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1 A bill to be entitled

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

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 497.005, Florida Statutes, is amended
 31 to read:

32 497.005 Definitions.--As used in this chapter:

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

37 (2) "Bank of belowground crypts" means any construction
 38 unit of belowground crypts which is acceptable to the department
 39 and which a cemetery uses to initiate its belowground crypt
 40 program or to add to existing belowground crypt structures.

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

45 (4) "Board" means the Board of Funeral and Cemetery
 46 Services.

47 (5) "Burial merchandise," "funeral merchandise," or
 48 "merchandise" means any personal property offered or sold by any
 49 person for use in connection with the final disposition,
 50 memorialization, interment, entombment, or inurnment of human
 51 remains.

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

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



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60 (8) "Care and maintenance" means the perpetual process of
61 keeping a cemetery and its lots, graves, grounds, landscaping,
62 roads, paths, parking lots, fences, mausoleums, columbaria,
63 vaults, crypts, utilities, and other improvements, structures,
64 and embellishments in a well-cared-for and dignified condition,
65 so that the cemetery does not become a nuisance or place of
66 reproach and desolation in the community. As specified in the
67 rules of the board, "care and maintenance" may include, but is
68 not limited to, any or all of the following activities: mowing
69 the grass at reasonable intervals; raking and cleaning the grave
70 spaces and adjacent areas; pruning of shrubs and trees;
71 suppression of weeds and exotic flora; and maintenance, upkeep,
72 and repair of drains, water lines, roads, buildings, and other
73 improvements. "Care and maintenance" may include, but is not
74 limited to, reasonable overhead expenses necessary for such
75 purposes, including maintenance of machinery, tools, and
76 equipment used for such purposes. "Care and maintenance" may
77 also include repair or restoration of improvements necessary or
78 desirable as a result of wear, deterioration, accident, damage,
79 or destruction. "Care and maintenance" does not include expenses
80 for the construction and development of new grave spaces or
81 interment structures to be sold to the public.

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

86 (10) "Cemetery" means a place dedicated to and used or
87 intended to be used for the permanent interment of human
88 remains. A cemetery may contain land or earth interment;
89 mausoleum, vault, or crypt interment; a columbarium, ossuary,



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90 scattering garden, or other structure or place used or intended
 91 to be used for the interment or disposition of cremated human
 92 remains; or any combination of one or more of such structures or
 93 places.

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

96 (12) "Certificateholder" or "licensee" means the person or
 97 entity that is authorized under this chapter to sell preneed
 98 funeral or burial services, preneed funeral or burial
 99 merchandise, or burial rights. Each term shall include the
 100 other, as applicable, as the context requires. For the purposes
 101 of chapter 120, all certificateholders, licensees, and
 102 registrants shall be considered licensees.

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

106 (14) "Common business enterprise" means a group of two or
 107 more business entities that share common ownership in excess of
 108 50 percent.

109 (15) "Cremation" includes any mechanical or thermal
 110 process whereby a dead human body is reduced to ashes. Cremation
 111 also includes any other mechanical or thermal process whereby
 112 human remains are pulverized, burned, reinterred, or otherwise
 113 further reduced in size or quantity.

114 (16) "Department" means the Department of Banking and
 115 Finance.

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



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

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

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

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

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

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

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

143 (25) "Monument establishment" means a facility that
144 operates independently of a cemetery or funeral establishment
145 and that offers to sell monuments or monument services to the
146 public for placement in a cemetery.

147 (26) "Net assets" means the amount by which the total
148 assets of a certificateholder, excluding goodwill, franchises,



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149 customer lists, patents, trademarks, and receivables from or
150 advances to officers, directors, employees, salespersons, and
151 affiliated companies, exceed total liabilities of the
152 certificateholder. For purposes of this definition, the term
153 "total liabilities" does not include the capital stock, paid-in
154 capital, or retained earnings of the certificateholder.

155 (27) "Net worth" means total assets minus total
156 liabilities pursuant to generally accepted accounting
157 principles.

158 (28) "Niche" means a compartment or cubicle for the
159 memorialization or permanent placement of an urn containing
160 cremated remains.

161 (29)~~(28)~~ "Ossuary" means a receptacle used for the
162 communal placement of cremated human remains without benefit of
163 an urn or any other container in which remains will be
164 commingled with other cremated human remains and are
165 nonrecoverable. It may or may not include memorialization.

166 (30)~~(29)~~ "Outer burial container" means an enclosure into
167 which a casket is placed and includes, but is not limited to,
168 vaults made of concrete, steel, fiberglass, or copper; sectional
169 concrete enclosures; crypts; and wooden enclosures.

170 (31)~~(30)~~ "Preneed contract" means any arrangement or
171 method, of which the provider of funeral merchandise or services
172 has actual knowledge, whereby any person agrees to furnish
173 funeral merchandise or service in the future.

174 (32)~~(31)~~ "Religious institution" means an organization
175 formed primarily for religious purposes which has qualified for
176 exemption from federal income tax as an exempt organization
177 under the provisions of s. 501(c)(3) of the Internal Revenue
178 Code of 1986, as amended.



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179 (33)~~(32)~~ "Scattering garden" means a location set aside,
 180 within a cemetery, which is used for the spreading or
 181 broadcasting of cremated remains that have been removed from
 182 their container and can be mixed with or placed on top of the
 183 soil or ground cover or buried in an underground receptacle on a
 184 commingled basis and that are nonrecoverable. It may or may not
 185 include memorialization.

186 (34)~~(33)~~ "Servicing agent" means any person acting as an
 187 independent contractor whose fiduciary responsibility is to
 188 assist both the trustee and certificateholder hereunder in
 189 administrating their responsibilities pursuant to this chapter.

190 (35)~~(34)~~ "Solicitation" means any communication which
 191 directly or implicitly requests an immediate oral response from
 192 the recipient.

193 (36)~~(35)~~ "Statutory accounting" means generally accepted
 194 accounting principles, except as modified by this chapter.

195 (37) "Urn" means a receptacle designed to permanently
 196 encase cremated remains.

197 Section 2. Section 497.306, Florida Statutes, is created
 198 to read:

199 497.306 Standards for grave spaces.--

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

207 (2)(a) Effective October 1, 2003, and prior to the sale of
 208 grave spaces in any undeveloped areas of a licensed cemetery,



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209 the cemetery company shall prepare a map documenting the
210 establishment of recoverable internal survey reference markers
211 installed by the cemetery company no more than 100 feet apart in
212 the areas planned for development. The internal reference
213 markers shall be established with reference to survey markers
214 that are no more than 200 feet apart which have been set by a
215 surveyor and mapper licensed under chapter 472 and documented in
216 a certified land survey. Both the map and the certified land
217 survey shall be maintained by the cemetery company and shall be
218 made available upon request to the department or members of the
219 public.

220 (b) The map of the area proposed to be developed shall
221 show:

- 222 1. The number of grave spaces available for sale.
- 223 2. The location of each grave space.
- 224 3. The number designation assigned to each grave space.
- 225 4. The dimensions of a standard adult grave space.

226 (3) Adult grave spaces established prior to October 1,
227 2003, are not required to meet the standards established under
228 this section for the dimensions or separation of grave spaces.

229 Section 3. Section 497.307, Florida Statutes, is created
230 to read:

231 497.307 Identification of human remains in licensed
232 cemeteries.--On and after October 1, 2003, human remains
233 interred, entombed, scattered, or otherwise placed for final
234 rest at licensed cemeteries shall be identified as follows:

235 (1) Each licensed cemetery shall place on the outer burial
236 container, cremation interment container, or other container, or
237 on the inside of a crypt or niche, a tag or a permanent
238 identifying marker containing the name of the decedent and the



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239 date of death, if available. The materials and location of the
240 tag or marker shall be more specifically described by rule of
241 the board.

242 (2) Each licensed cemetery may rely entirely on the
243 identity stated on the burial transit permit or on the
244 identification supplied by a person licensed under chapter 470
245 to establish the identity of the dead human remains delivered by
246 such person for burial and shall not be liable for any
247 differences between the identity shown on the burial transit
248 permit or other identification and the actual identity of the
249 dead human remains delivered by such person and buried in the
250 cemetery.

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

253 497.405 Certificate of authority required.--

254 (1)(a) No person, including any cemetery exempt under s.
255 497.003, may sell, advertise to sell, or make an arrangement for
256 a preneed contract without first having a valid certificate of
257 authority.

258 (b) No person, including any cemetery exempt under s.
259 497.003, may sell, advertise to sell, or make an arrangement for
260 services, merchandise, or burial rights on a preneed basis
261 unless such person is authorized pursuant to this chapter to
262 provide such services, merchandise, or burial rights on an at-
263 need basis.

264 (4) The provisions of this section do not apply to
265 religious-institution-owned cemeteries exempt under s.
266 497.003(1)(d), in counties with a population of at least 960,000
267 persons on July 1, 1996, with respect to the sale to the
268 religious institution's members and their families of interment



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269 rights, mausoleums, crypts, cremation niches and cremation
 270 interment containers, vaults, liners, urns, memorials, vases,
 271 foundations, memorial bases, floral arrangements, monuments,
 272 markers, engraving, and the opening and closing of interment
 273 rights, mausoleums, crypts, and cremation niches and cremation
 274 interment containers, if such cemeteries have engaged in the
 275 sale of preneed contracts prior to October 1, 1993, and maintain
 276 a positive net worth at the end of each fiscal year of the
 277 cemetery.

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

280 497.419 Cancellation of, or default on, preneed
 281 contracts.--

282 (4) Each certificateholder shall provide in conspicuous type
 283 in its contract that the contract purchaser may cancel the contract
 284 and receive a full refund within 30 days after ~~of~~ the date of
 285 execution of the contract, except for those amounts allocable to
 286 any burial rights, merchandise, or services that have been used by
 287 the purchaser. The failure to make such provision shall not impair
 288 the contract purchaser's right to cancellation and refund as
 289 provided in this section.

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

292 497.436 Inactive and revoked certificateholders.--

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

295 (a) ~~shall~~ Review the certificateholder's:

296 1.(a) Trust funds.

297 2.(b) Trust agreements.

298 3.(e) Evidence of all outstanding preneed contracts.



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(b) Perform other procedures the board deems necessary.

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