



HB 0015D

2003

1 A bill to be entitled

2 An act relating to funeral directing, embalming, direct
3 disposition, and cemetery services; amending s. 20.121,
4 F.S.; establishing the Division of Funeral, Cemetery, and
5 Consumer Services and the Board of Funeral, Cemetery, and
6 Consumer Services within the Department of Financial
7 Services; amending s. 20.165, F.S.; abolishing the Board
8 of Funeral Directors and Embalmers within the Department
9 of Business and Professional Regulation; amending ss.
10 497.005 and 470.002, F.S.; revising and providing
11 definitions; amending s. 455.2226, F.S.; conforming
12 terminology; repealing s. 470.003, F.S., relating to the
13 Board of Funeral Directors and Embalmers, to conform;
14 repealing ss. 497.105, 497.107, and 497.109, F.S.,
15 relating to the Department of Financial Services and the
16 Board of Funeral and Cemetery Services, to conform;
17 amending s. 497.101, F.S.; creating the Board of Funeral,
18 Cemetery, and Consumer Services; providing for the
19 appointment of board members; providing terms of office;
20 providing immunity from liability for members acting in an
21 official capacity; specifying the headquarters for the
22 board; providing for compensation and reimbursement for
23 per diem expenses; creating s. 497.102, F.S.; providing
24 for the authority of the board; creating s. 497.1021,
25 F.S.; providing duties of the Division of Funeral,
26 Cemetery, and Consumer Services; providing powers of
27 enforcement; creating s. 497.1022, F.S.; establishing the
28 office of the director of the division; providing duties
29 to the Chief Financial Officer under chapters 470 and 497,
30 F.S.; providing for type two transfer of the Board of



HB 0015D

2003

31 Funeral Directors and Embalmers to the Department of
32 Financial Services; providing for validity of judicial and
33 administrative actions; providing for validity of
34 licenses; providing for continuity of rules; abolishing
35 the Board of Funeral and Cemetery Services and the Board
36 of Funeral Directors and Embalmers; providing for deposit
37 of fees; providing for conforming of statutes; amending s.
38 470.002, F.S.; revising and providing definitions;
39 amending s. 470.0085, F.S.; extending the embalmer
40 apprentice period; amending s. 470.018, F.S.; increasing
41 continuing education requirement; amending s. 470.021,
42 F.S.; providing additional requirements to be a direct
43 disposal establishment; providing inspection requirements
44 and criteria; amending s. 470.024, F.S.; revising
45 requirements to be a funeral establishment; amending s.
46 470.025, F.S.; revising cremation requirements for
47 cinerator facilities relating to simultaneous cremations,
48 body parts, cremation containers, and the cremation
49 chamber; providing exemption from liability for
50 unintentional or incidental commingling of remains under
51 certain conditions; amending s. 470.0255, F.S.; providing
52 for cremation of parts of human bodies incidental to final
53 disposition; amending s. 470.028, F.S.; providing for
54 control and supervision of preneed agents; amending s.
55 470.029, F.S.; extending the filing time for reports of
56 bodies embalmed or handled; amending s. 470.031, F.S.;
57 prohibiting any guarantee on the future price of any goods
58 or services; providing penalties; amending s. 470.0355,
59 F.S.; revising requirements for identification of human
60 remains prior to final disposition; providing requirements



HB 0015D

2003

61 for identification of human remains in licensed and
62 unlicensed cemeteries and by direct disposal
63 establishments; reenacting s. 470.036(1)(a), F.S.,
64 relating to disciplinary proceedings, to incorporate the
65 amendment to s. 470.031, F.S., in a reference thereto;
66 amending s. 497.005, F.S.; revising and providing
67 definitions; amending s. 497.305, F.S.; requiring that a
68 cemetery company comply with its adopted bylaws; creating
69 s. 497.306, F.S.; providing dimension and spacing
70 standards for grave spaces; requiring a map of reference
71 markers and a land survey for areas proposed to be
72 developed by a licensed cemetery company; exempting adult
73 grave spaces previously established; creating s. 497.307,
74 F.S.; providing requirements for identification of human
75 remains in licensed cemeteries; amending s. 497.325, F.S.;
76 providing for procedures established by other entities
77 operating a cemetery; amending s. 497.333, F.S.; providing
78 for disclosure of certain information to customers;
79 amending s. 497.361, F.S.; providing remedies for certain
80 breaches of contract; providing for approval of contracts;
81 creating s. 497.365, F.S.; providing for regulation of
82 monument establishments by the Department of Financial
83 Services; providing for inspections; providing for rules;
84 providing that the department may not unreasonably
85 restrict commerce; creating s. 497.371, F.S.; providing
86 for specifications for business locations; creating s.
87 497.379, F.S.; providing for licensure of monument
88 establishments to sell preneed contracts; creating s.
89 497.385, F.S.; providing for registration of monument
90 sales representatives; creating s. 497.391, F.S.;



HB 0015D

2003

91 providing for approval of preneed contracts by the board;
92 creating s. 497.395, F.S.; providing financial
93 requirements for monument establishments; providing
94 requirements for minimum net worth; providing for
95 submission of financial statements; providing for minimum
96 sales volume with respect to preneed contracts; providing
97 for guarantee agreements; providing for additional
98 oversight in lieu of financial requirements; amending s.
99 497.405, F.S.; prohibiting any person from advertising for
100 sale or making any arrangement for a preneed contract
101 without having a valid certificate of authority; expanding
102 the exemption from the required certificate of authority
103 for certain religious-institution-owned cemeteries to
104 include the sale and opening or closing of cremation
105 interment containers to members and family members of the
106 religious institution; amending s. 497.419, F.S.;
107 requiring preneed contracts to include in the refund
108 notice the exclusion for amounts allocable to burial
109 rights, merchandise, and services used by the purchaser;
110 providing condition for breach of contract by
111 certificateholder and for rights of purchaser; amending s.
112 497.436, F.S.; authorizing the Board of Funeral and
113 Cemetery Services to review the trust funds, trust
114 agreements, and outstanding preneed contracts of, and
115 perform other procedures at its discretion with respect
116 to, a certificateholder filing notice to become inactive;
117 creating s. 497.310, F.S.; providing for the optional
118 recordation of burial rights; permitting the clerk of the
119 court to assess service charge fees; providing for
120 construction of the act in pari materia with laws enacted



HB 0015D

2003

121 during the 2003 Regular Session or any 2003 special
 122 session of the Legislature; providing effective dates.

123

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

125

126 Section 1. Effective January 1, 2004, paragraph (n) is
 127 added to subsection (2) of section 20.121, Florida Statutes, as
 128 amended by section 69 of chapter 2003-261, Laws of Florida, and
 129 subsection (4) is added to that section, to read:

130 20.121 Department of Financial Services.--There is created
 131 a Department of Financial Services.

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

134 (n) The Division of Funeral, Cemetery, and Consumer
 135 Services.

136 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER
 137 SERVICES.--There is created within the Department of Financial
 138 Services the Board of Funeral, Cemetery, and Consumer Services.

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

142 20.165 Department of Business and Professional
 143 Regulation.--There is created a Department of Business and
 144 Professional Regulation.

145 (4)(a) The following boards are established within the
 146 Division of Professions:

147 1. Board of Architecture and Interior Design, created
 148 under part I of chapter 481.

149 2. Florida Board of Auctioneers, created under part VI of
 150 chapter 468.



HB 0015D

2003

- 151 3. Barbers' Board, created under chapter 476.
- 152 4. Florida Building Code Administrators and Inspectors
- 153 Board, created under part XII of chapter 468.
- 154 5. Construction Industry Licensing Board, created under
- 155 part I of chapter 489.
- 156 6. Board of Cosmetology, created under chapter 477.
- 157 7. Electrical Contractors' Licensing Board, created under
- 158 part II of chapter 489.
- 159 8. Board of Employee Leasing Companies, created under part
- 160 XI of chapter 468.
- 161 ~~9. Board of Funeral Directors and Embalmers, created under~~
- 162 ~~chapter 470.~~
- 163 9.10. Board of Landscape Architecture, created under part
- 164 II of chapter 481.
- 165 ~~10.11.~~ Board of Pilot Commissioners, created under chapter
- 166 310.
- 167 ~~11.12.~~ Board of Professional Engineers, created under
- 168 chapter 471.
- 169 ~~12.13.~~ Board of Professional Geologists, created under
- 170 chapter 492.
- 171 ~~13.14.~~ Board of Professional Surveyors and Mappers,
- 172 created under chapter 472.
- 173 ~~14.15.~~ Board of Veterinary Medicine, created under chapter
- 174 474.
- 175 Section 3. Effective January 1, 2004, subsection (4) of
- 176 section 497.005, Florida Statutes, is amended, and subsections
- 177 (36) and (37) are added to that section, to read:
- 178 497.005 Definitions.--As used in this chapter:
- 179 (4) "Board" means the Board of Funeral, Cemetery, and
- 180 Consumer Services ~~Funeral and Cemetery Services.~~



HB 0015D

2003

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

183 (37) "Division" means the Division of Funeral, Cemetery,
 184 and Consumer Services within the Department of Financial
 185 Services.

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

188 470.002 Definitions.--As used in this chapter:

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

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

193 Section 5. Effective January 1, 2004, subsection (1) of
 194 section 455.2226, Florida Statutes, is amended to read:

195 455.2226 Funeral directors and embalmers; instruction on
 196 HIV and AIDS.--

197 (1) The Board of Funeral, Cemetery, and Consumer Services
 198 ~~Directors and Embalmers~~ shall require each person licensed or
 199 certified under chapter 470 to complete a continuing educational
 200 course, approved by the board, on human immunodeficiency virus
 201 and acquired immune deficiency syndrome as part of biennial
 202 relicensure or recertification. The course shall consist of
 203 education on the modes of transmission, infection control
 204 procedures, clinical management, and prevention of human
 205 immunodeficiency virus and acquired immune deficiency syndrome.
 206 Such course shall include information on current Florida law on
 207 acquired immune deficiency syndrome and its impact on testing,
 208 confidentiality of test results, and treatment of patients.

209 Section 6. Effective January 1, 2004, sections 470.003,
 210 497.105, 497.107, and 497.109, Florida Statutes, are repealed.



HB 0015D

2003

211 Section 7. Effective January 1, 2004, section 497.101,
 212 Florida Statutes, is amended to read:

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

215 497.101 Board of Funeral, Cemetery, and Consumer Services;
 216 membership; appointment; terms.--

217 (1) The Board of Funeral, Cemetery, and Consumer Services
 218 is created within the Department of Financial Services and shall
 219 consist of 10 members, nine of whom shall be appointed by the
 220 Governor from nominations made by the Chief Financial Officer
 221 and confirmed by the Senate. The Chief Financial Officer shall
 222 nominate three persons for each of the nine vacancies on the
 223 board, and the Governor shall fill each vacancy on the board by
 224 appointing one of the three persons nominated by the Chief
 225 Financial Officer to fill that vacancy. If the Governor objects
 226 to each of the three nominations for a vacancy, she or he shall
 227 inform the Chief Financial Officer in writing. Upon notification
 228 of an objection by the Governor, the Chief Financial Officer
 229 shall submit three additional nominations for that vacancy until
 230 the vacancy is filled. One member must be the State Health
 231 Officer or his or her designee.

232 (2) Two members of the board must be funeral directors
 233 licensed under chapter 470 who are associated with a funeral
 234 establishment. One member of the board must be a funeral
 235 director licensed under chapter 470 who is associated with a
 236 funeral establishment licensed pursuant to chapter 470 which has
 237 a valid certificate of authority issued pursuant to this chapter
 238 and who owns or operates a cinerator facility approved pursuant
 239 to chapters 403 and 470. Two members of the board must be
 240 persons whose primary occupation is associated with a cemetery



HB 0015D

2003

241 company licensed pursuant to this chapter. Three members of the
242 board must be consumers who are residents of the state who have
243 never been licensed as funeral directors or embalmers and not
244 connected with a cemetery or cemetery company licensed pursuant
245 to this chapter, the death care industry, the practice of
246 embalming, funeral directing, or direct disposition. One of the
247 consumer members must be at least 60 years of age or older and
248 one must be licensed as a certified public accountant pursuant
249 to this chapter 473. One member of the board shall be a monument
250 dealer licensed pursuant to this chapter. One member shall be
251 the State Health Officer or his or her designee.

252 (3) Board members shall be appointed for terms of 4 years
253 and the State Health Officer shall serve as long as that person
254 holds that office. The designee of the State Health Officer
255 shall serve at the pleasure of the Governor. When the terms of
256 the initial board members expire, the Chief Financial Officer
257 shall stagger the terms of the successor members as follows: one
258 funeral director, one cemetery representative, the monument
259 dealer, and one consumer member shall be appointed for terms of
260 2 years, and the remaining members shall be appointed for terms
261 of 4 years. All subsequent terms shall be for 4 years. The
262 Governor may suspend any board member for malfeasance or
263 misfeasance, neglect of duty, incompetence, substantial
264 inability to perform official duties, commission of a crime, or
265 for other substantial cause as determined by the Governor to
266 evidence a lack of fitness to sit on the board. A board member
267 shall be deemed to have resigned his or her board membership,
268 and that position shall be deemed vacant, upon the failure of
269 the member to attend three consecutive meetings of the board or
270 at least half of the meetings of the board during any 12-month



HB 0015D

2003

271 period, unless the Chief Financial Officer determines that there
272 was good and adequate justification for the absences and that
273 such absences are not likely to continue.

274 (4) A current or former board member and a person serving
275 on the board's probable cause panels are exempt from any civil
276 liability for any act or omission when acting in good faith in
277 his or her official capacity, and the Department of Legal
278 Affairs and the Division of Risk Management shall defend such
279 board member in any civil action against such person arising
280 from any such act or omission.

281 (5) The headquarters and records of the board shall be in
282 the Division of Funeral, Cemetery, and Consumer Services of the
283 Department of Financial Services in Tallahassee. The Chief
284 Financial Officer shall annually appoint from among the board
285 members a chairperson and vice chairperson of the board. The
286 board shall meet at least every 6 months, and more often as it
287 deems necessary. Special meetings of the board shall be convened
288 upon the direction of the Chief Financial Officer. A quorum is
289 necessary for the conduct of business by the board, unless
290 otherwise provided by law, six board members other than the
291 board's executive director shall constitute a quorum for the
292 conduct of the board's business.

293 (6) A board member shall be compensated \$50 for each day
294 the member attends an official meeting and each day the member
295 participates at the request of the board's executive director in
296 any other business involving the board. To the extent authorized
297 by s. 112.061, a board member is entitled to reimbursement for
298 expenses incurred in connection with official duties. Out-of-
299 state travel by board members on official business shall in each
300 specific instance require the advance approval of the board's



HB 0015D

2003

301 executive director in order for the travel to be eligible for
302 reimbursement of expenses.

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

305 497.102 Authority of the board.--

306 (1) The board shall enforce and administer the provisions
307 of chapter 470 and this chapter. Notwithstanding s. 455.017, the
308 board shall administer those powers, duties, and functions in
309 chapter 455 which are necessary to enforce the provisions of
310 chapter 470.

311 (2) For purposes of enforcement of chapter 455 regarding
312 chapter 470, on and after January 1, 2004, references in chapter
313 455 to the Department of Business and Professional Regulation or
314 the secretary of that department, shall be read as referring to
315 the Department of Financial Services or the Chief Financial
316 Officer, as the context may indicate to be appropriate.

317 (3) The Department of Financial Services shall not adopt
318 any rule or publish any notice of proposed rule development as
319 provided in ss. 120.536-120.551 which affects the provisions of
320 chapter 455, chapter 470, or this chapter without first
321 presenting the rule or rules proposed for development to the
322 board for its review and recommendation, if any. This subsection
323 shall not apply to emergency rulemaking under s. 120.54(4).

324 Section 9. Effective January 1, 2004, section 497.1021,
325 Florida Statutes, is created to read:

326 497.1021 Division of Funeral, Cemetery, and Consumer
327 Services.--

328 (1) There is created within the Department of Financial
329 Services the Division of Funeral, Cemetery, and Consumer
330 Services. The division shall enforce the provisions of chapter



HB 0015D

2003

331 470 and this chapter and perform such other acts as may be
332 necessary to carry out the provisions thereof.

333 (2) The division shall provide all services concerning
334 chapter 470 and this chapter, including, but not limited to,
335 recordkeeping services, examination services, legal services,
336 and investigative services. Those services in chapter 455
337 necessary to perform the duties of chapter 470 shall be provided
338 by the division.

339 (3) Funds received as a result of settlements with
340 regulated entities and persons may be used by the division for
341 contracting for the training of auditors and the conduct of
342 examinations in order to enhance oversight and enforcement of
343 laws and regulations governing the activities of licensees.

344 Section 10. Effective January 1, 2004, section 497.1022,
345 Florida Statutes, is created to read:

346 497.1022 Director of the Division of Funeral, Cemetery,
347 and Consumer Services.--

348 (1) The office of the Director of the Division of Funeral,
349 Cemetery, and Consumer Services is created. The director is the
350 agency head of the division. The director shall be appointed by
351 the Chief Financial Officer and shall serve at the pleasure of
352 the Chief Financial Officer.

353 (2) The director shall be responsible for the preparation
354 of the board agenda, presentation of division staff
355 recommendations, and reports of the activities of the division
356 to the board and shall serve as the executive director of the
357 board and perform such other duties as may be assigned by the
358 Chief Financial Officer.

359 Section 11. Effective January 1, 2004, all duties
360 performed by the Secretary of Business and Professional



HB 0015D

2003

361 Regulation under chapter 470, Florida Statutes, and all duties
362 performed by the Chief Financial Officer under chapter 497,
363 Florida Statutes, shall be performed by the Chief Financial
364 Officer under the provisions of this act. The duties may be
365 delegated by the Chief Financial Officer to the Director of the
366 Division of the Funeral, Cemetery, and Consumer Services.

367 Section 12. (1) All of the statutory powers, duties and
368 functions, records, personnel, property, and unexpended balances
369 of appropriations, allocations, or other funds for the
370 administration of chapter 470, Florida Statutes, related to the
371 Board of Funeral Directors and Embalmers shall be transferred by
372 a type two transfer, as defined in s. 20.06(2), Florida
373 Statutes, from the Department of Business and Professional
374 Regulation to the Board of Funeral, Cemetery, and Consumer
375 Services within the Department of Financial Services.

376 (2) The transfer of regulatory authority over chapter 470,
377 Florida Statutes, provided by this act shall not affect the
378 validity of any judicial or administrative action involving the
379 Board of Funeral Directors and Embalmers or the Department of
380 Business and Professional Regulation pending on December 31,
381 2003, and the Department of Financial Services or the Board of
382 Funeral, Cemetery, and Consumer Services shall be substituted as
383 a party in interest in any such action.

384 (3) Notwithstanding the transfer of regulatory authority
385 over chapter 470, Florida Statutes, provided by this act, all
386 licenses and registrations issued pursuant to chapter 470,
387 Florida Statutes, that are valid on December 31, 2003, shall
388 remain in effect subject to the provisions of chapters 470 and
389 455, Florida Statutes.



HB 0015D

2003

390 (4) The rules of the Board of Funeral Directors and
391 Embalmers and the Department of Business and Professional
392 Regulation which were in effect on midnight, December 31, 2003,
393 shall become the rules of the Department of Financial Services
394 as is appropriate to the corresponding regulatory function and
395 shall remain in effect until specifically amended or repealed in
396 the manner provided by law.

397 (5) All of the statutory powers, duties, and functions,
398 records, personnel, property, and unexpended balances of
399 appropriations, allocations, or other funds for the
400 administration of chapter 497, Florida Statutes, related to the
401 Board of Funeral and Cemetery Services within the Department of
402 Financial Services shall be transferred by a type two transfer,
403 as defined in s. 20.06(2), Florida Statutes, to the Board of
404 Funeral, Cemetery, and Consumer Services within the Department
405 of Financial Services.

406 (6) The transfer of regulatory authority over chapter 497,
407 Florida Statutes, provided by this act shall not affect the
408 validity of any judicial or administrative action involving the
409 Board of Funeral and Cemetery Services pending on December 31,
410 2003, and the Board of Funeral, Cemetery, and Consumer Services
411 shall be substituted as a party in interest in any such action.

412 (7) Notwithstanding the transfer of regulatory authority
413 over chapter 497, Florida Statutes, provided by this act, all
414 licenses and registrations issued pursuant to chapter 497,
415 Florida Statutes, which are valid on December 31, 2003, shall
416 remain in effect subject to the provisions of chapter 497,
417 Florida Statutes.

418 (8) The rules of the Board of Funeral and Cemetery
419 Services which were in effect on midnight, December 31, 2003,



HB 0015D

2003

420 shall become the rules of the Department of Financial Services
 421 and shall remain in effect until specifically amended or
 422 repealed in the manner provided by law.

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

424 Section 13. Effective midnight December 31, 2003, the
 425 Board of Funeral and Cemetery Services and the Board of Funeral
 426 Directors and Embalmers are abolished.

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

431 Section 15. The Legislature recognizes that there is a
 432 need to conform the Florida Statutes to the policy decisions
 433 reflected in the provisions of this act. The Division of
 434 Statutory Revision is directed to provide the relevant
 435 substantive committees of the Senate and the House of
 436 Representatives with assistance, upon request, to enable such
 437 committees to prepare draft legislation to conform the Florida
 438 Statutes to the provisions of this act.

439 Section 16. Section 470.002, Florida Statutes, as amended
 440 by section 56 of chapter 2003-1, Laws of Florida, is amended to
 441 read:

442 470.002 Definitions.--As used in this chapter:

443 (1)-(15) "Alternative container" means a nonmetal
 444 receptacle or enclosure which is less expensive than a casket
 445 and of sufficient strength to be used to hold and transport a
 446 dead human body.

447 (2)-(22) "At-need solicitation" means any uninvited contact
 448 by a funeral director or direct disposer for the purpose of the



HB 0015D

2003

449 sale of funeral services or merchandise to the family or next of
450 kin of a person after that person has died.

451 ~~(3)(2)~~ "Board" means the Board of Funeral Directors and
452 Embalmers.

453 (4) "Body parts" means:

454 (a) Limbs or other portions of the anatomy that are
455 removed from a person or human remains for medical purposes
456 during treatment, surgery, biopsy, autopsy, or medical research;
457 or

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

460 ~~(5)(16)~~ "Casket" means a rigid container which is designed
461 for the encasement of human remains for burial, ~~and~~ which is
462 usually constructed of wood or metal, ornamented, and lined with
463 fabric, and which may or may not be combustible.

464 ~~(6)(27)~~ "Centralized embalming facility" means a facility,
465 not physically connected with a funeral establishment, in which
466 embalming takes place.

467 ~~(7)(14)~~ "Cinerator" means a facility where dead human
468 bodies are reduced to a residue, including bone fragments, by
469 direct flame, also known as "cremation," or by intense heat,
470 also known as "calcination."

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

474 (9) "Cremated remains" means all the remains of the human
475 body recovered after the completion of the cremation process,
476 including processing or pulverization which leaves only bone
477 fragments reduced to unidentifiable dimensions and may include
478 the residue of any foreign matter, including casket material,



HB 0015D

2003

479 bridgework, or eyeglasses that were cremated with the human
480 remains.

481 (10)(24) "Cremation" means the technical process, using
482 direct flame and heat or chemical means, that reduces human
483 remains to bone fragments through heat and evaporation.
484 Cremation includes the processing and usually includes the
485 pulverization of the bone fragments ~~includes any mechanical or~~
486 thermal process whereby a dead human body is reduced to ashes
487 and bone fragments. Cremation also includes any other mechanical
488 or thermal process whereby human remains are pulverized, burned,
489 recremated, or otherwise further reduced in size or quantity.

490 (11) "Cremation chamber" means the enclosed space within
491 which the cremation process takes place. Cremation chambers
492 covered by these procedures must be used exclusively for the
493 cremation of human remains.

494 (12) "Cremation container" means the container in which
495 the human remains are transported to and placed in the cremation
496 chamber for a cremation. A cremation container should meet
497 substantially all of the following standards:

498 (a) Be composed of readily combustible materials suitable
499 for cremation.

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

502 (c) Be resistant to leakage or spillage.

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

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

506 (13) "Cremation interment container" means a rigid outer
507 container that, subject to a cemetery's rules and regulations,
508 is composed of concrete, steel, fiberglass, or some similar



HB 0015D

2003

509 material in which an urn is placed prior to being interred in
510 the ground and that is designed to support the earth above the
511 urn.

512 (14)~~(1)~~ "Department" means the Department of Business and
513 Professional Regulation.

514 (15)~~(8)~~ "Direct disposal establishment" means a facility
515 registered under this chapter where a direct disposer practices
516 direct disposition.

517 (16)~~(9)~~ "Direct disposer" means any person registered
518 under this chapter to practice direct disposition in this state.

519 (17)~~(28)~~ "Disinterment" means removal of a dead human body
520 from earth interment or aboveground interment.

521 (18)~~(5)~~ "Embalmer" means any person licensed under this
522 chapter to practice embalming in this state.

523 (19)~~(11)~~ "Final disposition" means the final disposal of a
524 dead human body by earth interment, aboveground interment,
525 cremation, burial at sea, or delivery to a medical institution
526 for lawful dissection if the medical institution assumes
527 responsibility for disposal. "Final disposition" does not
528 include the disposal or distribution of ashes and residue of
529 cremated human remains.

530 (20)~~(13)~~ "Funeral" or "funeral service" means the
531 observances, services, or ceremonies held to commemorate the
532 life of a specific deceased human being, and at which the human
533 remains are present.

534 (21)~~(3)~~ "Funeral director" means any person licensed under
535 this chapter to practice funeral directing in this state.

536 (22)~~(7)~~ "Funeral establishment" means a facility licensed
537 under this chapter where a funeral director or embalmer
538 practices funeral directing or embalming.



HB 0015D

2003

539 (23)~~(12)~~ "Funeral merchandise" or "merchandise" means any
540 merchandise commonly sold in connection with the funeral, final
541 disposition, or memorialization of human remains, including, but
542 not limited to, caskets, outer burial containers, alternative
543 containers, cremation containers, cremation interment
544 containers, urns, monuments, private mausoleums, flowers,
545 shrubs, benches, vases, acknowledgment cards, register books,
546 memory folders, prayer cards, and clothing.

547 (24)~~(23)~~ "Human remains" or "remains," "dead human body"
548 or "dead human bodies," means the body of a deceased human
549 person for which a death certificate or fetal death certificate
550 is required under chapter 382 and includes the body in any stage
551 of decomposition and the residue of cremated human bodies.

552 (25)~~(18)~~ "Legally authorized person" means, in the
553 priority listed, the decedent, when written inter vivos
554 authorizations and directions are provided by the decedent, the
555 surviving spouse, unless the spouse has been arrested for
556 committing against the deceased an act of domestic violence as
557 defined in s. 741.28 that resulted in or contributed to the
558 death of the deceased, a son or daughter who is 18 years of age
559 or older, a parent, a brother or sister 18 years of age or over,
560 a grandchild who is 18 years of age or older, or a grandparent;
561 or any person in the next degree of kinship. In addition, the
562 term may include, if no family exists or is available, the
563 following: the guardian of the dead person at the time of death;
564 the personal representative of the deceased; the attorney in
565 fact of the dead person at the time of death; the health
566 surrogate of the dead person at the time of death; a public
567 health officer; the medical examiner, county commission or
568 administrator acting under part II of chapter 406, or other



HB 0015D

2003

569 public administrator; a representative of a nursing home or
570 other health care institution in charge of final disposition; or
571 a friend or other person not listed in this subsection who is
572 willing to assume the responsibility as authorized person. Where
573 there is a person in any priority class listed in this
574 subsection, the funeral establishment shall rely upon the
575 authorization of any one legally authorized person of that class
576 if that individual represents that he or she is not aware of any
577 objection to the cremation of the deceased's human remains by
578 others in the same class of the person making the representation
579 or of any person in a higher priority class.

580 (26) "Niche" means a compartment or cubicle for the
581 memorialization or permanent placement of a container or urn
582 containing cremated remains.

583 (27)~~(19)~~ "Outer burial container" means an enclosure into
584 which a casket is placed, including, but not limited to, a vault
585 made of concrete, steel, fiberglass, or copper, a sectional
586 concrete enclosure, a crypt, or a wooden enclosure.

587 (28)~~(20)~~ "Personal residence" means any residential
588 building in which one temporarily or permanently maintains his
589 or her abode, including, but not limited to, an apartment or a
590 hotel, motel, nursing home, convalescent home, home for the
591 aged, or a public or private institution.

592 (29)~~(10)~~ "Practice of direct disposition" means the
593 cremation of human remains without preparation of the human
594 remains by embalming and without any attendant services or rites
595 such as funeral or graveside services or the making of
596 arrangements for such final disposition.

597 (30)~~(6)~~ "Practice of embalming" means disinfecting or
598 preserving or attempting to disinfect or preserve dead human



HB 0015D

2003

599 bodies by replacing certain body fluids with preserving and
600 disinfecting chemicals.

601 (31)~~(4)~~ "Practice of funeral directing" means the
602 performance by a licensed funeral director of any of those
603 functions authorized by s. 470.0087.

604 (32)~~(21)~~ "Preneed sales agent" means any person who is
605 registered under chapter 497 to sell preneed burial or funeral
606 service and merchandise contracts or direct disposition
607 contracts in this state.

608 (33) "Processing" means the reduction of identifiable bone
609 fragments after the completion of the cremation process to
610 unidentifiable bone fragments by manual means.

611 (34) "Pulverization" means the reduction of identifiable
612 bone fragments after the completion of the cremation and
613 processing to granulated particles by manual or mechanical
614 means.

615 (35)~~(25)~~ "Refrigeration facility" means a facility that is
616 not physically connected with a funeral establishment, crematory
617 or direct disposal establishment, that maintains space and
618 equipment for the storage and refrigeration of dead human
619 bodies, and that offers its service to funeral directors and
620 funeral establishments for a fee.

621 (36)~~(26)~~ "Removal service" means any service that operates
622 independently of a funeral establishment, that handles the
623 initial removal of dead human bodies, and that offers its
624 service to funeral establishments and direct disposal
625 establishments for a fee.

626 (37)~~(17)~~ "Solicitation" means any communication which
627 directly or implicitly requests an immediate oral response from
628 the recipient.



HB 0015D

2003

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

633 (39) "Urn" means a receptacle designed to permanently
 634 encase cremated remains.

635 Section 17. Section 470.0085, Florida Statutes, is amended
 636 to read:

637 470.0085 Establishment of embalmer apprentice
 638 program.--The board may adopt rules establishing an embalmer
 639 apprentice program. An embalmer apprentice may perform only
 640 those tasks, functions, and duties relating to embalming which
 641 are performed under the direct supervision of a licensed
 642 embalmer. An embalmer apprentice shall be eligible to serve in
 643 an apprentice capacity for a period not to exceed 3 years ~~1 year~~
 644 as may be determined by board rule or for a period not to exceed
 645 5 ~~3~~ years if the apprentice is enrolled in and attending a
 646 course in mortuary science or funeral service education at any
 647 mortuary college or funeral service education college or school.
 648 An embalmer apprentice shall be registered with the board upon
 649 payment of a registration fee not to exceed \$50.

650 Section 18. Subsection (2) of section 470.018, Florida
 651 Statutes, is amended to read:

652 470.018 Renewal of registration of direct disposer.--

653 (2) The department shall adopt rules establishing a
 654 procedure for the biennial renewal of registrations. The board
 655 shall prescribe by rule continuing education requirements of up
 656 to 6 ~~3~~ classroom hours and may by rule establish criteria for
 657 accepting alternative nonclassroom continuing education on an
 658 hour-for-hour basis, in addition to a board-approved course on



HB 0015D

2003

659 communicable diseases that includes the course on human
660 immunodeficiency virus and acquired immune deficiency syndrome
661 required by s. 455.2226, for the renewal of a registration.

662 Section 19. Subsections (2) and (5) of section 470.021,
663 Florida Statutes, are amended to read:

664 470.021 Direct disposal establishment; standards and
665 location; registration.--

666 (2) The practice of direct disposition must be engaged in
667 at a fixed location of at least 625 interior contiguous square
668 feet and must maintain or make arrangements for suitable
669 capacity for the refrigeration and storage of dead human bodies
670 handled and stored by the establishment. No person may open or
671 maintain an establishment at which to engage in or hold himself
672 or herself out as engaging in the practice of direct disposition
673 unless such establishment is registered with the board. Any
674 change in location of such establishment shall be reported
675 promptly to the board as prescribed by rule of the board.

676 (5)(a) Each direct disposal establishment shall at all
677 times be subject to the inspection of all its buildings,
678 grounds, and vehicles used in the conduct of its business, by
679 the department, the Department of Health, and local government
680 inspectors and by their agents. The board shall adopt rules
681 which establish such inspection requirements.

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

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

687 1. Maintain one or more retorts for the reduction of dead
688 human bodies.



HB 0015D

2003

689 2. Maintain refrigeration which satisfies the standards
 690 set by the Department of Health and which contains a sufficient
 691 number of shelves for the average daily number of bodies stored,
 692 if unembalmed bodies are kept at the site.

693 3. Maintain sufficient pollution control equipment to
 694 comply with requirements of the Department of Environmental
 695 Protection in order to secure annual approved certification.

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

699 5. Maintain the premises in a clean and sanitary
 700 condition.

701 6. Have appropriate Department of Environmental Protection
 702 permits.

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

705 Section 20. Subsection (1) of section 470.024, Florida
 706 Statutes, is amended to read:

707 470.024 Funeral establishment; licensure.--

708 (1) A funeral establishment shall be a place at a specific
 709 street address or location consisting of at least 1,250
 710 contiguous interior square feet and must maintain or make
 711 arrangements for ~~either~~ suitable capacity for the refrigeration
 712 and storage of dead human bodies handled and stored by the
 713 establishment and ~~or~~ a preparation room equipped with necessary
 714 ventilation and drainage and containing necessary instruments
 715 for embalming dead human bodies or must make arrangements for a
 716 preparation room as established by board rule.



HB 0015D

2003

717 Section 21. Subsections (6), (13), (14), and (15) of
718 section 470.025, Florida Statutes, are amended, and subsection
719 (16) is added to that section, to read:

720 470.025 Cinerator facility; licensure.--

721 (6) No more than one dead human body may be placed in a
722 retort at one time, unless written permission has been received
723 from a legally authorized person for each body. The operator of
724 a cinerator facility shall be entitled to rely on the permission
725 of a legally authorized person to cremate more than one human
726 body.

727 (13) A cinerator facility shall not place human remains or
728 body parts in a retort or cremation chamber unless the human
729 remains are in an alternative container, cremation container, or
730 casket. Human remains may be transported in a cremation
731 container or stored if they are completely covered, and at all
732 times treated with dignity and respect. Cremation may include
733 the processing and pulverization of bone fragments. Cremated
734 remains may be placed in a temporary container following
735 cremation. None of the provisions contained in this subsection
736 require the purchase of a casket for cremation. This subsection
737 applies to at-need contracts and preneed contracts entered into
738 pursuant to chapter 497 after June 1, 1996.

739 (14) Each cinerator facility shall ensure that all
740 alternative containers, cremation containers, or caskets used
741 for cremation contain no amount of chlorinated plastics not
742 authorized by the Department of Environmental Protection, that
743 they also are composed of readily combustible materials suitable
744 for cremation, able to be closed to provide a complete covering
745 for the human remains, resistant to leakage or spillage, rigid
746 enough for handling with ease, and able to provide for the



HB 0015D

2003

747 health, safety, and personal integrity of the public and
748 crematory personnel.

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

751 (16) The operator of a cinerator facility shall establish
752 written procedures for the removal of remains and bone
753 fragments, to the extent possible, resulting from the cremation
754 of a human body and the postcremation processing, shipping,
755 packing, or identifying of those remains. If an operator follows
756 these procedures, the operator is not liable for the
757 unintentional or incidental commingling of human remains and
758 bone fragments resulting from more than one cremation cycle or
759 from postcremation processing, shipping, packing, or identifying
760 of those remains. A copy of the procedures shall be available,
761 upon request, to the department and legally authorized persons.

762 Section 22. Section 470.0255, Florida Statutes, is amended
763 to read:

764 470.0255 Cremation; procedure required.--

765 (1) At the time of the arrangement for a cremation
766 performed by any person licensed pursuant to this chapter, the
767 person contracting for cremation services shall be required to
768 designate his or her intentions with respect to the disposition
769 of the cremated remains of the deceased in a signed declaration
770 of intent which shall be provided by and retained by the funeral
771 or direct disposal establishment. A cremation may not be
772 performed until a legally authorized person gives written
773 authorization for such cremation. The cremation must be
774 performed within 48 hours after a specified time which has been
775 agreed to in writing by the person authorizing the cremation.



HB 0015D

2003

776 (2) With respect to any person who intends to provide for
777 the cremation of the deceased, if, after a period of 120 days
778 from the time of cremation the cremated remains have not been
779 claimed, the funeral or direct disposal establishment may
780 dispose of the cremated remains. Such disposal shall include
781 scattering them at sea or placing them in a licensed cemetery
782 scatter garden or pond or in a church columbarium or otherwise
783 disposing of the remains as provided by rule of the department
784 or board.

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

789 Section 23. Section 470.028, Florida Statutes, is amended
790 to read:

791 470.028 Preneed sales; registration of agents; control and
792 supervision of agents.--

793 (1) All sales of preneed funeral service contracts or
794 direct disposition contracts shall be made pursuant to chapter
795 497.

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

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



HB 0015D

2003

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

807 (b) The direct disposer in charge or a funeral director
808 acting as a direct disposer in charge of a direct disposal
809 establishment shall be responsible for the control and
810 activities of the establishment's preneed agents.

811 Section 24. Subsection (1) of section 470.029, Florida
812 Statutes, is amended to read:

813 470.029 Reports of cases embalmed and bodies handled.--

814 (1) Each funeral establishment, direct disposal
815 establishment, cinerator facility, and centralized embalming
816 facility shall report on a form prescribed and furnished by the
817 department the name of the deceased and such other information
818 as may be required with respect to each dead human body embalmed
819 or otherwise handled by the establishment or facility. Such
820 forms shall be signed by the embalmer who performs the
821 embalming, if the body is embalmed, and the funeral director in
822 charge of the establishment or facility or by the direct
823 disposer who disposes of the body. The board shall prescribe by
824 rule the procedures in submitting such documentation. Reports
825 required by this subsection shall be filed by the 20th ~~10th~~ day
826 of each month for final dispositions handled the preceding
827 month.

828 Section 25. Section 470.031, Florida Statutes, is amended
829 to read:

830 470.031 Prohibitions; penalties.--

831 (1) No person may:



HB 0015D

2003

832 (a) Practice funeral directing, embalming, or direct
 833 disposition unless the person holds an active license or
 834 registration under this chapter.

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

838 (c) Represent as his or her own the license or
 839 registration of another.

840 (d) Give false or forged evidence to the board, a member
 841 thereof, or the department for the purpose of obtaining a
 842 license or registration.

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

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

847 (g) Knowingly conceal information relative to violations
 848 of this chapter.

849 (h) Operate an unlicensed cinerator facility.

850 (i) Except as otherwise provided in chapter 497, guarantee
 851 the price of goods and services at a future date.

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

855 Section 26. Section 470.0355, Florida Statutes, is amended
 856 to read:

857 470.0355 Identification of human remains.--

858 (1) PRIOR TO FINAL DISPOSITION.--

859 (a)~~(1)~~ The licensee or registrant in charge of the final
 860 disposition of dead human remains shall, prior to final
 861 disposition of such dead human remains, affix on the ankle or



HB 0015D

2003

862 wrist of the deceased, and ~~or~~ in the casket or alternative
863 container or cremation container, proper identification of the
864 dead human remains. The identification or tag shall be encased
865 in or consist of durable and long-lasting material containing
866 the name, date of birth, and date of death, ~~and social security~~
867 ~~number~~ of the deceased, if available. If the dead human remains
868 are cremated, proper identification shall be placed in the
869 container or urn containing the remains.

870 ~~(b)(2)~~ Any licensee or registrant responsible for removal
871 of dead human remains to any establishment, facility, or
872 location shall ensure that the remains are identified by a tag
873 or other means of identification that is affixed to the ankle or
874 wrist of the deceased at the time the remains are removed from
875 the place of death or other location.

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

879 (2) IN UNLICENSED CEMETERIES.--Effective October 1, 2003,
880 the identification of human remains interred in an unlicensed
881 cemetery shall be the responsibility of the licensed funeral
882 establishment in charge of the funeral arrangements for the
883 deceased person. The licensed funeral establishment in charge of
884 the funeral arrangements for the interment in an unlicensed
885 cemetery of human remains shall place on the outer burial
886 container, cremation internment container, or other container or
887 on the inside of a crypt or niche a tag or permanent identifying
888 mark containing the name of the decedent and the date of death,
889 if available. The materials and locations of the tag or mark
890 shall be more specifically described by the rule of the board.



HB 0015D

2003

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

894 (a) Each licensed cemetery shall place on the outer burial
895 container, cremation interment container, or other container or
896 on the inside of a crypt or niche a tag or permanent identifying
897 marker containing the name of the decedent and the date of
898 death, if available. The materials and the location of the tag
899 or marker shall be more specifically described by rule of the
900 board.

901 (b) Each licensed cemetery may rely entirely on the
902 identity stated on the burial transit permit or on the
903 identification supplied by a person licensed under chapter 470
904 to establish the identity of the dead human remains delivered by
905 such person for burial and shall not be liable for any
906 differences between the identity shown on the burial transit
907 permit or identification and the actual identity of the dead
908 human remains delivered by such person and buried in the
909 cemetery.

910 (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal
911 establishments shall establish a system of identification of
912 human remains received which shall be designed to track the
913 identity of the remains from the time of receipt until delivery
914 of the remains to the authorized persons. This is in addition to
915 the requirements for identification of human remains set forth
916 in subsection (1). A copy of the identification procedures shall
917 be available, upon request, to the department and legally
918 authorized persons.

919 Section 27. For the purpose of incorporating the amendment
920 to section 470.031, Florida Statutes, in a reference thereto,



HB 0015D

2003

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

923 470.036 Disciplinary proceedings.--

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

926 (a) Violation of any provision of s. 455.227(1) or s.
 927 470.031.

928 Section 28. Section 497.005, Florida Statutes, is amended
 929 to read:

930 497.005 Definitions.--As used in this chapter:

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

935 (2) "Bank of belowground crypts" means any construction
 936 unit of belowground crypts which is acceptable to the department
 937 and which a cemetery uses to initiate its belowground crypt
 938 program or to add to existing belowground crypt structures.

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

943 (4) "Board" means the Board of Funeral and Cemetery
 944 Services.

945 (5) "Burial merchandise," "funeral merchandise," or
 946 "merchandise" means any personal property offered or sold by any
 947 person for use in connection with the final disposition,
 948 memorialization, interment, entombment, or inurnment of human
 949 remains.



HB 0015D

2003

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

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

958 (8) "Care and maintenance" means the perpetual process of
959 keeping a cemetery and its lots, graves, grounds, landscaping,
960 roads, paths, parking lots, fences, mausoleums, columbaria,
961 vaults, crypts, utilities, and other improvements, structures,
962 and embellishments in a well-cared-for and dignified condition,
963 so that the cemetery does not become a nuisance or place of
964 reproach and desolation in the community. As specified in the
965 rules of the board, "care and maintenance" may include, but is
966 not limited to, any or all of the following activities: mowing
967 the grass at reasonable intervals; raking and cleaning the grave
968 spaces and adjacent areas; pruning of shrubs and trees;
969 suppression of weeds and exotic flora; and maintenance, upkeep,
970 and repair of drains, water lines, roads, buildings, and other
971 improvements. "Care and maintenance" may include, but is not
972 limited to, reasonable overhead expenses necessary for such
973 purposes, including maintenance of machinery, tools, and
974 equipment used for such purposes. "Care and maintenance" may
975 also include repair or restoration of improvements necessary or
976 desirable as a result of wear, deterioration, accident, damage,
977 or destruction. "Care and maintenance" does not include expenses
978 for the construction and development of new grave spaces or
979 interment structures to be sold to the public.



HB 0015D

2003

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

984 (10) "Cemetery" means a place dedicated to and used or
 985 intended to be used for the permanent interment of human
 986 remains. A cemetery may contain land or earth interment;
 987 mausoleum, vault, or crypt interment; a columbarium, ossuary,
 988 scattering garden, or other structure or place used or intended
 989 to be used for the interment or disposition of cremated human
 990 remains; or any combination of one or more of such structures or
 991 places.

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

994 (12) "Certificateholder" or "licensee" means the person or
 995 entity that is authorized under this chapter to sell preneed
 996 funeral or burial services, preneed funeral or burial
 997 merchandise, or burial rights. Each term shall include the
 998 other, as applicable, as the context requires. For the purposes
 999 of chapter 120, all certificateholders, licensees, and
 1000 registrants shall be considered licensees.

1001 (13) "Columbarium" means a structure or building which is
 1002 substantially exposed above the ground and which is intended to
 1003 be used for the inurnment of cremated human remains.

1004 (14) "Common business enterprise" means a group of two or
 1005 more business entities that share common ownership in excess of
 1006 50 percent.

1007 (15) "Cremation" includes any mechanical or thermal
 1008 process whereby a dead human body is reduced to ashes. Cremation
 1009 also includes any other mechanical or thermal process whereby



HB 0015D

2003

1010 human remains are pulverized, burned, recremented, or otherwise
 1011 further reduced in size or quantity.

1012 (16) "Department" means the Department of Banking and
 1013 Finance.

1014 (17) "Direct disposer" means any person who is registered
 1015 in this state to practice direct disposition pursuant to the
 1016 provisions of chapter 470.

1017 (18) "Final disposition" means the final disposal of a
 1018 dead human body whether by interment, entombment, burial at sea,
 1019 cremation, or any other means and includes, but is not limited
 1020 to, any other disposition of remains for which a segregated
 1021 charge is imposed.

1022 (19) "Funeral director" means any person licensed in this
 1023 state to practice funeral directing pursuant to the provisions
 1024 of chapter 470.

1025 (20) "Grave space" means a space of ground in a cemetery
 1026 intended to be used for the interment in the ground of human
 1027 remains.

1028 (21) "Human remains" means the bodies of deceased persons
 1029 and includes bodies in any stage of decomposition and cremated
 1030 remains.

1031 (22) "Mausoleum" means a structure or building which is
 1032 substantially exposed above the ground and which is intended to
 1033 be used for the entombment of human remains.

1034 (23) "Mausoleum section" means any construction unit of a
 1035 mausoleum which is acceptable to the department and which a
 1036 cemetery uses to initiate its mausoleum program or to add to its
 1037 existing mausoleum structures.



HB 0015D

2003

1038 (24) "Monument" means any product used for identifying a
1039 grave site and cemetery memorials of all types, including
1040 monuments, markers, and vases.

1041 (25) "Monument establishment" means a facility that
1042 operates independently of a cemetery or funeral establishment
1043 and that offers to sell monuments or monument services to the
1044 public for placement in a cemetery.

1045 (26) "Net assets" means the amount by which the total
1046 assets of a certificateholder, excluding goodwill, franchises,
1047 customer lists, patents, trademarks, and receivables from or
1048 advances to officers, directors, employees, salespersons, and
1049 affiliated companies, exceed total liabilities of the
1050 certificateholder. For purposes of this definition, the term
1051 "total liabilities" does not include the capital stock, paid-in
1052 capital, or retained earnings of the certificateholder.

1053 (27) "Net worth" means total assets minus total
1054 liabilities pursuant to generally accepted accounting
1055 principles.

1056 (28) "Niche" means a compartment or cubicle for the
1057 memorialization or permanent placement of an urn containing
1058 cremated remains.

1059 (29)~~(28)~~ "Ossuary" means a receptacle used for the
1060 communal placement of cremated human remains without benefit of
1061 an urn or any other container in which remains will be
1062 commingled with other cremated human remains and are
1063 nonrecoverable. It may or may not include memorialization.

1064 (30)~~(29)~~ "Outer burial container" means an enclosure into
1065 which a casket is placed and includes, but is not limited to,
1066 vaults made of concrete, steel, fiberglass, or copper; sectional
1067 concrete enclosures; crypts; and wooden enclosures.



HB 0015D

2003

1068 (31)~~(30)~~ "Preneed contract" means any arrangement or
 1069 method, of which the provider of funeral merchandise or services
 1070 has actual knowledge, whereby any person agrees to furnish
 1071 funeral merchandise or service in the future.

1072 (32)~~(31)~~ "Religious institution" means an organization
 1073 formed primarily for religious purposes which has qualified for
 1074 exemption from federal income tax as an exempt organization
 1075 under the provisions of s. 501(c)(3) of the Internal Revenue
 1076 Code of 1986, as amended.

1077 (33)~~(32)~~ "Scattering garden" means a location set aside,
 1078 within a cemetery, which is used for the spreading or
 1079 broadcasting of cremated remains that have been removed from
 1080 their container and can be mixed with or placed on top of the
 1081 soil or ground cover or buried in an underground receptacle on a
 1082 commingled basis and that are nonrecoverable. It may or may not
 1083 include memorialization.

1084 (34)~~(33)~~ "Servicing agent" means any person acting as an
 1085 independent contractor whose fiduciary responsibility is to
 1086 assist both the trustee and certificateholder hereunder in
 1087 administrating their responsibilities pursuant to this chapter.

1088 (35)~~(34)~~ "Solicitation" means any communication that ~~which~~
 1089 directly or implicitly requests an immediate oral response from
 1090 the recipient.

1091 (36)~~(35)~~ "Statutory accounting" means generally accepted
 1092 accounting principles, except as modified by this chapter.

1093 (37) "Urn" means a receptacle designed to permanently
 1094 encase cremated remains.

1095 Section 29. Subsection (3) of section 497.305, Florida
 1096 Statutes, is amended to read:

1097 497.305 Cemetery companies; authorized functions.--



HB 0015D

2003

1098 (3) A cemetery company may adopt bylaws establishing
1099 minimum standards for burial merchandise or the installation
1100 thereof. Such bylaws shall include minimum standards for access
1101 to install burial merchandise. A cemetery company must comply
1102 with its adopted bylaws.

1103 Section 30. Section 497.306, Florida Statutes, is created
1104 to read:

1105 497.306 Standards for grave spaces.--

1106 (1) A standard adult grave space shall measure at least 42
1107 inches in width and 96 inches in length, except for preinstalled
1108 vaults in designated areas. For interments, except cremated
1109 remains, the covering soil shall measure no less than 12 inches
1110 from the top of the outer burial container, unless such level of
1111 soil is not physically possible. In any interment, the family or
1112 next of kin may waive the 12-inch coverage minimum.

1113 (2)(a) Effective October 1, 2003, and prior to the sale of
1114 grave spaces in any undeveloped areas of a licensed cemetery,
1115 the cemetery company shall prepare a map documenting the
1116 establishment of recoverable internal survey reference markers
1117 installed by the cemetery company no more than 100 feet apart in
1118 the areas planned for development. The internal reference
1119 markers shall be established with reference to survey markers
1120 that are no more than 200 feet apart which have been set by a
1121 surveyor and mapper licensed under chapter 472 and documented in
1122 a certified land survey. Both the map and the certified land
1123 survey shall be maintained by the cemetery company and shall be
1124 made available upon request to the department or members of the
1125 public.

1126 (b) The map of the area proposed to be developed shall
1127 show:



HB 0015D

2003

- 1128 1. The number of grave spaces available for sale.
- 1129 2. The location of each grave space.
- 1130 3. The number designation assigned to each grave space.
- 1131 4. The dimensions of a standard adult grave space.

1132 (3) Adult grave spaces established prior to October 1,
 1133 2003, are not required to meet the standards established under
 1134 this section for the dimensions or separation of grave spaces.

1135 Section 31. Section 497.307, Florida Statutes, is created
 1136 to read:

1137 497.307 Identification of human remains in licensed
 1138 cemeteries.--On and after October 1, 2003, human remains
 1139 interred, entombed, scattered, or otherwise placed for final
 1140 rest at licensed cemeteries shall be identified as follows:

1141 (1) Each licensed cemetery shall place on the outer burial
 1142 container, cremation interment container, or other container, or
 1143 on the inside of a crypt or niche, a tag or a permanent
 1144 identifying marker containing the name of the decedent and the
 1145 date of death, if available. The materials and location of the
 1146 tag or marker shall be more specifically described by rule of
 1147 the board.

1148 (2) Each licensed cemetery may rely entirely on the
 1149 identity stated on the burial transit permit or on the
 1150 identification supplied by a person licensed under chapter 470
 1151 to establish the identity of the dead human remains delivered by
 1152 such person for burial and shall not be liable for any
 1153 differences between the identity shown on the burial transit
 1154 permit or other identification and the actual identity of the
 1155 dead human remains delivered by such person and buried in the
 1156 cemetery.



HB 0015D

2003

1157 Section 32. Subsection (2) of section 497.325, Florida
 1158 Statutes, is amended to read:

1159 497.325 Illegal tying arrangements.--

1160 (2)(a) Noncemetery licensed persons and firms shall have
 1161 the right to sell monuments and to perform or provide on
 1162 cemetery property foundation, preparation, and installation
 1163 services for monuments. However, a cemetery company or any other
 1164 entity owning and operating a cemetery may establish reasonable
 1165 rules regarding the style and size of a monument or its
 1166 foundation, provided such rules are applicable to all monuments
 1167 from whatever source obtained and are enforced uniformly as to
 1168 all monuments. Such rules shall be conspicuously posted and
 1169 readily accessible to inspection and copy by interested persons.

1170 (b) No person who is authorized to sell grave space and no
 1171 cemetery company or other entity owning and operating a cemetery
 1172 may:

1173 1. Require the payment of a setting or service charge, by
 1174 whatever name known, from third party installers for the
 1175 placement of a monument;

1176 2. Refuse to provide care or maintenance for any portion
 1177 of a gravesite on which a monument has been placed; or

1178 3. Waive liability with respect to damage caused by
 1179 cemetery employees or agents to a monument after installation,

1180
 1181 where the monument or installation service is not purchased from
 1182 the person authorized to sell grave space or the cemetery
 1183 company or other legal entity providing grave space or from or
 1184 through any other person or corporation designated by the person
 1185 authorized to sell grave space or the cemetery company or other
 1186 legal entity providing grave space. ~~A No~~ cemetery company or



HB 0015D

2003

1187 other entity owning and operating a cemetery may not be held
 1188 liable for the improper installation of a monument where the
 1189 monument is not installed by the cemetery company or its agents
 1190 or by such other entity or its agents.

1191 Section 33. Subsection (9) is added to section 497.333,
 1192 Florida Statutes, to read:

1193 497.333 Disclosure of information to public.--A licensee
 1194 offering to provide burial rights, merchandise, or services to
 1195 the public shall:

1196 (9) Provide to each customer a complete description of any
 1197 monument, marker, or memorialization to be placed at the
 1198 gravesite.

1199 Section 34. Subsection (5) of section 497.361, Florida
 1200 Statutes, is amended, and subsections (6) and (7) are added to
 1201 that section, to read:

1202 497.361 Registration of monument establishments.--

1203 (5) Monuments ~~not shall be~~ delivered within a specified
 1204 timeframe shall be considered a breach of contract unless the
 1205 monument establishment has a written agreement to extend the
 1206 delivery date. The purchaser shall be entitled to a refund of
 1207 all money paid for the merchandise. Such refund shall be made
 1208 within 30 days after receipt by the monument establishment of
 1209 the purchaser's written request for a refund. This subsection
 1210 does not preclude the purchase and installation of a new
 1211 monument from any other registered monument establishment or
 1212 certificateholder as established by this chapter and installed
 1213 no later than 120 days after the date of sale. The establishment
 1214 may request two 30-day extensions. Extensions may be granted by
 1215 the executive director.



HB 0015D

2003

1216 (6) All contracts with the public must be approved by the
 1217 Department of Financial Services and must provide a complete
 1218 description of any monument, marker, or related product to be
 1219 delivered.

1220 (7) A registration may not be transferred or assigned.
 1221 Section 35. Section 497.365, Florida Statutes, is created
 1222 to read:

1223 497.365 Regulation of monument establishments.--

1224 (1) The Department of Financial Services shall establish
 1225 an inspection program for all monument establishments in
 1226 accordance with the requirements of this act.

1227 (2) The Department of Financial Services shall adopt rules
 1228 that shall include requirements for the approval of contracts
 1229 for memorials and related products, written complaint procedures
 1230 and mandatory response to consumer complaints, disclosure to the
 1231 public as to the form of ownership, the fingerprinting of
 1232 owners, and appropriate recordkeeping.

1233 (3) Nothing in the department's authority or any other
 1234 provisions of this act shall unreasonably restrict competition
 1235 or permit the restraint of trade and commerce.

1236
 1237 Section 36. Section 497.371, Florida Statutes, is created
 1238 to read:

1239 497.371 Monument establishment business location.--

1240 (1) A monument establishment shall be a place at a
 1241 specific street address or location consisting of an office and
 1242 manufacturing space, including a display area for monuments,
 1243 markers, and related products. The place where the establishment
 1244 is located must comply with the local government zoning
 1245 regulations and may not be located on tax-exempt property.



HB 0015D

2003

1246 (2) The monument establishment must be a full-service
1247 monument location open to the public during normal business
1248 hours, with facilities to design, inscribe, and install
1249 monuments and related products.

1250 (3) A person may not operate a monument company or install
1251 monuments, markers, and related products in this state unless he
1252 or she is licensed by the Department of Financial Services.

1253 Section 37. Section 497.379, Florida Statutes, is created
1254 to read:

1255 497.379 Licensure of monument establishments to sell
1256 preneed contracts.--A monument establishment, including an
1257 existing registered or unregistered monument establishment, may
1258 not sell a preneed contract without first having obtained a
1259 valid certificate of authority from the Department of Financial
1260 Services. A person may not be issued a certificate of authority
1261 as a monument establishment to sell preneed contracts unless
1262 such person has at least 3 years' experience in the operation
1263 and management of an establishment selling monuments, markers,
1264 and related products.

1265 Section 38. Section 497.385, Florida Statutes, is created
1266 to read:

1267 497.385 Monument establishment; sales
1268 representative.--Each person selling monuments, markers, and
1269 related products for a monument establishment must register with
1270 the board, including any person registered or licensed pursuant
1271 to chapter 470 or this chapter. A person selling monuments,
1272 markers, and related products for a monument establishment that
1273 has been issued a certificate of authority must register as a
1274 preneed agent pursuant to the requirements of this chapter.



HB 0015D

2003

1275 Section 39. Section 497.391, Florida Statutes, is created
 1276 to read:

1277 497.391 Monument establishment; preneed
 1278 contracts.--Effective January 1, 2004, a monument dealer or
 1279 establishment may not write a preneed contract unless that
 1280 contract has been approved by the board. Any monument dealer or
 1281 establishment that is paid, collects, or receives funds under a
 1282 preneed contract for services or merchandise shall comply with
 1283 the provisions of ss. 497.417 and 497.413.

1284 Section 40. Section 497.395, Florida Statutes, is created
 1285 to read:

1286 497.395 Licensed monument establishment; financial
 1287 requirements.--

1288 (1) For the purposes of qualifying for a certificate of
 1289 authority as a licensed monument establishment must have a
 1290 minimum net worth of \$10,000. A licensed monument establishment
 1291 holding a certificate of authority or a monument establishment
 1292 applicant must meet and maintain the requirements of this
 1293 section on an annual basis in order to perform its obligation
 1294 for all existing preneed contracts.

1295 (2) All licensed monument establishments holding a
 1296 Certificate of Authority or an applicant must submit its most
 1297 recent year-end financial statements, including a balance sheet
 1298 and income statement, with the certificate of authority
 1299 application and annually thereafter as provided in s.
 1300 497.407(1). The financial statement must be prepared in
 1301 accordance with generally accepted accounting principles, as
 1302 those principles have been defined by the Florida Board of
 1303 Accountancy in the Florida Administrative Code. If the applicant
 1304 does not have the minimum net worth as set forth in subsection



HB 0015D

2003

1305 (3), lacks sufficient liquid assets to satisfy current
1306 liabilities, or does not appear to have any substantial long-
1307 term assets, the department shall request additional financial
1308 information concerning financial statements and the statement of
1309 cash flow.

1310 (3) For the purposes of this section, the term "total
1311 preneed contracts" means the total retail value of all
1312 outstanding preneed contracts. There shall be an annual fee for
1313 the renewal of the monument establishment certificate of
1314 authority based on the following sales volume for total preneed
1315 contracts:

1316 (a) Five hundred dollars for a certificateholder that has
1317 total sales of \$1 to \$50,000.

1318 (b) Seven hundred and fifty dollars for a
1319 certificateholder that has total sales of \$50,001 to \$250,000.

1320 (c) One thousand dollars for a certificateholder that has
1321 total sales of \$250,001 to \$500,000.

1322 (d) Twelve hundred fifty dollars for a certificateholder
1323 that has total sales in excess of \$500,001.

1324 (4) In the case of a monument establishment holding a
1325 certificate of authority or a licensed dealer applicant offering
1326 preneed sales through a subsidiary agent as provided in Rule 3F-
1327 5.0015, Florida Administrative Code, the certificateholder or
1328 applicant must execute a guarantee agreement with respect to any
1329 contract obligations resulting from preneed sales of such a
1330 selling agent.

1331 (5) If the certificateholder or applicant does not meet
1332 the financial requirements in subsection (3), the entity may
1333 voluntarily submit to the board additional evidence or agree to
1334 additional oversight as to meeting the requirements of



HB 0015D

2003

1335 subsection (1) as a condition of receiving or retaining a
 1336 certificate of authority. Such additional evidence or oversight
 1337 shall include, as appropriate:

1338 (a) An agreement to submit monthly financial statements of
 1339 the entity;

1340 (b) An agreement to submit quarterly financial statements
 1341 of the entity;

1342 (c) An appraisal of the entity's property or broker's
 1343 opinion of the entity's assets;

1344 (d) A credit report of the entity or its principal owners;

1345 (e) Subordination-of-debt agreement from the entity's
 1346 principal owners;

1347 (f) An indemnification or subrogation agreement binding
 1348 the entity and principal owners;

1349 (g) A guarantee agreement for the entity from its
 1350 principal owners;

1351 (h) Written explanation of past financial activity;

1352 (i) Submission of the 12-month projected business plan
 1353 that includes:

1354 1. A statement of cash flows;

1355 2. Proforma income statements, with sources of revenues
 1356 identified; and

1357 3. Marketing initiatives;

1358 (j) Submission of previous department examination reports;
 1359 or

1360 (k) An agreement of 100 percent voluntary trust by the
 1361 entity.

1362 Section 41. Subsections (1) and (4) of section 497.405,
 1363 Florida Statutes, are amended to read:

1364 497.405 Certificate of authority required.--



HB 0015D

2003

1365 (1)(a) No person, including any cemetery exempt under s.
 1366 497.003, may sell, advertise to sell, or make an arrangement for
 1367 a preneed contract without first having a valid certificate of
 1368 authority.

1369 (b) No person, including any cemetery exempt under s.
 1370 497.003, may sell, advertise to sell, or make an arrangement for
 1371 services, merchandise, or burial rights on a preneed basis
 1372 unless such person is authorized pursuant to this chapter to
 1373 provide such services, merchandise, or burial rights on an at-
 1374 need basis.

1375 (4) The provisions of this section do not apply to
 1376 religious-institution-owned cemeteries exempt under s.
 1377 497.003(1)(d), in counties with a population of at least 960,000
 1378 persons on July 1, 1996, with respect to the sale to the
 1379 religious institution's members and their families of interment
 1380 rights, mausoleums, crypts, cremation niches and cremation
 1381 interment containers, vaults, liners, urns, memorials, vases,
 1382 foundations, memorial bases, floral arrangements, monuments,
 1383 markers, engraving, and the opening and closing of interment
 1384 rights, mausoleums, crypts, and cremation niches and cremation
 1385 interment containers, if such cemeteries have engaged in the
 1386 sale of preneed contracts prior to October 1, 1993, and maintain
 1387 a positive net worth at the end of each fiscal year of the
 1388 cemetery.

1389 Section 42. Subsection (4) of section 497.419, Florida
 1390 Statutes, is amended, and subsection (11) is added to that
 1391 section, to read:

1392 497.419 Cancellation of, or default on, preneed
 1393 contracts.--



HB 0015D

2003

1394 (4) Each certificateholder shall provide in conspicuous
 1395 type in its contract that the contract purchaser may cancel the
 1396 contract and receive a full refund within 30 days after ~~of~~ the
 1397 date of execution of the contract, except for those amounts
 1398 allocable to any burial rights, merchandise, or services that
 1399 have been used by the purchaser. The failure to make such
 1400 provision shall not impair the contract purchaser's right to
 1401 cancellation and refund as provided in this section.

1402 (11) Failure to install a monument within 180 days after
 1403 interment shall be considered a breach of contract unless the
 1404 certificateholder has a written agreement to extend the
 1405 installation date. The purchaser shall be entitled to a refund
 1406 of all money paid for the merchandise. Such refund shall be made
 1407 within 30 days after receipt by the certificateholder of the
 1408 purchaser's written request for a refund. Nothing in this
 1409 subsection shall preclude the purchase and installation of a new
 1410 monument from any other registered monument establishment or
 1411 certificateholder.

1412 Section 43. Subsection (4) of section 497.436, Florida
 1413 Statutes, is amended to read:

1414 497.436 Inactive and revoked certificateholders.--

1415 (4) Upon receipt of the notice, in order to protect the
 1416 contract purchaser, the board may:

1417 (a) ~~shall~~ Review the certificateholder's:

1418 1.(a) Trust funds.

1419 2.(b) Trust agreements.

1420 3.(e) Evidence of all outstanding preneed contracts.

1421 (b) Perform other procedures the board deems necessary.

1422 Section 44. Section 497.310, Florida Statutes, is created
 1423 to read:



HB 0015D

2003

1424 497.310 Recording purchase of burial rights.--

1425 (1) Any person purchasing a burial right, belowground
1426 crypt, grave space, mausoleum, columbarium, ossuary, or
1427 scattering garden for the interment, entombment, inurnment, or
1428 other disposition of human remains may, at the person's option,
1429 permanently record the purchase of the burial right, belowground
1430 crypt, grave space, mausoleum, columbarium, ossuary, or
1431 scattering garden with the clerk of the court in the county
1432 where the burial right, belowground crypt, grave space,
1433 mausoleum, columbarium, ossuary, or scattering garden is
1434 located.

1435 (2) The clerk of the court shall record the evidence of
1436 the purchase of a burial right, belowground crypt, grave space,
1437 mausoleum, columbarium, ossuary, or scattering garden presented
1438 to him or her for recording, upon payment of the service charge
1439 of \$5 for the first page and \$2 for each additional page or
1440 fraction thereof of the purchase documents.

1441 Section 45. If any law amended by this act was also
1442 amended by a law enacted at the 2003 Regular Session or any 2003
1443 special session of the Legislature, such laws shall be construed
1444 as if they had been enacted at the same session of the
1445 Legislature, and full effect shall be given to each if possible.

1446 Section 46. Except as otherwise expressly provided in this
1447 act, this act shall take effect October 1, 2003.