

CHAMBER ACTION

1 The Committee on Insurance recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to regulation of the funeral and cemetery
7 industry; creating in the Department of Financial Services
8 the Division of Funeral, Cemetery, and Consumer Services;
9 creating in the Department of Financial Services the Board
10 of Funeral, Cemetery, and Consumer Services; abolishing
11 the Board of Funeral and Cemetery Services; abolishing the
12 Board of Funeral Directors and Embalmers; consolidating
13 regulation under chapters 470 and 497, F.S., into ch. 497,
14 F.S., under the Board of Funeral, Cemetery, and Consumer
15 Services in the Department of Financial Services; removing
16 responsibility regarding ch. 470, F.S., from the
17 Department of Business and Professional Regulation;
18 dividing ch. 497, F.S., into part I relating to general
19 provisions, part II relating to cemetery regulation, part
20 III relating to funeral directing, embalming, and related
21 services, part IV relating to preneed sales, part V
22 relating to monument establishments, and part VI relating
23 to cremation, crematories, and direct disposition;

24 providing for the continued validity of licenses,
 25 registrations, and certificates issued under chapters 470
 26 and 497, F.S.; providing for continued validity of rules
 27 of the Board of Funeral and Cemetery Services, the Board
 28 of Funeral Directors and Embalmers, and the Department of
 29 Business and Professional Regulation, adopted under or in
 30 relation to ch. 470, F.S., or ch. 497, F.S.; providing for
 31 continued validity of orders entered by the Board of
 32 Funeral and Cemetery Services, the Board of Funeral
 33 Directors and Embalmers, and the Department of Business
 34 and Professional Regulation for or in relation to the
 35 enforcement of ch. 470, F.S., or ch. 497, F.S.; providing
 36 for the substitution of the Department of Financial
 37 Services and the Board of Funeral, Cemetery, and Consumer
 38 Services as parties in pending litigation; providing for
 39 type two transfers; eliminating or consolidating
 40 duplicative provisions from chapters 470 and 497, F.S.;
 41 replacing references to registrations, registrants,
 42 certificates, and certificateholders with references to
 43 licenses and licensees; conforming internal statutory
 44 references; amending ss. 497.001, 497.002, 497.005,
 45 497.101, 497.103, and 497.107, F.S., to conform; amending
 46 and renumbering ss. 470.006, 470.007, 470.008, 470.0085,
 47 470.0087, 470.009, 470.011, 470.012, 470.013, 470.014,
 48 470.015, 470.016, 470.0165, 470.017, 470.018, 470.0201,
 49 470.021, 470.022, 470.024, 470.025, 470.0255, 470.026,
 50 470.029, 470.0294, 470.0295, 470.0301, 470.0315, 470.032,
 51 470.0355, 470.0375, 470.038, 470.039, 470.0395, 497.003,

52 | 497.025, 497.0255, 497.121, 497.133, 497.201, 497.205,
 53 | 497.213, 497.229, 497.237, 497.249, 497.253, 497.255,
 54 | 497.257, 497.305, 497.309, 497.321, 497.325, 497.329,
 55 | 497.333, 497.337, 497.349, 497.353, 497.357, 497.361,
 56 | 497.405, 497.407, 497.409, 497.411, 497.413, 497.415,
 57 | 497.417, 497.419, 497.421, 497.423, 497.425, 497.427,
 58 | 497.429, 497.436, 497.437, 497.439, 497.441, 497.525, and
 59 | 497.527, F.S., to conform; renumbering ss. 497.004,
 60 | 497.241, 497.245, 497.313, 497.317, 497.345, 497.401,
 61 | 497.403, and 497.531, F.S., to conform; creating ss.
 62 | 497.0021, 497.141, 497.142, 497.143, 497.144, 497.145,
 63 | 497.146, 497.147, 497.148, 497.149, 497.150, 497.151,
 64 | 497.152, 497.153, 497.156, 497.157, 497.159, 497.161,
 65 | 497.163, 497.166, 497.167, 497.168, 497.274, 497.275,
 66 | 497.365, 497.366, 497.367, 497.551, 497.552, 497.553,
 67 | 497.554, 497.555, 497.556, and 497.608, F.S.; amending
 68 | chapter name; clarifying purpose and intent of chapter;
 69 | amending and providing additional definitions; creating
 70 | the Board of Funeral, Cemetery, and Consumer Services,
 71 | identifying criteria for membership, describing procedures
 72 | for appointment of members, and providing administrative
 73 | procedures regarding operation; allocating authority and
 74 | responsibility between the board and the Department of
 75 | Financial Services; providing procedures for establishing
 76 | and processing fees; providing for creation of
 77 | disciplinary guidelines; providing for the issuance of
 78 | disciplinary citations; providing authority for judicial
 79 | actions to terminate violations and abate nuisances;

80 | establishing health and safety education requirements;
81 | establishing authority and requirements for the regulation
82 | of solicitation of goods and services; establishing
83 | liability of owners and others for trust fund deficits;
84 | authorizing and clarifying provisions regarding private
85 | actions; prohibiting unauthorized arrangements for the
86 | sale of funeral or burial merchandiser services;
87 | clarifying authority and procedures regarding complaints
88 | against unlicensed cemeteries; establishing prohibitions
89 | against discrimination based on race or color; providing
90 | procedures for the transfer of cemetery licenses;
91 | requiring reference to authorizing statute in trust
92 | instruments; clarifying requirements for minimum acreage
93 | in cemeteries; establishing requirements for the sale,
94 | leasing, or encumbering of cemetery lands; amending
95 | requirements regarding illegal tying arrangements;
96 | establishing requirements regarding burial rights brokers;
97 | establishing requirements regarding informational
98 | brochures to be provided by cemeteries to customers;
99 | authorizing payment of court costs and attorney's fees in
100 | litigation to enforce reporting requirements by unlicensed
101 | cemeteries; authorizing fees to be specified by the board
102 | subject to caps; providing rulemaking authority to the
103 | board and the department; establishing and clarifying
104 | requirements regarding the processing of dead human
105 | bodies; establishing requirements for the approval of
106 | preneed contract forms and related forms; authorizing
107 | rules regarding the reliance by preneed trustees on the

108 | advice of investment advisers and restricting payments to
 109 | investment advisers; establishing restrictions on the
 110 | investing or loaning of preneed trust funds; providing
 111 | additional authority to the board concerning orders to
 112 | liquidate specified preneed trust fund investments;
 113 | providing additional authority to the board regarding the
 114 | requirements of preneed trust instruments; providing
 115 | requirements and additional authority to the board
 116 | regarding surrender of preneed licenses; providing
 117 | procedures and requirements regarding application and
 118 | issuance of licenses to preneed sales agents; clarifying
 119 | and establishing requirements regarding persons legally
 120 | authorized to authorize burial and funeral services and
 121 | procedures; clarifying applicability of parts; providing
 122 | general procedures applicable to licensing; providing
 123 | authority and procedures regarding submission and
 124 | processing of fingerprints; providing authority and
 125 | procedures for limited licensing of retired professionals;
 126 | providing procedures and requirements regarding licensing
 127 | examinations; allowing use of professional testing
 128 | services; providing requirements for notification of
 129 | licensee change of address; providing procedures and
 130 | requirements for continuing education; providing
 131 | requirements for monitoring of continuing education by
 132 | licensees; providing procedures and authority for
 133 | investigations, inspections, and hearings to be conducted
 134 | by the department; providing procedures and authority for
 135 | financial and compliance examinations of licensees by the

136 department; establishing requirements and authority
137 regarding retention of complaints and creation of
138 complaint logs; establishing grounds for disciplinary
139 action; establishing disciplinary procedures and
140 authorizing penalties; providing authority and procedures
141 for action against unlicensed practice; identifying
142 conduct constituting criminal violations; authorizing and
143 providing procedures for receivership proceedings;
144 authorizing rules; providing restrictions in relation to
145 citizenship; establishing responsibility of licensees
146 regarding preneed sales by persons under their
147 supervision; clarifying the relationship of part IV to
148 other parts of the chapter; requiring a toll-free
149 telephone hotline; identifying and providing authority and
150 procedures regarding the executive director of the board;
151 establishing requirements for submission of budget;
152 establishing requirements for a training program for the
153 board members; authorizing newsletters and other
154 informational communications with licensees; authorizing
155 screening of licensed records in relation to child support
156 requirements; clarifying status in regard to insurance
157 coverage and immunity of agents retained by the
158 department; authorizing use of disciplinary settlement
159 funds for training of staff; establishing deadlines for
160 completeness of applications for submission and board
161 meetings; authorizing rules requiring applicants to appear
162 before the board for oral interview by the board;
163 establishing procedures for calculating deadlines for

164 filings by licensees; clarifying status of elected
165 officials licensed under the chapter; providing for
166 presentation of applications to the board by the
167 department; providing standing to the department in
168 judicial proceedings; providing for certain legal services
169 to the board by the Department of Legal Affairs;
170 establishing requirements and authority regarding members
171 of the military reserves; establishing procedures and fees
172 for application for licensure as a cemetery; establishing
173 standards and mapping requirements for grave spaces;
174 establishing requirements for placement of identification
175 tags on grave vaults, mausoleum crypts, and other outer
176 burial containers in licensed cemeteries; establishing
177 requirements and procedures regarding inactive and
178 delinquent licenses under part III; establishing
179 requirements for sending renewal and cancellation of
180 license notices; establishing requirements for instruction
181 on HIV and AIDS; authorizing fees to be determined by the
182 board subject to specified caps; providing rulemaking
183 authority to the board and department; establishing and
184 clarifying requirements regarding the handling and
185 processing of dead human bodies; establishing requirements
186 regarding identification of human remains in licensed and
187 unlicensed cemeteries and by direct disposal
188 establishments; establishing procedures and requirements
189 regarding application for preneed license; authorizing
190 issuance of licenses on probationary status; establishing
191 procedures and requirements for change in control of the

192 preneed license; establishing requirements regarding
 193 renewal of preneed licenses; establishing requirements and
 194 procedures for the licensure and operation of preneed
 195 branches; establishing requirements regarding reports by
 196 preneed trusts; establishing procedures and requirements
 197 for the licensure of monument establishment businesses;
 198 establishing requirements for the renewal of monument
 199 establishment licenses; establishing requirements for
 200 approval of sales agreement forms used by monument
 201 establishments; establishing requirements for procedures
 202 by monument establishments in relation to complaints from
 203 customers; establishing requirements for refund of moneys
 204 to customers in regard to failure to deliver monuments
 205 according to contract terms; establishing requirements and
 206 procedures for the licensing of sales persons employed by
 207 monument establishments; establishing procedures and
 208 requirements regarding licensure of monument
 209 establishments to engage in preneed sales; establishing
 210 requirements and procedures for licensure of direct
 211 disposers; establishing requirements and procedures for
 212 licensure of direct disposal establishments; establishing
 213 requirements applicable to the operation of direct
 214 disposal establishments; establishing procedures and
 215 requirements for the licensure of cinerator facilities;
 216 establishing requirements and procedures for the
 217 supervision and operation of cinerator facilities;
 218 establishing restrictions on liability for unintentional
 219 commingling of cremation residues; amending ss. 20.121,

220 20.165, 316.1974, 381.0098, 382.002, 403.703, 406.02,
 221 406.50, 406.52, 406.53, 455.2226, 501.022, 501.604,
 222 626.785, and 765.519, F.S.; conforming references;
 223 repealing ss. 470.001, 470.002, 470.003, 470.005, 470.019,
 224 470.023, 470.027, 470.028, 470.031, 470.033, 470.034,
 225 470.035, 470.036, 497.105, 497.109, 497.111, 497.113,
 226 497.115, 497.117, 497.119, 497.123, 497.125, 497.127,
 227 497.129, 497.131, 497.135, 497.137, 497.209, 497.217,
 228 497.221, 497.225, 497.233, 497.301, 497.341, 497.431,
 229 497.435, 497.443, 497.445, 497.447, 497.515, 497.517,
 230 497.519, and 497.529, F.S., to conform; providing
 231 effective dates.

232

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

234

235 Section 1. Part I of chapter 497, Florida Statutes,
 236 consisting of sections 497.001, 497.002, 497.0021, 497.005,
 237 497.101, 497.103, 497.107, 497.140, 497.141, 497.142, 497.143,
 238 497.144, 497.145, 497.146, 497.147, 497.148, 497.149, 497.150,
 239 497.151, 497.152, 497.153, 497.154, 497.155, 497.156, 497.157,
 240 497.158, 497.159, 497.160, 497.161, 497.162, 497.163, 497.164,
 241 497.165, 497.166, 497.167, 497.168, 497.169, and 497.170, is
 242 created to read:

243

PART I

244

GENERAL PROVISIONS

245 Section 2. Section 497.001, Florida Statutes, is amended
 246 to read:

HB 323 CS

2004
CS

247 497.001 Popular name ~~Short title~~.--This chapter shall ~~may~~
248 be known by the popular name ~~cited as~~ the "Florida Funeral, and
249 Cemetery, and Consumer Services Act."

250 Section 3. Section 497.002, Florida Statutes, is amended
251 to read:

252 497.002 Purpose and intent.--

253 (1) The Legislature recognizes that purchasers of preneed
254 burial rights, funeral or burial merchandise, or funeral or
255 burial services may suffer serious economic harm if purchase
256 money is not set aside for future use as intended by the
257 purchaser and that the failure to maintain cemetery grounds
258 properly may cause significant emotional stress. Therefore, it
259 is necessary in the interest of the public welfare to regulate
260 preneed sales and cemeteries ~~certificateholders, licensees,~~
261 ~~registrants, and cemetery companies~~ in this state. However,
262 restrictions shall be imposed only to the extent necessary to
263 protect the public from significant or discernible harm or
264 damage and not in a manner which will unreasonably affect the
265 competitive market.

266 (2) Subject to certain interests of society, the
267 Legislature finds that every competent adult has the right to
268 control the decisions relating to her or his own funeral
269 arrangements. Accordingly, unless otherwise stated herein, it is
270 the Legislature's express intent that nothing contained in this
271 chapter should be construed or interpreted in any manner as to
272 subject preneed contract purchasers to federal income taxation
273 under the grantor trust rules contained in ss. 671 et seq. of
274 the Internal Revenue Code of 1986, as amended.

275 (3) The Legislature deems it necessary in the interest of
 276 public health and safety to establish minimum qualifications for
 277 entry into the professions and occupations of embalming, funeral
 278 directing, cremation, direct disposition, and monument sales, to
 279 regulate such activities, and to provide for swift and effective
 280 discipline for those practitioners who violate the law.

281 Section 4. Section 497.0021, Florida Statutes, is created
 282 to read:

283 497.0021 Applicability of parts.--The provisions of this
 284 part shall be applicable to and supplement the provisions of
 285 parts II, III, IV, V, and VI of this chapter and shall be
 286 applicable to all licensees under this chapter, except to the
 287 extent specifically provided otherwise in this chapter.

288 Section 5. Section 497.005, Florida Statutes, is amended
 289 to read:

290 497.005 Definitions.--As used in this chapter:

291 (1) "Alternative container" means a nonmetal receptacle or
 292 enclosure which is less expensive than a casket and of
 293 sufficient strength to be used to hold and transport a dead
 294 human body.

295 (2)(1) "At-need solicitation" means any uninvited contact
 296 by a licensee or her or his agent for the purpose of the sale of
 297 burial services or merchandise to the family or next of kin of a
 298 person after her or his death has occurred.

299 (3)(2) "Bank of belowground crypts" means any construction
 300 unit of belowground crypts which is acceptable to the department
 301 and which a cemetery uses to initiate its belowground crypt
 302 program or to add to existing belowground crypt structures.

303 (4)~~(3)~~ "Belowground crypts" consist of interment space in
 304 preplaced chambers, either side by side or multiple depth,
 305 covered by earth and sod and known also as "lawn crypts,"
 306 "westminsters," or "turf-top crypts."

307 (5)~~(4)~~ "Board" means the Board of Funeral, ~~and~~ Cemetery,
 308 and Consumer Services.

309 (6) "Body parts" means:

310 (a) Limbs or other portions of the anatomy which are
 311 removed from a person or human remains for medical purposes
 312 during treatment, surgery, biopsy, autopsy, or medical research;
 313 or

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

316 (7)~~(5)~~ "Burial merchandise," "funeral merchandise," or
 317 "merchandise" means any personal property offered or sold by any
 318 person for use in connection with the final disposition,
 319 memorialization, interment, entombment, or inurnment of human
 320 remains.

321 (8)~~(6)~~ "Burial right" means the right to use a grave
 322 space, mausoleum, columbarium, ossuary, or scattering garden for
 323 the interment, entombment, inurnment, or other disposition of
 324 human remains.

325 (9)~~(7)~~ "Burial service," "funeral service," or "service"
 326 means any service offered or provided by any person in
 327 connection with the final disposition, memorialization,
 328 interment, entombment, or inurnment of human remains.

329 (10)~~(8)~~ "Care and maintenance" means the perpetual process
 330 of keeping a cemetery and its lots, graves, grounds,

331 landscaping, roads, paths, parking lots, fences, mausoleums,
 332 columbaria, vaults, crypts, utilities, and other improvements,
 333 structures, and embellishments in a well-cared-for and dignified
 334 condition, so that the cemetery does not become a nuisance or
 335 place of reproach and desolation in the community. As specified
 336 in the rules of the licensing authority ~~board~~, "care and
 337 maintenance" may include, but is not limited to, any or all of
 338 the following activities: mowing the grass at reasonable
 339 intervals; raking and cleaning the grave spaces and adjacent
 340 areas; pruning of shrubs and trees; suppression of weeds and
 341 exotic flora; and maintenance, upkeep, and repair of drains,
 342 water lines, roads, buildings, and other improvements. "Care and
 343 maintenance" may include, but is not limited to, reasonable
 344 overhead expenses necessary for such purposes, including
 345 maintenance of machinery, tools, and equipment used for such
 346 purposes. "Care and maintenance" may also include repair or
 347 restoration of improvements necessary or desirable as a result
 348 of wear, deterioration, accident, damage, or destruction. "Care
 349 and maintenance" does not include expenses for the construction
 350 and development of new grave spaces or interment structures to
 351 be sold to the public.

352 (11)~~(9)~~ "Casket" means a rigid container which is designed
 353 for the encasement of human remains and which is usually
 354 constructed of wood or metal, ornamented, and lined with fabric.

355 (12)~~(10)~~ "Cemetery" means a place dedicated to and used or
 356 intended to be used for the permanent interment of human
 357 remains. A cemetery may contain land or earth interment;
 358 mausoleum, vault, or crypt interment; a columbarium, ossuary,

359 scattering garden, or other structure or place used or intended
 360 to be used for the interment or disposition of cremated ~~human~~
 361 remains; or any combination of one or more of such structures or
 362 places.

363 (13)~~(11)~~ "Cemetery company" means any legal entity that
 364 owns or controls cemetery lands or property.

365 (14) "Centralized embalming facility" means a facility,
 366 not physically connected with a funeral establishment, in which
 367 embalming takes place.

368 ~~(12) "Certificateholder" or "licensee" means the person or~~
 369 ~~entity that is authorized under this chapter to sell preneed~~
 370 ~~funeral or burial services, preneed funeral or burial~~
 371 ~~merchandise, or burial rights. Each term shall include the~~
 372 ~~other, as applicable, as the context requires. For the purposes~~
 373 ~~of chapter 120, all certificateholders, licensees, and~~
 374 ~~registrants shall be considered licensees.~~

375 (15) "Cinerator" means a facility where dead human bodies
 376 are reduced to a residue, including bone fragments, by direct
 377 flame, also known as "cremation," or by intense heat, also known
 378 as "calcination."

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

382 (17)~~(13)~~ "Columbarium" means a structure or building which
 383 is substantially exposed above the ground and which is intended
 384 to be used for the inurnment of cremated ~~human~~ remains.

HB 323 CS

2004
CS

385 ~~(18)~~~~(14)~~ "Common business enterprise" means a group of two
386 or more business entities that share common ownership in excess
387 of 50 percent.

388 (19) "Control" means the possession, directly or
389 indirectly, through the ownership of voting shares, by contract,
390 arrangement, understanding, relationship, or otherwise, of the
391 power to direct or cause the direction of the management and
392 policies of a person or entity. However, a person or entity
393 shall not be deemed to have control if the person or entity
394 holds voting shares, in good faith and not for the purpose of
395 circumventing this definition, as an agent, bank, broker,
396 nominee, custodian, or trustee for one or more beneficial owners
397 who do not individually or as a group have control.

398 (20) "Cremated remains" means all the remains of the human
399 body recovered after the completion of the cremation process,
400 including processing or pulverization which leaves only bone
401 fragments reduced to unidentifiable dimensions and may include
402 the residue of any foreign matter, including casket material,
403 bridgework, or eyeglasses that were cremated with the human
404 remains.

405 ~~(21)~~~~(15)~~ "Cremation" means the technical process, using
406 direct flame and heat or chemical means, which reduces human
407 remains to bone fragments through heat and evaporation.
408 Cremation includes the processing and usually includes the
409 pulverization of the bone fragments ~~includes any mechanical or~~
410 ~~thermal process whereby a dead human body is reduced to ashes.~~
411 ~~Cremation also includes any other mechanical or thermal process~~

412 ~~whereby human remains are pulverized, burned, reinterred, or~~
 413 ~~otherwise further reduced in size or quantity.~~

414 (22) "Cremation chamber" means the enclosed space within
 415 which the cremation process takes place. Cremation chambers
 416 covered by these procedures must be used exclusively for the
 417 cremation of human remains.

418 (23) "Cremation container" means the container in which
 419 the human remains are transported to and placed in the cremation
 420 chamber for a cremation. A cremation container should meet
 421 substantially all of the following standards:

422 (a) Be composed of readily combustible materials suitable
 423 for cremation.

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

426 (c) Be resistant to leakage or spillage.

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

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

430 (24) "Cremation interment container" means a rigid outer
 431 container that, subject to a cemetery's rules and regulations,
 432 is composed of concrete, steel, fiberglass, or some similar
 433 material in which an urn is placed prior to being interred in
 434 the ground and that is designed to support the earth above the
 435 urn.

436 (25)~~(16)~~ "Department" means the Department of Financial
 437 Services.

438 (26) "Direct disposal establishment" means a facility
 439 licensed under this chapter where a direct disposer practices
 440 direct disposition.

441 (27)~~(17)~~ "Direct disposer" means any person licensed under
 442 this chapter ~~who is registered in this state to practice direct~~
 443 disposition in this state ~~pursuant to the provisions of chapter~~
 444 ~~470.~~

445 (28) "Director" means the director of the Division of
 446 Funeral, Cemetery, and Consumer Services.

447 (29) "Disinterment" means removal of a dead human body
 448 from earth interment or aboveground interment.

449 (30) "Division" means the Division of Funeral, Cemetery,
 450 and Consumer Services within the Department of Financial
 451 Services.

452 (31) "Embalmer" means any person licensed under this
 453 chapter to practice embalming in this state.

454 (32)~~(18)~~ "Final disposition" means the final disposal of a
 455 dead human body by earth interment, aboveground interment,
 456 cremation, burial at sea, or delivery to a medical institution
 457 for lawful dissection if the medical institution assumes
 458 responsibility for disposal. "Final disposition" does not
 459 include the disposal or distribution of ashes and residue of
 460 cremated remains ~~whether by interment, entombment, burial at~~
 461 ~~sea, cremation, or any other means and includes, but is not~~
 462 ~~limited to, any other disposition of remains for which a~~
 463 ~~segregated charge is imposed.~~

464 (33) "Funeral" or "funeral service" means the observances,
 465 services, or ceremonies held to commemorate the life of a

466 specific deceased human being and at which the human remains are
467 present.

468 (34)(19) "Funeral director" means any person licensed
469 under this chapter in this state to practice funeral directing
470 in this state pursuant to the provisions of chapter 470.

471 (35) "Funeral establishment" means a facility licensed
472 under this chapter where a funeral director or embalmer
473 practices funeral directing or embalming.

474 (36) "Funeral merchandise" or "merchandise" means any
475 merchandise commonly sold in connection with the funeral, final
476 disposition, or memorialization of human remains, including, but
477 not limited to, caskets, outer burial containers, alternative
478 containers, cremation containers, cremation interment
479 containers, urns, monuments, private mausoleums, flowers,
480 benches, vases, acknowledgment cards, register books, memory
481 folders, prayer cards, and clothing.

482 (37)(20) "Grave space" means a space of ground in a
483 cemetery intended to be used for the interment in the ground of
484 human remains.

485 (38)(21) "Human remains" or "remains," or "dead human
486 body" or "dead human bodies," means the body of a deceased human
487 person for which a death certificate or fetal death certificate
488 is required under chapter 382 and includes the body in any stage
489 of decomposition and the residue of cremated human bodies means
490 the bodies of deceased persons and includes bodies in any stage
491 of decomposition and cremated remains.

492 (39) "Legally authorized person" means, in the priority
493 listed, the decedent, when written inter vivos authorizations

494 and directions are provided by the decedent; the surviving
 495 spouse, unless the spouse has been arrested for committing
 496 against the deceased an act of domestic violence as defined in
 497 s. 741.28 which resulted in or contributed to the death of the
 498 deceased; a son or daughter who is 18 years of age or older; a
 499 parent; a brother or sister who is 18 years of age or older; a
 500 grandchild who is 18 years of age or older; a grandparent; or
 501 any person in the next degree of kinship. In addition, the term
 502 may include, if no family member exists or is available, the
 503 guardian of the dead person at the time of death; the personal
 504 representative of the deceased; the attorney in fact of the dead
 505 person at the time of death; the health surrogate of the dead
 506 person at the time of death; a public health officer; the
 507 medical examiner, county commission, or administrator acting
 508 under part II of chapter 406 or other public administrator; a
 509 representative of a nursing home or other health care
 510 institution in charge of final disposition; or a friend or other
 511 person not listed in this subsection who is willing to assume
 512 the responsibility as the legally authorized person. Where there
 513 is a person in any priority class listed in this subsection, the
 514 funeral establishment shall rely upon the authorization of any
 515 one legally authorized person of that class if that individual
 516 represents that she or he is not aware of any objection to the
 517 cremation of the deceased's human remains by others in the same
 518 class of the person making the representation or of any person
 519 in a higher priority class.

520 (40) "License" includes all authorizations required or
 521 issued under this chapter, except where expressly indicated

522 otherwise, and shall be understood to include authorizations
 523 previously referred to as registrations or certificates of
 524 authority in chapters 470 and 497 as those chapters appeared in
 525 the 2004 edition of the Florida Statutes.

526 (41) "Licensee" means the person or entity holding any
 527 license or other authorization issued under this chapter, except
 528 where expressly indicated otherwise.

529 (42)~~(22)~~ "Mausoleum" means a structure or building which
 530 is substantially exposed above the ground and which is intended
 531 to be used for the entombment of human remains.

532 (43)~~(23)~~ "Mausoleum section" means any construction unit
 533 of a mausoleum which is acceptable to the department and which a
 534 cemetery uses to initiate its mausoleum program or to add to its
 535 existing mausoleum structures.

536 (44)~~(24)~~ "Monument" means any product used for identifying
 537 a grave site and cemetery memorials of all types, including
 538 monuments, markers, and vases.

539 (45)~~(25)~~ "Monument establishment" means a facility that
 540 operates independently of a cemetery or funeral establishment
 541 and that offers to sell monuments or monument services to the
 542 public for placement in a cemetery.

543 (46)~~(26)~~ "Net assets" means the amount by which the total
 544 assets of a licensee ~~certificateholder~~, excluding goodwill,
 545 franchises, customer lists, patents, trademarks, and receivables
 546 from or advances to officers, directors, employees,
 547 salespersons, and affiliated companies, exceed total liabilities
 548 of the licensee ~~certificateholder~~. For purposes of this
 549 definition, the term "total liabilities" does not include the

550 capital stock, paid-in capital, or retained earnings of the
551 licensee certificateholder.

552 ~~(47)(27)~~ "Net worth" means total assets minus total
553 liabilities pursuant to generally accepted accounting
554 principles.

555 (48) "Niche" means a compartment or cubicle for the
556 memorialization or permanent placement of a container or urn
557 containing cremated remains.

558 ~~(49)(28)~~ "Ossuary" means a receptacle used for the
559 communal placement of cremated ~~human~~ remains without benefit of
560 an urn or any other container in which cremated remains may be
561 commingled with other cremated remains and are nonrecoverable.
562 It may or may not include memorialization.

563 ~~(50)(29)~~ "Outer burial container" means an enclosure into
564 which a casket is placed and includes, but is not limited to,
565 vaults made of concrete, steel, fiberglass, or copper; sectional
566 concrete enclosures; crypts; and wooden enclosures.

567 (51) "Person" when used without qualification such as
568 "natural" or "individual" includes both natural persons and
569 legal entities.

570 (52) "Personal residence" means any residential building
571 in which one temporarily or permanently maintains her or his
572 abode, including, but not limited to, an apartment or a hotel,
573 motel, nursing home, convalescent home, home for the aged, or a
574 public or private institution.

575 (53) "Practice of direct disposition" means the cremation
576 of human remains without preparation of the human remains by
577 embalming and without any attendant services or rites such as

578 funeral or graveside services or the making of arrangements for
579 such final disposition.

580 (54) "Practice of embalming" means disinfecting or
581 preserving or attempting to disinfect or preserve dead human
582 bodies by replacing certain body fluids with preserving and
583 disinfecting chemicals.

584 (55) "Practice of funeral directing" means the performance
585 by a licensed funeral director of any of those functions
586 authorized by s. 497.372.

587 (56)~~(30)~~ "Preneed contract" means any arrangement or
588 method, of which the provider of funeral merchandise or services
589 has actual knowledge, whereby any person agrees to furnish
590 funeral merchandise or service in the future.

591 (57) "Preneed sales agent" means any person who is
592 licensed under this chapter to sell preneed burial or funeral
593 service and merchandise contracts or direct disposition
594 contracts in this state.

595 (58) "Principal" means and includes the sole proprietor of
596 a sole proprietorship; all partners of a partnership; all
597 members of a limited liability company; regarding a corporation,
598 all directors and officers, and all stockholders controlling
599 more than 10 percent of the voting stock; and all other persons
600 who can exercise control over the person or entity.

601 (59) "Processing" means the reduction of identifiable bone
602 fragments after the completion of the cremation process to
603 unidentifiable bone fragments by manual means.

604 (60) "Profession" and "occupation" are used
605 interchangeably in this chapter. The use of the word

606 "profession" in this chapter with respect to any activities
 607 regulated under this chapter shall not be deemed to mean that
 608 such activities are not occupations for other purposes in state
 609 or federal law.

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

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

620 (63)~~(31)~~ "Religious institution" means an organization
 621 formed primarily for religious purposes which has qualified for
 622 exemption from federal income tax as an exempt organization
 623 under the provisions of s. 501(c)(3) of the Internal Revenue
 624 Code of 1986, as amended.

625 (64) "Removal service" means any service that operates
 626 independently of a funeral establishment, that handles the
 627 initial removal of dead human bodies, and that offers its
 628 service to funeral establishments and direct disposal
 629 establishments for a fee.

630 (65) "Rules" refers to rules adopted under this chapter
 631 unless expressly indicated to the contrary.

632 (66)~~(32)~~ "Scattering garden" means a location set aside,
 633 within a cemetery, which is used for the spreading or

634 broadcasting of cremated remains that have been removed from
 635 their container and can be mixed with or placed on top of the
 636 soil or ground cover or buried in an underground receptacle on a
 637 commingled basis and that are nonrecoverable. It may or may not
 638 include memorialization.

639 ~~(67)(33)~~ "Servicing agent" means any person acting as an
 640 independent contractor whose fiduciary responsibility is to
 641 assist both the trustee and licensee certificateholder hereunder
 642 in administrating their responsibilities pursuant to this
 643 chapter.

644 ~~(68)(34)~~ "Solicitation" means any communication which
 645 directly or implicitly requests an immediate oral response from
 646 the recipient.

647 ~~(69)(35)~~ "Statutory accounting" means generally accepted
 648 accounting principles, except as modified by this chapter.

649 (70) "Temporary container" means a receptacle for cremated
 650 remains usually made of cardboard, plastic, or similar material
 651 designated to hold the cremated remains until an urn or other
 652 permanent container is acquired.

653 (71) "Urn" means a receptacle designed to permanently
 654 encase cremated remains.

655 Section 6. Section 497.101, Florida Statutes, is amended
 656 to read:

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

659 497.101 Board of Funeral, Cemetery, and Consumer Services;
 660 membership; appointment; terms.--

661 (1) The Board of Funeral, Cemetery, and Consumer Services
662 is created within the Department of Financial Services and shall
663 consist of 10 members, nine of whom shall be appointed by the
664 Governor from nominations made by the Chief Financial Officer
665 and confirmed by the Senate. The Chief Financial Officer shall
666 nominate three persons for each of the nine vacancies on the
667 board, and the Governor shall fill each vacancy on the board by
668 appointing one of the three persons nominated by the Chief
669 Financial Officer to fill that vacancy. If the Governor objects
670 to each of the three nominations for a vacancy, she or he shall
671 inform the Chief Financial Officer in writing. Upon notification
672 of an objection by the Governor, the Chief Financial Officer
673 shall submit three additional nominations for that vacancy until
674 the vacancy is filled. One member must be the State Health
675 Officer or her or his designee.

676 (2) Two members of the board must be funeral directors
677 licensed under part III of this chapter who are associated with
678 a funeral establishment. One member of the board must be a
679 funeral director licensed under part III of this chapter who is
680 associated with a funeral establishment licensed under part III
681 of this chapter which has a valid preneed license issued
682 pursuant to this chapter and who owns or operates a cinerator
683 facility approved under chapter 403 and licensed under part VI
684 of this chapter. Two members of the board must be persons whose
685 primary occupation is associated with a cemetery company
686 licensed pursuant to this chapter. Three members of the board
687 must be consumers who are residents of the state, have never
688 been licensed as funeral directors or embalmers, are not

HB 323 CS

2004
CS

689 connected with a cemetery or cemetery company licensed pursuant
690 to this chapter, and are not connected with the death care
691 industry or the practice of embalming, funeral directing, or
692 direct disposition. One of the consumer members must be at least
693 60 years of age, and one must be licensed as a certified public
694 accountant under chapter 473. One member of the board must be a
695 monument dealer licensed under this chapter. One member must be
696 the State Health Officer or her or his designee. There shall not
697 be two or more board members who are directors, employees,
698 partners, shareholders, or members of the same company or
699 partnership or group of companies or partnerships under common
700 control.

701 (3) Board members shall be appointed for terms of 4 years,
702 and the State Health Officer shall serve as long as that person
703 holds that office. The designee of the State Health Officer
704 shall serve at the pleasure of the Governor. When the terms of
705 the initial board members expire, the Chief Financial Officer
706 shall stagger the terms of the successor members as follows: one
707 funeral director, one cemetery representative, the monument
708 dealer, and one consumer member shall be appointed for terms of
709 2 years, and the remaining members shall be appointed for terms
710 of 4 years. All subsequent terms shall be for 4 years.

711 (4) The Governor may suspend and the Senate may remove any
712 board member for malfeasance or misfeasance, neglect of duty,
713 incompetence, substantial inability to perform official duties,
714 commission of a crime, or other substantial cause as determined
715 by the Governor or Senate, as applicable, to evidence a lack of
716 fitness to sit on the board. A board member shall be deemed to

717 have resigned her or his board membership, and that position
718 shall be deemed vacant, upon the failure of the member to attend
719 three consecutive meetings of the board or at least half of the
720 meetings of the board during any 12-month period, unless the
721 Chief Financial Officer determines that there was good and
722 adequate justification for the absences and that such absences
723 are not likely to continue.

724 (5) A current or former board member is exempt from any
725 civil liability for any act or omission when acting in good
726 faith in her or his official capacity, and the Department of
727 Legal Affairs and the Division of Risk Management shall defend
728 such board member in any civil action against such person
729 arising from any such act or omission.

730 (6) The headquarters and records of the board shall be in
731 the Division of Funeral, Cemetery, and Consumer Services of the
732 Department of Financial Services in the City of Tallahassee. The
733 board may be contacted through the Division of Funeral,
734 Cemetery, and Consumer Services of the Department of Financial
735 Services in the City of Tallahassee. The Chief Financial Officer
736 shall annually appoint from among the board members a chair and
737 vice chair of the board. The board shall meet at least every 6
738 months, and more often as necessary. Special meetings of the
739 board shall be convened upon the direction of the Chief
740 Financial Officer. A quorum is necessary for the conduct of
741 business by the board. Unless otherwise provided by law, six
742 board members shall constitute a quorum for the conduct of the
743 board's business.

744 (7) A board member shall be compensated \$50 for each day
 745 the member attends an official meeting and each day the member
 746 participates at the request of the board's executive director in
 747 any other business involving the board. To the extent authorized
 748 by the s. 112.061, a board member is entitled to reimbursement
 749 for expenses incurred in connection with official duties. Out-
 750 of-state travel by board members on official business shall, in
 751 each specific instance, require the advance approval of the
 752 board's executive director in order for the travel to be
 753 eligible for reimbursement of expenses.

754 Section 7. Section 497.103, Florida Statutes, is amended
 755 to read:

756 (Substantial rewording of section. See
 757 s. 497.103, F.S., for present text.)

758 497.103 Rulemaking authority of board and department.--

759 (1) BOARD AUTHORITY.--Subject to the provisions of this
 760 section, all authority provided under this chapter, including
 761 rulemaking authority, relating to the following matters, is
 762 vested solely in the board, and the board shall be deemed the
 763 licensing authority as to such matters:

764 (a) Authority to determine any and all criteria for
 765 licensure under this chapter as to which this chapter vests
 766 discretion in the licensing authority.

767 (b) Authority to specify who may conduct practical
 768 examination under this chapter.

769 (c) Authority to specify the content of examinations for
 770 licensure, both written and practical, and the relative

771 weighting of areas examined, and grading criteria, and
 772 determination of what constitutes a passing grade.

773 (d) Authority to strike any examination question
 774 determined before or after an examination to be inappropriate
 775 for any reason.

776 (e) Authority to specify which national examinations or
 777 parts thereof shall or shall not be required or accepted
 778 regarding Florida licensure.

779 (f) Authority to determine time limits and substantive
 780 requirements regarding reexamination of applicants who fail any
 781 portion of a licensing examination.

782 (g) Authority to determine substantive requirements and
 783 conditions relating to apprenticeships and internships, and
 784 temporary licensure pending examination.

785 (h) Authority to determine substantive requirements for
 786 licensure by endorsement.

787 (i) Authority to specify substantive requirements for
 788 reactivation of inactive licenses, such as, but not limited to,
 789 requirements for examination or education prior to reactivation.

790 (j) Authority to approve or deny applications for initial
 791 licensure of all types under this chapter and to specify
 792 conditions for probationary initial licensure.

793 (k) Authority to renew or decline to renew licenses issued
 794 under this chapter.

795 (l) Authority to approve or deny applications for change
 796 of control or location of any licensee.

797 (m) Authority to determine standards of construction
 798 applicable to facilities utilized by licensees under this
 799 chapter.

800 (n) Authority to specify standards of operation applicable
 801 to licensees, including required equipment, supplies,
 802 facilities, and professional techniques and practices utilized
 803 by licensees.

804 (o) Authority to specify required access to be provided by
 805 cemeteries to monument establishments licensed under this
 806 chapter.

807 (p) Authority to determine required criteria for and
 808 provisions in agreements among licensees regarding the shared
 809 use of professional facilities, such as, but not limited to,
 810 embalming preparation rooms.

811 (q) Authority to specify the amount and content of
 812 continuing education required of licensees and the acceptability
 813 of continuing education by distance learning.

814 (r) Authority to approve or disapprove providers of
 815 continuing education.

816 (s) Authority to specify the amount and content of safety
 817 education courses required by unlicensed staff of licensees.

818 (t) Authority regarding establishing requirements to
 819 maintain complaint logs and complaint records.

820 (u) Authority to approve or disapprove contract forms,
 821 trust instruments, and all other forms required to be filed by
 822 licensees for approval under this chapter.

823 (v) Authority to determine through probable cause panels
 824 of the board whether proposed administrative prosecutions of
 825 licensees shall go forward.

826 (w) Authority to establish disciplinary guidelines and to
 827 identify violations or categories of violation for which the
 828 department may issue citations under this chapter.

829 (x) Authority to determine whether any licensee shall have
 830 her or his license revoked or suspended or be fined or otherwise
 831 sanctioned and to take final action in that regard.

832 (y) Authority to determine the validity of and amount due
 833 on claims against the Preneed Funeral Contract Consumer
 834 Protection Trust Fund.

835 (z) Authority to approve or deny applications to utilize
 836 any alternative to trust deposits concerning preneed sales.

837 (aa) Authority to determine the method by which wholesale
 838 cost is determined for purposes of determining the amount of the
 839 preneed trust deposits required under this chapter.

840 (bb) Authority to determine the amount of any fee payable
 841 under this chapter as to which this chapter provides discretion
 842 in setting the amount of the fee.

843 (cc) Authority to direct the initiation of receivership or
 844 other delinquency proceedings against any licensee under this
 845 chapter.

846 (2) DEPARTMENT AUTHORITY.--All authority provided by this
 847 chapter and not expressly vested in the board by subsection (1)
 848 is vested in the department, and the department shall be deemed
 849 to be the licensing authority as to such matters. Without
 850 limiting the generality of the foregoing vesting of authority in

851 the department, the authority provided by this chapter which is
 852 vested solely in the department includes:

853 (a) Authority relating to the conduct of investigations,
 854 financial examinations, and inspections, including, but not
 855 limited to:

856 1. Determination of applicants, licensees, and other
 857 persons to be investigated, subjected to financial examination,
 858 or inspected.

859 2. The frequency, duration, and extent of investigations,
 860 financial examinations, and inspections.

861 3. Techniques and procedures utilized in, and staff
 862 assigned to, investigations, financial examinations, and
 863 inspections.

864 4. Establishment of requirements binding upon licensees
 865 and other persons regarding records and information to be
 866 produced or provided, and access to facilities and staff, in
 867 regard to investigations, financial examinations, and
 868 inspections.

869 5. Preparation and filing of reports concerning
 870 investigations, financial examinations, and inspections.

871 (b) Authority to receive fees and other amounts payable
 872 under this chapter to the licensing authority or to the
 873 Regulatory Trust Fund or Preneed Funeral Contract Consumer
 874 Protection Trust Fund from licensees, applicants, and others and
 875 to process and deposit such receipts in accordance with this
 876 chapter and the laws of this state.

877 (c) Authority to prescribe forms and procedures to be used
 878 by applicants or licensees relating to any and all applications,

879 filings, or reports of any type that are made with or submitted
880 to the licensing authority by any person or entity pursuant to
881 this chapter, including, but not limited to, applications for
882 licenses of any type under this chapter, applications for
883 renewal of license, applications for approval of forms,
884 applications for approval of change of control, periodic reports
885 of operations, including format and reporting period for
886 financial statements, and procedures and provisions relating to
887 electronic submissions.

888 (d) Authority to determine any application or other filing
889 made under this chapter to be incomplete and not subject to
890 further processing until made complete.

891 (e) Authority to initiate and prosecute administrative and
892 judicial action, including taking final action, regarding
893 activity by persons and entities not licensed under this chapter
894 engaging in activity the department deems to be in violation of
895 this chapter.

896 (f) Authority regarding procedures and requirements
897 relating to security of examinations for licensure.

898 (g) Authority to determine the systems, methods, means,
899 facilities, equipment, procedures, budgets, department staff,
900 and other persons and entities, whether inside or outside the
901 department, to be used in relation to recording, tracking, and
902 processing licensing applications, the administrative issuance
903 and denial of licenses, license renewals, disciplinary actions,
904 continuing education, filings made or required under this
905 chapter, and all other administrative matters relating to the
906 implementation and enforcement of this chapter.

907 (h) Authority to determine the number, hiring, assignment,
 908 and discharge of department staff in relation to implementation
 909 of this chapter.

910 (i) Authority to determine whether any contract or
 911 agreement authorized to be entered into by this chapter, on any
 912 subject matter, shall be entered into and sole authority to
 913 enter into any such other contract or agreement regarding the
 914 implementation of this chapter.

915 (j) Subject to the requirements for probable cause
 916 proceedings before a probable cause panel of the board and
 917 subject to the sole authority of the board to take final action
 918 imposing disciplinary sanctions, all authority to draft,
 919 execute, file, serve, and prosecute administrative complaints
 920 and other action against any licensee. However, the Chief
 921 Financial Officer may in particular instances decline to
 922 prosecute or to continue to prosecute, in which case the board
 923 may request the Department of Legal Affairs to conduct or
 924 continue to conduct the prosecution and the Department of Legal
 925 Affairs shall be authorized at its discretion to do so.

926 (k) Authority to seek administrative or judicial
 927 enforcement of orders of the board or department or of statutory
 928 predecessors to the board or department. However, the Chief
 929 Financial Officer may in particular instances decline to seek
 930 enforcement or to continue to seek enforcement of any order, in
 931 which case the board may request the Department of Legal Affairs
 932 to conduct or continue to conduct such enforcement action and
 933 the Department of Legal Affairs shall be authorized at its
 934 discretion to do so.

935 (1) The department shall represent the board in any appeal
 936 of a board final order. However, the Chief Financial Officer may
 937 in particular instances decline to represent the board, in which
 938 case the board may request the Department of Legal Affairs to
 939 represent the board in the matter and the Department of Legal
 940 Affairs shall be authorized at its discretion to do so.

941 (m) Authority to take emergency action against any
 942 licensee under this chapter without prior consultation with the
 943 board.

944 (n) Authority to develop and submit to the Legislature
 945 from time to time budgets for the implementation of this
 946 chapter.

947 (o) The department shall have the authority and duty to
 948 provide necessary administrative support to the board as
 949 reasonably required to allow the board to discharge its
 950 responsibilities under this chapter.

951 (3) RECOMMENDATIONS BY DEPARTMENT STAFF.--The board shall
 952 carefully review and give substantial weight to any
 953 recommendation of department staff concerning any matter coming
 954 before the board and upon request of department staff shall
 955 state with specificity on the record at the board meeting where
 956 the rejection occurs the reason or reasons why the board has
 957 rejected a particular recommendation of the department staff.

958 (4) RECOMMENDATIONS BY THE CHIEF FINANCIAL OFFICER.--

959 (a) As to any matter falling within the board's authority,
 960 if the Chief Financial Officer submits or causes to be submitted
 961 to the board at any board meeting any recommendation signed by
 962 the Chief Financial Officer, the Chief Financial Officer's

963 | recommendation shall be adopted by the board and the board shall
 964 | act and be deemed to act in accordance with such recommendation,
 965 | unless at such meeting 70 percent of the board members present
 966 | and voting vote to reject the Chief Financial Officer's
 967 | recommendation. Any fractional vote resulting from application
 968 | of the 70-percent requirement shall be rounded upward and
 969 | counted as one additional vote in determining how many votes are
 970 | required to reject the Chief Financial Officer's recommendation.
 971 | The Chief Financial Officer's recommendation to the board shall
 972 | be in regard to one or more of the following matters:

973 | 1. Protecting the public from any significant and
 974 | discernible harm or damage.

975 | 2. Preventing the unreasonable restriction of competition
 976 | or the availability of professional services in the state or in
 977 | a significant part of the state.

978 | 3. Preventing the unnecessary increase in cost of
 979 | professional services without a corresponding or equivalent
 980 | public benefit.

981 | (b) If the recommendation of department staff to the board
 982 | as to any matter shall be rejected or otherwise overridden by
 983 | the board to any degree, the board's action in the matter shall
 984 | not be final until 14 days have elapsed after the board rejected
 985 | or overrode the recommendation of department staff and, if
 986 | during such 14-day period the Chief Financial Officer submits a
 987 | recommendation concerning the matter to the board pursuant to
 988 | paragraph (a), until the effect of such recommendation is
 989 | determined in accordance with paragraph (a). The running of the

990 period under s. 120.60 for approving or denying a completed
 991 application shall be tolled during such 14-day period.

992 (c) If the Chief Financial Officer makes any
 993 recommendation pursuant to this subsection concerning approval
 994 or denial of an application for license or otherwise under this
 995 chapter, the running of the period under s. 120.60 for approving
 996 or denying a completed application shall be tolled from the date
 997 of the Chief Financial Officer's recommendation is made for the
 998 shorter of 90 days or until the effect of such recommendation is
 999 determined in accordance with paragraph (a).

1000 (d) If any recommendation by the Chief Financial Officer
 1001 made under this subsection would require initiation of
 1002 rulemaking proceedings under chapter 120 as a prerequisite to
 1003 implementation of such recommendation by the board and such
 1004 recommendation becomes binding on the board pursuant to this
 1005 subsection, the board shall promptly and in good faith initiate
 1006 and conduct such rulemaking proceedings or may in regard to the
 1007 promulgation of the specific rule in issue delegate to the
 1008 department the board's rulemaking authority under this chapter,
 1009 in which case the department shall be authorized to adopt the
 1010 rule.

1011 (5) RULEMAKING.--

1012 (a) The board is authorized to adopt all rules authorized
 1013 under this chapter regarding matters under the board's
 1014 authority.

1015 (b) The department is authorized to adopt all rules
 1016 authorized under this chapter regarding matters which fall under

1017 the department's authority or as to which the board has
 1018 delegated rulemaking authority to the department.

1019 (c) Neither the board nor the department shall initiate
 1020 rulemaking under their respective rulemaking authority under
 1021 this chapter unless they have provided each other at least 60
 1022 days' advance notice of their intent to initiate rulemaking
 1023 proceedings and during that 60-day period have conferred and
 1024 consulted with each other concerning the purpose and intent of
 1025 the rulemaking. However, the 60-day advance notice requirement
 1026 does not apply to the promulgation of emergency rules.

1027 (6) FINAL ORDERS.--

1028 (a) The board shall have authority to take final action
 1029 and issue final orders as to all matters under its authority.
 1030 The chairperson of the board shall be authorized to sign orders
 1031 of the board and may delegate such authority to the executive
 1032 director of the board.

1033 (b) The department shall have authority to take final
 1034 action and issue final orders as to all matters under its
 1035 authority.

1036 (7) ACTIONS BY BOARD AND DEPARTMENT.--

1037 (a) The department and the board shall each have standing
 1038 to institute judicial or other proceedings against the other for
 1039 the enforcement of this section.

1040 (b) The board shall have standing as a party litigant to
 1041 challenge any rule proposed or adopted by the department under
 1042 authority of this chapter, upon any grounds enumerated in s.
 1043 120.52(8).

1044 (c) The board shall be represented by the Department of
 1045 Legal Affairs in any litigation by the board against the
 1046 department authorized by this subsection, and the Department of
 1047 Financial Services shall provide reasonable funds for the
 1048 conduct of such litigation by the board.

1049 (d) No applicant, licensee, or person other than the board
 1050 shall have standing in any proceeding under chapter 120 to
 1051 assert that any rule adopted by the department under asserted
 1052 authority of this chapter is invalid because it relates to a
 1053 matter under the board's authority.

1054 Section 8. Section 497.107, Florida Statutes, is amended
 1055 to read:

1056 497.107 Headquarters.--The Board of Funeral, ~~and~~ Cemetery,
 1057 and Consumer Services may be contacted through the division at
 1058 the headquarters of the department in the City of Tallahassee.

1059 Section 9. Section 497.525, Florida Statutes, is
 1060 renumbered as section 497.140, Florida Statutes, and amended to
 1061 read:

1062 (Substantial rewording of section. See
 1063 s. 497.525, F.S., for present text.)

1064 497.140 Fees.--

1065 (1)(a) As to any fee payable under this chapter as to
 1066 which discretion is provided to the licensing authority to
 1067 specify the amount of the fee subject to a cap stated in this
 1068 chapter, the board shall from time to time as requested by the
 1069 department determine by rule the amount of such fee, based upon
 1070 department-prepared estimates of the revenue required to
 1071 implement all provisions of this chapter.

1072 (b) It is the legislative intent that the costs of
1073 regulation under this chapter be provided for by fees collected
1074 under this chapter. The board shall ensure that fees are
1075 adequate to cover all anticipated costs of implementation of
1076 this chapter. The department shall at least every other year
1077 provide the board with estimates as to projected costs in
1078 implementing this chapter and projected fee collections under
1079 this chapter for the following 2 years, information as to
1080 balances of regulatory trusts from fees collected, other
1081 information which the department deems material to the setting
1082 of fees by the board at proper levels, and a department
1083 recommendation as to action, if any, regarding changing fee
1084 levels. The board shall review such information provided by the
1085 department and make such changes in fees, up or down, as the
1086 board determines appropriate. If sufficient action is not taken
1087 by the board within 1 year after notification by the department
1088 that fees are projected to be inadequate, the department shall
1089 set fees on behalf of the board to cover anticipated costs.

1090 (c) The board may from time to time by rule assess and
1091 collect a one-time fee from each active and each voluntary
1092 inactive licensee under this chapter in an amount necessary to
1093 correct an inadequacy of fees received to implement regulation
1094 required by this chapter, provided that no more than one such
1095 assessment may be made in any 4-year period without specific
1096 legislative authorization.

1097 (2) All moneys collected under this chapter shall be paid
1098 into the Regulatory Trust Fund, except as expressly provided
1099 otherwise in this chapter. The Legislature shall appropriate

1100 funds from this trust fund sufficient to implement the
 1101 provisions of this chapter.

1102 (3) The department, in consultation with the board, shall
 1103 from time to time recommended fee and fee cap increases to the
 1104 Legislature as deemed advisable.

1105 (4) If a duplicate license is required or requested by the
 1106 licensee, the department may charge a fee as determined by rule
 1107 not to exceed \$25 before issuance of the duplicate license.

1108 (5) The department shall charge a fee not to exceed \$25
 1109 for the certification of a public record. The fee shall be
 1110 determined by rule of the department. The department shall
 1111 assess a fee for duplication of a public record as provided in
 1112 s. 119.07(1)(a) and (b).

1113 (6)(a) The department shall impose, upon initial licensure
 1114 and each renewal thereof, a special unlicensed activity fee of
 1115 \$5 per licensee, in addition to all other fees provided for in
 1116 this chapter. Such fee shall be used by the department to fund
 1117 efforts to identify and combat unlicensed activity which
 1118 violates this chapter. Such fee shall be in addition to all
 1119 other fees collected from each licensee and shall be deposited
 1120 in a separate account of the Regulatory Trust Fund; however, the
 1121 department is not limited to the funds in such an account for
 1122 combating improper unlicensed activity in violation of this
 1123 chapter.

1124 (b) The board may with the concurrence of the department,
 1125 if that portion of the Regulatory Trust Fund held by the
 1126 department for implementation of this chapter is not in deficit
 1127 and has a reasonable cash balance, earmark \$5 of each initial

1128 licensure and each license renewal fee collected under this
 1129 chapter and direct the deposit of each such amount into the
 1130 separate account required in paragraph (a), to be utilized by
 1131 the department for the purposes of combating unlicensed practice
 1132 in violation of this chapter. Such earmarked amount may be, as
 1133 the board directs, in lieu of or in addition to the special
 1134 unlicensed activity fee imposed under paragraph (a). The
 1135 earmarking may be imposed and thereafter eliminated from time to
 1136 time according the adequacy of trust funds held for
 1137 implementation of this chapter.

1138 (c) The department shall confer and consult with the board
 1139 regarding enforcement methods and strategies regarding the use
 1140 of such unlicensed activity fee funds.

1141 (7) Any fee required to be paid under this chapter, which
 1142 was set at a fixed amount as the 2004 edition of the Florida
 1143 Statutes, but as to which this chapter now provides to be a fee
 1144 as determined by board rule subject to a cap specified in this
 1145 chapter, shall remain at the amount as set in the 2004 edition
 1146 of the Florida Statutes unless and until the board shall change
 1147 such fee by rule.

1148 Section 10. Section 497.141, Florida Statutes, is created
 1149 to read:

1150 497.141 Licensing; general application procedures.--

1151 (1) The provisions of this section shall supplement and
 1152 implement all provisions of this chapter relating to application
 1153 for licensure.

1154 (2) Any person desiring to be licensed shall apply to the
 1155 licensing authority in writing using such forms and procedures

1156 as may be prescribed by rule. The application for licensure
 1157 shall include the applicant's social security number.
 1158 Notwithstanding any other provision of law, the department is
 1159 the sole authority for determining the forms and form contents
 1160 to be submitted for initial licensure and licensure renewal
 1161 application. Such forms and the information and materials
 1162 required by such forms may include, as appropriate,
 1163 demographics, education, work history, personal background,
 1164 criminal history, finances, business information, signature
 1165 notarization, performance periods, reciprocity, local government
 1166 approvals, supporting documentation, periodic reporting
 1167 requirements, fingerprint requirements, continuing education
 1168 requirements, business plans, character references, and ongoing
 1169 education monitoring. Such forms and the information and
 1170 materials required by such forms may also include, to the extent
 1171 such information or materials are not already in the possession
 1172 of the department or the board, records or information as to
 1173 complaints, inspections, investigations, discipline, bonding,
 1174 and photographs. The application shall be supplemented as needed
 1175 to reflect any material change in any circumstance or condition
 1176 stated in the application which takes place between the initial
 1177 filing of the application and the final grant or denial of the
 1178 license and which might affect the decision of the department or
 1179 the board.

1180 (3) The department shall conduct such investigation of the
 1181 applicant and the application as the department deems necessary
 1182 or advisable to establish the correctness of matters stated in
 1183 the application and to determine whether the applicable

1184 licensing criteria are met and shall make recommendations in
 1185 those regards to the board.

1186 (4) Before the issuance of any license, the department
 1187 shall collect such initial fee as specified by this chapter or,
 1188 where authorized, by rule of the board. Upon receipt of a
 1189 completed application and the appropriate fee, and certification
 1190 by the board that the applicant meets the applicable
 1191 requirements of law and rules, the department shall issue the
 1192 license applied for. However, an applicant who is not otherwise
 1193 qualified for licensure is not entitled to licensure solely
 1194 based on a passing score on a required examination.

1195 (5) The board may refuse to rule on an initial application
 1196 for licensure by any applicant who is under investigation or
 1197 prosecution in any jurisdiction for an action which there is
 1198 reasonable cause to believe would constitute a violation of this
 1199 chapter if committed in this state, until such time as such
 1200 investigation or prosecution is completed and the results of the
 1201 investigation or prosecution are reviewed by the board.

1202 (6) When any administrative law judge conducts a hearing
 1203 pursuant to the provisions of chapter 120 with respect to the
 1204 issuance or denial of a license under this chapter, the
 1205 administrative law judge shall submit her or his recommended
 1206 order to the board, which shall thereupon issue a final order.
 1207 The applicant for a license may appeal the final order in
 1208 accordance with the provisions of chapter 120.

1209 (7) A privilege against civil liability is hereby granted
 1210 to any witness for any information furnished by the witness in

1211 any proceeding pursuant to this section, unless the witness
 1212 acted in bad faith or with malice in providing such information.

1213 (8) Pursuant to the federal Personal Responsibility and
 1214 Work Opportunity Reconciliation Act of 1996, each applicant for
 1215 licensure is required to provide her or his social security
 1216 number in accordance with this section. Disclosure of social
 1217 security numbers obtained through this requirement shall be
 1218 limited to the purpose of administration of the Title IV-D
 1219 program for child support enforcement and use by the department
 1220 and as otherwise provided by law.

1221 (9) Whenever any provision of this chapter or rules
 1222 adopted under this chapter require student completion of a
 1223 specific number of clock hours of classroom instruction for
 1224 initial licensure purposes, there shall be established by rule
 1225 the minimal competencies that such students must demonstrate in
 1226 order to be licensed. The demonstration of such competencies may
 1227 be substituted for specific classroom clock-hour requirements
 1228 established in statute or rule which are related to
 1229 instructional programs for licensure purposes. Student
 1230 demonstration of the established minimum competencies shall be
 1231 certified by the educational institution. The provisions of this
 1232 subsection shall not apply if federal licensure standards are
 1233 more restrictive or stringent than the standards prescribed in
 1234 this chapter.

1235 (10) No license issued under this chapter shall be
 1236 assignable or transferable except to the extent specifically
 1237 provided by this chapter.

1238 (11) The department shall implement a system for
 1239 administration of the overall licensing process, including the
 1240 processing and tracking of applications for licensure, the
 1241 issuance of licenses approved by the board, the tracking of
 1242 licenses issued, the administration of the license renewal
 1243 process, and the collection and processing of fees related to
 1244 those activities. The system may use staff and facilities of the
 1245 department or the department may enter into a contract for all
 1246 or any part of such system, upon such terms and conditions as
 1247 the department deems advisable, and such contract may be with
 1248 another government agency or a private business.

1249 Section 11. Section 497.142, Florida Statutes, is created
 1250 to read:

1251 497.142 Licensing; fingerprinting and criminal background
 1252 checks.--

1253 (1) In any instance that this chapter requires submission
 1254 of fingerprints in connection with an application for license,
 1255 the provisions of this section shall apply.

1256 (2) The fingerprints must be taken by a law enforcement
 1257 agency or other agency or entity approved by the department and
 1258 in such a way as to allow their use to obtain a criminal history
 1259 check through the Department of Law Enforcement.

1260 (3) The department shall submit the fingerprints to or
 1261 cause them to be submitted to the Department of Law Enforcement
 1262 for the purpose of ascertaining whether the person fingerprinted
 1263 has a criminal history in any state or before the Federal
 1264 Government and, if so, the nature of the criminal history.

1265 (4) The Department of Law Enforcement may accept
1266 fingerprints of any applicant under this chapter, any principal
1267 of any such applicant, and any other person who is examined or
1268 investigated or who is subject to examination or investigation
1269 under the provisions of this chapter.

1270 (5) The Department of Law Enforcement may, to the extent
1271 provided for by federal law, exchange state, multistate, and
1272 federal criminal history records with the department and the
1273 board for the purpose of the issuance, denial, suspension, or
1274 revocation of any license or other application under this
1275 chapter.

1276 (6) The Department of Law Enforcement may accept
1277 fingerprints of any other person required by statute or rule to
1278 submit fingerprints to the department or board or any applicant
1279 or licensee regulated by the department or board who is required
1280 to demonstrate that she or he has not been convicted of or pled
1281 guilty or nolo contendere to a felony or a misdemeanor.

1282 (7) The Department of Law Enforcement shall, upon receipt
1283 of fingerprints from the department, submit the fingerprints to
1284 the Federal Bureau of Investigation to check federal criminal
1285 history records.

1286 (8) Statewide criminal records obtained through the
1287 Department of Law Enforcement, federal criminal records obtained
1288 through the Federal Bureau of Investigation, and local criminal
1289 records obtained through local law enforcement agencies shall be
1290 used by the department and board for the purpose of issuance,
1291 denial, suspension, or revocation of certificates of authority,
1292 certifications, or licenses issued to operate in this state.

1293 (9) For the purposes of criminal background checks,
 1294 applicants and principals of applicants for any approval or
 1295 license under this chapter may be required to disclose whether
 1296 they have ever had their name legally changed and any prior name
 1297 or names they have used.

1298 (10) If any applicant under this chapter has been, within
 1299 the 10 years preceding the application under this chapter,
 1300 convicted or found guilty of, or entered a plea of nolo
 1301 contendere to, regardless of adjudication, any crime in any
 1302 jurisdiction, the application shall not be deemed complete until
 1303 such time as the applicant provides such certified true copies
 1304 of the court records evidencing the conviction, finding, or
 1305 plea, as the licensing authority may by rule require.

1306 Section 12. Section 497.143, Florida Statutes, is created
 1307 to read:

1308 497.143 Licensing; limited licenses for retired
 1309 professionals.--

1310 (1) It is the intent of the Legislature that, absent a
 1311 threat to the health, safety, and welfare of the public, the use
 1312 of retired professionals in good standing to serve the indigent,
 1313 underserved, or critical need populations of this state should
 1314 be encouraged. To that end, rules may be adopted to permit
 1315 practice by retired professionals as limited licensees under
 1316 this section.

1317 (2) Any person desiring to obtain a limited license, when
 1318 permitted by rule, shall submit to the department an application
 1319 and fee, not to exceed \$300, and an affidavit stating that the
 1320 applicant has been licensed to practice in any jurisdiction in

1321 the United States for at least 10 years in the profession for
 1322 which the applicant seeks a limited license. The affidavit shall
 1323 also state that the applicant has retired or intends to retire
 1324 from the practice of that profession and intends to practice
 1325 only pursuant to the restrictions of the limited license granted
 1326 pursuant to this section. If the applicant for a limited license
 1327 submits a notarized statement from the employer stating that the
 1328 applicant will not receive monetary compensation for any service
 1329 involving the practice of her or his profession, the application
 1330 and all licensure fees shall be waived.

1331 (3) Limited licensure may be denied to an applicant who
 1332 has committed, or is under investigation or prosecution for, any
 1333 act which would constitute the basis for discipline under this
 1334 chapter.

1335 (4) The recipient of a limited license may practice only
 1336 in the employ of public agencies or institutions or nonprofit
 1337 agencies or institutions which meet the requirements of 26
 1338 U.S.C. 501(c)(3) of the Internal Revenue Code and which provide
 1339 professional liability coverage for acts or omissions of the
 1340 limited licensee. A limited licensee may provide services only
 1341 to the indigent, underserved, or critical need populations
 1342 within the state. The standard for determining indigence shall
 1343 be that recognized by the Federal Poverty Income Guidelines
 1344 produced by the United States Department of Health and Human
 1345 Services. Rules may be adopted to define underserved and
 1346 critical need areas and to ensure implementation of this
 1347 section.

1348 (5) The department may provide by rule for supervision of
 1349 limited licensees to protect the health, safety, and welfare of
 1350 the public.

1351 (6) Each applicant granted a limited license is subject to
 1352 all the provisions of this chapter under which the limited
 1353 license is issued which are not in conflict with this section.

1354 Section 13. Section 497.144, Florida Statutes, is created
 1355 to read:

1356 497.144 Licensing; examinations, general provisions.--

1357 (1) The department shall, with the approval of the board,
 1358 provide, contract, or approve services for the development,
 1359 preparation, administration, scoring, score reporting, and
 1360 evaluation of all examinations and may use professional testing
 1361 services for the development, preparation, and evaluation of
 1362 examinations, when such services are available. The department
 1363 may contract with the Department of Business and Professional
 1364 Regulation for any examination services.

1365 (2) After an examination has been administered, the board
 1366 may reject any question that does not reliably measure the
 1367 required competency.

1368 (3) For each examination there shall by rule be specified
 1369 the general areas of competency to be covered by the
 1370 examination, the relative weight to be assigned in grading each
 1371 area tested, the score necessary to achieve a passing grade, and
 1372 the fees, where applicable, to cover the actual cost for any
 1373 purchase, development, and administration of the required
 1374 examination. However, statutory fee caps shall apply. This

1375 subsection does not apply to national examinations approved and
 1376 administered pursuant to subsection (5).

1377 (4) If a practical examination is utilized, rules shall
 1378 specify the criteria by which examiners are to be selected, the
 1379 grading criteria to be used by the examiner, the relative weight
 1380 to be assigned in grading each criterion, and the score
 1381 necessary to achieve a passing grade. Procedures for practical
 1382 examinations shall be specified by rule. Board members may serve
 1383 as examiners at a practical examination with the consent of the
 1384 board.

1385 (5) The board may approve the use of any national
 1386 examination. Providers of examinations may be either profit or
 1387 nonprofit entities. The name and number of a candidate may be
 1388 provided to a national contractor for the limited purpose of
 1389 preparing the grade tape and information to be returned to the
 1390 department or, to the extent otherwise specified by rule, the
 1391 candidate may apply directly to the vendor of the national
 1392 examination. The department may delegate to the board the duty
 1393 to provide and administer the examination.

1394 (6) Rules may be adopted establishing procedures and
 1395 requirements for the security and monitoring of examinations. In
 1396 order to maintain the security of examinations, the department
 1397 may seek fines and injunctive relief in the courts of this state
 1398 against an examinee who violates applicable security rules. The
 1399 department, or any agent thereof, may, for the purposes of
 1400 investigation, confiscate any written, photographic, or
 1401 recording material or device in the possession of the examinee

1402 at the examination site which the department deems necessary to
 1403 enforce the security of examinations.

1404 (7) The department may, with the approval of the board and
 1405 for a fee, share with any other state's licensing authority an
 1406 examination developed by or for the board unless prohibited by a
 1407 contract entered into by the department for development or
 1408 purchase of the examination. The department shall establish
 1409 guidelines that ensure security of a shared examination and
 1410 shall require that any other state's licensing authority comply
 1411 with those guidelines.

1412 (8) If both a written and a practical examination are
 1413 given, an applicant shall be required to retake only the portion
 1414 of the examination for which she or he failed to achieve a
 1415 passing grade, if she or he successfully passes that portion
 1416 within a reasonable time of her or his passing the other
 1417 portion. Rules may be adopted establishing procedures and
 1418 reasonable times for retaking failed portions of any
 1419 examination.

1420 (9) Except for national examinations approved and
 1421 administered pursuant to this section, procedures shall be
 1422 established by rule for applicants who have taken and failed a
 1423 written examination to review their examination questions,
 1424 answers, papers, grades, and grading key for the questions the
 1425 candidate answered incorrectly or, if not feasible, the parts of
 1426 the examination failed. Applicants shall bear the actual cost
 1427 for the department to provide examination review pursuant to
 1428 this subsection. An applicant may waive in writing the

1429 confidentiality of her or his examination grades. Rules may be
1430 adopted establishing procedures for such reviews.

1431 (10) For each examination administered under this chapter,
1432 an accurate record of each applicant's examination questions,
1433 answers, papers, grades, and grading key shall be kept for a
1434 period of not less than 2 years immediately following the
1435 examination, and such record shall thereafter be maintained or
1436 destroyed as provided in chapters 119 and 257. This subsection
1437 does not apply to national examinations approved and
1438 administered pursuant to this section.

1439 (11) In addition to meeting any other requirements for
1440 licensure by examination or by endorsement, an applicant may be
1441 required by the board to pass an examination pertaining to state
1442 laws and rules applicable to the practice of the profession
1443 regulated under this chapter.

1444 (12) Examinations and reexaminations for any license under
1445 this chapter shall be administered in the English language
1446 unless 15 or more applicants request that the examination or
1447 reexamination be administered in their native language. Such
1448 requests must be received at least 6 months prior to the
1449 examination or reexamination. In the event that such examination
1450 or reexamination is administered in a foreign language, the full
1451 cost to the board and department of preparing and administering
1452 the examination shall be borne by the applicants. Where the
1453 taking of a national examination is required by this chapter or
1454 rule adopted under this chapter, the examination may not be
1455 required to be given in any language other than English unless
1456 the national examination is available in the requested language.

1457 Rules may be adopted establishing procedures for requesting
 1458 examinations in languages other than English and establishing
 1459 the costs related to such examinations.

1460 (13) Unless an applicant notifies the department at least
 1461 5 days prior to an examination hearing of the applicant's
 1462 inability to attend or unless an applicant can demonstrate an
 1463 extreme emergency for failing to attend, the department may
 1464 require an applicant who fails to attend to pay reasonable
 1465 attorney's fees, costs, and court costs of the department for
 1466 the examination hearing.

1467 Section 14. Section 497.145, Florida Statutes, is created
 1468 to read:

1469 497.145 Licensing; use of professional testing
 1470 services.--Notwithstanding any other provision of law to the
 1471 contrary, the department may use a professional testing service
 1472 to prepare, administer, grade, and evaluate any computerized
 1473 examination, when that service is available and approved by the
 1474 board.

1475 Section 15. Section 497.146, Florida Statutes, is created
 1476 to read:

1477 497.146 Licensing; address of record; changes; licensee
 1478 responsibility.--Each licensee under this chapter is responsible
 1479 for notifying the department in writing of the licensee's
 1480 current business and residence mailing address and the street
 1481 address of the licensee's primary place of practice and shall
 1482 notify the department in writing within 30 days after any change
 1483 in such information, in accordance with procedures and forms
 1484 prescribed by rule. Notwithstanding any other provision of law,

1485 service by regular mail to a licensee's last known address of
 1486 record with the department constitutes adequate and sufficient
 1487 notice to the licensee for any official communication to the
 1488 licensee by the board or the department, except when other
 1489 service is expressly required by this chapter. Rules may be
 1490 adopted establishing forms and procedures for licensees to
 1491 provide the notice required by this section.

1492 Section 16. Section 497.147, Florida Statutes, is created
 1493 to read:

1494 497.147 Continuing education; general provisions.--

1495 (1) As to any licensure under this chapter that requires
 1496 prelicensure training or continuing education for renewal of a
 1497 license, no such training or continuing education shall be
 1498 accepted in satisfaction of the requirements of this chapter,
 1499 unless approved by the board.

1500 (2) There shall be adopted rules by the board to establish
 1501 the criteria for such training or continuing education courses.

1502 (3) The licensing authority may provide by rule that
 1503 distance learning may be used to satisfy continuing education
 1504 requirements and may specify conditions applicable to such
 1505 distance learning for credit under this chapter.

1506 (4) The licensing authority is authorized to adopt rules
 1507 to implement requirements regarding prelicensure training and
 1508 continuing education requirements under this chapter. Persons
 1509 providing prelicensure training or continuing education for
 1510 credit against the requirements of this chapter are hereinafter
 1511 referred to as "providers."

1512 (a) The rules may establish criteria for obtaining
 1513 approval from the licensing authority as a provider, and for
 1514 periodic renewal of such approval, and may establish procedures
 1515 and forms for use in applying to obtain and renew such approval
 1516 from the licensing authority.

1517 (b) The rules may establish conditions and requirements
 1518 applicable to providers, including, but not limited to:

1519 1. Periodic submission by the provider to the licensing
 1520 authority of information and documentation as to course
 1521 materials, class locations and schedules, names of scheduled
 1522 instructors, resumes of instructors, and descriptions of
 1523 facilities.

1524 2. Requirements for periodic reporting by the provider to
 1525 the licensing authority of information concerning enrollment,
 1526 attendance, and status of persons enrolled for credit under this
 1527 chapter.

1528 3. Requirements for inspection by the licensing authority
 1529 of records of the provider related to training or continuing
 1530 education of applicants and licensees under this chapter.

1531 4. Requirements for announced or unannounced attendance by
 1532 department staff or board members at scheduled classes or
 1533 training, for the purpose of ensuring that the training meets
 1534 the requirements of this chapter and rules adopted under this
 1535 chapter.

1536 5. Requirements for written contracts or agreements
 1537 required to be entered into by providers with the licensing
 1538 authority as a prerequisite to acceptance of training or

1539 continuing education provided by such provider for credit under
1540 this chapter.

1541 6. Requirements regarding retention of records by the
1542 provider regarding training or continuing education for which
1543 credit has been given to any licensee under this chapter.

1544 7. Procedures and criteria for terminating the status of
1545 any provider as an approved source of training or continuing
1546 education for credit under this chapter.

1547 8. Requirements for fees to accompany applications from
1548 providers for approval or renewal of approval as a provider, not
1549 to exceed \$250 per year. The rules may exempt nonprofit entities
1550 from such fees.

1551 (c) The rules may list all approved providers and identify
1552 the training or continuing education each provider is approved
1553 to provide for credit under this chapter.

1554 (d) Such rules may establish procedures and forms for use
1555 by applicants, licensees, and providers in reporting completed
1556 training and continuing education to the licensing authority.

1557 (5) The board may by rule provide up to 5 hours of
1558 continuing education credit per continuing education reporting
1559 period for licensees attending board meetings or selected types
1560 or portions of board meetings, as specified by such rules. The
1561 rules may limit the number of times such credit may be utilized
1562 by a licensee. The rules may include provisions as to the
1563 minimum amount of time that must be spent in the board meeting
1564 room viewing proceedings, which may be more than 5 hours of
1565 attendance, requirements for advance notice by licensees to
1566 department staff of proposed attendance, requirements to sign in

HB 323 CS

2004
CS

1567 and out of the meeting room on lists maintained at the meeting
 1568 site by department staff, forms that must be completed by the
 1569 licensee to obtain such credit, and such other requirements
 1570 deemed by the board to be advisable or necessary to prevent
 1571 abuse of such rules and to ensure that useful information is
 1572 obtained by licensees as a result of attendance. Procedural
 1573 requirements of such rules requiring action by the department
 1574 shall be subject to approval by the department prior to
 1575 promulgation.

1576 Section 17. Section 497.148, Florida Statutes, is created
 1577 to read:

1578 497.148 Continuing education; monitoring of
 1579 compliance.--The department shall establish a system to monitor
 1580 licensee compliance with applicable trainings and continuing
 1581 education requirements and to determine each licensee's
 1582 continuing education status. The department is authorized to
 1583 provide for a phase-in of the compliance monitoring system. The
 1584 compliance monitoring system may use staff and facilities of the
 1585 department, or the department may enter into a contract for
 1586 compliance monitoring services, upon such terms and conditions
 1587 as the department deems advisable. Such contract may be with
 1588 another government agency or a private business.

1589 Section 18. Section 497.149, Florida Statutes, is created
 1590 to read:

1591 497.149 Investigations, hearings, and inspections.--

1592 (1) INVESTIGATIONS.--Investigations shall be conducted by
 1593 the department. The following provisions shall apply concerning
 1594 investigations:

1595 (a) All complaints directly or indirectly alleging
 1596 violation of any provision of this chapter or rules adopted
 1597 pursuant to this chapter shall be investigated. Investigations
 1598 may be conducted regarding any applicant for licensure under
 1599 this chapter to ensure that the applicant satisfies the
 1600 requirements for licensure and to ensure the accuracy and
 1601 truthfulness of any matters represented to the department or the
 1602 board in connection with the application. There may be such
 1603 investigations of persons and entities not licensed under this
 1604 chapter to determine if they are engaging in activities for
 1605 which a license under this chapter is required, or are otherwise
 1606 in violation of this chapter, as is deemed necessary to ensure
 1607 compliance with this chapter. There may be conducted such other
 1608 investigations, in addition to investigations expressly
 1609 authorized or required by this chapter, as are deemed necessary
 1610 or advisable by the department to determine whether any person
 1611 is, has, or may violate any provision of this chapter or to
 1612 secure information useful in the lawful administration of this
 1613 chapter.

1614 (b) Every person and entity being investigated, and its
 1615 officers, attorneys, employees, agents, and representatives,
 1616 shall make freely available to the department the accounts,
 1617 records, documents, files, information, assets, business
 1618 premises, and matters in their possession or control relating to
 1619 the subject of the investigation. If records relating to a
 1620 licensee or to activities regulated by this chapter are
 1621 maintained by an agent on premises owned or operated by a third

1622 party, the agent and the third party shall provide the
 1623 department access to the records.

1624 (c) If the department finds any accounts or records of a
 1625 licensee required by this chapter to be created and maintained
 1626 by the licensee to be inadequate or inadequately kept or posted,
 1627 it may employ experts to reconstruct, rewrite, post, or balance
 1628 them at the expense of the person being investigated, provided
 1629 the person has failed to maintain, complete, or correct such
 1630 records or accounting after the department has given her or him
 1631 notice and a reasonable opportunity to do so.

1632 (d) In connection with any investigation under this
 1633 chapter, the department may administer oaths, examine witnesses,
 1634 and receive oral and documentary evidence, require the licensee
 1635 to answer under oath interrogatories propounded by the
 1636 department, issue a subpoena for testimony or the production of
 1637 records to any person believed to have information or materials
 1638 relevant to the subject matter of the investigation, and compel
 1639 such attendance and testimony and the production of such
 1640 materials for inspection and copying. If any person refuses to
 1641 comply with any such subpoena or to testify as to any matter
 1642 concerning which she or he may be lawfully interrogated, the
 1643 Circuit Court of Leon County or of the county wherein such
 1644 examination, investigation, or hearing is being conducted, or of
 1645 the county wherein such person resides, may, on the application
 1646 of the department, issue an order requiring such person to
 1647 comply with the subpoena and to testify. Subpoenas may be
 1648 served, and proof of such service made, by any employee of the
 1649 department.

1650 (e) The department may retain and pay such experts on a
 1651 case-by-case basis, as it deems necessary for the investigation
 1652 and prosecution, if any, of any alleged violation of this
 1653 chapter.

1654 (2) INSPECTIONS.--The department may conduct such
 1655 inspections of licensee's premises and records during normal
 1656 business hours, at such intervals, as the department deems
 1657 necessary to ensure compliance with this chapter.

1658 (a) Inspections may be announced or unannounced as the
 1659 department determines appropriate on a case-by-case basis.

1660 (b) Every licensee being inspected, and its employees,
 1661 officers, attorneys, employees, agents, and representatives,
 1662 shall freely and immediately make available to the department
 1663 for inspection during normal business hours the licensee's
 1664 entire premises and the records and information in their
 1665 possession or control relating to the inspection.

1666 (c) The department may adopt rules regarding inspection
 1667 procedures.

1668 (3) HEARINGS.--The department may hold public hearings to
 1669 secure information useful in the lawful administration of this
 1670 chapter. The department may require the attendance of witnesses
 1671 by subpoena and the giving of testimony under oath.

1672 (4) RULES.--The department may adopt rules pursuant to ss.
 1673 120.536(1) and 120.54 for the implementation of this section.

1674 Section 19. Section 497.150, Florida Statutes, is created
 1675 to read:

1676 497.150 Compliance examinations of existing licensees.--

1677 (1) There may be examined by the department the
 1678 facilities, records, operations, trust accounts, and financial
 1679 affairs of licensees under this chapter, as often as may be
 1680 deemed necessary by the department, to ensure compliance with
 1681 the provisions of this chapter and rules adopted under this
 1682 chapter. The provisions of this section shall apply to
 1683 examinations conducted by the department under this chapter.

1684 (2) The examination may, as deemed necessary by the
 1685 department, include examination of the affairs, transactions,
 1686 accounts, and records of the licensee's agents and controlling
 1687 or controlled person, relating directly or indirectly to the
 1688 licensee.

1689 (3) The examination may be conducted at the offices,
 1690 wherever located, of the person being examined or investigated
 1691 and at such other places as may be required for determination of
 1692 matters under examination.

1693 (4) Every person being examined, and its officers,
 1694 attorneys, employees, agents, and representatives, shall make
 1695 freely available the accounts, records, documents, files,
 1696 information, assets, and matters in their possession or control
 1697 relating to the subject of the examination.

1698 (5) The licensee shall provide for the department
 1699 examiner's use during the examination such suitable private
 1700 office work location and facilities, including desk, chair, and
 1701 adequate lighting and ventilation, as are reasonably available
 1702 on the licensee's premises.

1703 (6) If the department finds any accounts or records
 1704 required to be made or maintained by a licensee under this

1705 chapter to be inadequate or inadequately kept or posted, it may
1706 be employ experts to reconstruct, rewrite, post, or balance them
1707 at the expense of the person being examined, provided the person
1708 has failed to maintain, complete, or correct such records or
1709 accounting after the department has given her or him notice and
1710 a reasonable opportunity to do so.

1711 (7) In connection with any examination under this chapter,
1712 the department may administer oaths, examine witnesses, and
1713 receive oral and documentary evidence, require the licensee to
1714 answer under oath interrogatories propounded by the department,
1715 issue a subpoena for testimony or the production of records to
1716 any person believed to have information or materials relevant to
1717 the subject matter of the examination, and compel such
1718 attendance and testimony and the production of such materials
1719 for inspection and copying. If any person refuses to comply with
1720 any such subpoena or to testify as to any matter concerning
1721 which she or he may be lawfully interrogated, the Circuit Court
1722 of Leon County or of the county wherein such examination,
1723 investigation, or hearing is being conducted, or of the county
1724 wherein such person resides, may, on the application of the
1725 department, issue an order requiring such person to comply with
1726 the subpoena and to testify. Subpoenas may be served, and proof
1727 of such service made, by any employee of the department.

1728 (8) The department shall furnish a copy of any examination
1729 report to the licensee examined within a reasonable period of
1730 time, and the licensee shall have 30 days thereafter in which to
1731 prepare and provide the department a response to the examination
1732 report. No examination report shall be filed by the department

1733 until such 30-day period has elapsed. If the licensee provides a
 1734 written response to the department within such 30-day period,
 1735 the response shall be attached to and made a part of the report
 1736 as filed in the department's files.

1737 (9) The examination report when so filed shall thereafter
 1738 be admissible in evidence in any judicial or administrative
 1739 action or proceeding brought by the department against the
 1740 person examined, or against its officers, employees, or agents,
 1741 or for the enforcement of an investigative subpoena issued by
 1742 the department in any investigation of, involving, or relating
 1743 to the person examined. In all other proceedings, the
 1744 admissibility of the examination report is governed by the
 1745 evidence code. The department or its examiners may at any time
 1746 testify and offer other proper evidence as to information
 1747 secured or matters discovered during the course of an
 1748 examination, whether or not a written report of the examination
 1749 has been made, furnished, or filed in the department.

1750 (10) The written report of each preneed examination, when
 1751 completed, shall be filed in the office of the board and, when
 1752 so filed, shall constitute a public record.

1753 (11) The person or organization examined shall pay the
 1754 travel expense and per diem subsistence allowance provided for
 1755 state employees under s. 112.061 for out-of-state travel
 1756 incurred by department representatives or examiners in
 1757 connection with an examination.

1758 (12) The department may adopt rules pursuant to ss.
 1759 120.536(1) and 120.54 for the implementation of this section.

1760 Section 20. Section 497.151, Florida Statutes, is created
1761 to read:

1762 497.151 Complaints; logs; procedures.--

1763 (1) This section shall be applicable to all licensees
1764 under this chapter except preneed sales agent licensees.

1765 (2) Licensees shall cause to be maintained on a continuing
1766 basis a log of all written complaints received by the licensee
1767 regarding any aspect of the licensee's operations. The log shall
1768 show the complainant's name, the date the complaint was
1769 received, and the complainant's address and phone number if
1770 shown in the complaint. Each written complaint received shall be
1771 entered into the complaint log within 10 days after receiving
1772 such complaint. The licensing authority may by rule establish
1773 requirements relating to complaint logs, including whether the
1774 log may be electronically maintained or must be kept in writing
1775 by pen and ink. Each licensee under this chapter shall retain in
1776 its records all written complaints received by the licensee or
1777 the licensee's staff. All complaint logs, and all written
1778 complaints and related papers, shall be retained by the licensee
1779 until the completion of the next examination by the department
1780 of the licensee, which examination covers the period the
1781 complaint was received or such other period as the licensing
1782 authority may by rule require.

1783 (3) Rules may be adopted modifying the requirements of
1784 this section as applied to different categories of licensees
1785 under this chapter, if the board determines that the
1786 requirements of this section are impractical as to any category
1787 of licensees.

1788 Section 21. Section 497.152, Florida Statutes, is created
1789 to read:

1790 497.152 Disciplinary grounds.--This section sets forth
1791 conduct which is prohibited and which shall constitute grounds
1792 for denial of any application, imposition of discipline, and
1793 other enforcement action against the licensee or other person
1794 committing such conduct. For purposes of this section, the
1795 requirements of this chapter include the requirements of rules
1796 adopted under authority of this chapter. No subsection heading
1797 in this section shall be interpreted as limiting the
1798 applicability of any paragraph within the subsection.

1799 (1) GENERAL PROVISIONS.--The generality of the provisions
1800 of this subsection shall not be deemed to be limited by the
1801 provisions of any other subsection.

1802 (a) Violating any provision of this chapter or any lawful
1803 order of the board or department or of the statutory
1804 predecessors to the board or department.

1805 (b) Committing fraud, deceit, negligence, incompetency, or
1806 misconduct in the practice of any of the activities regulated
1807 under this chapter.

1808 (c) Failing while holding a license under this chapter to
1809 maintain one or more of the qualifications for such license.

1810 (d) Refusing to sell or issue a contract or provide
1811 services to any person because of the person's race, color,
1812 creed, marital status, sex, or national origin.

1813 (2) CRIMINAL ACTIVITY.--Being convicted or found guilty
1814 of, or entering a plea of nolo contendere to, regardless of
1815 adjudication, a crime in any jurisdiction which relates to the

1816 practice of, or the ability to practice, a licensee's profession
 1817 or occupation under this chapter.

1818 (3) DISCIPLINARY ACTION BY OTHER AUTHORITIES.--Having a
 1819 license or the authority to practice a profession or occupation
 1820 revoked, suspended, fined, denied, or otherwise acted against or
 1821 disciplined by the licensing authority of any jurisdiction,
 1822 including its agencies or subdivisions, for conduct that would
 1823 constitute a violation of this chapter if committed in this
 1824 state or upon grounds which directly relate to the ability to
 1825 practice under this chapter. The licensing authority's
 1826 acceptance of a relinquishment of licensure, stipulation,
 1827 consent order, or other settlement offered in response to or in
 1828 anticipation of the filing of charges against the license shall
 1829 be construed as action against the license.

1830 (4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT
 1831 AGENCIES.--

1832 (a) Improperly interfering with an investigation or
 1833 inspection authorized by statute or with any disciplinary
 1834 proceeding.

1835 (b) Failure to comply with a lawfully issued subpoena of
 1836 the department.

1837 (c) Refusal to produce records to the department or board
 1838 in connection with any activity regulated pursuant to this
 1839 chapter.

1840 (d) Failing to report to the department any person who the
 1841 licensee knows is in violation of this chapter.

1842 (e) Knowingly concealing information relative to
 1843 violations of this chapter.

1844 (f) Attempting to obtain, obtaining, or renewing a license
 1845 under this chapter by bribery, false or forged evidence, or
 1846 misrepresentation or through an error of the department or
 1847 board.

1848 (g) Making or filing a report or statement to or with any
 1849 government entity which the licensee knows or has reason to know
 1850 to be false; or intentionally or negligently failing to file a
 1851 report or record required to be filed with any government
 1852 entity, or willfully impeding or obstructing another person to
 1853 do so, or inducing another person to impede or obstruct such
 1854 filing.

1855 (h) Failing to perform any statutory or legal obligation
 1856 placed upon a licensee.

1857 (5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED
 1858 PRACTICE.--

1859 (a) Practicing or offering to practice beyond the scope
 1860 permitted by this chapter and rules adopted under this chapter
 1861 for the type of licensure held or accepting and performing
 1862 professional responsibilities the licensee knows, or has reason
 1863 to know, the licensee is not competent to perform.

1864 (b) Practicing or attempting to practice with a revoked,
 1865 suspended, inactive, or delinquent license.

1866 (c) Representing as her or his own the license of another.

1867 (d) Aiding, assisting, procuring, employing, or advising
 1868 any person or entity to practice a profession or occupation
 1869 regulated by this chapter without required licensure under this
 1870 chapter.

1871 (e) Aiding, assisting, procuring, employing, or advising
 1872 any person or entity to operate or in operating an establishment
 1873 regulated by this chapter without the required licensure under
 1874 this chapter.

1875 (f) Delegating to any person the performance of
 1876 professional activities, or contracting with any person for the
 1877 performance of professional activities by such person, when the
 1878 licensee knows or has reason to know the person is not qualified
 1879 by training, experience, and authorization to perform such
 1880 responsibilities.

1881 (g) Using the name or title "funeral director,"
 1882 "embalmer," "direct disposer," or other title suggesting
 1883 licensure which the person using such name or title does not
 1884 hold.

1885 (h) Engaging by a direct disposer in the practice of
 1886 direct burial or offering the at-need or preneed service of
 1887 direct burial.

1888 (6) EDUCATIONAL REQUIREMENTS.--

1889 (a) Failing to comply with applicable educational course
 1890 requirements pursuant to this chapter or rules adopted under
 1891 this chapter regarding human immunodeficiency virus and acquired
 1892 immune deficiency syndrome.

1893 (b) Failing to timely comply with applicable continuing
 1894 education requirements of this chapter.

1895 (7) RELATIONS WITH OTHER LICENSEES.--

1896 (a) Having been found liable in a civil proceeding for
 1897 knowingly filing a false report or complaint against another
 1898 licensee with the department or the board.

1899 (b) Making any misleading statements or misrepresentations
 1900 as to the financial condition of any person, or which are
 1901 falsely and maliciously critical of any person for the purpose
 1902 damaging that person's business regulated under this chapter.

1903 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF
 1904 HUMAN REMAINS.--

1905 (a) Violation of any state law or rule or any municipal or
 1906 county ordinance or regulation affecting the handling, custody,
 1907 care, or transportation of dead human bodies.

1908 (b) Refusing to surrender promptly the custody of a dead
 1909 human body upon the express order of the person legally
 1910 authorized to its custody; however, this provision shall be
 1911 subject to any state or local laws or rules governing custody or
 1912 transportation of dead human bodies.

1913 (c) Taking possession of a dead human body without first
 1914 having obtained written or oral permission from a legally
 1915 authorized person. If oral permission is granted, the licensee
 1916 must obtain written permission within a reasonable time as
 1917 established by rule.

1918 (d) Embalming human remains without first having obtained
 1919 written or oral permission from a legally authorized person;
 1920 however, washing and other public health procedures, such as
 1921 closing of the orifices by placing cotton soaked in a
 1922 disinfectant in such orifices until authorization to embalm is
 1923 received, shall not be precluded. If oral permission is granted,
 1924 the licensee must obtain written permission within a reasonable
 1925 time as established by board rule.

1926 (e) Failing to obtain written authorization from the
 1927 family or next of kin of the deceased prior to entombment,
 1928 interment, disinterment, disentombment, or disinurnment of the
 1929 remains of any human being.

1930 (9) SALES PRACTICES IN GENERAL.--

1931 (a) Soliciting by the licensee, or by her or his agent,
 1932 assistant, or employee, through the use of fraud, undue
 1933 influence, intimidation, overreaching, or other means which
 1934 takes advantage of a customer's ignorance or emotional
 1935 vulnerability.

1936 (b) Exercising undue influence on a client for the purpose
 1937 of financial gain of the licensee or a third party in connection
 1938 with any transaction regulated by this chapter.

1939 (c) Discouraging a customer's purchase of any funeral
 1940 merchandise or service which is advertised or offered for sale,
 1941 with the purpose of encouraging the purchase of additional or
 1942 more expensive merchandise or service, by disparaging its
 1943 quality or appearance, except that true factual statements
 1944 concerning features, design, or construction do not constitute
 1945 disparagement; by misrepresenting its availability or any delay
 1946 involved in obtaining it; or by suggesting directly or by
 1947 implication that a customer's concern for price or expressed
 1948 interest in inexpensive funeral merchandise or services is
 1949 improper, inappropriate, or indicative of diminished respect or
 1950 affection for the deceased.

1951 (d) Misrepresenting the benefits, advantages, conditions,
 1952 or terms of any contract to provide any services or merchandise
 1953 regulated under this chapter.

1954 (e) Advertising goods and services in a manner that is
 1955 fraudulent, deceptive, or misleading in form or content.

1956 (f) Directly or indirectly making any deceptive,
 1957 misleading, or untrue representations, whether oral or written,
 1958 or employing any trick, scheme, or artifice, in or related to
 1959 the practice of a profession or occupation regulated under this
 1960 chapter, including in the advertising or sale of any merchandise
 1961 or services related to the practice of the profession or
 1962 occupation.

1963 (10) SPECIFIC MISREPRESENTATIONS.--

1964 (a) Making any false or misleading statement of the legal
 1965 requirement as to the necessity of any particular burial or
 1966 funeral merchandise or services.

1967 (b) Making any oral, written, or visual representations,
 1968 directly or indirectly, that any funeral merchandise or service
 1969 is offered for sale when such is not a bona fide offer to sell
 1970 such merchandise or service.

1971 (c) Making any misrepresentation for the purpose of
 1972 inducing, or tending to induce, the lapse, forfeiture, exchange,
 1973 conversion, or surrender of any preneed contract or any life
 1974 insurance policy pledged or assigned to secure payment for
 1975 funeral or burial goods or services.

1976 (d) Misrepresenting pertinent facts or prepaid contract
 1977 provisions relating to funeral or burial merchandise or
 1978 services.

1979 (e) Misrepresenting the amount advanced on behalf of a
 1980 customer for any item of service or merchandise, including, but
 1981 not limited to, cemetery or crematory services, pallbearers,

1982 public transportation, clergy honoraria, flowers, musicians or
 1983 singers, nurses, obituary notices, gratuities, and death
 1984 certificates, described as cash advances, accommodations, or
 1985 words of similar import on the contract, final bill, or other
 1986 written evidence of agreement or obligation furnished to
 1987 customers; however, nothing in this paragraph shall require
 1988 disclosure of a discount or rebate which may accrue to a
 1989 licensee subsequent to making a cash advance.

1990 (f) Making any false or misleading statement or claim that
 1991 natural decomposition or decay of human remains can be prevented
 1992 or substantially delayed by embalming, use of a gasketed or
 1993 ungasketed casket, or use of an adhesive or nonadhesive closure
 1994 on an outer burial container.

1995 (g) Making any false or misleading statement, oral or
 1996 written, directly or indirectly, regarding any law or rule
 1997 pertaining to the preparation for disposition, transportation
 1998 for disposition, or disposition of dead human bodies.

1999 (h) Making any false or misleading statements of the legal
 2000 requirement as to the conditions under which preservation of a
 2001 dead human body is required or as to the necessity of a casket
 2002 or outer burial container.

2003 (11) SPECIFIC SALES PRACTICES.--

2004 (a) Failing to furnish, for retention, to each purchaser
 2005 of burial rights, burial or funeral merchandise, or burial or
 2006 funeral services a written agreement, the form of which has been
 2007 previously approved if and as required by this chapter, which
 2008 lists in detail the items and services purchased together with
 2009 the prices for the items and services purchased; the name,

2010 address, and telephone number of the licensee; the signatures of
 2011 the customer and the licensee or her or his representative; and
 2012 the date signed.

2013 (b) Using any name or title in any contract regulated
 2014 under this chapter which misrepresents the true nature of the
 2015 contract.

2016 (c) Selling an irrevocable preneed contract to a person
 2017 who is not an applicant for or recipient of Supplemental
 2018 Security Income or Aid to Families with Dependent Children or
 2019 pursuant to s. 497.459(6)(a).

2020 (d) Except as authorized in part IV of this chapter,
 2021 guaranteeing the price of goods and services at a future date.

2022 (e) Requiring that a casket be purchased for cremation or
 2023 claiming directly or by implication that a casket is required
 2024 for cremation.

2025 (f) When displaying any caskets for sale, failing to
 2026 display the least expensive casket offered for sale or use in
 2027 adult funerals in the same general manner as the funeral service
 2028 industry member's other caskets are displayed.

2029 (g) Assessing fees and costs that have not been disclosed
 2030 to the customer in connection with any transaction regulated by
 2031 this chapter.

2032 (h) Failure by a cemetery licensed under this chapter to
 2033 provide to any person, upon request, a copy of the cemetery
 2034 bylaws.

2035 (i) Requirements by a cemetery licensee that lot owners or
 2036 current customers make unnecessary visits to the cemetery
 2037 company office for the purpose of solicitation.

2038 (12) DISCLOSURE REQUIREMENTS.--

2039 (a) Failure to disclose, when such disclosure is desired,
 2040 the components of the prices for alternatives offered by the
 2041 licensee from whom disclosure is requested, such as graveside
 2042 service, direct disposition, and body donation without any rites
 2043 or ceremonies prior to the delivery of the body and prices of
 2044 service if there are to be such after the residue has been
 2045 removed following the use thereof.

2046 (b) Failing to furnish, for retention, to anyone who
 2047 inquires in person about burial rights, burial or funeral
 2048 merchandise, or burial or funeral services, before any
 2049 discussion of selection, a printed or typewritten list
 2050 specifying the range of retail prices for such rights,
 2051 merchandise, or services. At a minimum, the list shall itemize
 2052 the highest and lowest priced product and service regularly
 2053 offered and shall include the name, address, and telephone
 2054 number of the licensee and statements that the customer may
 2055 choose only the items the customer desires, that the customer
 2056 will be charged for only those items selected, and that there
 2057 may be other charges for other items or other services.

2058 (c) Failing to reasonably provide by telephone, upon
 2059 request, accurate information regarding the retail prices of
 2060 funeral merchandise and services offered for sale by that
 2061 licensee.

2062 (d) Failure by a funeral director to make full disclosure
 2063 in the case of a funeral or direct disposition with regard to
 2064 the use of funeral merchandise which is not to be disposed of

2065 with the body or failure to obtain written permission from the
 2066 purchaser regarding disposition of such merchandise.

2067 (e) Failure by any funeral director to fully disclose all
 2068 of her or his available services and merchandise prior to the
 2069 selection of a casket offered by a licensee. The full disclosure
 2070 required shall identify what is included in the funeral or
 2071 direct disposition and the prices of all services and
 2072 merchandise provided by the licensee or registrant.

2073 (f) Failing to have the price of any casket offered for
 2074 sale clearly marked on or in the casket, whether the casket is
 2075 displayed at a funeral establishment or at any other location,
 2076 regardless of whether the licensee is in control of such
 2077 location. If a licensee uses books, catalogs, brochures, or
 2078 other printed display aids, the price of each casket shall be
 2079 clearly marked.

2080 (g) Failing to disclose all fees and costs the customer
 2081 may incur to use the burial rights or merchandise purchased.

2082 (13) CONTRACT OBLIGATIONS.--

2083 (a) Failing without reasonable justification to timely
 2084 honor contracts entered into by the licensee or under the
 2085 licensee's license for funeral or burial merchandise or
 2086 services.

2087 (b) Failure to honor preneed contract cancellation
 2088 requests and make refunds as required by the chapter.

2089 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
 2090 CUSTOMERS.--

2091 (a) Failing to adopt and implement standards for the
 2092 proper investigation and resolution of claims and complaints

2093 received by a licensee relating to the licensee's activities
 2094 regulated by this chapter.

2095 (b) Committing or performing with such frequency as to
 2096 indicate a general business practice any of the following:

2097 1. Failing to acknowledge and act promptly upon
 2098 communications from a licensee's customers and their
 2099 representatives with respect to claims or complaints relating to
 2100 the licensee's activities regulated by this chapter.

2101 2. Denying claims or rejecting complaints received by a
 2102 licensee from a customer or customer's representative, relating
 2103 to the licensee's activities regulated by this chapter, without
 2104 first conducting reasonable investigation based upon available
 2105 information.

2106 3. Attempting to settle a claim or complaint on the basis
 2107 of a material document which was altered without notice to, or
 2108 without the knowledge or consent of, the contract purchaser or
 2109 her or his representative or legal guardian.

2110 4. Failing within a reasonable time to affirm or deny
 2111 coverage of specified services or merchandise under a contract
 2112 entered into by a licensee upon written request of the contract
 2113 purchaser or her or his representative or legal guardian.

2114 5. Failing to promptly provide, in relation to a contract
 2115 for funeral or burial merchandise or services entered into by
 2116 the licensee or under the licensee's license, a reasonable
 2117 explanation to the contract purchaser or her or his
 2118 representative or legal guardian of the licensee's basis for
 2119 denying or rejecting all or any part of a claim or complaint
 2120 submitted.

2121 (c) Making a material misrepresentation to a contract
 2122 purchaser or her or his representative or legal guardian for the
 2123 purpose and with the intent of effecting settlement of a claim
 2124 or complaint or loss under a prepaid contract on less favorable
 2125 terms than those provided in, and contemplated by, the prepaid
 2126 contract.

2127 (d) Failing to maintain a complete copy of every complaint
 2128 received by the licensee since the date of the last examination
 2129 of the licensee by the department. For purposes of this
 2130 subsection, the term "complaint" means any written communication
 2131 primarily expressing a grievance and which communication is
 2132 from:

2133 1. A representative or family member of a deceased person
 2134 interred at the licensee's facilities or using the licensee's
 2135 services, or which deceased's remains were the subject of any
 2136 service provided by the licensee or licensee's business; or

2137 2. A person, or such person's family member or
 2138 representative, who inquired of the licensee or licensee's
 2139 business concerning the purchase of, or who purchased or
 2140 contracted to purchase, any funeral or burial merchandise or
 2141 services from the licensee or licensee's business.

2142 (15) MISCELLANEOUS FINANCIAL MATTERS.--

2143 (a) Failing to timely pay any fee required by this
 2144 chapter.

2145 (b) Failing to timely remit as required by this chapter
 2146 the required amounts to any trust fund required by this chapter.

2147 (c) Paying to or receiving from any organization, agency,
 2148 or person, either directly or indirectly, any commission, bonus,

2149 kickback, or rebate in any form whatsoever for any business
 2150 regulated under this chapter, whether such payments are made or
 2151 received by the licensee, or her or his agent, assistant, or
 2152 employee; however, this provision shall not prohibit the payment
 2153 of commissions by a funeral director, funeral establishment,
 2154 cemetery, or monument establishment to its preneed sales agents
 2155 licensed pursuant to this chapter or to licensees under this
 2156 chapter.

2157 Section 22. Section 497.153, Florida Statutes, is created
 2158 to read:

2159 497.153 Disciplinary procedures and penalties.--

2160 (1) JURISDICTION OF LICENSING AUTHORITY TO INVESTIGATE AND
 2161 PROSECUTE.--The expiration, nonrenewal, or surrender of
 2162 licensure under this chapter shall not eliminate jurisdiction in
 2163 the licensing authority to investigate and prosecute for
 2164 violations committed while licensed under this chapter. The
 2165 prosecution of any matter may be initiated or continued
 2166 notwithstanding the withdrawal of any complaint.

2167 (2) DETERMINATION OF PROBABLE CAUSE.--

2168 (a) If the department shall determine that there is
 2169 reasonable cause to believe that any licensee under this chapter
 2170 is subject to disciplinary action under this chapter and is not
 2171 eligible for a citation or notice of noncompliance pursuant to
 2172 criteria established by the board, the department shall present
 2173 the matter to a probable cause panel of the board.

2174 (b) Prior to submitting a matter to the probable cause
 2175 panel, the licensee who is the subject of the matter shall be
 2176 provided by the department with a copy of any written complaint

2177 received by the department in the matter and shall be advised
 2178 that she or he may, within 20 days after receipt of a copy of
 2179 such complaint from the department, submit to the department a
 2180 written response. Any response timely received by the department
 2181 shall be provided by the department to the probable cause panel.
 2182 Licensees may not appear in person or through a representative
 2183 at any probable cause panel proceeding. This paragraph shall not
 2184 apply to emergency action.

2185 (3) PROBABLE CAUSE PROCEEDINGS.--

2186 (a) The board may provide, by rule, for multiple probable
 2187 cause panels composed of at least two members. The board may
 2188 provide, by rule, that one or more members of the panel or
 2189 panels may be a former board member. The length of term or
 2190 repetition of service of any such former board member on a
 2191 probable cause panel may vary according to the direction of the
 2192 board when authorized by board rule. Any probable cause panel
 2193 must include one of the board's former or present consumer
 2194 members, if one is available and willing to serve. Any probable
 2195 cause panel must include a present board member. The board shall
 2196 enact rules consistent with this section specifying, according
 2197 to what categories of licensure are represented on a probable
 2198 cause panel, what categories of licensee cases may be presented
 2199 to that panel. Former board members may be from the former Board
 2200 of Funeral and Cemetery Services or the former Board of Funeral
 2201 Directors and Embalmers. However, any former professional board
 2202 member serving on the probable cause panel must hold an active
 2203 valid license for that profession.

2204 (b) The probable cause panel may make a reasonable request
 2205 to the department for additional investigative information, and
 2206 upon such request the department shall provide such additional
 2207 investigative information as is necessary to the determination
 2208 of probable cause. A request for additional investigative
 2209 information shall be made within 15 days after the date of
 2210 receipt by the probable cause panel of the investigative report
 2211 of the department. The probable cause panel shall make its
 2212 determination as to the existence of probable cause within 30
 2213 days after referral of the matter to the probable cause panel by
 2214 the department. The Chief Financial Officer may grant extensions
 2215 of the 15-day and the 30-day time limits. If the probable cause
 2216 panel does not find probable cause within the 30-day time limit,
 2217 as may be extended, or if the probable cause panel finds no
 2218 probable cause, the department may determine, within 10 days
 2219 after the panel fails to determine probable cause or 10 days
 2220 after the time limit has elapsed, that probable cause exists.

2221 (c) The probable cause panel may not resolve or direct
 2222 resolution of a matter presented to it, by issuance of a
 2223 citation or a letter of guidance or noncompliance or other
 2224 informal resolution, without the concurrence of the department.

2225 (d) The determination as to whether probable cause exists
 2226 shall be made by majority vote of the probable cause panel of
 2227 the board.

2228 (e) If the probable cause panel finds that probable cause
 2229 exists, it shall direct the department to file a formal
 2230 complaint against the licensee.

2231 (4) ACTION AFTER PROBABLE CAUSE FOUND.--

2232 (a) Service of an administrative complaint may be in
 2233 person by department staff or any person authorized to make
 2234 service of process under the Florida Rules of Civil Procedure.
 2235 Service upon a licensee may in the alternative be made by
 2236 certified mail, return receipt requested, to the last known
 2237 address of record provided by the licensee to the department.

2238 (b) If after service of the administrative complaint on a
 2239 licensee the licensee does not dispute the facts alleged, the
 2240 department shall present the matter to the board for final
 2241 action.

2242 (c) The department may at any time present to the board a
 2243 proposed settlement of any matter as to which probable cause has
 2244 been found. If the board accepts the proposed settlement, it
 2245 shall issue its final order adopting the settlement. If the
 2246 board does not accept such settlement, the prosecution of the
 2247 matter shall be resumed. No settlement of any disciplinary
 2248 matter as to which probable cause has been found may be entered
 2249 into by the board prior to receipt of a recommended order of an
 2250 administrative law judge without the department's concurrence.

2251 (d) Hearings concerning disputes as to any fact alleged in
 2252 a disciplinary action shall be held before an administrative law
 2253 judge of the Division of Administrative Hearings in accordance
 2254 with chapter 120. The department shall present the recommended
 2255 order of the administrative law judge to the board for final
 2256 action.

2257 (e) If at any time after probable cause has been found in
 2258 a matter the department shall conclude that the matter should
 2259 not be further prosecuted, the department may present the matter

2260 to any probable cause panel of the board. If that probable cause
 2261 panel concurs with the department, the prosecution may be
 2262 terminated without prejudice to subsequent prosecution of the
 2263 same matter. If the probable cause panel does not concur with
 2264 the department, the matter shall be returned to the department
 2265 for continued prosecution. Upon commencement of taking of
 2266 evidence in a matter before an administrative law judge, the
 2267 jurisdiction of the administrative law judge may not be
 2268 terminated except by order of the administrative law judge or a
 2269 court of competent jurisdiction.

2270 (f) No disciplinary matter may come before the board for
 2271 final or other action, nor shall action by the board be taken as
 2272 to any disciplinary matter, except upon presentation and
 2273 recommendation by the department.

2274 (5) PENALTIES.--

2275 (a) When the board finds any person to be subject to
 2276 discipline under this chapter, it may enter an order imposing
 2277 one or more of the following:

2278 1. Denial of an application for a license.

2279 2. Issuance of a written reprimand.

2280 3. Placement of the licensee on probation for a period of
 2281 time and subject to such conditions as the board may specify.

2282 4. Restrictions on the authorized scope of practice of the
 2283 licensee.

2284 5. Requirements that the licensee complete additional
 2285 education or training as specified by the board.

2286 6. Imposition of an administrative fine not to exceed
 2287 \$5,000 for each count or separate offense; provided, a licensee

2288 may by settlement agree to a fine in excess of such \$5,000
 2289 limitation.

2290 7. Suspension of a license. A suspension may be for such
 2291 period and subject to such terms as the board shall specify in
 2292 its order imposing discipline. Unless ordered otherwise by the
 2293 board, during the period of suspension, the person whose license
 2294 has been suspended shall continue to file all such reports,
 2295 complete all continuing education, and pay all fees as required
 2296 under this chapter as if the license had continued in full
 2297 force. Upon expiration of the suspension period, if within such
 2298 period the license has not otherwise terminated, the suspended
 2299 license shall automatically be reinstated unless the board has
 2300 ordered that the licensee apply for reinstatement, and the board
 2301 may deny such application if the board finds that the causes of
 2302 the suspension have not been resolved or that such person is
 2303 otherwise not in compliance with the requirements of the order
 2304 or this chapter.

2305 8. Revocation of licensure. The board may specify by final
 2306 order on a case-by-case basis the period of time that must
 2307 elapse before a revoked licensee may apply or reapply for any
 2308 licensure under this chapter. The board may by order on a case-
 2309 by-case basis specify that a revocation is permanent and that no
 2310 future application for licensure under this chapter by the
 2311 revoked person or entity shall be accepted, processed, or
 2312 approved. In no event shall any person or entity whose licensure
 2313 has been revoked under this section subsequently be issued the
 2314 same or other licensure under this chapter unless such person
 2315 shall show by clear and convincing evidence that the person or

2316 entity has been rehabilitated and otherwise qualifies for the
 2317 licensure applied for.

2318 (b) In addition to any fine and other sanction imposed,
 2319 the board may order the payment by the licensee of the
 2320 reasonable costs of the department and the board associated with
 2321 investigation and prosecution of the matter, and may order the
 2322 licensee to make restitution as directed by board order to
 2323 persons harmed by the violation.

2324 (c) The failure of a licensee to timely comply with a
 2325 final order of the board imposing discipline shall be grounds
 2326 for emergency suspension of all licensure held by the licensee
 2327 under this chapter; provided, the department shall give written
 2328 notice to such licensee, at least 7 days before such emergency
 2329 suspension, of the department's intent to enter an emergency
 2330 order of suspension and the ground therefore, and such emergency
 2331 suspension shall not occur if during the 7-day period the
 2332 licensee shall provide the department with evidence satisfactory
 2333 to the department that the licensee was in compliance or has
 2334 come into compliance with the disciplinary order. Any emergency
 2335 suspension imposed shall be effective when served, and shall
 2336 terminate upon notice to the licensee by the department that the
 2337 department has received evidence satisfactory to the department
 2338 that the licensee has come into compliance with the board's
 2339 order, which notice the department shall promptly provide to the
 2340 licensee upon receipt of such evidence. Notwithstanding the
 2341 licensee's correction of any noncompliance with a board order,
 2342 such licensee shall be liable for additional disciplinary action
 2343 for failure to timely comply with an order of the board.

2344 (d) Any order imposing any penalty pursuant to this
 2345 section shall recite the grounds upon which the penalty is
 2346 based.

2347 (6) PROTECTION OF CUSTOMERS OF DISCIPLINED LICENSEES.--In
 2348 imposing any discipline under this section the board may also
 2349 impose by its order such restrictions, conditions, and
 2350 requirements on the licensee and the licensee's assets and the
 2351 assets of any trust under this chapter utilized by the licensee
 2352 as are reasonably necessary for the protection of persons to
 2353 whom the disciplined licensee is obligated for the future
 2354 performance or delivery of funeral or burial merchandise or
 2355 services. The board shall have continuing jurisdiction over
 2356 revoked persons and entities and their assets and related trusts
 2357 under this chapter, for the purpose of and to the extent
 2358 necessary for the protection of persons to whom the disciplined
 2359 licensee is obligated for the future performance or delivery of
 2360 funeral or burial merchandise or services, and may issue such
 2361 subsequent and additional orders as from time to time the board
 2362 deems necessary or advisable for such purposes. The courts of
 2363 this state shall have jurisdiction to enforce the reasonable
 2364 orders of the board issued for such purposes.

2365 (7) LIABILITY FOR AGENTS AND EMPLOYEES.--For purposes of
 2366 this section, the acts or omissions of any person employed by or
 2367 under contract to the licensee shall be treated as acts or
 2368 omissions of the licensee. However, the board may determine that
 2369 disciplinary action may be more appropriately taken against an
 2370 individual licensed preneed sales agent or licensed branch

2371 rather than taking action against the sponsoring preneed
 2372 licensee.

2373 (8) PUBLICATION OF DISCIPLINARY ACTION.--The department
 2374 may cause notice of any disciplinary action of the board to be
 2375 published in one or more newspapers of general circulation
 2376 published in this state.

2377 (9) DETERMINATIONS NOT SUBJECT TO CHAPTER 120.--The
 2378 following determinations shall not entitle any person to
 2379 proceedings under chapter 120:

2380 (a) A determination by the department to exercise its
 2381 authority under this chapter to investigate, financially
 2382 examine, or inspect any person or entity; a determination by the
 2383 department concerning how to conduct such investigation,
 2384 financial examination, or inspection; or a determination by the
 2385 department concerning the content of any report of
 2386 investigation, financial examination, or inspection.

2387 (b) A determination by the department that there is
 2388 reasonable cause to believe that a licensee under this chapter
 2389 is subject to disciplinary action under this chapter and that
 2390 the matter should be presented to a probable cause panel of the
 2391 board, or that the licensee is not eligible for a citation
 2392 pursuant to criteria established by the board.

2393 (c) A determination by a probable cause panel of the board
 2394 that probable cause does or does not exist, or a determination
 2395 by the department under paragraph (3)(b).

2396 (d) A determination by the department not to offer any
 2397 settlement to a licensee concerning any disciplinary matter.

2398 Section 23. Section 497.133, Florida Statutes, is
 2399 renumbered as section 497.154, Florida Statutes, and amended to
 2400 read:

2401 497.154 ~~497.133~~ Disciplinary guidelines.--

2402 (1) The board shall adopt, by rule, and periodically
 2403 review the disciplinary guidelines applicable to each ground for
 2404 disciplinary action which may be imposed by the board pursuant
 2405 to this chapter, and any rule of the board or department.

2406 (2) The disciplinary guidelines shall specify a meaningful
 2407 range of designated penalties based upon the severity and
 2408 repetition of specific offenses, it being the legislative intent
 2409 that minor violations be distinguished from those which endanger
 2410 the public health, safety, or welfare; that such guidelines
 2411 provide reasonable and meaningful notice to the public of likely
 2412 penalties which may be imposed for proscribed conduct; and that
 2413 such penalties be consistently applied by the board.

2414 (3) A specific finding of mitigating or aggravating
 2415 circumstances shall allow the board to impose a penalty other
 2416 than that provided for in such guidelines. If applicable, the
 2417 board shall adopt by rule disciplinary guidelines to designate
 2418 possible mitigating and aggravating circumstances and the
 2419 variation and range of penalties permitted for such
 2420 circumstances.

2421 (4) The department must review such disciplinary
 2422 guidelines for compliance with the legislative intent as set
 2423 forth in this section to determine whether the guidelines
 2424 establish a meaningful range of penalties and may also challenge
 2425 such rules pursuant to s. 120.56.

2426 (5) The rules provided for in this section shall be
 2427 adopted ~~promulgated~~ within 6 months after the enactment of the
 2428 board.

2429 (6) The administrative law judge, in recommending
 2430 penalties in any recommended order, must follow the penalty
 2431 guidelines established by the board and must state in writing
 2432 the mitigating or aggravating circumstances upon which the
 2433 recommended penalty is based.

2434 Section 24. Section 497.121, Florida Statutes, is
 2435 renumbered as section 497.155, Florida Statutes, and amended to
 2436 read:

2437 497.155 ~~497.121~~ Disciplinary citations and minor
 2438 violations ~~Authority to issue citations.~~--

2439 (1) CITATIONS.--

2440 (a) Notwithstanding the provisions of s. 497.153 ~~497.131~~,
 2441 the board shall adopt rules to permit the issuance of citations.
 2442 The citation shall be issued to the subject and shall contain
 2443 the subject's name and address, the subject's license number if
 2444 applicable, a brief factual statement, the sections of the law
 2445 allegedly violated, and the penalty imposed. The citation must
 2446 clearly state that the subject may choose, in lieu of accepting
 2447 the citation, to follow the procedures under s. 497.153 ~~497.131~~.
 2448 If the subject disputes the matter in the citation, the
 2449 procedures set forth in s. 497.153 ~~497.131~~ must be followed.
 2450 However, if the subject does not dispute the matter in the
 2451 citation with the department within 30 days after the citation
 2452 is served, the citation shall become a final order of the board

2453 and shall constitute discipline. The penalty shall be a fine or
2454 other conditions as established by rule.

2455 ~~(b)(2)~~ The board shall adopt rules designating violations
2456 for which a citation may be issued. Such rules shall designate
2457 as citation violations those violations for which there is no
2458 substantial threat to the public health, safety, and welfare.
2459 Citations shall not be utilized if there was any significant
2460 consumer harm resulting from the violation.

2461 ~~(c)(3)~~ The department shall be entitled to recover the
2462 costs of investigation, in addition to any penalty provided
2463 according to board rule, as part of the penalty levied pursuant
2464 to the citation.

2465 ~~(d)(4)~~ A citation must be issued within 6 months after the
2466 filing of the complaint that is the basis for the citation.

2467 ~~(e)(5)~~ Service of a citation may be made by personal
2468 service or certified mail, restricted delivery, to the subject
2469 at the subject's last known address.

2470 (2) MINOR VIOLATIONS.--

2471 (a) The board may by rule specify violations of this
2472 chapter, and criteria for use by the department in identifying
2473 violations of this chapter, which are minor violations and
2474 which, if promptly corrected by the licensee upon notice by the
2475 department during investigation, may, with the concurrence of
2476 the department, result in closure of the investigation in the
2477 matter without further action by the department or the board.

2478 (b) The rules may establish limits as to the number of
2479 times in total, or per period of time, that this subsection may
2480 be used in regard to any one licensee.

HB 323 CS

2004
CS

2481 (c) The rules may establish limits or prohibitions on the
 2482 use of this subsection where the violation relates to a consumer
 2483 complaint received by the department concerning the licensee,
 2484 and the complaint has not been resolved.

2485 (d) There may by rule be specified notices of
 2486 noncompliance and other forms and procedures for use in
 2487 implementation of this subsection.

2488 Section 25. Section 497.156, Florida Statutes, is created
 2489 to read:

2490 497.156 Emergency action against licensees.--In addition
 2491 to or in lieu of other actions authorized under this chapter for
 2492 the enforcement of this chapter, the department may issue
 2493 emergency orders under s. 120.60(6) suspending or restricting a
 2494 license or ordering a licensee to cease or desist from specified
 2495 conduct, or taking other action deemed necessary in the
 2496 circumstances, but shall thereafter promptly present the matter
 2497 to a probable cause panel of the board. Emergency orders shall
 2498 be effective when issued, shall be appealable as provided by
 2499 law, and shall be enforceable in the courts of this state.

2500 Section 26. Section 497.157, Florida Statutes, is created
 2501 to read:

2502 497.157 Unlicensed practice; remedies concerning
 2503 violations by unlicensed persons.--

2504 (1) No person or entity shall engage in any activity for
 2505 which a license is required under this chapter without holding
 2506 such licensure in good standing.

2507 (2)(a) When the department has reasonable cause to believe
 2508 that any person or entity not licensed under this chapter has

2509 violated any provision of this chapter or any rule adopted under
 2510 this chapter, the department may issue an administrative
 2511 complaint to such person or entity, alleging violation of this
 2512 chapter and providing notice therein of intent by the department
 2513 to order such person to cease and desist from the alleged
 2514 violation of this chapter, to take corrective action including
 2515 payment of restitution to persons adversely affected by the
 2516 violation, to pay the department's reasonable costs of
 2517 investigation and prosecution, or to impose a fine of up to
 2518 \$10,000 upon such person for each violation of this chapter
 2519 alleged in the administrative complaint.

2520 (b) The issuance of the administrative complaint shall be
 2521 a decision affecting substantial interests and shall entitle the
 2522 respondent therein to proceedings pursuant to s. 120.569, if
 2523 such proceedings are requested by the respondent in writing and
 2524 are received by the department within 21 days after service of
 2525 the administrative complaint. If such proceedings are timely
 2526 requested and the respondent shall contest any material fact
 2527 alleged in the administrative complaint, the matter shall be
 2528 heard before an administrative law judge of the Division of
 2529 Administrative Hearings, who shall issue her or his recommended
 2530 order to the department; otherwise, the proceedings shall be
 2531 before the Chief Financial Officer or her or his designee. Upon
 2532 conclusion of proceedings under s. 120.57 if the subject timely
 2533 requested a hearing, or after the expiration of 21 days after
 2534 service of the administrative complaint if no request for
 2535 hearing is received within those 21 days, the department may
 2536 take final agency action and issue its final order concerning

2537 the matter, which final order shall be enforceable as set forth
 2538 in s. 120.69.

2539 (3) Where the department determines that an emergency
 2540 exists regarding any violation of this chapter by any unlicensed
 2541 person or entity, the department may issue and serve an
 2542 immediate final order upon such unlicensed person or entity, in
 2543 accordance with s. 120.569(2)(n). Such an immediate final order
 2544 may impose such prohibitions and requirements as are reasonably
 2545 necessary to protect the public health, safety, and welfare, and
 2546 shall be effective when served.

2547 (a) For the purpose of enforcing such an immediate final
 2548 order, the department may file an emergency or other proceeding
 2549 in the circuit courts of the state seeking enforcement of the
 2550 immediate final order by injunctive or other order of the court.
 2551 The court shall issue its injunction or other order enforcing
 2552 the immediate final order pending administrative resolution of
 2553 the matter under subsection (2), unless the court determines
 2554 that such action would be a manifest injustice under the
 2555 circumstances. Venue for judicial actions under this paragraph
 2556 shall be, at the election of the department, in the courts of
 2557 Leon County or in a county where the respondent resides or has a
 2558 place of business.

2559 (b) After serving an immediate final order to cease and
 2560 desist upon any person or entity, the department shall within 10
 2561 days issue and serve upon the same person or entity an
 2562 administrative complaint as set forth in subsection (2), except
 2563 that, absent order of a court to the contrary, the immediate

2564 final order shall be effective throughout the pendency of
 2565 proceedings under subsection (2).

2566 (4) For the purpose of this section, a violation of this
 2567 chapter by a person who is not licensed under this chapter or by
 2568 any person who aids and abets the unlicensed activity shall be
 2569 presumed to be irreparable harm to the public health, safety, or
 2570 welfare.

2571 (5) Any administrative complaint or immediate final order
 2572 under this section may be served in person by a department
 2573 employee or by certified mail, return receipt requested, to the
 2574 subject's place of residence or business, or by other means
 2575 authorized by law.

2576 Section 27. Section 497.229, Florida Statutes, is
 2577 renumbered as section 497.158, Florida Statutes, and amended to
 2578 read:

2579 497.158 ~~497.229~~ Court enforcement actions; Courts; powers;
 2580 abatement of nuisances.--

2581 (1) In addition to or in lieu of other actions authorized
 2582 by this chapter, the department may petition the courts of this
 2583 state for injunctive or other relief against any licensed or
 2584 unlicensed person, for the enforcement of this chapter and
 2585 orders issued under this chapter. The court shall be authorized
 2586 to impose a fine of up to \$5,000 per violation, payable to the
 2587 department, upon any person determined by the court to have
 2588 violated this chapter and may order payment to the department of
 2589 the department's attorney's fees and litigation costs by any
 2590 person found to have violated this chapter.

HB 323 CS

2004
CS

2591 (2)~~(1)~~ In addition to all other means provided by law for
 2592 the enforcement by a court of a temporary restraining order or
 2593 an injunction, the circuit court may impound the property of a
 2594 licensee cemetery company, including books, papers, documents,
 2595 and records pertaining thereto, and may appoint a receiver or
 2596 administrator to prevent further violation of this chapter.

2597 (3)~~(2)~~ A court-appointed receiver or administrator may
 2598 take any action to implement the provisions of the court order,
 2599 to ensure the performance of the order, and to remedy any breach
 2600 thereof.

2601 (4)~~(3)~~ Any nonconforming physical condition in a cemetery
 2602 or component thereof which is the result of a violation of this
 2603 chapter or of the rules adopted under this chapter ~~of the board~~
 2604 relating to construction, physical operations, or care and
 2605 maintenance at the cemetery shall be deemed a public nuisance,
 2606 and the nonconforming physical conditions caused by such
 2607 violation may be abated as provided in s. 60.05.

2608 Section 28. Section 497.159, Florida Statutes, is created
 2609 to read:

2610 497.159 Crimes.--

2611 (1) The theft of an examination in whole or in part or the
 2612 act of unauthorized reproducing or copying any examination
 2613 administered by the department or the board, whether such
 2614 examination is reproduced or copied in part or in whole and by
 2615 any means, constitutes a felony of the third degree, punishable
 2616 as provided in s. 775.082, s. 775.083, or s. 775.084.

2617 (2) The act of knowingly giving false information in the
 2618 course of applying for or obtaining a license under this chapter

2619 with intent to mislead the board or a public employee in the
 2620 performance of her or his official duties, or the act of
 2621 attempting to obtain or obtaining a license under this chapter
 2622 by knowingly misleading statements or knowing
 2623 misrepresentations, constitutes a felony of the third degree,
 2624 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2625 (3) Any individual who willfully obstructs the department
 2626 or its examiner in any examination or investigation authorized
 2627 by this chapter commits a misdemeanor of the second degree and,
 2628 in addition to any disciplinary action under this chapter, is
 2629 punishable as provided in s. 775.082 or s. 775.083.

2630 (4) Any officer or director, or person occupying similar
 2631 status or performing similar functions, of a licensee under this
 2632 chapter who knowingly directs or causes the failure to make
 2633 required deposits to any trust fund required by this chapter, or
 2634 with knowledge that such required deposits are not being made as
 2635 required by law fails to report such failure to the department,
 2636 or who knowingly directs or causes the unlawful withdrawal of
 2637 funds from any trust fund required by this chapter, commits a
 2638 felony of the third degree, punishable as provided in s.
 2639 775.082, s. 775.083, or s. 775.084.

2640 (5)(a) No cemetery company or other legal entity
 2641 conducting or maintaining any public or private cemetery may
 2642 deny burial space to any person because of race or color. A
 2643 cemetery company or other entity operating any cemetery may
 2644 designate parts of cemeteries or burial grounds for the specific
 2645 use of persons whose religious code requires isolation.

2646 Religious institution cemeteries may limit burials to members of
 2647 the religious institution and their families.

2648 (b) Any cemetery company or other legal entity which
 2649 violates the provisions of this subsection commits a misdemeanor
 2650 of the second degree, punishable as provided in s. 775.083, and
 2651 each violation of this section constitutes a separate offense.

2652 (6) Any person who is not licensed under this chapter who
 2653 engages in activity requiring licensure under this chapter
 2654 commits a misdemeanor of the second degree, punishable as
 2655 provided in s. 775.082 or s. 775.083.

2656 Section 29. Section 497.437, Florida Statutes, is
 2657 renumbered as section 497.160, Florida Statutes, and amended to
 2658 read:

2659 (Substantial rewording of section. See
 2660 s. 497.437, F.S., for present text.)
 2661 497.160 Receivership proceedings.--

2662 (1) The department, with the approval of the board, may
 2663 petition the circuit courts of this state for appointment of a
 2664 receiver of any licensee or revoked or suspended licensee under
 2665 this chapter or any person who has, without a license, conducted
 2666 activities requiring licensure under this chapter. The court
 2667 shall appoint a receiver if the court shall determine that a
 2668 receivership is necessary or advisable:

2669 (a) To ensure the orderly and proper conduct of a
 2670 licensee's professional business and affairs during or in the
 2671 aftermath of the administrative proceeding to revoke or suspend
 2672 the licensee.

2673 (b) For the protection of the public's interest and rights
 2674 in the business, premises, or activities of the person sought to
 2675 be placed in receivership.

2676 (c) Upon a showing of actual or constructive abandonment
 2677 of premises or business licensed or which were not but should
 2678 have been licensed under this chapter.

2679 (d) Upon a showing of serious and repeated violations of
 2680 this chapter demonstrating an inability or unwillingness of a
 2681 licensee to comply with the requirements of this chapter.

2682 (e) To prevent loss, wasting, dissipation, theft, or
 2683 conversion of assets that should be marshaled and held available
 2684 for the honoring of obligations under this chapter.

2685 (f) Upon proof of other grounds which the court deems good
 2686 and sufficient for instituting receivership action concerning
 2687 the respondent sought to be placed in receivership.

2688 (2) A receivership under this section may be temporary, or
 2689 for the winding up and dissolution of the business, as the
 2690 department may request and the court determines to be necessary
 2691 or advisable in the circumstances. Venue of receivership
 2692 proceedings may be, at the department's election, in Leon County
 2693 or the county where the subject of the receivership is located.
 2694 The appointed receiver shall be the department or such person as
 2695 the department may nominate and the court shall approve. The
 2696 provisions of part I of chapter 631 shall be applicable to
 2697 receiverships under this section except to the extent the court
 2698 determines that the application of such provisions would be
 2699 impracticable or would produce unfair results in the
 2700 circumstances. Expenditures by the department from its budgeted

2701 funds, the Preneed Funeral Contract Consumer Protection Trust
 2702 Fund, and other regulatory trust funds derived from this
 2703 chapter, for implementation and effectuation of such a
 2704 receivership, shall be authorized; any such funds expended shall
 2705 be a claim against the estate in the receivership proceedings.

2706 (3) The department may adopt rules for the implementation
 2707 of this section.

2708 Section 30. Section 497.161, Florida Statutes, is created
 2709 to read:

2710 497.161 Other rulemaking provisions.--

2711 (1) In addition to such other rules as are authorized or
 2712 required under this chapter, the following additional rules, not
 2713 inconsistent with this chapter, shall be authorized by the
 2714 licensing authority.

2715 (a) Rules by the board defining any technical term used
 2716 but not defined in his chapter, and defining the terms "at-need"
 2717 and "preneed" as used in this chapter.

2718 (b) Rules by the board defining and regulating hazardous
 2719 materials generated in connection with the practice of
 2720 embalming, funeral directing, or direct disposition.

2721 (c) Rules by the board governing the operation of
 2722 cemeteries in this state.

2723 (d) Rules establishing a fee of up to \$100 for issuance of
 2724 a duplicate license or for a name change on a license.

2725 (e) Rules allowing and prescribing procedure and formats
 2726 for the electronic submission of any applications, documents,
 2727 filings, or fees required by this chapter.

2728 (f) Rules establishing procedures for investigation,
 2729 financial examination, and inspection of licensees.

2730 (g) Rules establishing procedures by which the department
 2731 may use the expert or technical advice of the board or members
 2732 of the board for the purposes of any investigation, inspection,
 2733 or financial examination, without thereby disqualifying the
 2734 board member from voting on final action in the matter.

2735 (h) In connection with the statutory revisions by the 2005
 2736 Regular Session of the Legislature merging chapters 470 and 497
 2737 as those chapters appeared in the 2004 edition of the Florida
 2738 Statutes and the elimination of the former boards under those
 2739 chapters and the movement of regulation out of the Department of
 2740 Business and Professional Regulation, the licensing authority
 2741 shall through July 1, 2006, be deemed to have extraordinary
 2742 rulemaking authority to adopt any and all rules jointly agreed
 2743 to by the board and the department to be necessary for the
 2744 protection of the public concerning the regulation of the
 2745 professions and occupations regulated under this chapter, or for
 2746 the relief of licensees regulated under this chapter concerning
 2747 any impacts which the department and the board jointly agree
 2748 were unintended or not contemplated in the enactment of the 2005
 2749 legislative changes. The authority under this paragraph and any
 2750 rules adopted under authority of this paragraph shall expire
 2751 July 1, 2006.

2752 (2) In addition to challenges for any invalid exercise of
 2753 delegated legislative authority, no rule shall be adopted under
 2754 this chapter, and the administrative law judge upon such a
 2755 challenge by the department or the board, may declare all or

2756 part of a rule or proposed rule invalid, if the rule or proposed
 2757 rule:

2758 (a) Does not protect the public from any significant and
 2759 discernible harm or damages;

2760 (b) Unreasonably restricts competition or the availability
 2761 of professional services in the state or in a significant part
 2762 of the state; or

2763 (c) Unnecessarily increases the cost of professional
 2764 services without a corresponding or equivalent public benefit.
 2765 However, there shall not be created a presumption of the
 2766 existence of any of the conditions cited in this subsection in
 2767 the event that the rule or proposed rule is challenged.

2768 (3) The department and the board shall each have standing
 2769 under chapter 120 for the purposes of challenging rules or
 2770 proposed rules under this chapter.

2771 Section 31. Section 470.0201, Florida Statutes, is
 2772 renumbered as section 497.162, Florida Statutes, and amended to
 2773 read:

2774 497.162 ~~470.0201~~ Health and safety education.--All
 2775 individuals not licensed under this chapter ~~by the department~~
 2776 who intend to be employed as operational personnel affiliated
 2777 with a direct disposal establishment, cinerator facility,
 2778 removal service, refrigeration facility, or centralized
 2779 embalming facility, as well as all nonlicensed individuals who
 2780 intend to be involved in the removal or transportation of human
 2781 remains on behalf of a funeral establishment, direct disposal
 2782 establishment, or cinerator facility shall complete one course
 2783 approved by the licensing authority ~~board~~ on communicable

HB 323 CS

2004
CS

2784 diseases, within 10 days after the date that they begin
 2785 functioning as operational personnel on behalf of any entity
 2786 that is regulated by this chapter. The course shall not exceed 3
 2787 hours and shall be offered at approved locations throughout the
 2788 state. Such locations may include establishments that are
 2789 licensed ~~or registered~~ under this chapter. The licensing
 2790 authority board shall adopt rules to implement and enforce this
 2791 provision, which rules shall include provisions that provide for
 2792 the use of approved videocassette courses and other types of
 2793 audio, video, or home study courses to fulfill the continuing
 2794 education requirements of this section.

2795 Section 32. Section 497.163, Florida Statutes, is created
 2796 to read:

2797 497.163 Restriction on requirement of citizenship.--No
 2798 person shall be disqualified from practicing an occupation or
 2799 profession regulated by this chapter solely because she or he is
 2800 not a United States citizen.

2801 Section 33. Section 497.321, Florida Statutes, is
 2802 renumbered as section 497.164, Florida Statutes, and amended to
 2803 read:

2804 497.164 497.321 Solicitation of goods or services.--

2805 (1) The board is authorized to adopt rules regulating the
 2806 solicitation of sales of burial rights, merchandise, or services
 2807 by licensees.

2808 (2) The board shall regulate such solicitation to protect
 2809 the public from solicitation which is intimidating,
 2810 overreaching, ~~vexatious~~, fraudulent, or misleading; which

HB 323 CS

2004
CS

2811 utilizes undue influence; or which takes undue advantage of a
2812 person's ignorance or emotional vulnerability.

2813 (3) The board shall regulate any solicitation which
2814 comprises an uninvited invasion of personal privacy. It is the
2815 express finding of the Legislature that the public have a high
2816 expectation of privacy in their personal residences, and the
2817 department by rule shall restrict the hours or otherwise
2818 regulate such solicitation in the personal residence of a person
2819 unless the solicitation has been previously and expressly
2820 requested by the person solicited.

2821 (4) Nothing in this section ~~act~~ shall be construed to
2822 restrict the right of a person to lawfully advertise, use direct
2823 mail, or otherwise communicate in a manner not within the
2824 definition of solicitation or to solicit the business of anyone
2825 responding to such communication or otherwise initiating
2826 discussion of goods and services being offered.

2827 (5) At-need solicitation of sales of burial rights,
2828 merchandise, or services is prohibited. No person ~~cemetary~~
2829 ~~company or any agent or representative of that company~~ may
2830 contact the family or next of kin of a deceased person to sell
2831 services or merchandise unless the person ~~cemetary company or an~~
2832 ~~agent or representative of the company~~ has been initially called
2833 or contacted by the family or next of kin of such person or
2834 persons and requested to provide services or merchandise.

2835 Section 34. Section 497.025, Florida Statutes, is
2836 renumbered as section 497.165, Florida Statutes, and amended to
2837 read:

2838 (Substantial rewording of section. See

2839 s. 497.025, F.S., for present text.)
 2840 497.165 Liability of owners, directors, and officers
 2841 regarding trust funds.--The owners, officers, and directors of
 2842 any licensee under this chapter may be held jointly and
 2843 severally liable for any deficiency in any trust fund required
 2844 by this chapter, to the extent the deficiency arose during the
 2845 period they were owners, officers, or directors of the licensee,
 2846 if their conduct or their negligence in the performance of their
 2847 duties caused the deficiency or substantially contributed to
 2848 conditions that allowed the deficiency to arise or increase.

2849 Section 35. Section 497.166, Florida Statutes, is created
 2850 to read:

2851 497.166 Preneed sales.--

2852 (1) Regulation of preneed sales shall be as set forth in
 2853 part IV of this chapter. No person may act as an agent for a
 2854 funeral establishment or direct disposal establishment with
 2855 respect to preneed contracts unless such person is licensed as a
 2856 preneed sales agent pursuant to part IV of this chapter.

2857 (2) Nothing in part I, part II, part III, part V, or part
 2858 VI of this chapter shall be understood to necessarily prohibit
 2859 any licensee under this chapter from selling preneed funerals
 2860 and funeral merchandise through its agents and employees, so
 2861 long as such sales are permitted by part IV of this chapter.

2862 (3)(a) The funeral director in charge of a funeral
 2863 establishment shall be responsible for the control and
 2864 activities of the establishment's preneed sales agents.

2865 (b) The direct disposer in charge or a funeral director
 2866 acting as a direct disposer in charge of a direct disposal

HB 323 CS

2004
CS

2867 establishment shall be responsible for the control and
 2868 activities of the establishment's preneed sales agents.

2869 Section 36. Section 497.167, Florida Statutes, is created
 2870 to read:

2871 497.167 Administrative matters.--

2872 (1) The department shall establish and operate a toll-free
 2873 telephone hotline to receive complaints and provide information
 2874 relating to the regulation under this chapter.

2875 (2) The director of the division shall serve as executive
 2876 director of the board. The director is the agency head of the
 2877 division. The director shall be appointed by and serve at the
 2878 pleasure of the Chief Financial Officer. The director shall be
 2879 responsible for preparing the agenda for each board meeting,
 2880 making presentations to the board of department recommendations
 2881 and reports, and performing such other duties as may be assigned
 2882 by the Chief Financial Officer.

2883 (3) There shall be submitted to the Legislature a biennial
 2884 budget for the board's operations at a time and in the manner
 2885 provided by law.

2886 (4) There shall be developed and implemented a training
 2887 program for persons newly appointed to membership on the board.
 2888 The program shall familiarize such persons with the substantive
 2889 and procedural laws and rules which relate to the regulation
 2890 under this chapter and with the structure of the department.

2891 (5) There may be informational newsletters, bulletins, and
 2892 brochures produced and provided to licensees and consumers
 2893 concerning regulation under this chapter.

2894 (6) The department shall allow applicants for new or
 2895 renewal licenses and current licensees to be screened by the
 2896 Title IV-D child support agency pursuant to s. 409.2598 to
 2897 ensure compliance with a support obligation. The purpose of this
 2898 subsection is to promote the public policy of this state as
 2899 established in s. 409.2551. The department shall, when directed
 2900 by the court, suspend or deny the license of any licensee found
 2901 to have a delinquent support obligation as defined in s.
 2902 409.2554. The department shall issue or reinstate the license
 2903 without additional charge to the licensee when notified by the
 2904 court that the licensee has complied with the terms of the court
 2905 order. The department shall not be held liable for any license
 2906 denial or suspension resulting from the discharge of its duties
 2907 under this subsection.

2908 (7) Any person retained by the department under contract
 2909 to review materials, make site visits, or provide expert
 2910 testimony regarding any complaint or application filed with the
 2911 department, relating to regulation under this chapter, shall be
 2912 considered an agent of the department in determining the state
 2913 insurance coverage and sovereign immunity protection
 2914 applicability of ss. 284.31 and 768.28.

2915 (8) Funds due from any licensee as a result of
 2916 disciplinary settlements under this chapter may be directed by
 2917 the board and department to use in support of training of
 2918 examiners, investigators, and inspectors concerning
 2919 examinations, investigations, and inspections under this
 2920 chapter, and to the conduct of examinations and investigations
 2921 under this chapter, in order to enhance oversight and

2922 enforcement of laws and regulations governing the activities of
 2923 licensees under this chapter.

2924 (9) Any application under this chapter which must be
 2925 reviewed and acted upon by the board under this chapter shall be
 2926 acted upon by the board at a regularly scheduled board meeting,
 2927 and such application must be completed at least 25 days in
 2928 advance of a regularly scheduled board meeting to be considered
 2929 by the board at such board meeting. The time for approval of
 2930 completed applications under s. 120.60 shall be deemed tolled
 2931 between the date the application is complete and the next
 2932 regularly scheduled board meeting at which the application may
 2933 be considered by the board.

2934 (10) The board may establish by rule procedures and
 2935 requirements for the appearance before the board of any
 2936 applicant or principal of an applicant to stand for oral
 2937 interview by the board at a public meeting board before an
 2938 application shall be deemed complete. Such rule may require such
 2939 appearance for all or specified categories of applicants and may
 2940 provide criteria for determining when such appearance shall be
 2941 required.

2942 (11) In any instance in which a licensee or applicant
 2943 under this chapter is required to be in compliance with a
 2944 particular provision by, on, or before a certain date, and if
 2945 that date occurs on a Saturday, Sunday, or a legal holiday, then
 2946 the licensee or applicant is deemed to be in compliance with the
 2947 specific date requirement if the required action occurs on the
 2948 first succeeding day which is not a Saturday, Sunday, or legal
 2949 holiday.

2950 (12) Notwithstanding anything to the contrary, any elected
 2951 official who is licensed pursuant to this chapter may hold
 2952 employment for compensation with any public agency concurrent
 2953 with such public service. Such dual service shall be disclosed
 2954 according to any disclosure required by applicable law.

2955 (13) No application for any approval by the board may come
 2956 before the board for final or other action, nor shall action by
 2957 the board be taken as to any application, except upon
 2958 presentation and recommendation by the department.

2959 (14) The department shall have standing to appear as a
 2960 party litigant in any judicial proceeding for the purpose of
 2961 enforcing this chapter or for the protection Florida residents
 2962 from the effects of any violation of this chapter.

2963 (15) The Department of Legal Affairs shall provide legal
 2964 services to the board within the Department of Financial
 2965 Services, but the primary responsibility of the Department of
 2966 Legal Affairs shall be to represent the interests of the
 2967 citizens of the state by vigorously counseling the board with
 2968 respect to its obligations under the laws of the state. Subject
 2969 to the prior approval of the Attorney General, the board may
 2970 retain independent legal counsel to provide legal advice to the
 2971 board on a specific matter. Fees and costs of such counsel shall
 2972 be paid from the Regulatory Trust Fund.

2973 Section 37. Section 497.168, Florida Statutes, is created
 2974 to read:

2975 497.168 Members of Armed Forces in good standing with
 2976 administrative boards.--

2977 (1) Any reserve member of the Armed Forces of the United
 2978 States, and any member of any element of the national guard, now
 2979 or hereafter called to active duty in the Armed Forces of the
 2980 United States for a continuous period of 30 or more days, who at
 2981 the time of being called to active duty was licensed in good
 2982 standing to practice a profession under this chapter, shall
 2983 remain in good standing, without registering, paying dues or
 2984 fees, or being required to perform any other act, as long as she
 2985 or he remains on such active duty and for a period of 6 months
 2986 after discharge from active duty.

2987 (2) The licensing authority shall adopt rules exempting
 2988 the spouses of members of the Armed Forces of the United States
 2989 from licensure renewal provisions, but only in cases of absence
 2990 from the state because of their spouses' call to active duty
 2991 from the reserves or national guard.

2992 Section 38. Section 497.527, Florida Statutes, is
 2993 renumbered as section 497.169, Florida Statutes, and amended to
 2994 read:

2995 497.169 497.527 Private actions; actions on behalf of
 2996 consumers; attorney's fees and costs Civil remedies.--

2997 (1) The Attorney General, the department on behalf of
 2998 Florida residents, or any person may bring a civil action
 2999 against a person or company violating the provisions of this
 3000 chapter in the appropriate court of the county in which the
 3001 alleged violator resides or has ~~his or~~ her or his or its
 3002 principal place of business or in the county wherein the alleged
 3003 violation occurred. Upon adverse adjudication, the defendant
 3004 shall be liable for actual damages caused by such violation. The

3005 | court may, as provided by common law, award punitive damages and
 3006 | may provide such equitable relief as it deems proper or
 3007 | necessary, including enjoining the defendant from further
 3008 | violations of this chapter.

3009 | (2) In any civil litigation resulting from a transaction
 3010 | involving a violation of this chapter, the court may award to
 3011 | the prevailing party, after judgment in the trial court and
 3012 | exhaustion of any appeal, reasonable attorney's fees and costs
 3013 | from the nonprevailing party in an amount to be determined by
 3014 | the trial court. Any award of attorney's fees or costs shall
 3015 | become a part of the judgment and shall be subject to execution
 3016 | as the law allows.

3017 | (3) The provisions of this chapter are cumulative to
 3018 | rights under the general civil and common law, and no action of
 3019 | the department may abrogate such rights to damages or other
 3020 | relief in any court.

3021 | Section 39. Section 497.531, Florida Statutes, is
 3022 | renumbered as section 497.170, Florida Statutes, to read:

3023 | 497.170 ~~497.531~~ Unauthorized arrangements.--

3024 | (1) Any arrangement to provide merchandise or services as
 3025 | defined in this chapter, by which payment for such merchandise
 3026 | or services is to be paid for through a financial arrangement,
 3027 | other than as authorized pursuant to this chapter, in which the
 3028 | provider of the merchandise or services is a beneficiary, party,
 3029 | agent, or owner is in violation of this chapter.

3030 | (2) Any person who provides merchandise or services and
 3031 | who knowingly becomes a beneficiary, agent, party, or coowner as
 3032 | described in subsection (1) is in violation of this chapter.

3033 Section 40. Part II of chapter 497, consisting of sections
 3034 497.260, 497.261, 497.262, 497.263, 497.264, 497.265, 497.266,
 3035 497.267, 497.268, 497.269, 497.270, 497.271, 497.272, 497.273,
 3036 497.274, 497.275, 497.276, 497.277, 497.278, 497.280, 497.281,
 3037 497.282, 497.283, 497.284, 497.285, 497.286, and 497.287, is
 3038 created to read:

3039 PART II

3040 CEMETERY REGULATION

3041 Section 41. Section 497.003, Florida Statutes, is
 3042 renumbered as section 497.260, Florida Statutes, and amended to
 3043 read:

3044 497.260 ~~497.003~~ Cemeteries; exemption; investigation and
 3045 mediation.--

3046 (1) The provisions of this chapter relating to cemeteries
 3047 and all rules adopted pursuant thereto shall apply to all
 3048 cemeteries except for:

3049 (a) Religious institution cemeteries of less than 5 acres
 3050 which provide only single-level ground burial.

3051 (b) County and municipal cemeteries.

3052 (c) Community and nonprofit association cemeteries which
 3053 provide only single-level ground burial and do not sell burial
 3054 spaces or burial merchandise.

3055 (d) Cemeteries owned and operated or dedicated by a
 3056 religious institution prior to June 23, 1976.

3057 (e) Cemeteries beneficially owned and operated since July
 3058 1, 1915, by a fraternal organization or its corporate agent.

3059 (f) A columbarium consisting of less than one-half acre
 3060 which is owned by and immediately contiguous to an existing

3061 religious institution facility and is subject to local
 3062 government zoning. The religious institution establishing such a
 3063 columbarium shall ensure that the columbarium is perpetually
 3064 kept and maintained in a manner consistent with the intent of
 3065 this chapter. If the religious institution relocates, the
 3066 religious institution shall relocate all of the urns and remains
 3067 placed in the columbarium which were placed therein during its
 3068 use by the religious institution.

3069 (g) Family cemeteries of less than 2 acres which do not
 3070 sell burial spaces or burial merchandise.

3071 (h) A mausoleum consisting of 2 acres or less which is
 3072 owned by and immediately contiguous to an existing religious
 3073 institution facility and is subject to local government zoning.
 3074 The religious institution establishing such a mausoleum must
 3075 ensure that the mausoleum is kept and maintained in a manner
 3076 consistent with the intent of this chapter and limit its
 3077 availability to members of the religious institution. The
 3078 religious institution establishing such a mausoleum must have
 3079 been incorporated for at least 25 years and must have sufficient
 3080 funds in an endowment fund to cover the costs of construction of
 3081 the mausoleum.

3082 (2) Section 497.276(1) ~~497.309(1)~~ as to burial records,
 3083 and ss. 497.164, 497.152(1)(d), 497.280, and 497.284 ~~497.321,~~
 3084 ~~497.325, 497.341, and 497.345~~ apply to all cemeteries in this
 3085 state.

3086 (3) All cemeteries exempted under this chapter which are
 3087 in excess of 5 acres must submit to the following investigation

HB 323 CS

2004
CS

3088 and mediation procedure by the department in the event of a
3089 consumer complaint:

3090 (a) The exempt cemetery shall make every effort to first
3091 resolve a consumer complaint;

3092 (b) If the complaint is not resolved, the exempt cemetery
3093 shall advise the consumer of the right to seek investigation and
3094 mediation by the department;

3095 (c) If the department receives a complaint, it shall
3096 attempt to resolve it telephonically with the parties involved;

3097 (d) If the complaint still is not resolved, the department
3098 shall conduct an investigation and mediate the complaint;

3099 (e) If the department conducts an onsite investigation and
3100 face-to-face mediation with the parties, it may charge the
3101 exempt cemetery a single investigation and mediation fee not to
3102 exceed \$300, which fee shall be set by rule and shall be
3103 calculated on an hourly basis; and

3104 (f) If all attempts to resolve the consumer complaint
3105 fail, the cemetery shall be subject to proceedings for penalties
3106 and discipline under this chapter if it is determined in a
3107 proceeding complying with chapter 120 that the cemetery is
3108 guilty of fraud, deceit, theft, gross negligence, incompetence,
3109 unjustified failure to honor its contracts, or failure to
3110 adequately maintain its premises. The department may file and
3111 serve on the cemetery an administrative complaint and cause the
3112 matter to be prosecuted and may thereafter issue and enforce its
3113 final order in the matter pursuant to chapter 120.

3114 (4) Any religious-institution-owned cemetery that is
3115 exempt under paragraph (1)(d), is located in a county with a

HB 323 CS

2004
CS

3116 population of at least 1.3 million persons on July 1, 1996, and
 3117 was selling merchandise and services to the religious
 3118 institution's members prior to October 1, 1993, may establish
 3119 one additional exempt cemetery in such county after December 31,
 3120 2020.

3121 (5) Any religious-institution-owned cemetery exempt under
 3122 subsection (1), except those cemeteries qualifying under
 3123 paragraph (1)(d), which becomes affiliated with a commercial
 3124 enterprise must meet the requirements of s. 497.263 ~~497.201~~.

3125 (6)(a) This subsection applies to all cemeteries in this
 3126 state.

3127 (b) No cemetery company or other legal entity conducting
 3128 or maintaining any public or private cemetery may deny burial
 3129 space to any person because of race or color. A cemetery company
 3130 or other entity operating any cemetery may designate parts of
 3131 cemeteries or burial grounds for the specific use of persons
 3132 whose religious code requires isolation. Religious institution
 3133 cemeteries may limit burials to members of the religious
 3134 institution and their families.

3135 (c) Any cemetery company or other legal entity which
 3136 violates the provisions of this subsection commits a misdemeanor
 3137 of the second degree, punishable as provided in s. 775.083, and
 3138 each violation of this section constitutes a separate offense.

3139 Section 42. Section 497.004, Florida Statutes, is
 3140 renumbered as section 497.261, Florida Statutes, to read:

3141 497.261 ~~497.004~~ Existing companies, effect of this
 3142 chapter.--Cemetery companies existing on October 1, 1993, shall

HB 323 CS

2004
CS

3143 | continue in full force and effect but shall be operated in
3144 | accordance with the provisions of this chapter.

3145 | Section 43. Section 497.0255, Florida Statutes, is
3146 | renumbered as section 497.262, Florida Statutes, and amended to
3147 | read:

3148 | 497.262 ~~497.0255~~ Duty of care and maintenance of licensed
3149 | cemetery.--Every cemetery company or other entity responsible
3150 | for the care and maintenance of a licensed cemetery in this
3151 | state shall ensure that the grounds, structures, and other
3152 | improvements of the cemetery are well cared for and maintained
3153 | in a proper and dignified condition. The licensing authority
3154 | ~~board~~ shall adopt, by no later than July 1, 1999, such rules as
3155 | are necessary to implement and enforce this section. In
3156 | developing and adopting such ~~promulgating said~~ rules, the
3157 | licensing authority ~~board~~ may define different classes of
3158 | cemeteries or care and maintenance, and may provide for
3159 | different rules to apply to each of said classes, if the
3160 | designation of classes and the application of different rules is
3161 | in the public interest and is supported by findings by the
3162 | licensing authority ~~board~~ based on evidence of industry
3163 | practices, economic and physical feasibility, location, or
3164 | intended uses; provided, that the rules shall provide minimum
3165 | standards applicable to all cemeteries. For example, and without
3166 | limiting the generality of the foregoing, the licensing
3167 | authority ~~board~~ may determine that a small rural cemetery with
3168 | large trees and shade area does not require, and may not be able
3169 | to attain, the same level of lawn care as a large urban cemetery
3170 | with large open grassy areas and sprinkler systems.

3171 Section 44. Section 497.201, Florida Statutes, is
 3172 renumbered as section 497.263, Florida Statutes, and amended to
 3173 read:

3174 (Substantial rewording of section. See
 3175 s. 497.201, F.S., for present text.)

3176 497.263 Cemetery companies; license required; licensure
 3177 requirements and procedures.--

3178 (1) LICENSE REQUIRED.--No person may operate a cemetery
 3179 without first obtaining a license under this section, unless
 3180 specifically exempted from this chapter.

3181 (2) APPLICATION PROCEDURES.--

3182 (a) A person seeking a cemetery license under this section
 3183 shall apply for such licensure using forms and procedures
 3184 prescribed by rule.

3185 (b) The applicant shall be a corporation, partnership, or
 3186 limited liability company formed prior to January 1, 2005, which
 3187 limited liability company already holds a license under this
 3188 chapter.

3189 (c) The application shall require the name, principal
 3190 place of business, date of formation, and federal tax
 3191 identification number of the applicant.

3192 (d) The application shall require such historical sketches
 3193 and audited or unaudited financial statements concerning the
 3194 applicant and each principal of applicant as the licensing
 3195 authority may require by rule.

3196 (e) The application shall state any and all names under
 3197 which the cemetery may do business if licensed, if different
 3198 from applicant's name.

3199 (f) The application shall state the exact location of the
3200 proposed cemetery.

3201 (g) The proposed cemetery must contain at least 30
3202 contiguous acres. The application shall state the exact number
3203 of acres in the proposed cemetery.

3204 (h) The applicant must have a net worth of \$50,000, as
3205 attested to by a sworn statement signed by all officers of
3206 applicant. Such net worth must be continually maintained as a
3207 condition of licensure.

3208 (i) The application shall be accompanied by such
3209 description of the proposed financial structure of the cemetery
3210 as the licensing authority may require by rule.

3211 (j) The application shall be accompanied by a legal
3212 description of the cemetery.

3213 (k) The application shall be accompanied by such maps or
3214 surveys of the proposed cemetery, and maps showing the location
3215 of the proposed cemetery in the local area as the licensing
3216 authority may require by rule, and the licensing authority may
3217 by rule require such maps or surveys of the cemetery to be
3218 prepared by a licensed Florida professional surveyor.

3219 (l) The application shall include such description of the
3220 development plans for the proposed cemetery as the licensing
3221 authority may require by rule.

3222 (m) The application shall require the applicant to
3223 disclose whether the applicant or any principal of applicant has
3224 ever been convicted or found guilty of, or entered a plea of
3225 nolo contendere to, regardless of adjudication, any crime in any
3226 jurisdiction. The licensing authority may require by rule

3227 additional information to be provided concerning any affirmative
 3228 answers.

3229 (n) The application shall require the applicant to
 3230 disclose whether the applicant or any principal of the applicant
 3231 has ever had a license or the authority to practice a profession
 3232 or occupation refused, suspended, fined, denied, or otherwise
 3233 acted against or disciplined by the licensing authority of any
 3234 jurisdiction. The licensing authority may require by rule
 3235 additional information to be provided concerning any affirmative
 3236 answers. A licensing authority's acceptance of a relinquishment
 3237 of licensure, stipulation, consent order, or other settlement
 3238 offered in response to or in anticipation of the filing of
 3239 charges against the license shall be construed as action against
 3240 the license. The licensing authority may require by rule
 3241 additional information to be provided concerning any affirmative
 3242 answers.

3243 (o) The application shall require the applicant and
 3244 applicant's principals to provide fingerprints in accordance
 3245 with part I of this chapter.

3246 (p) The applicant shall demonstrate by clear and
 3247 convincing evidence that the applicant has the ability,
 3248 experience, financial stability, and integrity to operate a
 3249 cemetery and that its principals are of good character.

3250 (q) The application shall be signed by the president of
 3251 the applicant.

3252 (r) The application shall be accompanied by a
 3253 nonrefundable application fee of \$5,000.

3254 (s) The licensing authority may establish by rule
 3255 requirements for the appearance before the licensing authority
 3256 of the applicant and the applicant's principals to stand for
 3257 oral interview by the licensing authority at a public licensing
 3258 authority meeting before the application shall be deemed
 3259 complete.

3260 (3) ACTION CONCERNING APPLICATIONS.--If the licensing
 3261 authority finds that the applicant meets the criteria
 3262 established in subsection (2), the applicant shall be notified
 3263 that a license will be issued when all of the following
 3264 conditions are satisfied:

3265 (a) The establishment of a care and maintenance trust fund
 3266 containing not less than \$50,000 has been certified by a trust
 3267 company operating pursuant to chapter 660, a state or national
 3268 bank holding trust powers, or a savings and loan association
 3269 holding trust powers as provided in s. 497.458, pursuant to a
 3270 trust agreement approved by the licensing authority. The \$50,000
 3271 required for the care and maintenance trust fund shall be over
 3272 and above the \$50,000 net worth required by subsection (2).

3273 (b) The applicant files with the licensing authority an
 3274 opinion or certification from a Florida attorney in good
 3275 standing, or a Florida title company, in a form acceptable to
 3276 the licensing authority, that the applicant holds unencumbered
 3277 fee simple title to all land identified in the application.

3278 (c) The applicant obtains approval of the local zoning
 3279 authorities regarding the cemetery, and files with the licensing
 3280 authority evidence satisfactory to the licensing authority of
 3281 such approval, or, if no approval by local zoning authorities is

3282 required, such approval of residents adjacent to the proposed
 3283 cemetery as the licensing authority may require by rule.

3284 (d) The licensing authority determines that the applicant
 3285 has designated as general manager of the cemetery a person of
 3286 integrity who has 3 years of cemetery management experience as
 3287 defined by rule of the licensing authority and has the ability
 3288 to operate a cemetery.

3289 (e) Evidence satisfactory to the licensing authority that
 3290 the applicant has fully developed not less than 2 acres for use
 3291 as burial space, such development to include a paved road from a
 3292 public roadway to the developed section.

3293 (f) Regarding the cemetery land identified in the
 3294 application, the applicant has recorded, and provides the
 3295 licensing authority with a written attestation of such recording
 3296 signed by a licensed Florida attorney, in the public records of
 3297 real estate in the county in which the cemetery land is located,
 3298 a notice which contains the following language:

3299
 3300 NOTICE

3301
 3302 The property described herein shall not be sold,
 3303 conveyed, leased, mortgaged, or encumbered without the
 3304 prior written approval of the Department of Financial
 3305 Services, as provided in chapter 497, Florida
 3306 Statutes.

3307
 3308 Such notice shall be clearly printed in boldfaced type of not
 3309 less than 10 points and may be included on the face of the deed

HB 323 CS

2004
CS

3310 of conveyance to the licensee or may be contained in a separate
 3311 recorded instrument which contains a description of the
 3312 property.

3313 (4) ISSUANCE OF LICENSE.--There shall be issued a license
 3314 to operate a cemetery company to any applicant who, within 12
 3315 months after notice that a license may be issued, meets the
 3316 criteria of subsection (3). The licensing authority may, for
 3317 good cause shown, grant up to two extensions of the 12-month
 3318 period within which the applicant must meet the criteria of
 3319 subsection (3).

3320 Section 45. Section 497.205, Florida Statutes, is
 3321 renumbered as section 497.264, Florida Statutes, and amended to
 3322 read:

3323 497.264 ~~497.205~~ License not assignable or transferable.--

3324 (1) A license issued to operate a cemetery pursuant to
 3325 this chapter is not transferable or assignable, and a licensee
 3326 may not develop or operate any cemetery authorized by this
 3327 chapter at any location other than that contained in the
 3328 application for the license.

3329 (2) Any person or entity that seeks to purchase or
 3330 otherwise acquire control of any cemetery licensed under this
 3331 chapter shall first apply to the licensing authority and obtain
 3332 approval of such purchase or change in control.

3333 (a) The licensing authority may adopt rules establishing
 3334 forms and procedures for such applications.

3335 (b) The application shall state the name and address of
 3336 the licensed cemetery to which the application relates.

3337 (c) For applications by a natural person, the application
 3338 shall state the applicant's name, residence address, address of
 3339 principal office or place of employment, and social security
 3340 number.

3341 (d) For applications by an entity, the application shall
 3342 state the applicant's name, address of principal place of
 3343 business or headquarters offices, the names and titles of all
 3344 officers of applicant, applicant's state of domicile and date of
 3345 formation, and applicant's federal tax identification number.

3346 (e) The application shall require such historical sketches
 3347 and audited or unaudited financial statements concerning the
 3348 applicant and each principal of the applicant as the licensing
 3349 authority may require by rule.

3350 (f) The applicant must have a net worth of \$50,000, as
 3351 attested to by a sworn statement signed by applicant if a
 3352 natural person, otherwise by all officers of applicant. Such net
 3353 worth must be continually maintained as a condition of licensure
 3354 of the cemetery if the application is approved.

3355 (g) The application shall include such description of the
 3356 development plans the applicant has for the proposed cemetery as
 3357 the licensing authority may require by rule.

3358 (h) The application shall require the applicant to
 3359 disclose whether the applicant or any principal of the applicant
 3360 has ever been convicted or found guilty of, or entered a plea of
 3361 nolo contendere to, regardless of adjudication, any crime in any
 3362 jurisdiction. The licensing authority may require by rule
 3363 additional information to be provided concerning any affirmative
 3364 answers.

3365 (i) The application shall require the applicant to
 3366 disclose whether the applicant or any principal of the applicant
 3367 has ever had a license or the authority to practice a profession
 3368 or occupation refused, suspended, fined, denied, or otherwise
 3369 acted against or disciplined by the licensing authority of any
 3370 jurisdiction. The licensing authority may require by rule
 3371 additional information to be provided concerning any affirmative
 3372 answers. A licensing authority's acceptance of a relinquishment
 3373 of licensure, stipulation, consent order, or other settlement,
 3374 offered in response to or in anticipation of the filing of
 3375 charges against the license, shall be construed as an action
 3376 against the license. The licensing authority may require by rule
 3377 additional information to be provided concerning any affirmative
 3378 answers.

3379 (j) The application shall require the applicant and
 3380 applicant's principals to provide fingerprints in accordance
 3381 with part I of this chapter.

3382 (k) The applicant shall demonstrate by clear and
 3383 convincing evidence that the applicant has the ability,
 3384 experience, financial stability, and integrity to operate a
 3385 cemetery and, if the applicant is an entity, that the
 3386 applicant's principals are of good character.

3387 (l) The application shall be signed by the applicant if a
 3388 natural person, otherwise by the president of the applicant.

3389 (m) The application shall be accompanied by a
 3390 nonrefundable application fee of \$5,000; provided, the fee shall
 3391 be \$500 if the application is in regards to a change in

HB 323 CS

2004
CS

3392 ownership that will not be accompanied by any change in ultimate
3393 control.

3394 (n) The licensing authority may establish by rule
3395 requirements for the appearance before the licensing authority
3396 of the applicant and the applicant's principals to stand for
3397 oral interview by the licensing authority at a public licensing
3398 authority meeting before the application shall be deemed
3399 complete.

3400 (o) A completed application shall be approved if the
3401 requirements of this section are met.

3402 ~~(2) Any person who seeks to purchase or acquire control of~~
3403 ~~an existing licensed cemetery shall first apply to the board for~~
3404 ~~approval of the proposed change of ownership. The application~~
3405 ~~shall contain the name and address of the proposed new owner, a~~
3406 ~~financial statement signed by all officers of the company~~
3407 ~~attesting to a net worth of at least \$50,000, and other~~
3408 ~~information required by the board. The board may approve a~~
3409 ~~change of ownership only after it has conducted an investigation~~
3410 ~~of the applicant and determined that the proposed new owner is~~
3411 ~~qualified by character, experience, and financial responsibility~~
3412 ~~to control and operate the cemetery in a legal and proper~~
3413 ~~manner. The department may examine the records of the cemetery~~
3414 ~~company as part of the investigation in accordance with this~~
3415 ~~chapter. The application shall be accompanied by an~~
3416 ~~investigation fee of \$5,000. Upon consummation of the purchase~~
3417 ~~or acquisition of control and upon receipt of all documents~~
3418 ~~required by the board, the department shall issue the new~~

HB 323 CS

2004
CS

3419 | ~~license for that cemetery effective on the date of that purchase~~
3420 | ~~or acquisition of control.~~

3421 | Section 46. Section 497.213, Florida Statutes, is
3422 | renumbered as section 497.265, Florida Statutes, and amended to
3423 | read:

3424 | 497.265 ~~497.213~~ Annual license fees.--

3425 | (1) The department shall collect from each cemetery
3426 | company operating under the provisions of this chapter an annual
3427 | license fee as follows:

3428 | (a) For a cemetery with less than \$25,000 annual gross
3429 | sales.....\$250.

3430 | (b) For a cemetery with at least \$25,000 but less than
3431 | \$100,000 annual gross sales.....\$350.

3432 | (c) For a cemetery with annual gross sales of at least
3433 | \$100,000 but less than \$250,000.....\$600.

3434 | (d) For a cemetery with annual gross sales of at least
3435 | \$250,000 but less than \$500,000.....\$900.

3436 | (e) For a cemetery with annual gross sales of at least
3437 | \$500,000 but less than \$750,000.....\$1,350.

3438 | (f) For a cemetery with annual gross sales of at least
3439 | \$750,000 but less than \$1 million.....\$2,250.

3440 | (g) For a cemetery with annual gross sales of at least \$1
3441 | million but less than \$5 million.....\$3,250.

3442 | (h) For a cemetery with annual gross sales of \$5 million
3443 | or
3444 | more.....\$4,900.

3445 | (2) An application for license renewal shall be submitted,
3446 | along with the applicable license fee, on or before December 31

HB 323 CS

2004
CS

3447 | each year in the case of an existing cemetery company and before
 3448 | any sale of cemetery property in the case of a new cemetery
 3449 | company or a change of ownership or control pursuant to s.
 3450 | 497.264 ~~ss. 497.205 and 497.209~~. If the renewal application and
 3451 | fee are not received by December 31, the department shall
 3452 | collect a penalty in the amount of \$200 per month or fraction of
 3453 | a month for each month delinquent. For the purposes of this
 3454 | subsection, a renewal application and fee submitted by mail
 3455 | shall be considered timely submitted and received if postmarked
 3456 | by December 31 of the applicable year.

3457 | Section 47. Section 497.237, Florida Statutes, is
 3458 | renumbered as section 497.266, Florida Statutes, and amended to
 3459 | read:

3460 | 497.266 ~~497.237~~ Care and maintenance trust fund; remedy of
 3461 | department for noncompliance.--

3462 | (1) No cemetery company may establish a cemetery, or
 3463 | operate a cemetery if already established, without providing for
 3464 | the future care and maintenance of the cemetery, for which a
 3465 | care and maintenance trust fund shall be established, to be
 3466 | known as "the care and maintenance trust fund of ____." The
 3467 | trust fund shall be established with a trust company operating
 3468 | pursuant to chapter 660, with a state or national bank holding
 3469 | trust powers, or with a federal or state savings and loan
 3470 | association holding trust powers. Trust funds which are with a
 3471 | state or national bank or savings and loan association licensed
 3472 | in this state on October 1, 1993, shall remain in force;
 3473 | however, when the amount of any such trust fund exceeds the
 3474 | amount that is insured by an agency of the Federal Government,

3475 | the cemetery company shall transfer that trust fund to a trust
 3476 | company operating pursuant to chapter 660, to a state or
 3477 | national bank holding trust powers, or to a federal or state
 3478 | savings and loan association holding trust powers.

3479 | (2) The cemetery company may appoint a person to advise
 3480 | the trustee in the investment of the trust fund. The licensing
 3481 | authority ~~board~~ must approve the appointment of the initial
 3482 | trustee, and any subsequent changes of the trustee shall also be
 3483 | approved by the licensing authority, pursuant to procedures and
 3484 | utilizing forms as specified by rule ~~board~~. If a cemetery
 3485 | company refuses or otherwise fails to provide or maintain an
 3486 | adequate care and maintenance trust fund in accordance with the
 3487 | provisions of this chapter, the licensing authority ~~board~~, after
 3488 | reasonable notice, shall enforce compliance. However, a
 3489 | nonprofit cemetery corporation which has been incorporated and
 3490 | engaged in the cemetery business prior to and continuously since
 3491 | 1915 and which has current trust assets exceeding \$2 million is
 3492 | not required to designate a corporate trustee. The trust fund
 3493 | agreement shall specify the following: the name, location, and
 3494 | address of both the licensee and the trustee, the terms and
 3495 | conditions of the trust, a statement that the trust is
 3496 | established pursuant to ss. 497.266 and 497.268, and ~~showing~~ the
 3497 | date of agreement, together with the percentages required to be
 3498 | deposited pursuant to this chapter.

3499 | (3) No person may withdraw or transfer any portion of the
 3500 | corpus of the care and maintenance trust fund without first
 3501 | obtaining written consent from the licensing authority ~~board~~.
 3502 | ~~Funds deposited pursuant to this chapter may not be loaned to~~

3503 ~~any cemetery company or person who is directly or indirectly~~
 3504 ~~engaged in the burial, funeral home, or cemetery business.~~

3505 (4) The trustee of the trust established pursuant to this
 3506 section may only invest in investments and loan trust funds, as
 3507 prescribed in s. 497.458 ~~497.417~~. The trustee shall take title
 3508 to the property conveyed to the trust for the purposes of
 3509 investing, protecting, and conserving it for the cemetery
 3510 company; collecting income; and distributing the principal and
 3511 income as prescribed in this chapter. The cemetery company is
 3512 prohibited from sharing in the discharge of the trustee's
 3513 responsibilities under this subsection, except that the cemetery
 3514 company may request the trustee to invest in tax-free
 3515 investments.

3516 Section 48. Section 497.241, Florida Statutes, is
 3517 renumbered as section 497.267, Florida Statutes, to read:

3518 497.267 ~~497.241~~ Disposition of income of care and
 3519 maintenance trust fund; notice to purchasers and
 3520 depositors.--The net income of the care and maintenance trust
 3521 fund shall be used solely for the care and maintenance of the
 3522 cemetery, including maintenance of monuments, which maintenance
 3523 shall not be deemed to include the cleaning, refinishing,
 3524 repairing, or replacement of monuments; for reasonable costs of
 3525 administering the care and maintenance; and for reasonable costs
 3526 of administering the trust fund. At the time of making a sale or
 3527 receiving an initial deposit, the cemetery company shall deliver
 3528 to the person to whom the sale is made, or who makes a deposit,
 3529 a written instrument which shall specifically state the purposes
 3530 for which the income of the trust fund shall be used.

3531 Section 49. Section 497.245, Florida Statutes, is
 3532 renumbered as section 497.268, Florida Statutes, to read:
 3533 497.268 ~~497.245~~ Care and maintenance trust fund,
 3534 percentage of payments for burial rights to be deposited.--
 3535 (1) Each cemetery company shall set aside and deposit in
 3536 its care and maintenance trust fund the following percentages or
 3537 amounts for all sums received from sales of burial rights:
 3538 (a) For burial rights, 10 percent of all payments
 3539 received; however, for sales made after September 30, 1993, no
 3540 deposit shall be less than \$25 per grave. For each burial right
 3541 which is provided without charge, the deposit to the fund shall
 3542 be \$25.
 3543 (b) For mausoleums or columbaria, 10 percent of payments
 3544 received.
 3545 (c) For general endowments for the care and maintenance of
 3546 the cemetery, the full amount of sums received when received.
 3547 (d) For special endowments for a specific lot or grave or
 3548 a family mausoleum, memorial, marker, or monument, the cemetery
 3549 company may set aside the full amount received for this
 3550 individual special care in a separate trust fund or by a deposit
 3551 to a savings account in a bank or savings and loan association
 3552 located within and authorized to do business in the state;
 3553 however, if the licensee does not set up a separate trust fund
 3554 or savings account for the special endowment, the full amount
 3555 thereof shall be deposited into the care and maintenance trust
 3556 fund as required of general endowments.
 3557 (2) Deposits to the care and maintenance trust fund shall
 3558 be made by the cemetery company not later than 30 days following

HB 323 CS

2004
CS

3559 | the close of the calendar month in which any payment was
3560 | received; however, when such payments are received in
3561 | installments, the percentage of the installment payment placed
3562 | in trust must be identical to the percentage which the payment
3563 | received bears to the total cost for the burial rights. Trust
3564 | income may be used to pay for all usual and customary services
3565 | for the operation of a trust account, including, but not limited
3566 | to: reasonable trustee and custodian fees, investment adviser
3567 | fees, allocation fees, and taxes. If the net income is not
3568 | sufficient to pay the fees and other expenses, the fees and
3569 | other expenses shall be paid by the cemetery company. Capital
3570 | gains taxes shall be paid from the corpus.

3571 | (3) Any payments made to the care and maintenance trust
3572 | fund on contracts which are canceled shall be credited against
3573 | future obligations to the care and maintenance trust fund,
3574 | provided they have been refunded to the purchaser.

3575 | (4) When a cemetery which is exempt from the provisions of
3576 | this chapter changes ownership so as to lose its exempt status,
3577 | it shall establish and maintain a care and maintenance trust
3578 | fund pursuant to this chapter. The initial deposit for
3579 | establishment of this trust fund shall be \$25 per space for all
3580 | spaces either previously sold or contracted for sale in the
3581 | cemetery at the time of conversion or \$50,000, whichever is
3582 | greater.

3583 | (5) In each sales contract, reservation, or agreement
3584 | wherein burial rights are priced separately, the purchase price
3585 | of the burial rights shall be the only item subject to care and
3586 | maintenance trust fund deposits; but if the burial rights are

HB 323 CS

2004
CS

3587 | not priced separately, the full amount of the contract,
 3588 | reservation, or agreement shall be subject to care and
 3589 | maintenance trust fund deposits as provided in this section,
 3590 | unless the purchase price of the burial rights can be determined
 3591 | from the accounting records of the cemetery company.

3592 | (6) If an installment contract or promissory note for the
 3593 | purchase of a burial space is sold or discounted to a third
 3594 | party, the entire amount due the care and maintenance trust fund
 3595 | shall be payable no later than 30 days following the close of
 3596 | the calendar month in which the contract was sold or discounted.

3597 | Section 50. Section 497.249, Florida Statutes, is
 3598 | renumbered as section 497.269, Florida Statutes, and amended to
 3599 | read:

3600 | 497.269 ~~497.249~~ Care and maintenance trust fund; financial
 3601 | reports.--On or before April 1 of each year, the trustee shall
 3602 | furnish adequate financial reports with respect to the care and
 3603 | maintenance trust fund utilizing forms and procedures specified
 3604 | by rule ~~on forms provided by the department~~. However, the
 3605 | department may require the trustee to make such additional
 3606 | financial reports as it deems necessary. In order to ensure that
 3607 | the proper deposits to the trust fund have been made, the
 3608 | department shall examine the status of the trust fund of the
 3609 | company on a semiannual basis for the first 2 years of the trust
 3610 | fund's existence.

3611 | Section 51. Section 497.253, Florida Statutes, is
 3612 | renumbered as section 497.270, Florida Statutes, and amended to
 3613 | read:

3614 497.270 ~~497.253~~ Minimum acreage; sale or disposition of
 3615 cemetery lands.--

3616 (1) No land in a licensed cemetery may be sold, mortgaged,
 3617 leased, or encumbered without prior approval of the licensing
 3618 authority pursuant to procedures specified by rule. Such
 3619 approval shall not be given unless it be shown that such
 3620 approval would be in the public interest. The licensing
 3621 authority may adopt rules establishing criteria for approval of
 3622 the sale, mortgaging, leasing, or encumbering of cemetery land.
 3623 ~~Each licensee shall set aside a minimum of 30 contiguous acres~~
 3624 ~~of land for use by the licensee as a cemetery and shall not~~
 3625 ~~sell, mortgage, lease, or encumber that property without prior~~
 3626 ~~written approval of the department.~~

3627 (2) Any lands owned by a licensee and dedicated for use by
 3628 it as a cemetery, which are in excess of a ~~contiguous,~~
 3629 ~~adjoining, or adjacent to~~ the minimum of 30 contiguous acres
 3630 ~~described in subsection (1),~~ may be sold, conveyed, or disposed
 3631 of by the licensee, after obtaining written approval pursuant to
 3632 procedures and utilizing forms specified by rule and consistent
 3633 with ~~of the department pursuant to~~ subsection (3), for use by
 3634 the new owner for other purposes than as a cemetery. All of the
 3635 human remains which have been previously interred therein shall
 3636 first have been removed from the lands proposed to be sold,
 3637 conveyed, or disposed of; however, the provisions of ss. 497.384
 3638 and 497.152(8)(e) ~~470.0295 and 497.515(7)~~ must be complied with
 3639 prior to any disinterment of human remains. Any and all titles,
 3640 interests, or burial rights which may have been sold or
 3641 contracted to be sold in lands which are the subject of the sale

HB 323 CS

2004
CS

3642 shall be conveyed to and revested in the licensee prior to
3643 consummation of any such sale, conveyance, or disposition.

3644 (3)(a) If the property to be sold, conveyed, or disposed
3645 of under subsection (2) has been or is being used for the
3646 permanent interment of human remains, the applicant for approval
3647 of such sale, conveyance, or disposition shall cause to be
3648 published, at least once a week for 4 consecutive weeks, a
3649 notice meeting the standards of publication set forth in s.
3650 125.66(4)(b)2. The notice shall describe the property in
3651 question and the proposed noncemetery use and shall advise
3652 substantially affected persons that they may file a written
3653 request for a hearing pursuant to chapter 120, within 14 days
3654 after the date of last publication of the notice, with the
3655 department if they object to granting the applicant's request to
3656 sell, convey, or dispose of the subject property for noncemetery
3657 uses.

3658 (b) If the property in question has never been used for
3659 the permanent interment of human remains, no notice or hearing
3660 is required.

3661 (c) If the property in question has been used for the
3662 permanent interment of human remains, the department shall
3663 approve the application, in writing, if it finds that it would
3664 not be contrary to the public interest. In determining whether
3665 to approve the application, the department shall consider any
3666 evidence presented concerning the following:

3667 1. The historical significance of the subject property, if
3668 any.

3669 2. The archaeological significance of the subject
3670 property, if any.

3671 3. The public purpose, if any, to be served by the
3672 proposed use of the subject property.

3673 4. The impact of the proposed change in use of the subject
3674 property upon the reasonable expectations of the families of the
3675 deceased regarding whether the cemetery property was to remain
3676 as a cemetery in perpetuity.

3677 5. Whether any living relatives of the deceased actively
3678 oppose the relocation of their deceased's remains and the
3679 conversion of the subject property to noncemetery uses.

3680 6. The elapsed time since the last interment in the
3681 subject property.

3682 7. Any other factor enumerated in this chapter that the
3683 department considers relevant to the public interest.

3684 (d) Any deed, mortgage, or other conveyance by a cemetery
3685 company or other owner pursuant to subsections (a) and (c) above
3686 must contain a disclosure in the following or substantially
3687 similar form:

3688
3689 NOTICE: The property described herein was formerly used and
3690 dedicated as a cemetery. Conveyance of this property and its use
3691 for noncemetery purposes was authorized by the Florida
3692 Department of Financial Services by Order No. _____, dated
3693 _____.

3694
3695 (e) The department shall adopt such rules as are necessary
3696 to carry out the provisions of this section.

HB 323 CS

2004
CS

3697 (4) A licensee may convey and transfer to a municipality
 3698 or county its real and personal property, together with moneys
 3699 deposited in trust funds pursuant to this chapter, provided the
 3700 municipality or county will accept responsibility for
 3701 maintenance thereof and prior written approval of the department
 3702 is obtained.

3703 (5) The provisions of subsections (1) and (2) relating to
 3704 a requirement for minimum acreage shall not apply to any
 3705 cemetery company licensed by the department on or before July 1,
 3706 2001, which owns a total of less than 30 acres of land; however,
 3707 no cemetery company shall dispose of any land without the prior
 3708 written consent of the department.

3709 Section 52. Section 497.255, Florida Statutes, is
 3710 renumbered as section 497.271, Florida Statutes, and amended to
 3711 read:

3712 497.271 ~~497.255~~ Standards for construction and significant
 3713 alteration or renovation of mausoleums and columbaria.--

3714 (1) All newly constructed and significantly altered or
 3715 renovated mausoleums and columbaria must, in addition to
 3716 complying with applicable building codes, conform to the
 3717 standards adopted under this section.

3718 (2) The licensing authority ~~board~~ shall adopt, by no later
 3719 than July 1, 1999, rules establishing minimum standards for all
 3720 newly constructed and significantly altered or renovated
 3721 mausoleums and columbaria; however, in the case of significant
 3722 alterations or renovations to existing structures, the rules
 3723 shall apply only, when physically feasible, to the newly altered
 3724 or renovated portion of such structures, except as specified in

HB 323 CS

2004
CS

3725 subsection (4). In developing and adopting such ~~promulgating~~
3726 ~~said~~ rules, the licensing authority board may define different
3727 classes of structures or construction standards, and may provide
3728 for different rules to apply to each of said classes, if the
3729 designation of classes and the application of different rules is
3730 in the public interest and is supported by findings by the
3731 licensing authority board based on evidence of industry
3732 practices, economic and physical feasibility, location, or
3733 intended uses; provided, that the rules shall provide minimum
3734 standards applicable to all construction. For example, and
3735 without limiting the generality of the foregoing, the licensing
3736 authority board may determine that a small single-story ground
3737 level mausoleum does not require the same level of construction
3738 standards that a large multistory mausoleum might require; or
3739 that a mausoleum located in a low-lying area subject to frequent
3740 flooding or hurricane threats might require different standards
3741 than one located on high ground in an area not subject to
3742 frequent severe weather threats. The licensing authority board
3743 shall develop the rules in cooperation with, and with technical
3744 assistance from, the Florida Building Commission of the
3745 Department of Community Affairs, to ensure that the rules are in
3746 the proper form and content to be included as part of the State
3747 Minimum Building Codes under part VII of chapter 553. If the
3748 Florida Building Commission advises that some of the standards
3749 proposed by the licensing authority board are not appropriate
3750 for inclusion in such building codes, the licensing authority
3751 ~~board~~ may choose to include those standards in a distinct
3752 chapter of its rules entitled "Non-Building-Code Standards for

3753 Mausoleums" or "Additional Standards for Mausoleums," or other
3754 terminology to that effect. If the licensing authority ~~board~~
3755 elects to divide the standards into two or more chapters, all
3756 such rules shall be binding on licensees and others subject to
3757 the jurisdiction of the licensing authority ~~board~~, but only the
3758 chapter containing provisions appropriate for building codes
3759 shall be transmitted to the Florida Building Commission pursuant
3760 to subsection (3). Such rules may be in the form of standards
3761 for design and construction; methods, materials, and
3762 specifications for construction; or other mechanisms. Such rules
3763 shall encompass, at a minimum, the following standards:

3764 (a) No structure may be built or significantly altered for
3765 use for interment, entombment, or inurnment purposes unless
3766 constructed of such material and workmanship as will ensure its
3767 durability and permanence, as well as the safety, convenience,
3768 comfort, and health of the community in which it is located, as
3769 dictated and determined at the time by modern mausoleum
3770 construction and engineering science.

3771 (b) Such structure must be so arranged that the exterior
3772 of any vault, niche, or crypt may be readily examined at any
3773 time by any person authorized by law to do so.

3774 (c) Such structure must contain adequate provision for
3775 drainage and ventilation.

3776 (d) Such structure must be of fire-resistant construction.
3777 Notwithstanding the requirements of s. 553.895 and chapter 633,
3778 any mausoleum or columbarium constructed of noncombustible
3779 materials, as defined in the Standard Building Code, shall not
3780 require a sprinkler system.

3781 (e) Such structure must be resistant to hurricane and
 3782 other storm damage to the highest degree provided under
 3783 applicable building codes for buildings of that class.

3784 (f) Suitable provisions must be made for securely and
 3785 permanently sealing each crypt with durable materials after the
 3786 interment or entombment of human remains, so that no effluvia or
 3787 odors may escape therefrom except as provided by design and
 3788 sanitary engineering standards. Panels for permanent seals must
 3789 be solid and constructed of materials of sufficient weight,
 3790 permanence, density, imperviousness, and strength as to ensure
 3791 their durability and continued functioning. Permanent crypt
 3792 sealing panels must be securely installed and set in with high
 3793 quality fire-resistant, resilient, and durable materials after
 3794 the interment or entombment of human remains. The outer or
 3795 exposed covering of each crypt must be of a durable, permanent,
 3796 fire-resistant material; however, plastic, fiberglass, and wood
 3797 are not acceptable materials for such outer or exposed
 3798 coverings.

3799 (g) Interior and exterior fastenings for hangers, clips,
 3800 doors, and other objects must be of copper, copper-base alloy,
 3801 aluminum, or stainless steel of adequate gauges, or other
 3802 materials established by rule which provide equivalent or better
 3803 strength and durability, and must be properly installed.

3804 (3) The licensing authority ~~board~~ shall transmit the rules
 3805 as adopted under subsection (2), hereinafter referred to as the
 3806 "mausoleum standards," to the Florida Building Commission, which
 3807 shall initiate rulemaking under chapter 120 to consider such
 3808 mausoleum standards. If such mausoleum standards are not deemed

3809 acceptable, they shall be returned by the Florida Building
 3810 Commission to the licensing authority ~~board~~ with details of
 3811 changes needed to make them acceptable. If such mausoleum
 3812 standards are acceptable, the Florida Building Commission shall
 3813 adopt a rule designating the mausoleum standards as an approved
 3814 revision to the State Minimum Building Codes under part VII of
 3815 chapter 553. When so designated by the Florida Building
 3816 Commission, such mausoleum standards shall become a required
 3817 element of the State Minimum Building Codes under s. 553.73(2)
 3818 and shall be transmitted to each local enforcement agency, as
 3819 defined in s. 553.71(5). Such local enforcement agency shall
 3820 consider and inspect for compliance with such mausoleum
 3821 standards as if they were part of the local building code, but
 3822 shall have no continuing duty to inspect after final approval of
 3823 the construction pursuant to the local building code. Any
 3824 further amendments to the mausoleum standards shall be
 3825 accomplished by the same procedure. Such designated mausoleum
 3826 standards, as from time to time amended, shall be a part of the
 3827 State Minimum Building Codes under s. 553.73 until the adoption
 3828 and effective date of a new statewide uniform minimum building
 3829 code, which may supersede the mausoleum standards as provided by
 3830 the law enacting the new statewide uniform minimum building
 3831 code.

3832 (4) In addition to the rules adopted under subsection (2),
 3833 the licensing authority ~~board~~ shall adopt rules providing that
 3834 following all interments, inurnments, and entombments in
 3835 mausoleums and columbaria occurring after the effective date of
 3836 such rules, whether newly constructed or existing, suitable

HB 323 CS

2004
CS

3837 provision must be made, when physically feasible, for sealing
 3838 each crypt in accordance with standards adopted ~~promulgated~~
 3839 pursuant to paragraph (2)(f).

3840 (5) For purposes of this section, "significant alteration
 3841 or renovation" means any addition, renovation, or repair which
 3842 results in the creation of new crypt or niche spaces.

3843 Section 53. Section 497.257, Florida Statutes, is
 3844 renumbered as section 497.272, Florida Statutes, and amended to
 3845 read:

3846 497.272 ~~497.257~~ Construction of mausoleums, columbaria,
 3847 and belowground crypts; preconstruction trust fund; compliance
 3848 requirement.--

3849 (1) A cemetery company shall start construction of that
 3850 section of a mausoleum, columbarium, or bank of belowground
 3851 crypts in which sales, contracts for sales, reservations for
 3852 sales, or agreements for sales are being made within 4 years
 3853 after the date of the first such sale or 50 percent of the
 3854 mausoleum, columbarium, or belowground crypts have been sold and
 3855 the purchase price has been received, whichever occurs first.
 3856 The construction shall be completed within 5 years after the
 3857 date of the first sale made. However, extensions for completion,
 3858 not to exceed 1 year, may be granted by the department for good
 3859 cause shown. If the units have not been completely constructed
 3860 at the time of need or the time specified herein, all moneys
 3861 paid shall be refunded upon request, plus interest earned
 3862 thereon for that portion of the moneys deposited in the trust
 3863 fund and an amount equal to the interest that would have been
 3864 earned on that portion of the moneys that were not in trust.

3865 (2) A cemetery company which plans to offer for sale space
 3866 in a section of a mausoleum, columbarium, or bank of belowground
 3867 crypts prior to construction shall establish a preconstruction
 3868 trust fund by written instrument. The preconstruction trust fund
 3869 shall be administered by a corporate trustee and operated in
 3870 conformity with s. 497.458 ~~497.417~~. The preconstruction trust
 3871 fund shall be separate from any other trust funds that may be
 3872 required by this chapter. The written instrument by which the
 3873 trustee of the preconstruction trust fund agrees to act as
 3874 trustee shall contain a statement that the trust is created
 3875 pursuant to the requirements of this section. The trust shall be
 3876 subject to examination by the licensing authority.

3877 (3) Before a sale, contract for sale, reservation for
 3878 sale, or agreement for sale in a mausoleum section, columbarium,
 3879 or bank of belowground crypts may be made, the cemetery company
 3880 shall compute the amount to be deposited to the preconstruction
 3881 trust fund. The total amount to be deposited in the fund for
 3882 each unit of the project shall be computed by dividing the cost
 3883 of the project plus 10 percent of the cost, as computed by a
 3884 licensed contractor, engineer, or architect, by the number of
 3885 crypts in the section or bank of belowground crypts or the
 3886 number of niches in the columbarium. When payments are received
 3887 in installments, the percentage of the installment payment
 3888 placed in trust must be identical to the percentage which the
 3889 payment received bears to the total cost of the contract,
 3890 including other merchandise and services purchased.
 3891 Preconstruction trust fund payments shall be made within 30 days
 3892 after the end of the month in which payment is received.

3893 (4) When the cemetery company delivers a completed crypt
3894 or niche acceptable to the purchaser in lieu of the crypt or
3895 niche purchased prior to construction, all sums deposited to the
3896 preconstruction trust fund for that purchaser shall be paid to
3897 the cemetery company.

3898 (5) Each cemetery company may negotiate, at the time of
3899 establishment of the preconstruction trust fund, a procedure for
3900 withdrawal of the escrowed funds as a part of the construction
3901 cost of the mausoleum section, columbarium, or bank of
3902 belowground crypts contemplated, subject to the approval of the
3903 department. Upon completion of the mausoleum section,
3904 columbarium, or bank of belowground crypts, the cemetery company
3905 shall certify completion to the trustee and shall be entitled to
3906 withdraw all funds deposited to the account thereof.

3907 (6) If the mausoleum section, columbarium, or bank of
3908 belowground crypts is not completed within the time limits set
3909 out in this section, the trustee shall contract for and cause
3910 the project to be completed and pay therefor from the trust
3911 funds deposited to the project's account paying any balance,
3912 less cost and expenses, to the cemetery company. The refund
3913 provisions of subsection (1) apply only to the extent there are
3914 funds remaining in excess of the costs to complete the
3915 facilities, prior to any payments to the cemetery company.

3916 (7) On or before April 1 of each year, the trustee shall
3917 file with the licensing authority board in the form prescribed
3918 by rule ~~the board~~ a full and true statement as to the activities
3919 of any trust established ~~by the board~~ pursuant to this chapter
3920 for the preceding calendar year.

HB 323 CS

2004
CS

3921 (8) In lieu of the payments outlined hereunder to the
 3922 preconstruction trust fund, the cemetery company may deliver to
 3923 the department a performance bond in an amount and by a surety
 3924 company acceptable to the department.

3925 Section 54. Section 497.305, Florida Statutes, is
 3926 renumbered as section 497.273, Florida Statutes, and amended to
 3927 read:

3928 497.273 ~~497.305~~ Cemetery companies; authorized
 3929 functions.--

3930 (1) Within the boundaries of the cemetery lands it owns, a
 3931 cemetery company may perform the following functions:

3932 (a) The exclusive care and maintenance of the cemetery.

3933 (b) The exclusive interment, entombment, or inurnment of
 3934 human remains, including the exclusive right to open, prepare
 3935 for interment, and close all ground, mausoleum, and urn burials.
 3936 Each preneed contract for burial rights or services shall
 3937 disclose, pursuant to licensing authority ~~board~~ rule, whether
 3938 opening and closing of the burial space is included in the
 3939 contract and, if not, the current prices for opening and closing
 3940 and a statement that these prices are subject to change. Each
 3941 cemetery which sells preneed contracts must offer opening and
 3942 closing as part of a preneed contract.

3943 (c) The exclusive initial preneed and at-need sale of
 3944 interment or burial rights in earth, mausoleum, crypt, niche, or
 3945 columbarium interment; however, nothing herein shall limit the
 3946 right of a person owning interment or burial rights to sell
 3947 those rights to third parties subject to the transfer of title
 3948 by the cemetery company.

3949 (d) The adoption of bylaws regulating the activities
 3950 conducted within its boundaries, provided that no funeral
 3951 director licensed pursuant to this chapter 470 shall be denied
 3952 access to any cemetery to conduct a funeral for or supervise a
 3953 disinterment of human remains. All bylaws provided for herein
 3954 shall be subject to the approval of the licensing authority
 3955 ~~board~~ under the provisions of chapter 120 prior to becoming
 3956 effective. The licensing authority ~~board~~ shall not approve any
 3957 bylaw which unreasonably restricts the use of interment or
 3958 burial rights, which unreasonably restricts competition, or
 3959 which unreasonably increases the cost to the owner of interment
 3960 or burial rights in utilizing these rights.

3961 (e) The nonexclusive preneed and at-need sale of
 3962 monuments, memorials, markers, burial vaults, urns, flower
 3963 vases, floral arrangements, and other similar merchandise for
 3964 use within the cemetery.

3965 (f) The nonexclusive cremation of human remains, subject
 3966 to provisions of s. 497.606 ~~470.025~~.

3967 (g) The entry into sales or management contracts with
 3968 other persons. The cemetery company shall be responsible for the
 3969 deposit of all moneys required by this part to be placed in a
 3970 trust fund.

3971 (2) A full disclosure shall be made for all fees required
 3972 for interment, entombment, or inurnment of human remains.

3973 (3) A cemetery company may adopt bylaws establishing
 3974 minimum standards for burial merchandise or the installation
 3975 thereof. Such bylaws shall include minimum standards for access

HB 323 CS

2004
CS

3976 to install burial merchandise. A cemetery company must comply
 3977 with its adopted bylaws.

3978 Section 55. Section 497.274, Florida Statutes, is created
 3979 to read:

3980 497.274 Standards for grave spaces.--

3981 (1) A standard adult grave space shall measure at least 42
 3982 inches in width and 96 inches in length, except for preinstalled
 3983 vaults in designated areas. For interments, except cremated
 3984 remains, the covering soil shall measure no less than 12 inches
 3985 from the top of the outer burial container at the time of
 3986 interment, unless such level of soil is not physically possible.
 3987 In any interment, the family or next of kin may waive the 12-
 3988 inch coverage minimum.

3989 (2)(a) Prior to the sale of grave spaces in any
 3990 undeveloped areas of a licensed cemetery, the cemetery company
 3991 shall prepare a map documenting the establishment of recoverable
 3992 internal survey reference markers installed by the cemetery
 3993 company no more than 100 feet apart in the areas planned for
 3994 development. The internal reference markers shall be established
 3995 with reference to survey markers that are no more than 200 feet
 3996 apart which have been set by a surveyor and mapper licensed
 3997 under chapter 472 and documented in a certified land survey.
 3998 Both the map and the certified land survey shall be maintained
 3999 by the cemetery company and shall be made available upon request
 4000 to the department or members of the public.

4001 (b) The map of the area proposed to be developed shall
 4002 show:

4003 1. The number of grave spaces available for sale.

HB 323 CS

2004
CS

- 4004 2. The location of each grave space.
- 4005 3. The number designation assigned to each grave space.
- 4006 4. The dimensions of a standard adult grave space.

4007 (3) Adult grave spaces established prior to October 1,
 4008 2005, are not required to meet the standards established under
 4009 this section for the dimensions or separation of grave spaces.

4010 Section 56. Section 497.275, Florida Statutes, is created
 4011 to read:

4012 497.275 Identification of human remains in licensed
 4013 cemeteries.--On and after October 1, 2005, human remains
 4014 interred, entombed, or otherwise placed for final rest at
 4015 licensed cemeteries shall be identified as follows:

4016 (1) Each licensed cemetery shall place on the outer burial
 4017 container, cremation interment container, or other container, or
 4018 on the inside of a crypt or niche, a tag or a permanent
 4019 identifying marker containing the name of the decedent and the
 4020 date of death, if available. The materials and location of the
 4021 tag or marker shall be more specifically described by rule.

4022 (2) Each licensed cemetery may rely entirely on the
 4023 identity stated on the burial transit permit or on the
 4024 identification supplied by a person licensed under part III of
 4025 this chapter to establish the identity of the dead human remains
 4026 delivered by such person for burial and shall not be liable for
 4027 any differences between the identity shown on the burial transit
 4028 permit or other identification and the actual identity of the
 4029 dead human remains delivered by such person and buried in the
 4030 cemetery.

4031 Section 57. Section 497.309, Florida Statutes, is
 4032 renumbered as section 497.276, Florida Statutes, and amended to
 4033 read:

4034 497.276 ~~497.309~~ Records.--

4035 (1) A record shall be kept of every burial in the cemetery
 4036 of a cemetery company, showing the date of burial and the name
 4037 of the person buried, together with lot, plot, and space in
 4038 which the burial was made. All financial records of the cemetery
 4039 company shall be available at its principal place of business in
 4040 this state and shall be readily available at all reasonable
 4041 times for examination by the department.

4042 (2) Notwithstanding the provisions of subsection (1), the
 4043 licensing authority board ~~board~~ may, upon request, authorize a
 4044 cemetery company to maintain its financial records at a location
 4045 other than its principal place of business and may, if
 4046 necessary, require the company to make its books, accounts,
 4047 records, and documents available at a reasonable and convenient
 4048 location in this state.

4049 (3) The licensing authority board ~~board~~ may prescribe by rule
 4050 the minimum information to be shown in the books, accounts,
 4051 records, and documents of a cemetery company to enable the
 4052 department to determine the company's compliance with this
 4053 chapter, and may prescribe financial statements that shall be
 4054 prepared annually by licensed cemetery companies.

4055 Section 58. Section 497.313, Florida Statutes, is
 4056 renumbered as section 497.277, Florida Statutes, to read:

4057 497.277 ~~497.313~~ Other charges.--Other than the fees for
 4058 the sale of burial rights, burial merchandise, and burial

4059 | services, no other fee may be directly or indirectly charged,
 4060 | contracted for, or received by a cemetery company as a condition
 4061 | for a customer to use any burial right, burial merchandise, or
 4062 | burial service, except for:

4063 | (1) Charges paid for opening and closing a grave and vault
 4064 | installation.

4065 | (2) Charges paid for transferring burial rights from one
 4066 | purchaser to another; however, no such fee may exceed \$50.

4067 | (3) Charges for sales, documentary excise, and other taxes
 4068 | actually and necessarily paid to a public official, which
 4069 | charges must be supported in fact.

4070 | (4) Charges for credit life and credit disability
 4071 | insurance, as requested by the purchaser, the premiums for which
 4072 | may not exceed the applicable premiums chargeable in accordance
 4073 | with the rates filed with the Office of Insurance Regulation of
 4074 | the Financial Services Commission.

4075 | (5) Charges for interest on unpaid balances pursuant to
 4076 | chapter 687.

4077 | Section 59. Section 497.317, Florida Statutes, is
 4078 | renumbered as section 497.278, Florida Statutes, to read:

4079 | 497.278 ~~497.317~~ Monuments; installation fees.--

4080 | (1) No cemetery company may charge a fee for the
 4081 | installation of a monument purchased or obtained from and to be
 4082 | installed by a person or firm other than the cemetery company or
 4083 | its agents.

4084 | (2) To verify that a monument is installed on the proper
 4085 | grave in accordance with cemetery bylaws, rules, or regulations,
 4086 | the cemetery company shall mark the place on the grave where the

4087 marker or monument is to be installed and shall inspect the
 4088 installation when completed. Nothing in this subsection is
 4089 intended to imply or require that a cemetery company shall have
 4090 to lay out or engineer a grave site or grave sites for the
 4091 installation of a marker or monument.

4092 (3) A cemetery company may not require any person or firm
 4093 that installs, places, or sets a monument to obtain any form of
 4094 insurance, bond, or surety or make any form of pledge, deposit,
 4095 or monetary guarantee as a condition for entry on or access to
 4096 cemetery property.

4097 Section 60. Section 497.325, Florida Statutes, is
 4098 renumbered as section 497.280, Florida Statutes, and amended to
 4099 read:

4100 497.280 ~~497.325~~ Illegal tying arrangements.--

4101 (1) No person authorized to sell grave space may tie the
 4102 purchase of any grave space to the purchase of a monument from
 4103 or through the seller of any other designated person or
 4104 corporation.

4105 (2)(a) Noncemetery licensed persons and firms shall have
 4106 the right to sell monuments and to perform or provide on
 4107 cemetery property foundation, preparation, and installation
 4108 services for monuments. However, a cemetery company or any other
 4109 entity owning and operating a cemetery may establish reasonable
 4110 rules regarding the style and size of a monument or its
 4111 foundation, provided such rules are applicable to all monuments
 4112 from whatever source obtained and are enforced uniformly as to
 4113 all monuments. Such rules shall be conspicuously posted and
 4114 readily accessible to inspection and copy by interested persons.

HB 323 CS

2004
CS

4115 (b) No person who is authorized to sell grave space and no
 4116 cemetery company or other entity owning and operating a cemetery
 4117 may:

4118 1. Require the payment of a setting or service charge, by
 4119 whatever name known, from third party installers for the
 4120 placement of a monument;

4121 2. Refuse to provide care or maintenance for any portion
 4122 of a gravesite on which a monument has been placed; or

4123 3. Require waiver of ~~Waive~~ liability with respect to
 4124 damage caused by cemetery employees or agents to a monument
 4125 after installation,

4126
 4127 where the monument or installation service is not purchased from
 4128 the person authorized to sell grave space or the cemetery
 4129 company providing grave space or from or through any other
 4130 person or corporation designated by the person authorized to
 4131 sell grave space or the cemetery company providing grave space.
 4132 No cemetery company may be held liable for the improper
 4133 installation of a monument where the monument is not installed
 4134 by the cemetery company or its agents.

4135 (3) No program offering free burial rights may be
 4136 conditioned by any requirement to purchase additional burial
 4137 rights, funeral merchandise, or services. Any program offering
 4138 free burial rights shall comply with s. 817.415.

4139 Section 61. Section 497.329, Florida Statutes, is
 4140 renumbered as section 497.281, Florida Statutes, and amended to
 4141 read:

HB 323 CS

2004
CS

4142 497.281 ~~497.329~~ Licensure Registration of brokers of
4143 burial rights.--

4144 (1) No person shall receive compensation to act as a third
4145 party to the sale or transfer of three or more burial rights in
4146 a 12-month period unless the person pays a license registration
4147 fee as determined by licensing authority rule but not to exceed
4148 \$250 ~~of \$150~~ and is licensed ~~registered~~ with the department as a
4149 burial rights broker in accordance with this section.

4150 (2) The department, by rule, shall provide for the
4151 biennial renewal of licenses under this section ~~registrants~~ and
4152 a renewal fee as determined by licensing authority rule but not
4153 to exceed \$250 ~~of \$100~~.

4154 (3) This section shall not apply to persons otherwise
4155 licensed ~~or registered~~ pursuant to this chapter.

4156 (4) The licensing authority may by rule specify records of
4157 brokerage transactions which shall be required to be maintained
4158 by burial rights brokers licensed under this subsection, and
4159 which shall be subject to inspection by the department.

4160 Section 62. Section 497.333, Florida Statutes, is
4161 renumbered as section 497.282, Florida Statutes, and amended to
4162 read:

4163 497.282 ~~497.333~~ Disclosure of information to public.--A
4164 licensee offering to provide burial rights, merchandise, or
4165 services to the public shall:

4166 (1) Provide by telephone, upon request, accurate
4167 information regarding the retail prices of burial merchandise
4168 and services offered for sale by the licensee.

4169 (2) Fully disclose all regularly offered services and
4170 merchandise prior to the selection of burial services or
4171 merchandise. The full disclosure required shall identify the
4172 prices of all burial rights, services, and merchandise provided
4173 by the licensee.

4174 (3) Not make any false or misleading statements of the
4175 legal requirement as to the necessity of a casket or outer
4176 burial container.

4177 (4) Provide a good faith estimate of all fees and costs
4178 the customer will incur to use any burial rights, merchandise,
4179 or services purchased.

4180 (5) Provide to the customer, upon request, a current copy
4181 of the bylaws of the licensee.

4182 (6) Provide to the customer, upon the purchase of any
4183 burial right, merchandise, or service, a written contract, the
4184 form of which has been approved by the licensing authority
4185 pursuant to procedures specified by rule board.

4186 (a) The written contract shall be completed as to all
4187 essential provisions prior to the signing of the contract by the
4188 customer.

4189 (b) The written contract shall provide an itemization of
4190 the amounts charged for all services, merchandise, and fees,
4191 which itemization shall be clearly and conspicuously segregated
4192 from everything else on the written contract.

4193 (c) A description of the merchandise covered by the
4194 contract to include, when applicable, model, manufacturer, and
4195 other relevant specifications.

4196 (7) Provide the licensee's policy on cancellation and
4197 refunds to each customer.

4198 (8) In a manner established by rule of the licensing
4199 authority board, provide on the signature page, clearly and
4200 conspicuously in boldfaced 10-point type or larger, the
4201 following:

4202 (a) The words "purchase price."

4203 (b) The amount to be trusted.

4204 (c) The amount to be refunded upon contract cancellation.

4205 (d) The amounts allocated to merchandise, services, and
4206 cash advances.

4207 (e) The toll-free number of the department which is
4208 available for questions or complaints.

4209 (f) A statement that the purchaser shall have 30 days from
4210 the date of execution of contract to cancel the contract and
4211 receive a total refund of all moneys paid for items not used.

4212 (9) Effective October 1, 2006, display in its offices for
4213 free distribution to all potential customers, and provide to all
4214 customers at the time of sale, a brochure explaining how and by
4215 whom cemeteries and preneed sales are regulated, summarizing
4216 consumer rights under the law, and providing the name, address,
4217 and phone number of the department's consumer affairs division.
4218 The format and content of the brochure shall be as prescribed by
4219 the rule. The licensing authority may cause the publication of
4220 such brochures and by rule establish requirements that cemetery
4221 and preneed licensees purchase and make available in the
4222 licensee's offices such brochures to all potential customers.

4223 (10) Provide to each customer a complete description of
 4224 any monument, marker, or memorialization to be placed at the
 4225 gravesite.

4226 Section 63. Section 497.337, Florida Statutes, is
 4227 renumbered as section 497.283, Florida Statutes, and amended to
 4228 read:

4229 497.283 ~~497.337~~ Prohibition on sale of personal property
 4230 or services.--

4231 (1) This section applies to all cemetery companies
 4232 licensed pursuant to this chapter that offer for sale or sell
 4233 personal property or services which may be used in a cemetery in
 4234 connection with the burial of human remains or the commemoration
 4235 of the memory of a deceased human being and also to any person
 4236 in direct written contractual relationship with licensed
 4237 cemetery companies.

4238 (2)(a) Except as otherwise provided in this chapter, no
 4239 cemetery company shall directly or indirectly enter into a
 4240 contract for the sale of personal property or services,
 4241 excluding burial or interment rights, which may be used in a
 4242 cemetery in connection with disposing of human remains, or
 4243 commemorating the memory of a deceased human being, if delivery
 4244 of the personal property or performance of the service is to be
 4245 made more than 120 days after receipt of final payment under the
 4246 contract of sale, except as provided in s. 497.458 ~~497.417~~. This
 4247 shall include, but not be limited to, the sale for future
 4248 delivery of burial vaults, grave liners, urns, memorials, vases,
 4249 foundations, memorial bases, and similar merchandise and related

4250 services commonly sold or used in cemeteries and interment fees
4251 but excluding burial or interment rights.

4252 (b) For the purposes of this section, the term "delivery"
4253 means actual delivery and installation at the time of need or at
4254 the request of the owner or the owner's agent. Merchandise is
4255 not considered delivered under paragraph (a) if it is stored on
4256 the grounds of the cemetery or at a storage facility except for
4257 monuments, markers, and permanent outer burial receptacles that
4258 are stored in a protected environment and are comprised of
4259 materials designed to withstand prolonged, protected storage
4260 without adversely affecting the structural integrity or
4261 aesthetic characteristics of such permanent outer burial
4262 receptacles.

4263 (c) In lieu of delivery as required by paragraph (b), for
4264 sales to cemetery companies and funeral establishments, and only
4265 for such sales, the manufacturer of a permanent outer burial
4266 receptacle which meets standards adopted by rule ~~the board~~ may
4267 elect, at its discretion, to comply with the delivery
4268 requirements of this section by annually submitting for approval
4269 pursuant to procedures and forms as specified by rule, in
4270 writing, evidence of the manufacturer's financial responsibility
4271 with the licensing authority ~~board~~ for its review and approval.
4272 The standards and procedures to establish evidence of financial
4273 responsibility shall be those in s. 497.461 ~~497.423 or s.~~
4274 ~~497.425~~, with the manufacturer of permanent outer burial
4275 receptacles which meet national industry standards assuming the
4276 same rights and responsibilities as those of a preneed licensee
4277 ~~certificateholder~~ under s. 497.461 ~~497.423 or s. 497.425.~~

4278 (3) No nonprofit cemetery corporation which has been
 4279 incorporated and engaged in the cemetery business prior to and
 4280 continuously since 1915 and which has current trust assets
 4281 exceeding \$2 million shall be required to designate a corporate
 4282 trustee.

4283 Section 64. Section 497.345, Florida Statutes, is
 4284 renumbered as section 497.284, Florida Statutes, to read:

4285 497.284 ~~497.345~~ Abandoned cemeteries; immunity; actions.--

4286 (1) Notwithstanding any provision of law to the contrary,
 4287 a county or municipality which has within its jurisdiction an
 4288 abandoned cemetery or a cemetery that has not been reasonably
 4289 maintained for a period in excess of 6 months may, upon notice
 4290 to the department, take such action as is necessary and
 4291 appropriate to provide for maintenance and security of the
 4292 cemetery. The solicitation of private funds and the expenditure
 4293 of public funds for the purposes enumerated in this subsection
 4294 are hereby authorized, provided that no action taken by a county
 4295 or municipality under this subsection shall establish an ongoing
 4296 obligation or duty to provide continuous security or maintenance
 4297 for any cemetery.

4298 (2) No county or municipality nor any person under the
 4299 supervision or direction of the county or municipality,
 4300 providing good faith assistance in securing or maintaining a
 4301 cemetery under subsection (1), may be subject to civil
 4302 liabilities or penalties of any type for damages to property at
 4303 the cemetery.

4304 (3) A county or municipality that has maintained or
 4305 secured a cemetery pursuant to the provisions of subsection (1)

4306 | may maintain an action at law against the owner of the cemetery
 4307 | to recover an amount equal to the value of such maintenance or
 4308 | security.

4309 | Section 65. Section 497.349, Florida Statutes, is
 4310 | renumbered as section 497.285, Florida Statutes, and amended to
 4311 | read:

4312 | 497.285 ~~497.349~~ Inactive cemeteries.--

4313 | (1) A licensee shall be considered inactive upon the
 4314 | acceptance of the surrender of its license by the department or
 4315 | upon the nonreceipt by the department of the license renewal
 4316 | fees required by s. 497.265 ~~497.213(2)~~.

4317 | (2) A cemetery licensee licensed to engage in preneed
 4318 | sales shall cease all preneed sales to the public upon becoming
 4319 | inactive with regard to its cemetery license. At-need sales to
 4320 | the public shall cease within 30 days after becoming inactive.

4321 | (3) Any licensee desiring to surrender its license to the
 4322 | department shall first:

4323 | (a) File notice with the department.

4324 | (b) Submit copies of its existing trust agreements.

4325 | (c) Resolve to the department's satisfaction all findings
 4326 | and violations resulting from the last examination conducted.

4327 | (d) Pay all outstanding fines and invoices due the
 4328 | department.

4329 | (e) Submit its current license.

4330 | (4) Upon receipt of the notice, the department shall
 4331 | review the licensee's:

4332 | (a) Trust funds.

4333 | (b) Trust agreements.

4334 (c) Care and maintenance of the cemetery grounds.

4335 (5) After a review to the department's satisfaction, the
4336 department shall terminate the license.

4337 (6)(a) The care and maintenance trust fund of a licensee
4338 shall be held intact and in trust after the licensee has become
4339 inactive, and funds in that trust fund shall be disbursed to the
4340 cemetery on a regular basis for the upkeep of the grounds.

4341 (b) The merchandise trust fund of a licensee shall be held
4342 intact and in trust after the licensee has become inactive, and
4343 the funds in that trust fund shall be disbursed in accordance
4344 with the requirements of the written contracts until the fund
4345 has been exhausted.

4346 Section 66. Section 497.353, Florida Statutes, is
4347 renumbered as section 497.286, Florida Statutes, and amended to
4348 read:

4349 497.286 ~~497.353~~ Owners to provide addresses; presumption
4350 of abandonment; abandonment procedures; sale of abandoned unused
4351 burial rights.--

4352 (1) For purposes of this section, all owners of burial
4353 rights in any cemetery licensed under the provisions of this
4354 chapter ~~the Florida Funeral and Cemetery Services Act~~ shall have
4355 the legal duty to keep the cemetery companies informed in
4356 writing of their residence addresses. Cemetery companies shall
4357 notify their present burial rights owners by letter at the
4358 owner's last known address and notify all future burial rights
4359 owners, in the contract for sale and the certificate of
4360 ownership, of the requirement to keep the cemetery company
4361 informed in writing of their current residence address.

4362 (2) There is hereby created a presumption that burial
 4363 rights in any cemetery licensed under this chapter have been
 4364 abandoned when an owner of unused burial rights has failed to
 4365 provide the cemetery with a current residence address for a
 4366 period of 50 consecutive years and the cemetery is unable to
 4367 communicate by certified letter with said owner of unused burial
 4368 rights for lack of address. No such presumption of abandonment
 4369 shall exist for burial rights held in common ownership which are
 4370 adjoining, whether in a grave space, plot, mausoleum,
 4371 columbarium, or other place of interment, if any such burial
 4372 rights have been used within such common ownership.

4373 (3) Upon the occurrence of a presumption of abandonment as
 4374 set forth in subsection (2), a cemetery may file with the
 4375 department a certified notice attesting to the abandonment of
 4376 the burial rights. The notice shall do the following:

4377 (a) Describe the burial rights certified to have been
 4378 abandoned;

4379 (b) Set forth the name of the owner or owners of the
 4380 burial rights, or if the owner is known to the cemetery to be
 4381 deceased, then the names, if known to the cemetery, of such
 4382 claimants as are heirs at law, next of kin, or specific devisees
 4383 under the will of the owner;

4384 (c) Detail the facts with respect to the failure of the
 4385 owner or survivors as outlined in this section to keep the
 4386 cemetery informed of the owner's address for a period of 50
 4387 consecutive years or more; and

HB 323 CS

2004
CS

4388 (d) Certify that no burial right has been exercised which
4389 is held in common ownership with any abandoned burial rights as
4390 set forth in subsection (2).

4391 (4) Irrespective of diversity of ownership of the burial
4392 rights, a cemetery may include in its certification burial
4393 rights in as many owners as are certified to have been
4394 abandoned.

4395 (5) The department shall notice and publish the approved
4396 abandoned burial rights in the manner provided by s. 717.118.

4397 (6) Within 120 days from the final notice and publication
4398 as provided in subsection (5), the department shall notify the
4399 cemetery if there has been no claim filed for the burial rights,
4400 and the cemetery shall have the right to sell such burial rights
4401 at a public sale subject to the approval of the sale price by
4402 the department.

4403 (7) Notice of the time and place of any sale held pursuant
4404 to the provisions of this section shall be published by the
4405 cemetery once in a newspaper of general circulation in the
4406 county in which the cemetery is located, such publication to be
4407 not less than 30 days prior to the date of sale.

4408 (8) The proceeds derived from any sale shall be disbursed
4409 in the following manner: an amount specified in s. 497.268
4410 ~~497.245~~ shall be deposited to the cemetery care and maintenance
4411 trust fund; an amount equal to the cemetery company's actual and
4412 necessary costs incurred pursuant to this section but not to
4413 exceed 10 percent of the selling price of the abandoned burial
4414 right shall be deposited to the cemetery company's operating
4415 account; and the balance of the proceeds shall be deposited with

4416 | the department within 20 days after receipt of said funds. The
 4417 | department shall deposit all funds received pursuant to this
 4418 | subsection in accordance with the provisions of s. 717.123.

4419 | (9) Persons or their heirs who were owners of burial
 4420 | rights which were sold under this section shall have the right
 4421 | at any time to obtain equivalent burial rights in the cemetery
 4422 | without further charge. If no burial rights are desired, such
 4423 | persons or their heirs may obtain the amount paid to the
 4424 | department in accordance with the provisions of s. 717.124.

4425 | (10) The cemetery shall set aside equivalent burial rights
 4426 | equal to 10 percent of the abandoned burial rights sold under
 4427 | this section for the exclusive use of persons or their heirs who
 4428 | were owners of burial rights which were sold under this section,
 4429 | who have the right at any time to obtain equivalent burial
 4430 | rights in the cemetery under this section.

4431 | (11) Persons who purchase burial rights at a sale pursuant
 4432 | to this section shall have the right to sell, alienate, or
 4433 | otherwise transfer said burial rights subject to and in
 4434 | accordance with the rules and regulations of the cemetery and
 4435 | payment of a reasonable transfer fee.

4436 | Section 67. Section 497.357, Florida Statutes, is
 4437 | renumbered as section 497.287, Florida Statutes, and amended to
 4438 | read:

4439 | 497.287 ~~497.357~~ Report of identification of exempt
 4440 | cemeteries.--

4441 | (1) All cemeteries in excess of 5 acres located in this
 4442 | state that are exempt from the provisions of this chapter shall
 4443 | be required to file a report of identification with the

HB 323 CS

2004
CS

4444 department and pay a \$25 fee. The department shall maintain such
 4445 reports as public records. Such report of identification shall
 4446 be refiled every 5 years pursuant to a schedule set by board
 4447 rule. Solely for purposes of chapter 120, such report of
 4448 identification shall be considered a license ~~registration~~ with
 4449 the department.

4450 (2) The report shall be submitted on a form and pursuant
 4451 to procedures specified by rule ~~approved by the board~~, and shall
 4452 list the name and address of the authorized agent who is
 4453 responsible for conducting the business of the cemetery and to
 4454 whom inquiries about the cemetery can be directed.

4455 (3) The department ~~board~~ may institute proceedings in any
 4456 appropriate court for injunctive relief to enforce this section.
 4457 Upon issuance of an injunctive order, the court shall award the
 4458 department its costs and attorney fees in the action.

4459 Section 68. Part III of chapter 497, Florida Statutes,
 4460 consisting of sections 497.365, 497.366, 497.367, 497.368,
 4461 497.369, 497.370, 497.371, 497.372, 497.373, 497.374, 497.375,
 4462 497.376, 497.377, 497.378, 497.379, 497.380, 497.381, 497.382,
 4463 497.383, 497.384, 497.385, 497.386, 497.387, 497.388, 497.389,
 4464 497.390, 497.391, and 497.392, is created to read:

4465 PART III

4466 FUNERAL DIRECTING, EMBALMING, AND RELATED SERVICES

4467 Section 69. Section 497.365, Florida Statutes, is created
 4468 to read:

4469 497.365 Licensure; inactive and delinquent status.--

4470 (1) This section shall apply only to licenses issued under
 4471 this part. A licensee may practice a profession or occupation

4472 regulated under this part only if the licensee has an active
 4473 status license. A licensee who practices a profession without an
 4474 active status license is in violation of this chapter and the
 4475 licensing authority may impose discipline on the licensee.

4476 (2) Pursuant to procedures specified by rule, a licensee
 4477 shall be permitted to choose, at the time of licensure renewal,
 4478 an active or inactive status. However, a licensee who changes
 4479 from inactive to active status is not eligible to return to
 4480 inactive status until the licensee thereafter completes a
 4481 licensure cycle on active status.

4482 (3) There shall be imposed pursuant to rule a fee for an
 4483 inactive status license which is no greater than the fee for an
 4484 active status license.

4485 (4) An inactive status licensee may change to active
 4486 status at any time, provided the licensee meets all requirements
 4487 for active status, pays any additional licensure fees necessary
 4488 to equal those imposed on an active status licensee, pays any
 4489 applicable reactivation fees as set by the licensing authority,
 4490 and meets all continuing education requirements as specified in
 4491 this section.

4492 (5) A licensee shall apply with a complete application, as
 4493 defined by rule of the licensing authority, to renew an active
 4494 or inactive status license, before the license expires. Failure
 4495 of a licensee to renew before the license expires shall cause
 4496 the license to become delinquent in the license cycle following
 4497 expiration.

4498 (6) A delinquent status licensee must affirmatively apply
 4499 with a complete application, as defined by rule of the licensing

4500 authority, for active or inactive status during the licensure
4501 cycle in which a licensee becomes delinquent. Failure by a
4502 delinquent status licensee to become active or inactive before
4503 the expiration of the current licensure cycle shall render the
4504 license null without any further action by the board or the
4505 licensing authority. Any subsequent licensure shall be as a
4506 result of applying for and meeting all requirements imposed on
4507 an applicant for new licensure.

4508 (7) There shall be imposed pursuant to rule an additional
4509 delinquency fee, not to exceed the biennial renewal fee for an
4510 active status license, on a delinquent status licensee when such
4511 licensee applies for active or inactive status.

4512 (8) There shall be imposed pursuant to rule an additional
4513 fee, not to exceed the biennial renewal fee for an active status
4514 license, for processing a licensee's request to change licensure
4515 status at any time other than at the beginning of a licensure
4516 cycle.

4517 (9) There may be imposed pursuant to rule reasonable
4518 conditions, excluding full reexamination but including part of a
4519 national examination or a special purpose examination, to assess
4520 current competency necessary to ensure that a licensee who has
4521 been on inactive status for more than 4 consecutive years and
4522 who applies for active status can practice with the care and
4523 skill sufficient to protect the health, safety, and welfare of
4524 the public. Reactivation requirements may differ depending on
4525 the length of time licensees are inactive. The costs to meet
4526 reactivation requirements shall be borne by licensees requesting
4527 reactivation.

4528 (10) Before reactivation, an inactive or delinquent
 4529 licensee shall meet the same continuing education requirements,
 4530 if any, imposed on an active status licensee for all licensure
 4531 periods in which the licensee was inactive or delinquent.

4532 (11) The status or a change in status of a licensee shall
 4533 not alter in any way the right to impose discipline or to
 4534 enforce discipline previously imposed on a licensee for acts or
 4535 omissions committed by the licensee while holding a license,
 4536 whether active, inactive, or delinquent.

4537 Section 70. Section 497.366, Florida Statutes, is created
 4538 to read:

4539 497.366 Licensure; renewal and cancellation notices.--

4540 (1) At least 90 days before the end of a licensure cycle,
 4541 the licensing authority shall:

4542 (a) Forward a licensure renewal notification to an active
 4543 or inactive licensee at the licensee's last known address of
 4544 record with the licensing authority.

4545 (b) Forward a notice of pending cancellation of licensure
 4546 to a delinquent status licensee at the licensee's last known
 4547 address of record with the licensing authority.

4548 (2) Each licensure renewal notification and each notice of
 4549 pending cancellation of licensure must state conspicuously that
 4550 a licensee who remains on inactive status for more than 4 years
 4551 and who wishes to reactivate the license may be required to
 4552 demonstrate the competency to resume active practice by sitting
 4553 for a special purpose examination or by completing other
 4554 reactivation requirements, as defined by rule of the licensing
 4555 authority.

4556 (3) This section shall apply only to licensees licensed
4557 under this part.

4558 Section 71. Section 497.367, Florida Statutes, is created
4559 to read:

4560 497.367 Instruction on HIV and AIDS, funeral directors and
4561 embalmers.--

4562 (1) Each person licensed as a funeral director or embalmer
4563 under this chapter shall be required to complete an approved
4564 continuing educational course on human immunodeficiency virus
4565 and acquired immune deficiency syndrome, at least every 2 years.
4566 The course shall consist of education on the modes of
4567 transmission, infection control procedures, clinical management,
4568 and prevention of human immunodeficiency virus and acquired
4569 immune deficiency syndrome. Such course shall include
4570 information on current Florida law on acquired immune deficiency
4571 syndrome and its impact on testing, confidentiality of test
4572 results, and treatment of patients.

4573 (2) Confirmation of completed continuing education
4574 concerning each funeral director or embalmer licensee shall be
4575 submitted according to procedures, forms, and methods as
4576 specified by rule of the licensing authority.

4577 (3) There may be approved by the licensing authority by
4578 rule or order additional equivalent courses that may be used to
4579 satisfy the requirements in subsection (1). There may be counted
4580 the hours required for completion of the course included in the
4581 total continuing educational requirements as required by law.

4582 (4) Any person holding two or more licenses subject to the
4583 provisions of this section shall only be required to take the

HB 323 CS

2004
CS

4584 course once every 2 years notwithstanding the number of licenses
4585 held by that person.

4586 (5) Failure to timely comply with the above requirements
4587 shall constitute grounds for disciplinary action against the
4588 licensee.

4589 (6) It shall be required as a condition of granting a
4590 license as a funeral director and embalmer under this chapter
4591 that an applicant making initial application for licensure
4592 complete an educational course approved by the licensing
4593 authority on human immunodeficiency virus and acquired immune
4594 deficiency syndrome. An applicant who has not taken a course at
4595 the time of licensure shall, upon an affidavit showing good
4596 cause, be allowed 6 months to complete this requirement.

4597 Section 72. Section 470.006, Florida Statutes, is
4598 renumbered as section 497.368, Florida Statutes, and amended to
4599 read:

4600 497.368 ~~470.006~~ Embalmers; licensure as an embalmer by
4601 examination; provisional license.--

4602 (1) Any person desiring to be licensed as an embalmer
4603 shall apply to the licensing authority ~~department~~ to take the
4604 licensure examination. The licensing authority ~~department~~ shall
4605 examine each applicant who has remitted an examination fee set
4606 by rule of the licensing authority ~~the board~~ not to exceed \$200
4607 plus the actual per applicant cost to the licensing authority
4608 ~~department~~ for portions of the examination and who ~~the board~~
4609 ~~certifies~~ has:

4610 (a) Completed the application form and remitted a
 4611 nonrefundable application fee set by the licensing authority
 4612 ~~board~~ not to exceed \$200 ~~\$50~~.

4613 (b) Submitted proof satisfactory to the licensing
 4614 authority ~~board~~ that the applicant is at least 18 years of age
 4615 and is a recipient of a high school degree or equivalent.

4616 (c) Had no conviction or finding of guilt, regardless of
 4617 adjudication, for a crime which directly relates to the ability
 4618 to practice embalming or the practice of embalming.

4619 (d) Completed a course in mortuary science approved by the
 4620 licensing authority ~~board~~, which course embraces, at least, the
 4621 following subjects: theory and practice of embalming,
 4622 restorative art, pathology, anatomy, microbiology, chemistry,
 4623 hygiene, and public health and sanitation.

4624 (e) Submitted proof of completion of a ~~board-approved~~
 4625 course on communicable diseases approved by the licensing
 4626 authority.

4627 (2) The licensing authority ~~department~~ shall license the
 4628 applicant as an embalmer if the applicant:

4629 (a) Passes an examination on the subjects of the theory
 4630 and practice of embalming, restorative art, pathology, anatomy,
 4631 microbiology, chemistry, hygiene, public health and sanitation,
 4632 and local, state, and federal laws and rules relating to the
 4633 disposition of dead human bodies; however, there may ~~the board~~
 4634 by rule be approved by the licensing authority ~~may adopt~~ the use
 4635 of a national examination, such as the embalming examination
 4636 prepared by the Conference of Funeral Service Examining Boards,
 4637 in lieu of part of this examination requirement; and

4638 (b) Completes a 1-year internship under a licensed
4639 embalmer.

4640 (3) Any applicant who has completed the required 1-year
4641 internship and has been approved for examination as an embalmer
4642 may qualify for a provisional license to work in a licensed
4643 funeral establishment, under the direct supervision of a
4644 licensed embalmer for a limited period of 6 months as provided
4645 by rule of the licensing authority ~~board~~. The fee for
4646 provisional licensure shall be set by rule of the licensing
4647 authority ~~the board~~, but may not exceed \$200 ~~\$125~~, and shall be
4648 nonrefundable and in addition to the fee required in subsection
4649 (1). This provisional license may be renewed no more than one
4650 time.

4651 Section 73. Section 470.007, Florida Statutes, is
4652 renumbered as section 497.369, Florida Statutes, and amended to
4653 read:

4654 497.369 ~~470.007~~ Embalmers; licensure as an embalmer by
4655 endorsement; licensure ~~registration~~ of a temporary embalmer.--

4656 (1) The licensing authority ~~department~~ shall issue a
4657 license by endorsement to practice embalming to an applicant who
4658 has remitted an examination fee set by rule of the licensing
4659 authority ~~the board~~ not to exceed \$200 and who the licensing
4660 authority ~~board~~ certifies:

4661 (a) Has completed the application form and remitted a
4662 nonrefundable application fee set by rule of the licensing
4663 authority ~~the board~~ not to exceed \$200 ~~\$50~~.

4664 (b)1. Holds a valid license to practice embalming in
4665 another state of the United States, provided that, when the

4666 applicant secured ~~his or~~ her or his original license, the
 4667 requirements for licensure were substantially equivalent to or
 4668 more stringent than those existing in this state; or

4669 2. Meets the qualifications for licensure in s. 497.368
 4670 ~~470.006~~, except that the internship requirement shall be deemed
 4671 to have been satisfied by 1 year's practice as a licensed
 4672 embalmer in another state, and has, within 10 years prior to the
 4673 date of application, successfully completed a state, regional,
 4674 or national examination in mortuary science, which, as
 4675 determined by rule of the licensing authority ~~board~~, is
 4676 substantially equivalent to or more stringent than the
 4677 examination given by the licensing authority ~~department~~.

4678 (c) Has submitted proof of completion of a licensing
 4679 authority approved ~~board-approved~~ course on communicable
 4680 diseases.

4681 (2) State, regional, or national examinations and
 4682 requirements for licensure in another state shall be presumed to
 4683 be substantially equivalent to or more stringent than the
 4684 examination and requirements in this state unless found
 4685 otherwise by rule of the licensing authority ~~board~~.

4686 (3) The licensing authority ~~department~~ shall not issue a
 4687 license by endorsement or a temporary license ~~registration~~ to
 4688 any applicant who is under investigation or prosecution in any
 4689 jurisdiction for an act which would constitute a violation of
 4690 this chapter until such time as the investigation or prosecution
 4691 is complete.

4692 (4) Each applicant for licensure by endorsement must pass
 4693 the examination on local, state, and federal laws and rules

4694 relating to the disposition of dead human bodies which is
 4695 required under s. 497.368 ~~470.006~~ and which shall be given by
 4696 the licensing authority ~~department~~.

4697 (5) There may be adopted by the licensing authority ~~The~~
 4698 ~~board may adopt~~ rules authorizing an applicant who has met the
 4699 requirements of paragraphs (1)(b) and (c) and who is awaiting an
 4700 opportunity to take the examination required by subsection (4)
 4701 to be licensed ~~register~~ as a temporary licensed embalmer. A
 4702 temporary licensed ~~registered~~ temporary embalmer may work as an
 4703 embalmer in a licensed funeral establishment under the general
 4704 supervision of a licensed embalmer. Such temporary license
 4705 ~~registration~~ shall expire 60 days after the date of the next
 4706 available examination required under subsection (4); however,
 4707 the temporary license ~~registration~~ may be renewed one time under
 4708 the same conditions as initial issuance. The fee for issuance
 4709 ~~registration~~ or renewal of an embalmer temporary license
 4710 ~~registration as a temporary embalmer~~ shall be set by rule of the
 4711 licensing authority ~~the board~~ but may not exceed \$200 ~~\$125~~. The
 4712 fee required in this subsection shall be nonrefundable and in
 4713 addition to the fee required in subsection (1).

4714 Section 74. Section 470.008, Florida Statutes, is
 4715 renumbered as section 497.370, Florida Statutes, and amended to
 4716 read:

4717 497.370 ~~470.008~~ Embalmers; licensure ~~Registration~~ of an
 4718 embalmer intern.--

4719 (1) Any person desiring to become an embalmer intern shall
 4720 make application to the licensing authority ~~department~~ on forms
 4721 specified by rule ~~provided by the department~~, together with a

4722 nonrefundable fee determined by rule of the licensing authority
 4723 but not to exceed \$200 ~~\$100~~. The application shall indicate the
 4724 name and address of the licensed embalmer under whose
 4725 supervision the intern will receive training and the name of the
 4726 licensed funeral establishment or centralized embalming facility
 4727 where such training is to be conducted. The embalmer intern
 4728 shall intern under the direct supervision of a licensed embalmer
 4729 who has an active, valid license under s. 497.368 or s. 497.369.

4730 (2) An applicant for internship under this section shall
 4731 meet the requirements of s. 497.368(1)(b)-(e) ~~470.006(1)(b)-(e)~~
 4732 prior to being licensed ~~registered by the board~~ as an embalmer
 4733 intern.

4734 (3) There shall be adopted ~~The board shall adopt~~ rules
 4735 establishing an embalmer internship program and criteria for
 4736 embalmer intern training agencies and supervisors. Any funeral
 4737 establishment or centralized embalming facility where embalming
 4738 is conducted must apply to the licensing authority ~~board~~ for
 4739 approval as an embalmer intern training agency.

4740 (4) A funeral establishment or centralized embalming
 4741 facility designated as an embalmer intern training agency may
 4742 not exact a fee from any person obtaining intern training at
 4743 such funeral establishment or centralized embalming facility.

4744 Section 75. Section 470.0085, Florida Statutes, is
 4745 renumbered as section 497.371, Florida Statutes, and amended to
 4746 read:

4747 497.371 ~~470.0085~~ Embalmers; establishment of embalmer
 4748 apprentice program.--The licensing authority adopts ~~board may~~
 4749 ~~adopt~~ rules establishing an embalmer apprentice program. An

4750 embalmer apprentice may perform only those tasks, functions, and
 4751 duties relating to embalming which are performed under the
 4752 direct supervision of an a-licensed embalmer who has an active,
 4753 valid license under s. 497.368 or s. 497.369. An embalmer
 4754 apprentice shall be eligible to serve in an apprentice capacity
 4755 for a period not to exceed 3 years ~~1-year~~ as may be determined
 4756 by licensing authority ~~board~~ rule or for a period not to exceed
 4757 5 ~~3~~ years if the apprentice is enrolled in and attending a
 4758 course in mortuary science or funeral service education at any
 4759 mortuary college or funeral service education college or school.
 4760 An embalmer apprentice shall be licensed ~~registered with the~~
 4761 ~~board~~ upon payment of a licensure ~~registration~~ fee as determined
 4762 by licensing authority rule but not to exceed \$200 ~~\$50~~.

4763 Section 76. Section 470.0087, Florida Statutes, is
 4764 renumbered as section 497.372, Florida Statutes, and amended to
 4765 read:

4766 497.372 ~~470.0087~~ Funeral directing; conduct constituting
 4767 ~~Practice of~~ funeral directing.--

4768 (1) The practice of funeral directing shall be construed
 4769 to consist of the following functions, which may be performed
 4770 only by a licensed funeral director:

4771 (a) Selling or offering to sell funeral services on an at-
 4772 need basis.

4773 (b) Planning or arranging, on an at-need basis, the
 4774 details of a funeral service with the family or friends of the
 4775 decedent or any other person responsible for such service;
 4776 setting the time of the service; establishing the type of
 4777 service to be rendered; acquiring the services of the clergy;

4778 and obtaining vital information for the filing of death
4779 certificates and obtaining of burial transit permits.

4780 (c) Making, negotiating, or completing the financial
4781 arrangements for a funeral service on an at-need basis, provided
4782 that nonlicensed personnel may assist the funeral director in
4783 performing such tasks.

4784 (d) Directing, being in charge or apparent charge of, or
4785 supervising, directly or indirectly, a visitation or viewing.
4786 Such functions shall not require that a licensed funeral
4787 director be physically present throughout the visitation or
4788 viewing, provided that the funeral director is readily available
4789 by telephone for consultation.

4790 (e) Directing, being in charge or apparent charge of, or
4791 supervising, directly or indirectly, any funeral service held in
4792 a funeral establishment, cemetery, or elsewhere.

4793 (f) Directing, being in charge or apparent charge of, or
4794 supervising, directly or indirectly, any memorial service held
4795 prior to or within 72 hours of the burial or cremation, if such
4796 memorial service is sold or arranged by a licensee
4797 ~~certificateholder or registrant~~.

4798 (g) Using in connection with one's name or employment the
4799 words or terms "funeral director," "funeral establishment,"
4800 "undertaker," "mortician," or any other word, term, title, or
4801 picture, or combination of any of the above, that when
4802 considered in the context in which used would imply that such
4803 person is engaged in the practice of funeral directing or that
4804 such person is holding ~~himself or herself~~ or himself out to the
4805 public as being engaged in the practice of funeral directing;

4806 | provided, however, that nothing in this paragraph shall prevent
 4807 | using the name of any owner, officer, or corporate director of a
 4808 | funeral establishment, who is not a licensee, in connection with
 4809 | the name of the funeral establishment with which such individual
 4810 | is affiliated, so long as such individual's affiliation is
 4811 | properly specified.

4812 | (h) Managing or supervising the operation of a funeral
 4813 | establishment, except for administrative matters such as
 4814 | budgeting, accounting and personnel, maintenance of buildings,
 4815 | equipment and grounds, and routine clerical and recordkeeping
 4816 | functions.

4817 | (2) The practice of funeral directing shall not be
 4818 | construed to consist of the following functions:

4819 | (a) The phoning-in or faxing of obituary notices; ordering
 4820 | of flowers or merchandise; delivery of death certificates to
 4821 | attending physicians; or clerical preparation of death
 4822 | certificates, insurance forms, and any clerical tasks that
 4823 | record the information compiled by the funeral director or that
 4824 | are incidental to any of the functions specified above.

4825 | (b) Furnishing standard printed price lists and other
 4826 | disclosure information to the public by telephone or by
 4827 | providing such lists to persons making inquiry.

4828 | (c) Removing or transporting human remains from the place
 4829 | of death, or removing or transporting human remains from or to a
 4830 | funeral establishment, centralized embalming facility,
 4831 | refrigeration facility, cemetery, crematory, medical examiner's
 4832 | office, common carrier, or other locations as authorized and
 4833 | provided by law.

4834 (d) Arranging, coordinating, or employing licensed
 4835 ~~registered~~ removal services, licensed ~~registered~~ refrigeration
 4836 facilities, or licensed ~~registered~~ centralized embalming
 4837 facilities.

4838 (e) Any aspect of making preneed funeral arrangements or
 4839 entering into preneed contracts.

4840 (f) Any functions normally performed by cemetery or
 4841 crematory personnel.

4842 Section 77. Section 470.009, Florida Statutes, is
 4843 renumbered as section 497.373, Florida Statutes, and amended to
 4844 read:

4845 497.373 ~~470.009~~ Funeral directing; licensure as a funeral
 4846 director by examination; provisional license.--

4847 (1) Any person desiring to be licensed as a funeral
 4848 director shall apply to the licensing authority ~~department~~ to
 4849 take the licensure examination. The licensing authority
 4850 ~~department~~ shall examine each applicant who has remitted an
 4851 examination fee set by rule of the licensing authority ~~the board~~
 4852 not to exceed \$200 plus the actual per applicant cost to the
 4853 licensing authority ~~department~~ for portions of the examination
 4854 and who the licensing authority ~~board~~ certifies has:

4855 (a) Completed the application form and remitted a
 4856 nonrefundable application fee set by rule of the licensing
 4857 authority ~~the board~~ not to exceed \$200 ~~\$50~~.

4858 (b) Submitted proof satisfactory to the licensing
 4859 authority ~~board~~ that the applicant is at least 18 years of age
 4860 and is a recipient of a high school degree or equivalent.

4861 (c) Had no conviction or finding of guilt, regardless of
 4862 adjudication, for a crime which directly relates to the ability
 4863 to practice funeral directing or the practice of funeral
 4864 directing.

4865 (d)1. Received an associate in arts degree, associate in
 4866 science degree, or an associate in applied science degree in
 4867 mortuary science approved by the licensing authority ~~board~~; or

4868 2. Holds an associate degree or higher from a college or
 4869 university accredited by a regional association of colleges and
 4870 schools recognized by the United States Department of Education
 4871 and is a graduate of at least an approved a 1-year course in
 4872 mortuary science approved by the licensing authority ~~board~~.

4873 (e) Submitted proof of completion of a ~~board-approved~~
 4874 course on communicable diseases approved by the licensing
 4875 authority.

4876 (2) The licensing authority ~~department~~ shall license the
 4877 applicant as a funeral director if ~~he or she~~ or he:

4878 (a) Passes an examination on the subjects of the theory
 4879 and practice of funeral directing, public health and sanitation,
 4880 and local, state, and federal laws and rules relating to the
 4881 disposition of dead human bodies; however, there may be approved
 4882 by rule ~~the board by rule may adopt~~ the use of a national
 4883 examination, such as the funeral service arts examination
 4884 prepared by the Conference of Funeral Service Examining Boards,
 4885 in lieu of part of this examination requirement.

4886 (b) Completes a 1-year internship under a licensed funeral
 4887 director.

4888 (3) Any applicant who has completed the required 1-year
 4889 internship and has been approved for examination as a funeral
 4890 director may qualify for a provisional license to work in a
 4891 licensed funeral establishment, under the direct supervision of
 4892 a licensed funeral director for a limited period of 6 months as
 4893 provided by rule of the licensing authority ~~board~~. The fee for
 4894 provisional licensure shall be set by rule of the licensing
 4895 authority ~~the board~~ but may not exceed \$200 ~~\$125~~. The fee
 4896 required in this subsection shall be nonrefundable and in
 4897 addition to the fee required by subsection (1). This provisional
 4898 license may be renewed no more than one time.

4899 Section 78. Section 470.011, Florida Statutes, is
 4900 renumbered as section 497.374, Florida Statutes, and amended to
 4901 read:

4902 497.374 ~~470.011~~ Funeral directing; licensure as a funeral
 4903 director by endorsement; licensure ~~registration~~ of a temporary
 4904 funeral director.--

4905 (1) The licensing authority ~~department~~ shall issue a
 4906 license by endorsement to practice funeral directing to an
 4907 applicant who has remitted a fee set by rule of the licensing
 4908 authority ~~the board~~ not to exceed \$200 and who ~~the board~~
 4909 certifies:

4910 (a) Has completed the application form and remitted a
 4911 nonrefundable application fee set by rule of the licensing
 4912 authority ~~the board~~ not to exceed \$200 ~~\$50~~.

4913 (b)1. Holds a valid license to practice funeral directing
 4914 in another state of the United States, provided that, when the
 4915 applicant secured ~~his or~~ her or his original license, the

4916 requirements for licensure were substantially equivalent to or
4917 more stringent than those existing in this state; or

4918 2. Meets the qualifications for licensure in s. 497.373
4919 ~~470.009~~ and has, within 10 years prior to the date of
4920 application, successfully completed a state, regional, or
4921 national examination in mortuary science, which, as determined
4922 by rule of the licensing authority ~~board~~, is substantially
4923 equivalent to or more stringent than the examination given by
4924 the licensing authority ~~department~~.

4925 (c) Has submitted proof of completion of a licensing
4926 authority approved ~~board-approved~~ course on communicable
4927 diseases.

4928 (2) The licensing authority ~~department~~ shall not issue a
4929 license by endorsement or a temporary license ~~registration~~ to
4930 any applicant who is under investigation or prosecution in any
4931 jurisdiction for acts which would constitute a violation of this
4932 chapter until such time as the investigation or prosecution is
4933 complete.

4934 (3) State, regional, or national examinations and
4935 requirements for licensure in another state shall be presumed to
4936 be substantially equivalent to or more stringent than the
4937 examination and requirements in this state unless found
4938 otherwise by rule of the licensing authority ~~board~~.

4939 (4) Each applicant for licensure by endorsement must pass
4940 the examination on local, state, and federal laws and rules
4941 relating to the disposition of dead human bodies which is
4942 required under s. 497.373 ~~470.009~~ and which shall be given by
4943 the licensing authority ~~department~~.

4944 (5) There may be adopted ~~The board may adopt~~ rules
 4945 authorizing an applicant who has met the requirements of
 4946 paragraphs (1)(b) and (c) and who is awaiting an opportunity to
 4947 take the examination required by subsection (4) to obtain a
 4948 license ~~register~~ as a temporary funeral director. A licensed
 4949 ~~registered~~ temporary funeral director may work as a funeral
 4950 director in a licensed funeral establishment under the general
 4951 supervision of a ~~licensed~~ funeral director licensed under
 4952 subsection (1) or s. 497.373. Such license ~~registration~~ shall
 4953 expire 60 days after the date of the next available examination
 4954 required under subsection (4); however, the temporary license
 4955 ~~registration~~ may be renewed one time under the same conditions
 4956 as initial issuance. The fee for initial issuance or renewal of
 4957 a temporary license under this subsection ~~registration or~~
 4958 ~~renewal of registration as a temporary funeral director~~ shall be
 4959 set by rule of the licensing authority ~~the board~~ but may not
 4960 exceed \$200 ~~\$125~~. The fee required in this subsection shall be
 4961 nonrefundable and in addition to the fee required in subsection
 4962 (1).

4963 Section 79. Section 470.012, Florida Statutes, is
 4964 renumbered as section 497.375, Florida Statutes, and amended to
 4965 read:

4966 497.375 ~~470.012~~ Funeral directing; licensure ~~Registration~~
 4967 of a funeral director intern.--

4968 (1) Any person desiring to become a funeral director
 4969 intern shall make application ~~to the department~~ on forms as
 4970 required by rule ~~provided by the department~~, together with a
 4971 nonrefundable fee as determined by rule of the licensing

HB 323 CS

2004
CS

4972 authority but not to exceed \$200 ~~\$100~~. The application shall
 4973 indicate the name and address of the licensed funeral director
 4974 licensed under s. 497.373 or s. 497.374(1) under whose
 4975 supervision the intern will receive training and the name of the
 4976 licensed funeral establishment where such training is to be
 4977 conducted. The funeral director intern shall intern under the
 4978 direct supervision of a licensed funeral director who has an
 4979 active, valid license under s. 497.373 or s. 497.374(1).

4980 (2) Rules shall be adopted ~~The board shall adopt rules~~
 4981 establishing a funeral director internship program and criteria
 4982 for funeral director intern training agencies and supervisors.
 4983 Any funeral establishment where funeral directing is conducted
 4984 may apply to the licensing authority ~~board~~ for approval as a
 4985 funeral director intern training agency.

4986 (3) A funeral establishment designated as a funeral
 4987 director intern training agency may not exact a fee from any
 4988 person obtaining intern training at such funeral establishment.

4989 Section 80. Section 470.013, Florida Statutes, is
 4990 renumbered as section 497.376, Florida Statutes, and amended to
 4991 read:

4992 497.376 ~~470.013~~ License as funeral director and embalmer
 4993 permitted; display of license.--

4994 (1) Nothing in this chapter may be construed to prohibit a
 4995 person from holding a license as an embalmer and a license as a
 4996 funeral director at the same time.

4997 (2) There shall be adopted ~~The board shall adopt~~ rules
 4998 which require each license issued under this chapter to be
 4999 displayed in such a manner as to make it visible to the public

HB 323 CS

2004
CS

5000 and to facilitate inspection by the licensing authority
 5001 ~~department~~. However, each licensee shall permanently affix a
 5002 recent photograph of the licensee to each displayed license
 5003 issued to that licensee as a funeral director or embalmer.

5004 Section 81. Section 470.014, Florida Statutes, is
 5005 renumbered as section 497.377, Florida Statutes, and amended to
 5006 read:

5007 497.377 ~~470.014~~ Concurrent internships.--The internship
 5008 requirement for embalmers and funeral directors may be served
 5009 concurrently pursuant to rules adopted by the licensing
 5010 authority ~~board~~.

5011 Section 82. Section 470.015, Florida Statutes, is
 5012 renumbered as section 497.378, Florida Statutes, and amended to
 5013 read:

5014 497.378 ~~470.015~~ Renewal of funeral director and embalmer
 5015 licenses.--

5016 (1) There shall be renewed ~~The department shall renew~~ a
 5017 funeral director or embalmer license upon receipt of the renewal
 5018 application and fee set by the licensing authority ~~board~~ not to
 5019 exceed \$250. The licensing authority ~~board~~ may prescribe by rule
 5020 continuing education requirements of up to 12 classroom hours
 5021 and may by rule establish criteria for accepting alternative
 5022 nonclassroom continuing education on an hour-for-hour basis, in
 5023 addition to a licensing authority-approved ~~board-approved~~ course
 5024 on communicable diseases that includes the course on human
 5025 immunodeficiency virus and acquired immune deficiency syndrome
 5026 required by s. 497.367 ~~455.2226~~, for the renewal of a funeral
 5027 director or embalmer license. The rule ~~board~~ may provide for the

HB 323 CS

2004
CS

5028 | waiver of continuing education requirements in circumstances
 5029 | that would justify the waiver, such as hardship, disability, or
 5030 | illness. The continuing education requirement is not required
 5031 | after July 1, 1996, for a licensee who is over the age of 75
 5032 | years if the licensee does not qualify as the sole person in
 5033 | charge of an establishment or facility.

5034 | (2) The licensing authority ~~department~~ shall adopt rules
 5035 | establishing a procedure for the biennial renewal of licenses.

5036 | (3) The licensing authority ~~board~~ shall adopt rules to
 5037 | establish requirements for the advertising of continuing
 5038 | education courses.

5039 | Section 83. Section 470.016, Florida Statutes, is
 5040 | renumbered as section 497.379, Florida Statutes, and amended to
 5041 | read:

5042 | 497.379 ~~470.016~~ Inactive status.--

5043 | (1) A funeral director or embalmer license that has become
 5044 | inactive may be reactivated under s. 497.378 ~~470.015~~ upon
 5045 | application to the licensing authority ~~department~~. The licensing
 5046 | authority ~~board~~ shall prescribe by rule continuing education
 5047 | requirements as a condition of reactivating a license. The
 5048 | continuing education requirements for reactivating a license may
 5049 | not exceed 12 classroom hours, and the licensing authority ~~board~~
 5050 | may by rule establish criteria for accepting alternative
 5051 | nonclassroom continuing education on an hour-for-hour basis, in
 5052 | addition to a licensing authority-approved ~~board-approved~~ course
 5053 | on communicable diseases, for each year the license was
 5054 | inactive.

HB 323 CS

2004
CS

5055 (2) The licensing authority ~~board~~ shall prescribe by rule
5056 an application fee for inactive status, a renewal fee for
5057 inactive status, a delinquency fee, and a fee for reactivation
5058 of a license. None of these fees may exceed the biennial renewal
5059 fee established by the licensing authority ~~board~~ for an active
5060 license.

5061 (3) The licensing authority ~~department~~ may not reactivate
5062 a license unless the inactive or delinquent licensee has paid
5063 any applicable biennial renewal or delinquency fee, or both, and
5064 a reactivation fee.

5065 Section 84. Section 470.024, Florida Statutes, is
5066 renumbered as section 497.380, Florida Statutes, and amended to
5067 read:

5068 497.380 ~~470.024~~ Funeral establishment; licensure.--

5069 (1) A funeral establishment shall be a place at a specific
5070 street address or location consisting of at least 1,250
5071 contiguous interior square feet and must maintain or make
5072 arrangements for either ~~suitable~~ capacity for the refrigeration
5073 and storage of dead human bodies handled and stored by the
5074 establishment and ~~or~~ a preparation room equipped with necessary
5075 ventilation and drainage and containing necessary instruments
5076 for embalming dead human bodies or must make arrangements for a
5077 preparation room as established by rule.

5078 (2) Each licensed funeral establishment may operate a
5079 visitation chapel at a separate location within the county in
5080 which the funeral establishment is located. A visitation chapel
5081 must be a facility of not less than 500 square feet and not more
5082 than 700 square feet and may be operated only when a licensed

5083 funeral director is present at the facility. A visitation chapel
 5084 may be used only for visitation of a deceased human body and may
 5085 not be used for any other activity permitted by this chapter.

5086 (3) No person may conduct, maintain, manage, or operate a
 5087 funeral establishment unless a funeral ~~an~~ establishment
 5088 operating license has been issued under this chapter ~~by the~~
 5089 ~~department~~ for that funeral establishment.

5090 (4) Application for a funeral establishment license shall
 5091 be made on forms and pursuant to procedures specified by rule
 5092 ~~furnished by the department~~, shall be accompanied by a
 5093 nonrefundable fee not to exceed \$300 as set by licensing
 5094 authority ~~board~~ rule, and shall include the name of the licensed
 5095 funeral director who is in charge of that establishment.

5096 (5) A funeral establishment license shall be renewable
 5097 biennially pursuant to procedures, and upon payment of a
 5098 nonrefundable fee not to exceed \$300, as set by licensing
 5099 authority ~~board~~ rule. The licensing authority ~~board~~ may also
 5100 establish by rule a delinquency fee not to exceed \$50 per day.

5101 (6) The practice of embalming done at a funeral
 5102 establishment shall only be practiced by an embalmer licensed
 5103 under this chapter.

5104 (7) Each licensed funeral establishment shall have one
 5105 full-time funeral director in charge and shall have a licensed
 5106 funeral director reasonably available to the public during
 5107 normal business hours for that establishment. The full-time
 5108 funeral director in charge must have an active license and may
 5109 not be the full-time funeral director in charge of any other

HB 323 CS

2004
CS

5110 funeral establishment or of any other direct disposal
5111 establishment.

5112 (8) The issuance of a license to operate a funeral
5113 establishment to a person or entity who is not individually
5114 licensed as a funeral director does not entitle the person to
5115 practice funeral directing.

5116 (9) Each funeral establishment located at a specific
5117 address shall be deemed to be a separate entity and shall
5118 require separate licensing and compliance with the requirements
5119 of this chapter. A funeral establishment may not be operated at
5120 the same location as any other funeral establishment or direct
5121 disposal establishment unless such establishments were licensed
5122 as colocated establishments on October 1, 1993.

5123 (10) Every funeral establishment licensed under this
5124 chapter shall at all times be subject to the inspection of all
5125 its buildings, grounds, and vehicles used in the conduct of its
5126 business, by the department or any of its designated
5127 representatives or agents, or local or Department of Health
5128 inspectors. The licensing authority ~~board~~ shall by rule
5129 establish requirements for inspection of funeral establishments.

5130 (11) The licensing authority ~~board~~ shall set by rule an
5131 annual inspection fee not to exceed \$300 ~~\$100~~, payable upon
5132 application for licensure and upon each renewal of such license.

5133 (12) A change in ownership of a funeral establishment
5134 shall be promptly reported pursuant to procedures established by
5135 rule ~~to the department~~ and shall require the relicensure of the
5136 funeral establishment, including reinspection and payment of
5137 applicable fees.

5138 (13) Each application for a funeral establishment license
 5139 shall identify every person with the ability to direct the
 5140 management or policies of the establishment and must identify
 5141 every person having more than a 10-percent ownership interest in
 5142 the establishment or the business or corporation which owns the
 5143 establishment. The licensing authority ~~board~~ may deny, suspend,
 5144 or revoke the license if any person identified in the
 5145 application has been or thereafter is ~~ever been~~ disciplined by a
 5146 regulatory agency in any jurisdiction for any offense that would
 5147 constitute a violation of this chapter. The licensing authority
 5148 ~~board~~ may deny, suspend, or revoke the license if any person
 5149 identified in the application has ever been convicted or found
 5150 guilty of, or entered a plea of nolo contendere to, regardless
 5151 of adjudication, a crime in any jurisdiction that directly
 5152 relates to the ability to operate a funeral establishment.

5153 (14) Each funeral establishment must display at the public
 5154 entrance the name of the establishment and the name of the full-
 5155 time funeral director in charge. A funeral establishment must
 5156 transact its business under the name by which it is licensed.

5157 Section 85. Section 470.026, Florida Statutes, is
 5158 renumbered as section 497.381, Florida Statutes, and amended to
 5159 read:

5160 497.381 ~~470.026~~ Solicitation of goods or services.--

5161 (1) The licensing authority ~~board~~ shall adopt rules
 5162 regulating the solicitation of goods or services by licensees ~~or~~
 5163 ~~registrants~~.

5164 (2) The licensing authority ~~board~~ shall regulate such
 5165 solicitation to protect the public from solicitation which is

HB 323 CS

2004
CS

5166 | intimidating, overreaching, ~~vexatious~~, fraudulent, or
 5167 | misleading; which utilizes undue influence; or which takes undue
 5168 | advantage of a person's ignorance or emotional vulnerability.

5169 | (3) The licensing authority board shall regulate such
 5170 | solicitation which comprises an uninvited invasion of personal
 5171 | privacy. It is the express finding of the Legislature that the
 5172 | public has a high expectation of privacy in one's personal
 5173 | residence, and the licensing authority board by rule may
 5174 | restrict the hours or otherwise regulate such solicitation in
 5175 | the personal residence of a person unless the solicitation has
 5176 | been previously and expressly requested by the person solicited.

5177 | (4) Nothing in this chapter may be construed to restrict
 5178 | the right of a person to lawfully advertise, direct mail, or
 5179 | otherwise communicate in a manner not within the definition of
 5180 | solicitation or to solicit the business of anyone responding to
 5181 | such communication or otherwise initiating discussion of the
 5182 | goods or services being offered.

5183 | (5) At-need solicitation of funeral merchandise or
 5184 | services is prohibited. No funeral director or direct disposer
 5185 | or her or his agent or representative may contact the family or
 5186 | next of kin of a deceased person to sell services or merchandise
 5187 | unless the funeral director or direct disposer or her or his
 5188 | agent or representative has been initially called or contacted
 5189 | by the family or next of kin of such person and requested to
 5190 | provide her or his services or merchandise.

5191 | Section 86. Section 470.029, Florida Statutes, is
 5192 | renumbered as section 497.382, Florida Statutes, and amended to
 5193 | read:

HB 323 CS

2004
CS

5194 497.382 ~~470.029~~ Reports of cases embalmed and bodies
5195 handled.--

5196 (1) Each funeral establishment, direct disposal
5197 establishment, cinerator facility, and centralized embalming
5198 facility shall report on a form prescribed and furnished by the
5199 licensing authority ~~department~~ the name of the deceased and such
5200 other information as may be required with respect to each dead
5201 human body embalmed or otherwise handled by the establishment or
5202 facility. Such forms shall be signed by the embalmer who
5203 performs the embalming, if the body is embalmed, and the funeral
5204 director in charge of the establishment or facility or by the
5205 direct disposer who disposes of the body. The licensing
5206 authority ~~board~~ shall prescribe by rule the procedures in
5207 submitting such documentation. Reports required by this
5208 subsection shall be filed by the 20th ~~10th~~ day of each month for
5209 final dispositions handled the preceding month.

5210 (2) Funeral directors performing disinterments shall
5211 report, using a form and procedures specified by rule ~~on a form~~
5212 ~~prescribed and furnished by the department~~, the name of the
5213 deceased and such other information as may be required by rule
5214 with respect to each dead human body disinterred.

5215 Section 87. Section 470.0294, Florida Statutes, is
5216 renumbered as section 497.383, Florida Statutes, and amended to
5217 read:

5218 497.383 ~~470.0294~~ Additional rights of legally authorized
5219 persons.--

5220 (1) In addition to any other common law or statutory
5221 rights a legally authorized person may otherwise have, that

5222 person may authorize a funeral director or direct disposer
 5223 licensed under this chapter to lawfully dispose of fetal remains
 5224 in circumstances when a fetal death certificate is not issued
 5225 under chapter 382. A person licensed under this chapter or
 5226 former chapter 470 is not liable for damages as a result of
 5227 following the instructions of the legally authorized person in
 5228 connection with the final disposition of fetal remains in
 5229 circumstances in which a fetal death certificate is not issued
 5230 under chapter 382 or in connection with the final disposition of
 5231 a dead human body.

5232 (2) Any ambiguity or dispute concerning the right of any
 5233 legally authorized person to provide authorization under this
 5234 chapter or the validity of any documentation purporting to grant
 5235 that authorization shall be resolved by a court of competent
 5236 jurisdiction.

5237 Section 88. Section 470.0295, Florida Statutes, is
 5238 renumbered as section 497.384, Florida Statutes, and amended to
 5239 read:

5240 497.384 ~~470.0295~~ Disinterment; transportation;
 5241 authorization and notification.--

5242 (1) The disinterment and reinterment of human remains
 5243 shall require the physical presence of a licensed funeral
 5244 director, unless the reinterment is to be made in the same
 5245 cemetery.

5246 (2) In order to ensure that any disinterment or
 5247 transportation of a dead human body is conducted in a manner
 5248 that properly protects the public health, safety, and welfare,

HB 323 CS

2004
CS

5249 the licensing authority ~~board~~ may adopt rules to regulate the
5250 disinterment and transportation of human remains.

5251 (3) The funeral director shall obtain written
5252 authorization from a legally authorized person or a court of
5253 competent jurisdiction prior to the disinterment and reinterment
5254 of a dead human body.

5255 (4) Notification must be provided licensing authority ~~to~~
5256 ~~the board and department~~ as provided in s. 497.382 ~~470.029~~.

5257 (5) The removal of human remains from a designated
5258 temporary storage area to a place of permanent burial within a
5259 cemetery shall not be considered a disinterment or reinterment.

5260 Section 89. Section 470.0301, Florida Statutes, is
5261 renumbered as section 497.385, Florida Statutes, and amended to
5262 read:

5263 497.385 ~~470.0301~~ Removal services; refrigeration
5264 facilities; centralized embalming facilities.--In order to
5265 ensure that the removal, refrigeration, and embalming of all
5266 dead human bodies is conducted in a manner that properly
5267 protects the public's health and safety, the licensing authority
5268 ~~board~~ shall adopt rules to provide for the licensure
5269 ~~registration~~ of removal services, refrigeration facilities, and
5270 centralized embalming facilities operated independently of
5271 funeral establishments, direct disposal establishments, and
5272 cinerator facilities.

5273 (1) REMOVAL SERVICES AND REFRIGERATION SERVICES.--

5274 (a) Application for licensure ~~registration~~ of a removal
5275 service or a refrigeration service shall be made using forms and
5276 procedures as specified by rule ~~on forms furnished by the~~

HB 323 CS

2004
CS

5277 ~~department~~, shall be accompanied by a nonrefundable fee not to
 5278 exceed \$300 as set by licensing authority board rule, and shall
 5279 include the name of the business owner, manager in charge,
 5280 business address, and copies of occupational and other local
 5281 permits.

5282 (b) The licensing authority board shall set by rule
 5283 requirements for licensure registration of removal services and
 5284 refrigeration services.

5285 (c) The licensure Registration shall be renewed biennially
 5286 pursuant to procedures and upon payment of a nonrefundable fee
 5287 not to exceed \$300 as set by licensing authority board rule. The
 5288 licensing authority board may also establish by rule a late
 5289 renewal penalty fee not to exceed \$50 per day. Any licensure
 5290 registration not renewed within 30 days after its renewal date
 5291 shall expire without further action ~~by the department~~.

5292 (d) Each business located at a specific address shall be
 5293 deemed to be a separate entity and shall require separate
 5294 licensure registration and compliance with the requirements of
 5295 this chapter.

5296 (e) Every licensee registrant under this section shall at
 5297 all times be subject to the inspection of all its buildings,
 5298 grounds, and vehicles used in the conduct of its business, by
 5299 the department or any of its designated representatives or
 5300 agents, or local or Department of Health inspectors. The
 5301 licensing authority board shall by rule establish requirements
 5302 for inspection of removal services and refrigeration services.

5303 (f) The licensing authority board shall set by rule an
 5304 annual inspection fee not to exceed \$300 ~~\$100~~, payable upon

5305 application for licensure ~~registration~~ and upon each renewal of
5306 such licensure ~~registration~~.

5307 (g) A change in ownership shall be promptly reported using
5308 forms and procedures specified by rule ~~to the department~~ and may
5309 require the relicensure of the licensee ~~registrant~~, including
5310 reinspection and payment of applicable fees, as required by
5311 rule.

5312 (h) The licensing authority ~~board~~ may deny, suspend, or
5313 revoke the licensure ~~registration~~ if any person identified in
5314 the application has ever been disciplined by a regulatory agency
5315 in any jurisdiction for any offense that would constitute a
5316 violation of this chapter. The licensing authority ~~board~~ may
5317 deny, suspend, or revoke the license of ~~registration~~ if any
5318 person identified in the application who has been convicted or
5319 found guilty of, or entered a plea of nolo contendere to,
5320 regardless of adjudication, a crime in any jurisdiction that
5321 directly relates to the ability to operate a removal service or
5322 refrigeration service.

5323 (i) Each business must display at the public entrance the
5324 name of the establishment and the name of the full-time manager
5325 in charge. Each licensee ~~registrant~~ must transact its business
5326 under the name by which it is licensed ~~registered~~ with the
5327 licensing authority ~~department~~.

5328 (j) No person may conduct, maintain, manage, or operate a
5329 removal service or refrigeration service unless licensed
5330 ~~registration~~ for such service under this chapter ~~has been issued~~
5331 ~~by the department~~.

5332 (k) Such removal services and refrigeration services may
5333 not enter into removal or refrigeration contracts with the
5334 general public.

5335 (2) CENTRALIZED EMBALMING FACILITIES.--In order to ensure
5336 that all funeral establishments have access to embalming
5337 facilities that comply with all applicable health and safety
5338 requirements, the licensing authority board shall adopt rules to
5339 provide for the licensure registration and operation of
5340 centralized embalming facilities and shall require, at a
5341 minimum, the following:

5342 (a) All centralized embalming facilities shall contain all
5343 of the equipment and meet all of the requirements that a
5344 preparation room located in a funeral establishment is required
5345 to meet, but such facilities shall not be required to comply
5346 with any of the other requirements for funeral establishments,
5347 as set forth in s. 497.380 ~~470.024~~.

5348 (b) Each licensed centralized embalming facility shall
5349 have at least one full-time embalmer in charge. The full-time
5350 embalmer in charge must have an active license and may not be
5351 the full-time embalmer in charge, full-time funeral director in
5352 charge, or full-time direct disposer in charge of any other
5353 establishment licensed under this chapter.

5354 (c) Any person, regardless of whether such person is
5355 otherwise regulated by this chapter, may own such a facility,
5356 provided that such facility is operated in accordance with the
5357 rules established by the licensing authority board.

5358 (d) A centralized embalming facility may only provide
5359 services to funeral establishments.

5360 (e) The practice of embalming done at a centralized
 5361 embalming facility shall only be practiced by an embalmer
 5362 licensed under this chapter and shall be provided only to
 5363 licensed funeral establishments.

5364 (f) Application for licensure ~~registration~~ of a
 5365 centralized embalming facility shall be made utilizing forms and
 5366 procedures prescribed by rule ~~on forms furnished by the~~
 5367 ~~department~~ and shall be accompanied by a nonrefundable fee not
 5368 to exceed \$300 as set by licensing authority ~~board~~ rule, and
 5369 licensure ~~registration~~ shall be renewed biennially pursuant to
 5370 procedures and upon payment of a nonrefundable fee not to exceed
 5371 \$300 as set by licensing authority ~~board~~ rule. The licensing
 5372 authority ~~board~~ may also establish by rule a late fee not to
 5373 exceed \$50 per day. Any licensure ~~registration~~ not renewed
 5374 within 30 days after the renewal date shall expire without
 5375 further action by the department.

5376 (g) The licensing authority ~~board~~ shall set by rule an
 5377 annual inspection fee not to exceed \$300 ~~\$100~~, payable upon
 5378 application for licensure ~~registration~~ and upon renewal of such
 5379 licensure ~~registration~~.

5380 (h) The licensing authority ~~board~~ shall, by rule,
 5381 establish operating procedures which shall require, at a
 5382 minimum, that centralized embalming facilities maintain a system
 5383 of identification of human remains received for embalming.

5384 Section 90. Section 470.0315, Florida Statutes, is
 5385 renumbered as section 497.386, Florida Statutes, and amended to
 5386 read:

5387 497.386 ~~470.0315~~ Storage, preservation, and transportation
5388 of human remains.--

5389 (1) A person may not store or maintain human remains at
5390 any establishment or facility except an establishment or
5391 facility licensed ~~or registered~~ under this chapter or a health
5392 care facility, medical examiner's facility, morgue, or cemetery
5393 holding facility.

5394 (2) A dead human body may not be held in any place or in
5395 transit over 24 hours after death or pending final disposition
5396 unless the body is maintained under refrigeration at a
5397 temperature of 40 degrees Fahrenheit or below or is embalmed or
5398 otherwise preserved in a manner approved by the licensing
5399 authority ~~board~~ in accordance with the provisions of this
5400 chapter.

5401 (3) A dead human body transported by common carrier or any
5402 agency or individual authorized to carry dead human bodies must
5403 be placed in a carrying container adequate to prevent the
5404 seepage of fluids and escape of offensive odors. A dead human
5405 body may be transported only when accompanied by a properly
5406 completed burial-transit permit issued in accordance with the
5407 provisions of chapter 382.

5408 (4) The licensing authority ~~board~~ shall establish by rule
5409 the minimal standards of acceptable and prevailing practices for
5410 the handling and storing of dead human bodies, provided that all
5411 human remains transported or stored must be completely covered
5412 and at all times treated with dignity and respect.

5413 (5) A person who violates any provision of this section
5414 commits a misdemeanor of the first degree, punishable as
5415 provided in s. 775.082 or s. 775.083.

5416 Section 91. Section 470.032, Florida Statutes, is
5417 renumbered as section 497.387, Florida Statutes, and amended to
5418 read:

5419 497.387 ~~470.032~~ Unlawful to remove or embalm body without
5420 consent of proper official when crime is suspected.--It is
5421 unlawful for a licensee under this chapter ~~or registrant~~ to
5422 remove or embalm a dead human body when she or he has
5423 information indicating crime or violence of any sort in
5424 connection with the cause of death until permission of the
5425 medical examiner or other lawfully authorized official has first
5426 been obtained.

5427 Section 92. Section 470.0355, Florida Statutes, is
5428 renumbered as section 497.388, Florida Statutes, and amended to
5429 read:

5430 497.388 ~~470.0355~~ Identification of human remains.--

5431 (1) PRIOR TO FINAL DISPOSITION.--

5432 (a) The licensee ~~or registrant~~ in charge of the final
5433 disposition of dead human remains shall, prior to final
5434 disposition of such dead human remains, affix on the ankle or
5435 wrist of the deceased, and ~~or~~ in the casket or alternative
5436 container or cremation container, proper identification of the
5437 dead human remains. The identification or tag shall be encased
5438 in or consist of durable and long-lasting material containing
5439 the name, date of birth, and date of death, ~~and social security~~
5440 ~~number~~ of the deceased, if available. If the dead human remains

5441 are cremated, proper identification shall be placed in the
5442 container or urn containing the remains.

5443 (b)(2) Any licensee ~~or registrant~~ responsible for removal
5444 of dead human remains to any establishment, facility, or
5445 location shall ensure that the remains are identified by a tag
5446 or other means of identification that is affixed to the ankle or
5447 wrist of the deceased at the time the remains are removed from
5448 the place of death or other location.

5449 (c)(3) Any licensee ~~or registrant~~ may rely on the
5450 representation of a legally authorized person to establish the
5451 identity of dead human remains.

5452 (2) IN UNLICENSED CEMETERIES.--The identification of human
5453 remains interred in an unlicensed cemetery shall be the
5454 responsibility of the licensed funeral establishment in charge
5455 of the funeral arrangements for the deceased person. The
5456 licensed funeral establishment in charge of the funeral
5457 arrangements for the interment in an unlicensed cemetery of
5458 human remains shall place on the outer burial container,
5459 cremation interment container, or other container or on the
5460 inside of a crypt or niche a tag or permanent identifying mark
5461 containing the name of the decedent and the date of death, if
5462 available. The materials and locations of the tag or mark shall
5463 be more specifically described by rule of the licensing
5464 authority.

5465 (3) IN LICENSED CEMETERIES.--Human remains at licensed
5466 cemeteries shall be identified as follows:

5467 (a) Each licensed cemetery shall place on the outer burial
5468 container, cremation interment container, or other container or

5469 | on the inside of a crypt or niche a tag or permanent identifying
 5470 | marker containing the name of the decedent and the date of
 5471 | death, if available. The materials and the location of the tag
 5472 | or marker shall be more specifically described by rule of the
 5473 | board.

5474 | (b) Each licensed cemetery may rely entirely on the
 5475 | identity stated on the burial transit permit or on the
 5476 | identification supplied by a person licensed under this chapter
 5477 | to establish the identity of the dead human remains delivered by
 5478 | such person for burial and shall not be liable for any
 5479 | differences between the identity shown on the burial transit
 5480 | permit or identification and the actual identity of the dead
 5481 | human remains delivered by such person and buried in the
 5482 | cemetery.

5483 | (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal
 5484 | establishments shall establish a system of identification of
 5485 | human remains received which shall be designed to track the
 5486 | identity of the remains from the time of receipt until delivery
 5487 | of the remains to the authorized persons. This is in addition to
 5488 | the requirements for identification of human remains set forth
 5489 | in subsection (1). A copy of the identification procedures shall
 5490 | be available, upon request, to the department and legally
 5491 | authorized persons.

5492 | Section 93. Section 470.0375, Florida Statutes, is
 5493 | renumbered as section 497.389, Florida Statutes, and amended to
 5494 | read:

5495 | 497.389 ~~470.0375~~ Funeral establishments; cash advance
 5496 | accounts; escrow refund accounts.--

5497 (1) Funeral establishments may elect to maintain special,
 5498 segregated bank accounts to be used in conjunction with making
 5499 cash advances to vendors. The money in such accounts may be used
 5500 by the funeral establishments to pay third-party vendors when
 5501 such amounts must be paid before the funeral establishment has
 5502 been paid by the purchaser.

5503 (2) Funeral establishments may elect to maintain special,
 5504 segregated escrow accounts to be used in conjunction with making
 5505 cash refunds to their purchasers. A funeral establishment may
 5506 deposit in such accounts any amounts paid by its purchasers that
 5507 were in excess of the actual funeral costs incurred and cash
 5508 advances made by the funeral establishment.

5509 Section 94. Section 470.038, Florida Statutes, is
 5510 renumbered as section 497.390, Florida Statutes, and amended to
 5511 read:

5512 497.390 ~~470.038~~ Reciprocity.--In order to ensure that
 5513 funeral directors, embalmers, and direct disposers who are
 5514 licensed ~~or registered~~ in this state may be considered for
 5515 licensure or registration in other jurisdictions, the licensing
 5516 authority board may enter into reciprocity agreements with other
 5517 jurisdictions.

5518 Section 95. Section 470.039, Florida Statutes, is
 5519 renumbered as section 497.391, Florida Statutes, and amended to
 5520 read:

5521 497.391 ~~470.039~~ Exceptions.--

5522 (1) Nothing in this chapter may be construed to limit the
 5523 sale of caskets, alternative containers, outer burial

5524 containers, or funeral merchandise by any person on an at-need
5525 basis.

5526 (2) Nothing in this chapter may be construed to override
5527 the written instructions or wishes of the deceased as to how ~~his~~
5528 ~~or~~ her or his body is to be disposed of, if such instructions
5529 are reasonably available at the time of death.

5530 Section 96. Section 470.0395, Florida Statutes, is
5531 renumbered as section 497.392, Florida Statutes, and amended to
5532 read:

5533 497.392 ~~470.0395~~ Branch chapels.--Notwithstanding the
5534 provisions of s. 497.380 ~~470.024~~, any licensed establishment
5535 operating a branch chapel on June 30, 1979, in accordance with
5536 the law then in effect, as determined by the licensing authority
5537 ~~board~~, may continue to operate such branch chapel for the sole
5538 and exclusive purpose of providing and holding funeral services.

5539 Section 97. Part IV of chapter 497, Florida Statutes,
5540 consisting of sections 497.450, 497.451, 497.452, 497.453,
5541 497.454, 497.455, 497.456, 497.457, 497.458, 497.459, 497.460,
5542 497.461, 497.462, 497.463, 497.464, 497.465, 497.466, and
5543 497.467, is created to read:

5544 PART IV

5545 PRENEED SALES

5546 Section 98. Section 497.401, Florida Statutes, is
5547 renumbered as section 497.450, Florida Statutes, to read:

5548 497.450 ~~497.401~~ Preneed sales; chapter exclusive;
5549 applicability of other laws.--Except as provided in this
5550 chapter, preneed funeral merchandise or service contract
5551 businesses and preneed burial merchandise or service contract

5552 | businesses shall be governed by this chapter and shall be exempt
5553 | from all provisions of the Florida Insurance Code.

5554 | Section 99. Section 497.403, Florida Statutes, is
5555 | renumbered as section 497.451, Florida Statutes, to read:

5556 | 497.451 ~~497.403~~ Insurance business not
5557 | authorized.--Nothing in the Florida Insurance Code or this
5558 | chapter shall be deemed to authorize any preneed funeral
5559 | merchandise or service contract business or any preneed burial
5560 | merchandise or service business to transact any insurance
5561 | business, other than that of preneed funeral merchandise or
5562 | service insurance or preneed burial merchandise or service
5563 | insurance, or otherwise to engage in any other type of insurance
5564 | unless it is authorized under a certificate of authority issued
5565 | under the provisions of the Florida Insurance Code. Any
5566 | insurance business transacted under this section must comply
5567 | with the provisions of s. 626.785.

5568 | Section 100. Section 497.405, Florida Statutes, is
5569 | renumbered as section 497.452, Florida Statutes, and amended to
5570 | read:

5571 | 497.452 ~~497.405~~ Preneed license ~~Certificate of authority~~
5572 | required.--

5573 | (1)(a) No person, including any cemetery exempt under s.
5574 | 497.260 ~~497.003~~, may sell, advertise to sell, or make an
5575 | arrangement for a preneed contract without first having a valid
5576 | preneed license ~~certificate of authority~~.

5577 | (b) No person, including any cemetery exempt under s.
5578 | 497.260 ~~497.003~~, may sell, advertise to sell, or make an
5579 | arrangement for services, merchandise, or burial rights on a

5580 | preneed basis unless such person is authorized pursuant to this
 5581 | chapter to provide such services, merchandise, or burial rights
 5582 | on an at-need basis.

5583 | (2)(a) No person may receive any funds for payment on a
 5584 | preneed contract who does not hold a valid preneed license
 5585 | ~~certificate of authority~~.

5586 | (b) The provisions of paragraph (a) do not apply to a
 5587 | trust company operating pursuant to chapter 660, to a national
 5588 | or state bank holding trust powers, or to a federal or state
 5589 | savings and loan association having trust powers which company,
 5590 | bank, or association receives any money in trust pursuant to the
 5591 | sale of a preneed contract.

5592 | (c) The provisions of paragraph (a) do not apply to any
 5593 | Florida corporation existing under chapter 607 acting as a
 5594 | servicing agent hereunder in which the stock of such corporation
 5595 | is held by 100 or more persons licensed pursuant to part III of
 5596 | this chapter 470, provided no one stockholder holds, owns,
 5597 | votes, or has proxies for more than 5 percent of the issued
 5598 | stock of such corporation; provided the corporation has a
 5599 | blanket fidelity bond, covering all employees handling the
 5600 | funds, in the amount of \$50,000 or more issued by a licensed
 5601 | insurance carrier in this state; and provided the corporation
 5602 | processes the funds directly to and from the trustee within the
 5603 | applicable time limits set forth in this chapter. The department
 5604 | may require any person claiming that the provisions of this
 5605 | paragraph exempt it from the provisions of paragraph (a) to
 5606 | demonstrate to the satisfaction of the department that it meets
 5607 | the requirements of this paragraph.

HB 323 CS

2004
CS

5608 (3) No person may obtain a preneed license ~~certificate of~~
 5609 ~~authority~~ under this chapter for the preneed sale of merchandise
 5610 or services unless such person or its agent, in the case of a
 5611 corporate entity, holds a license as a funeral establishment, or
 5612 cemetery company, ~~or registration as a~~ direct disposal
 5613 establishment, or monument establishment ~~under chapter 470.~~

5614 (4) The provisions of this section do not apply to
 5615 religious-institution-owned cemeteries exempt under s.
 5616 497.260(1)(d) ~~497.003(1)(d)~~, in counties with a population of at
 5617 least 960,000 persons on July 1, 1996, with respect to the sale
 5618 to the religious institution's members and their families of
 5619 interment rights, mausoleums, crypts, cremation niches,
 5620 cremation interment containers, vaults, liners, urns, memorials,
 5621 vases, foundations, memorial bases, floral arrangements,
 5622 monuments, markers, engraving, and the opening and closing of
 5623 interment rights, mausoleums, crypts, ~~and~~ cremation niches, and
 5624 cremation interment containers, if such cemeteries have engaged
 5625 in the sale of preneed contracts prior to October 1, 1993, and
 5626 maintain a positive net worth at the end of each fiscal year of
 5627 the cemetery.

5628 Section 101. Section 497.407, Florida Statutes, is
 5629 renumbered as section 497.453, Florida Statutes, and amended to
 5630 read:

5631 (Substantial rewording of section. See
 5632 s. 497.407, F.S., for present text.)

5633 497.453 Application for preneed license, procedures and
 5634 criteria; renewal; reports.--

5635 (1) PRENEED LICENSE APPLICATION PROCEDURES.--

5636 (a) A person seeking a license to enter into preneed
5637 contracts shall apply for such licensure using forms prescribed
5638 by rule.

5639 (b) The application shall require the name, business
5640 address, residence address, date and place of birth or
5641 incorporation, and business phone number, of applicant and all
5642 principals of applicant. The application shall require the
5643 applicant's social security number, or if the applicant is an
5644 entity, its federal tax identification number.

5645 (c) The application may require information as to the
5646 applicant's financial resources.

5647 (d) The application may require information as to the
5648 educational and employment history of an individual applicant;
5649 and as to applicants that are not natural persons, the business
5650 and employment history of the applicant and principals of
5651 applicant.

5652 (e) The application shall require the applicant to
5653 disclose whether the applicant or any of applicant's principals
5654 has ever been convicted or found guilty of, or entered a plea of
5655 nolo contendere to, regardless of adjudication, any crime in any
5656 jurisdiction.

5657 (f) The application shall require the applicant to
5658 disclose whether the applicant or any of applicant's principals
5659 has ever had a license or the authority to practice a profession
5660 or occupation refused, suspended, fined, denied, or otherwise
5661 acted against or disciplined, by the licensing authority of any
5662 jurisdiction. A licensing authority's acceptance of a
5663 relinquishment of licensure, stipulation, consent order, or

5664 other settlement, offered in response to or in anticipation of
 5665 the filing of charges against the license, shall be construed as
 5666 action against the license.

5667 (g) The application shall require the applicant and its
 5668 principals to provide fingerprints in accordance with part I of
 5669 this chapter.

5670 (h) The application shall state the name and license
 5671 number of the funeral establishment, cemetery company, direct
 5672 disposal establishment, or monument establishment, under whose
 5673 license the preneed application is made.

5674 (i) The application shall state the types of preneed
 5675 contracts proposed to be written.

5676 (j) The application shall disclose the existence of all
 5677 preneed contracts for service or merchandise entered into by the
 5678 applicant, or by any other entity under common control with the
 5679 applicant, without or prior to authorization under this section
 5680 or predecessors to this section. As to each such contract the
 5681 applicant shall disclose the name and address of the contract
 5682 purchaser, the status of the contract, and what steps or
 5683 measures the applicant has taken to ensure performance of
 5684 unfulfilled contracts, setting forth the treatment and status of
 5685 funds received from the customer in regard to the contract, and
 5686 stating the name and address of any institution where such funds
 5687 are deposited and the number used by the institution to identify
 5688 the account. With respect to contracts entered into before
 5689 January 1, 1983, an application to issue or renew a preneed
 5690 license may not be denied solely on the basis of such
 5691 disclosure. The purchaser of any such contract may not be

5692 required to liquidate the account if such account was
 5693 established before July 1, 1965. Information disclosed may be
 5694 used by the licensing authority to notify the contract purchaser
 5695 and the institution in which such funds are deposited should the
 5696 holder of a preneed be unable to fulfill the requirements of the
 5697 contract.

5698 (k) The application shall require the applicant to
 5699 demonstrate that applicant complies and will comply with all
 5700 requirements for preneed contract licensure under this chapter.

5701 (l) The application may require any other information
 5702 considered necessary by the department or board to meet its
 5703 responsibilities under this chapter.

5704 (m) The application shall be sworn to and signed by the
 5705 applicant if a natural person, or by the president of an
 5706 applicant that is not a natural person.

5707 (n) The application shall be accompanied by a
 5708 nonrefundable fee as determined by licensing authority rule but
 5709 not to exceed \$500.

5710 (2) ACTION CONCERNING APPLICATIONS.--A duly completed
 5711 application for licensure under this section, accompanied by the
 5712 required fees, shall be approved and license issued, if the
 5713 licensing authority determines that the following conditions are
 5714 met:

5715 (a) The application is made by a funeral establishment,
 5716 cemetery company, direct disposal establishment, or monument
 5717 establishment, or on behalf of one of the preceding licensees by
 5718 its agent in the case of a corporate entity, licensed and in
 5719 good standing under this chapter.

5720 (b) Applicant meets net worth requirements specified by
5721 rule of the licensing authority.

5722 (c) Applicant has and will have the ability to discharge
5723 her or his liabilities as they become due in the normal course
5724 of business, and has and will have sufficient funds available
5725 during the calendar year to perform her or his obligations under
5726 her or his contracts.

5727 (d) If the applicant or any entity under common control
5728 with the applicant has entered into preneed contracts prior to
5729 being authorized to do so under the laws of this state:

5730 1. The licensing authority determines that adequate
5731 provision has been made to ensure the performance of such
5732 contracts.

5733 2. The licensing authority determines that the improper
5734 sale of such preneed contracts prior to authorization under this
5735 chapter does not indicate, under the facts of the particular
5736 application in issue, that applicant has a disregard of the laws
5737 of this state such as would expose the public to unreasonable
5738 risk if the applicant were issued a preneed license.

5739 3. Nothing in this section shall imply any authorization
5740 to enter into preneed contracts without authorization under this
5741 chapter.

5742 (e) Neither applicant nor applicant's principals have a
5743 demonstrated history of conducting their business affairs to the
5744 detriment of the public.

5745 (f) Applicant and applicant's principals are of good
5746 character and have no demonstrated history of lack of

5747 trustworthiness or integrity in business or professional
 5748 matters.

5749 (g) The applicant does and will comply with all other
 5750 requirements of this chapter relating to preneed licensure.

5751 (3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.--It is
 5752 the policy of this state to encourage competition for the public
 5753 benefit in the preneed contract business by, among other means,
 5754 the entry of new licensees into that business. To facilitate
 5755 issuance of licenses concerning applications judged by the
 5756 licensing authority to be borderline as to qualification for
 5757 licensure, the licensing authority may issue a new license under
 5758 this section on a probationary basis, subject to conditions
 5759 specified by the licensing authority on a case-by-case basis,
 5760 which conditions may impose special monitoring, reporting, and
 5761 restrictions on operations for up to the first 12 months of
 5762 licensure, to ensure the licensee's responsibility, competency,
 5763 financial stability, and compliance with this chapter. Provided,
 5764 no such probationary license shall be issued unless the
 5765 licensing authority determines that issuance would not pose an
 5766 unreasonable risk to the public, and the licensing authority
 5767 must within 12 months after issuance of the license either
 5768 remove the probationary status or determine that the licensee is
 5769 not qualified for licensure under this chapter and institute
 5770 proceedings for revocation of licensure.

5771 (4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.--

5772 (a) Each licensee under this section must provide notice
 5773 as required by rule prior to any change in control of the
 5774 licensee. Any such change is subject to disapproval or to

5775 reasonable conditions imposed by the licensing authority, for
5776 the protection of the public to ensure compliance with this
5777 chapter, based upon criteria established by rule, which criteria
5778 shall promote the purposes of this part in protecting the
5779 consumer.

5780 (b) The licensing authority may authorize the transfer of
5781 a preneed license and establish by rule a fee for the transfer
5782 in an amount not to exceed \$500. Upon receipt of an application
5783 for transfer, the executive director may grant a temporary
5784 preneed license to the proposed transferee, based upon criteria
5785 established by the licensing authority by rule, which criteria
5786 shall promote the purposes of this chapter in protecting the
5787 consumer. Such a temporary preneed license shall expire at the
5788 conclusion of the next regular meeting of the board unless
5789 renewed by the board. The licensing authority may by rule
5790 establish forms and procedures for the implementation of this
5791 paragraph.

5792 (5) RENEWAL OF LICENSES.--

5793 (a) A preneed license shall expire annually on June 1,
5794 unless renewed, or at such other time or times as may be
5795 provided by rule. The application for renewal of the license
5796 shall be on forms prescribed by rule and shall be accompanied a
5797 renewal fee as specified in paragraph (c).

5798 (b) Within 3 months after the end of its fiscal period, or
5799 within an extension of time therefore, as the department for
5800 good cause may grant, the licensee shall file with the
5801 department a full and true statement of her or his financial
5802 condition, transactions, and affairs, prepared on a basis as

5803 adopted by rule, as of the end of the preceding fiscal period or
5804 at such other time or times as may be required by rule, together
5805 with such other information and data which may be required by
5806 rule. To facilitate uniformity in financial statements and to
5807 facilitate department analysis, there may be adopted by rule a
5808 form for financial statements.

5809 (c) Each annual application for renewal of a preneed
5810 license shall be accompanied by the appropriate fee as follows:

5811 1. For a preneed licensee with no preneed contract sales
5812 during the immediately preceding year.....\$ 300.

5813 2. For a preneed licensee with at least 1 but fewer than
5814 50 preneed contract sales during the immediately preceding
5815 year.....\$400.

5816 3. For a preneed licensee with at least 50 but fewer than
5817 250 preneed contract sales during the immediately preceding
5818 year.....\$500.

5819 4. For a preneed licensee with at least 250 but fewer than
5820 1,000 preneed contract sales during the immediately preceding
5821 year.....\$850.

5822 5. For a preneed licensee with at least 1,000 but fewer
5823 than 2,500 preneed contract sales during the immediately
5824 preceding year.....\$1,500.

5825 6. For a preneed licensee with at least 2,500 but fewer
5826 than 5,000 preneed contract sales during the immediately
5827 preceding year.....\$2,500.

5828 7. For a preneed licensee with at least 5,000 but fewer
5829 than 15,000 preneed contract sales during the immediately
5830 preceding year.....\$6,000.

5831 8. For a preneed licensee with at least 15,000 but fewer
5832 than 30,000 preneed contract sales during the immediately
5833 preceding year.....\$12,500.

5834 9. For a preneed licensee with 30,000 preneed contract
5835 sales or more during the immediately preceding
5836 year.....\$18,500.

5837 (d) An application for renewal shall disclose the
5838 existence of all preneed contracts for service or merchandise
5839 funded by any method other than a method permitted by this
5840 chapter, which contracts are known to the applicant and were
5841 entered into by the applicant, or any other entity under common
5842 control with the applicant, during the annual license period
5843 then ending. Such disclosure shall include the name and address
5844 of the contract purchaser, the name and address of the
5845 institution where such funds are deposited, and the number used
5846 by the institution to identify the account.

5847 (e) In addition to any other penalty that may be provided
5848 for under this chapter, there may be levied a late fee as
5849 determined by licensing authority rule but not to exceed \$50 a
5850 day for each day the preneed licensee fails to file its annual
5851 statement, and there may be levied a late fee as determined by
5852 licensing authority rule but not to exceed \$50 a day for each
5853 day the preneed licensee fails to file the statement of
5854 activities of the trust. Upon notice to the preneed licensee by
5855 the department that the preneed licensee has failed to file the
5856 annual statement or the statement of activities of the trust,
5857 the preneed licensee's authority to sell preneed contracts shall
5858 cease while such default continues.

5859 (6) QUARTERLY PAYMENTS.--In addition to other amounts
 5860 required to be paid by this section, each preneed licensee shall
 5861 pay to the Regulatory Trust Fund an amount established by rule
 5862 not to exceed \$10 for each preneed contract entered into. This
 5863 amount must be paid within 60 days after the end of each
 5864 quarter. These funds must be used to defray the cost of in
 5865 administering the provisions of this part.

5866 (7) BRANCH OPERATIONS AND LICENSURE.--

5867 (a) Any person or entity that is part of a common business
 5868 enterprise that has a preneed license issued pursuant to this
 5869 section and desires to operate under a name other than that of
 5870 the common business enterprise, may submit an application on a
 5871 form adopted by rule to become a branch licensee. The
 5872 application shall be accompanied by an application fee as
 5873 determined by licensing authority rule but not to exceed \$300.

5874 (b) Upon a determination that such applicant qualifies to
 5875 sell preneed contracts under this part except for the
 5876 requirements of paragraph (2)(c), and if the preneed licensee
 5877 meets the requirements of such paragraph and is in compliance
 5878 with all requirements of this part regarding its preneed license
 5879 and operations thereunder, a branch license shall be issued.

5880 (c) Branch licenses shall be renewed annually by payment
 5881 of a renewal fee set by licensing authority rule and not to
 5882 exceed \$300. Branch licenses may be renewed only so long as the
 5883 preneed license of the sponsoring preneed licensee remains in
 5884 good standing.

5885 (d) Violations of this part by the branch shall be deemed
 5886 to be violations of this part by its sponsoring preneed

5887 licensee, unless the licensing authority determines that
 5888 extenuating circumstances indicate that it would be unjust to
 5889 attribute the branch's misconduct to the sponsoring preneed
 5890 licensee. Preneed sales of the branch shall be deemed to be
 5891 sales of the sponsoring licensee for purposes of renewal fees
 5892 and trust requirements under this chapter.

5893 (e) The sponsoring preneed licensee shall be responsible
 5894 for performance of preneed contracts entered into by its
 5895 branches if the branch does not timely fulfill any such
 5896 contract.

5897 (8) ANNUAL TRUST REPORTS.--On or before April 1 of each
 5898 year, the preneed licensee shall file in the form prescribed by
 5899 rule a full and true statement as to the activities of any trust
 5900 established by it pursuant to this part for the preceding
 5901 calendar year.

5902 (9) DEPOSIT OF FUNDS.--All sums collected under this
 5903 section shall be deposited to the credit of the Regulatory Trust
 5904 Fund.

5905 Section 102. Section 497.409, Florida Statutes, is
 5906 renumbered as section 497.454, Florida Statutes, and amended to
 5907 read:

5908 497.454 497.409 Approval of preneed contract and related
 5909 forms.--

5910 (1) Preneed contract forms and related forms shall be
 5911 filed with and approved by the licensing authority prior to use,
 5912 pursuant to procedures specified by rule ~~board~~. The licensing
 5913 authority ~~board~~ may not approve any preneed contract form that
 5914 does not provide for sequential prenumbering thereon.

5915 (2) A form filed for approval under this section shall be
 5916 approved unless it is determined that it:

5917 (a) Is in any respect in violation of, or does not comply
 5918 with, this chapter.

5919 (b) Contains, or incorporates by reference any
 5920 inconsistent, ambiguous, or misleading clauses, or exceptions
 5921 and conditions which deceptively affect the benefits purportedly
 5922 provided to the customer in the general terms of the contract.

5923 (c) Has any title, heading, or other indication of its
 5924 contents which is misleading.

5925 (d) Is printed or otherwise reproduced in such manner as
 5926 to render any material provision substantially illegible, or
 5927 contains variations in print size which de-emphasize provisions
 5928 which limit or restrict the customers rights under the contract.

5929 (e) Contains provisions that are unfair or inequitable or
 5930 contrary to the public policy of this state or that encourage
 5931 misrepresentation.

5932 (f) Does not provide for the specification in reasonable
 5933 detail of the type, size, and design of merchandise and the
 5934 description of service to be delivered or performed.

5935 (3)(2) Specific disclosure regarding the preneed
 5936 licensee's ~~certificateholder's~~ ability to select either trust
 5937 funding or the financial responsibility alternative as set forth
 5938 in s. ~~497.461 497.423~~ or s. ~~497.425~~ in connection with the
 5939 receipt of preneed contract proceeds is required in the preneed
 5940 contract.

HB 323 CS

2004
CS

5941 Section 103. Section 497.411, Florida Statutes, is
5942 renumbered as section 497.455, Florida Statutes, and amended to
5943 read:

5944 497.455 ~~497.411~~ Nonconforming contracts.--Any preneed
5945 contract that requires the moneys paid to the seller or trustee
5946 to be placed in trust and fails to comply with s. 497.458
5947 ~~497.417~~ shall comply with and be construed under s. 497.464
5948 ~~497.429~~.

5949 Section 104. Section 497.413, Florida Statutes, is
5950 renumbered as section 497.456, Florida Statutes, and amended to
5951 read:

5952 497.456 ~~497.413~~ Preneed Funeral Contract Consumer
5953 Protection Trust Fund.--

5954 (1) There is hereby created in the department the Preneed
5955 Funeral Contract Consumer Protection Trust Fund to be
5956 administered and regulated by the licensing authority ~~board~~.

5957 (2) Within 60 days after the end of each calendar quarter,
5958 for each preneed contract written during the quarter and not
5959 canceled within 30 days after the date of the execution of the
5960 contract, each preneed licensee ~~certificateholder~~, whether
5961 funding preneed contracts by the sale of insurance or by
5962 establishing a trust pursuant to s. 497.458 or s. 497.464
5963 ~~497.417~~ or s. ~~497.429~~, shall remit the sum of \$2.50 for each
5964 preneed contract having a purchase price of \$1,500 or less, and
5965 the sum of \$5 for each preneed contract having a purchase price
5966 in excess of \$1,500; and each preneed licensee ~~certificateholder~~
5967 utilizing s. 497.461 or s. 497.462 ~~497.423~~ or s. ~~497.425~~ shall
5968 remit the sum of \$5 for each preneed contract having a purchase

HB 323 CS

2004
CS

5969 price of \$1,500 or less, and the sum of \$10 for each preneed
5970 contract having a purchase price in excess of \$1,500.

5971 (3) In addition to the amounts specified in subsection
5972 (2), each remittance shall contain such other additional
5973 information as needed by the licensing authority ~~board~~ to carry
5974 out its responsibilities under this chapter and as prescribed by
5975 rule ~~of the board~~.

5976 (4) All funds received by the licensing authority ~~board or~~
5977 ~~the department~~ pursuant to this section shall be deposited into
5978 the Preneed Funeral Contract Consumer Protection Trust Fund.

5979 (5) The amounts remitted for deposit into the Preneed
5980 Funeral Contract Consumer Protection Trust Fund shall not be
5981 deemed proceeds from the sale of a preneed contract within the
5982 meaning of this chapter.

5983 (6) Upon the commencement of a delinquency proceeding
5984 pursuant to this chapter against a preneed licensee
5985 ~~certificateholder~~, the licensing authority ~~board~~ may use up to
5986 50 percent of the balance of the trust fund not already
5987 committed to a prior delinquency proceeding solely for the
5988 purpose of providing restitution to preneed contract purchasers
5989 and their estates due to a preneed licensee's
5990 ~~certificateholder's~~ failure to provide the benefits of a preneed
5991 contract or failure to refund the appropriate principal amount
5992 by reason of cancellation thereof. The balance of the trust fund
5993 shall be determined as of the date of the delinquency
5994 proceeding.

5995 (7) In any situation in which a delinquency proceeding has
5996 not commenced, the licensing authority ~~board~~ may, in its

HB 323 CS

2004
CS

5997 | discretion, use the trust fund for the purpose of providing
 5998 | restitution to any consumer, owner, or beneficiary of a preneed
 5999 | contract or similar regulated arrangement under this chapter
 6000 | entered into after June 30, 1977. If, after investigation, the
 6001 | licensing authority board ~~board~~ determines that a preneed licensee
 6002 | ~~certificateholder~~ has breached a preneed contract by failing to
 6003 | provide benefits or an appropriate refund, or that a provider,
 6004 | who is a former preneed licensee ~~certificateholder~~ or an
 6005 | establishment which has been regulated under this chapter ~~or~~
 6006 | ~~chapter 470~~, has sold a preneed contract and has failed to
 6007 | fulfill the arrangement or provide the appropriate refund, and
 6008 | such preneed licensee ~~certificateholder~~ or provider does not
 6009 | provide or does not possess adequate funds to provide
 6010 | appropriate refunds, payments from the trust fund may be
 6011 | authorized by the licensing authority board. In considering
 6012 | whether payments shall be made or when considering who will be
 6013 | responsible for such payments, the licensing authority board
 6014 | shall consider whether the preneed licensee ~~certificateholder~~ or
 6015 | previous provider has been acquired by a successor who is or
 6016 | should be responsible for the liabilities of the defaulting
 6017 | entity. With respect to preneed contracts funded by life
 6018 | insurance, payments from the fund shall be made: if the insurer
 6019 | is insolvent, but only to the extent that funds are not
 6020 | available through the liquidation proceeding of the insurer; or
 6021 | if the preneed licensee ~~certificateholder~~ is unable to perform
 6022 | under the contract and the insurance proceeds are not sufficient
 6023 | to cover the cost of the merchandise and services contracted
 6024 | for. In no event shall the licensing authority board ~~board~~ approve

HB 323 CS

2004
CS

6025 | payments in excess of the insurance policy limits unless it
 6026 | determines that at the time of sale of the preneed contract, the
 6027 | insurance policy would have paid for the services and
 6028 | merchandise contracted for. Such monetary relief shall be in an
 6029 | amount as the licensing authority ~~board~~ may determine and shall
 6030 | be payable in such manner and upon such conditions and terms as
 6031 | the licensing authority ~~board~~ may prescribe. However, with
 6032 | respect to preneed contracts to be funded pursuant to s.
 6033 | 497.458, s. 497.459, s. 497.461, or s. 497.462 ~~s. 497.417, s.~~
 6034 | ~~497.419, s. 497.423, or s. 497.425,~~ any restitution made
 6035 | pursuant to this subsection shall not exceed, as to any single
 6036 | contract or arrangement, the lesser of the gross amount paid
 6037 | under the contract or 4 percent of the uncommitted assets of the
 6038 | trust fund. With respect to preneed contracts funded by life
 6039 | insurance policies, any restitution shall not exceed, as to any
 6040 | single contract or arrangement, the lesser of the face amount of
 6041 | the policy, the actual cost of the arrangement contracted for,
 6042 | or 4 percent of the uncommitted assets of the trust fund. The
 6043 | total of all restitutions made to all applicants under this
 6044 | subsection in a single fiscal year shall not exceed the greater
 6045 | of 30 percent of the uncommitted assets of the trust fund as of
 6046 | the end of the most recent fiscal year or \$120,000. The
 6047 | department may use moneys in the trust fund to contract with
 6048 | independent vendors pursuant to chapter 287 to administer the
 6049 | requirements of this subsection.

6050 | (8) All moneys deposited in the Preneed Funeral Contract
 6051 | Consumer Protection Trust Fund together with all accumulated
 6052 | income shall be used only for the purposes expressed authorized

6053 | by this chapter ~~in this section~~ and shall not be subject to any
 6054 | liens, charges, judgments, garnishments, or other creditor's
 6055 | claims against the preneed licensee ~~certificateholder~~, any
 6056 | trustee utilized by the preneed licensee ~~certificateholder~~, any
 6057 | company providing a surety bond as specified in this chapter, or
 6058 | any purchaser of a preneed contract. No preneed contract
 6059 | purchaser shall have any vested rights in the trust fund.

6060 | (9) If restitution is paid to a preneed contract purchaser
 6061 | or her or his estate in accordance with this section, the amount
 6062 | of restitution paid shall not exceed the gross amount of the
 6063 | principal payments made by the purchaser on its contract.

6064 | (10) Whenever the licensing authority ~~board~~ makes payments
 6065 | from the trust fund to a purchaser or its estate, the licensing
 6066 | authority ~~board~~ shall be subrogated to the purchaser's rights
 6067 | under the contract, and any amounts so collected by the
 6068 | licensing authority ~~board~~ shall be deposited in the Preneed
 6069 | Funeral Contract Consumer Protection Trust Fund.

6070 | (11) No person shall make, publish, disseminate,
 6071 | circulate, or place before the public, or cause, directly or
 6072 | indirectly, to be made, published, disseminated, circulated, or
 6073 | placed before the public, in a newspaper, magazine, or other
 6074 | publication, or in the form of a notice, circular, pamphlet,
 6075 | letter, or poster, or over any radio station or television
 6076 | station, or in any other way, any advertisement, announcement,
 6077 | or statement which uses the existence of the Preneed Funeral
 6078 | Contract Consumer Protection Trust Fund for the purpose of
 6079 | sales, solicitation, or inducement to purchase any form of
 6080 | preneed contract covered under this chapter.

6081 (12) Notwithstanding the fee structure in subsection (2),
 6082 the department shall review the status of the trust fund
 6083 annually, and if it determines that the uncommitted trust fund
 6084 balance exceeds \$1 million, the licensing authority ~~board~~ may by
 6085 rule lower the required payments to the trust fund to an amount
 6086 not less than \$1 per preneed contract.

6087 (13) Regarding the Preneed Funeral Contract Consumer
 6088 Protection Trust Fund, the licensing authority shall have
 6089 authority to adopt rules for the implementation of this section,
 6090 including:

6091 (a) Forms to be used in filing claims against the trust
 6092 fund.

6093 (b) Procedures to be used for filing claims against the
 6094 trust fund.

6095 (c) Information and supporting documentation that must be
 6096 provided by claimants to support claims against the trust fund.

6097 (d) Procedures for the investigation of claims against the
 6098 trust fund.

6099 (e) Criteria to be used in determining whether a claim is
 6100 allowable and in what amount.

6101 (f) Forms and procedures to be used by preneed licensees
 6102 in making remittances to the trust fund required by this
 6103 chapter.

6104 Section 105. Section 497.415, Florida Statutes, is
 6105 renumbered as section 497.457, Florida Statutes, and amended to
 6106 read:

6107 497.457 ~~497.415~~ Ownership of proceeds received on
 6108 contracts.--

6109 (1) Subject to the provisions of this chapter, all funds
6110 paid pursuant to a preneed contract by a purchaser to a preneed
6111 licensee ~~certificateholder~~ shall be the sole property of, and
6112 within the full dominion and control of, said preneed licensee
6113 ~~certificateholder~~.

6114 (2) Subject to the provisions of this chapter, the
6115 relationship between the purchaser of a preneed contract and a
6116 preneed licensee ~~certificateholder~~ shall be deemed for all
6117 purposes as a debtor-creditor relationship.

6118 Section 106. Section 497.417, Florida Statutes, is
6119 renumbered as section 497.458, Florida Statutes, and amended to
6120 read:

6121 497.458 ~~497.417~~ Disposition of proceeds received on
6122 contracts.--

6123 (1)(a) Any person who is paid, collects, or receives funds
6124 under a preneed contract for funeral services or merchandise or
6125 burial services or merchandise shall deposit an amount at least
6126 equal to the sum of 70 percent of the purchase price collected
6127 for all services sold and facilities rented; 100 percent of the
6128 purchase price collected for all cash advance items sold; and 30
6129 percent of the purchase price collected or 110 percent of the
6130 wholesale cost, whichever is greater, for each item of
6131 merchandise sold.

6132 (b) The method of determining wholesale cost shall be
6133 established by rule of the licensing authority ~~board~~ and shall
6134 be based upon the preneed licensee's ~~certificateholder's~~ stated
6135 wholesale cost for the 12-month period beginning July 1 during

6136 | which the initial deposit to the preneed trust fund for the
6137 | preneed contract is made.

6138 | (c) Such deposits shall be made within 30 days after the
6139 | end of the calendar month in which payment is received, under
6140 | the terms of a revocable trust instrument entered into with a
6141 | trust company operating pursuant to chapter 660, with a national
6142 | or state bank holding trust powers, or with a federal or state
6143 | savings and loan association holding trust powers.

6144 | (d) The trustee shall take title to the property conveyed
6145 | to the trust for the purpose of investing, protecting, and
6146 | conserving it for the preneed licensee ~~certificateholder~~;
6147 | collecting income; and distributing the principal and income as
6148 | prescribed in this chapter. The preneed licensee
6149 | ~~certificateholder~~ is prohibited from sharing in the discharge of
6150 | these responsibilities, except that the preneed licensee
6151 | ~~certificateholder~~ may request the trustee to invest in tax-free
6152 | investments and may appoint an adviser to the trustee. The
6153 | licensing authority may adopt rules limiting or otherwise
6154 | specifying the degree to which the trustee may rely on the
6155 | investment advice of an investment adviser appointed by the
6156 | preneed licensee. The licensing authority may adopt rules
6157 | limiting or prohibiting payment of fees by the trust to
6158 | investment advisors that are employees or principals of the
6159 | licensee to whom the trust fund relates.

6160 | (e) The trust agreement shall be submitted to the
6161 | licensing authority ~~board~~ for approval and filing prior to use.
6162 | The licensing authority may adopt rules specifying procedures
6163 | and establishing criteria and requirements not inconsistent with

6164 | this chapter for approval of trusts submitted under this
 6165 | paragraph.

6166 | (f) The deposited funds shall be held in trust, both as to
 6167 | principal and income earned thereon, and shall remain intact,
 6168 | except that the cost of the operation of the trust or trust
 6169 | account authorized by this section may be deducted from the
 6170 | income earned thereon.

6171 | (g) The preneed contract purchaser shall have no interest
 6172 | whatsoever in, or power whatsoever over, funds deposited in
 6173 | trust pursuant to this section.

6174 | (h) In no event may said funds be loaned to a preneed
 6175 | licensee ~~certificateholder~~, an affiliate of a preneed licensee
 6176 | ~~certificateholder~~, or any person directly or indirectly engaged
 6177 | in the burial, funeral home, or cemetery business.

6178 | (i) ~~Furthermore,~~ The preneed licensee's
 6179 | ~~certificateholder's~~ interest in said trust shall not be pledged
 6180 | as collateral for any loans, debts, or liabilities of the
 6181 | preneed licensee ~~certificateholder~~ and shall not be transferred
 6182 | to any person without the prior written approval from the
 6183 | department and the trustee which shall not be unreasonably
 6184 | withheld.

6185 | (j) Even though the preneed licensee ~~certificateholder~~
 6186 | shall be deemed and treated as the settlor and beneficiary of
 6187 | said trust for all purposes, all of said trust funds are exempt
 6188 | from all claims of creditors of the preneed licensee
 6189 | ~~certificateholder~~ except as to the claims of the preneed
 6190 | contract purchaser, her or his representative, the board, or the
 6191 | department.

HB 323 CS

2004
CS

6192 (2) Except as provided in s. 497.283 ~~497.337~~, the delivery
 6193 of funeral merchandise before the death of the person for whom
 6194 it is purchased does not constitute performance or fulfillment,
 6195 either wholly or in part, of any preneed contract entered into
 6196 after July 1, 1977.

6197 (3)(a) The trustee shall make regular valuations of assets
 6198 it holds in trust and provide a report of such valuations to the
 6199 preneed licensee certificateholder at least quarterly.

6200 (b) Any person who withdraws appreciation in the value of
 6201 trust, other than the pro rata portion of such appreciation
 6202 which may be withdrawn upon the death of a contract beneficiary
 6203 or upon cancellation of a preneed contract, shall be required to
 6204 make additional deposits from her or his own funds to restore
 6205 the aggregate value of assets to the value of funds deposited in
 6206 trust, but excluding from the funds deposited those funds paid
 6207 out upon preneed contracts which such person has fully performed
 6208 or which have been otherwise withdrawn, as provided for in this
 6209 chapter.

6210 (c) The preneed licensee certificateholder shall be liable
 6211 to third parties to the extent that income from the trust is not
 6212 sufficient to pay the expenses of the trust.

6213 (4)(a) Trust funds shall not be invested in or loaned to
 6214 or for the benefit of any business venture in which the preneed
 6215 licensee, its principals, or persons related by blood or
 6216 marriage to the licensee or its principals, have a direct or
 6217 indirect interest, without the prior approval of the licensing
 6218 authority.

6219 (b) Trust funds shall not be loaned to or for the benefit
 6220 of the preneed licensee, its principals, or persons related by
 6221 blood or marriage to the licensee or its principals, without the
 6222 prior approval of the licensing authority.

6223 (c) No approval of such loans or investments shall be
 6224 given unless it be shown by clear and convincing evidence that
 6225 such loan or investment would be in the interest of the preneed
 6226 contract holders whose contracts are secured by the trust funds.

6227 (d) The licensing authority may adopt rules exempting from
 6228 the prohibition of this subsection, pursuant to criteria
 6229 established in such rule, the investment of trust funds in
 6230 investments, such as widely and publicly traded stocks and
 6231 bonds, notwithstanding that the licensee, its principals, or
 6232 persons related by blood or marriage to the licensee or its
 6233 principals have an interest by investment in the same entity,
 6234 where neither the licensee, its principals, or persons related
 6235 by blood or marriage to the licensee or its principals, have the
 6236 ability to control the entity invested in, and it would be in
 6237 the interest of the preneed contract holders whose contracts are
 6238 secured by the trust funds, to allow the investment.

6239 (5)(4) The trustee of the trust established pursuant to
 6240 this section shall only have the power to:

6241 (a) Invest in investments as prescribed in s. 215.47 and
 6242 exercise the powers set forth in part IV of chapter 737,
 6243 provided that the licensing authority ~~board~~ may by order require
 6244 the trustee to liquidate or dispose of any investment within 30
 6245 days after such order, or within such other times as the order
 6246 may direct. The licensing authority may issue such order if it

6247 determines that the investment violates any provision of this
 6248 chapter or is not in the best interests of the preneed contract
 6249 holders whose contracts are secured by the trust funds.

6250 (b) Borrow money up to an aggregate amount of 10 percent
 6251 of trust assets, at interest rates then prevailing from any
 6252 individual, bank, insurance company, or other source,
 6253 irrespective of whether any such person is then acting as
 6254 trustee, and to create security interests in no more than 10
 6255 percent of trust assets by mortgage, pledge, or otherwise, upon
 6256 the terms and conditions and for such purposes as the trustee
 6257 may deem advisable.

6258 (c) Commingle the property of the trust with the property
 6259 of any other trust established pursuant to this chapter and make
 6260 corresponding allocations and divisions of assets, liabilities,
 6261 income, and expenses.

6262 (6)(5) The preneed licensee certificateholder, at her or
 6263 his election, shall have the right and power, at any time, to
 6264 revert in it title to the trust assets, or its pro rata share
 6265 thereof, provided it has complied with s. 497.461.+

6266 ~~(a) Section 497.423;~~

6267 ~~(b) Contracts written prior to July 1, 2001, under s.~~
 6268 ~~497.425; or~~

6269 ~~(c) Contracts written prior to December 31, 2004, under s.~~
 6270 ~~497.425 for any certificateholder authorized to do business in~~
 6271 ~~this state that has total bonded liability exceeding \$100~~
 6272 ~~million as of July 1, 2001.~~

6273 (7)(6) Notwithstanding anything contained in this chapter
 6274 to the contrary, the preneed licensee certificateholder, via its

6275 | election to sell or offer for sale preneed contracts subject to
 6276 | this section, shall represent and warrant, and is hereby deemed
 6277 | to have done such, to all federal and Florida taxing
 6278 | authorities, as well as to all potential and actual preneed
 6279 | contract purchasers, that:

6280 | (a) Section 497.461 ~~497.423~~ is a viable option available
 6281 | to it at any and all relevant times;

6282 | (b) Section 497.462 ~~497.425~~ is a viable option available
 6283 | to it at any and all relevant times for contracts written prior
 6284 | to July 1, 2001, for funds not held in trust as of July 1, 2001;
 6285 | or

6286 | (c) For any preneed licensee ~~certificateholder~~ authorized
 6287 | to do business in this state that has total bonded liability
 6288 | exceeding \$100 million as of July 1, 2001, s. 497.462 ~~497.425~~ is
 6289 | a viable option to it at any and all relevant times for
 6290 | contracts written prior to December 31, 2004, for funds not held
 6291 | in trust as of July 1, 2001.

6292 | ~~(8)(7)~~ If in the preneed licensee's ~~certificateholder's~~
 6293 | opinion it does not have the ability to select the financial
 6294 | responsibility alternative of s. 497.461 or s. 497.462 ~~497.423~~
 6295 | ~~or s. 497.425~~, then the preneed license ~~it~~ shall not have the
 6296 | right to sell or solicit preneed contracts ~~pursuant to this~~
 6297 | ~~section~~.

6298 | (9) The amounts required to be placed in trust by this
 6299 | section for contracts previously entered into shall be as
 6300 | follows:

6301 (a) For contracts entered into before October 1, 1993, the
 6302 trust amounts as amended by s. 6, chapter 83-816, Laws of
 6303 Florida, shall apply.

6304 (b) For contracts entered into on or after October 1,
 6305 1993, the trust amounts as amended by s. 98, chapter 93-399,
 6306 Laws of Florida, shall apply.

6307 ~~(8) This section, as amended by s. 6, chapter 83-316, Laws~~
 6308 ~~of Florida, applies to preneed contracts entered into before~~
 6309 ~~October 1, 1993, and as amended by s. 98, chapter 93-399, Laws~~
 6310 ~~of Florida, applies to preneed contracts entered into on or~~
 6311 ~~after October 1, 1993.~~

6312 Section 107. Section 497.419, Florida Statutes, is
 6313 renumbered as section 497.459, Florida Statutes, and amended to
 6314 read:

6315 497.459 ~~497.419~~ Cancellation of, or default on, preneed
 6316 contracts.--

6317 (1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.--A purchaser,
 6318 by providing written notice to the preneed licensee
 6319 ~~certificateholder~~, may cancel a preneed contract within 30 days
 6320 after ~~of~~ the date that the contract was executed provided that
 6321 the burial rights, merchandise and services have not yet been
 6322 used. Upon providing such notice, the purchaser shall be
 6323 entitled to a complete refund of the amount paid, except for the
 6324 amount allocable to any burial rights, merchandise or services
 6325 that have been used, and shall be released from all obligations
 6326 under the contract. This subsection shall apply to all items
 6327 that are purchased as part of a preneed contract, including

6328 | burial rights, regardless of whether such burial rights are
6329 | purchased as part of a preneed contract or purchased separately.

6330 | (2) CANCELLATION BY PURCHASER AFTER 30 DAYS.--

6331 | (a) A purchaser, by providing written notice to the
6332 | preneed licensee certificateholder, may cancel the services,
6333 | facilities, and cash advance items portions of a preneed
6334 | contract at any time, and shall be entitled to a full refund of
6335 | the purchase price allocable to such items. Any accumulated
6336 | earnings allocable to such preneed contract shall be paid to the
6337 | preneed licensee certificateholder upon such cancellation.

6338 | (b)(3) Subject to subparagraphs 1. and 2., ~~paragraphs (a)~~
6339 | ~~and (b)~~ a purchaser may cancel the merchandise portion of a
6340 | preneed contract by providing written notice to the preneed
6341 | licensee certificateholder, and shall be entitled to a full
6342 | refund of the purchase price allocable to the specific item or
6343 | items of merchandise that the preneed licensee certificateholder
6344 | cannot or does not deliver in accordance with this subsection.

6345 | 1.(a) Such refund shall be provided only if at the time
6346 | that the preneed licensee certificateholder is required to
6347 | fulfill its obligations under the preneed contract the preneed
6348 | licensee certificateholder does not or cannot comply with the
6349 | terms of the contract by actually delivering the merchandise,
6350 | within a reasonable time, depending upon the nature of the
6351 | merchandise purchased, after having been requested to do so.

6352 | 2.(b) In order to fulfill its obligations under the
6353 | preneed contract, a preneed licensee certificateholder may elect
6354 | either or both of the following options:

HB 323 CS

2004
CS

6355 a.1- Subcontract with a person located outside the preneed
6356 licensee's ~~certificateholder's~~ market area to provide the
6357 merchandise; or

6358 b.2- Provide other items of equal or greater quality.

6359 (3)(4) REQUIRED DISCLOSURE.--Each preneed licensee
6360 ~~certificateholder~~ shall provide in conspicuous type in its
6361 contract that the contract purchaser may cancel the contract and
6362 receive a full refund within 30 days after ~~of~~ the date of
6363 execution of the contract. The failure to make such provision
6364 shall not impair the contract purchaser's right to cancellation
6365 and refund as provided in this section.

6366 (4)(5) BREACH OF CONTRACT BY SELLER.--Upon breach of
6367 contract or failure of the preneed licensee ~~certificateholder~~ to
6368 provide funeral merchandise or services under a preneed
6369 contract, the contract purchaser shall be entitled to a refund
6370 of all money paid on the contract. Such refund shall be made
6371 within 30 days after receipt by the preneed licensee
6372 ~~certificateholder~~ of the contract purchaser's written request
6373 for refund.

6374 (5)(6) DEFAULT BY PURCHASER.--If a purchaser is 90 days
6375 past due in making payments on a preneed contract, the contract
6376 shall be considered to be in default, and the preneed licensee
6377 ~~certificateholder~~ shall be entitled to cancel the contract,
6378 withdraw all funds in trust allocable to merchandise items, and
6379 retain such funds as liquidated damages. Upon making such
6380 withdrawal, the preneed licensee ~~certificateholder~~ shall return
6381 all funds in trust allocable to services, facilities, or cash
6382 advance items to the purchaser, provided that the preneed

6383 licensee certificateholder has provided the purchaser with 30
 6384 days' written notice of its intention to exercise any of its
 6385 rights under this provision. The board may by rule specify the
 6386 required format and content of the notice required under this
 6387 subsection and the manner in which the notice shall be sent.

6388 ~~(6)(7)~~ OTHER PROVISIONS.--

6389 (a) All preneed contracts are cancelable and revocable as
 6390 provided in this section, provided that a preneed contract does
 6391 not restrict any contract purchaser who is a qualified applicant
 6392 for, or a recipient of, supplemental security income, temporary
 6393 cash assistance, or Medicaid from making her or his contract
 6394 irrevocable.

6395 (b) The amounts required to be refunded by this section
 6396 for contracts previously entered into shall be as follows:

6397 1. For contracts entered into before October 1, 1993, the
 6398 refund amounts as amended by s. 7, chapter 83-816, Laws of
 6399 Florida, shall apply.

6400 2. For contracts entered into on or after October 1, 1993,
 6401 the refund amounts as amended by s. 99, chapter 93-399, Laws of
 6402 Florida, shall apply.

6403 ~~(8) This section, as amended by s. 7, chapter 83-316, Laws~~
 6404 ~~of Florida, applies to preneed contracts entered into before~~
 6405 ~~October 1, 1993, and as amended by s. 98, chapter 93-399, Laws~~
 6406 ~~of Florida, applies to preneed contracts entered into on or~~
 6407 ~~after October 1, 1993.~~

6408 (c)(9) Persons who purchase merchandise or burial rights
 6409 pursuant to this chapter shall have the right to sell, alienate,
 6410 or otherwise transfer the merchandise or burial rights subject

6411 to and in accordance with rules adopted by the licensing
6412 authority board.

6413 (d)(10) All refunds required to be made under this section
6414 to a purchaser who has canceled a contract must be made within
6415 30 days after the date written notice of cancellation is
6416 received by the preneed licensee certificateholder.

6417 Section 108. Section 497.421, Florida Statutes, is
6418 renumbered as section 497.460, Florida Statutes, and amended to
6419 read:

6420 497.460 ~~497.421~~ Payment of funds upon death of named
6421 beneficiary.--Disbursements of funds discharging any preneed
6422 contract fulfilled after September 30, 1993, shall be made by
6423 the trustee to the preneed licensee certificateholder upon
6424 receipt of a certified copy of the death certificate of the
6425 contract beneficiary or satisfactory evidence as established by
6426 rule of the licensing authority ~~the board~~ that the preneed
6427 contract has been performed in whole or in part. However, if the
6428 contract is only partially performed, the disbursement shall
6429 only cover that portion of the contract performed. In the event
6430 of any contract default by the contract purchaser, or in the
6431 event that the funeral merchandise or service or burial
6432 merchandise or service contracted for is not provided or is not
6433 desired by the heirs or personal representative of the contract
6434 beneficiary, the trustee shall return, within 30 days after its
6435 receipt of a written request therefor, funds paid on the
6436 contract to the preneed licensee certificateholder or to its
6437 assigns, subject to the provisions of s. 497.459 ~~497.419~~.

6438 Section 109. Section 497.423, Florida Statutes, is
6439 renumbered as section 497.461, Florida Statutes, and amended to
6440 read:

6441 497.461 ~~497.423~~ Surety bonding ~~Evidence of financial~~
6442 ~~responsibility~~ as alternative to trust deposit.--

6443 (1) In lieu of depositing funds into a trust as required
6444 by s. 497.548(1) or s. 497.464 ~~497.417(1)~~ or s. ~~497.429~~, a
6445 preneed licensee certificateholder may elect annually, at its
6446 discretion, to comply with this section by filing annually a
6447 written request with, and receiving annual approval from, the
6448 licensing authority board.

6449 (2) No preneed licensee certificateholder shall utilize
6450 this section unless it has filed annually a written request
6451 with, and received approval by, the licensing authority board.

6452 (3) The preneed licensee certificateholder receiving
6453 approval from the licensing authority board to comply with this
6454 section shall maintain compliance with this section at all times
6455 during the period this election is in effect.

6456 (4) The preneed licensee's certificateholder's request to
6457 be governed by this section shall be in the form prescribed by
6458 rule by the licensing authority board and shall be accompanied
6459 by, in addition to other information that the licensing
6460 authority board may require by rule, the surety bond, the
6461 audited financial statements, and proof of the other
6462 requirements specified in this section, all as described in this
6463 section.

6464 (5) For each 12-month period, or any part thereof, in
6465 which this section is applicable, the electing preneed licensee

6466 ~~certificateholder~~ shall maintain a bond, issued by a surety
 6467 company admitted to do business in this state, in an amount at
 6468 least equal to the sum of:

6469 (a) All amounts not currently in trust.~~7~~

6470 (b) An amount equal to the total purchase price for all
 6471 installed preneed contracts where the total purchase price has
 6472 not been collected, excluding those amounts already in trust.~~7~~

6473 (c) All amounts the preneed licensee ~~certificateholder~~
 6474 intends to remove from trust if the licensing authority ~~board~~
 6475 approves the preneed licensee's ~~certificateholder's~~ request to
 6476 comply with this section.~~7~~~~and~~

6477 (d) An amount equal to 70 percent of the total purchase
 6478 price for each preneed contract the preneed licensee
 6479 ~~certificateholder~~ expects to sell in the year for which the
 6480 preneed licensee ~~certificateholder~~ is electing to comply with
 6481 this section.

6482 (6) The surety bond shall be conditioned in such a manner
 6483 to secure the faithful performance of all conditions of any
 6484 preneed contracts for which the preneed licensee
 6485 ~~certificateholder~~ was required to have covered by the amount of
 6486 the bond, including refunds requested pursuant to ss. 497.459
 6487 and 497.460 ~~497.419 and 497.421~~. The surety bond shall also
 6488 guarantee the financial responsibility of such preneed licensee
 6489 ~~certificateholder~~ against its default arising out of any of its
 6490 preneed contracts. The terms of the surety bond shall cover
 6491 liabilities arising from all moneys received by the electing
 6492 preneed licensee ~~certificateholder~~ from preneed contracts for
 6493 which the preneed licensee ~~certificateholder~~ was required to

HB 323 CS

2004
CS

6494 have covered by the amount of the bond during the time the bond
 6495 is in effect, and the liability of the surety shall continue
 6496 until the contracts thereunder are fulfilled. The bond shall be
 6497 in favor of the state for the benefit of any person damaged as a
 6498 result of purchasing a preneed contract from the preneed
 6499 licensee certificateholder. The aggregate liability of the
 6500 surety to all persons for all breaches of the conditions of the
 6501 bonds shall in no event exceed the amount of the bond. The per
 6502 preneed contract liability shall not exceed the amount of the
 6503 funds received by the preneed licensee certificateholder per
 6504 preneed contract during the effective period in which the bond
 6505 is issued. The bond shall be filed and maintained with the
 6506 licensing authority board.

6507 (7)(6) The amount of the surety bond shall, upon order of
 6508 the licensing authority board, be increased if, in the licensing
 6509 authority's board's discretion, it finds such increase to be
 6510 warranted by the volume of preneed contracts handled, or
 6511 expected to be handled, by the preneed licensee
 6512 certificateholder.

6513 (8) The surety bond shall be in a form to be approved by
 6514 the licensing authority board, and the licensing authority board
 6515 shall have the right to disapprove any bond which does not
 6516 provide assurance as provided in, and required by, this section.

6517 (9)(7) The bond shall be maintained unimpaired for as long
 6518 as the preneed licensee certificateholder continues in business
 6519 in this state and continues to utilize this section. Whenever
 6520 the preneed licensee certificateholder notifies the licensing
 6521 authority board that it no longer desires to be governed by this

6522 section and furnishes to the licensing authority ~~board~~
 6523 satisfactory proof that it has discharged or otherwise
 6524 adequately provided for all of its obligations to its preneed
 6525 contract purchasers covered by the bond, such as by evidence
 6526 satisfactory to the licensing authority ~~board~~ demonstrating that
 6527 s. 497.458 or s. 497.464 ~~497.417~~ ~~or s. 497.429~~ has been
 6528 complied with, the licensing authority ~~board~~ shall release the
 6529 bond to the entitled parties, provided said parties acknowledge
 6530 receipt of same.

6531 (10)~~(8)~~ No surety bond used to comply with this section
 6532 shall be canceled or subject to cancellation unless at least 60
 6533 days' advance notice thereof, in writing, is filed with the
 6534 licensing authority ~~board~~, by the surety company. The
 6535 cancellation of the bond shall not relieve the obligation of the
 6536 surety company for claims arising out of contracts issued or
 6537 otherwise covered before cancellation of the bond.

6538 (11) In the event that notice of cancellation ~~termination~~
 6539 of the bond is filed with the licensing authority ~~board~~, the
 6540 preneed licensee ~~certificateholder~~ insured thereunder shall,
 6541 within 30 days after ~~of~~ the filing of the notice of termination
 6542 with the licensing authority ~~board~~, provide the licensing
 6543 authority ~~board~~ with a replacement bond or with evidence which
 6544 is satisfactory to the licensing authority ~~board~~ demonstrating
 6545 that s. 497.458 or s. 497.464 ~~497.417~~ ~~or s. 497.429~~ has been
 6546 fully complied with. If within 30 days after ~~of~~ filing of the
 6547 notice of termination with the licensing authority ~~board~~ no
 6548 replacement bond acceptable to the licensing authority ~~board~~ or
 6549 no evidence satisfactory to the licensing authority ~~board~~

6550 demonstrating that s. 497.458 or s. 497.464 ~~497.417~~ or s.
 6551 ~~497.429~~ has been complied with is filed with the licensing
 6552 authority board, the licensing authority board shall suspend the
 6553 license of the preneed licensee certificateholder until the
 6554 preneed licensee certificateholder files a replacement bond
 6555 acceptable to the board or demonstrates to the satisfaction of
 6556 the licensing authority board that it has complied with s.
 6557 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~.

6558 ~~(12)~~~~(9)~~ In lieu of the surety bond, the licensing
 6559 authority board may provide by rule for other forms of security
 6560 or insurance.

6561 ~~(13)~~~~(10)~~ Every preneed licensee certificateholder electing
 6562 to be governed by this section shall have its financial
 6563 statements, submitted to the department pursuant to s. 497.453
 6564 ~~497.407~~, audited by an independent public accountant certified
 6565 pursuant to chapter 473. The financial statements shall contain,
 6566 in accordance with generally accepted accounting principles, for
 6567 two or more consecutive annual periods, the following:

6568 (a) The certified public accountant's unqualified opinion
 6569 or, in the case of a qualified opinion, a qualified opinion
 6570 acceptable to the licensing authority board, and:

- 6571 1. A balance sheet;
- 6572 2. A statement of income and expenses; and
- 6573 3. A statement of changes in financial position.

6574 (b) Notes to the financial statements considered customary
 6575 or necessary for full disclosure and adequate understanding of
 6576 the financial statements, financial condition, and operation of
 6577 the preneed licensee certificateholder. The notes shall include

6578 a schedule, based upon statutory accounting principles,
 6579 indicating that the preneed licensee ~~certificateholder~~ which has
 6580 held a license ~~certificate~~ pursuant to this chapter for less
 6581 than 10 years has a current ratio of no less than 3 to 1 of
 6582 current assets to current liabilities and net assets of at least
 6583 \$600,000 or that the preneed licensee ~~certificateholder~~ which
 6584 has held a license ~~certificate~~ pursuant to this chapter for 10
 6585 years or more has a current ratio of no less than 2 to 1 of
 6586 current assets to current liabilities and net assets of at least
 6587 \$400,000.

6588 (c) An indication that the preneed licensee
 6589 ~~certificateholder~~ has sufficient funds available to perform the
 6590 obligations under all its preneed contracts.

6591 ~~(14)~~~~(11)~~ The licensing authority ~~board~~ may require that
 6592 the audited financial statements be prepared on a calendar-year
 6593 basis.

6594 ~~(15)~~~~(12)~~ The electing preneed licensee ~~certificateholder~~
 6595 shall provide the licensing authority ~~board~~ interim unaudited
 6596 financial statements on a quarterly basis demonstrating
 6597 financial compliance with this section.

6598 ~~(16)~~~~(13)~~ In lieu of subsections ~~(4)-(14)~~ ~~(4)~~~~(11)~~, a
 6599 preneed licensee ~~certificateholder~~ with net assets of at least
 6600 \$25,000 may request to comply with this section by providing a
 6601 written guarantee from a qualified guaranteeing organization. If
 6602 the preneed licensee ~~certificateholder~~ so elects, the preneed
 6603 licensee's ~~certificateholder's~~ requests to be governed by this
 6604 section shall be in the form prescribed by rule ~~the board~~ and
 6605 shall be accompanied by, in addition to other information the

6606 | licensing authority ~~board~~ may require by rule, a written
 6607 | guarantee approved by the licensing authority ~~board~~ as meeting
 6608 | the requirements of this section from a qualified guaranteeing
 6609 | organization, acceptable to the licensing authority ~~board~~,
 6610 | which:

6611 | (a) Is either a preneed licensee ~~certificateholder~~ or
 6612 | servicing agent.

6613 | (b) Is a corporation formed under the laws of this state
 6614 | or of another state, district, territory, or possession of the
 6615 | United States.

6616 | (c) Has been in operation for 10 or more years.

6617 | (d) Submits to the licensing authority ~~board~~ its annual
 6618 | financial statements audited by an independent public accountant
 6619 | certified pursuant to chapter 473. The financial statements
 6620 | shall contain, in accordance with generally accepted accounting
 6621 | principles, for two or more consecutive annual periods, the
 6622 | following:

6623 | 1. The certified public accountant's unqualified opinion
 6624 | or, in the case of a qualified opinion, a qualified opinion
 6625 | acceptable to the licensing authority ~~board~~, and:

- 6626 | a. A balance sheet;
- 6627 | b. A statement of income and expenses; and
- 6628 | c. A statement of changes in financial position.

6629 | 2. Notes to the financial statements considered customary
 6630 | or necessary for full disclosure and adequate understanding of
 6631 | the financial statements, financial condition, and operation of
 6632 | the preneed licensee ~~certificateholder~~. The notes shall include
 6633 | a schedule, based upon statutory accounting principles,

6634 indicating that the guaranteeing organization has a current
6635 ratio of no less than 2 to 1 of current assets to current
6636 liabilities and net assets of at least \$250,000.

6637 (e) Has sufficient funds available to perform the
6638 obligations under its guarantees.

6639 (f) Has complied with subsections (5)-(11) ~~(5), (6), (7),~~
6640 ~~and (8)~~, except that the bond shall be maintained by the
6641 guaranteeing organization in the minimum aggregate principal
6642 amount of \$1 million.

6643 (g) Has principals, including directors, officers,
6644 stockholders, employees, and agents that are of good moral
6645 character and have reputations for fair dealing in business
6646 matters, both as determined by the licensing authority board ~~board~~.

6647 Section 110. Section 497.425, Florida Statutes, is
6648 renumbered as section 497.462, Florida Statutes, and amended to
6649 read:

6650 497.462 ~~497.425~~ Other alternatives to deposits under s.
6651 497.458 ~~497.417~~.--

6652 (1)(a) As an alternative to the requirements of s. 497.458
6653 ~~497.417~~ that relate to trust funds for contracts written prior
6654 to July 1, 2001, or that relate to trust funds for contracts
6655 written prior to December 31, 2004, by any preneed licensee
6656 ~~certificateholder~~ authorized to do business in this state that
6657 has total bonded liability exceeding \$100 million as of July 1,
6658 2001, and subject to the other restrictions of this section, a
6659 preneed licensee ~~certificateholder~~ may purchase a surety bond
6660 for funds not held in trust as of July 1, 2001, in an amount not
6661 less than the aggregate value of outstanding liabilities on

HB 323 CS

2004
CS

6662 undelivered preneed contracts for merchandise and services. For
6663 the purpose of this section, the term "outstanding liabilities"
6664 means the gross replacement or wholesale value of the preneed
6665 merchandise and services. The bond shall be made payable to the
6666 State of Florida for the benefit of the licensing authority
6667 ~~board~~ and all purchasers of preneed cemetery merchandise or
6668 services. The bond must be approved by the licensing authority
6669 ~~board~~.

6670 (b) The amount of the bond shall be based on a report
6671 documenting the outstanding liabilities of the preneed licensee
6672 ~~certificateholder~~ and shall be prepared by the preneed licensee
6673 ~~certificateholder~~ using generally accepted accounting principles
6674 and signed by the preneed licensee's certificateholder's chief
6675 financial officer.

6676 (c) The report shall be compiled as of the end of the
6677 preneed licensee's certificateholder's fiscal year and updated
6678 annually. The amount of the bond shall be increased or decreased
6679 as necessary to correlate with changes in the outstanding
6680 liabilities.

6681 (d) If a preneed licensee certificateholder fails to
6682 maintain a bond pursuant to this section, the preneed licensee
6683 ~~certificateholder~~ shall cease the sale of preneed merchandise
6684 and services.

6685 (2) Upon prior approval by the licensing authority board,
6686 the preneed licensee certificateholder may file a letter of
6687 credit with the licensing authority board in lieu of a surety
6688 bond. Such letter of credit must be in a form, and is subject to

6689 terms and conditions, prescribed by the board. It may be revoked
6690 only with the express approval of the licensing authority ~~board~~.

6691 (3)(a) A buyer of preneed merchandise or services who does
6692 not receive such services or merchandise due to the economic
6693 failure, closing, or bankruptcy of the preneed licensee
6694 ~~certificateholder~~ must file a claim with the surety as a
6695 prerequisite to payment of the claim and, if the claim is not
6696 paid, may bring an action based on the bond and recover against
6697 the surety. In the case of a letter of credit or cash deposit
6698 that has been filed with the licensing authority ~~board~~, the
6699 buyer may file a claim with the licensing authority ~~board~~.

6700 (b) In order to qualify for recovery on any claim under
6701 paragraph (a), the buyer must file the claim no later than 1
6702 year after the date on which the preneed licensee
6703 ~~certificateholder~~ closed or bankruptcy was filed.

6704 (c) The licensing authority ~~board~~ may file a claim with
6705 the surety on behalf of any buyer under paragraph (a). The
6706 surety shall pay the amount of the claims to the licensing
6707 authority ~~board~~ for distribution to claimants entitled to
6708 restitution and shall be relieved of liability to that extent.

6709 (d) The liability of the surety under any bond may not
6710 exceed the aggregate amount of the bond, regardless of the
6711 number or amount of claims filed.

6712 (e) If the total value of the claims filed exceeds the
6713 amount of the bond, the surety shall pay the amount of the bond
6714 to the licensing authority ~~board~~ for distribution to claimants
6715 entitled to restitution and shall be relieved of all liability
6716 under the bond.

6717 (4) The preneed licensee ~~certificateholder~~ shall maintain
6718 accurate records of the bond and premium payments on it, which
6719 records shall be open to inspection by the licensing authority
6720 ~~board~~.

6721 ~~(5) For purposes of this section, a preneed contract is a~~
6722 ~~contract calling for the delivery of merchandise and services in~~
6723 ~~the future and entered into before the death of the prospective~~
6724 ~~recipient.~~

6725 (5)(6) This act does not relieve the preneed licensee
6726 ~~certificateholder~~ or other entity from liability for
6727 nonperformance of contractual terms unless the preneed licensee
6728 ~~certificateholder~~ cannot deliver the merchandise or services
6729 because of a national emergency, strike, or act of God.

6730 (6)(7) The licensing authority ~~board~~ may require the
6731 holder of any assets of the preneed licensee ~~certificateholder~~
6732 to furnish written verification of the financial report required
6733 to be submitted by the preneed licensee ~~certificateholder~~ or
6734 other entity.

6735 (7)(8) Any preneed contract which promises future delivery
6736 of merchandise at no cost constitutes a paid-up contract.
6737 Merchandise which has been delivered is not covered by the
6738 required performance bond or letter of credit even though the
6739 contract is not completely paid. The preneed licensee
6740 ~~certificateholder~~ may not cancel a contract unless the purchaser
6741 is in default according to the terms of the contract and subject
6742 to the requirements of s. 497.459. A contract sold, discounted,
6743 and transferred to a third party constitutes a paid-up contract
6744 for the purposes of the performance bond or letter of credit.

HB 323 CS

2004
CS

6745 ~~(8)(9)~~ Each contract must state the type, size, and design
6746 of merchandise and the description of service to be delivered or
6747 performed.

6748 ~~(9)(10)~~ A purchaser and a preneed licensee
6749 ~~certificateholder~~ who are parties to a preneed contract executed
6750 prior to July 2, 1988, may enter into an amended preneed
6751 contract which is made subject to this section. On and after
6752 January 1, 2006, this subsection may no longer be used to make
6753 any additional contracts subject to a bond under this section,
6754 provided that contracts already amended and made subject to a
6755 bond as of December 31, 2005, may remain under such bond.

6756 ~~(10)(11)~~ The licensing authority ~~board~~ may adopt forms and
6757 rules necessary to implement this section, including, but not
6758 limited to, rules which ensure that the surety bond and line of
6759 credit provide liability coverage for preneed merchandise and
6760 services.

6761 ~~(11)(12)~~ Preneed licensees ~~Certificateholders~~ may utilize
6762 the bonding alternatives to s. 497.458 ~~497.417~~ provided in this
6763 section only for contracts written prior to July 1, 2001, for
6764 funds not held in trust as of July 1, 2001, or for contracts
6765 written prior to December 31, 2004, by any preneed licensee
6766 ~~certificateholder~~ authorized to do business in this state that
6767 has total bonded liability exceeding \$100 million as of July 1,
6768 2001, for funds not held in trust as of July 1, 2001.

6769 Section 111. Section 497.427, Florida Statutes, is
6770 renumbered as section 497.463, Florida Statutes, and amended to
6771 read:

6772 497.463 ~~497.427~~ Existing merchandise trust funds; proof of
 6773 compliance with law.--The preneed licensee ~~certificateholder~~
 6774 shall present to the licensing authority ~~board~~ prior to the
 6775 implementation of the alternatives provided in s. 497.462
 6776 ~~497.425~~ documentation which demonstrates that the existing
 6777 merchandise trust fund complies with the law and that the
 6778 elected alternative plan conforms to the requirements of this
 6779 chapter.

6780 Section 112. Section 497.429, Florida Statutes, is
 6781 renumbered as section 497.464, Florida Statutes, and amended to
 6782 read:

6783 497.464 ~~497.429~~ Alternative preneed contracts.--

6784 (1) Nothing in this chapter shall prevent the purchaser
 6785 and the preneed licensee ~~certificateholder~~ from executing a
 6786 preneed contract upon the terms stated in this section. Such
 6787 contracts shall be subject to all provisions of this chapter
 6788 except:

6789 (a) Section 497.454(3) ~~497.409(2)~~.

6790 (b) Section 497.457 ~~497.415~~.

6791 (c) Section 497.458(1), (3), and (6) ~~497.417(1), (3), and~~
 6792 ~~(5)~~.

6793 (d) Section 497.459(1), (2), and (4) ~~497.419(1), (2), and~~
 6794 ~~(5)~~.

6795 (e) Section 497.460 ~~497.421~~.

6796 (f) Section 497.461 ~~497.423~~.

6797 (g) Section 497.462 ~~497.425~~.

6798 (2) The contract must require that a trust be established
 6799 by the preneed licensee ~~certificateholder~~ on behalf of, and for

6800 the use, benefit, and protection of, the purchaser and that the
 6801 trustee must be a trust company operating pursuant to chapter
 6802 660, a national or state bank holding trust powers, or a federal
 6803 or state savings and loan association holding trust powers.

6804 (3) The contract must require that the purchaser make all
 6805 payments required by the contract directly to the trustee or its
 6806 qualified servicing agent and that the funds shall be deposited
 6807 in this state, subject to the terms of a trust instrument
 6808 approved by the licensing authority board. The licensing
 6809 authority may adopt rules establishing procedures and forms for
 6810 the submission of trust instruments for approval by the
 6811 licensing authority, establishing criteria for the approval of
 6812 such trust instruments, and specifying information required to
 6813 be provided by the applicant in connection with submission of a
 6814 trust instrument for approval. A copy of the trust instrument
 6815 shall be made available to the purchaser, at any reasonable
 6816 time, upon request.

6817 (4) The contract or trust instrument shall expressly state
 6818 that the preneed licensee ~~certificateholder~~ does not have any
 6819 dominion or control over the trust or its assets, except to the
 6820 extent that subsection (6) applies, until such time as the
 6821 preneed contract is entirely completed or performed.

6822 (5) The trust instrument shall prohibit the trustee from
 6823 distributing any appreciation on the trust to any person and
 6824 shall require that the trustee accumulate the entire net income
 6825 of the trust, or its pro rata share thereof. The accumulated net
 6826 income shall be distributed to the preneed licensee

6827 ~~certificateholder~~ upon cancellation or performance of the
6828 contract.

6829 (6) The contract and trust instrument may provide that the
6830 preneed licensee ~~certificateholder~~ may receive a current
6831 distribution of not more than 10 percent of all funds paid or
6832 collected by the trustee and may further provide for liquidated
6833 damages during the first 3 years after the execution of the
6834 contract of not more than 10 percent of all the funds paid on
6835 the preneed contract, except that no liquidated damages shall
6836 apply for cancellation within 30 days after ~~of~~ the date of
6837 execution of the contract.

6838 (7) Disbursement of funds discharging any preneed contract
6839 shall be made by the trustee to the person issuing or writing
6840 such contract upon receipt of a certified copy of the death
6841 certificate of the contract beneficiary and evidence
6842 satisfactory to the trustee that the preneed contract has been
6843 fully performed. In the event of any contract default by the
6844 contract purchaser, or in the event that the funeral merchandise
6845 or service contracted for is not provided or is not desired by
6846 the purchaser or the heirs or personal representative of the
6847 contract beneficiary, the trustee shall return, within 30 days
6848 after its receipt of a written request therefor, funds paid on
6849 the contract to the contract purchaser or to her or his assigns,
6850 heirs, or personal representative, subject to the lawful
6851 liquidation damage provision in the contract.

6852 (8) The contract shall provide, in conspicuous type, that
6853 the purchaser may receive a federal income tax informational
6854 statement, pursuant to the grantor trust rules of ss. 671 et

HB 323 CS

2004
CS

6855 | seq. of the Internal Revenue Code of 1986, as amended, from the
 6856 | trustee reflecting all of the income earned by the trust; and,
 6857 | accordingly, the purchaser should seek the advice of an
 6858 | independent tax professional for the tax impact upon the
 6859 | purchaser as a result of executing the preneed contract.

6860 | (9) The contract may provide that the preneed licensee
 6861 | ~~certificateholder~~ may cancel the contract, but only in the event
 6862 | that the purchaser is more than 90 days in default of the terms
 6863 | of the contract; and, unless subject to the provisions of s.
 6864 | 497.459(5) ~~497.419(6)~~, must provide that the purchaser, or her
 6865 | or his representative, has the right, at any time prior to the
 6866 | performance of the contract, to cancel the preneed contract and
 6867 | revert title to all the funds paid on the preneed contract,
 6868 | except for applicable liquidated damages, and the preneed
 6869 | licensee's ~~certificateholder's~~ rights in the net income of the
 6870 | trust.

6871 | (10) The contract or trust agreement may require the
 6872 | trustee to invest in solely tax-free investments.

6873 | (11) In the event the parties execute a contract pursuant
 6874 | to this section, the purchaser shall be deemed, and treated for
 6875 | all purposes, as the settlor of the trust established
 6876 | thereunder.

6877 | Section 113. Section 497.436, Florida Statutes, is
 6878 | renumbered as section 497.465, Florida Statutes, and amended to
 6879 | read:

6880 | 497.465 ~~497.436~~ Inactive, surrendered, and revoked preneed
 6881 | licensees ~~certificateholders~~.--

6882 (1) A preneed licensee ~~certificateholder~~ shall be
 6883 considered inactive upon the acceptance of the surrender of its
 6884 license by the licensing authority ~~board~~ or upon the nonreceipt
 6885 by the licensing authority ~~board~~ of the preneed license
 6886 ~~certificate of authority~~ renewal application and fees required
 6887 by s. 497.265 ~~497.213(2)~~.

6888 (2) A preneed licensee ~~certificateholder~~ shall cease all
 6889 preneed sales to the public upon becoming inactive. The preneed
 6890 licensee ~~certificateholder~~ shall collect and deposit into trust
 6891 all of the funds paid toward preneed contracts sold prior to
 6892 becoming inactive.

6893 (3) Any preneed licensee ~~certificateholder~~ desiring to
 6894 surrender its license to the licensing authority ~~board~~ shall
 6895 first:

- 6896 (a) File notice with the licensing authority ~~board~~.
- 6897 (b) Submit copies of its existing trust agreements.
- 6898 (c) Submit a sample copy of each type of preneed contract
 6899 sold.
- 6900 (d) Resolve to the licensing authority's ~~board's~~
 6901 satisfaction all unresolved findings and violations resulting
 6902 from prior examinations ~~the last examination~~ conducted.
- 6903 (e) Pay all outstanding fines and invoices due the
 6904 licensing authority ~~board~~.
- 6905 (f) Submit its current preneed license ~~certificate of~~
 6906 ~~authority~~.

6907 (4) Upon receipt of the notice, the licensing authority
 6908 ~~board~~ shall review the preneed licensee's ~~certificateholder's~~:

- 6909 (a) Trust funds.

6910 (b) Trust agreements.

6911 (c) Evidence of all outstanding preneed contracts.

6912 (5) After a review to the licensing authority's ~~board's~~
 6913 satisfaction, the licensing authority ~~board~~ shall terminate the
 6914 preneed license ~~certificate of authority~~ by an order which shall
 6915 set forth the conditions of termination established by the
 6916 licensing authority ~~board~~ to ensure that the preneed funds will
 6917 be available for their intended purpose.

6918 (6) The trust fund of the preneed licensee
 6919 ~~certificateholder~~ shall be held intact and in trust after the
 6920 preneed licensee ~~certificateholder~~ has become inactive, and the
 6921 funds in that trust shall be disbursed in accordance with the
 6922 requirements of the written contracts and this chapter until the
 6923 funds have been exhausted.

6924 (7) The licensing authority ~~board~~ shall continue to have
 6925 jurisdiction over the inactive preneed licensee and the trust
 6926 funds ~~certificateholder~~ as if the preneed license ~~certificate~~
 6927 were active and to require such reports and inspect such records
 6928 as the licensing authority ~~board~~ deems appropriate so long as
 6929 there are funds in trust or preneed contracts that are not
 6930 fulfilled.

6931 (8) In addition to any other terms of revocation or
 6932 suspension ordered pursuant to this chapter ~~s. 497.233~~, the
 6933 provisions of this section shall also apply in the event of
 6934 revocation or suspension of a preneed license, unless the
 6935 provisions of the suspension or revocation order specifically
 6936 provide otherwise.

6937 (9) The licensing authority may adopt rules for the
 6938 implementation of this section, for the purpose of ensuring a
 6939 thorough review and investigation of the status and condition of
 6940 the preneed licensee's business affairs for the protection of
 6941 the licensee's preneed customers. Such rules may include:

6942 (a) The form of notice required by paragraph (3)(a) and
 6943 the information or materials to be contained in or accompany the
 6944 notice or otherwise to be provided, which may include any
 6945 information or materials the licensing authority deems needed
 6946 for the discharge of its responsibilities under this section.

6947 (b) Requirements for the submission of sworn affidavits by
 6948 or the taking of sworn testimony from the preneed licensee and
 6949 its principals, employees, and sales agents.

6950 (c) Requirements for submission of unaudited or audited
 6951 financial statements, as the licensing authority deems
 6952 advisable.

6953 Section 114. Section 497.439, Florida Statutes, is
 6954 renumbered as section 497.466, Florida Statutes, and amended to
 6955 read:

6956 497.466 497.439 Preneed sales agents, license required;
 6957 application procedures and criteria; responsibility of preneed
 6958 licensee.--

6959 (1) GENERAL PROVISIONS APPLICABLE TO PRENEED SALES
 6960 AGENTS.--

6961 (a) All individuals who offer preneed contracts to the
 6962 public, or who execute preneed contracts on behalf of a preneed
 6963 licensee ~~certificateholder~~, including all individuals who offer,
 6964 sell, or sign contracts for the preneed sale of burial rights,

6965 shall be licensed ~~registered with the board~~ as preneed sales
 6966 agents, pursuant to this section, unless such individuals are
 6967 licensed as funeral directors pursuant to this chapter.

6968 ~~(b)(2)~~ All preneed sales agents and funeral directors
 6969 acting as preneed sales agents must be employed by or under
 6970 written contract ~~affiliated~~ with the preneed licensee
 6971 ~~certificateholder~~ that they are representing.

6972 ~~(c)(3)~~ A preneed licensee ~~certificateholder~~ shall be
 6973 responsible for the activities of all preneed sales agents and
 6974 all funeral directors acting as preneed sales agents, who are
 6975 affiliated with the preneed licensee ~~certificateholder~~ and who
 6976 perform any type of preneed-related activity on behalf of the
 6977 preneed licensee ~~certificateholder~~. In addition to the preneed
 6978 sales agents and funeral directors acting as preneed sales
 6979 agents, each preneed licensee ~~certificateholder~~ shall also be
 6980 subject to discipline if its preneed sales agents or funeral
 6981 directors acting as preneed sales agents violate any provision
 6982 of this chapter.

6983 ~~(d)(4)~~ A preneed sales agent and a funeral director acting
 6984 as a preneed sales agent shall be authorized to sell, offer, and
 6985 execute preneed contracts on behalf of all entities owned or
 6986 operated by its sponsoring preneed licensee ~~certificateholder~~.

6987 (e) An individual may be licensed as a preneed sales agent
 6988 on behalf of more than one preneed licensee, provided that the
 6989 individual has received the written consent of all such preneed
 6990 licensees and makes separate application under this section for
 6991 each such preneed licensee.

6992 (f) A sponsoring preneed licensee shall notify the
 6993 department in writing within 30 days after the sponsored preneed
 6994 sales agent's authority to represent that preneed licensee has
 6995 terminated.

6996 (2) APPLICATION PROCEDURES.--

6997 (a) A person seeking licensure as a preneed sales agent
 6998 shall apply for such licensure using forms prescribed by rule of
 6999 the licensing authority.

7000 (b) The application shall require the name, residence
 7001 address, residence phone number, if any, and date and place of
 7002 birth of the preneed sales agent applicant. Applicants shall be
 7003 at least 18 years of age. The application shall require
 7004 identification of the name, address, and license number of the
 7005 sponsoring preneed licensee. The application shall require the
 7006 preneed sales agent applicant's social security number and the
 7007 federal tax identification number of the sponsoring preneed
 7008 licensee.

7009 (c) The application shall require information as to the
 7010 educational and employment history of the preneed sales agent
 7011 applicant.

7012 (d) The application shall require the preneed sales agent
 7013 applicant to disclose whether the preneed sales agent applicant
 7014 has ever been convicted or found guilty of, or entered a plea of
 7015 nolo contendere to, regardless of adjudication, any crime in any
 7016 jurisdiction.

7017 (e) The application shall require the preneed sales agent
 7018 applicant to disclose whether the preneed sales agent applicant
 7019 has ever had a license or the authority to practice a profession

7020 or occupation refused, suspended, fined, denied, or otherwise
 7021 acted against or disciplined by the licensing authority of any
 7022 jurisdiction. A licensing authority's acceptance of a
 7023 relinquishment of licensure, stipulation, consent order, or
 7024 other settlement, offered in response to or in anticipation of
 7025 the filing of charges against the license, shall be construed as
 7026 action against the license.

7027 (f) The application shall require a representation by the
 7028 sponsoring preneed licensee that:

7029 1. The sponsoring preneed licensee's license is in good
 7030 standing.

7031 2. Upon licensure as a preneed sales agent, the sponsored
 7032 preneed sales agent applicant will be authorized to offer, sell,
 7033 and sign preneed contracts on behalf of the preneed licensee.

7034 3. The preneed licensee has trained the applicant in the
 7035 provisions of this chapter relating to preneed sales, the
 7036 provisions of the preneed licensee's preneed contracts, and the
 7037 nature of the merchandise, services, or burial rights sold by
 7038 the preneed licensee.

7039 (g) The application shall require the preneed sales agent
 7040 applicant to indicate whether the applicant has any type of
 7041 working relationship with any other preneed licensee or
 7042 insurance company and, if so, to identify such other preneed
 7043 licensee or insurance company, as the case may be.

7044 (h) The applicant shall be required to submit her or his
 7045 fingerprints in accordance with part I of this chapter.

7046 (i) The application shall be signed by the applicant and
 7047 by an officer or manager of the sponsoring preneed licensee.

7048 (j) The application shall be accompanied by a
 7049 nonrefundable fee of \$100. The licensing authority may from time
 7050 to time increase such fee but not to exceed \$200.

7051 (3) ACTION CONCERNING APPLICATIONS; TEMPORARY AND REGULAR
 7052 LICENSURE.--

7053 (a) An applicant shall be deemed to have been issued a
 7054 temporary preneed sales agent license and may begin functioning
 7055 as a preneed sales agent immediately upon receipt by the
 7056 department of a duly completed application for licensure under
 7057 this section if the application shows an applicant of at least
 7058 18 years of age who has no prior criminal and disciplinary
 7059 actions to disclose under paragraphs (2)(d) and (e) and the
 7060 application is accompanied by the required application fee. The
 7061 temporary preneed sales agent license shall be valid for 90 days
 7062 unless earlier suspended by the licensing authority for cause.
 7063 If the application is approved by the board within the 90-day
 7064 period, the temporary license shall be deemed converted to a
 7065 regular biennial license which shall expire in accordance with
 7066 the schedule established by the licensing authority by rule.

7067 (b)1. A person who has any prior criminal or disciplinary
 7068 action required to be disclosed under paragraph (2)(d) or
 7069 paragraph (2)(e) may apply to the licensing authority for
 7070 issuance of a preneed sales agent license notwithstanding such
 7071 criminal or disciplinary record. The licensing authority may by
 7072 rule specify forms and procedures for use by such persons in
 7073 applying for preneed sales agent licensure, to be used by such
 7074 persons in lieu of the forms and procedures specified under
 7075 paragraph (a). Licensure shall be granted unless the licensing

HB 323 CS

2004
CS

7076 authority reasonably determines that the prior criminal or
7077 disciplinary record indicates that the granting of licensure
7078 would pose unreasonable risk to the public.

7079 2. To facilitate issuance of licenses concerning
7080 applicants with criminal or disciplinary records which the
7081 licensing authority determines make the applicant borderline as
7082 to qualification for licensure, the licensing authority may
7083 issue a new license under this section on a probationary basis,
7084 subject to conditions specified by the licensing authority on a
7085 case-by-case basis, which conditions may impose special
7086 monitoring, reporting, and restrictions on operations for up to
7087 the first 24 months after licensure, to ensure the preneed sales
7088 agent licensee's integrity, trustworthiness, and compliance with
7089 this chapter. Provided, no such probationary license shall be
7090 issued unless the licensing authority determines that issuance
7091 would not pose an unreasonable risk to the public, and the
7092 licensing authority must, within 24 months after issuance of the
7093 license, either remove the probationary status or determine that
7094 the licensee is not qualified for licensure under this chapter
7095 and institute proceedings for revocation of licensure. The
7096 licensing authority may adopt rules prescribing criteria and
7097 procedures for issuance of such probationary licenses.

7098 (4) RENEWAL OF LICENSES.--Nontemporary preneed sales agent
7099 licenses under this section shall be renewed biennially in
7100 accordance with a schedule, forms, and procedures established by
7101 rule. The nonrefundable biennial renewal fee shall be as
7102 determined by licensing authority rule but not to exceed \$200.

7103 (5) SIMPLIFIED PROCEDURES FOR SUBSEQUENT CHANGE OF
 7104 SPONSORING LICENSEE.--The board may by rule establish simplified
 7105 requirements and procedures under which any preneed sales agent
 7106 who, within the 12 months preceding application under this
 7107 subsection held in good standing a preneed sales agent license
 7108 under this section, may obtain a preneed sales agent's license
 7109 under this section to represent a different sponsoring preneed
 7110 licensee. The simplified requirements shall dispense with the
 7111 requirement for submission of fingerprints. The licensing
 7112 authority may by rule prescribe forms to be used by applicants
 7113 under this subsection, which forms may dispense with the
 7114 requirement for any information not deemed by the licensing
 7115 authority to be necessary to tracking the identity of the
 7116 preneed licensee responsible for the activities of the preneed
 7117 sales agent. No preneed sales agent licensee whose sales agent
 7118 license issued by the board was revoked or suspended or
 7119 otherwise terminated while in other than good standing shall be
 7120 eligible to use the simplified requirements and procedures. The
 7121 issuance of a preneed sales agent license under this subsection
 7122 shall not operate as a bar to any subsequent disciplinary action
 7123 relating to grounds arising prior to obtaining the license under
 7124 this subsection. There shall be a fee payable to the department
 7125 under such simplified procedures, which fee shall be the same as
 7126 the fee paid upon initial application for preneed sales agent
 7127 licensure, except that no fingerprint fee shall be required if
 7128 such fingerprint fee is required for initial applications.

7129 ~~(5) An individual may begin functioning as a preneed sales~~
 7130 ~~agent as soon as a completed application for registration, as~~
 7131 ~~set forth in subsection (7), is sent to the department.~~

7132 ~~(6) The qualifications for a preneed sales agent are as~~
 7133 ~~follows:~~

7134 ~~(a) The applicant must be at least 18 years of age.~~

7135 ~~(b) The applicant must be in good standing with the board.~~

7136 ~~(c) The applicant must not have any felony or misdemeanor~~
 7137 ~~convictions that relate to any activity regulated by this~~
 7138 ~~chapter.~~

7139 ~~(7) An application for registration as a preneed sales~~
 7140 ~~agent shall be submitted to the department with an application~~
 7141 ~~fee of \$100 by the certificateholder in a form that has been~~
 7142 ~~prescribed by department rule and approved by the board. Such~~
 7143 ~~application shall contain, at a minimum, the following:~~

7144 ~~(a) The name, address, social security number, and date of~~
 7145 ~~birth of the applicant and such other information as the board~~
 7146 ~~may reasonably require of the applicant.~~

7147 ~~(b) The name, address, and license number of the~~
 7148 ~~sponsoring certificateholder.~~

7149 ~~(c) A representation, signed by the applicant, that the~~
 7150 ~~applicant meets the requirements set forth in subsection (6).~~

7151 ~~(d) A representation, signed by the certificateholder,~~
 7152 ~~that the applicant is authorized to offer, sell, and sign~~
 7153 ~~preneed contracts on behalf of the certificateholder, and that~~
 7154 ~~the certificateholder has trained the applicant in the~~
 7155 ~~provisions of this chapter relating to preneed sales as~~
 7156 ~~determined by the board, the provisions of the~~

7157 ~~certificateholder's preneed contract, and the nature of the~~
 7158 ~~merchandise, services, or burial rights sold by the~~
 7159 ~~certificateholder.~~

7160 ~~(e) A statement indicating whether the applicant has any~~
 7161 ~~type of working relationship with any other certificateholder or~~
 7162 ~~insurance company.~~

7163 ~~(8) An individual may be registered as a preneed sales~~
 7164 ~~agent on behalf of more than one certificateholder, provided~~
 7165 ~~that the individual has received the written consent of all such~~
 7166 ~~certificateholders.~~

7167 ~~(9) A certificateholder who has registered a preneed sales~~
 7168 ~~agent shall notify the department within 30 days after such~~
 7169 ~~individual's status as a preneed sales agent has been~~
 7170 ~~terminated.~~

7171 ~~(10) Upon receipt of an application that complies with all~~
 7172 ~~of the requirements of subsection (7), the department shall~~
 7173 ~~register the applicant. The department shall by rule provide for~~
 7174 ~~biennial renewal of registration and a renewal fee of \$150.~~

7175 Section 115. Section 497.441, Florida Statutes, is
 7176 renumbered as section 497.467, Florida Statutes, and amended to
 7177 read:

7178 497.467 ~~497.441~~ Acceptability of funeral and burial
 7179 merchandise.--Each person who engages in preneed sales of
 7180 funeral or burial merchandise shall determine, and notify the
 7181 purchaser in writing prior to the completion of the contract,
 7182 that the merchandise being considered for purchase will be
 7183 accepted in the cemetery of the purchaser's choice. The failure
 7184 to comply with this chapter shall nullify the agreement, and all

7185 moneys paid in shall be returned, notwithstanding the existence
 7186 of any liquidated damages provision otherwise applicable by
 7187 contract or statute pursuant to s. 497.419(2).

7188 Section 116. Part V of chapter 497, Florida Statutes,
 7189 consisting of sections 497.550, 497.551, 497.552, 497.553,
 7190 497.554, 497.555, and 497.556, is created to read:

7191 PART V

7192 MONUMENT ESTABLISHMENTS

7193 Section 117. Section 497.361, Florida Statutes, is
 7194 renumbered as section 497.550, Florida Statutes, and
 7195 amended to read:

7196 (Substantial rewording of section. See
 7197 s. 497.361, F.S., for present text.)

7198 497.550 Licensure of monument establishments required;
 7199 procedures and criteria.--

7200 (1) LICENSE REQUIRED.--No person shall conduct, maintain,
 7201 manage, or operate a monument establishment in this state unless
 7202 the monument establishment is licensed pursuant to this part.

7203 (2) APPLICATION PROCEDURES.--A person seeking licensure as
 7204 a monument establishment shall apply for such licensure using
 7205 forms prescribed by rule.

7206 (a) The application shall require the applicant's name and
 7207 address and the name and address of all principals of the
 7208 applicant. The application shall require the applicant's social
 7209 security number or, if the applicant is an entity, its federal
 7210 tax identification number.

7211 (b) The application may require information as to the
 7212 applicant's financial resources and the experience of the

HB 323 CS

2004
CS

7213 applicant and its principals in the monument establishment
7214 business or death care industry.

7215 (c) The application shall require the applicant to
7216 disclose whether the applicant or any of its principals has ever
7217 been convicted or found guilty of, or entered a plea of nolo
7218 contendere to, regardless of adjudication, any crime in any
7219 jurisdiction.

7220 (d) The application shall require the applicant to
7221 disclose whether the applicant or any of its principals has ever
7222 had a license or the authority to practice a profession or
7223 occupation revoked, suspended, fined, denied, or otherwise acted
7224 against or disciplined by the licensing authority of any
7225 jurisdiction.

7226 (e) The application shall require the applicant's
7227 principals to provide fingerprints in accordance with part I of
7228 this chapter.

7229 (f) The applicant shall be a natural person at least 18
7230 years of age, a corporation, a partnership, or a limited
7231 liability company formed prior to January 1, 2005, which limited
7232 liability company already holds a license under this chapter.

7233 (g) The application shall require the applicant to
7234 demonstrate that the applicant has, or will have before
7235 commencing operations, the facilities required under this part.

7236 (h) The application shall be signed by the applicant if a
7237 natural person or by the president of an applicant that is a
7238 corporation.

7239 (i) The application shall be accompanied by an application
 7240 fee as determined by licensing authority rule but not to exceed
 7241 \$500.

7242 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
 7243 application for licensure as a monument establishment,
 7244 accompanied by the required application fee, shall be approved
 7245 unless there is shown by clear and convincing evidence that the
 7246 applicant will not, before commencing operations, have the
 7247 facilities required by this part or that issuance of the license
 7248 would pose an unreasonable risk to the public because one or
 7249 more of the following factors:

7250 (a) The applicant's lack of experience.

7251 (b) The applicant's lack of financial resources.

7252 (c) The criminal or disciplinary record of the applicant
 7253 or its principals.

7254 (d) A demonstrated history of violations of the laws of
 7255 this state by the applicant or its principals regarding the
 7256 funeral or cemetery business or other business activities.

7257 (e) A demonstrated history of lack of trustworthiness or
 7258 integrity on the part of the applicant or its principals.

7259 (4) PROBATIONARY STATUS.--It is the policy of this state
 7260 to encourage competition for the public benefit in the monument
 7261 establishment business by, among other means, the entry of new
 7262 licensees into the monument establishment business. To
 7263 facilitate issuance of licenses concerning applications judged
 7264 by the licensing authority to be borderline as to qualification
 7265 for licensure, the licensing authority may issue new monument
 7266 establishment licenses on a probationary basis, subject to

7267 conditions specified by the licensing authority on a case-by-
 7268 case basis, which conditions may impose special monitoring,
 7269 reporting, and restrictions on operations for up to the first 24
 7270 months after licensure, to ensure the licensee's
 7271 responsibleness, competency, and financial stability. However,
 7272 no such probationary license shall be issued unless the
 7273 licensing authority determines that issuance would not pose an
 7274 unreasonable risk to the public, and the licensing authority
 7275 must, within 24 months after issuance of the license, either
 7276 remove the probationary status or determine that the licensee is
 7277 not qualified for licensure and institute proceedings for
 7278 revocation of licensure.

7279 (5) LICENSE NOT TRANSFERABLE OR ASSIGNABLE.--A monument
 7280 establishment license shall not be transferable or assignable.

7281 Section 118. Section 497.551, Florida Statutes, is created
 7282 to read:

7283 497.551 Renewal of monument establishment licensure.--

7284 (1) A monument establishment license must be renewed
 7285 biennially by the licensee.

7286 (2) A monument establishment licensee that does not hold a
 7287 preneed license as of 90 days prior to the date its monument
 7288 establishment license renewal is due shall renew its monument
 7289 establishment license by payment of a renewal fee established by
 7290 rule not to exceed \$250.

7291 (3) A monument establishment licensee that as of 90 days
 7292 prior to its monument establishment license renewal date also
 7293 holds a preneed license issued under this chapter shall renew
 7294 its monument establishment license by payment of a renewal fee

HB 323 CS

2004
CS

7295 determined by its total gross aggregate at-need and preneed
 7296 retail sales for the 12-month period ending 2 full calendar
 7297 months prior to the month in which the renewal is required, as
 7298 follows:

7299 (a) For total sales of \$1 to \$50,000, a renewal fee of
 7300 \$1,000.

7301 (b) For total sales of \$50,001 to \$250,000, a renewal fee
 7302 of \$1,500.

7303 (c) For total sales of \$250,001 to \$500,000, a renewal fee
 7304 of \$2,000.

7305 (d) For total sales over \$500,000, a renewal fee of
 7306 \$2,500.

7307 (4) Rules may be adopted providing procedures, forms, and
 7308 uniform timeframes for monument establishment license renewals.

7309 Section 119. Section 497.552, Florida Statutes, is created
 7310 to read:

7311 497.552 Required facilities.--Effective January 1, 2006, a
 7312 monument establishment shall at all times have and maintain a
 7313 full-service place of business at a specific street address or
 7314 location in this state which complies with the following
 7315 requirements:

7316 (1) It shall include an office for the conduct of its
 7317 business, including the reception of customers.

7318 (2) It shall include a display area in which there is
 7319 displayed a selection of monuments, markers, and related
 7320 products for inspection by customers prior to sale.

7321 (3) Its office and display area shall normally be open to
 7322 the public weekdays during normal business hours.

7323 (4) It shall have facilities for inscribing monuments and
7324 equipment to deliver and install markers and monuments.

7325 (5) It shall comply with any local government zoning
7326 regulations, and it may not be located on tax-exempt property.

7327 Section 120. Section 497.553, Florida Statutes, is created
7328 to read:

7329 497.553 Regulation of monument establishments.--

7330 (1) The Department of Financial Services shall establish
7331 and implement an inspection program for all monument
7332 establishments in accordance with the requirements of this act.

7333 (2) Commencing January 1, 2006, all retail sales by
7334 monument establishments shall be on a sales agreement form filed
7335 by the monument establishment with and approved by the licensing
7336 authority. Sales agreement forms must provide a complete
7337 description of any monument, marker, or related product to be
7338 delivered, and shall prominently and clearly specify the agreed
7339 date for delivery and installation. Procedures for submission
7340 and approval of such forms shall be established by rule.

7341 (3) Commencing January 1, 2006, all monument
7342 establishments shall have written procedures for the receipt,
7343 investigation, and disposition of customer complaints, and shall
7344 ensure that their staff who receive or process such complaints
7345 are familiar with and follow such procedures.

7346 (4) Commencing January 1, 2006, all monument
7347 establishments shall maintain for inspection by the department
7348 records of written complaints received by the monument
7349 establishment. Such complaint records shall include a
7350 chronological log of written complaints received, in which the

HB 323 CS

2004
CS

7351 name and address of each complainant and the date of the
7352 complaint is entered consecutively within 10 business days after
7353 receipt of each complaint. The licensing authority may by rule
7354 establish requirements regarding the format of complaint logs,
7355 including whether they may be maintained electronically or shall
7356 be maintained by pen and ink on paper. The licensing authority
7357 may by order direct a licensee to maintain complaint logs by pen
7358 and ink in writing. The original or complete copy of each
7359 written complaint received by a monument establishment, and all
7360 subsequent correspondence related to such complaint, shall be
7361 maintained by the monument establishment, for inspection by the
7362 department, for the longer of 24 months or 12 months after the
7363 most recent department inspection during which the complaint was
7364 in the monument establishment's complaint records and available
7365 for the department's review.

7366 (5) Commencing January 1, 2006, the failure of a monument
7367 establishment to deliver and install a purchased monument or
7368 marker by the date agreed to in the sales agreement shall
7369 entitle the customer to a full refund of all amounts paid by the
7370 customer for the monument and its delivery and installation,
7371 unless the monument establishment has obtained a written
7372 agreement from the customer extending the delivery date. Such
7373 refund shall be made within 30 days after receipt by the
7374 monument establishment of the customer's written request for a
7375 refund. This subsection does not preclude the purchase and
7376 installation of a new monument from any other registered
7377 monument establishment or preneed licensee.

HB 323 CS

2004
CS

7378 Section 121. Section 497.554, Florida Statutes, is created
7379 to read:

7380 497.554 Monument establishment sales representatives.--

7381 (1) LICENSE REQUIRED.--Each person selling monuments,
7382 markers, or related products for a monument establishment must
7383 be licensed as a monument establishment sales agent. This
7384 requirement shall apply notwithstanding the fact that such
7385 person is already registered or licensed in another capacity
7386 pursuant to this chapter.

7387 (2) APPLICATION PROCEDURES.--Licensure as an monument
7388 establishment sales agent shall be by submission of an
7389 application for licensure to the department on a form prescribed
7390 by rule.

7391 (a) The application shall require the applicant to state
7392 her or his name, residence and business address, business phone
7393 number, social security number, and the name and address of the
7394 monument establishment for which the applicant will be selling.

7395 (b) The application shall require the applicant to
7396 disclose whether the applicant has ever been convicted or found
7397 guilty of, or entered a plea of nolo contendere to, regardless
7398 of adjudication, any crime in any jurisdiction.

7399 (c) The application shall require the applicant to
7400 disclose whether the applicant has ever had a license or the
7401 authority to practice a profession or occupation revoked,
7402 suspended, fined, denied, or otherwise acted against or
7403 disciplined by the licensing authority of any jurisdiction.

7404 (d) The application shall be signed by the applicant and
 7405 the owner or an officer of the sponsoring monument
 7406 establishment.

7407 (e) The monument establishment sales agent application
 7408 shall be accompanied by a fee of \$50. The licensing authority
 7409 may from time to time increase the application fee by rule but
 7410 not to exceed \$200.

7411 (3) APPROVAL OR DENIAL OF APPLICATION.--

7412 (a) If a properly completed application accompanied by the
 7413 required application fee indicates the applicant has no criminal
 7414 or disciplinary record, the requested licensure shall be deemed
 7415 granted upon receipt of the duly completed application by the
 7416 department.

7417 (b) If the application indicates the applicant has any
 7418 criminal or disciplinary history, licensure shall be granted
 7419 unless the licensing authority determines that the licensure of
 7420 the applicant would pose a substantial threat to the welfare of
 7421 the public with whom the applicant might be dealing as a
 7422 monument establishment sales agent. Rules may be adopted
 7423 providing criteria for evaluating criminal and disciplinary
 7424 records as they may affect applications for licensure under this
 7425 section.

7426 (4) TERMINATION OF AUTHORITY.--

7427 (a) Once issued, a monument establishment sales agent
 7428 license of an agent not licensed to make preneed sales shall
 7429 remain in effect without renewal until surrendered, or the
 7430 sponsoring monument establishment terminates the agent's
 7431 authority to sell on behalf of that monument establishment, or

7432 the license is revoked or suspended by the licensing authority
 7433 for cause.

7434 (b) The monument establishment whose officer signed the
 7435 sales agent application shall terminate that agent's authority
 7436 to sell on behalf of that monument establishment, and the
 7437 monument establishment shall advise the licensing authority of
 7438 such termination in writing within 30 days after the
 7439 termination.

7440 (5) RESPONSIBILITY FOR AGENTS.--The sponsoring monument
 7441 establishment shall be responsible for the activities of its
 7442 sales agents concerning their sales activities and shall
 7443 reasonably supervise such activities.

7444 (6) AGENT LICENSE REQUIRED.--A person selling monuments,
 7445 markers, and related products on a preneed basis for a monument
 7446 establishment that has been issued a preneed sales license must
 7447 also obtain authorization as a preneed sales agent under part IV
 7448 of this chapter.

7449 Section 122. Section 497.555, Florida Statutes, is created
 7450 to read:

7451 497.555 Required rules.--Rules shall be adopted
 7452 establishing minimum standards for access to all cemeteries by
 7453 licensed monument establishments for the purpose of delivering
 7454 and installing markers and monuments. In all cases, cemeteries
 7455 must comply with these minimum standards.

7456 Section 123. Section 497.556, Florida Statutes, is created
 7457 to read:

7458 497.556 Requirements relating to monument
 7459 establishments.--

7460 (1) INITIAL LICENSURE.--No monument establishment shall be
 7461 issued a license to engage in preneed sales under this chapter
 7462 unless the monument establishment shall, in addition to the
 7463 other requirements of this part for issuance of a preneed
 7464 license, meet the following requirements:

7465 (a) The monument establishment or its principals shall
 7466 demonstrate at least 3 years of experience in the operation of a
 7467 monument establishment.

7468 (b) The monument establishment shall demonstrate that it
 7469 has a net worth of at least \$10,000 pursuant to generally
 7470 accepted accounting principles. If the monument establishment
 7471 applying for preneed licensure cannot demonstrate a net worth of
 7472 at least \$10,000, the licensing authority may in accordance with
 7473 subsection (3) accept alternative factors or arrangements as
 7474 substituting for the \$10,000 net worth requirement and issue the
 7475 license on that basis. A monument establishment that is issued a
 7476 preneed sales license based upon subsection (3) shall be subject
 7477 to subsection (2) regarding subsequent renewals of its preneed
 7478 sales license.

7479 (2) RENEWAL LICENSURE.--Each monument establishment
 7480 seeking to renew its preneed sales license shall demonstrate, in
 7481 addition to the other requirements of part IV of this chapter
 7482 relating to renewal of preneed licenses, a net worth of \$10,000
 7483 as of the year end for its fiscal year most recently concluded
 7484 prior to the renewal date. Such net worth shall be demonstrated
 7485 in financial statements prepared in accordance with generally
 7486 accepted accounting principles and filed with the licensing
 7487 authority. If the monument establishment seeking renewal of its

7488 preneed licensure cannot demonstrate the required net worth, the
 7489 licensing authority may in accordance with subsection (3) accept
 7490 alternative factors or arrangements as substituting for the
 7491 \$10,000 net worth requirement and renew the license for that
 7492 renewal cycle on that basis.

7493 (3) ALTERNATIVES TO \$10,000 NET WORTH REQUIREMENT.--

7494 (a) A monument establishment that cannot demonstrate the
 7495 required \$10,000 net worth may voluntarily submit to the
 7496 licensing authority and request acceptance of alternative
 7497 evidence of financial stability and resources or agree to
 7498 additional oversight in lieu of the required net worth. Such
 7499 additional evidence or oversight may include, as appropriate,
 7500 one or more of the following:

7501 1. An agreement to submit monthly financial statements of
 7502 the entity.

7503 2. An agreement to submit quarterly financial statements
 7504 of the entity.

7505 3. An appraisal of the entity's property or broker's
 7506 opinion of the entity's assets.

7507 4. A credit report of the entity or its principals.

7508 5. A subordination-of-debt agreement from the entity's
 7509 principals.

7510 6. An indemnification or subrogation agreement binding the
 7511 entity and its principals.

7512 7. A guarantee agreement for the entity from its
 7513 principals.

7514 8. A written explanation of past financial activity of the
 7515 entity.

7516 9. Submission of a 12-month projected business plan of the
7517 entity that includes:

7518 a. A statement of cash flows.

7519 b. Pro forma income statements, with sources of revenues
7520 identified.

7521 c. Marketing initiatives.

7522 10. Submission of previous department examination reports
7523 of the entity.

7524 11. An agreement of 100 percent voluntary trust by the
7525 entity.

7526 (b) The licensing authority may accept such alternative
7527 evidence or arrangements in lieu of the required net worth only
7528 if the licensing authority determines such alternative evidence
7529 or arrangements are an adequate substitute for \$10,000 of net
7530 worth and that acceptance would not substantially increase the
7531 risk to existing or future customers of nonperformance by the
7532 monument establishment on its retail sales agreements.

7533 (4) BRANCH OPERATIONS.--A licensed monument establishment
7534 under common control with another monument establishment,
7535 funeral establishment, or licensed cemetery, which other
7536 monument establishment, funeral establishment, or licensed
7537 cemetery holds a preneed sales license in good standing, may
7538 engage in preneed sales under and as a branch of that other
7539 entity's preneed sales license, if there is compliance with the
7540 usual requirements of this part for branch operation, and the
7541 entity holding the preneed sales license executes and files with
7542 the licensing authority a written agreement in a form acceptable

7543 | to the licensing authority guaranteeing performance of the
 7544 | preneed sales of the branch.

7545 | Section 124. Part VI of chapter 497, Florida Statutes,
 7546 | consisting of sections 497.601, 497.602, 497.603, 497.604,
 7547 | 497.605, 497.606, 497.607, and 497.608, is created to read:

7548 | PART VI

7549 | CREMATION, CREMATORIES, AND DIRECT DISPOSITION

7550 | Section 125. Section 470.0165, Florida Statutes, is
 7551 | renumbered as section 497.601, Florida Statutes, and amended to
 7552 | read:

7553 | 497.601 ~~470.0165~~ Direct disposition; duties.--

7554 | (1) Those individuals licensed ~~registered~~ as direct
 7555 | disposers may perform only those functions set forth below:

7556 | (a) Remove human remains from the place of death and store
 7557 | human remains in registered direct disposal establishments.

7558 | (b) Secure pertinent information from the decedent's next
 7559 | of kin in order to complete the death certificate and to file
 7560 | for the necessary permits for direct disposition.

7561 | (c) Obtain the necessary permits for direct disposition
 7562 | and arrange for obituaries and death notices to be placed in
 7563 | newspapers; provided, however, that the name of the direct
 7564 | disposal establishment may not appear in any death notice or
 7565 | obituary if any funeral service, memorial service, or graveside
 7566 | service is to take place and such service is mentioned in the
 7567 | death notice or obituary.

7568 | (d) Refrigerate human remains prior to direct disposition
 7569 | and transport human remains to a direct disposal establishment
 7570 | for direct disposition.

7571 (e) Contract with a removal service or refrigeration
7572 facility to provide such services or facilities to a direct
7573 disposal establishment.

7574 (2) Direct disposers or funeral directors functioning as
7575 direct disposers may not, in their capacity as direct disposers,
7576 sell, conduct, or arrange for burials, funeral services,
7577 memorial services, visitations, or viewings; hold themselves out
7578 to the public as funeral directors; or use any name, title, or
7579 advertisement that may tend to connote that they are funeral
7580 directors. These prohibitions shall apply regardless of the fact
7581 that such individuals may be licensed as funeral directors.

7582 (3) Provided that direct disposers limit their activities
7583 to those functions set forth in subsection (1), those activities
7584 shall not be deemed to constitute funeral directing or embalming
7585 or the functions performed by a funeral director or embalmer as
7586 otherwise set forth in this chapter.

7587 Section 126. Section 470.017, Florida Statutes, is
7588 renumbered as section 497.602, Florida Statutes, and amended to
7589 read:

7590 (Substantial rewording of section. See
7591 s. 470.017, F.S., for present text.)

7592 497.602 Direct disposers, license required; licensing
7593 procedures and criteria; regulation.--

7594 (1) LICENSE REQUIRED.--Any person who is not a licensed
7595 funeral director and who engages in the practice of direct
7596 disposition must be licensed pursuant to this section as a
7597 direct disposer.

7598 (2) APPLICATION PROCEDURES.--

7599 (a) A person seeking licensure as a direct disposer shall
7600 apply for such licensure using forms prescribed by rule.

7601 (b) The application shall require the name, residence
7602 address, date and place of birth, and social security number of
7603 the applicant.

7604 (c) The application may require information as to the
7605 educational and employment history of the applicant.

7606 (d) The application shall require the applicant to
7607 disclose whether the applicant has ever been convicted or found
7608 guilty of, or entered a plea of nolo contendere to, regardless
7609 of adjudication, any crime in any jurisdiction.

7610 (e) The application shall require the applicant to
7611 disclose whether the applicant has ever had a license or the
7612 authority to practice a profession or occupation refused,
7613 suspended, fined, denied, or otherwise acted against or
7614 disciplined by the licensing authority of any jurisdiction. A
7615 licensing authority's acceptance of a relinquishment of
7616 licensure, stipulation, consent order, or other settlement,
7617 offered in response to or in anticipation of the filing of
7618 charges against the license, shall be construed as action
7619 against the license.

7620 (f) The application shall require the applicant to provide
7621 fingerprints in accordance with part I of this chapter.

7622 (g) The application shall require the applicant to
7623 demonstrate that the applicant does, or will before commencing
7624 operations under the license, comply with all requirements of
7625 this chapter relating to the licensure for which the applicant
7626 applied.

7627 (h) The application shall be signed by the applicant.
 7628 (i) The application shall be accompanied by a
 7629 nonrefundable fee of \$300. The licensing authority may from time
 7630 to time increase the fee by rule but not to exceed \$500.
 7631 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
 7632 application for licensure under this section, accompanied by the
 7633 required fees, shall be approved if the licensing authority
 7634 determines that the following conditions are met:
 7635 (a) The applicant is a natural person at least 18 years of
 7636 age and a high school graduate or equivalent.
 7637 (b) The applicant has taken and received a passing grade
 7638 in a college credit course in Florida mortuary law.
 7639 (c) The applicant has completed a course on communicable
 7640 diseases approved by the licensing authority.
 7641 (d) The applicant has passed an examination prepared by
 7642 the department on the local, state, and federal laws and rules
 7643 relating to the disposition of dead human bodies.
 7644 (e) The applicant does, or will prior to commencing
 7645 operations under the license, comply with all requirements of
 7646 this chapter relating to the license for which the applicant
 7647 applied.
 7648 (f) The applicant is of good character and has no
 7649 demonstrated history of lack of trustworthiness or integrity in
 7650 business or professional matters.
 7651 (4) ISSUANCE OF LICENSE.--Upon approval of the application
 7652 by the licensing authority, the license shall be issued.
 7653 (5) DISPLAY OF LICENSE.--There shall be adopted rules that
 7654 require each license issued under this section to be displayed

HB 323 CS

2004
CS

7655 | in such a manner as to make it visible to the public and to
 7656 | facilitate inspection by the department. Each licensee shall
 7657 | permanently affix a recent photograph of the licensee to each
 7658 | displayed license issued to that licensee as a direct disposer.

7659 | Section 127. Section 470.018, Florida Statutes, is
 7660 | renumbered as section 497.603, Florida Statutes, and amended to
 7661 | read:

7662 | 497.603 ~~470.018~~ Direct disposers, renewal of license
 7663 | ~~Renewal of registration of direct disposer.--~~

7664 | (1) A direct disposer's license shall be renewed ~~The~~
 7665 | ~~department shall renew a registration~~ upon receipt of the
 7666 | renewal application and fee set by rule of the licensing
 7667 | authority but the department not to exceed \$250.

7668 | (2) There shall be adopted ~~The department shall adopt~~
 7669 | rules establishing a schedule, forms, and procedures ~~procedure~~
 7670 | for the biennial renewal of licenses as direct disposers
 7671 | ~~registrations.~~ There shall be adopted ~~The board shall prescribe~~
 7672 | by rule continuing education requirements of up to 6 ~~3~~ classroom
 7673 | hours and there may by rule be established ~~establish~~ criteria
 7674 | for accepting alternative nonclassroom continuing education on
 7675 | an hour-for-hour basis, in addition to an approved ~~a board-~~
 7676 | ~~approved~~ course on communicable diseases that includes the
 7677 | course on human immunodeficiency virus and acquired immune
 7678 | deficiency syndrome required by s. 497.367 ~~455.2226~~, for the
 7679 | renewal of a license as a direct disposer ~~registration.~~

7680 | Section 128. Section 470.021, Florida Statutes, is
 7681 | renumbered as section 497.604, Florida Statutes, and amended to
 7682 | read:

7683 (Substantial rewording of section. See
 7684 s. 470.021, F.S., for present text.)
 7685 497.604 Direct disposal establishments, license required;
 7686 licensing procedures and criteria; license renewal;
 7687 regulation.--
 7688 (1) LICENSE REQUIRED.--A direct disposer shall practice at
 7689 a direct disposal establishment that has been licensed under
 7690 this section and that may be a cinerator facility licensed under
 7691 s. 497.606. No person may open or maintain an establishment at
 7692 which to engage in or hold herself or himself out as engaging in
 7693 the practice of direct disposition unless such establishment is
 7694 licensed pursuant to this section.
 7695 (2) APPLICATION PROCEDURES.--
 7696 (a) A person seeking licensure as a direct disposal
 7697 establishment shall apply for such licensure using forms
 7698 prescribed by rule.
 7699 (b) The application shall require the name, business
 7700 address, residence address, date and place of birth or
 7701 incorporation, and business phone number of the applicant and
 7702 all principals of the applicant. The application shall require
 7703 the applicant's social security number or, if the applicant is
 7704 an entity, its federal tax identification number.
 7705 (c) The application shall name the licensed direct
 7706 disposer or licensed funeral director who will acting as a
 7707 direct disposer in charge of the direct disposal establishment.
 7708 (d) The application may require information as to the
 7709 applicant's financial resources.

7710 (e) The application may require information as to the
7711 educational and employment history of an individual applicant,
7712 and, with respect to applicants that are not natural persons,
7713 the business and employment history of the applicant and
7714 principals of the applicant.

7715 (f) The application shall require the applicant to
7716 disclose whether the applicant or any of the applicant's
7717 principals, including its proposed supervising licensee, have
7718 ever been convicted or found guilty of, or entered a plea of
7719 nolo contendere to, regardless of adjudication, any crime in any
7720 jurisdiction.

7721 (g) The application shall require the applicant to
7722 disclose whether the applicant or any of the applicant's
7723 principals, including its proposed supervising licensee, have
7724 ever had a license or the authority to practice a profession or
7725 occupation refused, suspended, fined, denied, or otherwise acted
7726 against or disciplined by the licensing authority of any
7727 jurisdiction. A licensing authority's acceptance of a
7728 relinquishment of licensure, stipulation, consent order, or
7729 other settlement, offered in response to or in anticipation of
7730 the filing of charges against the license, shall be construed as
7731 action against the license.

7732 (h) The application shall require the applicant and its
7733 principals to provide fingerprints in accordance with part I of
7734 this chapter.

7735 (i) The application shall require the applicant to
7736 demonstrate that the applicant does, or will before commencing
7737 operations under the license, comply with all requirements of

7738 this chapter relating to the licensure for which the applicant
 7739 applied.

7740 (j) The application shall be signed by the applicant if a
 7741 natural person or by the president of an applicant that is not a
 7742 natural person.

7743 (k) The application shall be accompanied by a
 7744 nonrefundable fee of \$300. The licensing authority may from time
 7745 to time by rule increase the fee but not to exceed \$500.

7746 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
 7747 application for licensure under this section, accompanied by the
 7748 required fee, shall be approved if the licensing authority
 7749 determines that the following conditions are met:

7750 (a) The applicant is a natural person at least 18 years of
 7751 age, a corporation, a partnership, or a limited liability
 7752 company formed prior to January 1, 2006, which limited liability
 7753 company already holds a license under this chapter.

7754 (b) The applicant does, or will prior to commencing
 7755 operations under the license, comply with all requirements of
 7756 this chapter relating to the license for which the applicant
 7757 applied.

7758 (c) The applicant and the applicant's principals are of
 7759 good character and have no demonstrated history of lack of
 7760 trustworthiness or integrity in business or professional
 7761 matters.

7762 (4) ISSUANCE OF LICENSE.--Upon approval of the application
 7763 by the licensing authority, the license shall be issued.

7764 (5) PROBATIONARY STATUS.--It is the policy of this state
 7765 to encourage competition for the public benefit in the direct

7766 disposal establishment business by, among other means, the entry
 7767 of new licensees into that business. To facilitate issuance of
 7768 licenses concerning applications judged by the licensing
 7769 authority to be borderline as to qualification for licensure,
 7770 the licensing authority may issue a new license under this
 7771 section on a probationary basis, subject to conditions specified
 7772 by the licensing authority on a case-by-case basis, which
 7773 conditions may impose special monitoring, reporting, and
 7774 restrictions on operations for up to the first 24 months after
 7775 licensure to ensure the licensee's responsibility, competency,
 7776 financial stability, and compliance with this chapter. However,
 7777 no such probationary license shall be issued unless the
 7778 licensing authority determines that issuance would not pose an
 7779 unreasonable risk to the public, and the licensing authority
 7780 must, within 24 months after issuance of the license, either
 7781 remove the probationary status or determine that the licensee is
 7782 not qualified for licensure under this chapter and institute
 7783 proceedings for revocation of licensure.

7784 (6) RENEWAL OF LICENSE.--A direct disposal establishment
 7785 license shall be renewed biennially pursuant to a schedule,
 7786 forms, and procedures and upon payment of a fee of \$200. The
 7787 licensing authority may from time to time increase the fee by
 7788 rule but not to exceed \$400.

7789 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee under
 7790 this section must provide notice as required by rule prior to
 7791 any change in location or control of the licensee or licensed
 7792 person in charge of the licensee's operations. Any such change
 7793 is subject to disapproval or to reasonable conditions imposed by

7794 | the licensing authority for the protection of the public to
 7795 | ensure compliance with this chapter.

7796 | (8) SUPERVISION OF FACILITIES.--Each direct disposal
 7797 | establishment shall have one full-time licensed direct disposer
 7798 | or licensed funeral director acting as a direct disposer in
 7799 | charge and reasonably available to the public during normal
 7800 | business hours for that establishment. Such person may be in
 7801 | charge of only one facility. Such licensed funeral director or
 7802 | licensed direct disposer shall be responsible for making sure
 7803 | the facility, its operations, and all persons employed in the
 7804 | facility comply with all applicable state and federal laws and
 7805 | rules.

7806 | (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.--

7807 | (a) There shall be established by rule standards for
 7808 | direct disposal establishments, including, but not limited to,
 7809 | requirements for refrigeration and storage of dead human bodies.

7810 | (b) The practice of direct disposition must be engaged in
 7811 | at a fixed location of at least 625 interior contiguous square
 7812 | feet and must maintain or make arrangements for suitable
 7813 | capacity for the refrigeration and storage of dead human bodies
 7814 | handled and stored by the establishment.

7815 | (c) Each direct disposal establishment shall at all times
 7816 | be subject to the inspection of all its buildings, grounds, and
 7817 | vehicles used in the conduct of its business by the department,
 7818 | the Department of Health, and local government inspectors and by
 7819 | their agents. There shall be adopted rules that establish such
 7820 | inspection requirements. There shall be adopted by rule of the
 7821 | licensing authority an annual inspection fee not to exceed \$300,

7822 payable upon issuance of the license and upon each renewal of
7823 such license.

7824 (d) Each direct disposal establishment must display at the
7825 public entrance the name of the establishment and the name of
7826 the direct disposer or licensed funeral director acting as a
7827 direct disposer responsible for that establishment. A direct
7828 disposal establishment must transact its business under the name
7829 by which it is licensed.

7830 (e) A direct disposal establishment may not be operated at
7831 the same location as any other direct disposal establishment or
7832 funeral establishment unless such establishments were licensed
7833 as colocated establishments on July 1, 2000.

7834 Section 129. Section 470.022, Florida Statutes, is
7835 renumbered as section 497.605, Florida Statutes, and amended to
7836 read:

7837 497.605 ~~470.022~~ Direct disposition not funeral
7838 directing.--The duties, functions, and services performed by a
7839 direct disposer licensee ~~registrant~~, as provided by this
7840 chapter, shall not be deemed to constitute funeral directing or
7841 embalming or the duties, functions, or services performed by a
7842 funeral director or embalmer as otherwise defined and provided
7843 by this chapter.

7844 Section 130. Section 470.025, Florida Statutes, is
7845 renumbered as section 497.606, Florida Statutes, and amended to
7846 read:

7847 (Substantial rewording of section. See
7848 s. 470.025, F.S., for present text.)

7849 497.606 Cinerator facility, licensure required; licensing
 7850 procedures and criteria; license renewal; regulation.--
 7851 (1) LICENSE REQUIRED.--No person may conduct, maintain,
 7852 manage, or operate a cinerator facility unless a license for
 7853 such facility has been issued and is in good standing under this
 7854 section.
 7855 (2) APPLICATION PROCEDURES.--
 7856 (a) A person seeking licensure as a cinerator facility
 7857 shall apply for such licensure using forms prescribed by rule.
 7858 (b) The application shall require the name, business
 7859 address, residence address, date and place of birth or
 7860 incorporation, and business phone number of the applicant and
 7861 all principals of the applicant. The application shall require
 7862 the applicant's social security number or, if the applicant is
 7863 an entity, its federal tax identification number.
 7864 (c) The application shall name the licensed funeral
 7865 director or licensed direct disposer who will be in charge of
 7866 the cinerator facility.
 7867 (d) The application may require information as to the
 7868 applicant's financial resources.
 7869 (e) The application may require information as to the
 7870 educational and employment history of an individual applicant,
 7871 and, with respect to applicants that are not natural persons,
 7872 the business and employment history of the applicant and
 7873 principals of the applicant.
 7874 (f) The application shall require the applicant to
 7875 disclose whether the applicant or any of the applicant's
 7876 principals, including its proposed supervising licensee, have

HB 323 CS

2004
CS

7877 ever been convicted or found guilty of, or entered a plea of
7878 nolo contendere to, regardless of adjudication, any crime in any
7879 jurisdiction.

7880 (g) The application shall require the applicant to
7881 disclose whether the applicant or any of the applicant's
7882 principals, including its proposed supervising licensee, have
7883 ever had a license or the authority to practice a profession or
7884 occupation refused, suspended, fined, denied, or otherwise acted
7885 against or disciplined by the licensing authority of any
7886 jurisdiction. A licensing authority's acceptance of a
7887 relinquishment of licensure, stipulation, consent order, or
7888 other settlement, offered in response to or in anticipation of
7889 the filing of charges against the license, shall be construed as
7890 action against the license.

7891 (h) The application shall require the applicant and its
7892 principals to provide fingerprints in accordance with part I of
7893 this chapter.

7894 (i) The application shall require the applicant to
7895 demonstrate that the applicant does, or will before commencing
7896 operations under the license, comply with all requirements of
7897 this chapter relating to the licensure for which the applicant
7898 applied.

7899 (j) The application shall be signed by the applicant if a
7900 natural person or by the president of an applicant that is not a
7901 natural person.

7902 (k) The application shall be accompanied by a
7903 nonrefundable fee of \$300. The licensing authority may from time
7904 to time increase the fee by rule but not to exceed \$500.

7905 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
 7906 application for licensure under this section, accompanied by the
 7907 required fee, shall be approved if the licensing authority
 7908 determines that the following conditions are met:

7909 (a) No license may be issued unless the cinerator facility
 7910 has been inspected and approved as meeting all requirements as
 7911 set forth by the department, the Department of Health, the
 7912 Department of Environmental Protection, or any local ordinance
 7913 regulating the facility.

7914 (b) The applicant is a natural person at least 18 years of
 7915 age, a corporation, a partnership, or a limited liability
 7916 company formed prior to January 1, 2006, which limited liability
 7917 company already holds a license under this chapter.

7918 (c) The applicant does, or will prior to commencing
 7919 operations under the license, comply with all requirements of
 7920 this chapter relating to the license for which the applicant
 7921 applied.

7922 (d) The applicant and the applicant's principals are of
 7923 good character and have no demonstrated history of lack of
 7924 trustworthiness or integrity in business or professional
 7925 matters.

7926 (4) PROBATIONARY STATUS.--It is the policy of this state
 7927 to encourage competition for the public benefit in the cinerator
 7928 facility business by, among other means, the entry of new
 7929 licensees into that business. To facilitate issuance of licenses
 7930 concerning applications judged by the licensing authority to be
 7931 borderline as to qualification for licensure, the licensing
 7932 authority may issue a new license under this section on a

7933 probationary basis, subject to conditions specified by the
 7934 licensing authority on a case-by-case basis, which conditions
 7935 may impose special monitoring, reporting, and restrictions on
 7936 operations for up to the first 24 months after licensure, to
 7937 ensure the licensee's responsibility, competency, financial
 7938 stability, and compliance with this chapter. Provided, no such
 7939 probationary license shall be issued unless the licensing
 7940 authority determines that issuance would not pose an
 7941 unreasonable risk to the public, and the licensing authority
 7942 must, within 24 months after issuance of the license, either
 7943 remove the probationary status or determine that the licensee is
 7944 not qualified for licensure under this chapter and institute
 7945 proceedings for revocation of licensure.

7946 (5) ISSUANCE OF LICENSE.--Upon approval of the application
 7947 by the licensing authority, the license shall be issued.

7948 (6) RENEWAL OF LICENSE.--Licenses under this section shall
 7949 be renewed biennially in accordance with a schedule, forms, and
 7950 procedures established by rule. The nonrefundable and
 7951 nonproratable biennial renewal fee shall be as determined by
 7952 licensing authority rule but not to exceed \$500.

7953 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee under
 7954 this section must provide notice as required by rule prior to
 7955 any change in location, control, or licensed person in charge.
 7956 Any such change is subject to disapproval or to reasonable
 7957 conditions imposed by the licensing authority for the protection
 7958 of the public to ensure compliance with this chapter.

7959 (8) SUPERVISION OF FACILITIES.--Each cinerator facility
 7960 shall have one full-time licensed direct disposer or licensed

7961 funeral director in charge of that facility. Such person may be
 7962 in charge of only one facility. Such licensed funeral director
 7963 or licensed direct disposer shall be responsible for making sure
 7964 the facility, its operations, and all persons employed in the
 7965 facility comply with all applicable state and federal laws and
 7966 rules.

7967 (9) REGULATION OF CINERATOR FACILITIES.--

7968 (a) There shall be established by rule standards for
 7969 cinerator facilities, including, but not limited to,
 7970 requirements for refrigeration and storage of dead human bodies,
 7971 use of forms and contracts, and record retention.

7972 (b) No more than one dead human body may be placed in a
 7973 retort at one time, unless written permission has been received
 7974 from a legally authorized person for each body. The operator of
 7975 a cinerator facility shall be entitled to rely on the permission
 7976 of a legally authorized person to cremate more than one human
 7977 body at a time.

7978 (c) Each cinerator facility shall at all times be subject
 7979 to the inspection of all its buildings, grounds, records,
 7980 equipment, and vehicles used in the conduct of its business by
 7981 the department, the Department of Environmental Protection, the
 7982 Department of Health, and local government inspectors and by
 7983 their agents. Rules shall be adopted that establish such
 7984 inspection requirements. There shall by rule of the licensing
 7985 authority be adopted an annual inspection fee not to exceed
 7986 \$300, payable prior to issuance of license and upon each renewal
 7987 of such license.

7988 (d) A cinerator facility licensed under this section shall
 7989 only receive dead human bodies for cremation. A cinerator
 7990 facility may not receive other materials, or medical, hazardous,
 7991 and biohazardous waste, for the purpose of disposal in a retort.

7992 (e) Each cinerator facility must display at its public
 7993 entrance the name of the facility and the name of the funeral
 7994 director or direct disposer responsible for that facility. A
 7995 cinerator facility must transact its business under the name by
 7996 which it is licensed.

7997 (f) A cinerator facility located at the same address as a
 7998 funeral establishment may not have a direct disposer as its
 7999 individual in charge.

8000 (g) A cinerator facility shall not place human remains or
 8001 body parts in a retort or cremation chamber unless the human
 8002 remains are in an alternative container, cremation container, or
 8003 casket. Human remains may be transported in a cremation
 8004 container or stored if they are completely covered and at all
 8005 times treated with dignity and respect. Cremation may include
 8006 the processing and pulverization of bone fragments. Cremated
 8007 remains may be placed in a temporary container following
 8008 cremation. None of the provisions contained in this paragraph
 8009 require the purchase of a casket for cremation. This paragraph
 8010 applies to at-need contracts and preneed contracts entered into
 8011 pursuant to this chapter after June 1, 1996.

8012 (h) Each cinerator facility shall ensure that all
 8013 alternative containers, cremation containers, or caskets used
 8014 for cremation contain no amount of chlorinated plastics not
 8015 authorized by the Department of Environmental Protection and

8016 that they are also composed of readily combustible materials
 8017 suitable for cremation, able to be closed to provide a complete
 8018 covering for the human remains, resistant to leakage or
 8019 spillage, rigid enough for handling with ease, and able to
 8020 provide for the health, safety, and personal integrity of the
 8021 public and crematory personnel.

8022 (i) There shall be adopted by rule criteria for acceptable
 8023 cremation and alternative containers.

8024 (j) There shall be rules adopted requiring each facility
 8025 to submit periodic reports to the department that include the
 8026 names of persons cremated, the date and county of death, the
 8027 name of each person supervising each cremation, the name and
 8028 license number of the establishment requesting cremation, and
 8029 the types of containers used to hold the body during cremation.

8030 (k) Each cinerator facility must be inspected prior to the
 8031 issuance and renewal of its license and shall:

8032 1. Maintain one or more retorts for the reduction of dead
 8033 human bodies.

8034 2. Maintain refrigeration that satisfies the standards set
 8035 by the Department of Health and contains a sufficient number of
 8036 shelves for the average daily number of bodies stored, if
 8037 unembalmed bodies are kept at the site.

8038 3. Maintain sufficient pollution control equipment to
 8039 comply with requirements of the Department of Environmental
 8040 Protection in order to secure annual approved certification.

8041 4. Either have on site or immediately available sufficient
 8042 sealed containers of a type required for the transportation of
 8043 bodies as specified in applicable state rules.

8044 5. Maintain the premises in a clean and sanitary
8045 condition.

8046 6. Have appropriate Department of Environmental Protection
8047 permits.

8048 7. Retain all signed contracts for a period of at least 2
8049 years.

8050 Section 131. Section 470.0255, Florida Statutes, is
8051 renumbered as section 497.607, Florida Statutes, and amended to
8052 read:

8053 497.607 ~~470.0255~~ Cremation; procedure required.--

8054 (1) At the time of the arrangement for a cremation
8055 performed by any person licensed pursuant to this chapter, the
8056 person contracting for cremation services shall be required to
8057 designate ~~his or~~ her or his intentions with respect to the
8058 disposition of the cremated remains of the deceased in a signed
8059 declaration of intent which shall be provided by and retained by
8060 the funeral or direct disposal establishment. A cremation may
8061 not be performed until a legally authorized person gives written
8062 authorization for such cremation. The cremation must be
8063 performed within 48 hours after a specified time which has been
8064 agreed to in writing by the person authorizing the cremation.

8065 (2) With respect to any person who intends to provide for
8066 the cremation of the deceased, if, after a period of 120 days
8067 from the time of cremation the cremated remains have not been
8068 claimed, the funeral or direct disposal establishment may
8069 dispose of the cremated remains. Such disposal shall include
8070 scattering them at sea or placing them in a licensed cemetery
8071 scatter garden or pond or in a church columbarium or otherwise

8072 disposing of the remains as provided by rule ~~of the department~~
8073 ~~or board.~~

8074 (3) Pursuant to the request of a legally authorized person
8075 and incidental to final disposition, cremation may be performed
8076 on parts of human remains. This subsection does not authorize
8077 the cremation of body parts as defined in s. 497.005.

8078 Section 132. Section 497.608, Florida Statutes, is created
8079 to read:

8080 497.608 Liability for unintentional commingling of the
8081 residue of the cremation process.--

8082 (1) The Legislature recognizes that the unintentional or
8083 incidental commingling of the residue of the cremation of human
8084 remains is an inevitable byproduct of the cremation process in a
8085 cinerator retort or cremation chamber.

8086 (2) The operator of a cinerator facility shall establish
8087 written procedures for the removal of cremated remains, to the
8088 extent possible, resulting from the cremation of a human body
8089 and the postcremation processing, shipping, packing or
8090 identifying of those remains. The operator of a cinerator
8091 facility shall file its written procedures, and any revisions to
8092 those written procedures, with the licensing authority for its
8093 approval, and effective January 1, 2006, the cremation facility
8094 shall not be operated unless it has and follows such written
8095 procedures approved by the licensing authority. However, the
8096 licensing authority may adopt by rule standard uniform
8097 procedures for the removal of such cremated remains, which may
8098 be adopted by any cinerator facility in lieu of promulgating,
8099 filing, and obtaining approval of procedures. A cinerator

8100 facility choosing to the utilize standard uniform procedures
 8101 specified by rule shall file notice of its choice with the
 8102 licensing authority pursuant to procedures and forms specified
 8103 by rule.

8104 (3) If an operator follows the procedures set forth in
 8105 written procedures filed and approved by the licensing
 8106 authority, or adopts and follows the standard uniform procedures
 8107 adopted by the licensing authority, the operator shall not be
 8108 liable for the unintentional or the incidental commingling of
 8109 cremated remains resulting from more than one cremation cycle or
 8110 from postcremation processing, shipping, packing, or identifying
 8111 those remains.

8112 (4) A copy of the procedures being utilized by a cinerator
 8113 facility shall be provided by the cinerator facility upon
 8114 request to customers and their representatives, the department,
 8115 and other legally authorized persons.

8116 Section 133. Section 20.121, Florida Statutes, is amended
 8117 to read:

8118 20.121 Department of Financial Services.--There is created
 8119 a Department of Financial Services.

8120 (1) DEPARTMENT HEAD.--The head of the Department of
 8121 Financial Services is the Chief Financial Officer.

8122 (2) DIVISIONS.--The Department of Financial Services shall
 8123 consist of the following divisions:

8124 (a) The Division of Accounting and Auditing, which shall
 8125 include the following bureau and office:

8126 1. The Bureau of Unclaimed Property.

HB 323 CS

2004
CS

8127 2. The Office of Fiscal Integrity which shall function as
8128 a criminal justice agency for purposes of ss. 943.045-943.08 and
8129 shall have a separate budget. The office may conduct
8130 investigations within or outside this state as the bureau deems
8131 necessary to aid in the enforcement of this section. If during
8132 an investigation the office has reason to believe that any
8133 criminal law of this state has or may have been violated, the
8134 office shall refer any records tending to show such violation to
8135 state or federal law enforcement or prosecutorial agencies and
8136 shall provide investigative assistance to those agencies as
8137 required.

8138 (b) The Division of State Fire Marshal.

8139 (c) The Division of Risk Management.

8140 (d) The Division of Treasury, which shall include a Bureau
8141 of Deferred Compensation responsible for administering the
8142 Government Employees Deferred Compensation Plan established
8143 under s. 112.215 for state employees.

8144 (e) The Division of Insurance Fraud.

8145 (f) The Division of Rehabilitation and Liquidation.

8146 (g) The Division of Insurance Agents and Agency Services.

8147 (h) The Division of Consumer Services, ~~which shall include~~
8148 ~~a Bureau of Funeral and Cemetery Services.~~

8149 1. The Division of Consumer Services shall perform the
8150 following functions concerning products or services regulated by
8151 the Department of Financial Services or by either office of the
8152 Financial Services Commission:

8153 a. Receive inquiries and complaints from consumers. +

HB 323 CS

2004
CS

8154 b. Prepare and disseminate such information as the
8155 department deems appropriate to inform or assist consumers.‡
8156 c. Provide direct assistance and advocacy for consumers
8157 who request such assistance or advocacy.‡
8158 d. With respect to apparent or potential violations of law
8159 or applicable rules by a person or entity licensed by the
8160 department or by either office of the commission, report such
8161 apparent or potential violation to the appropriate division of
8162 the department or office of the commission, which may take such
8163 further action as it deems appropriate.

8164 2. Any person licensed or issued a certificate of
8165 authority by the department or by the Office of Insurance
8166 Regulation shall respond, in writing, to the Division of
8167 Consumer Services within 20 days after receipt of a written
8168 request for information from the division concerning a consumer
8169 complaint. The response must address the issues and allegations
8170 raised in this complaint. The division may, in its discretion,
8171 impose an administrative penalty for failure to comply with this
8172 subparagraph in an amount up to \$2,500 per violation upon any
8173 entity licensed by the department or the Office of Insurance
8174 Regulation and \$250 for the first violation, \$500 for the second
8175 violation and up to \$1,000 per violation thereafter upon any
8176 individual licensed by the department or the Office of Insurance
8177 Regulation.

8178 3. The department may adopt rules to implement the
8179 provisions of this paragraph.

8180 4. The powers, duties, and responsibilities expressed or
8181 granted in this paragraph shall not limit the powers, duties,

8182 and responsibilities of the Department of Financial Services,
 8183 the Financial Services Commission, the Office of Insurance
 8184 Regulation, or the Office of Financial Regulation set forth
 8185 elsewhere in the Florida Statutes.

8186 (i) The Division of Workers' Compensation.

8187 (j) The Division of Administration.

8188 (k) The Division of Legal Services.

8189 (l) The Division of Information Systems.

8190 (m) The Office of Insurance Consumer Advocate.

8191 (n) The Division of Funeral, Cemetery, and Consumer
 8192 Services.

8193 (3) FINANCIAL SERVICES COMMISSION.--Effective January 7,
 8194 2003, there is created within the Department of Financial
 8195 Services the Financial Services Commission, composed of the
 8196 Governor, the Attorney General, the Chief Financial Officer, and
 8197 the Commissioner of Agriculture, which shall for purposes of
 8198 this section be referred to as the commission. Commission
 8199 members shall serve as agency head of the Financial Services
 8200 Commission. The commission shall be a separate budget entity and
 8201 shall be exempt from the provisions of s. 20.052. Commission
 8202 action shall be by majority vote consisting of at least three
 8203 affirmative votes. The commission shall not be subject to
 8204 control, supervision, or direction by the Department of
 8205 Financial Services in any manner, including purchasing,
 8206 transactions involving real or personal property, personnel, or
 8207 budgetary matters.

8208 (a) Structure.--The major structural unit of the
8209 commission is the office. Each office shall be headed by a
8210 director. The following offices are established:

8211 1. The Office of Insurance Regulation, which shall be
8212 responsible for all activities concerning insurers and other
8213 risk bearing entities, including licensing, rates, policy forms,
8214 market conduct, claims, adjusters, issuance of certificates of
8215 authority, solvency, viatical settlements, premium financing,
8216 and administrative supervision, as provided under the insurance
8217 code or chapter 636. The head of the Office of Insurance
8218 Regulation is the Director of the Office of Insurance
8219 Regulation.

8220 2. The Office of Financial Regulation, which shall be
8221 responsible for all activities of the Financial Services
8222 Commission relating to the regulation of banks, credit unions,
8223 other financial institutions, finance companies, and the
8224 securities industry. The head of the office is the Director of
8225 the Office of Financial Regulation. The Office of Financial
8226 Regulation shall include a Bureau of Financial Investigations,
8227 which shall function as a criminal justice agency for purposes
8228 of ss. 943.045-943.08 and shall have a separate budget. The
8229 bureau may conduct investigations within or outside this state
8230 as the bureau deems necessary to aid in the enforcement of this
8231 section. If, during an investigation, the office has reason to
8232 believe that any criminal law of this state has or may have been
8233 violated, the office shall refer any records tending to show
8234 such violation to state or federal law enforcement or

8235 prosecutorial agencies and shall provide investigative
8236 assistance to those agencies as required.

8237 (b) Organization.--The commission shall establish by rule
8238 any additional organizational structure of the offices. It is
8239 the intent of the Legislature to provide the commission with the
8240 flexibility to organize the offices in any manner they determine
8241 appropriate to promote both efficiency and accountability.

8242 (c) Powers.--Commission members shall serve as the agency
8243 head for purposes of rulemaking under ss. 120.536-120.565 by the
8244 commission and all subunits of the commission. Each director is
8245 agency head for purposes of final agency action under chapter
8246 120 for all areas within the regulatory authority delegated to
8247 the director's office.

8248 (d) Appointment and qualifications of directors.--The
8249 commission shall appoint or remove each director by a majority
8250 vote consisting of at least three affirmative votes, with both
8251 the Governor and the Chief Financial Officer on the prevailing
8252 side. The minimum qualifications of the directors are as
8253 follows:

8254 1. Prior to appointment as director, the Director of the
8255 Office of Insurance Regulation must have had, within the
8256 previous 10 years, at least 5 years of responsible private
8257 sector experience working full time in areas within the scope of
8258 the subject matter jurisdiction of the Office of Insurance
8259 Regulation or at least 5 years of experience as a senior
8260 examiner or other senior employee of a state or federal agency
8261 having regulatory responsibility over insurers or insurance
8262 agencies.

8263 2. Prior to appointment as director, the Director of the
8264 Office of Financial Regulation must have had, within the
8265 previous 10 years, at least 5 years of responsible private
8266 sector experience working full time in areas within the subject
8267 matter jurisdiction of the Office of Financial Regulation or at
8268 least 5 years of experience as a senior examiner or other senior
8269 employee of a state or federal agency having regulatory
8270 responsibility over financial institutions, finance companies,
8271 or securities companies.

8272
8273 (e) Administrative support.--The offices shall have a
8274 sufficient number of attorneys, examiners, investigators, other
8275 professional personnel to carry out their responsibilities and
8276 administrative personnel as determined annually in the
8277 appropriations process. The Department of Financial Services
8278 shall provide administrative and information systems support to
8279 the offices.

8280 (f) Records retention schedules.--The commission and the
8281 offices may destroy general correspondence files and also any
8282 other records that they deem no longer necessary to preserve in
8283 accordance with retention schedules and destruction notices
8284 established under rules of the Division of Library and
8285 Information Services, records and information management
8286 program, of the Department of State. Such schedules and notices
8287 relating to financial records of the commission and offices
8288 shall be subject to the approval of the Auditor General.

8289 (g) Records storage.--The commission and offices may
8290 photograph, microphotograph, or reproduce on film such documents

8291 and records as they may select, in such manner that each page
 8292 will be exposed in exact conformity with the original. After
 8293 reproduction and filing, original documents and records may be
 8294 destroyed in accordance with the provisions of paragraph (f).

8295 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES.--
 8296 The Board of Funeral, Cemetery, and Consumer Services is created
 8297 within the Division of Funeral, Cemetery, and Consumer Services
 8298 of the Department of Financial Services.

8299 (5)(4) TRANSITIONAL RULES.--Effective January 7, 2003, the
 8300 rules of the Department of Banking and Finance and of the
 8301 Department of Insurance that were in effect on January 6, 2003,
 8302 shall become rules of the Department of Financial Services or
 8303 the Financial Services Commission as is appropriate to the
 8304 corresponding regulatory or constitutional function and shall
 8305 remain in effect until specifically amended or repealed in the
 8306 manner provided by law.

8307 Section 134. Paragraph (a) of subsection (4) of section
 8308 20.165, Florida Statutes, is amended to read:

8309 20.165 Department of Business and Professional
 8310 Regulation.--There is created a Department of Business and
 8311 Professional Regulation.

8312 (4)(a) The following boards are established within the
 8313 Division of Professions:

- 8314 1. Board of Architecture and Interior Design, created
 8315 under part I of chapter 481.
- 8316 2. Florida Board of Auctioneers, created under part VI of
 8317 chapter 468.
- 8318 3. Barbers' Board, created under chapter 476.

HB 323 CS

2004
CS

- 8319 | 4. Florida Building Code Administrators and Inspectors
 8320 | Board, created under part XII of chapter 468.
- 8321 | 5. Construction Industry Licensing Board, created under
 8322 | part I of chapter 489.
- 8323 | 6. Board of Cosmetology, created under chapter 477.
- 8324 | 7. Electrical Contractors' Licensing Board, created under
 8325 | part II of chapter 489.
- 8326 | 8. Board of Employee Leasing Companies, created under part
 8327 | XI of chapter 468.
- 8328 | ~~9. Board of Funeral Directors and Embalmers, created under~~
 8329 | ~~chapter 470.~~
- 8330 | 9.10. Board of Landscape Architecture, created under part
 8331 | II of chapter 481.
- 8332 | 10.11. Board of Pilot Commissioners, created under chapter
 8333 | 310.
- 8334 | 11.12. Board of Professional Engineers, created under
 8335 | chapter 471.
- 8336 | 12.13. Board of Professional Geologists, created under
 8337 | chapter 492.
- 8338 | 13.14. Board of Professional Surveyors and Mappers,
 8339 | created under chapter 472.
- 8340 | 14.15. Board of Veterinary Medicine, created under chapter
 8341 | 474.
- 8342 | Section 135. Paragraph (a) of subsection (1) of section
 8343 | 316.1974, Florida Statutes, is amended to read:
 8344 | 316.1974 Funeral procession right-of-way and liability.--
 8345 | (1) DEFINITIONS.--

HB 323 CS

2004
CS

8346 (a) "Funeral director" and "funeral establishment" shall
8347 have the same meaning as set forth in s. 497.005 ~~470.002~~.

8348 Section 136. Paragraph (a) of subsection (2) of section
8349 381.0098, Florida Statutes, is amended to read:

8350 381.0098 Biomedical waste.--

8351 (2) DEFINITIONS.--As used in this section, the term:

8352 (a) "Biomedical waste" means any solid or liquid waste
8353 which may present a threat of infection to humans. The term
8354 includes, but is not limited to, nonliquid human tissue and body
8355 parts; laboratory and veterinary waste which contains human-
8356 disease-causing agents; discarded disposable sharps; human
8357 blood, blood products, and body fluids; and other materials
8358 which in the opinion of the department represent a significant
8359 risk of infection to persons outside the generating facility.
8360 The term does not include human remains that are disposed of by
8361 persons licensed under chapter 497 ~~470~~.

8362 Section 137. Subsection (7) of section 382.002, Florida
8363 Statutes, is amended to read:

8364 382.002 Definitions.--As used in this chapter, the term:

8365 (7) "Funeral director" means a licensed funeral director
8366 or direct disposer licensed pursuant to chapter 497 ~~470~~ or other
8367 person who first assumes custody of or effects the final
8368 disposition of a dead body or a fetus as described in subsection
8369 (5).

8370 Section 138. Subsections (21), (37), and (39) of section
8371 403.703, Florida Statutes, are amended to read:

8372 403.703 Definitions.--As used in this act, unless the
8373 context clearly indicates otherwise, the term:

HB 323 CS

2004
CS

8374 (21) "Hazardous waste" means solid waste, or a combination
 8375 of solid wastes, which, because of its quantity, concentration,
 8376 or physical, chemical, or infectious characteristics, may cause,
 8377 or significantly contribute to, an increase in mortality or an
 8378 increase in serious irreversible or incapacitating reversible
 8379 illness or may pose a substantial present or potential hazard to
 8380 human health or the environment when improperly transported,
 8381 disposed of, stored, treated, or otherwise managed. The term
 8382 does not include human remains that are disposed of by persons
 8383 licensed under chapter 497 470.

8384 (37) "Biomedical waste" means any solid waste or liquid
 8385 waste which may present a threat of infection to humans. The
 8386 term includes, but is not limited to, nonliquid human tissue and
 8387 body parts; laboratory and veterinary waste which contain human-
 8388 disease-causing agents; discarded disposable sharps; human
 8389 blood, and human blood products and body fluids; and other
 8390 materials which in the opinion of the Department of Health
 8391 represent a significant risk of infection to persons outside the
 8392 generating facility. The term does not include human remains
 8393 that are disposed of by persons licensed under chapter 497 470.

8394 (39) "Biological waste" means solid waste that causes or
 8395 has the capability of causing disease or infection and includes,
 8396 but is not limited to, biomedical waste, diseased or dead
 8397 animals, and other wastes capable of transmitting pathogens to
 8398 humans or animals. The term does not include human remains that
 8399 are disposed of by persons licensed under chapter 497 470.

8400 Section 139. Paragraph (a) of subsection (1) of section
 8401 406.02, Florida Statutes, is amended to read:

HB 323 CS

2004
CS

8402 406.02 Medical Examiners Commission; membership; terms;
8403 duties; staff.--

8404 (1) There is created the Medical Examiners Commission
8405 within the Department of Law Enforcement. The commission shall
8406 consist of nine persons appointed or selected as follows:

8407 (a) The Governor shall appoint:

8408 1. Two members who are physicians licensed pursuant to
8409 chapter 458 or chapter 459 and who are active district medical
8410 examiners;

8411 2. One member who is a funeral director licensed pursuant
8412 to chapter 497 ~~470~~;

8413 3. One member who is a state attorney;

8414 4. One member who is a public defender;

8415 5. One member who is a sheriff; and

8416 6. One member who is a county commissioner.

8417 Section 140. Section 406.50, Florida Statutes, is amended
8418 to read:

8419 406.50 Unclaimed dead bodies or human remains;
8420 disposition, procedure.--All public officers, agents, or
8421 employees of every county, city, village, town, or municipality
8422 and every person in charge of any prison, morgue, hospital,
8423 funeral parlor, or mortuary and all other persons coming into
8424 possession, charge, or control of any dead human body or remains
8425 which are unclaimed or which are required to be buried or
8426 cremated at public expense are hereby required to notify,
8427 immediately, the anatomical board, whenever any such body,
8428 bodies, or remains come into its possession, charge, or control.
8429 Notification of the anatomical board is not required if the

8430 death was caused by crushing injury, the deceased had a
 8431 contagious disease, an autopsy was required to determine cause
 8432 of death, the body was in a state of severe decomposition, or a
 8433 family member objects to use of the body for medical education
 8434 and research.

8435 (1) The person or entity in charge or control of the dead
 8436 body or human remains shall make a reasonable effort to
 8437 determine:

8438 (a) The identity of the deceased person and shall further
 8439 make a reasonable effort to contact any relatives of such
 8440 deceased person.

8441 (b) Whether or not the deceased person is entitled to
 8442 burial in a national cemetery as a veteran of the armed forces
 8443 and, if so, shall make arrangements for such burial services in
 8444 accordance with the provisions of 38 C.F.R. For purposes of this
 8445 subsection, "a reasonable effort" includes contacting the county
 8446 veterans service office or regional office of the United States
 8447 Department of Veterans Affairs.

8448 (2) Such dead human bodies as described in this chapter
 8449 shall be delivered to the anatomical board as soon as possible
 8450 after death.

8451 (3) Nothing herein shall affect the right of a medical
 8452 examiner to hold such dead body or remains for the purpose of
 8453 investigating the cause of death, nor shall this chapter affect
 8454 the right of any court of competent jurisdiction to enter an
 8455 order affecting the disposition of such body or remains.

8456 (4) In the event more than one legally authorized person
 8457 claims a body for interment, the requests shall be prioritized
 8458 in accordance with s. 732.103.

8459
 8460 For purposes of this chapter, the term "anatomical board" means
 8461 the anatomical board of this state located at the University of
 8462 Florida Health Science Center, and the term "unclaimed" means a
 8463 dead body or human remains that are not claimed by a legally
 8464 authorized person, as defined in s. 497.005, for interment at
 8465 that person's expense.

8466 Section 141. Section 406.52, Florida Statutes, is amended
 8467 to read:

8468 406.52 Retention of bodies before use; unfit or excess
 8469 number of bodies, disposition procedure.--All bodies received by
 8470 the anatomical board shall be retained in receiving vaults for a
 8471 period of not less than 48 hours before allowing their use for
 8472 medical science; if at any time more bodies are made available
 8473 to the anatomical board than can be used for medical science
 8474 under its jurisdiction, or if a body shall be deemed by the
 8475 anatomical board to be unfit for anatomical purposes, the
 8476 anatomical board may notify, in writing, the county
 8477 commissioners or other legally authorized person, as defined in
 8478 s. 497.005 ~~470.002~~, in the county where such person died, to
 8479 cause it to be buried or cremated in accordance with the rules,
 8480 laws and practices for disposing of such unclaimed bodies.
 8481 However, prior to having any body buried or cremated, the county
 8482 shall make a reasonable effort to determine the identity of the
 8483 body and shall further make a reasonable effort to contact any

HB 323 CS

2004
CS

8484 relatives of the deceased person. If a relative of the deceased
 8485 person is contacted and expresses a preference for either burial
 8486 or cremation, the county shall make a reasonable effort to
 8487 accommodate the request of the relative. For purposes of this
 8488 section, the county commissioners of the county where such
 8489 person died shall be considered a legally authorized person as
 8490 defined in s. ~~497.005~~ 470.002. A person licensed under ~~chapter~~
 8491 ~~470~~ or chapter 497 shall not be liable for any damages resulting
 8492 from cremating or burying such body at the direction of the
 8493 county's legally authorized person.

8494 Section 142. Section 406.53, Florida Statutes, is amended
 8495 to read:

8496 406.53 Death of indigents; notice; delivery to the
 8497 anatomical board when unclaimed; exceptions; assessment of
 8498 fees.--

8499 (1) Notice of death to the anatomical board in cases of
 8500 indigent persons is not required if:

- 8501 (a) Death was caused by crushing injury.
- 8502 (b) The deceased had a contagious disease.
- 8503 (c) An autopsy was required to determine cause of death.
- 8504 (d) The body was in a state of severe decomposition.
- 8505 (e) Any relative, by blood or marriage, claims the body
 8506 for burial at the expense of such relative, but the body shall
 8507 be surrendered to the claimant for interment, unless the
 8508 claimant is indigent, in which case the body shall be
 8509 surrendered in a manner consistent with the policy of the agency
 8510 in possession or control of the body.

HB 323 CS

2004
CS

8511 (f) Any friend or any representative of a fraternal
 8512 society of which the deceased was a member, or a representative
 8513 of any charitable or religious organization, or a governmental
 8514 agency which was providing residential care to the indigent
 8515 person at the time of ~~his~~ or her or his death claims the body
 8516 for burial at ~~his~~ or her or his, its, or their expense.

8517 (g) The deceased person was an honorably discharged member
 8518 of the Armed Forces of the United States or the state who served
 8519 during a period of wartime service as defined in s. 1.01(14);
 8520 but such body shall be buried in accordance with the provisions
 8521 of the existing laws.

8522 (2) When the Department of Health claims the body of a
 8523 client according to this section, the department shall assess
 8524 fees for burial pursuant to s. 402.33.

8525 (3) For purposes of this chapter, the term indigent shall
 8526 be 100 percent of the federal poverty level recognized by the
 8527 Federal Poverty Income Guidelines produced by the United States
 8528 Department of Health and Human Services.

8529 Section 143. Subsection (1) of section 455.2226, Florida
 8530 Statutes, is amended to read:

8531 455.2226 Funeral directors and embalmers; instruction on
 8532 HIV and AIDS.--

8533 (1) The Board of Funeral Directors and Embalmers shall
 8534 require each person licensed or certified under chapter ~~497~~ 470
 8535 to complete a continuing educational course, approved by the
 8536 board, on human immunodeficiency virus and acquired immune
 8537 deficiency syndrome as part of biennial relicensure or
 8538 recertification. The course shall consist of education on the

HB 323 CS

2004
CS

8539 | modes of transmission, infection control procedures, clinical
 8540 | management, and prevention of human immunodeficiency virus and
 8541 | acquired immune deficiency syndrome. Such course shall include
 8542 | information on current Florida law on acquired immune deficiency
 8543 | syndrome and its impact on testing, confidentiality of test
 8544 | results, and treatment of patients.

8545 | Section 144. Paragraph (b) of subsection (1) of section
 8546 | 501.022, Florida Statutes, is amended to read:

8547 | 501.022 Home solicitation sale; permit required.--

8548 | (1)

8549 | (b) The following are excluded from the operation of this
 8550 | section:

8551 | 1. Bona fide agents, business representatives, or
 8552 | salespersons making calls or soliciting orders at the usual
 8553 | place of business of a customer regarding products or services
 8554 | for use in connection with the customer's business.

8555 | 2. Solicitors, salespersons, or agents making a call or
 8556 | business visit upon the express invitation, oral or written, of
 8557 | an inhabitant of the premises or her or his agent.

8558 | 3. Telephone solicitors, salespersons, or agents making
 8559 | calls which involve transactions that are unsolicited by the
 8560 | consumer and consummated by telephone and without any other
 8561 | contact between the buyer and the seller or its representative
 8562 | prior to delivery of the goods or performance of the services.

8563 | 4. Solicitors, salespersons, or agents conducting a sale,
 8564 | lease, or rental of consumer goods or services by sample,
 8565 | catalog, or brochure for future delivery.

8566 5. Minors, as defined in s. 1.01(13), conducting home
8567 solicitation sales under the supervision of an adult supervisor
8568 who holds a valid home solicitation sale permit. Minors excluded
8569 from operation of this section must, however, carry personal
8570 identification which includes their full name, date of birth,
8571 residence address, and employer and the name and permit number
8572 of their adult supervisor.

8573 6. Those sellers or their representatives that are
8574 currently regulated as to the sale of goods and services by
8575 ~~chapter 470~~, chapter 475, or chapter 497.

8576 7. Solicitors, salespersons, or agents making calls or
8577 soliciting orders on behalf of a religious, charitable,
8578 scientific, educational, or veterans' institution or
8579 organization holding a sales tax exemption certificate under s.
8580 212.08(7)(a).

8581 Section 145. Subsection (15) of section 501.604, Florida
8582 Statutes, is amended to read:

8583 501.604 Exemptions.--The provisions of this part, except
8584 ss. 501.608 and 501.616(6) and (7), do not apply to:

8585 (15) A person who is licensed pursuant to ~~chapter 470~~ or
8586 chapter 497 and who is soliciting within the scope of the
8587 license.

8588 Section 146. Paragraph (d) of subsection (1) of section
8589 626.785, Florida Statutes, is amended to read:

8590 626.785 Qualifications for license.--

8591 (1) The department shall not grant or issue a license as
8592 life agent to any individual found by it to be untrustworthy or
8593 incompetent, or who does not meet the following qualifications:

HB 323 CS

2004
CS

8594 (d) Must not be a funeral director or direct disposer, or
 8595 an employee or representative thereof, or have an office in, or
 8596 in connection with, a funeral establishment, except that a
 8597 funeral establishment may contract with a life insurance agent
 8598 to sell a preneed contract as defined in s. 497.005 ~~chapter 497~~.
 8599 Notwithstanding other provisions of this chapter, such insurance
 8600 agent may sell limited policies of insurance covering the
 8601 expense of final disposition or burial of an insured in the
 8602 amount of \$12,500, plus an annual percentage increase based on
 8603 the Annual Consumer Price Index compiled by the United States
 8604 Department of Labor, beginning with the Annual Consumer Price
 8605 Index announced by the United States Department of Labor for the
 8606 year 2003.

8607 Section 147. Section 765.519, Florida Statutes, is amended
 8608 to read:

8609 765.519 Enucleation of eyes by licensed funeral
 8610 directors.--With respect to a gift of an eye as provided for in
 8611 this part, a licensed funeral director as defined in chapter 497
 8612 ~~470~~ who has completed a course in eye enucleation and has
 8613 received a certificate of competence from the Department of
 8614 Ophthalmology of the University of Florida School of Medicine,
 8615 the University of South Florida School of Medicine, or the
 8616 University of Miami School of Medicine may enucleate eyes for
 8617 gift after proper certification of death by a physician and in
 8618 compliance with the intent of the gift as defined in this
 8619 chapter. No properly certified funeral director acting in
 8620 accordance with the terms of this part shall have any civil or
 8621 criminal liability for eye enucleation.

8622 Section 148. (1) All of the statutory powers, duties and
 8623 functions, records, personnel, property, and unexpended balances
 8624 of appropriations, allocations, or other funds for the
 8625 administration of chapter 470, Florida Statutes, related to the
 8626 Board of Funeral Directors and Embalmers, shall be transferred
 8627 by a type two transfer, as defined in s. 20.06(2), Florida
 8628 Statutes, from the Department of Business and Professional
 8629 Regulation to the Department of Financial Services.

8630 (2) All of the statutory powers, duties and functions,
 8631 records, personnel, property, and unexpended balances of
 8632 appropriations, allocations, or other funds for the
 8633 administration of chapter 497, Florida Statutes, related to the
 8634 Board of Funeral and Cemetery Services, shall be transferred by
 8635 a type two transfer, as defined in s. 20.06(2), Florida
 8636 Statutes, to the Board of Funeral, Cemetery, and Consumer
 8637 Services and the Department of Financial Services, as
 8638 appropriate.

8639 Section 149. (1) The transfer of regulatory authority
 8640 under chapter 470, Florida Statutes, provided by this act shall
 8641 not affect the validity of any judicial or administrative action
 8642 pending as of 11:59 p.m. on the day before the effective date of
 8643 this act, to which action the Board of Funeral Directors and
 8644 Embalmers, or the Department of Business and Professional
 8645 Regulation in relation to the Board of Funeral Directors and
 8646 Embalmers, are at that time parties, and the Board of Funeral,
 8647 Cemetery, and Consumer Services or the Department of Financial
 8648 Services, as appropriate, shall be substituted as a party in
 8649 interest in any such action.

8650 (2) The transfer of regulatory authority under chapter
 8651 497, Florida Statutes, provided by this act shall not affect the
 8652 validity of any judicial or administrative action pending as of
 8653 11:59 p.m. on the day prior to this act taking effect, to which
 8654 action the Board of Funeral and Cemetery Services, or the
 8655 Department of Financial Services in relation to the Board of
 8656 Funeral and Cemetery Services, is at that time a party, and the
 8657 Board of Funeral, Cemetery, and Consumer Services, or the
 8658 Department of Financial Services, as appropriate, shall be
 8659 substituted as a party in interest in any such action.

8660 Section 150. (1) All lawful orders issued by the Board of
 8661 Funeral Directors and Embalmers, or by the Department of
 8662 Business and Professional Regulation, implementing or enforcing
 8663 or otherwise in regard to any provision of chapter 470, Florida
 8664 Statutes, issued prior to the effective date of this act, shall
 8665 remain in effect and be enforceable after the effective date of
 8666 this act, unless thereafter modified in accordance with law.

8667 (2) All lawful orders issued by the Board of Funeral and
 8668 Cemetery Services, or the Department of Financial Services in
 8669 regard to the Board of Funeral and Cemetery Services,
 8670 implementing or enforcing or otherwise in regard to any
 8671 provision of chapter 497, Florida Statutes, issued prior to the
 8672 effective date of this act, shall remain in effect and be
 8673 enforceable after the effective date of this act.

8674 Section 151. (1) The rules of the Board of Funeral
 8675 Directors and Embalmers and of the Department of Business and
 8676 Professional Regulation relating to the Board of Funeral
 8677 Directors and Embalmers or implementation of chapter 470,

HB 323 CS

2004
CS

8678 Florida Statutes, that were in effect at 11:59 p.m. on the day
8679 prior to this act taking effect shall become the rules of the
8680 Department of Financial Services and the Board of Funeral,
8681 Cemetery, and Consumer Services and shall remain in effect until
8682 amended or repealed in the manner provided by law.

8683 (2) The rules of the Board of Funeral and Cemetery
8684 Services that were in effect at 11:59 p.m. on the day prior to
8685 this act taking effect shall become the rules of the Department
8686 of Financial Services and the Board of Funeral, Cemetery, and
8687 Consumer Services and shall remain in effect until specifically
8688 amended or repealed in the manner provided by law.

8689 (3) The rules of the Department of Financial Services
8690 relating to chapter 497, Florida Statutes, that were in effect
8691 at 11:59 P.M. on the day prior to this act taking effect shall
8692 continue in force until thereafter repealed or amended pursuant
8693 to chapter 120, Florida Statutes, and this act.

8694 Section 152. (1) Notwithstanding the transfer of
8695 regulatory authority over chapters 470 and 497, Florida
8696 Statutes, provided by this act, persons and entities holding in
8697 good standing any license under chapter 470 or chapter 497,
8698 Florida Statutes, as of 11:59 p.m. on the day prior to the
8699 effective date of this act, shall be deemed to hold in good
8700 standing a license in the same capacity under chapter 497,
8701 Florida Statutes, as of the effective date of this act.

8702 (2) Notwithstanding the transfer of regulatory authority
8703 over chapters 470 and 497, Florida Statutes, provided by this
8704 act, persons and entities holding in good standing a preneed
8705 certificate of authority under chapter 497, Florida Statutes, as

8706 | of 11:59 p.m. on the day prior to the effective date of this
 8707 | act, shall be deemed to hold in good standing a preneed license
 8708 | under part IV of chapter 497, Florida Statutes, as of the
 8709 | effective date of this act, and their certificate of authority
 8710 | shall be deemed a preneed license for purposes of chapter 497,
 8711 | Florida Statutes.

8712 | (3) Notwithstanding the transfer of regulatory authority
 8713 | over chapters 470 and 497, Florida Statutes, provided by this
 8714 | act, persons and entities holding in good standing any
 8715 | registration under chapter 470 or chapter 497, Florida Statutes,
 8716 | as of 11:59 p.m. on the day prior to the effective date of this
 8717 | act, shall as of the effective date of this act be deemed to be
 8718 | licensed in the same capacity in which they were formerly
 8719 | registered, and their registration shall thereafter be deemed a
 8720 | license for purposes of chapter 497, Florida Statutes.

8721 | Section 153. The Legislature recognizes that there is a
 8722 | need to conform the Florida Statutes to the policy decisions
 8723 | reflected in the provisions of this act. The Division of
 8724 | Statutory Revision is directed to provide the relevant
 8725 | substantive committees of the Senate and the House of
 8726 | Representatives with assistance, upon request, to enable such
 8727 | committees to prepare draft legislation to conform the Florida
 8728 | Statutes to the provisions of this act.

8729 | Section 154. Effective at 11:59 p.m. on September 30,
 8730 | 2005, the Board of Funeral and Cemetery Services and the Board
 8731 | of Funeral Directors and Embalmers are abolished.

8732 | Section 155. Sections 470.001, 470.002, 470.003, 470.005,
 8733 | 470.019, 470.023, 470.027, 470.028, 470.031, 470.033, 470.034,

HB 323 CS

2004
CS

8734 | 470.035, 470.036, 497.105, 497.109, 497.111, 497.113, 497.115,
 8735 | 497.117, 497.119, 497.123, 497.125, 497.127, 497.129, 497.131,
 8736 | 497.135, 497.137, 497.209, 497.217, 497.221, 497.225, 497.233,
 8737 | 497.301, 497.341, 497.431, 497.435, 497.443, 497.445, 497.447,
 8738 | 497.515, 497.517, 497.519, and 497.529, Florida Statutes, are
 8739 | repealed.

8740 | Section 156. Except as otherwise provided herein, this act
 8741 | shall take effect October 1, 2005.