

By the Committee on Regulated Industries; and Senators Pruitt
and Jones

315-2316-03

1 A bill to be entitled
2 An act relating to funeral directing,
3 embalming, direct disposition, and cemetery
4 services; amending s. 20.121, F.S.;
5 establishing the Division of Funeral, Cemetery,
6 and Consumer Services and the Board of Funeral,
7 Cemetery, and Consumer Services within the
8 Department of Financial Services; amending s.
9 20.165, F.S.; abolishing the Board of Funeral
10 Directors and Embalmers within the Department
11 of Business and Professional Regulation;
12 amending ss. 497.005 and 470.002, F.S.;
13 providing definitions; amending s. 497.101,
14 F.S.; creating the Board of Funeral, Cemetery,
15 and Consumer Services; providing for the
16 appointment of board members; providing terms
17 of office; providing immunity from liability
18 for members acting in an official capacity;
19 specifying the headquarters for the board;
20 providing for compensation and reimbursement
21 for per diem expenses; creating s. 497.102,
22 F.S.; providing for the authority of the board;
23 creating s. 497.1021, F.S.; providing duties of
24 the Division of Funeral, Cemetery, and Consumer
25 Services; providing powers of enforcement;
26 creating s. 497.1022, F.S.; establishing the
27 office of the director of the division;
28 providing duties to the Chief Financial Officer
29 under chapters 470 and 497, F.S.; providing for
30 type two transfer of the Board of Funeral
31 Directors and Embalmers to the Department of

1 Financial Services; providing for validity of
2 judicial and administrative actions; providing
3 for validity of licenses; providing for
4 continuity of rules; abolishing the Board of
5 Funeral and Cemetery Services and the Board of
6 Funeral Directors and Embalmers; providing for
7 deposit of fees; providing for conforming of
8 statutes; amending s. 470.002, F.S.; revising
9 and providing definitions; amending s.
10 470.0085, F.S.; extending the embalmer
11 apprentice period; amending s. 470.018, F.S.;
12 increasing continuing education requirement;
13 amending s. 470.021, F.S.; providing additional
14 requirements to be a direct disposal
15 establishment; providing inspection
16 requirements and criteria; amending s. 470.024,
17 F.S.; revising requirements to be a funeral
18 establishment; amending s. 470.025, F.S.;
19 revising cremation requirements for cinerator
20 facilities relating to simultaneous cremations,
21 body parts, cremation containers, and the
22 cremation chamber; providing exemption from
23 liability for unintentional or incidental
24 commingling of remains under certain
25 conditions; amending s. 470.0255, F.S.;
26 providing for cremation of parts of human
27 bodies incidental to final disposition;
28 amending s. 470.028, F.S.; providing for
29 control and supervision of preneed agents;
30 amending s. 470.029, F.S.; extending the filing
31 time for reports of bodies embalmed or handled;

1 amending s. 470.0294, F.S.; expanding authority
2 of legally authorized persons with respect to
3 fetal remains; amending s. 470.031, F.S.;
4 prohibiting any guarantee on the future price
5 of any goods or services; providing penalties;
6 amending s. 470.0355, F.S.; revising
7 requirements for identification of human
8 remains prior to final disposition; providing
9 requirements for identification of human
10 remains in licensed and unlicensed cemeteries
11 and by direct disposal establishments;
12 reenacting s. 470.036, F.S., relating to
13 disciplinary proceedings, to incorporate the
14 amendment to s. 470.031, F.S., in a reference
15 thereto; amending s. 497.005, F.S.; revising
16 and providing definitions; amending s. 497.305,
17 F.S.; requiring that a cemetery company comply
18 with its adopted bylaws; creating s. 497.306,
19 F.S.; providing dimension and spacing standards
20 for grave spaces; requiring a map of reference
21 markers and a land survey for areas proposed to
22 be developed by a licensed cemetery company,
23 exempting adult grave spaces previously
24 established; creating s. 497.307, F.S.;
25 providing requirements for identification of
26 human remains in licensed cemeteries; amending
27 s. 497.325, F.S.; providing for procedures
28 established by other entities operating a
29 cemetery; amending s. 497.333, F.S.; providing
30 for disclosure of certain information to
31 customers; amending s. 497.361, F.S.; providing

1 for certification of monument establishments;
2 providing for approval of contracts; creating
3 s. 497.365, F.S.; providing for regulation of
4 monument establishments by the Department of
5 Financial Services; providing for inspections;
6 providing for rules; providing that the
7 department may not unreasonably restrict
8 commerce; creating s. 497.371, F.S.; providing
9 for specifications for business locations;
10 creating s. 497.379, F.S.; providing for
11 licensure of monument establishments to sell
12 preneed contracts; creating s. 497.385, F.S.;
13 providing for registration of monument sales
14 representatives; creating s. 497.391, F.S.;
15 providing for approval of preneed contracts by
16 the board; creating s. 497.395, F.S.; providing
17 financial requirements for monument
18 establishments; providing requirements for
19 minimum net worth; providing for submission of
20 financial statements; providing for minimum
21 sales volume with respect to preneed contracts;
22 providing for guarantee agreements; providing
23 for additional oversight in lieu of financial
24 requirements; amending s. 497.405, F.S.;
25 prohibiting any person from advertising for
26 sale or making any arrangement for a preneed
27 contract without having a valid certificate of
28 authority; expanding the exemption from the
29 required certificate of authority for certain
30 religious-institution-owned cemeteries to
31 include the sale and opening or closing of

1 cremation interment containers to members and
2 family members of the religious institution;
3 amending s. 497.419, F.S.; requiring preneed
4 contracts to include in the refund notice the
5 exclusion for amounts allocable to burial
6 rights, merchandise, and services used by the
7 purchaser; providing condition for breach of
8 contract by certificateholder and for rights of
9 purchaser; amending s. 497.436, F.S.;
10 authorizing the Board of Funeral and Cemetery
11 Services to review the trust funds, trust
12 agreements, and outstanding preneed contracts
13 of, and perform other procedures at its
14 discretion with respect to, a certificateholder
15 filing notice to become inactive; providing an
16 effective date.

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

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20 Section 1. Effective January 1, 2004, paragraph (n) is
21 added to subsection (2) of section 20.121, Florida Statutes,
22 and subsection (4) is added to that section, to read:

23 20.121 Department of Financial Services.--There is
24 created a Department of Financial Services.

25 (2) DIVISIONS.--The Department of Financial Services
26 shall consist of the following divisions:

27 (n) Division of Funeral, Cemetery, and Consumer
28 Services.

29 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER
30 SERVICES.--There is created within the Department of Financial

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1 Services, the Board of Funeral, Cemetery, and Consumer
2 Services.

3 Section 2. Effective January 1, 2004, paragraph (a) of
4 subsection (4) of section 20.165, Florida Statutes, is amended
5 to read:

6 20.165 Department of Business and Professional
7 Regulation.--There is created a Department of Business and
8 Professional Regulation.

9 (4)(a) The following boards are established within the
10 Division of Professions:

11 1. Board of Architecture and Interior Design, created
12 under part I of chapter 481.

13 2. Florida Board of Auctioneers, created under part VI
14 of chapter 468.

15 3. Barbers' Board, created under chapter 476.

16 4. Florida Building Code Administrators and Inspectors
17 Board, created under part XII of chapter 468.

18 5. Construction Industry Licensing Board, created
19 under part I of chapter 489.

20 6. Board of Cosmetology, created under chapter 477.

21 7. Electrical Contractors' Licensing Board, created
22 under part II of chapter 489.

23 8. Board of Employee Leasing Companies, created under
24 part XI of chapter 468.

25 ~~9. Board of Funeral Directors and Embalmers, created~~
26 ~~under chapter 470.~~

27 9.10. Board of Landscape Architecture, created under
28 part II of chapter 481.

29 10.11. Board of Pilot Commissioners, created under
30 chapter 310.

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1 ~~11.12.~~ Board of Professional Engineers, created under
2 chapter 471.

3 ~~12.13.~~ Board of Professional Geologists, created under
4 chapter 492.

5 ~~13.14.~~ Board of Professional Surveyors and Mappers,
6 created under chapter 472.

7 ~~14.15.~~ Board of Veterinary Medicine, created under
8 chapter 474.

9 Section 3. Effective January 1, 2004, subsections (4)
10 and (16) of section 497.005, Florida Statutes, are amended,
11 and subsections (36) and (37) are added to that section, to
12 read:

13 497.005 Definitions.--As used in this chapter:

14 (4) "Board" means the Board of Funeral, Cemetery, and
15 Consumer Services ~~Funeral and Cemetery Services~~.

16 (16) "Department" means the Department of Financial
17 Services ~~Banking and Finance~~.

18 (36) "Director" means the director of the Division of
19 Funeral, Cemetery, and Consumer Services.

20 (37) "Division" means the Division of Funeral,
21 Cemetery, and Consumer Services within the Department of
22 Financial Services.

23 Section 4. Effective January 1, 2004, subsections (1)
24 and (2) of section 470.002, Florida Statutes, are amended to
25 read:

26 470.002 Definitions.--As used in this chapter:

27 (1) "Department" means the Department of Financial
28 Services ~~Business and Professional Regulation~~.

29 (2) "Board" means the Board of Funeral, Cemetery, and
30 Consumer Services ~~Funeral Directors and Embalmers~~.

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1 Section 5. Effective January 1, 2004, section 470.003,
2 Florida Statutes, is repealed.

3 Section 6. Effective January 1, 2004, section 497.101,
4 Florida Statutes, is amended to read:

5 (Substantial rewording of section. See
6 s. 497.101, F.S., for present text.)

7 497.101 Board of Funeral, Cemetery, and Consumer
8 Services; membership; appointment; terms.--

9 (1) The Board of Funeral, Cemetery, and Consumer
10 Services is created within the Department of Financial
11 Services and shall consist of 10 members, nine of whom shall
12 be appointed by the Governor from nominations made by the
13 Chief Financial Officer and confirmed by the Senate. The
14 Chief Financial Officer shall nominate three persons for each
15 of the nine vacancies on the board, and the Governor shall
16 fill each vacancy on the board by appointing one of the three
17 persons nominated by the Chief Financial Officer to fill that
18 vacancy. If the Governor objects to each of the three
19 nominations for a vacancy, she or he shall inform the Chief
20 Financial Officer in writing. Upon notification of an
21 objection by the Governor, the Chief Financial Officer shall
22 submit three additional nominations for that vacancy until the
23 vacancy is filled. One member must be the State Health
24 Officer or his or her designee.

25 (2) Two members of the board must be funeral directors
26 licensed under chapter 470 who are associated with a funeral
27 establishment. One member of the board must be a funeral
28 director licensed under chapter 470 who is associated with a
29 funeral establishment licensed pursuant to chapter 470 which
30 has a valid certificate of authority issued pursuant to this
31 chapter and who owns or operates a cinerator facility approved

1 pursuant to chapters 403 and 470. Two members of the board
2 must be persons whose primary occupation is associated with a
3 cemetery company licensed pursuant to this chapter. Three
4 members of the board must be consumers who are residents of
5 the state who have never been licensed as funeral directors or
6 embalmers and not connected with a cemetery or cemetery
7 company licensed pursuant to this chapter, the death care
8 industry, the practice of embalming, funeral directing, or
9 direct disposition. One of the consumer members must be at
10 least 60 years of age or older and one must be licensed as a
11 certified public accountant pursuant to this chapter 473. One
12 member of the board shall be a monument dealer with a
13 certificate of authority issued pursuant to this chapter. One
14 member shall be the State Health Officer or his or her
15 designee.

16 (3) Board members shall be appointed for terms of 4
17 years and the State Health Officer shall serve as long as that
18 person holds that office. The designee of the State Health
19 Officer shall serve at the pleasure of the Governor. When the
20 terms of the initial board members expire, the Chief Financial
21 Officer shall stagger the terms of the successor members as
22 follows: one funeral director, one cemetery representative,
23 the monument dealer, and one consumer member shall be
24 appointed for terms of 2 years, and the remaining members
25 shall be appointed for terms of 4 years. All subsequent terms
26 shall be for 4 years.

27 (4) The Governor, with the concurrence of the Chief
28 Financial Officer, may suspend or remove any board member for
29 malfeasance or misfeasance, neglect of duty, incompetence,
30 substantial inability to perform official duties, commission
31 of a crime, or for other substantial cause as determined by

1 the Governor and the Chief Financial Officer to evidence a
2 lack of fitness to sit on the board. A board member shall be
3 deemed to have resigned his or her board membership, and that
4 position shall be deemed vacant, upon the failure of the
5 member to attend three consecutive meetings of the board or at
6 least half of the meetings of the board during any 12-month
7 period, unless the Chief Financial Officer determines that
8 there was good and adequate justification for the absences and
9 that such absences are not likely to continue.

10 (5) A current or former board member and a person
11 -serving on the board's probable cause panels are exempt from
12 any civil liability for any act or omission when acting in
13 good faith in his or her official capacity, and the Department
14 of Legal Affairs and the Division of Risk Management shall
15 defend such board member in any civil action against such
16 person arising from any such act or omission.

17 (6) The headquarters and records of the board shall be
18 in the Division of Funeral, Cemetery, and Consumer Services of
19 the Department of Financial Services in Tallahassee. The
20 Chief Financial Officer shall annually appoint from among the
21 board members a chairperson and vice chairperson of the board.
22 The board shall meet at least every 6 months, and more often
23 as it deems necessary. Special meetings of the board shall be
24 convened upon the direction of the Chief Financial Officer. A
25 quorum is necessary for the conduct of business by the board,
26 unless otherwise provided by law, six board members other than
27 the board's executive director shall constitute a quorum for
28 the conduct of the board's business.

29 (7) A board member shall be compensated \$50 for each
30 day the member attends an official meeting and each day the
31 member participates at the request of the board's executive

1 director in any other business involving the board. To the
2 extent authorized by the s. 112.061, a board member is
3 entitled to reimbursement for expenses incurred in connection
4 with official duties. Out-of-state travel by board members on
5 official business shall in each specific instance require the
6 advance approval of the board's executive director in order
7 for the travel to be eligible for reimbursement of expenses.

8 Section 7. Effective January 1, 2004, section 497.102,
9 Florida Statutes, is created to read:

10 497.102 Authority of the board.--

11 (1) The board shall enforce and administer the
12 provisions of chapter 470 and this chapter. Notwithstanding s.
13 455.017, the board shall administer those powers, duties, and
14 functions in chapter 455 which are necessary to enforce the
15 provisions of chapter 470.

16 (2) For purposes of enforcement of chapter 455
17 regarding chapter 470, on and after January 1, 2004,
18 references in chapter 455 to the Department of Business and
19 Professional Regulation or the secretary of that department,
20 shall be read as referring to the Department of Financial
21 Services or the Chief Financial Officer, as the context may
22 indicate to be appropriate.

23 (3) The Department of Financial Services shall not
24 adopt any rule or publish any notice of proposed rule
25 development as provided in ss. 120.536-120.551 which affects
26 the provisions of chapter 455, chapter 470 or this chapter
27 without first presenting the rule or rules proposed for
28 development to the board for its review and recommendation, if
29 any. This subsection shall not apply to emergency rulemaking
30 under s. 120.54(4).

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1 Section 8. Effective January 1, 2004, section
2 497.1021, Florida Statutes, is created to read:

3 497.1021 Division of Funeral, Cemetery, and Consumer
4 Services.--

5 (1) There is created within the Department of
6 Financial Services the Division of Funeral, Cemetery, and
7 Consumer Services. The division shall enforce the provisions
8 of chapter 470 and this chapter and perform such other acts as
9 may be necessary to carry out the provisions thereof.

10 (2) The division shall provide all services concerning
11 chapter 470 and this chapter, including, but not limited to,
12 recordkeeping services, examination services, legal services,
13 and investigative services. Those services in chapter 455
14 necessary to perform the duties of chapter 470 shall be
15 provided by the division.

16 (3) Funds received as a result of settlements with
17 regulated entities and persons may be used by the division for
18 contracting for the training of auditors and the conduct of
19 examinations in order to enhance oversight and enforcement of
20 laws and regulations governing the activities of licensees.

21 Section 9. Effective January 1, 2004, section
22 497.1022, Florida Statutes, is created to read:

23 497.1022 Director of the Division of Funeral,
24 Cemetery, and Consumer Services.--

25 (1) The office of the Director of the Division of
26 Funeral, Cemetery, and Consumer Services is created. The
27 director is the agency head of the division. The director
28 shall be appointed by the Chief Financial Officer and shall
29 serve at the pleasure of the Chief Financial Officer.

30 (2) The director shall be responsible for the
31 preparation of the board agenda, presentation of division

1 staff recommendations, and reports of the activities of the
2 division to the board and shall serve as the executive
3 director of the board and perform such other duties as may be
4 assigned by the Chief Financial Officer.

5 Section 10. Effective January 1, 2004, all duties
6 performed by the Secretary of the Department of Business and
7 Professional Regulation under chapter 470, Florida Statutes,
8 and all duties performed by the Comptroller under chapter 497,
9 Florida Statutes, shall be performed by the Chief Financial
10 Officer under the provisions of this act. The duties may be
11 delegated by the Chief Financial Officer to the Director of
12 the Division of the Funeral, Cemetery, and Consumer Services.

13 Section 11. (1) All of the statutory powers, duties
14 and functions, records, personnel, property, and unexpended
15 balances of appropriations, allocations, or other funds for
16 the administration of chapter 470, Florida Statutes, related
17 to the Board of Funeral Directors and Embalmers shall be
18 transferred by a type two transfer, as defined in section
19 20.06(2), Florida Statutes, from the Department of Business
20 and Professional Regulation to the Board of Funeral, Cemetery,
21 and Consumer Services within the Department of Financial
22 Services. The transfer shall include not less than the 25
23 full-time equivalent staff positions, and all property issued
24 and assigned directly to such positions, as follows: one
25 management position of pay grade 930 or higher; one
26 administrative assistant II position or equivalent; eight
27 full-time equivalent staff positions regarding license
28 application, license examinations, and license renewal; seven
29 regulatory field inspector positions; five regulatory field
30 investigator positions; and three telephone call center staff
31 positions.

1 (2) The transfer of regulatory authority over chapter
2 470, Florida Statutes, provided by this act shall not affect
3 the validity of any judicial or administrative action
4 involving the Board of Funeral Directors and Embalmers or the
5 Department of Business and Professional Regulation pending on
6 December 31, 2003, and the Department of Financial Services or
7 the Board of Funeral, Cemetery, and Consumer Services shall be
8 substituted as a party in interest in any such action.

9 (3) Notwithstanding the transfer of regulatory
10 authority over chapter 470, Florida Statutes, provided by this
11 act, all licenses and registrations issued pursuant to chapter
12 470, Florida Statutes, that are valid on December 31, 2003,
13 shall remain in effect subject to the provisions of chapters
14 470 and 455, Florida Statutes.

15 (4) The rules of the Board of Funeral Directors and
16 Embalmers and the Department of Business and Professional
17 Regulation which were in effect on midnight, December 31,
18 2003, shall become the rules of the Department of Financial
19 Services as is appropriate to the corresponding regulatory
20 function and shall remain in effect until specifically amended
21 or repealed in the manner provided by law.

22 (5) All of the statutory powers, duties and functions,
23 records, personnel, property, and unexpended balances of
24 appropriations, allocations, or other funds for the
25 administration of chapter 497, Florida Statutes, related to
26 the Board of Funeral and Cemetery Services shall be
27 transferred by a type two transfer, as defined in section
28 20.06(2), Florida Statutes, from the Department of Banking and
29 Finance to the Board of Funeral, Cemetery, and Consumer
30 Services within the Department of Financial Services.

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1 (6) The transfer of regulatory authority over chapter
2 497, Florida Statutes, provided by this act shall not affect
3 the validity of any judicial or administrative action
4 involving the Board of Funeral and Cemetery Services or the
5 Department of Banking and Finance pending on December 31,
6 2003, and the Department of Financial Services or the Board of
7 Funeral, Cemetery, and Consumer Services shall be substituted
8 as a party in interest in any such action.

9 (7) Notwithstanding the transfer of regulatory
10 authority over chapter 497, Florida Statutes, provided by this
11 act, all licenses and registrations issued pursuant to chapter
12 497, Florida Statutes, which are valid on December 31, 2003,
13 shall remain in effect subject to the provisions of chapter
14 497, Florida Statutes.

15 (8) The rules of the Board of Funeral and Cemetery
16 Services or the Department of Banking and Finance which were
17 in effect on midnight, December 31, 2003, shall become the
18 rules of the Department of Financial Services and shall remain
19 in effect until specifically amended or repealed in the manner
20 provided by law.

21 (9) This section shall take effect on January 1, 2004.

22 Section 12. Effective midnight December 31, 2003, the
23 Board of Funeral and Cemetery Services and the Board of
24 Funeral Directors and Embalmers are abolished.

25 Section 13. Effective January 1, 2004, all fees
26 collected pursuant to the provisions of chapters 470 and 497,
27 Florida Statutes, shall be deposited in the Regulatory Trust
28 Fund in the Department of Financial Services.

29 Section 14. The Legislature recognizes that there is a
30 need to conform the Florida Statutes to the policy decisions
31 reflected in the provisions of this act. The Division of

1 Statutory Revision is directed to provide the relevant
2 substantive committees of the Senate and the House of
3 Representatives with assistance, upon request, to enable such
4 committees to prepare draft legislation to conform the Florida
5 Statutes to the provisions of this act.

6 Section 15. Section 470.002, Florida Statutes, is
7 amended to read:

8 470.002 Definitions.--As used in this chapter:

9 (1)(15) "Alternative container" means a nonmetal
10 receptacle or enclosure which is less expensive than a casket
11 and of sufficient strength to be used to hold and transport a
12 dead human body.

13 (2)(22) "At-need solicitation" means any uninvited
14 contact by a funeral director or direct disposer for the
15 purpose of the sale of funeral services or merchandise to the
16 family or next of kin of a person after that person has died.

17 (3)(2) "Board" means the Board of Funeral Directors
18 and Embalmers.

19 (4) "Body parts" means:

20 (a) Limbs or other portions of the anatomy that are
21 removed from a person or human remains for medical purposes
22 during treatment, surgery, biopsy, autopsy, or medical
23 research; or

24 (b) Human bodies or any portions of human bodies which
25 have been donated to science for medical research purposes.

26 (5)(16) "Casket" means a rigid container which is
27 designed for the encasement of human remains for burial, ~~and~~
28 which is usually constructed of wood or metal, ornamented, and
29 lined with fabric, and which may or may not be combustible.

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1 ~~(6)(27)~~ "Centralized embalming facility" means a
2 facility, not physically connected with a funeral
3 establishment, in which embalming takes place.

4 ~~(7)(14)~~ "Cinerator" means a facility where dead human
5 bodies are reduced to a residue, including bone fragments, by
6 direct flame, also known as "cremation," or by intense heat,
7 also known as "calcination."

8 (8) "Closed container" means any container in which
9 cremated remains can be placed and closed in a manner so as to
10 prevent leakage or spillage of the remains.

11 (9) "Cremated remains" means all the remains of the
12 human body recovered after the completion of the cremation
13 process, including processing or pulverization which leaves
14 only bone fragments reduced to unidentifiable dimensions and
15 may include the residue of any foreign matter, including
16 casket material, bridgework, or eyeglasses that were cremated
17 with the human remains.

18 ~~(10)(24)~~ "Cremation" means the technical process,
19 using direct flame and heat or chemical means, that reduces
20 human remains to bone fragments through heat and evaporation.
21 Cremation includes the processing and usually includes the
22 pulverization of the bone fragments ~~includes any mechanical or~~
23 ~~thermal process whereby a dead human body is reduced to ashes~~
24 ~~and bone fragments. Cremation also includes any other~~
25 ~~mechanical or thermal process whereby human remains are~~
26 ~~pulverized, burned, re Cremated, or otherwise further reduced~~
27 ~~in size or quantity.~~

28 (11) "Cremation chamber" means the enclosed space
29 within which the cremation process takes place. Cremation
30 chambers covered by these procedures must be used exclusively
31 for the cremation of human remains.

1 (12) "Cremation container" means the container in
2 which the human remains are transported to and placed in the
3 cremation chamber for a cremation. A cremation container
4 should meet substantially all of the following standards:

5 (a) Be composed of readily combustible materials
6 suitable for cremation.

7 (b) Be able to be closed in order to provide a
8 complete covering for the human remains.

9 (c) Be resistant to leakage or spillage.

10 (d) Be rigid enough to be handled with ease.

11 (e) Be able to provide protection for the health,
12 safety, and personal integrity of crematory personnel.

13 (13) "Cremation interment container" means a rigid
14 outer container that, subject to a cemetery's rules and
15 regulations, is composed of concrete, steel, fiberglass, or
16 some similar material in which an urn is placed prior to being
17 interred in the ground and that is designed to support the
18 earth above the urn.

19 (14)~~(1)~~ "Department" means the Department of Business
20 and Professional Regulation.

21 (15)~~(8)~~ "Direct disposal establishment" means a
22 facility registered under this chapter where a direct disposer
23 practices direct disposition.

24 (16)~~(9)~~ "Direct disposer" means any person registered
25 under this chapter to practice direct disposition in this
26 state.

27 (17)~~(28)~~ "Disinterment" means removal of a dead human
28 body from earth interment or aboveground interment.

29 (18)~~(5)~~ "Embalmer" means any person licensed under
30 this chapter to practice embalming in this state.

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1 (19)~~(11)~~ "Final disposition" means the final disposal
2 of a dead human body by earth interment, aboveground
3 interment, cremation, burial at sea, or delivery to a medical
4 institution for lawful dissection if the medical institution
5 assumes responsibility for disposal. "Final disposition" does
6 not include the disposal or distribution of ashes and residue
7 of cremated human remains.

8 (20)~~(13)~~ "Funeral" or "funeral service" means the
9 observances, services, or ceremonies held to commemorate the
10 life of a specific deceased human being, and at which the
11 human remains are present.

12 (21)~~(3)~~ "Funeral director" means any person licensed
13 under this chapter to practice funeral directing in this
14 state.

15 (22)~~(7)~~ "Funeral establishment" means a facility
16 licensed under this chapter where a funeral director or
17 embalmer practices funeral directing or embalming.

18 (23)~~(12)~~ "Funeral merchandise" or "merchandise" means
19 any merchandise commonly sold in connection with the funeral,
20 final disposition, or memorialization of human remains,
21 including, but not limited to, caskets, outer burial
22 containers, alternative containers, cremation containers,
23 cremation interment containers, urns, monuments, private
24 mausoleums, flowers, shrubs, benches, vases, acknowledgment
25 cards, register books, memory folders, prayer cards, and
26 clothing.

27 (24)~~(23)~~ "Human remains" or "remains," "dead human
28 body" or "dead human bodies," means the body of a deceased
29 human person for which a death certificate or fetal death
30 certificate is required under chapter 382 and includes the
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1 body in any stage of decomposition and the residue of cremated
2 human bodies.

3 (25)~~(18)~~ "Legally authorized person" means, in the
4 priority listed, the decedent, when written inter vivos
5 authorizations and directions are provided by the decedent,
6 the surviving spouse, unless the spouse has been arrested for
7 committing against the deceased an act of domestic violence as
8 defined in s. 741.28 that resulted in or contributed to the
9 death of the deceased, a son or daughter who is 18 years of
10 age or older, a parent, a brother or sister 18 years of age or
11 over, a grandchild who is 18 years of age or older, or a
12 grandparent; or any person in the next degree of kinship. In
13 addition, the term may include, if no family exists or is
14 available, the following: the guardian of the dead person at
15 the time of death; the personal representative of the
16 deceased; the attorney in fact of the dead person at the time
17 of death; the health surrogate of the dead person at the time
18 of death; a public health officer; the medical examiner,
19 county commission or administrator acting under chapter 245,
20 or other public administrator; a representative of a nursing
21 home or other health care institution in charge of final
22 disposition; or a friend or other person not listed in this
23 subsection who is willing to assume the responsibility as
24 authorized person. Where there is a person in any priority
25 class listed in this subsection, the funeral establishment
26 shall rely upon the authorization of any one legally
27 authorized person of that class if that individual represents
28 that he or she is not aware of any objection to the cremation
29 of the deceased's human remains by others in the same class of
30 the person making the representation or of any person in a
31 higher priority class.

1 (26) "Niche" means a compartment or cubicle for the
2 memorialization or permanent placement of a container or urn
3 containing cremated remains.

4 ~~(27)(19)~~ "Outer burial container" means an enclosure
5 into which a casket is placed, including, but not limited to,
6 a vault made of concrete, steel, fiberglass, or copper, a
7 sectional concrete enclosure, a crypt, or a wooden enclosure.

8 ~~(28)(20)~~ "Personal residence" means any residential
9 building in which one temporarily or permanently maintains his
10 or her abode, including, but not limited to, an apartment or a
11 hotel, motel, nursing home, convalescent home, home for the
12 aged, or a public or private institution.

13 ~~(29)(10)~~ "Practice of direct disposition" means the
14 cremation of human remains without preparation of the human
15 remains by embalming and without any attendant services or
16 rites such as funeral or graveside services or the making of
17 arrangements for such final disposition.

18 ~~(30)(6)~~ "Practice of embalming" means disinfecting or
19 preserving or attempting to disinfect or preserve dead human
20 bodies by replacing certain body fluids with preserving and
21 disinfecting chemicals.

22 ~~(31)(4)~~ "Practice of funeral directing" means the
23 performance by a licensed funeral director of any of those
24 functions authorized by s. 470.0087.

25 ~~(32)(21)~~ "Preneed sales agent" means any person who is
26 registered under chapter 497 to sell preneed burial or funeral
27 service and merchandise contracts or direct disposition
28 contracts in this state.

29 (33) "Processing" means the reduction of identifiable
30 bone fragments after the completion of the cremation process
31 to unidentifiable bone fragments by manual means.

1 (34) "Pulverization" means the reduction of
2 identifiable bone fragments after the completion of the
3 cremation and processing to granulated particles by manual or
4 mechanical means.

5 ~~(35)~~~~(25)~~ "Refrigeration facility" means a facility
6 that is not physically connected with a funeral establishment,
7 crematory or direct disposal establishment, that maintains
8 space and equipment for the storage and refrigeration of dead
9 human bodies, and that offers its service to funeral directors
10 and funeral establishments for a fee.

11 ~~(36)~~~~(26)~~ "Removal service" means any service that
12 operates independently of a funeral establishment, that
13 handles the initial removal of dead human bodies, and that
14 offers its service to funeral establishments and direct
15 disposal establishments for a fee.

16 ~~(37)~~~~(17)~~ "Solicitation" means any communication which
17 directly or implicitly requests an immediate oral response
18 from the recipient.

19 (38) "Temporary container" means a receptacle for
20 cremated remains usually made of cardboard, plastic, or
21 similar material designated to hold the cremated remains until
22 an urn or other permanent container is acquired.

23 (39) "Urn" means a receptacle designed to permanently
24 encase cremated remains.

25 Section 16. Section 470.0085, Florida Statutes, is
26 amended to read:

27 470.0085 Establishment of embalmer apprentice
28 program.--The board may adopt rules establishing an embalmer
29 apprentice program. An embalmer apprentice may perform only
30 those tasks, functions, and duties relating to embalming which
31 are performed under the direct supervision of a licensed

1 embalmer. An embalmer apprentice shall be eligible to serve in
2 an apprentice capacity for a period not to exceed 3 years ±
3 ~~year~~ as may be determined by board rule or for a period not to
4 exceed 5 ± years if the apprentice is enrolled in and
5 attending a course in mortuary science or funeral service
6 education at any mortuary college or funeral service education
7 college or school. An embalmer apprentice shall be registered
8 with the board upon payment of a registration fee not to
9 exceed \$50.

10 Section 17. Subsection (2) of section 470.018, Florida
11 Statutes, is amended to read:

12 470.018 Renewal of registration of direct disposer.--

13 (1) The department shall renew a registration upon
14 receipt of the renewal application and fee set by the
15 department not to exceed \$250.

16 (2) The department shall adopt rules establishing a
17 procedure for the biennial renewal of registrations. The board
18 shall prescribe by rule continuing education requirements of
19 up to 6 ± classroom hours and may by rule establish criteria
20 for accepting alternative nonclassroom continuing education on
21 an hour-for-hour basis, in addition to a board-approved course
22 on communicable diseases that includes the course on human
23 immunodeficiency virus and acquired immune deficiency syndrome
24 required by s. 455.2226, for the renewal of a registration.

25 Section 18. Subsections (2) and (5) of section
26 470.021, Florida Statutes, are amended to read:

27 470.021 Direct disposal establishment; standards and
28 location; registration.--

29 (2) The practice of direct disposition must be engaged
30 in at a fixed location of at least 625 interior contiguous
31 square feet and must maintain or make arrangements for

1 suitable capacity for the refrigeration and storage of dead
2 human bodies handled and stored by the establishment. No
3 person may open or maintain an establishment at which to
4 engage in or hold himself or herself out as engaging in the
5 practice of direct disposition unless such establishment is
6 registered with the board. Any change in location of such
7 establishment shall be reported promptly to the board as
8 prescribed by rule of the board.

9 (5)(a) Each direct disposal establishment shall at all
10 times be subject to the inspection of all its buildings,
11 grounds, and vehicles used in the conduct of its business, by
12 the department, the Department of Health, and local government
13 inspectors and by their agents. The board shall adopt rules
14 which establish such inspection requirements.

15 (b) The board shall set by rule an annual inspection
16 fee not to exceed \$100, payable upon application for
17 registration and upon each renewal of such registration.

18 (c) Each cinerator facility shall be inspected prior
19 to the issuance and renewal of its license and shall:

20 1. Maintain one or more retorts for the reduction of
21 dead human bodies.

22 2. Maintain refrigeration which satisfies the
23 standards set by the Department of Health and which contains a
24 sufficient number of shelves for the average daily number of
25 bodies stored, if unembalmed bodies are kept at the site.

26 3. Maintain sufficient pollution control equipment to
27 comply with requirements of the Department of Environmental
28 Protection in order to secure annual approved certification.

29 4. Either have on site or immediately available
30 sufficient sealed containers of a type required for the
31

1 transportation of bodies as specified in Rule 10D-37.012,
2 F.A.C.

3 5. Maintain the premises in a clean and sanitary
4 condition.

5 6. Have appropriate Department of Environmental
6 Protection permits.

7 7. Retain all signed contracts for a period of at
8 least 2 years.

9 Section 19. Subsection (1) of section 470.024, Florida
10 Statutes, is amended to read:

11 470.024 Funeral establishment; licensure.--

12 (1) A funeral establishment shall be a place at a
13 specific street address or location consisting of at least
14 1,250 contiguous interior square feet and must maintain or
15 make arrangements for ~~either~~ suitable capacity for the
16 refrigeration and storage of dead human bodies handled and
17 stored by the establishment and ~~or~~ a preparation room equipped
18 with necessary ventilation and drainage and containing
19 necessary instruments for embalming dead human bodies or must
20 make arrangements for a preparation room as established by
21 board rule.

22 Section 20. Subsections (6), (13), (14), and (15) of
23 section 470.025, Florida Statutes, are amended, and subsection
24 (16) is added to that section, to read:

25 470.025 Cinerator facility; licensure.--

26 (6) No more than one dead human body may be placed in
27 a retort at one time, unless written permission has been
28 received from a legally authorized person for each body. The
29 operator of a cinerator facility shall be entitled to rely on
30 the permission of a legally authorized person to cremate more
31 than one human body.

1 (13) A cinerator facility shall not place human
2 remains or body parts in a retort or cremation chamber unless
3 the human remains are in an alternative container, cremation
4 container, or casket. Human remains may be transported in a
5 cremation container or stored if they are completely covered,
6 and at all times treated with dignity and respect. Cremation
7 may include the processing and pulverization of bone
8 fragments. Cremated remains may be placed in a temporary
9 container following cremation.None of the provisions
10 contained in this subsection require the purchase of a casket
11 for cremation. This subsection applies to at-need contracts
12 and preneed contracts entered into pursuant to chapter 497
13 after June 1, 1996.

14 (14) Each cinerator facility shall ensure that all
15 alternative containers, cremation containers, or caskets used
16 for cremation contain no amount of chlorinated plastics not
17 authorized by the Department of Environmental Protection, that
18 they also are composed of readily combustible materials
19 suitable for cremation, able to be closed to provide a
20 complete covering for the human remains, resistant to leakage
21 or spillage, rigid enough for handling with ease, and able to
22 provide for the health, safety, and personal integrity of the
23 public and crematory personnel.

24 (15) The board shall adopt, by rule, criteria for
25 acceptable cremation and alternative containers.

26 (16) The operator of a cinerator facility shall
27 establish written procedures for the removal of remains and
28 bone fragments, to the extent possible, resulting from the
29 cremation of a human body and the postcremation processing,
30 shipping, packing, or identifying of those remains. If an
31 operator follows these procedures, the operator is not liable

1 for the unintentional or incidental commingling of human
2 remains and bone fragments resulting from more than one
3 cremation cycle or from postcremation processing, shipping,
4 packing, or identifying of those remains. A copy of the
5 procedures shall be available, upon request, to the department
6 and legally authorized persons.

7 Section 21. Section 470.0255, Florida Statutes, is
8 amended to read:

9 470.0255 Cremation; procedure required.--

10 (1) At the time of the arrangement for a cremation
11 performed by any person licensed pursuant to this chapter, the
12 person contracting for cremation services shall be required to
13 designate his or her intentions with respect to the
14 disposition of the cremated remains of the deceased in a
15 signed declaration of intent which shall be provided by and
16 retained by the funeral or direct disposal establishment. A
17 cremation may not be performed until a legally authorized
18 person gives written authorization for such cremation. The
19 cremation must be performed within 48 hours after a specified
20 time which has been agreed to in writing by the person
21 authorizing the cremation.

22 (2) With respect to any person who intends to provide
23 for the cremation of the deceased, if, after a period of 120
24 days from the time of cremation the cremated remains have not
25 been claimed, the funeral or direct disposal establishment may
26 dispose of the cremated remains. Such disposal shall include
27 scattering them at sea or placing them in a licensed cemetery
28 scatter garden or pond or in a church columbarium or otherwise
29 disposing of the remains as provided by rule of the department
30 or board.

31

1 (3) Pursuant to the request of a legally authorized
2 person and incidental to final disposition, cremation may be
3 performed on parts of human remains. This subsection does not
4 authorize the cremation of body parts as defined in s.
5 470.002.

6 Section 22. Section 470.028, Florida Statutes, is
7 amended to read:

8 470.028 Preneed sales; registration of agents; control
9 and supervision of agents.--

10 (1) All sales of preneed funeral service contracts or
11 direct disposition contracts shall be made pursuant to chapter
12 497.

13 (2) No person may act as an agent for a funeral
14 establishment or direct disposal establishment with respect to
15 the sale of preneed contracts unless such person is registered
16 pursuant to chapter 497.

17 (3) Each licensee or registrant shall be subject to
18 discipline if his or her agent violates any provision of this
19 chapter applicable to such licensee or registrant as
20 established by board rule.

21 (4)(a) The funeral director in charge of a funeral
22 establishment shall be responsible for the control and
23 activities of the establishment's preneed agents.

24 (b) The direct disposer in charge of a funeral
25 director acting as a direct disposer in charge of a direct
26 disposal establishment shall be responsible for the control
27 and activities of the establishment's preneed agents.

28 Section 23. Subsection (1) of section 470.029, Florida
29 Statutes, is amended to read:

30 470.029 Reports of cases embalmed and bodies
31 handled.--

1 (1) Each funeral establishment, direct disposal
2 establishment, cinerator facility, and centralized embalming
3 facility shall report on a form prescribed and furnished by
4 the department the name of the deceased and such other
5 information as may be required with respect to each dead human
6 body embalmed or otherwise handled by the establishment or
7 facility. Such forms shall be signed by the embalmer who
8 performs the embalming, if the body is embalmed, and the
9 funeral director in charge of the establishment or facility or
10 by the direct disposer who disposes of the body. The board
11 shall prescribe by rule the procedures in submitting such
12 documentation. Reports required by this subsection shall be
13 filed by the 20th ~~10th~~ day of each month for final
14 dispositions handled the preceding month.

15 Section 24. Subsection (1) of section 470.0294,
16 Florida Statutes, is amended to read:

17 470.0294 Additional rights of legally authorized
18 persons.--

19 (1) In addition to any other common law or statutory
20 rights a legally authorized person may otherwise have, that
21 person may authorize a funeral director or direct disposer
22 licensed under this chapter to lawfully dispose of fetal
23 remains in circumstances when a fetal death certificate is not
24 issued under chapter 382, including for fetal death of less
25 than 20 weeks' gestation. A person licensed under chapter 470
26 is not liable for damages as a result of following the
27 instructions of the legally authorized person in connection
28 with the final disposition of fetal remains in circumstances
29 in which a fetal death certificate is not issued under chapter
30 382 or in connection with the final disposition of a dead
31 human body.

1 Section 25. Section 470.031, Florida Statutes, is
2 amended to read:

3 470.031 Prohibitions; penalties.--

4 (1) No person may:

5 (a) Practice funeral directing, embalming, or direct
6 disposition unless the person holds an active license or
7 registration under this chapter.

8 (b) Use the name or title "funeral director,"
9 "embalmer," or "direct disposer" when the person has not been
10 licensed or registered pursuant to this chapter.

11 (c) Represent as his or her own the license or
12 registration of another.

13 (d) Give false or forged evidence to the board, a
14 member thereof, or the department for the purpose of obtaining
15 a license or registration.

16 (e) Use or attempt to use a license or registration
17 which has been suspended or revoked.

18 (f) Knowingly employ unlicensed persons in the
19 practice of funeral directing, embalming, or direct disposing.

20 (g) Knowingly conceal information relative to
21 violations of this chapter.

22 (h) Operate an unlicensed cinerator facility.

23 (i) Except as provided for in chapter 497, guarantee
24 the price of goods and services at a future date.

25 (2) Any person who violates the provisions of this
26 section commits a misdemeanor of the second degree, punishable
27 as provided in s. 775.082 or s. 775.083.

28 Section 26. Section 470.0355, Florida Statutes, is
29 amended to read:

30 470.0355 Identification of human remains.--

31 (1) PRIOR TO FINAL DISPOSITION.--

1 (a)~~(1)~~ The licensee or registrant in charge of the
2 final disposition of dead human remains shall, prior to final
3 disposition of such dead human remains, affix on the ankle or
4 wrist of the deceased, and ~~or~~ in the casket or alternative
5 container or cremation container, proper identification of the
6 dead human remains. The identification or tag shall be encased
7 in or consist of durable and long-lasting material containing
8 the name, date of birth, and date of death, ~~and social~~
9 ~~security number~~ of the deceased, if available. If the dead
10 human remains are cremated, proper identification shall be
11 placed in the container or urn containing the remains.

12 (b)~~(2)~~ Any licensee or registrant responsible for
13 removal of dead human remains to any establishment, facility,
14 or location shall ensure that the remains are identified by a
15 tag or other means of identification that is affixed to the
16 ankle or wrist of the deceased at the time the remains are
17 removed from the place of death or other location.

18 (c)~~(3)~~ Any licensee or registrant may rely on the
19 representation of a legally authorized person to establish the
20 identity of dead human remains.

21 (2) IN UNLICENSED CEMETERIES.--Effective October 1,
22 2003, the identification of human remains interred in an
23 unlicensed cemetery shall be the responsibility of the
24 licensed funeral establishment in charge of the funeral
25 arrangements for the deceased person. The licensed funeral
26 establishment in charge of the funeral arrangements for the
27 interment in an unlicensed cemetery of human remains shall
28 place on the outer burial container, cremation interment
29 container, or other container or on the inside of a crypt or
30 niche a tag or permanent identifying mark containing the name
31 of the decedent and the date of death, if available. The

1 materials and locations of the tag or mark shall be more
2 specifically described by the rule of the board.

3 (3) IN LICENSED CEMETERIES.--Effective October 1,
4 2003, human remains at licensed cemeteries shall be identified
5 as follows:

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

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

22 (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal
23 establishments shall establish a system of identification of
24 human remains received which shall be designed to track the
25 identity of the remains from the time of receipt until
26 delivery of the remains to the authorized persons. This is in
27 addition to the requirements for identification of human
28 remains set forth in subsection (1). A copy of the
29 identification procedures shall be available, upon request, to
30 the department and legally authorized persons.

31

1 Section 27. For the purpose of incorporating the
2 amendment to section 470.031, Florida Statutes, in a reference
3 thereto, paragraph (a) of subsection (1) of section 470.036,
4 Florida Statutes, is reenacted to read:

5 470.036 Disciplinary proceedings.--

6 (1) The following acts constitute grounds for which
7 the disciplinary actions in subsection (2) may be taken:

8 (a) Violation of any provision of s. 455.227(1) or s.
9 470.031.

10 Section 28. Section 497.005, Florida Statutes, is
11 amended to read:

12 497.005 Definitions.--As used in this chapter:

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

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

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

26 (4) "Board" means the Board of Funeral and Cemetery
27 Services.

28 (5) "Burial merchandise," "funeral merchandise," or
29 "merchandise" means any personal property offered or sold by
30 any person for use in connection with the final disposition,
31

1 memorialization, interment, entombment, or inurnment of human
2 remains.

3 (6) "Burial right" means the right to use a grave
4 space, mausoleum, columbarium, ossuary, or scattering garden
5 for the interment, entombment, inurnment, or other disposition
6 of human remains.

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

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

1 for the construction and development of new grave spaces or
2 interment structures to be sold to the public.

3 (9) "Casket" means a rigid container which is designed
4 for the encasement of human remains,~~and~~ which is usually
5 constructed of wood or metal, ornamented, and lined with
6 fabric, and which may or may not be combustible.

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

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

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

24 (13) "Columbarium" means a structure or building which
25 is substantially exposed above the ground and which is
26 intended to be used for the inurnment of cremated human
27 remains.

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

31

1 (15) "Cremation" includes any mechanical or thermal
2 process whereby a dead human body is reduced to ashes.
3 Cremation also includes any other mechanical or thermal
4 process whereby human remains are pulverized, burned,
5 cremated, or otherwise further reduced in size or quantity.

6 (16) "Department" means the Department of Banking and
7 Finance.

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

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

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

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

22 (21) "Human remains" means the bodies of deceased
23 persons and includes bodies in any stage of decomposition and
24 cremated remains.

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

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

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

4 (25) "Monument establishment" means a facility that
5 operates independently of a cemetery or funeral establishment
6 and that offers to sell monuments or monument services to the
7 public for placement in a cemetery.

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

17 (27) "Net worth" means total assets minus total
18 liabilities pursuant to generally accepted accounting
19 principles.

20 (28) "Niche" means a compartment or cubicle for the
21 memorialization or permanent placement of an urn containing
22 cremated remains.

23 ~~(29)~~~~(28)~~ "Ossuary" means a receptacle used for the
24 communal placement of cremated human remains without benefit
25 of an urn or any other container in which remains will be
26 commingled with other cremated human remains and are
27 nonrecoverable. It may or may not include memorialization.

28 ~~(30)~~~~(29)~~ "Outer burial container" means an enclosure
29 into which a casket is placed and includes, but is not limited
30 to, vaults made of concrete, steel, fiberglass, or copper;
31 sectional concrete enclosures; crypts; and wooden enclosures.

1 ~~(31)(30)~~ "Preneed contract" means any arrangement or
2 method, of which the provider of funeral merchandise or
3 services has actual knowledge, whereby any person agrees to
4 furnish funeral merchandise or service in the future.

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

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

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

22 ~~(35)(34)~~ "Solicitation" means any communication that
23 ~~which~~ directly or implicitly requests an immediate oral
24 response from the recipient.

25 ~~(36)(35)~~ "Statutory accounting" means generally
26 accepted accounting principles, except as modified by this
27 chapter.

28 ~~(37)~~ "Urn" means a receptacle designed to permanently
29 encase cremated remains.

30 Section 29. Subsection (3) of section 497.305, Florida
31 Statutes, is amended to read:

1 497.305 Cemetery companies; authorized functions.--

2 (3) A cemetery company may adopt bylaws establishing
3 minimum standards for burial merchandise or the installation
4 thereof. Such bylaws shall include minimum standards for
5 access to install burial merchandise. A cemetery company must
6 comply with its adopted bylaws.

7 Section 30. Section 497.306, Florida Statutes, is
8 created to read:

9 497.306 Standards for grave spaces.--

10 (1) A standard adult grave space shall measure at
11 least 42 inches in width and 96 inches in length, except for
12 preinstalled vaults in designated areas. For interments,
13 except cremated remains, the covering soil shall measure no
14 less than 12 inches from the top of the outer burial
15 container, unless such level of soil is not physically
16 possible. In any interment, the family or next of kin may
17 waive the 12-inch coverage minimum.

18 (2)(a) Effective October 1, 2003, and prior to the
19 sale of grave spaces in any undeveloped areas of a licensed
20 cemetery, the cemetery company shall prepare a map documenting
21 the establishment of recoverable internal survey reference
22 markers installed by the cemetery company no more than 100
23 feet apart in the areas planned for development. The internal
24 reference markers shall be established with reference to
25 survey markers that are no more than 200 feet apart which have
26 been set by a surveyor and mapper licensed under chapter 472
27 and documented in a certified land survey. Both the map and
28 the certified land survey shall be maintained by the cemetery
29 company and shall be made available upon request to the
30 department or members of the public.

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1 (b) The map of the area proposed to be developed shall
2 show:

3 1. The number of grave spaces available for sale.

4 2. The location of each grave space.

5 3. The number designation assigned to each grave
6 space.

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

8 (3) Adult grave spaces established prior to October 1,
9 2003, are not required to meet the standards established under
10 this section for the dimensions or separation of grave spaces.

11 Section 31. Section 497.307, Florida Statutes, is
12 created to read:

13 497.307 Identification of human remains in licensed
14 cemeteries.--On and after October 1, 2003, human remains
15 interred, entombed, scattered, or otherwise placed for final
16 rest at licensed cemeteries shall be identified as follows:

17 (1) Each licensed cemetery shall place on the outer
18 burial container, cremation interment container, or other
19 container, or on the inside of a crypt or niche, a tag or a
20 permanent identifying marker containing the name of the
21 decedent and the date of death, if available. The materials
22 and location of the tag or marker shall be more specifically
23 described by rule of the board.

24 (2) Each licensed cemetery may rely entirely on the
25 identity stated on the burial transit permit or on the
26 identification supplied by a person licensed under chapter 470
27 to establish the identity of the dead human remains delivered
28 by such person for burial and shall not be liable for any
29 differences between the identity shown on the burial transit
30 permit or other identification and the actual identity of the

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1 dead human remains delivered by such person and buried in the
2 cemetery.

3 Section 32. Subsection (2) of section 497.325, Florida
4 Statutes, is amended to read:

5 497.325 Illegal tying arrangements.--

6 (2)(a) Noncemetery licensed persons and firms shall
7 have the right to sell monuments and to perform or provide on
8 cemetery property foundation, preparation, and installation
9 services for monuments. However, a cemetery company or any
10 other entity owning and operating a cemetery may establish
11 reasonable rules regarding the style and size of a monument or
12 its foundation, provided such rules are applicable to all
13 monuments from whatever source obtained and are enforced
14 uniformly as to all monuments. Such rules shall be
15 conspicuously posted and readily accessible to inspection and
16 copy by interested persons.

17 (b) No person who is authorized to sell grave space
18 and no cemetery company or other entity owning and operating a
19 cemetery may:

20 1. Require the payment of a setting or service charge,
21 by whatever name known, from third party installers for the
22 placement of a monument;

23 2. Refuse to provide care or maintenance for any
24 portion of a gravesite on which a monument has been placed; or

25 3. Waive liability with respect to damage caused by
26 cemetery employees or agents to a monument after installation,

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28 where the monument or installation service is not purchased
29 from the person authorized to sell grave space or the cemetery
30 company or other legal entity providing grave space or from or
31 through any other person or corporation designated by the

1 person authorized to sell grave space or the cemetery company
2 or other legal entity providing grave space. ~~A No~~ cemetery
3 company or other entity owning and operating a cemetery may
4 not be held liable for the improper installation of a monument
5 where the monument is not installed by the cemetery company or
6 its agents or by such other entity or its agents.

7 Section 33. Subsection (9) is added to section
8 497.333, Florida Statutes, to read:

9 497.333 Disclosure of information to public.--A
10 licensee offering to provide burial rights, merchandise, or
11 services to the public shall:

12 (9) Provide to each customer a complete description of
13 any monument, marker, or memorialization to be placed at the
14 gravesite.

15 Section 34. Section 497.361, Florida Statutes, is
16 amended to read:

17 497.361 Certification ~~Registration~~ of monument
18 establishments.--

19 (1) ~~A No~~ person may not ~~shall~~ conduct, maintain,
20 manage, or operate a monument establishment, unless such an
21 establishment pays a ~~registration~~ fee of \$200 and has a valid
22 certificate of authority ~~is registered~~ with the department in
23 accordance with this act ~~section~~.

24 (2) A monument establishment shall be a physical
25 structure that is located at a specific street address.

26 (3) ~~A No~~ person may not engage in the retail sale of
27 monuments or monument services to consumers, unless they are
28 affiliated with a monument establishment, funeral
29 establishment, or cemetery.

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1 (4) The department, by rule, shall provide for
2 biennial renewal of certificates of authority ~~registrants and~~
3 ~~a renewal fee of \$150.~~

4 (5) Monuments not ~~shall be~~ delivered within a
5 specified timeframe shall be considered a breach of contract
6 unless the monument establishment has a written agreement to
7 extend the delivery date. The purchaser shall be entitled to
8 a refund of all money paid for the merchandise. Such refund
9 shall be made within 30 days after receipt by the monument
10 establishment of the purchaser's written request for a refund.
11 This subsection does not preclude the purchase and
12 installation of a new monument from any other registered
13 monument establishment or certificateholder ~~as established by~~
14 ~~this chapter and installed no later than 120 days after the~~
15 ~~date of sale. The establishment may request two 30-day~~
16 ~~extensions. Extensions may be granted by the executive~~
17 ~~director.~~

18 (6) All contracts with the public must be approved by
19 the Department of Financial Services and must provide a
20 complete description of any monument, marker, or related
21 product to be delivered.

22 (7) A certificate of authority may not be transferred
23 or assigned.

24 Section 35. Section 497.365, Florida Statutes, is
25 created to read:

26 497.365 Regulation of monument establishments.--

27 (1) The Department of Financial Services shall
28 establish an inspection program for all monument
29 establishments in accordance with the requirements of this
30 act.

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1 (2) The Department of Financial Services shall adopt
2 rules that shall include requirements for the approval of
3 contracts for memorials and related products, written
4 complaint procedures and mandatory response to consumer
5 complaints, disclosure to the public as to the form of
6 ownership, the fingerprinting of owners, and appropriate
7 recordkeeping.

8 (3) Nothing in the department's authority or any other
9 provisions of this act shall unreasonably restrict competition
10 or permit the restraint of trade and commerce.

11 Section 36. Section 497.371, Florida Statutes, is
12 created to read:

13 497.371 Monument establishment business location.--

14 (1) A monument establishment shall be a place at a
15 specific street address or location consisting of at least
16 1,500 square feet of office and manufacturing space, including
17 a display area for monuments, markers, and related products.
18 The place where the establishment is located must comply with
19 the local government zoning regulations and may not be located
20 on tax-exempt property.

21 (2) The monument establishment must be a full-service
22 monument location open to the public during normal business
23 hours, with facilities to design, inscribe, and install
24 monuments and related products.

25 (3) A person may not operate a monument company or
26 install monuments, markers, and related products in this state
27 unless he or she is licensed by the Department of Financial
28 Services.

29 Section 37. Section 497.379, Florida Statutes, is
30 created to read:

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1 497.379 Licensure of monument establishments to sell
2 preneed contracts.--A monument establishment, including an
3 existing registered or unregistered monument establishment,
4 may not sell a preneed contract without first having obtained
5 a valid certificate of authority from the Department of
6 Financial Services. A person may not be issued a certificate
7 of authority as a monument establishment to sell preneed
8 contracts unless such person has at least 3 years' experience
9 in the operation and management of an establishment selling
10 monuments, markers, and related products.

11 Section 38. Section 497.385, Florida Statutes, is
12 created to read:

13 497.385 Monument establishment; sales
14 representative.--Each person selling monuments, markers, and
15 related products for a monument establishment must register
16 with the board, including any person registered or licensed
17 pursuant to chapter 470 or this chapter. A person selling
18 monuments, markers, and related products for a monument
19 establishment that has been issued a certificate of authority
20 must register as a preneed agent pursuant to the requirements
21 of this chapter.

22 Section 39. Section 497.391, Florida Statutes, is
23 created to read:

24 497.391 Monument establishment; preneed
25 contracts.--Effective January 1, 2004, a monument dealer or
26 establishment may not write a preneed contract unless that
27 contract has been approved by the board. Any monument dealer
28 or establishment that is paid, collects, or receives funds
29 under a preneed contract for services or merchandise shall
30 comply with the provisions of ss. 497.417 and 497.413.

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1 Section 40. Section 497.395, Florida Statutes, is
2 created to read:

3 497.395 Licensed monument establishment; financial
4 requirements.--

5 (1) For the purposes of qualifying for a certificate
6 of authority as a licensed monument establishment must have a
7 minimum net worth of \$10,000. A licensed monument
8 establishment holding a certificate of authority or a monument
9 establishment applicant must meet and maintain the
10 requirements of this section on an annual basis in order to
11 perform its obligation for all existing preneed contracts.

12 (2) All licensed monument establishments holding a
13 Certificate of Authority or an applicant must submit its most
14 recent year-end financial statements, including a balance
15 sheet and income statement, with the certificate of authority
16 application and annually thereafter as provided in s.
17 497.407(1). The financial statement must be prepared in
18 accordance with generally accepted accounting principles, as
19 those principles have been defined by the Florida Board of
20 Accountancy in the Florida Administrative Code. If the
21 applicant does not have the minimum net worth as set forth in
22 subsection (3), lacks sufficient liquid assets to satisfy
23 current liabilities, or does not appear to have any
24 substantial long-term assets, the department shall request
25 additional financial information concerning financial
26 statements and the statement of cash flow.

27 (3) For the purposes of this section, the term "total
28 preneed contracts" means the total retail value of all
29 outstanding preneed contracts. There shall be an annual fee
30 for the renewal of the monument establishment certificate of
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1 authority based on the following sales volume for total
2 preneed contracts:
3 (a) Five hundred dollars for a certificateholder that
4 has total sales of \$1 to \$50,000.
5 (b) Seven hundred and fifty dollars for a
6 certificateholder that has total sales of \$50,001 to \$250,000.
7 (c) One thousand dollars for a certificateholder that
8 has total sales of \$250,001 to \$500,000.
9 (d) Twelve hundred fifty dollars for a
10 certificateholder that has total sales in excess of \$500,001.
11 (4) In the case of a monument establishment holding a
12 certificate of authority or a licensed dealer applicant
13 offering preneed sales through a subsidiary agent as provided
14 in Rule 3F-5.0015, Florida Administrative Code, the
15 certificateholder or applicant must execute a guarantee
16 agreement with respect to any contract obligations resulting
17 from preneed sales of such a selling agent.
18 (5) If the certificateholder or applicant does not
19 meet the financial requirements in subsection (3), the entity
20 may voluntarily submit to the board additional evidence or
21 agree to additional oversight as to meeting the requirements
22 of subsection (1) as a condition of receiving or retaining a
23 certificate of authority. Such additional evidence or
24 oversight shall include, as appropriate:
25 (a) An agreement to submit monthly financial
26 statements of the entity;
27 (b) An agreement to submit quarterly financial
28 statements of the entity;
29 (c) An appraisal of the entity's property or broker's
30 opinion of the entity's assets;
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- 1 (d) A credit report of the entity or its principal
2 owners;
3 (e) Subordination-of-debt agreement from the entity's
4 principal owners;
5 (f) An indemnification or subrogation agreement
6 binding the entity and principal owners;
7 (g) A guarantee agreement for the entity from its
8 principal owners;
9 (h) Written explanation of past financial activity;
10 (i) Submission of the 12-month projected business plan
11 that includes:
12 1. A statement of cash flows;
13 2. Proforma income statements, with sources of
14 revenues identified; and
15 3. Marketing initiatives;
16 (j) Submission of previous department examination
17 reports; or
18 (k) An agreement of 100 percent voluntary trust by the
19 entity.

20 Section 41. Subsections (1) and (4) of section
21 497.405, Florida Statutes, are amended to read:

22 497.405 Certificate of authority required.--

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

27 (b) No person, including any cemetery exempt under s.
28 497.003, may sell, advertise to sell, or make an arrangement
29 for services, merchandise, or burial rights on a preneed basis
30 unless such person is authorized pursuant to this chapter to
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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 42. Subsection (4) of section 497.419, Florida
18 Statutes, is amended, and subsection (11) is added to that
19 section, to read:

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

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

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1 (11) Failure to install a monument within 180 days
2 after interment shall be considered a breach of contract
3 unless the certificateholder has a written agreement to extend
4 the installation date. The purchaser shall be entitled to a
5 refund of all money paid for the merchandise. Such refund
6 shall be made within 30 days after receipt by the
7 certificateholder of the purchaser's written request for a
8 refund. Nothing in this subsection shall preclude the purchase
9 and installation of a new monument from any other registered
10 monument establishment or certificateholder.

11 Section 43. Subsection (4) of section 497.436, Florida
12 Statutes, is amended to read:

13 497.436 Inactive and revoked certificateholders.--

14 (4) Upon receipt of the notice, in order to protect
15 the contract purchaser, the board may:

16 (a) shall Review the certificateholder's:

17 1.(a) Trust funds.

18 2.(b) Trust agreements.

19 3.(c) Evidence of all outstanding preneed contracts.

20 (b) Perform other procedures the board deems
21 necessary.

22 Section 44. Except as otherwise expressly provided in
23 this act, this act shall take effect July 1, 2003.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 2016

The committee substitute creates the Division and the Board of Funeral, Cemetery and Consumer Services within the Department of Financial Services, and establishes its composition, compensation, powers, and duties. It provides for the office of the Director of the new division, including his or her duties and responsibilities. It transfers the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services by a type two transfer to the new board. It provides definitions.

It increases the period that an embalmer apprentice may serve in an apprentice capacity. It amends requirements relating to the practice of direct disposal. It provides for the direct disposal of fetal remains. It increases the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration. It provides for the proper identification of dead human remains in the casket, alternative container, or cremation container. It provides for the regulation of monument establishments, and establishes qualification requirements. It provides for the regulation of preneed contract sales by monument establishments.