~2004~~, for funds
26 not held in trust as of July 1, 2001.

27 Section 6. Subsections (2) and (6) of section 497.419,
28 Florida Statutes, are amended to read:

29 497.419 Cancellation of, or default on, preneed
30 contracts.--

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1 (2) A purchaser, by providing written notice to the
2 certificateholder, may cancel the services, facilities, and
3 cash advance items portions of a preneed contract at any time,
4 and shall be entitled to a full refund of the purchase price
5 allocable to such items. Any accumulated earnings allocable
6 to such preneed contract shall be paid to the purchaser
7 ~~certificateholder~~ upon such cancellation.

8 (6) If a purchaser is 90 days past due in making
9 payments on a preneed contract, the contract shall be
10 considered to be in default, and the certificateholder shall
11 be entitled to cancel the contract, ~~withdraw all funds in~~
12 ~~trust allocable to merchandise items, and retain such funds as~~
13 ~~liquidated damages. Upon making such withdrawal, The~~
14 certificateholder shall return all funds in trust ~~allocable to~~
15 ~~services, facilities, or cash advance items~~ to the purchaser,
16 provided that the certificateholder has provided the purchaser
17 with 30 days' written notice of its intention to exercise any
18 of its rights under this provision.

19 Section 7. Section 497.424, Florida Statutes, is
20 created to read:

21 497.424 Limit on interest in insurance company
22 providing security or acting as servicing agent.--No person
23 selling services or merchandise on a preneed basis may have
24 more than a 5-percent interest in any insurance company that
25 is either providing security for such services or merchandise
26 or acting as a servicing agent for the securing of such
27 services or merchandise.

28 Section 8. Paragraph (a) of subsection (1) and
29 subsection (12) of section 497.425, Florida Statutes, are
30 amended to read:

31 497.425 Alternatives to deposits under s. 497.417.--

1 (1)(a) As an alternative to the requirements of s.
2 497.417 that relate to trust funds for contracts written prior
3 to July 1, 2001, or that relate to trust funds for contracts
4 written prior to December 31, 2002 ~~2004~~, by any
5 certificateholder authorized to do business in this state that
6 has total bonded liability exceeding \$100 million as of July
7 1, 2001, a certificateholder may purchase a surety bond for
8 funds not held in trust as of July 1, 2001, in an amount not
9 less than the aggregate value of outstanding liabilities on
10 undelivered preneed contracts for merchandise and services.
11 For the purpose of this section, the term "outstanding
12 liabilities" means the gross replacement or wholesale value of
13 the preneed merchandise and services. The bond shall be made
14 payable to the State of Florida for the benefit of the board
15 and all purchasers of preneed cemetery merchandise or
16 services. The bond must be approved by the board.

17 (12) Certificateholders may utilize the bonding
18 alternatives to s. 497.417 provided in this section only for
19 contracts written prior to July 1, 2001, for funds not held in
20 trust as of July 1, 2001, or for contracts written prior to
21 December 31, 2002 ~~2004~~, by any certificateholder authorized to
22 do business in this state that has total bonded liability
23 exceeding \$100 million as of July 1, 2001, for funds not held
24 in trust as of July 1, 2001.

25 Section 9. Subsections (5), (6), (7), and (9) of
26 section 497.429, Florida Statutes, are amended to read:

27 497.429 Alternative preneed contracts.--

28 (5) The trust instrument shall prohibit the trustee
29 from distributing any appreciation on the trust to any person
30 and shall require that the trustee accumulate the entire net
31 income of the trust, or its pro rata share thereof. The

1 accumulated net income shall be distributed to the
2 certificateholder upon ~~cancellation or~~ performance of the
3 contract or to the purchaser upon cancellation of the
4 contract.

5 (6) The contract and trust instrument may provide that
6 the certificateholder may receive a current distribution of
7 not more than 10 percent of all funds paid or collected by the
8 trustee ~~and may further provide for liquidated damages during~~
9 ~~the first 3 years after the execution of the contract of not~~
10 ~~more than 10 percent of all the funds paid on the preneed~~
11 ~~contract, except that no liquidated damages shall apply for~~
12 ~~cancellation within 30 days of the date of execution of the~~
13 ~~contract.~~

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

29 (9) The contract may provide that the
30 certificateholder may cancel the contract, but only in the
31 event that the purchaser is more than 90 days in default of

1 the terms of the contract, and, ~~unless subject to the~~
2 ~~provisions of s. 497.419(6)~~, must provide that the purchaser,
3 or her or his representative, has the right, at any time prior
4 to the performance of the contract, to cancel the preneed
5 contract and revest title to all the funds paid on the preneed
6 contract, ~~except for applicable liquidated damages, and the~~
7 ~~certificateholder's rights in the net income of the trust.~~

8 Section 10. Section 497.441, Florida Statutes, is
9 amended to read:

10 497.441 Acceptability of funeral and burial
11 merchandise.--Each person who engages in preneed sales of
12 funeral or burial merchandise shall determine, and notify the
13 purchaser in writing prior to the completion of the contract,
14 that the merchandise being considered for purchase will be
15 accepted in the cemetery of the purchaser's choice. The
16 failure to comply with this chapter shall nullify the
17 agreement, and all moneys paid in shall be returned,
18 ~~notwithstanding the existence of any liquidated damages~~
19 ~~provision pursuant to s. 497.419(2).~~

20 Section 11. This act shall take effect July 1, 2002.
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LEGISLATIVE SUMMARY

Reduces minimum acreage requirements for cemeteries. Revises requirements for the purchase of burial rights and for the deposit of payments from sales of burial rights into care and maintenance trust funds. Restricts the preneed sale of services on behalf of a certificateholder to licensed funeral directors. Revises the amounts required to be placed in trust for services and merchandise under a preneed contract. Provides for payment of accumulated earnings or net income to the purchaser rather than the certificateholder upon cancellation of a preneed contract. Eliminates provisions authorizing liquidated damages. Provides a limit on the interest that may be held in an insurance company providing security on or acting as a servicing agent for a preneed contract. Provides for earlier phasing out of the option to secure preneed contracts by means of payment bonds. (See bill for details.)