

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

1 s. 497.365, F.S.; providing for regulation of  
2 monument establishments by the Department of  
3 Financial Services; providing for inspections;  
4 providing for rules; providing that the  
5 department may not unreasonably restrict  
6 commerce; creating s. 497.371, F.S.; providing  
7 for specifications for business locations;  
8 creating s. 497.379, F.S.; providing for  
9 licensure of monument establishments to sell  
10 preneed contracts; creating s. 497.385, F.S.;

11 providing for registration of monument sales  
12 representatives; creating s. 497.391, F.S.;

13 providing for approval of preneed contracts by  
14 the board; creating s. 497.395, F.S.; providing  
15 financial requirements for monument  
16 establishments; providing requirements for  
17 minimum net worth; providing for submission of  
18 financial statements; providing for minimum  
19 sales volume with respect to preneed contracts;

20 providing for guarantee agreements; providing  
21 for additional oversight in lieu of financial  
22 requirements; amending s. 497.405, F.S.;

23 prohibiting any person from advertising for  
24 sale or making any arrangement for a preneed  
25 contract without having a valid certificate of  
26 authority; expanding the exemption from the  
27 required certificate of authority for certain  
28 religious-institution-owned cemeteries to  
29 include the sale and opening or closing of  
30 cremation interment containers to members and  
31 family members of the religious institution;

1 amending s. 497.419, F.S.; requiring preneed  
2 contracts to include in the refund notice the  
3 exclusion for amounts allocable to burial  
4 rights, merchandise, and services used by the  
5 purchaser; providing condition for breach of  
6 contract by certificateholder and for rights of  
7 purchaser; amending s. 497.436, F.S.;  
8 authorizing the Board of Funeral and Cemetery  
9 Services to review the trust funds, trust  
10 agreements, and outstanding preneed contracts  
11 of, and perform other procedures at its  
12 discretion with respect to, a certificateholder  
13 filing notice to become inactive; creating s.  
14 497.310, F.S.; providing for the optional  
15 recordation of burial rights; permitting the  
16 clerk of the court to assess service charge  
17 fees; providing an effective date.

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

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

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

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

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

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

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~~.

31

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 licensed  
13 pursuant to this chapter. One member shall be the State Health  
14 Officer or his or her designee.

15 (3) Board members shall be appointed for terms of 4  
16 years and the State Health Officer shall serve as long as that  
17 person holds that office. The designee of the State Health  
18 Officer shall serve at the pleasure of the Governor. When the  
19 terms of the initial board members expire, the Chief Financial  
20 Officer shall stagger the terms of the successor members as  
21 follows: one funeral director, one cemetery representative,  
22 the monument dealer, and one consumer member shall be  
23 appointed for terms of 2 years, and the remaining members  
24 shall be appointed for terms of 4 years. All subsequent terms  
25 shall be for 4 years. The Governor may suspend any board  
26 member for malfeasance or misfeasance, neglect of duty,  
27 incompetence, substantial inability to perform official  
28 duties, commission of a crime, or for other substantial cause  
29 as determined by the Governor to evidence a lack of fitness to  
30 sit on the board. A board member shall be deemed to have  
31 resigned his or her board membership, and that position shall

1 be deemed vacant, upon the failure of the member to attend  
2 three consecutive meetings of the board or at least half of  
3 the meetings of the board during any 12-month period, unless  
4 the Chief Financial Officer determines that there was good and  
5 adequate justification for the absences and that such absences  
6 are not likely to continue.

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

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

26 (7) A board member shall be compensated \$50 for each  
27 day the member attends an official meeting and each day the  
28 member participates at the request of the board's executive  
29 director in any other business involving the board. To the  
30 extent authorized by the s. 112.061, a board member is  
31 entitled to reimbursement for expenses incurred in connection

1 with official duties. Out-of-state travel by board members on  
2 official business shall in each specific instance require the  
3 advance approval of the board's executive director in order  
4 for the travel to be eligible for reimbursement of expenses.

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

7 497.102 Authority of the board.--

8 (1) The board shall enforce and administer the  
9 provisions of chapter 470 and this chapter. Notwithstanding s.  
10 455.017, the board shall administer those powers, duties, and  
11 functions in chapter 455 which are necessary to enforce the  
12 provisions of chapter 470.

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

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

28 Section 8. Effective January 1, 2004, section  
29 497.1021, Florida Statutes, is created to read:

30 497.1021 Division of Funeral, Cemetery, and Consumer  
31 Services.--

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

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

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

17           Section 9. Effective January 1, 2004, section  
18 497.1022, Florida Statutes, is created to read:

19           497.1022 Director of the Division of Funeral,  
20 Cemetery, and Consumer Services.--

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

26           (2) The director shall be responsible for the  
27 preparation of the board agenda, presentation of division  
28 staff recommendations, and reports of the activities of the  
29 division to the board and shall serve as the executive  
30 director of the board and perform such other duties as may be  
31 assigned by the Chief Financial Officer.

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

9           Section 11. (1) All of the statutory powers, duties  
10 and functions, records, personnel, property, and unexpended  
11 balances of appropriations, allocations, or other funds for  
12 the administration of chapter 470, Florida Statutes, related  
13 to the Board of Funeral Directors and Embalmers shall be  
14 transferred by a type two transfer, as defined in section  
15 20.06(2), Florida Statutes, from the Department of Business  
16 and Professional Regulation to the Board of Funeral, Cemetery,  
17 and Consumer Services within the Department of Financial  
18 Services.

19           (2) The transfer of regulatory authority over chapter  
20 470, Florida Statutes, provided by this act shall not affect  
21 the validity of any judicial or administrative action  
22 involving the Board of Funeral Directors and Embalmers or the  
23 Department of Business and Professional Regulation pending on  
24 December 31, 2003, and the Department of Financial Services or  
25 the Board of Funeral, Cemetery, and Consumer Services shall be  
26 substituted as a party in interest in any such action.

27           (3) Notwithstanding the transfer of regulatory  
28 authority over chapter 470, Florida Statutes, provided by this  
29 act, all licenses and registrations issued pursuant to chapter  
30 470, Florida Statutes, that are valid on December 31, 2003,  
31

1 shall remain in effect subject to the provisions of chapters  
2 470 and 455, Florida Statutes.

3 (4) The rules of the Board of Funeral Directors and  
4 Embalmers and the Department of Business and Professional  
5 Regulation which were in effect on midnight, December 31,  
6 2003, shall become the rules of the Department of Financial  
7 Services as is appropriate to the corresponding regulatory  
8 function and shall remain in effect until specifically amended  
9 or repealed in the manner provided by law.

10 (5) All of the statutory powers, duties and functions,  
11 records, personnel, property, and unexpended balances of  
12 appropriations, allocations, or other funds for the  
13 administration of chapter 497, Florida Statutes, related to  
14 the Board of Funeral and Cemetery Services shall be  
15 transferred by a type two transfer, as defined in section  
16 20.06(2), Florida Statutes, from the Department of Banking and  
17 Finance to the Board of Funeral, Cemetery, and Consumer  
18 Services within the Department of Financial Services.

19 (6) The transfer of regulatory authority over chapter  
20 497, Florida Statutes, provided by this act shall not affect  
21 the validity of any judicial or administrative action  
22 involving the Board of Funeral and Cemetery Services or the  
23 Department of Banking and Finance pending on December 31,  
24 2003, and the Department of Financial Services or the Board of  
25 Funeral, Cemetery, and Consumer Services shall be substituted  
26 as a party in interest in any such action.

27 (7) Notwithstanding the transfer of regulatory  
28 authority over chapter 497, Florida Statutes, provided by this  
29 act, all licenses and registrations issued pursuant to chapter  
30 497, Florida Statutes, which are valid on December 31, 2003,  
31

1 shall remain in effect subject to the provisions of chapter  
2 497, Florida Statutes.

3 (8) The rules of the Board of Funeral and Cemetery  
4 Services or the Department of Banking and Finance which were  
5 in effect on midnight, December 31, 2003, shall become the  
6 rules of the Department of Financial Services and shall remain  
7 in effect until specifically amended or repealed in the manner  
8 provided by law.

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

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

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

17 Section 14. The Legislature recognizes that there is a  
18 need to conform the Florida Statutes to the policy decisions  
19 reflected in the provisions of this act. The Division of  
20 Statutory Revision is directed to provide the relevant  
21 substantive committees of the Senate and the House of  
22 Representatives with assistance, upon request, to enable such  
23 committees to prepare draft legislation to conform the Florida  
24 Statutes to the provisions of this act.

25 Section 15. Section 470.002, Florida Statutes, is  
26 amended to read:

27 470.002 Definitions.--As used in this chapter:

28 (1)(15) "Alternative container" means a nonmetal  
29 receptacle or enclosure which is less expensive than a casket  
30 and of sufficient strength to be used to hold and transport a  
31 dead human body.

1           ~~(2)(22)~~ "At-need solicitation" means any uninvited  
2 contact by a funeral director or direct disposer for the  
3 purpose of the sale of funeral services or merchandise to the  
4 family or next of kin of a person after that person has died.

5           ~~(3)(2)~~ "Board" means the Board of Funeral Directors  
6 and Embalmers.

7           (4) "Body parts" means:

8           (a) Limbs or other portions of the anatomy that are  
9 removed from a person or human remains for medical purposes  
10 during treatment, surgery, biopsy, autopsy, or medical  
11 research; or

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

14           ~~(5)(16)~~ "Casket" means a rigid container which is  
15 designed for the encasement of human remains for burial, ~~and~~  
16 which is usually constructed of wood or metal, ornamented, and  
17 lined with fabric, and which may or may not be combustible.

18           ~~(6)(27)~~ "Centralized embalming facility" means a  
19 facility, not physically connected with a funeral  
20 establishment, in which embalming takes place.

21           ~~(7)(14)~~ "Cinerator" means a facility where dead human  
22 bodies are reduced to a residue, including bone fragments, by  
23 direct flame, also known as "cremation," or by intense heat,  
24 also known as "calcination."

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

28           (9) "Cremated remains" means all the remains of the  
29 human body recovered after the completion of the cremation  
30 process, including processing or pulverization which leaves  
31 only bone fragments reduced to unidentifiable dimensions and



1 may include the residue of any foreign matter, including  
2 casket material, bridgework, or eyeglasses that were cremated  
3 with the human remains.

4 (10)(24) "Cremation" means the technical process,  
5 using direct flame and heat or chemical means, that reduces  
6 human remains to bone fragments through heat and evaporation.  
7 Cremation includes the processing and usually includes the  
8 pulverization of the bone fragments ~~includes any mechanical or~~  
9 ~~thermal process whereby a dead human body is reduced to ashes~~  
10 ~~and bone fragments. Cremation also includes any other~~  
11 ~~mechanical or thermal process whereby human remains are~~  
12 ~~pulverized, burned, re Cremated, or otherwise further reduced~~  
13 ~~in size or quantity.~~

14 (11) "Cremation chamber" means the enclosed space  
15 within which the cremation process takes place. Cremation  
16 chambers covered by these procedures must be used exclusively  
17 for the cremation of human remains.

18 (12) "Cremation container" means the container in  
19 which the human remains are transported to and placed in the  
20 cremation chamber for a cremation. A cremation container  
21 should meet substantially all of the following standards:

22 (a) Be composed of readily combustible materials  
23 suitable for cremation.

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

26 (c) Be resistant to leakage or spillage.

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

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

30 (13) "Cremation interment container" means a rigid  
31 outer container that, subject to a cemetery's rules and

1 regulations, is composed of concrete, steel, fiberglass, or  
2 some similar material in which an urn is placed prior to being  
3 interred in the ground and that is designed to support the  
4 earth above the urn.

5 (14)~~(1)~~ "Department" means the Department of Business  
6 and Professional Regulation.

7 (15)~~(8)~~ "Direct disposal establishment" means a  
8 facility registered under this chapter where a direct disposer  
9 practices direct disposition.

10 (16)~~(9)~~ "Direct disposer" means any person registered  
11 under this chapter to practice direct disposition in this  
12 state.

13 (17)~~(28)~~ "Disinterment" means removal of a dead human  
14 body from earth interment or aboveground interment.

15 (18)~~(5)~~ "Embalmer" means any person licensed under  
16 this chapter to practice embalming in this state.

17 (19)~~(11)~~ "Final disposition" means the final disposal  
18 of a dead human body by earth interment, aboveground  
19 interment, cremation, burial at sea, or delivery to a medical  
20 institution for lawful dissection if the medical institution  
21 assumes responsibility for disposal. "Final disposition" does  
22 not include the disposal or distribution of ashes and residue  
23 of cremated human remains.

24 (20)~~(13)~~ "Funeral" or "funeral service" means the  
25 observances, services, or ceremonies held to commemorate the  
26 life of a specific deceased human being, and at which the  
27 human remains are present.

28 (21)~~(3)~~ "Funeral director" means any person licensed  
29 under this chapter to practice funeral directing in this  
30 state.

31

1           ~~(22)(7)~~ "Funeral establishment" means a facility  
2 licensed under this chapter where a funeral director or  
3 embalmer practices funeral directing or embalming.

4           ~~(23)(12)~~ "Funeral merchandise" or "merchandise" means  
5 any merchandise commonly sold in connection with the funeral,  
6 final disposition, or memorialization of human remains,  
7 including, but not limited to, caskets, outer burial  
8 containers, alternative containers, cremation containers,  
9 cremation interment containers, urns, monuments, private  
10 mausoleums, flowers, shrubs, benches, vases, acknowledgment  
11 cards, register books, memory folders, prayer cards, and  
12 clothing.

13           ~~(24)(23)~~ "Human remains" or "remains," "dead human  
14 body" or "dead human bodies," means the body of a deceased  
15 human person for which a death certificate or fetal death  
16 certificate is required under chapter 382 and includes the  
17 body in any stage of decomposition and the residue of cremated  
18 human bodies.

19           ~~(25)(18)~~ "Legally authorized person" means, in the  
20 priority listed, the decedent, when written inter vivos  
21 authorizations and directions are provided by the decedent,  
22 the surviving spouse, unless the spouse has been arrested for  
23 committing against the deceased an act of domestic violence as  
24 defined in s. 741.28 that resulted in or contributed to the  
25 death of the deceased, a son or daughter who is 18 years of  
26 age or older, a parent, a brother or sister 18 years of age or  
27 over, a grandchild who is 18 years of age or older, or a  
28 grandparent; or any person in the next degree of kinship. In  
29 addition, the term may include, if no family exists or is  
30 available, the following: the guardian of the dead person at  
31 the time of death; the personal representative of the

1 deceased; the attorney in fact of the dead person at the time  
2 of death; the health surrogate of the dead person at the time  
3 of death; a public health officer; the medical examiner,  
4 county commission or administrator acting under chapter 245,  
5 or other public administrator; a representative of a nursing  
6 home or other health care institution in charge of final  
7 disposition; or a friend or other person not listed in this  
8 subsection who is willing to assume the responsibility as  
9 authorized person. Where there is a person in any priority  
10 class listed in this subsection, the funeral establishment  
11 shall rely upon the authorization of any one legally  
12 authorized person of that class if that individual represents  
13 that he or she is not aware of any objection to the cremation  
14 of the deceased's human remains by others in the same class of  
15 the person making the representation or of any person in a  
16 higher priority class.

17 (26) "Niche" means a compartment or cubicle for the  
18 memorialization or permanent placement of a container or urn  
19 containing cremated remains.

20 (27)~~(19)~~ "Outer burial container" means an enclosure  
21 into which a casket is placed, including, but not limited to,  
22 a vault made of concrete, steel, fiberglass, or copper, a  
23 sectional concrete enclosure, a crypt, or a wooden enclosure.

24 (28)~~(20)~~ "Personal residence" means any residential  
25 building in which one temporarily or permanently maintains his  
26 or her abode, including, but not limited to, an apartment or a  
27 hotel, motel, nursing home, convalescent home, home for the  
28 aged, or a public or private institution.

29 (29)~~(10)~~ "Practice of direct disposition" means the  
30 cremation of human remains without preparation of the human  
31 remains by embalming and without any attendant services or

1 rites such as funeral or graveside services or the making of  
2 arrangements for such final disposition.

3 (30)~~(6)~~ "Practice of embalming" means disinfecting or  
4 preserving or attempting to disinfect or preserve dead human  
5 bodies by replacing certain body fluids with preserving and  
6 disinfecting chemicals.

7 (31)~~(4)~~ "Practice of funeral directing" means the  
8 performance by a licensed funeral director of any of those  
9 functions authorized by s. 470.0087.

10 (32)~~(21)~~ "Preneed sales agent" means any person who is  
11 registered under chapter 497 to sell preneed burial or funeral  
12 service and merchandise contracts or direct disposition  
13 contracts in this state.

14 (33) "Processing" means the reduction of identifiable  
15 bone fragments after the completion of the cremation process  
16 to unidentifiable bone fragments by manual means.

17 (34) "Pulverization" means the reduction of  
18 identifiable bone fragments after the completion of the  
19 cremation and processing to granulated particles by manual or  
20 mechanical means.

21 (35)~~(25)~~ "Refrigeration facility" means a facility  
22 that is not physically connected with a funeral establishment,  
23 crematory or direct disposal establishment, that maintains  
24 space and equipment for the storage and refrigeration of dead  
25 human bodies, and that offers its service to funeral directors  
26 and funeral establishments for a fee.

27 (36)~~(26)~~ "Removal service" means any service that  
28 operates independently of a funeral establishment, that  
29 handles the initial removal of dead human bodies, and that  
30 offers its service to funeral establishments and direct  
31 disposal establishments for a fee.

1           ~~(37)(17)~~ "Solicitation" means any communication which  
2 directly or implicitly requests an immediate oral response  
3 from the recipient.

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

8           (39) "Urn" means a receptacle designed to permanently  
9 encase cremated remains.

10           Section 16. Section 470.0085, Florida Statutes, is  
11 amended to read:

12           470.0085 Establishment of embalmer apprentice  
13 program.--The board may adopt rules establishing an embalmer  
14 apprentice program. An embalmer apprentice may perform only  
15 those tasks, functions, and duties relating to embalming which  
16 are performed under the direct supervision of a licensed  
17 embalmer. An embalmer apprentice shall be eligible to serve in  
18 an apprentice capacity for a period not to exceed 3 years ±  
19 ~~year~~ as may be determined by board rule or for a period not to  
20 exceed 5 ~~3~~ years if the apprentice is enrolled in and  
21 attending a course in mortuary science or funeral service  
22 education at any mortuary college or funeral service education  
23 college or school. An embalmer apprentice shall be registered  
24 with the board upon payment of a registration fee not to  
25 exceed \$50.

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

28           470.018 Renewal of registration of direct disposer.--

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

1           (2) The department shall adopt rules establishing a  
2 procedure for the biennial renewal of registrations. The board  
3 shall prescribe by rule continuing education requirements of  
4 up to 6 ~~3~~ classroom hours and may by rule establish criteria  
5 for accepting alternative nonclassroom continuing education on  
6 an hour-for-hour basis, in addition to a board-approved course  
7 on communicable diseases that includes the course on human  
8 immunodeficiency virus and acquired immune deficiency syndrome  
9 required by s. 455.2226, for the renewal of a registration.

10           Section 18. Subsections (2) and (5) of section  
11 470.021, Florida Statutes, are amended to read:

12           470.021 Direct disposal establishment; standards and  
13 location; registration.--

14           (2) The practice of direct disposition must be engaged  
15 in at a fixed location of at least 625 interior contiguous  
16 square feet and must maintain or make arrangements for  
17 suitable capacity for the refrigeration and storage of dead  
18 human bodies handled and stored by the establishment. No  
19 person may open or maintain an establishment at which to  
20 engage in or hold himself or herself out as engaging in the  
21 practice of direct disposition unless such establishment is  
22 registered with the board. Any change in location of such  
23 establishment shall be reported promptly to the board as  
24 prescribed by rule of the board.

25           (5)(a) Each direct disposal establishment shall at all  
26 times be subject to the inspection of all its buildings,  
27 grounds, and vehicles used in the conduct of its business, by  
28 the department, the Department of Health, and local government  
29 inspectors and by their agents. The board shall adopt rules  
30 which establish such inspection requirements.

31

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

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

6 1. Maintain one or more retorts for the reduction of  
7 dead human bodies.

8 2. Maintain refrigeration which satisfies the  
9 standards set by the Department of Health and which contains a  
10 sufficient number of shelves for the average daily number of  
11 bodies stored, if unembalmed bodies are kept at the site.

12 3. Maintain sufficient pollution control equipment to  
13 comply with requirements of the Department of Environmental  
14 Protection in order to secure annual approved certification.

15 4. Either have on site or immediately available  
16 sufficient sealed containers of a type required for the  
17 transportation of bodies as specified in Rule 10D-37.012,  
18 F.A.C.

19 5. Maintain the premises in a clean and sanitary  
20 condition.

21 6. Have appropriate Department of Environmental  
22 Protection permits.

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

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

27 470.024 Funeral establishment; licensure.--

28 (1) A funeral establishment shall be a place at a  
29 specific street address or location consisting of at least  
30 1,250 contiguous interior square feet and must maintain or  
31 make arrangements for ~~either~~ suitable capacity for the



1 refrigeration and storage of dead human bodies handled and  
2 stored by the establishment and ~~or~~ a preparation room equipped  
3 with necessary ventilation and drainage and containing  
4 necessary instruments for embalming dead human bodies or must  
5 make arrangements for a preparation room as established by  
6 board rule.

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

10 470.025 Cinerator facility; licensure.--

11 (6) No more than one dead human body may be placed in  
12 a retort at one time, unless written permission has been  
13 received from a legally authorized person for each body. The  
14 operator of a cinerator facility shall be entitled to rely on  
15 the permission of a legally authorized person to cremate more  
16 than one human body.

17 (13) A cinerator facility shall not place human  
18 remains or body parts in a retort or cremation chamber unless  
19 the human remains are in an alternative container, cremation  
20 container, or casket. Human remains may be transported in a  
21 cremation container or stored if they are completely covered,  
22 and at all times treated with dignity and respect. Cremation  
23 may include the processing and pulverization of bone  
24 fragments. Cremated remains may be placed in a temporary  
25 container following cremation.None of the provisions  
26 contained in this subsection require the purchase of a casket  
27 for cremation. This subsection applies to at-need contracts  
28 and preneed contracts entered into pursuant to chapter 497  
29 after June 1, 1996.

30 (14) Each cinerator facility shall ensure that all  
31 alternative containers, cremation containers, or caskets used

1 for cremation contain no amount of chlorinated plastics not  
2 authorized by the Department of Environmental Protection, that  
3 they also are composed of readily combustible materials  
4 suitable for cremation, able to be closed to provide a  
5 complete covering for the human remains, resistant to leakage  
6 or spillage, rigid enough for handling with ease, and able to  
7 provide for the health, safety, and personal integrity of the  
8 public and crematory personnel.

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

11 (16) The operator of a cinerator facility shall  
12 establish written procedures for the removal of remains and  
13 bone fragments, to the extent possible, resulting from the  
14 cremation of a human body and the postcremation processing,  
15 shipping, packing, or identifying of those remains. If an  
16 operator follows these procedures, the operator is not liable  
17 for the unintentional or incidental commingling of human  
18 remains and bone fragments resulting from more than one  
19 cremation cycle or from postcremation processing, shipping,  
20 packing, or identifying of those remains. A copy of the  
21 procedures shall be available, upon request, to the department  
22 and legally authorized persons.

23 Section 21. Section 470.0255, Florida Statutes, is  
24 amended to read:

25 470.0255 Cremation; procedure required.--

26 (1) At the time of the arrangement for a cremation  
27 performed by any person licensed pursuant to this chapter, the  
28 person contracting for cremation services shall be required to  
29 designate his or her intentions with respect to the  
30 disposition of the cremated remains of the deceased in a  
31 signed declaration of intent which shall be provided by and

1 retained by the funeral or direct disposal establishment. A  
2 cremation may not be performed until a legally authorized  
3 person gives written authorization for such cremation. The  
4 cremation must be performed within 48 hours after a specified  
5 time which has been agreed to in writing by the person  
6 authorizing the cremation.

7 (2) With respect to any person who intends to provide  
8 for the cremation of the deceased, if, after a period of 120  
9 days from the time of cremation the cremated remains have not  
10 been claimed, the funeral or direct disposal establishment may  
11 dispose of the cremated remains. Such disposal shall include  
12 scattering them at sea or placing them in a licensed cemetery  
13 scatter garden or pond or in a church columbarium or otherwise  
14 disposing of the remains as provided by rule of the department  
15 or board.

16 (3) Pursuant to the request of a legally authorized  
17 person and incidental to final disposition, cremation may be  
18 performed on parts of human remains. This subsection does not  
19 authorize the cremation of body parts as defined in s.  
20 470.002.

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

23 470.028 Preneed sales; registration of agents; control  
24 and supervision of agents.--

25 (1) All sales of preneed funeral service contracts or  
26 direct disposition contracts shall be made pursuant to chapter  
27 497.

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

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

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

8           (b) The direct disposer in charge or a funeral  
9 director acting as a direct disposer in charge of a direct  
10 disposal establishment shall be responsible for the control  
11 and activities of the establishment's preneed agents.

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

14           470.029 Reports of cases embalmed and bodies  
15 handled.--

16           (1) Each funeral establishment, direct disposal  
17 establishment, cinerator facility, and centralized embalming  
18 facility shall report on a form prescribed and furnished by  
19 the department the name of the deceased and such other  
20 information as may be required with respect to each dead human  
21 body embalmed or otherwise handled by the establishment or  
22 facility. Such forms shall be signed by the embalmer who  
23 performs the embalming, if the body is embalmed, and the  
24 funeral director in charge of the establishment or facility or  
25 by the direct disposer who disposes of the body. The board  
26 shall prescribe by rule the procedures in submitting such  
27 documentation. Reports required by this subsection shall be  
28 filed by the 20th ~~10th~~ day of each month for final  
29 dispositions handled the preceding month.

30           Section 24. Section 470.031, Florida Statutes, is  
31 amended to read:

1 470.031 Prohibitions; penalties.--

2 (1) No person may:

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

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

9 (c) Represent as his or her own the license or  
10 registration of another.

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

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

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

18 (g) Knowingly conceal information relative to  
19 violations of this chapter.

20 (h) Operate an unlicensed cinerator facility.

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

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

26 Section 25. Section 470.0355, Florida Statutes, is  
27 amended to read:

28 470.0355 Identification of human remains.--

29 (1) PRIOR TO FINAL DISPOSITION.--

30 (a)~~(1)~~ The licensee or registrant in charge of the  
31 final disposition of dead human remains shall, prior to final

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

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

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

19 (2) IN UNLICENSED CEMETERIES.--Effective October 1,  
20 2003, the identification of human remains interred in an  
21 unlicensed cemetery shall be the responsibility of the  
22 licensed funeral establishment in charge of the funeral  
23 arrangements for the deceased person. The licensed funeral  
24 establishment in charge of the funeral arrangements for the  
25 interment in an unlicensed cemetery of human remains shall  
26 place on the outer burial container, cremation interment  
27 container, or other container or on the inside of a crypt or  
28 niche a tag or permanent identifying mark containing the name  
29 of the decedent and the date of death, if available. The  
30 materials and locations of the tag or mark shall be more  
31 specifically described by the rule of the board.

1           (3) IN LICENSED CEMETERIES.--Effective October 1,  
2 2003, human remains at licensed cemeteries shall be identified  
3 as follows:

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

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

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

29           Section 26. For the purpose of incorporating the  
30 amendment to section 470.031, Florida Statutes, in a reference  
31

1 thereto, paragraph (a) of subsection (1) of section 470.036,  
2 Florida Statutes, is reenacted to read:

3 470.036 Disciplinary proceedings.--

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

6 (a) Violation of any provision of s. 455.227(1) or s.  
7 470.031.

8 Section 27. Section 497.005, Florida Statutes, is  
9 amended to read:

10 497.005 Definitions.--As used in this chapter:

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

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

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

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

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

31



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

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

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

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

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

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

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

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

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

29           (15) "Cremation" includes any mechanical or thermal  
30 process whereby a dead human body is reduced to ashes.  
31 Cremation also includes any other mechanical or thermal

1 process whereby human remains are pulverized, burned,  
2 recremented, or otherwise further reduced in size or quantity.

3 (16) "Department" means the Department of Banking and  
4 Finance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29           (31)~~(30)~~ "Preneed contract" means any arrangement or  
30 method, of which the provider of funeral merchandise or  
31

1 services has actual knowledge, whereby any person agrees to  
2 furnish funeral merchandise or service in the future.

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

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

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

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

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

26 (37) "Urn" means a receptacle designed to permanently  
27 encase cremated remains.

28 Section 28. Subsection (3) of section 497.305, Florida  
29 Statutes, is amended to read:

30 497.305 Cemetery companies; authorized functions.--  
31

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

6           Section 29. Section 497.306, Florida Statutes, is  
7 created to read:

8           497.306 Standards for grave spaces.--

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

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

30           (b) The map of the area proposed to be developed shall  
31 show:

- 1           1. The number of grave spaces available for sale.  
2           2. The location of each grave space.  
3           3. The number designation assigned to each grave  
4 space.

- 5           4. The dimensions of a standard adult grave space.  
6           (3) Adult grave spaces established prior to October 1,  
7 2003, are not required to meet the standards established under  
8 this section for the dimensions or separation of grave spaces.

9           Section 30. Section 497.307, Florida Statutes, is  
10 created to read:

11           497.307 Identification of human remains in licensed  
12 cemeteries.--On and after October 1, 2003, human remains  
13 interred, entombed, scattered, or otherwise placed for final  
14 rest at licensed cemeteries shall be identified as follows:

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

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

31

1           Section 31. Subsection (2) of section 497.325, Florida  
2 Statutes, is amended to read:

3           497.325 Illegal tying arrangements.--

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

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

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

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

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

25  
26 where the monument or installation service is not purchased  
27 from the person authorized to sell grave space or the cemetery  
28 company or other legal entity providing grave space or from or  
29 through any other person or corporation designated by the  
30 person authorized to sell grave space or the cemetery company  
31 or other legal entity providing grave space. A ~~No~~ cemetery



1 company or other entity owning and operating a cemetery may  
2 not be held liable for the improper installation of a monument  
3 where the monument is not installed by the cemetery company or  
4 its agents or by such other entity or its agents.

5 Section 32. Subsection (9) is added to section  
6 497.333, Florida Statutes, to read:

7 497.333 Disclosure of information to public.--A  
8 licensee offering to provide burial rights, merchandise, or  
9 services to the public shall:

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

13 Section 33. Subsection (5) of section 497.361, Florida  
14 Statutes, is amended, and subsections (6) and (7) are added to  
15 that section, to read:

16 497.361 Registration of monument establishments.--

17 (5) Monuments not ~~shall be~~ delivered within a  
18 specified timeframe shall be considered a breach of contract  
19 unless the monument establishment has a written agreement to  
20 extend the delivery date. The purchaser shall be entitled to  
21 a refund of all money paid for the merchandise. Such refund  
22 shall be made within 30 days after receipt by the monument  
23 establishment of the purchaser's written request for a refund.  
24 This subsection does not preclude the purchase and  
25 installation of a new monument from any other registered  
26 monument establishment or certificateholder ~~as established by~~  
27 ~~this chapter and installed no later than 120 days after the~~  
28 ~~date of sale. The establishment may request two 30-day~~  
29 ~~extensions. Extensions may be granted by the executive~~  
30 ~~director.~~

31

1           (6) All contracts with the public must be approved by  
2 the Department of Financial Services and must provide a  
3 complete description of any monument, marker, or related  
4 product to be delivered.

5           (7) A registration may not be transferred or assigned.

6           Section 34. Section 497.365, Florida Statutes, is  
7 created to read:

8           497.365 Regulation of monument establishments.--

9           (1) The Department of Financial Services shall  
10 establish an inspection program for all monument  
11 establishments in accordance with the requirements of this  
12 act.

13           (2) The Department of Financial Services shall adopt  
14 rules that shall include requirements for the approval of  
15 contracts for memorials and related products, written  
16 complaint procedures and mandatory response to consumer  
17 complaints, disclosure to the public as to the form of  
18 ownership, the fingerprinting of owners, and appropriate  
19 recordkeeping.

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

23           Section 35. Section 497.371, Florida Statutes, is  
24 created to read:

25           497.371 Monument establishment business location.--

26           (1) A monument establishment shall be a place at a  
27 specific street address or location consisting of an office  
28 and manufacturing space, including a display area for  
29 monuments, markers, and related products. The place where the  
30 establishment is located must comply with the local government  
31

1 zoning regulations and may not be located on tax-exempt  
2 property.

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

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

11 Section 36. Section 497.379, Florida Statutes, is  
12 created to read:

13 497.379 Licensure of monument establishments to sell  
14 preneed contracts.--A monument establishment, including an  
15 existing registered or unregistered monument establishment,  
16 may not sell a preneed contract without first having obtained  
17 a valid certificate of authority from the Department of  
18 Financial Services. A person may not be issued a certificate  
19 of authority as a monument establishment to sell preneed  
20 contracts unless such person has at least 3 years' experience  
21 in the operation and management of an establishment selling  
22 monuments, markers, and related products.

23 Section 37. Section 497.385, Florida Statutes, is  
24 created to read:

25 497.385 Monument establishment; sales  
26 representative.--Each person selling monuments, markers, and  
27 related products for a monument establishment must register  
28 with the board, including any person registered or licensed  
29 pursuant to chapter 470 or this chapter. A person selling  
30 monuments, markers, and related products for a monument  
31 establishment that has been issued a certificate of authority

1 must register as a preneed agent pursuant to the requirements  
2 of this chapter.

3 Section 38. Section 497.391, Florida Statutes, is  
4 created to read:

5 497.391 Monument establishment; preneed  
6 contracts.--Effective January 1, 2004, a monument dealer or  
7 establishment may not write a preneed contract unless that  
8 contract has been approved by the board. Any monument dealer  
9 or establishment that is paid, collects, or receives funds  
10 under a preneed contract for services or merchandise shall  
11 comply with the provisions of ss. 497.417 and 497.413.

12 Section 39. Section 497.395, Florida Statutes, is  
13 created to read:

14 497.395 Licensed monument establishment; financial  
15 requirements.--

16 (1) For the purposes of qualifying for a certificate  
17 of authority as a licensed monument establishment must have a  
18 minimum net worth of \$10,000. A licensed monument  
19 establishment holding a certificate of authority or a monument  
20 establishment applicant must meet and maintain the  
21 requirements of this section on an annual basis in order to  
22 perform its obligation for all existing preneed contracts.

23 (2) All licensed monument establishments holding a  
24 Certificate of Authority or an applicant must submit its most  
25 recent year-end financial statements, including a balance  
26 sheet and income statement, with the certificate of authority  
27 application and annually thereafter as provided in s.  
28 497.407(1). The financial statement must be prepared in  
29 accordance with generally accepted accounting principles, as  
30 those principles have been defined by the Florida Board of  
31 Accountancy in the Florida Administrative Code. If the

1 applicant does not have the minimum net worth as set forth in  
2 subsection (3), lacks sufficient liquid assets to satisfy  
3 current liabilities, or does not appear to have any  
4 substantial long-term assets, the department shall request  
5 additional financial information concerning financial  
6 statements and the statement of cash flow.

7 (3) For the purposes of this section, the term "total  
8 preneed contracts" means the total retail value of all  
9 outstanding preneed contracts. There shall be an annual fee  
10 for the renewal of the monument establishment certificate of  
11 authority based on the following sales volume for total  
12 preneed contracts:

13 (a) Five hundred dollars for a certificateholder that  
14 has total sales of \$1 to \$50,000.

15 (b) Seven hundred and fifty dollars for a  
16 certificateholder that has total sales of \$50,001 to \$250,000.

17 (c) One thousand dollars for a certificateholder that  
18 has total sales of \$250,001 to \$500,000.

19 (d) Twelve hundred fifty dollars for a  
20 certificateholder that has total sales in excess of \$500,001.

21 (4) In the case of a monument establishment holding a  
22 certificate of authority or a licensed dealer applicant  
23 offering preneed sales through a subsidiary agent as provided  
24 in Rule 3F-5.0015, Florida Administrative Code, the  
25 certificateholder or applicant must execute a guarantee  
26 agreement with respect to any contract obligations resulting  
27 from preneed sales of such a selling agent.

28 (5) If the certificateholder or applicant does not  
29 meet the financial requirements in subsection (3), the entity  
30 may voluntarily submit to the board additional evidence or  
31 agree to additional oversight as to meeting the requirements

1 of subsection (1) as a condition of receiving or retaining a  
2 certificate of authority. Such additional evidence or  
3 oversight shall include, as appropriate:

4 (a) An agreement to submit monthly financial  
5 statements of the entity;

6 (b) An agreement to submit quarterly financial  
7 statements of the entity;

8 (c) An appraisal of the entity's property or broker's  
9 opinion of the entity's assets;

10 (d) A credit report of the entity or its principal  
11 owners;

12 (e) Subordination-of-debt agreement from the entity's  
13 principal owners;

14 (f) An indemnification or subrogation agreement  
15 binding the entity and principal owners;

16 (g) A guarantee agreement for the entity from its  
17 principal owners;

18 (h) Written explanation of past financial activity;

19 (i) Submission of the 12-month projected business plan  
20 that includes:

21 1. A statement of cash flows;

22 2. Proforma income statements, with sources of  
23 revenues identified; and

24 3. Marketing initiatives;

25 (j) Submission of previous department examination  
26 reports; or

27 (k) An agreement of 100 percent voluntary trust by the  
28 entity.

29 Section 40. Subsections (1) and (4) of section  
30 497.405, Florida Statutes, are amended to read:

31 497.405 Certificate of authority required.--

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

5           (b) No person, including any cemetery exempt under s.  
6 497.003, may sell, advertise to sell, or make an arrangement  
7 for services, merchandise, or burial rights on a preneed basis  
8 unless such person is authorized pursuant to this chapter to  
9 provide such services, merchandise, or burial rights on an  
10 at-need basis.

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

25           Section 41. Subsection (4) of section 497.419, Florida  
26 Statutes, is amended, and subsection (11) is added to that  
27 section, to read:

28           497.419 Cancellation of, or default on, preneed  
29 contracts.--

30           (4) Each certificateholder shall provide in  
31 conspicuous type in its contract that the contract purchaser

1 may cancel the contract and receive a full refund within 30  
2 days after ~~of~~ the date of execution of the contract, except  
3 for those amounts allocable to any burial rights, merchandise,  
4 or services that have been used by the purchaser. The failure  
5 to make such provision shall not impair the contract  
6 purchaser's right to cancellation and refund as provided in  
7 this section.

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

18 Section 42. Subsection (4) of section 497.436, Florida  
19 Statutes, is amended to read:

20 497.436 Inactive and revoked certificateholders.--

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

23 (a) shall Review the certificateholder's:

24 1.(a) Trust funds.

25 2.(b) Trust agreements.

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

27 (b) Perform other procedures the board deems  
28 necessary.

29 Section 43. Section 497.310, Florida Statutes, is  
30 created to read:

31 497.310 Recording purchase of burial rights.--



1           (1) Any person purchasing a burial right, belowground  
2 crypt, grave space, mausoleum, columbarium, ossuary, or  
3 scattering garden for the interment, entombment, inurnment, or  
4 other disposition of human remains may, at the person's  
5 option, permanently record the purchase of the burial right,  
6 belowground crypt, grave space, mausoleum, columbarium,  
7 ossuary, or scattering garden with the clerk of the court in  
8 the county where the burial right, belowground crypt, grave  
9 space, mausoleum, columbarium, ossuary, or scattering garden  
10 is located.

11           (2) The clerk of the court shall record the evidence  
12 of the purchase of a burial right, belowground crypt, grave  
13 space, mausoleum, columbarium, ossuary, or scattering garden  
14 presented to him or her for recording, upon payment of the  
15 service charge of \$5 for the first page and \$2 for each  
16 additional page or fraction thereof of the purchase documents.

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