

By Senator Pruitt

28-1091-03

See HB 907

1                                   A bill to be entitled  
2           An act relating to funeral and cemetery  
3           services; amending s. 497.005, F.S.; revising  
4           and providing definitions; creating s. 497.306,  
5           F.S.; providing dimension and spacing standards  
6           for grave spaces; requiring a map of reference  
7           markers and a land survey for areas proposed to  
8           be developed by a licensed cemetery company;  
9           exempting adult grave spaces previously  
10          established; creating s. 497.307, F.S.;  
11          providing requirements for identification of  
12          human remains in licensed cemeteries; amending  
13          s. 497.405, F.S.; prohibiting any person from  
14          advertising for sale or making any arrangement  
15          for a preneed contract without having a valid  
16          certificate of authority; expanding the  
17          exemption from the required certificate of  
18          authority for certain  
19          religious-institution-owned cemeteries to  
20          include the sale and opening or closing of  
21          cremation interment containers to members and  
22          family members of the religious institution;  
23          amending s. 497.419, F.S.; requiring preneed  
24          contracts to include in the refund notice the  
25          exclusion for amounts allocable to burial  
26          rights, merchandise, and services used by the  
27          purchaser; amending s. 497.436, F.S.;  
28          authorizing the Board of Funeral and Cemetery  
29          Services to review the trust funds, trust  
30          agreements, and outstanding preneed contracts  
31          of, and perform other procedures at its

1 discretion with respect to, a certificateholder  
2 filing notice to become inactive; providing an  
3 effective date.

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

6  
7 Section 1. Section 497.005, Florida Statutes, is  
8 amended to read:

9 497.005 Definitions.--As used in this chapter:

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

14 (2) "Bank of belowground crypts" means any  
15 construction unit of belowground crypts which is acceptable to  
16 the department and which a cemetery uses to initiate its  
17 belowground crypt program or to add to existing belowground  
18 crypt structures.

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

23 (4) "Board" means the Board of Funeral and Cemetery  
24 Services.

25 (5) "Burial merchandise," "funeral merchandise," or  
26 "merchandise" means any personal property offered or sold by  
27 any person for use in connection with the final disposition,  
28 memorialization, interment, entombment, or inurnment of human  
29 remains.

30 (6) "Burial right" means the right to use a grave  
31 space, mausoleum, columbarium, ossuary, or scattering garden

1 for the interment, entombment, inurnment, or other disposition  
2 of human remains.

3 (7) "Burial service," "funeral service," or "service"  
4 means any service offered or provided by any person in  
5 connection with the final disposition, memorialization,  
6 interment, entombment, or inurnment of human remains.

7 (8) "Care and maintenance" means the perpetual process  
8 of keeping a cemetery and its lots, graves, grounds,  
9 landscaping, roads, paths, parking lots, fences, mausoleums,  
10 columbaria, vaults, crypts, utilities, and other improvements,  
11 structures, and embellishments in a well-cared-for and  
12 dignified condition, so that the cemetery does not become a  
13 nuisance or place of reproach and desolation in the community.  
14 As specified in the rules of the board, "care and maintenance"  
15 may include, but is not limited to, any or all of the  
16 following activities: mowing the grass at reasonable  
17 intervals; raking and cleaning the grave spaces and adjacent  
18 areas; pruning of shrubs and trees; suppression of weeds and  
19 exotic flora; and maintenance, upkeep, and repair of drains,  
20 water lines, roads, buildings, and other improvements. "Care  
21 and maintenance" may include, but is not limited to,  
22 reasonable overhead expenses necessary for such purposes,  
23 including maintenance of machinery, tools, and equipment used  
24 for such purposes. "Care and maintenance" may also include  
25 repair or restoration of improvements necessary or desirable  
26 as a result of wear, deterioration, accident, damage, or  
27 destruction. "Care and maintenance" does not include expenses  
28 for the construction and development of new grave spaces or  
29 interment structures to be sold to the public.

30 (9) "Casket" means a rigid container which is designed  
31 for the encasement of human remains, ~~and~~ which is usually

1 constructed of wood or metal, ornamented, and lined with  
2 fabric, and which may or may not be combustible.

3 (10) "Cemetery" means a place dedicated to and used or  
4 intended to be used for the permanent interment of human  
5 remains. A cemetery may contain land or earth interment;  
6 mausoleum, vault, or crypt interment; a columbarium, ossuary,  
7 scattering garden, or other structure or place used or  
8 intended to be used for the interment or disposition of  
9 cremated human remains; or any combination of one or more of  
10 such structures or places.

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

13 (12) "Certificateholder" or "licensee" means the  
14 person or entity that is authorized under this chapter to sell  
15 preneed funeral or burial services, preneed funeral or burial  
16 merchandise, or burial rights. Each term shall include the  
17 other, as applicable, as the context requires. For the  
18 purposes of chapter 120, all certificateholders, licensees,  
19 and registrants shall be considered licensees.

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

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

27 (15) "Cremation" includes any mechanical or thermal  
28 process whereby a dead human body is reduced to ashes.  
29 Cremation also includes any other mechanical or thermal  
30 process whereby human remains are pulverized, burned,  
31 recremented, or otherwise further reduced in size or quantity.

1           (16) "Department" means the Department of Banking and  
2 Finance.

3           (17) "Direct disposer" means any person who is  
4 registered in this state to practice direct disposition  
5 pursuant to the provisions of chapter 470.

6           (18) "Final disposition" means the final disposal of a  
7 dead human body whether by interment, entombment, burial at  
8 sea, cremation, or any other means and includes, but is not  
9 limited to, any other disposition of remains for which a  
10 segregated charge is imposed.

11           (19) "Funeral director" means any person licensed in  
12 this state to practice funeral directing pursuant to the  
13 provisions of chapter 470.

14           (20) "Grave space" means a space of ground in a  
15 cemetery intended to be used for the interment in the ground  
16 of human remains.

17           (21) "Human remains" means the bodies of deceased  
18 persons and includes bodies in any stage of decomposition and  
19 cremated remains.

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

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

27           (24) "Monument" means any product used for identifying  
28 a grave site and cemetery memorials of all types, including  
29 monuments, markers, and vases.

30           (25) "Monument establishment" means a facility that  
31 operates independently of a cemetery or funeral establishment

1 and that offers to sell monuments or monument services to the  
2 public for placement in a cemetery.

3 (26) "Net assets" means the amount by which the total  
4 assets of a certificateholder, excluding goodwill, franchises,  
5 customer lists, patents, trademarks, and receivables from or  
6 advances to officers, directors, employees, salespersons, and  
7 affiliated companies, exceed total liabilities of the  
8 certificateholder. For purposes of this definition, the term  
9 "total liabilities" does not include the capital stock,  
10 paid-in capital, or retained earnings of the  
11 certificateholder.

12 (27) "Net worth" means total assets minus total  
13 liabilities pursuant to generally accepted accounting  
14 principles.

15 (28) "Niche" means a compartment or cubicle for the  
16 memorialization or permanent placement of an urn containing  
17 cremated remains.

18 (29)~~(28)~~ "Ossuary" means a receptacle used for the  
19 communal placement of cremated human remains without benefit  
20 of an urn or any other container in which remains will be  
21 commingled with other cremated human remains and are  
22 nonrecoverable. It may or may not include memorialization.

23 (30)~~(29)~~ "Outer burial container" means an enclosure  
24 into which a casket is placed and includes, but is not limited  
25 to, vaults made of concrete, steel, fiberglass, or copper;  
26 sectional concrete enclosures; crypts; and wooden enclosures.

27 (31)~~(30)~~ "Preneed contract" means any arrangement or  
28 method, of which the provider of funeral merchandise or  
29 services has actual knowledge, whereby any person agrees to  
30 furnish funeral merchandise or service in the future.

31

1        (32)~~(31)~~ "Religious institution" means an organization  
2 formed primarily for religious purposes which has qualified  
3 for exemption from federal income tax as an exempt  
4 organization under the provisions of s. 501(c)(3) of the  
5 Internal Revenue Code of 1986, as amended.

6        (33)~~(32)~~ "Scattering garden" means a location set  
7 aside, within a cemetery, which is used for the spreading or  
8 broadcasting of cremated remains that have been removed from  
9 their container and can be mixed with or placed on top of the  
10 soil or ground cover or buried in an underground receptacle on  
11 a commingled basis and that are nonrecoverable. It may or may  
12 not include memorialization.

13        (34)~~(33)~~ "Servicing agent" means any person acting as  
14 an independent contractor whose fiduciary responsibility is to  
15 assist both the trustee and certificateholder hereunder in  
16 administrating their responsibilities pursuant to this  
17 chapter.

18        (35)~~(34)~~ "Solicitation" means any communication that  
19 ~~which~~ directly or implicitly requests an immediate oral  
20 response from the recipient.

21        (36)~~(35)~~ "Statutory accounting" means generally  
22 accepted accounting principles, except as modified by this  
23 chapter.

24        (37) "Urn" means a receptacle designed to permanently  
25 encase cremated remains.

26        Section 2. Section 497.306, Florida Statutes, is  
27 created to read:

28        497.306 Standards for grave spaces.--

29        (1) A standard adult grave space shall measure at  
30 least 42 inches in width and 96 inches in length, except for  
31 preinstalled vaults in designated areas. For interments,

1 except cremated remains, the covering soil shall measure no  
2 less than 12 inches from the top of the outer burial  
3 container, unless such level of soil is not physically  
4 possible. In any interment, the family or next of kin may  
5 waive the 12-inch coverage minimum.

6 (2)(a) Effective October 1, 2003, and prior to the  
7 sale of grave spaces in any undeveloped areas of a licensed  
8 cemetery, the cemetery company shall prepare a map documenting  
9 the establishment of recoverable internal survey reference  
10 markers installed by the cemetery company no more than 100  
11 feet apart in the areas planned for development. The internal  
12 reference markers shall be established with reference to  
13 survey markers that are no more than 200 feet apart which have  
14 been set by a surveyor and mapper licensed under chapter 472  
15 and documented in a certified land survey. Both the map and  
16 the certified land survey shall be maintained by the cemetery  
17 company and shall be made available upon request to the  
18 department or members of the public.

19 (b) The map of the area proposed to be developed shall  
20 show:

21 1. The number of grave spaces available for sale.  
22 2. The location of each grave space.  
23 3. The number designation assigned to each grave  
24 space.

25 4. The dimensions of a standard adult grave space.

26 (3) Adult grave spaces established prior to October 1,  
27 2003, are not required to meet the standards established under  
28 this section for the dimensions or separation of grave spaces.

29 Section 3. Section 497.307, Florida Statutes, is  
30 created to read:

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1           497.307 Identification of human remains in licensed  
2 cemeteries.--On and after October 1, 2003, human remains  
3 interred, entombed, scattered, or otherwise placed for final  
4 rest at licensed cemeteries shall be identified as follows:

5           (1) Each licensed cemetery shall place on the outer  
6 burial container, cremation interment container, or other  
7 container, or on the inside of a crypt or niche, a tag or a  
8 permanent identifying marker containing the name of the  
9 decedent and the date of death, if available. The materials  
10 and location of the tag or marker shall be more specifically  
11 described by rule of the board.

12           (2) Each licensed cemetery may rely entirely on the  
13 identity stated on the burial transit permit or on the  
14 identification supplied by a person licensed under chapter 470  
15 to establish the identity of the dead human remains delivered  
16 by such person for burial and shall not be liable for any  
17 differences between the identity shown on the burial transit  
18 permit or other identification and the actual identity of the  
19 dead human remains delivered by such person and buried in the  
20 cemetery.

21           Section 4. Subsections (1) and (4) of section 497.405,  
22 Florida Statutes, are amended to read:

23           497.405 Certificate of authority required.--

24           (1)(a) No person, including any cemetery exempt under  
25 s. 497.003, may sell, advertise to sell, or make an  
26 arrangement for a preneed contract without first having a  
27 valid certificate of authority.

28           (b) No person, including any cemetery exempt under s.  
29 497.003, may sell, advertise to sell, or make an arrangement  
30 for services, merchandise, or burial rights on a preneed basis  
31 unless such person is authorized pursuant to this chapter to

1 provide such services, merchandise, or burial rights on an  
2 at-need basis.

3 (4) The provisions of this section do not apply to  
4 religious-institution-owned cemeteries exempt under s.  
5 497.003(1)(d), in counties with a population of at least  
6 960,000 persons on July 1, 1996, with respect to the sale to  
7 the religious institution's members and their families of  
8 interment rights, mausoleums, crypts, cremation niches and  
9 cremation interment containers, vaults, liners, urns,  
10 memorials, vases, foundations, memorial bases, floral  
11 arrangements, monuments, markers, engraving, and the opening  
12 and closing of interment rights, mausoleums, crypts, and  
13 cremation niches and cremation interment containers, if such  
14 cemeteries have engaged in the sale of preneed contracts prior  
15 to October 1, 1993, and maintain a positive net worth at the  
16 end of each fiscal year of the cemetery.

17 Section 5. Subsection (4) of section 497.419, Florida  
18 Statutes, is amended to read:

19 497.419 Cancellation of, or default on, preneed  
20 contracts.--

21 (4) Each certificateholder shall provide in  
22 conspicuous type in its contract that the contract purchaser  
23 may cancel the contract and receive a full refund within 30  
24 days after ~~of~~ the date of execution of the contract, except  
25 for those amounts allocable to any burial rights, merchandise,  
26 or services that have been used by the purchaser. The failure  
27 to make such provision shall not impair the contract  
28 purchaser's right to cancellation and refund as provided in  
29 this section.

30 Section 6. Subsection (4) of section 497.436, Florida  
31 Statutes, is amended to read:

1           497.436 Inactive and revoked certificateholders.--  
2           (4) Upon receipt of the notice, in order to protect  
3 the contract purchaser,the board may:  
4           (a) ~~shall~~ Review the certificateholder's:  
5           1.(a) Trust funds.  
6           2.(b) Trust agreements.  
7           3.(c) Evidence of all outstanding preneed contracts.  
8           (b) Perform other procedures the board deems  
9 necessary.

10           Section 7. This act shall take effect July 1, 2003.  
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