

Bill No. CS for CS for SB 528

Amendment No. ____ Barcode 831592

CHAMBER ACTION

Senate

House

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Senator Pruitt moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Senator Howard E. Futch Act."

Section 2. Part I of chapter 497, Florida Statutes, consisting of sections 497.001, 497.002, 497.0021, 497.005, 497.101, 497.103, 497.107, 497.140, 497.141, 497.142, 497.143, 497.144, 497.145, 497.146, 497.147, 497.148, 497.149, 497.150, 497.151, 497.152, 497.153, 497.154, 497.155, 497.156, 497.157, 497.158, 497.159, 497.160, 497.161, 497.162, 497.163, 497.164, 497.165, 497.166, 497.167, 497.168, 497.169, and 497.170, is created to read:

PART I

GENERAL PROVISIONS

Section 3. Section 497.001, Florida Statutes, is amended to read:

497.001 Short title.--This chapter may be cited as the

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1 "Florida Funeral, ~~and Cemetery, and Consumer~~ Services Act."

2 Section 4. Section 497.002, Florida Statutes, is
3 amended to read:

4 497.002 Purpose and intent.--

5 (1) The Legislature recognizes that purchasers of
6 preneed burial rights, funeral or burial merchandise, or
7 funeral or burial services may suffer serious economic harm if
8 purchase money is not set aside for future use as intended by
9 the purchaser and that the failure to maintain cemetery
10 grounds properly may cause significant emotional stress.
11 Therefore, it is necessary in the interest of the public
12 welfare to regulate preneed sales and cemeteries

13 ~~certificateholders, licensees, registrants, and cemetery~~
14 ~~companies~~ in this state. However, restrictions shall be
15 imposed only to the extent necessary to protect the public
16 from significant or discernible harm or damage and not in a
17 manner which will unreasonably affect the competitive market.

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

27 (3) The Legislature deems it necessary in the interest
28 of public health and safety to establish minimum
29 qualifications for entry into the professions and occupations
30 of embalming, funeral directing, cremation, direct
31 disposition, and monument sales, to regulate such activities,

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1 and to provide for swift and effective discipline for those
2 practitioners who violate the law.

3 Section 5. Section 497.0021, Florida Statutes, is
4 created to read:

5 497.0021 Applicability of parts.--The provisions of
6 this part shall be applicable to and supplement the provisions
7 of parts II, III, IV, V, and VI of this chapter and shall be
8 applicable to all licensees under this chapter, except to the
9 extent specifically provided otherwise in this chapter.

10 Section 6. Section 497.005, Florida Statutes, is
11 amended to read:

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

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

17 (2)(1) "At-need solicitation" means any uninvited
18 contact by a licensee or her or his agent for the purpose of
19 the sale of burial services or merchandise to the family or
20 next of kin of a person after her or his death has occurred.

21 (3)(2) "Bank of belowground crypts" means any
22 construction unit of belowground crypts which is acceptable to
23 the department and which a cemetery uses to initiate its
24 belowground crypt program or to add to existing belowground
25 crypt structures.

26 (4)(3) "Belowground crypts" consist of interment space
27 in preplaced chambers, either side by side or multiple depth,
28 covered by earth and sod and known also as "lawn crypts,"
29 "westminsters," or "turf-top crypts."

30 (5)(4) "Board" means the Board of Funeral, ~~and~~
31 Cemetery, ~~and Consumer~~ Services.

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1 (6) "Body parts" means:

2 (a) Limbs or other portions of the anatomy which are
3 removed from a person or human remains for medical purposes
4 during treatment, surgery, biopsy, autopsy, or medical
5 research; or

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

8 ~~(7)(5)~~ "Burial merchandise," "funeral merchandise," or
9 "merchandise" means any personal property offered or sold by
10 any person for use in connection with the final disposition,
11 memorialization, interment, entombment, or inurnment of human
12 remains.

13 ~~(8)(6)~~ "Burial right" means the right to use a grave
14 space, mausoleum, columbarium, ossuary, or scattering garden
15 for the interment, entombment, inurnment, or other disposition
16 of human remains.

17 ~~(9)(7)~~ "Burial service," "funeral service," or
18 "service" means any service offered or provided by any person
19 in connection with the final disposition, memorialization,
20 interment, entombment, or inurnment of human remains.

21 ~~(10)(8)~~ "Care and maintenance" means the perpetual
22 process of keeping a cemetery and its lots, graves, grounds,
23 landscaping, roads, paths, parking lots, fences, mausoleums,
24 columbaria, vaults, crypts, utilities, and other improvements,
25 structures, and embellishments in a well-cared-for and
26 dignified condition, so that the cemetery does not become a
27 nuisance or place of reproach and desolation in the community.
28 As specified in the rules of the licensing authority board,
29 "care and maintenance" may include, but is not limited to, any
30 or all of the following activities: mowing the grass at
31 reasonable intervals; raking and cleaning the grave spaces and

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1 adjacent areas; pruning of shrubs and trees; suppression of
2 weeds and exotic flora; and maintenance, upkeep, and repair of
3 drains, water lines, roads, buildings, and other improvements.
4 "Care and maintenance" may include, but is not limited to,
5 reasonable overhead expenses necessary for such purposes,
6 including maintenance of machinery, tools, and equipment used
7 for such purposes. "Care and maintenance" may also include
8 repair or restoration of improvements necessary or desirable
9 as a result of wear, deterioration, accident, damage, or
10 destruction. "Care and maintenance" does not include expenses
11 for the construction and development of new grave spaces or
12 interment structures to be sold to the public.

13 ~~(11)(9)~~ "Casket" means a rigid container which is
14 designed for the encasement of human remains and which is
15 usually constructed of wood or metal, ornamented, and lined
16 with fabric.

17 ~~(12)(10)~~ "Cemetery" means a place dedicated to and
18 used or intended to be used for the permanent interment of
19 human remains. A cemetery may contain land or earth interment;
20 mausoleum, vault, or crypt interment; a columbarium, ossuary,
21 scattering garden, or other structure or place used or
22 intended to be used for the interment or disposition of
23 cremated ~~human~~ remains; or any combination of one or more of
24 such structures or places.

25 ~~(13)(11)~~ "Cemetery company" means any legal entity
26 that owns or controls cemetery lands or property.

27 ~~(14)~~ "Centralized embalming facility" means a
28 facility, not physically connected with a funeral
29 establishment, in which embalming takes place.

30 ~~(12)~~ ~~"Certificateholder" or "licensee" means the~~
31 ~~person or entity that is authorized under this chapter to sell~~

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1 ~~preneed funeral or burial services, preneed funeral or burial~~
2 ~~merchandise, or burial rights. Each term shall include the~~
3 ~~other, as applicable, as the context requires. For the~~
4 ~~purposes of chapter 120, all certificateholders, licensees,~~
5 ~~and registrants shall be considered licensees.~~

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

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

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

17 ~~(18)(14)~~ "Common business enterprise" means a group of
18 two or more business entities that share common ownership in
19 excess of 50 percent.

20 (19) "Control" means the possession, directly or
21 indirectly, through the ownership of voting shares, by
22 contract, arrangement, understanding, relationship, or
23 otherwise, of the power to direct or cause the direction of
24 the management and policies of a person or entity. However, a
25 person or entity shall not be deemed to have control if the
26 person or entity holds voting shares, in good faith and not
27 for the purpose of circumventing this definition, as an agent,
28 bank, broker, nominee, custodian, or trustee for one or more
29 beneficial owners who do not individually or as a group have
30 control.

31 (20) "Cremated remains" means all the remains of the

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1 human body recovered after the completion of the cremation
 2 process, including processing or pulverization which leaves
 3 only bone fragments reduced to unidentifiable dimensions and
 4 may include the residue of any foreign matter, including
 5 casket material, bridgework, or eyeglasses that were cremated
 6 with the human remains.

7 (21)(15) "Cremation" means the technical process,
 8 using direct flame and heat or chemical means, which reduces
 9 human remains to bone fragments through heat and evaporation.
 10 Cremation includes the processing and usually includes the
 11 pulverization of the bone fragments ~~includes any mechanical or~~
 12 ~~thermal process whereby a dead human body is reduced to ashes.~~
 13 ~~Cremation also includes any other mechanical or thermal~~
 14 ~~process whereby human remains are pulverized, burned,~~
 15 ~~recremated, or otherwise further reduced in size or quantity.~~

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

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

24 (a) Be composed of readily combustible materials
 25 suitable for cremation.

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

28 (c) Be resistant to leakage or spillage.

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

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

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1 (24) "Cremation interment container" means a rigid
 2 outer container that, subject to a cemetery's rules and
 3 regulations, is composed of concrete, steel, fiberglass, or
 4 some similar material in which an urn is placed prior to being
 5 interred in the ground and that is designed to support the
 6 earth above the urn.

7 ~~(25)(16)~~ "Department" means the Department of
 8 Financial Services.

9 (26) "Direct disposal establishment" means a facility
 10 licensed under this chapter where a direct disposer practices
 11 direct disposition.

12 ~~(27)(17)~~ "Direct disposer" means any person licensed
 13 under this chapter ~~who is registered in this state to practice~~
 14 direct disposition in this state pursuant to the provisions of
 15 chapter 470.

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

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

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

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

25 ~~(32)(18)~~ "Final disposition" means the final disposal
 26 of a dead human body by earth interment, aboveground
 27 interment, cremation, burial at sea, or delivery to a medical
 28 institution for lawful dissection if the medical institution
 29 assumes responsibility for disposal. "Final disposition" does
 30 not include the disposal or distribution of ashes and residue
 31 of cremated remains ~~whether by interment, entombment, burial~~

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1 ~~at sea, cremation, or any other means and includes, but is not~~
2 ~~limited to, any other disposition of remains for which a~~
3 ~~segregated charge is imposed.~~

4 (33) "Funeral" or "funeral service" means the
5 observances, services, or ceremonies held to commemorate the
6 life of a specific deceased human being and at which the human
7 remains are present.

8 ~~(34)(19)~~ "Funeral director" means any person licensed
9 ~~under this chapter in this state~~ to practice funeral directing
10 ~~in this state pursuant to the provisions of chapter 470 .~~

11 (35) "Funeral establishment" means a facility licensed
12 under this chapter where a funeral director or embalmer
13 practices funeral directing or embalming.

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

22 ~~(37)(20)~~ "Grave space" means a space of ground in a
23 cemetery intended to be used for the interment in the ground
24 of human remains.

25 ~~(38)(21)~~ "Human remains" or "remains," or "dead human
26 body" or "dead human bodies," means the body of a deceased
27 human person for which a death certificate or fetal death
28 certificate is required under chapter 382 and includes the
29 body in any stage of decomposition and the residue of cremated
30 ~~human bodies means the bodies of deceased persons and includes~~
31 ~~bodies in any stage of decomposition and cremated remains.~~

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1 (39) "Legally authorized person" means, in the
2 priority listed, the decedent, when written inter vivos
3 authorizations and directions are provided by the decedent;
4 the surviving spouse, unless the spouse has been arrested for
5 committing against the deceased an act of domestic violence as
6 defined in s. 741.28 which resulted in or contributed to the
7 death of the deceased; a son or daughter who is 18 years of
8 age or older; a parent; a brother or sister who is 18 years of
9 age or older; a grandchild who is 18 years of age or older; a
10 grandparent; or any person in the next degree of kinship. In
11 addition, the term may include, if no family member exists or
12 is available, the guardian of the dead person at the time of
13 death; the personal representative of the deceased; the
14 attorney in fact of the dead person at the time of death; the
15 health surrogate of the dead person at the time of death; a
16 public health officer; the medical examiner, county
17 commission, or administrator acting under part II of chapter
18 406 or other public administrator; a representative of a
19 nursing home or other health care institution in charge of
20 final disposition; or a friend or other person not listed in
21 this subsection who is willing to assume the responsibility as
22 the legally authorized person. Where there is a person in any
23 priority class listed in this subsection, the funeral
24 establishment shall rely upon the authorization of any one
25 legally authorized person of that class if that individual
26 represents that she or he is not aware of any objection to the
27 cremation of the deceased's human remains by others in the
28 same class of the person making the representation or of any
29 person in a higher priority class.

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

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1 otherwise, and shall be understood to include authorizations
2 previously referred to as registrations or certificates of
3 authority in chapters 470 and 497 as those chapters appeared
4 in the 2004 edition of the Florida Statutes.

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

8 (42)(22) "Mausoleum" means a structure or building
9 which is substantially exposed above the ground and which is
10 intended to be used for the entombment of human remains.

11 (43)(23) "Mausoleum section" means any construction
12 unit of a mausoleum which is acceptable to the department and
13 which a cemetery uses to initiate its mausoleum program or to
14 add to its existing mausoleum structures.

15 (44)(24) "Monument" means any product used for
16 identifying a grave site and cemetery memorials of all types,
17 including monuments, markers, and vases.

18 (45)(25) "Monument establishment" means a facility
19 that operates independently of a cemetery or funeral
20 establishment and that offers to sell monuments or monument
21 services to the public for placement in a cemetery.

22 (46)(26) "Net assets" means the amount by which the
23 total assets of a licensee ~~certificateholder~~, excluding
24 goodwill, franchises, customer lists, patents, trademarks, and
25 receivables from or advances to officers, directors,
26 employees, salespersons, and affiliated companies, exceed
27 total liabilities of the licensee ~~certificateholder~~. For
28 purposes of this definition, the term "total liabilities" does
29 not include the capital stock, paid-in capital, or retained
30 earnings of the licensee ~~certificateholder~~.

31 (47)(27) "Net worth" means total assets minus total

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1 liabilities pursuant to generally accepted accounting
2 principles.

3 (48) "Niche" means a compartment or cubicle for the
4 memorialization or permanent placement of a container or urn
5 containing cremated remains.

6 (49)(28) "Ossuary" means a receptacle used for the
7 communal placement of cremated ~~human~~ remains without benefit
8 of an urn or any other container in which cremated remains may
9 be commingled with other cremated remains and are
10 nonrecoverable. It may or may not include memorialization.

11 (50)(29) "Outer burial container" means an enclosure
12 into which a casket is placed and includes, but is not limited
13 to, vaults made of concrete, steel, fiberglass, or copper;
14 sectional concrete enclosures; crypts; and wooden enclosures.

15 (51) "Person" when used without qualification such as
16 "natural" or "individual" includes both natural persons and
17 legal entities.

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

23 (53) "Practice of direct disposition" means the
24 cremation of human remains without preparation of the human
25 remains by embalming and without any attendant services or
26 rites such as funeral or graveside services or the making of
27 arrangements for such final disposition.

28 (54) "Practice of embalming" means disinfecting or
29 preserving or attempting to disinfect or preserve dead human
30 bodies by replacing certain body fluids with preserving and
31 disinfecting chemicals.

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1 (55) "Practice of funeral directing" means the
 2 performance by a licensed funeral director of any of those
 3 functions authorized by s. 497.372.

4 ~~(56)(30)~~ "Preneed contract" means any arrangement or
 5 method, of which the provider of funeral merchandise or
 6 services has actual knowledge, whereby any person agrees to
 7 furnish funeral merchandise or service in the future.

8 (57) "Preneed sales agent" means any person who is
 9 licensed under this chapter to sell preneed burial or funeral
 10 service and merchandise contracts or direct disposition
 11 contracts in this state.

12 (58) "Principal" means and includes the sole
 13 proprietor of a sole proprietorship; all partners of a
 14 partnership; all members of a limited liability company;
 15 regarding a corporation, all directors and officers, and all
 16 stockholders controlling more than 10 percent of the voting
 17 stock; and all other persons who can exercise control over the
 18 person or entity.

19 (59) "Processing" means the reduction of identifiable
 20 bone fragments after the completion of the cremation process
 21 to unidentifiable bone fragments by manual means.

22 (60) "Profession" and "occupation" are used
 23 interchangeably in this chapter. The use of the word
 24 "profession" in this chapter with respect to any activities
 25 regulated under this chapter shall not be deemed to mean that
 26 such activities are not occupations for other purposes in
 27 state or federal law.

28 (61) "Pulverization" means the reduction of
 29 identifiable bone fragments after the completion of the
 30 cremation and processing to granulated particles by manual or
 31 mechanical means.

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1 (62) "Refrigeration facility" means a facility that is
2 not physically connected with a funeral establishment,
3 crematory, or direct disposal establishment, that maintains
4 space and equipment for the storage and refrigeration of dead
5 human bodies, and that offers its service to funeral directors
6 and funeral establishments for a fee.

7 ~~(63)(31)~~ "Religious institution" means an organization
8 formed primarily for religious purposes which has qualified
9 for exemption from federal income tax as an exempt
10 organization under the provisions of s. 501(c)(3) of the
11 Internal Revenue Code of 1986, as amended.

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

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

19 ~~(66)(32)~~ "Scattering garden" means a location set
20 aside, within a cemetery, which is used for the spreading or
21 broadcasting of cremated remains that have been removed from
22 their container and can be mixed with or placed on top of the
23 soil or ground cover or buried in an underground receptacle on
24 a commingled basis and that are nonrecoverable. It may or may
25 not include memorialization.

26 ~~(67)(33)~~ "Servicing agent" means any person acting as
27 an independent contractor whose fiduciary responsibility is to
28 assist both the trustee and licensee ~~certificateholder~~
29 ~~hereunder~~ in administrating their responsibilities pursuant to
30 this chapter.

31 ~~(68)(34)~~ "Solicitation" means any communication which

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1 directly or implicitly requests an immediate oral response
 2 from the recipient.

3 ~~(69)(35)~~ "Statutory accounting" means generally
 4 accepted accounting principles, except as modified by this
 5 chapter.

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

10 ~~(71)~~ "Urn" means a receptacle designed to permanently
 11 encase cremated remains.

12 Section 7. Section 497.101, Florida Statutes, is
 13 amended to read:

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

16 497.101 Board of Funeral, Cemetery, and Consumer
 17 Services; membership; appointment; terms.--

18 (1) The Board of Funeral, Cemetery, and Consumer
 19 Services is created within the Department of Financial
 20 Services and shall consist of 10 members, nine of whom shall
 21 be appointed by the Governor from nominations made by the
 22 Chief Financial Officer and confirmed by the Senate. The Chief
 23 Financial Officer shall nominate three persons for each of the
 24 nine vacancies on the board, and the Governor shall fill each
 25 vacancy on the board by appointing one of the three persons
 26 nominated by the Chief Financial Officer to fill that vacancy.
 27 If the Governor objects to each of the three nominations for a
 28 vacancy, she or he shall inform the Chief Financial Officer in
 29 writing. Upon notification of an objection by the Governor,
 30 the Chief Financial Officer shall submit three additional
 31 nominations for that vacancy until the vacancy is filled. One

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1 member must be the State Health Officer or her or his
2 designee.

3 (2) Two members of the board must be funeral directors
4 licensed under part III of this chapter who are associated
5 with a funeral establishment. One member of the board must be
6 a funeral director licensed under part III of this chapter who
7 is associated with a funeral establishment licensed under part
8 III of this chapter which has a valid preneed license issued
9 pursuant to this chapter and who owns or operates a cinerator
10 facility approved under chapter 403 and licensed under part VI
11 of this chapter. Two members of the board must be persons
12 whose primary occupation is associated with a cemetery company
13 licensed pursuant to this chapter. Three members of the board
14 must be consumers who are residents of the state, have never
15 been licensed as funeral directors or embalmers, are not
16 connected with a cemetery or cemetery company licensed
17 pursuant to this chapter, and are not connected with the death
18 care industry or the practice of embalming, funeral directing,
19 or direct disposition. One of the consumer members must be at
20 least 60 years of age, and one must be licensed as a certified
21 public accountant under chapter 473. One member of the board
22 must be a monument dealer licensed under this chapter. One
23 member must be the State Health Officer or her or his
24 designee. There shall not be two or more board members who are
25 directors, employees, partners, shareholders, or members of
26 the same company or partnership or group of companies or
27 partnerships under common control.

28 (3) Board members shall be appointed for terms of 4
29 years, and the State Health Officer shall serve as long as
30 that person holds that office. The designee of the State
31 Health Officer shall serve at the pleasure of the Governor.

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1 When the terms of the initial board members expire, the Chief
2 Financial Officer shall stagger the terms of the successor
3 members as follows: one funeral director, one cemetery
4 representative, the monument dealer, and one consumer member
5 shall be appointed for terms of 2 years, and the remaining
6 members shall be appointed for terms of 4 years. All
7 subsequent terms shall be for 4 years.

8 (4) The Governor may suspend and the Senate may remove
9 any board member for malfeasance or misfeasance, neglect of
10 duty, incompetence, substantial inability to perform official
11 duties, commission of a crime, or other substantial cause as
12 determined by the Governor or Senate, as applicable, to
13 evidence a lack of fitness to sit on the board. A board member
14 shall be deemed to have resigned her or his board membership,
15 and that position shall be deemed vacant, upon the failure of
16 the member to attend three consecutive meetings of the board
17 or at least half of the meetings of the board during any
18 12-month period, unless the Chief Financial Officer determines
19 that there was good and adequate justification for the
20 absences and that such absences are not likely to continue.

21 (5) A current or former board member is exempt from
22 any civil liability for any act or omission when acting in
23 good faith in her or his official capacity, and the Department
24 of Legal Affairs and the Division of Risk Management shall
25 defend such board member in any civil action against such
26 person arising from any such act or omission.

27 (6) The headquarters and records of the board shall be
28 in the Division of Funeral, Cemetery, and Consumer Services of
29 the Department of Financial Services in the City of
30 Tallahassee. The board may be contacted through the Division
31 of Funeral, Cemetery, and Consumer Services of the Department

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1 of Financial Services in the City of Tallahassee. The Chief
2 Financial Officer shall annually appoint from among the board
3 members a chair and vice chair of the board. The board shall
4 meet at least every 6 months, and more often as necessary.
5 Special meetings of the board shall be convened upon the
6 direction of the Chief Financial Officer. A quorum is
7 necessary for the conduct of business by the board. Unless
8 otherwise provided by law, six board members shall constitute
9 a quorum for the conduct of the board's business.

10 (7) A board member shall be compensated \$50 for each
11 day the member attends an official meeting and each day the
12 member participates at the request of the board's executive
13 director in any other business involving the board. To the
14 extent authorized by the s. 112.061, a board member is
15 entitled to reimbursement for expenses incurred in connection
16 with official duties. Out-of-state travel by board members on
17 official business shall, in each specific instance, require
18 the advance approval of the board's executive director in
19 order for the travel to be eligible for reimbursement of
20 expenses.

21 Section 8. Section 497.103, Florida Statutes, is
22 amended to read:

23 (Substantial rewording of section. See
24 s. 497.103, F.S., for present text.)
25 497.103 Rulemaking authority of board and
26 department.--

27 (1) BOARD AUTHORITY.--Subject to the provisions of
28 this section, all authority provided under this chapter,
29 including rulemaking authority, relating to the following
30 matters, is vested solely in the board, and the board shall be
31 deemed the licensing authority as to such matters:

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- 1 (a) Authority to determine any and all criteria for
2 licensure under this chapter as to which this chapter vests
3 discretion in the licensing authority.
- 4 (b) Authority to specify who may conduct practical
5 examination under this chapter.
- 6 (c) Authority to specify the content of examinations
7 for licensure, both written and practical, and the relative
8 weighting of areas examined, and grading criteria, and
9 determination of what constitutes a passing grade.
- 10 (d) Authority to strike any examination question
11 determined before or after an examination to be inappropriate
12 for any reason.
- 13 (e) Authority to specify which national examinations
14 or parts thereof shall or shall not be required or accepted
15 regarding Florida licensure.
- 16 (f) Authority to determine time limits and substantive
17 requirements regarding reexamination of applicants who fail
18 any portion of a licensing examination.
- 19 (g) Authority to determine substantive requirements
20 and conditions relating to apprenticeships and internships,
21 and temporary licensure pending examination.
- 22 (h) Authority to determine substantive requirements
23 for licensure by endorsement.
- 24 (i) Authority to specify substantive requirements for
25 reactivation of inactive licenses, such as, but not limited
26 to, requirements for examination or education prior to
27 reactivation.
- 28 (j) Authority to approve or deny applications for
29 initial licensure of all types under this chapter and to
30 specify conditions for probationary initial licensure.
- 31 (k) Authority to renew or decline to renew licenses

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1 issued under this chapter.

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

4 (m) Authority to determine standards of construction
5 applicable to facilities utilized by licensees under this
6 chapter.

7 (n) Authority to specify standards of operation
8 applicable to licensees, including required equipment,
9 supplies, facilities, and professional techniques and
10 practices utilized by licensees.

11 (o) Authority to specify required access to be
12 provided by cemeteries to monument establishments licensed
13 under this chapter.

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

18 (q) Authority to specify the amount and content of
19 continuing education required of licensees and the
20 acceptability of continuing education by distance learning.

21 (r) Authority to approve or disapprove providers of
22 continuing education.

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

26 (t) Authority regarding establishing requirements to
27 maintain complaint logs and complaint records.

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

31 (v) Authority to determine through probable cause

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1 panels of the board whether proposed administrative
2 prosecutions of licensees shall go forward.

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

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

9 (y) Authority to determine the validity of and amount
10 due on claims against the Preneed Funeral Contract Consumer
11 Protection Trust Fund.

12 (z) Authority to approve or deny applications to
13 utilize any alternative to trust deposits concerning preneed
14 sales.

15 (aa) Authority to determine the method by which
16 wholesale cost is determined for purposes of determining the
17 amount of the preneed trust deposits required under this
18 chapter.

19 (bb) Authority to determine the amount of any fee
20 payable under this chapter as to which this chapter provides
21 discretion in setting the amount of the fee.

22 (cc) Authority to direct the initiation of
23 receivership or other delinquency proceedings against any
24 licensee under this chapter.

25 (2) DEPARTMENT AUTHORITY.--All authority provided by
26 this chapter and not expressly vested in the board by
27 subsection (1) is vested in the department, and the department
28 shall be deemed to be the licensing authority as to such
29 matters. Without limiting the generality of the foregoing
30 vesting of authority in the department, the authority provided
31 by this chapter which is vested solely in the department

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1 includes:

2 (a) Authority relating to the conduct of
3 investigations, financial examinations, and inspections,
4 including, but not limited to:

5 1. Determination of applicants, licensees, and other
6 persons to be investigated, subjected to financial
7 examination, or inspected.

8 2. The frequency, duration, and extent of
9 investigations, financial examinations, and inspections.

10 3. Techniques and procedures utilized in, and staff
11 assigned to, investigations, financial examinations, and
12 inspections.

13 4. Establishment of requirements binding upon
14 licensees and other persons regarding records and information
15 to be produced or provided, and access to facilities and
16 staff, in regard to investigations, financial examinations,
17 and inspections.

18 5. Preparation and filing of reports concerning
19 investigations, financial examinations, and inspections.

20 (b) Authority to receive fees and other amounts
21 payable under this chapter to the licensing authority or to
22 the Regulatory Trust Fund or Preneed Funeral Contract Consumer
23 Protection Trust Fund from licensees, applicants, and others
24 and to process and deposit such receipts in accordance with
25 this chapter and the laws of this state.

26 (c) Authority to prescribe forms and procedures to be
27 used by applicants or licensees relating to any and all
28 applications, filings, or reports of any type that are made
29 with or submitted to the licensing authority by any person or
30 entity pursuant to this chapter, including, but not limited
31 to, applications for licenses of any type under this chapter,

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1 applications for renewal of license, applications for approval
2 of forms, applications for approval of change of control,
3 periodic reports of operations, including format and reporting
4 period for financial statements, and procedures and provisions
5 relating to electronic submissions.

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

9 (e) Authority to initiate and prosecute administrative
10 and judicial action, including taking final action, regarding
11 activity by persons and entities not licensed under this
12 chapter engaging in activity the department deems to be in
13 violation of this chapter.

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

16 (g) Authority to determine the systems, methods,
17 means, facilities, equipment, procedures, budgets, department
18 staff, and other persons and entities, whether inside or
19 outside the department, to be used in relation to recording,
20 tracking, and processing licensing applications, the
21 administrative issuance and denial of licenses, license
22 renewals, disciplinary actions, continuing education, filings
23 made or required under this chapter, and all other
24 administrative matters relating to the implementation and
25 enforcement of this chapter.

26 (h) Authority to determine the number, hiring,
27 assignment, and discharge of department staff in relation to
28 implementation of this chapter.

29 (i) Authority to determine whether any contract or
30 agreement authorized to be entered into by this chapter, on
31 any subject matter, shall be entered into and sole authority

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1 to enter into any such other contract or agreement regarding
2 the implementation of this chapter.

3 (j) Subject to the requirements for probable cause
4 proceedings before a probable cause panel of the board and
5 subject to the sole authority of the board to take final
6 action imposing disciplinary sanctions, all authority to
7 draft, execute, file, serve, and prosecute administrative
8 complaints and other action against any licensee. However, the
9 Chief Financial Officer may in particular instances decline to
10 prosecute or to continue to prosecute, in which case the board
11 may request the Department of Legal Affairs to conduct or
12 continue to conduct the prosecution and the Department of
13 Legal Affairs shall be authorized at its discretion to do so.

14 (k) Authority to seek administrative or judicial
15 enforcement of orders of the board or department or of
16 statutory predecessors to the board or department. However,
17 the Chief Financial Officer may in particular instances
18 decline to seek enforcement or to continue to seek enforcement
19 of any order, in which case the board may request the
20 Department of Legal Affairs to conduct or continue to conduct
21 such enforcement action and the Department of Legal Affairs
22 shall be authorized at its discretion to do so.

23 (l) The department shall represent the board in any
24 appeal of a board final order. However, the Chief Financial
25 Officer may in particular instances decline to represent the
26 board, in which case the board may request the Department of
27 Legal Affairs to represent the board in the matter and the
28 Department of Legal Affairs shall be authorized at its
29 discretion to do so.

30 (m) Authority to take emergency action against any
31 licensee under this chapter without prior consultation with

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1 the board.

2 (n) Authority to develop and submit to the Legislature
3 from time to time budgets for the implementation of this
4 chapter.

5 (o) The department shall have the authority and duty
6 to provide necessary administrative support to the board as
7 reasonably required to allow the board to discharge its
8 responsibilities under this chapter.

9 (3) RECOMMENDATIONS BY DEPARTMENT STAFF.--The board
10 shall carefully review and give substantial weight to any
11 recommendation of department staff concerning any matter
12 coming before the board and upon request of department staff
13 shall state with specificity on the record at the board
14 meeting where the rejection occurs the reason or reasons why
15 the board has rejected a particular recommendation of the
16 department staff.

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

18 (a) As to any matter falling within the board's
19 authority, if the Chief Financial Officer submits or causes to
20 be submitted to the board at any board meeting any
21 recommendation signed by the Chief Financial Officer, the
22 Chief Financial Officer's recommendation shall be adopted by
23 the board and the board shall act and be deemed to act in
24 accordance with such recommendation, unless at such meeting 70
25 percent of the board members present and voting vote to reject
26 the Chief Financial Officer's recommendation. Any fractional
27 vote resulting from application of the 70-percent requirement
28 shall be rounded upward and counted as one additional vote in
29 determining how many votes are required to reject the Chief
30 Financial Officer's recommendation. The Chief Financial
31 Officer's recommendation to the board shall be in regard to

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1 one or more of the following matters:

2 1. Protecting the public from any significant and
3 discernible harm or damage.

4 2. Preventing the unreasonable restriction of
5 competition or the availability of professional services in
6 the state or in a significant part of the state.

7 3. Preventing the unnecessary increase in cost of
8 professional services without a corresponding or equivalent
9 public benefit.

10 (b) If the recommendation of department staff to the
11 board as to any matter shall be rejected or otherwise
12 overridden by the board to any degree, the board's action in
13 the matter shall not be final until 14 days have elapsed after
14 the board rejected or overrode the recommendation of
15 department staff, and if during such 14-day period the Chief
16 Financial Officer submits a recommendation concerning the
17 matter to the board pursuant to paragraph (a), until the
18 effect of such recommendation is determined in accordance with
19 paragraph (a). The running of the period under s. 120.60 for
20 approving or denying a completed application shall be tolled
21 during such 14-day period.

22 (c) If the Chief Financial Officer makes any
23 recommendation pursuant to this subsection concerning approval
24 or denial of an application for license or otherwise under
25 this chapter, the running of the period under s. 120.60 for
26 approving or denying a completed application shall be tolled
27 from the date of the Chief Financial Officer's recommendation
28 is made for the shorter of 90 days or until the effect of such
29 recommendation is determined in accordance with paragraph (a).

30 (d) If any recommendation by the Chief Financial
31 Officer made under this subsection would require initiation of

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1 rulemaking proceedings under chapter 120 as a prerequisite to
2 implementation of such recommendation by the board and such
3 recommendation becomes binding on the board pursuant to this
4 subsection, the board shall promptly and in good faith
5 initiate and conduct such rulemaking proceedings or may in
6 regard to the promulgation of the specific rule in issue
7 delegate to the department the board's rulemaking authority
8 under this chapter, in which case the department shall be
9 authorized to adopt the rule.

10 (5) RULEMAKING.--

11 (a) The board is authorized to adopt all rules
12 authorized under this chapter regarding matters under the
13 board's authority.

14 (b) The department is authorized to adopt all rules
15 authorized under this chapter regarding matters which fall
16 under the department's authority or as to which the board has
17 delegated rulemaking authority to the department.

18 (c) Neither the board nor the department shall
19 initiate rulemaking under their respective rulemaking
20 authority under this chapter unless they have provided each
21 other at least 60 days' advance notice of their intent to
22 initiate rulemaking proceedings and during that 60-day period
23 have conferred and consulted with each other concerning the
24 purpose and intent of the rulemaking. However, the 60-day
25 advance notice requirement does not apply to the promulgation
26 of emergency rules.

27 (6) FINAL ORDERS.--

28 (a) The board shall have authority to take final
29 action and issue final orders as to all matters under its
30 authority. The chairperson of the board shall be authorized to
31 sign orders of the board and may delegate such authority to

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1 the executive director of the board.

2 (b) The department shall have authority to take final
3 action and issue final orders as to all matters under its
4 authority.

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

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

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

13 (c) The board shall be represented by the Department
14 of Legal Affairs in any litigation by the board against the
15 department authorized by this subsection, and the Department
16 of Financial Services shall provide reasonable funds for the
17 conduct of such litigation by the board.

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

23 Section 9. Section 497.107, Florida Statutes, is
24 amended to read:

25 497.107 Headquarters.--The Board of Funeral, ~~and~~
26 Cemetery, ~~and Consumer~~ Services may be contacted through
27 division at the headquarters of the department in the City of
28 Tallahassee.

29 Section 10. Section 497.525, Florida Statutes, is
30 renumbered as section 497.140, Florida Statutes, and amended
31 to read:

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1 (Substantial rewording of section. See

2 s. 497.525, F.S., for present text.)

3 497.140 Fees.--

4 (1)(a) As to any fee payable under this chapter as to
5 which discretion is provided to the licensing authority to
6 specify the amount of the fee subject to a cap stated in this
7 chapter, the board shall from time to time as requested by the
8 department determine by rule the amount of such fee, based
9 upon department-prepared estimates of the revenue required to
10 implement all provisions of this chapter.

11 (b) It is the legislative intent that the costs of
12 regulation under this chapter be provided for by fees
13 collected under this chapter. The board shall ensure that fees
14 are adequate to cover all anticipated costs of implementation
15 of this chapter. The department shall at least every other
16 year provide the board with estimates as to projected costs in
17 implementing this chapter and projected fee collections under
18 this chapter for the following 2 years, information as to
19 balances of regulatory trusts from fees collected, other
20 information which the department deems material to the setting
21 of fees by the board at proper levels, and a department
22 recommendation as to action, if any, regarding changing fee
23 levels. The board shall review such information provided by
24 the department and make such changes in fees, up or down, as
25 the board determines appropriate. If sufficient action is not
26 taken by the board within 1 year after notification by the
27 department that fees are projected to be inadequate, the
28 department shall set fees on behalf of the board to cover
29 anticipated costs.

30 (c) The board may from time to time by rule assess and
31 collect a one-time fee from each active and each voluntary

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1 inactive licensee under this chapter in an amount necessary to
2 correct an inadequacy of fees received to implement regulation
3 required by this chapter, provided that no more than one such
4 assessment may be made in any 4-year period without specific
5 legislative authorization.

6 (2) All moneys collected under this chapter shall be
7 paid into the Regulatory Trust Fund, except as expressly
8 provided otherwise in this chapter. The Legislature shall
9 appropriate funds from this trust fund sufficient to implement
10 the provisions of this chapter.

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

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

18 (5) The department shall charge a fee not to exceed
19 \$25 for the certification of a public record. The fee shall be
20 determined by rule of the department. The department shall
21 assess a fee for duplication of a public record as provided in
22 s. 119.07(1)(a) and (b).

23 (6)(a) The department shall impose, upon initial
24 licensure and each renewal thereof, a special unlicensed
25 activity fee of \$5 per licensee, in addition to all other fees
26 provided for in this chapter. Such fee shall be used by the
27 department to fund efforts to identify and combat unlicensed
28 activity which violates this chapter. Such fee shall be in
29 addition to all other fees collected from each licensee and
30 shall be deposited in a separate account of the Regulatory
31 Trust Fund; however, the department is not limited to the

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1 funds in such an account for combating improper unlicensed
2 activity in violation of this chapter.

3 (b) The board may with the concurrence of the
4 department, if that portion of the Regulatory Trust Fund held
5 by the department for implementation of this chapter is not in
6 deficit and has a reasonable cash balance, earmark \$5 of each
7 initial licensure and each license renewal fee collected under
8 this chapter and direct the deposit of each such amount into
9 the separate account required in paragraph (a), to be utilized
10 by the department for the purposes of combating unlicensed
11 practice in violation of this chapter. Such earmarked amount
12 may be, as the board directs, in lieu of or in addition to the
13 special unlicensed activity fee imposed under paragraph (a).
14 The earmarking may be imposed and thereafter eliminated from
15 time to time according the adequacy of trust funds held for
16 implementation of this chapter.

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

20 (7) Any fee required to be paid under this chapter,
21 which was set at a fixed amount as the 2004 edition of the
22 Florida Statutes, but as to which this chapter now provides to
23 be a fee as determined by board rule subject to a cap
24 specified in this chapter, shall remain at the amount as set
25 in the 2004 edition of the Florida Statutes unless and until
26 the board shall change such fee by rule.

27 Section 11. Section 497.141, Florida Statutes, is
28 created to read:

29 497.141 Licensing; general application procedures.--

30 (1) The provisions of this section shall supplement
31 and implement all provisions of this chapter relating to

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1 application for licensure.

2 (2) Any person desiring to be licensed shall apply to
3 the licensing authority in writing using such forms and
4 procedures as may be prescribed by rule. The application for
5 licensure shall include the applicant's social security
6 number. Notwithstanding any other provision of law, the
7 department is the sole authority for determining the forms and
8 form contents to be submitted for initial licensure and
9 licensure renewal application. Such forms and the information
10 and materials required by such forms may include, as
11 appropriate, demographics, education, work history, personal
12 background, criminal history, finances, business information,
13 signature notarization, performance periods, reciprocity,
14 local government approvals, supporting documentation, periodic
15 reporting requirements, fingerprint requirements, continuing
16 education requirements, business plans, character references,
17 and ongoing education monitoring. Such forms and the
18 information and materials required by such forms may also
19 include, to the extent such information or materials are not
20 already in the possession of the department or the board,
21 records or information as to complaints, inspections,
22 investigations, discipline, bonding, and photographs. The
23 application shall be supplemented as needed to reflect any
24 material change in any circumstance or condition stated in the
25 application which takes place between the initial filing of
26 the application and the final grant or denial of the license
27 and which might affect the decision of the department or the
28 board.

29 (3) The department shall conduct such investigation of
30 the applicant and the application as the department deems
31 necessary or advisable to establish the correctness of matters

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1 stated in the application and to determine whether the
2 applicable licensing criteria are met and shall make
3 recommendations in those regards to the board.

4 (4) Before the issuance of any license, the department
5 shall collect such initial fee as specified by this chapter
6 or, where authorized, by rule of the board. Upon receipt of a
7 completed application and the appropriate fee, and
8 certification by the board that the applicant meets the
9 applicable requirements of law and rules, the department shall
10 issue the license applied for. However, an applicant who is
11 not otherwise qualified for licensure is not entitled to
12 licensure solely based on a passing score on a required
13 examination.

14 (5) The board may refuse to rule on an initial
15 application for licensure by any applicant who is under
16 investigation or prosecution in any jurisdiction for an action
17 which there is reasonable cause to believe would constitute a
18 violation of this chapter if committed in this state, until
19 such time as such investigation or prosecution is completed
20 and the results of the investigation or prosecution are
21 reviewed by the board.

22 (6) When any administrative law judge conducts a
23 hearing pursuant to the provisions of chapter 120 with respect
24 to the issuance or denial of a license under this chapter, the
25 administrative law judge shall submit her or his recommended
26 order to the board, which shall thereupon issue a final order.
27 The applicant for a license may appeal the final order in
28 accordance with the provisions of chapter 120.

29 (7) A privilege against civil liability is hereby
30 granted to any witness for any information furnished by the
31 witness in any proceeding pursuant to this section, unless the

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1 witness acted in bad faith or with malice in providing such
2 information.

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

11 (9) Whenever any provision of this chapter or rules
12 adopted under this chapter require student completion of a
13 specific number of clock hours of classroom instruction for
14 initial licensure purposes, there shall be established by rule
15 the minimal competencies that such students must demonstrate
16 in order to be licensed. The demonstration of such
17 competencies may be substituted for specific classroom
18 clock-hour requirements established in statute or rule which
19 are related to instructional programs for licensure purposes.
20 Student demonstration of the established minimum competencies
21 shall be certified by the educational institution. The
22 provisions of this subsection shall not apply if federal
23 licensure standards are more restrictive or stringent than the
24 standards prescribed in this chapter.

25 (10) No license issued under this chapter shall be
26 assignable or transferable except to the extent specifically
27 provided by this chapter.

28 (11) The department shall implement a system for
29 administration of the overall licensing process, including the
30 processing and tracking of applications for licensure, the
31 issuance of licenses approved by the board, the tracking of

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1 licenses issued, the administration of the license renewal
2 process, and the collection and processing of fees related to
3 those activities. The system may use staff and facilities of
4 the department or the department may enter into a contract for
5 all or any part of such system, upon such terms and conditions
6 as the department deems advisable, and such contract may be
7 with another government agency or a private business.

8 Section 12. Section 497.142, Florida Statutes, is
9 created to read:

10 497.142 Licensing; fingerprinting and criminal
11 background checks.--

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

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

20 (3) The department shall submit the fingerprints to or
21 cause them to be submitted to the Department of Law
22 Enforcement for the purpose of ascertaining whether the person
23 fingerprinted has a criminal history in any state or before
24 the Federal Government and, if so, the nature of the criminal
25 history.

26 (4) The Department of Law Enforcement may accept
27 fingerprints of any applicant under this chapter, any
28 principal of any such applicant, and any other person who is
29 examined or investigated or who is subject to examination or
30 investigation under the provisions of this chapter.

31 (5) The Department of Law Enforcement may, to the

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1 extent provided for by federal law, exchange state,
2 multistate, and federal criminal history records with the
3 department and the board for the purpose of the issuance,
4 denial, suspension, or revocation of any license or other
5 application under this chapter.

6 (6) The Department of Law Enforcement may accept
7 fingerprints of any other person required by statute or rule
8 to submit fingerprints to the department or board or any
9 applicant or licensee regulated by the department or board who
10 is required to demonstrate that she or he has not been
11 convicted of or pled guilty or nolo contendere to a felony or
12 a misdemeanor.

13 (7) The Department of Law Enforcement shall, upon
14 receipt of fingerprints from the department, submit the
15 fingerprints to the Federal Bureau of Investigation to check
16 federal criminal history records.

17 (8) Statewide criminal records obtained through the
18 Department of Law Enforcement, federal criminal records
19 obtained through the Federal Bureau of Investigation, and
20 local criminal records obtained through local law enforcement
21 agencies shall be used by the department and board for the
22 purpose of issuance, denial, suspension, or revocation of
23 certificates of authority, certifications, or licenses issued
24 to operate in this state.

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

30 (10) If any applicant under this chapter has been,
31 within the 10 years preceding the application under this

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1 chapter, convicted or found guilty of, or entered a plea of
2 nolo contendere to, regardless of adjudication, any crime in
3 any jurisdiction, the application shall not be deemed complete
4 until such time as the applicant provides such certified true
5 copies of the court records evidencing the conviction,
6 finding, or plea, as the licensing authority may by rule
7 require.

8 Section 13. Section 497.143, Florida Statutes, is
9 created to read:

10 497.143 Licensing; limited licenses for retired
11 professionals.--

12 (1) It is the intent of the Legislature that, absent a
13 threat to the health, safety, and welfare of the public, the
14 use of retired professionals in good standing to serve the
15 indigent, underserved, or critical need populations of this
16 state should be encouraged. To that end, rules may be adopted
17 to permit practice by retired professionals as limited
18 licensees under this section.

19 (2) Any person desiring to obtain a limited license,
20 when permitted by rule, shall submit to the department an
21 application and fee, not to exceed \$300, and an affidavit
22 stating that the applicant has been licensed to practice in
23 any jurisdiction in the United States for at least 10 years in
24 the profession for which the applicant seeks a limited
25 license. The affidavit shall also state that the applicant has
26 retired or intends to retire from the practice of that
27 profession and intends to practice only pursuant to the
28 restrictions of the limited license granted pursuant to this
29 section. If the applicant for a limited license submits a
30 notarized statement from the employer stating that the
31 applicant will not receive monetary compensation for any

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1 service involving the practice of her or his profession, the
2 application and all licensure fees shall be waived.

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

7 (4) The recipient of a limited license may practice
8 only in the employ of public agencies or institutions or
9 nonprofit agencies or institutions which meet the requirements
10 of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which
11 provide professional liability coverage for acts or omissions
12 of the limited licensee. A limited licensee may provide
13 services only to the indigent, underserved, or critical need
14 populations within the state. The standard for determining
15 indigency shall be that recognized by the Federal Poverty
16 Income Guidelines produced by the United States Department of
17 Health and Human Services. Rules may be adopted to define
18 underserved and critical need areas and to ensure
19 implementation of this section.

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

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

27 Section 14. Section 497.144, Florida Statutes, is
28 created to read:

29 497.144 Licensing; examinations, general provisions.--

30 (1) The department shall, with the approval of the
31 board, provide, contract, or approve services for the

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1 development, preparation, administration, scoring, score
2 reporting, and evaluation of all examinations and may use
3 professional testing services for the development,
4 preparation, and evaluation of examinations, when such
5 services are available. The department may contract with the
6 Department of Business and Professional Regulation for any
7 examination services.

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

11 (3) For each examination there shall by rule be
12 specified the general areas of competency to be covered by the
13 examination, the relative weight to be assigned in grading
14 each area tested, the score necessary to achieve a passing
15 grade, and the fees, where applicable, to cover the actual
16 cost for any purchase, development, and administration of the
17 required examination. However, statutory fee caps shall apply.
18 This subsection does not apply to national examinations
19 approved and administered pursuant to subsection (5).

20 (4) If a practical examination is utilized, rules
21 shall specify the criteria by which examiners are to be
22 selected, the grading criteria to be used by the examiner, the
23 relative weight to be assigned in grading each criterion, and
24 the score necessary to achieve a passing grade. Procedures for
25 practical examinations shall be specified by rule. Board
26 members may serve as examiners at a practical examination with
27 the consent of the board.

28 (5) The board may approve the use of any national
29 examination. Providers of examinations may be either profit or
30 nonprofit entities. The name and number of a candidate may be
31 provided to a national contractor for the limited purpose of

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1 preparing the grade tape and information to be returned to the
2 department or, to the extent otherwise specified by rule, the
3 candidate may apply directly to the vendor of the national
4 examination. The department may delegate to the board the duty
5 to provide and administer the examination.

6 (6) Rules may be adopted establishing procedures and
7 requirements for the security and monitoring of examinations.

8 In order to maintain the security of examinations, the
9 department may seek fines and injunctive relief in the courts
10 of this state against an examinee who violates applicable
11 security rules. The department, or any agent thereof, may, for
12 the purposes of investigation, confiscate any written,
13 photographic, or recording material or device in the
14 possession of the examinee at the examination site which the
15 department deems necessary to enforce the security of
16 examinations.

17 (7) The department may, with the approval of the board
18 and for a fee, share with any other state's licensing
19 authority an examination developed by or for the board unless
20 prohibited by a contract entered into by the department for
21 development or purchase of the examination. The department
22 shall establish guidelines that ensure security of a shared
23 examination and shall require that any other state's licensing
24 authority comply with those guidelines.

25 (8) If both a written and a practical examination are
26 given, an applicant shall be required to retake only the
27 portion of the examination for which she or he failed to
28 achieve a passing grade, if she or he successfully passes that
29 portion within a reasonable time of her or his passing the
30 other portion. Rules may be adopted establishing procedures
31 and reasonable times for retaking failed portions of any

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1 examination.

2 (9) Except for national examinations approved and
3 administered pursuant to this section, procedures shall be
4 established by rule for applicants who have taken and failed a
5 written examination to review their examination questions,
6 answers, papers, grades, and grading key for the questions the
7 candidate answered incorrectly or, if not feasible, the parts
8 of the examination failed. Applicants shall bear the actual
9 cost for the department to provide examination review pursuant
10 to this subsection. An applicant may waive in writing the
11 confidentiality of her or his examination grades. Rules may be
12 adopted establishing procedures for such reviews.

13 (10) For each examination administered under this
14 chapter, an accurate record of each applicant's examination
15 questions, answers, papers, grades, and grading key shall be
16 kept for a period of not less than 2 years immediately
17 following the examination, and such record shall thereafter be
18 maintained or destroyed as provided in chapters 119 and 257.
19 This subsection does not apply to national examinations
20 approved and administered pursuant to this section.

21 (11) In addition to meeting any other requirements for
22 licensure by examination or by endorsement, an applicant may
23 be required by the board to pass an examination pertaining to
24 state laws and rules applicable to the practice of the
25 profession regulated under this chapter.

26 (12) Examinations and reexaminations for any license
27 under this chapter shall be administered in the English
28 language unless 15 or more applicants request that the
29 examination or reexamination be administered in their native
30 language. Such requests must be received at least 6 months
31 prior to the examination or reexamination. In the event that

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1 such examination or reexamination is administered in a foreign
2 language, the full cost to the board and department of
3 preparing and administering the examination shall be borne by
4 the applicants. Where the taking of a national examination is
5 required by this chapter or rule adopted under this chapter,
6 the examination may not be required to be given in any
7 language other than English unless the national examination is
8 available in the requested language. Rules may be adopted
9 establishing procedures for requesting examinations in
10 languages other than English and establishing the costs
11 related to such examinations.

12 (13) Unless an applicant notifies the department at
13 least 5 days prior to an examination hearing of the
14 applicant's inability to attend or unless an applicant can
15 demonstrate an extreme emergency for failing to attend, the
16 department may require an applicant who fails to attend to pay
17 reasonable attorney's fees, costs, and court costs of the
18 department for the examination hearing.

19 Section 15. Section 497.145, Florida Statutes, is
20 created to read:

21 497.145 Licensing; use of professional testing
22 services.--Notwithstanding any other provision of law to the
23 contrary, the department may use a professional testing
24 service to prepare, administer, grade, and evaluate any
25 computerized examination, when that service is available and
26 approved by the board.

27 Section 16. Section 497.146, Florida Statutes, is
28 created to read:

29 497.146 Licensing; address of record; changes;
30 licensee responsibility.--Each licensee under this chapter is
31 responsible for notifying the department in writing of the

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1 licensee's current business and residence mailing address and
 2 the street address of the licensee's primary place of practice
 3 and shall notify the department in writing within 30 days
 4 after any change in such information, in accordance with
 5 procedures and forms prescribed by rule. Notwithstanding any
 6 other provision of law, service by regular mail to a
 7 licensee's last known address of record with the department
 8 constitutes adequate and sufficient notice to the licensee for
 9 any official communication to the licensee by the board or the
 10 department, except when other service is expressly required by
 11 this chapter. Rules may be adopted establishing forms and
 12 procedures for licensees to provide the notice required by
 13 this section.

14 Section 17. Section 497.147, Florida Statutes, is
 15 created to read:

16 497.147 Continuing education; general provisions.--

17 (1) As to any licensure under this chapter that
 18 requires prelicensure training or continuing education for
 19 renewal of a license, no such training or continuing education
 20 shall be accepted in satisfaction of the requirements of this
 21 chapter, unless approved by the board.

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

25 (3) The licensing authority may provide by rule that
 26 distance learning may be used to satisfy continuing education
 27 requirements and may specify conditions applicable to such
 28 distance learning for credit under this chapter.

29 (4) The licensing authority is authorized to adopt
 30 rules to implement requirements regarding prelicensure
 31 training and continuing education requirements under this

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1 chapter. Persons providing prelicensure training or continuing
2 education for credit against the requirements of this chapter
3 are hereinafter referred to as "providers."

4 (a) The rules may establish criteria for obtaining
5 approval from the licensing authority as a provider, and for
6 periodic renewal of such approval, and may establish
7 procedures and forms for use in applying to obtain and renew
8 such approval from the licensing authority.

9 (b) The rules may establish conditions and
10 requirements applicable to providers, including, but not
11 limited to:

12 1. Periodic submission by the provider to the
13 licensing authority of information and documentation as to
14 course materials, class locations and schedules, names of
15 scheduled instructors, resumes of instructors, and
16 descriptions of facilities.

17 2. Requirements for periodic reporting by the provider
18 to the licensing authority of information concerning
19 enrollment, attendance, and status of persons enrolled for
20 credit under this chapter.

21 3. Requirements for inspection by the licensing
22 authority of records of the provider related to training or
23 continuing education of applicants and licensees under this
24 chapter.

25 4. Requirements for announced or unannounced
26 attendance by department staff or board members at scheduled
27 classes or training, for the purpose of ensuring that the
28 training meets the requirements of this chapter and rules
29 adopted under this chapter.

30 5. Requirements for written contracts or agreements
31 required to be entered into by providers with the licensing

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1 authority as a prerequisite to acceptance of training or
2 continuing education provided by such provider for credit
3 under this chapter.

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

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

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

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

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

21 (5) The board may by rule provide up to 5 hours of
22 continuing education credit per continuing education reporting
23 period for licensees attending board meetings or selected
24 types or portions of board meetings, as specified by such
25 rules. The rules may limit the number of times such credit may
26 be utilized by a licensee. The rules may include provisions as
27 to the minimum amount of time that must be spent in the board
28 meeting room viewing proceedings, which may be more than 5
29 hours of attendance, requirements for advance notice by
30 licensees to department staff of proposed attendance,
31 requirements to sign in and out of the meeting room on lists

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1 maintained at the meeting site by department staff, forms that
 2 must be completed by the licensee to obtain such credit, and
 3 such other requirements deemed by the board to be advisable or
 4 necessary to prevent abuse of such rules and to ensure that
 5 useful information is obtained by licensees as a result of
 6 attendance. Procedural requirements of such rules requiring
 7 action by the department shall be subject to approval by the
 8 department prior to promulgation.

9 Section 18. Section 497.148, Florida Statutes, is
 10 created to read:

11 497.148 Continuing education; monitoring of
 12 compliance.--The department shall establish a system to
 13 monitor licensee compliance with applicable trainings and
 14 continuing education requirements and to determine each
 15 licensee's continuing education status. The department is
 16 authorized to provide for a phase-in of the compliance
 17 monitoring system. The compliance monitoring system may use
 18 staff and facilities of the department, or the department may
 19 enter into a contract for compliance monitoring services, upon
 20 such terms and conditions as the department deems advisable.
 21 Such contract may be with another government agency or a
 22 private business.

23 Section 19. Section 497.149, Florida Statutes, is
 24 created to read:

25 497.149 Investigations, hearings, and inspections.--
 26 (1) INVESTIGATIONS.--Investigations shall be conducted
 27 by the department. The following provisions shall apply
 28 concerning investigations:

29 (a) There shall be investigated all complaints
 30 directly or indirectly alleging violation of any provision of
 31 this chapter or rules adopted pursuant to this chapter.

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1 Investigations may be conducted regarding any applicant for
2 licensure under this chapter to ensure that the applicant
3 satisfies the requirements for licensure and to ensure the
4 accuracy and truthfulness of any matters represented to the
5 department or the board in connection with the application.
6 There may be such investigations of persons and entities not
7 licensed under this chapter to determine if they are engaging
8 in activities for which a license under this chapter is
9 required, or are otherwise in violation of this chapter, as is
10 deemed necessary to ensure compliance with this chapter. There
11 may be conducted such other investigations, in addition to
12 investigations expressly authorized or required by this
13 chapter, as are deemed necessary or advisable by the
14 department to determine whether any person is, has, or may
15 violate any provision of this chapter or to secure information
16 useful in the lawful administration of this chapter.

17 (b) Every person and entity being investigated, and
18 its officers, attorneys, employees, agents, and
19 representatives, shall make freely available to the department
20 the accounts, records, documents, files, information, assets,
21 business premises, and matters in their possession or control
22 relating to the subject of the investigation. If records
23 relating to a licensee or to activities regulated by this
24 chapter are maintained by an agent on premises owned or
25 operated by a third party, the agent and the third party shall
26 provide the department access to the records.

27 (c) If the department finds any accounts or records of
28 a licensee required by this chapter to be created and
29 maintained by the licensee to be inadequate or inadequately
30 kept or posted, it may employ experts to reconstruct, rewrite,
31 post, or balance them at the expense of the person being

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1 investigated, provided the person has failed to maintain,
2 complete, or correct such records or accounting after the
3 department has given her or him notice and a reasonable
4 opportunity to do so.

5 (d) In connection with any investigation under this
6 chapter, the department may administer oaths, examine
7 witnesses, and receive oral and documentary evidence, require
8 the licensee to answer under oath interrogatories propounded
9 by the department, issue a subpoena for testimony or the
10 production of records to any person believed to have
11 information or materials relevant to the subject matter of the
12 investigation, and compel such attendance and testimony and
13 the production of such materials for inspection and copying.
14 If any person refuses to comply with any such subpoena or to
15 testify as to any matter concerning which she or he may be
16 lawfully interrogated, the Circuit Court of Leon County or of
17 the county wherein such examination, investigation, or hearing
18 is being conducted, or of the county wherein such person
19 resides, may, on the application of the department, issue an
20 order requiring such person to comply with the subpoena and to
21 testify. Subpoenas may be served, and proof of such service
22 made, by any employee of the department.

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

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

31 (a) Inspections may be announced or unannounced as the

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1 department determines appropriate on a case-by-case basis.

2 (b) Every licensee being inspected, and its employees,
3 officers, attorneys, employees, agents, and representatives,
4 shall freely and immediately make available to the department
5 for inspection during normal business hours the licensee's
6 entire premises and the records and information in their
7 possession or control relating to the inspection.

8 (c) The department may adopt rules regarding
9 inspection procedures.

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

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

17 Section 20. Section 497.150, Florida Statutes, is
18 created to read:

19 497.150 Compliance examinations of existing
20 licensees.--

21 (1) There may be examined by the department the
22 facilities, records, operations, trust accounts, and financial
23 affairs of licensees under this chapter, as often as may be
24 deemed necessary by the department, to ensure compliance with
25 the provisions of this chapter and rules adopted under this
26 chapter. The provisions of this section shall apply to
27 examinations conducted by the department under this chapter.

28 (2) The examination may, as deemed necessary by the
29 department, include examination of the affairs, transactions,
30 accounts, and records of the licensee's agents and controlling
31 or controlled person, relating directly or indirectly to the

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1 licensee.

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

6 (4) Every person being examined, and its officers,
7 attorneys, employees, agents, and representatives, shall make
8 freely available the accounts, records, documents, files,
9 information, assets, and matters in their possession or
10 control relating to the subject of the examination.

11 (5) The licensee shall provide for the department
12 examiner's use during the examination such suitable private
13 office work location and facilities, including desk, chair,
14 and adequate lighting and ventilation, as are reasonably
15 available on the licensee's premises.

16 (6) If the department finds any accounts or records
17 required to be made or maintained by a licensee under this
18 chapter to be inadequate or inadequately kept or posted, it
19 may be employ experts to reconstruct, rewrite, post, or
20 balance them at the expense of the person being examined,
21 provided the person has failed to maintain, complete, or
22 correct such records or accounting after the department has
23 given her or him notice and a reasonable opportunity to do so.

24 (7) In connection with any examination under this
25 chapter, the department may administer oaths, examine
26 witnesses, and receive oral and documentary evidence, require
27 the licensee to answer under oath interrogatories propounded
28 by the department, issue a subpoena for testimony or the
29 production of records to any person believed to have
30 information or materials relevant to the subject matter of the
31 examination, and compel such attendance and testimony and the

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1 production of such materials for inspection and copying. If
2 any person refuses to comply with any such subpoena or to
3 testify as to any matter concerning which she or he may be
4 lawfully interrogated, the Circuit Court of Leon County or of
5 the county wherein such examination, investigation, or hearing
6 is being conducted, or of the county wherein such person
7 resides, may, on the application of the department, issue an
8 order requiring such person to comply with the subpoena and to
9 testify. Subpoenas may be served, and proof of such service
10 made, by any employee of the department.

11 (8) The department shall furnish a copy of any
12 examination report to the licensee examined within a
13 reasonable period of time, and the licensee shall have 30 days
14 thereafter in which to prepare and provide the department a
15 response to the examination report. No examination report
16 shall be filed by the department until such 30-day period has
17 elapsed. If the licensee provides a written response to the
18 department within such 30-day period, the response shall be
19 attached to and made a part of the report as filed in the
20 department's files.

21 (9) The examination report when so filed shall
22 thereafter be admissible in evidence in any judicial or
23 administrative action or proceeding brought by the department
24 against the person examined, or against its officers,
25 employees, or agents, or for the enforcement of an
26 investigative subpoena issued by the department in any
27 investigation of, involving, or relating to the person
28 examined. In all other proceedings, the admissibility of the
29 examination report is governed by the evidence code. The
30 department or its examiners may at any time testify and offer
31 other proper evidence as to information secured or matters

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1 discovered during the course of an examination, whether or not
 2 a written report of the examination has been made, furnished,
 3 or filed in the department.

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

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

12 (12) The department may adopt rules pursuant to ss.
 13 120.536(1) and 120.54 for the implementation of this section.

14 Section 21. Section 497.151, Florida Statutes, is
 15 created to read:

16 497.151 Complaints; logs; procedures.--

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

19 (2) Licensees shall cause to be maintained on a
 20 continuing basis a log of all written complaints received by
 21 the licensee regarding any aspect of the licensee's
 22 operations. The log shall show the complainant's name, the
 23 date the complaint was received, and the complainant's address
 24 and phone number if shown in the complaint. Each written
 25 complaint received shall be entered into the complaint log
 26 within 10 days after receiving such complaint. The licensing
 27 authority may by rule establish requirements relating to
 28 complaint logs, including whether the log may be
 29 electronically maintained or must be kept in writing by pen
 30 and ink. Each licensee under this chapter shall retain in its
 31 records all written complaints received by the licensee or the

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1 licensee's staff. All complaint logs, and all written
 2 complaints and related papers, shall be retained by the
 3 licensee until the completion of the next examination by the
 4 department of the licensee, which examination covers the
 5 period the complaint was received or such other period as the
 6 licensing authority may by rule require.

7 (3) Rules may be adopted modifying the requirements of
 8 this section as applied to different categories of licensees
 9 under this chapter, if the board determines that the
 10 requirements of this section are impractical as to any
 11 category of licensees.

12 Section 22. Section 497.152, Florida Statutes, is
 13 created to read:

14 497.152 Disciplinary grounds.--This section sets forth
 15 conduct which is prohibited and which shall constitute grounds
 16 for denial of any application, imposition of discipline, and
 17 other enforcement action against the licensee or other person
 18 committing such conduct. For purposes of this section, the
 19 requirements of this chapter include the requirements of rules
 20 adopted under authority of this chapter. No subsection heading
 21 in this section shall be interpreted as limiting the
 22 applicability of any paragraph within the subsection.

23 (1) GENERAL PROVISIONS.--The generality of the
 24 provisions of this subsection shall not be deemed to be
 25 limited by the provisions of any other subsection.

26 (a) Violating any provision of this chapter or any
 27 lawful order of the board or department or of the statutory
 28 predecessors to the board or department.

29 (b) Committing fraud, deceit, negligence,
 30 incompetency, or misconduct in the practice of any of the
 31 activities regulated under this chapter.

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

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

7 (2) CRIMINAL ACTIVITY.--Being convicted or found
8 guilty of, or entering a plea of nolo contendere to,
9 regardless of adjudication, a crime in any jurisdiction which
10 relates to the practice of, or the ability to practice, a
11 licensee's profession or occupation under this chapter.

12 (3) DISCIPLINARY ACTION BY OTHER AUTHORITIES.--Having
13 a license or the authority to practice a profession or
14 occupation revoked, suspended, fined, denied, or otherwise
15 acted against or disciplined by the licensing authority of any
16 jurisdiction, including its agencies or subdivisions, for
17 conduct that would constitute a violation of this chapter if
18 committed in this state or upon grounds which directly relate
19 to the ability to practice under this chapter. The licensing
20 authority's acceptance of a relinquishment of licensure,
21 stipulation, consent order, or other settlement offered in
22 response to or in anticipation of the filing of charges
23 against the license shall be construed as action against the
24 license.

25 (4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT
26 AGENCIES.--

27 (a) Improperly interfering with an investigation or
28 inspection authorized by statute or with any disciplinary
29 proceeding.

30 (b) Failure to comply with a lawfully issued subpoena
31 of the department.

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1 (c) Refusal to produce records to the department or
2 board in connection with any activity regulated pursuant to
3 this chapter.

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

6 (e) Knowingly concealing information relative to
7 violations of this chapter.

8 (f) Attempting to obtain, obtaining, or renewing a
9 license under this chapter by bribery, false or forged
10 evidence, or misrepresentation or through an error of the
11 department or board.

12 (g) Making or filing a report or statement to or with
13 any government entity which the licensee knows or has reason
14 to know to be false; or intentionally or negligently failing
15 to file a report or record required to be filed with any
16 government entity, or willfully impeding or obstructing
17 another person to do so, or inducing another person to impede
18 or obstruct such filing.

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

21 (5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED
22 PRACTICE.--

23 (a) Practicing or offering to practice beyond the
24 scope permitted by this chapter and rules adopted under this
25 chapter for the type of licensure held or accepting and
26 performing professional responsibilities the licensee knows,
27 or has reason to know, the licensee is not competent to
28 perform.

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

31 (c) Representing as her or his own the license of

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1 another.

2 (d) Aiding, assisting, procuring, employing, or
3 advising any person or entity to practice a profession or
4 occupation regulated by this chapter without required
5 licensure under this chapter.

6 (e) Aiding, assisting, procuring, employing, or
7 advising any person or entity to operate or in operating an
8 establishment regulated by this chapter without the required
9 licensure under this chapter.

10 (f) Delegating to any person the performance of
11 professional activities, or contracting with any person for
12 the performance of professional activities by such person,
13 when the licensee knows or has reason to know the person is
14 not qualified by training, experience, and authorization to
15 perform such responsibilities.

16 (g) Using the name or title "funeral director,"
17 "embalmer," "direct disposer," or other title suggesting
18 licensure which the person using such name or title does not
19 hold.

20 (h) Engaging by a direct disposer in the practice of
21 direct burial or offering the at-need or preneed service of
22 direct burial.

23 (6) EDUCATIONAL REQUIREMENTS.--

24 (a) Failing to comply with applicable educational
25 course requirements pursuant to this chapter or rules adopted
26 under this chapter regarding human immunodeficiency virus and
27 acquired immune deficiency syndrome.

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

30 (7) RELATIONS WITH OTHER LICENSEES.--

31 (a) Having been found liable in a civil proceeding for

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1 knowingly filing a false report or complaint against another
 2 licensee with the department or the board.

3 (b) Making any misleading statements or
 4 misrepresentations as to the financial condition of any
 5 person, or which are falsely and maliciously critical of any
 6 person for the purpose damaging that person's business
 7 regulated under this chapter.

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

10 (a) Violation of any state law or rule or any
 11 municipal or county ordinance or regulation affecting the
 12 handling, custody, care, or transportation of dead human
 13 bodies.

14 (b) Refusing to surrender promptly the custody of a
 15 dead human body upon the express order of the person legally
 16 authorized to its custody; however, this provision shall be
 17 subject to any state or local laws or rules governing custody
 18 or transportation of dead human bodies.

19 (c) Taking possession of a dead human body without
 20 first having obtained written or oral permission from a
 21 legally authorized person. If oral permission is granted, the
 22 licensee must obtain written permission within a reasonable
 23 time as established by rule.

24 (d) Embalming human remains without first having
 25 obtained written or oral permission from a legally authorized
 26 person; however, washing and other public health procedures,
 27 such as closing of the orifices by placing cotton soaked in a
 28 disinfectant in such orifices until authorization to embalm is
 29 received, shall not be precluded. If oral permission is
 30 granted, the licensee must obtain written permission within a
 31 reasonable time as established by board rule.

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1 (e) Failing to obtain written authorization from the
2 family or next of kin of the deceased prior to entombment,
3 interment, disinterment, disentombment, or disinurnment of the
4 remains of any human being.

5 (9) SALES PRACTICES IN GENERAL.--

6 (a) Soliciting by the licensee, or by her or his
7 agent, assistant, or employee, through the use of fraud, undue
8 influence, intimidation, overreaching, or other means which
9 takes advantage of a customer's ignorance or emotional
10 vulnerability.

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

14 (c) Discouraging a customer's purchase of any funeral
15 merchandise or service which is advertised or offered for
16 sale, with the purpose of encouraging the purchase of
17 additional or more expensive merchandise or service, by
18 disparaging its quality or appearance, except that true
19 factual statements concerning features, design, or
20 construction do not constitute disparagement; by
21 misrepresenting its availability or any delay involved in
22 obtaining it; or by suggesting directly or by implication that
23 a customer's concern for price or expressed interest in
24 inexpensive funeral merchandise or services is improper,
25 inappropriate, or indicative of diminished respect or
26 affection for the deceased.

27 (d) Misrepresenting the benefits, advantages,
28 conditions, or terms of any contract to provide any services
29 or merchandise regulated under this chapter.

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

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1 (f) Directly or indirectly making any deceptive,
2 misleading, or untrue representations, whether oral or
3 written, or employing any trick, scheme, or artifice, in or
4 related to the practice of a profession or occupation
5 regulated under this chapter, including in the advertising or
6 sale of any merchandise or services related to the practice of
7 the profession or occupation.

8 (10) SPECIFIC MISREPRESENTATIONS.--

9 (a) Making any false or misleading statement of the
10 legal requirement as to the necessity of any particular burial
11 or funeral merchandise or services.

12 (b) Making any oral, written, or visual
13 representations, directly or indirectly, that any funeral
14 merchandise or service is offered for sale when such is not a
15 bona fide offer to sell such merchandise or service.

16 (c) Making any misrepresentation for the purpose of
17 inducing, or tending to induce, the lapse, forfeiture,
18 exchange, conversion, or surrender of any preneed contract or
19 any life insurance policy pledged or assigned to secure
20 payment for funeral or burial goods or services.

21 (d) Misrepresenting pertinent facts or prepaid
22 contract provisions relating to funeral or burial merchandise
23 or services.

24 (e) Misrepresenting the amount advanced on behalf of a
25 customer for any item of service or merchandise, including,
26 but not limited to, cemetery or crematory services,
27 pallbearers, public transportation, clergy honoraria, flowers,
28 musicians or singers, nurses, obituary notices, gratuities,
29 and death certificates, described as cash advances,
30 accommodations, or words of similar import on the contract,
31 final bill, or other written evidence of agreement or

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1 obligation furnished to customers; however, nothing in this
 2 paragraph shall require disclosure of a discount or rebate
 3 which may accrue to a licensee subsequent to making a cash
 4 advance.

5 (f) Making any false or misleading statement or claim
 6 that natural decomposition or decay of human remains can be
 7 prevented or substantially delayed by embalming, use of a
 8 gasketed or ungasketed casket, or use of an adhesive or
 9 nonadhesive closure on an outer burial container.

10 (g) Making any false or misleading statement, oral or
 11 written, directly or indirectly, regarding any law or rule
 12 pertaining to the preparation for disposition, transportation
 13 for disposition, or disposition of dead human bodies.

14 (h) Making any false or misleading statements of the
 15 legal requirement as to the conditions under which
 16 preservation of a dead human body is required or as to the
 17 necessity of a casket or outer burial container.

18 (11) SPECIFIC SALES PRACTICES.--

19 (a) Failing to furnish, for retention, to each
 20 purchaser of burial rights, burial or funeral merchandise, or
 21 burial or funeral services a written agreement, the form of
 22 which has been previously approved if and as required by this
 23 chapter, which lists in detail the items and services
 24 purchased together with the prices for the items and services
 25 purchased; the name, address, and telephone number of the
 26 licensee; the signatures of the customer and the licensee or
 27 her or his representative; and the date signed.

28 (b) Using any name or title in any contract regulated
 29 under this chapter which misrepresents the true nature of the
 30 contract.

31 (c) Selling an irrevocable preneed contract to a

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1 person who is not an applicant for or recipient of
2 Supplemental Security Income or Aid to Families with Dependent
3 Children or pursuant to s. 497.459(6)(a).

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

6 (e) Requiring that a casket be purchased for cremation
7 or claiming directly or by implication that a casket is
8 required for cremation.

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

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

16 (h) Failure by a cemetery licensed under this chapter
17 to provide to any person, upon request, a copy of the cemetery
18 bylaws.

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

22 (12) DISCLOSURE REQUIREMENTS.--

23 (a) Failure to disclose, when such disclosure is
24 desired, the components of the prices for alternatives offered
25 by the licensee from whom disclosure is requested, such as
26 graveside service, direct disposition, and body donation
27 without any rites or ceremonies prior to the delivery of the
28 body and prices of service if there are to be such after the
29 residue has been removed following the use thereof.

30 (b) Failing to furnish, for retention, to anyone who
31 inquires in person about burial rights, burial or funeral

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1 merchandise, or burial or funeral services, before any
 2 discussion of selection, a printed or typewritten list
 3 specifying the range of retail prices for such rights,
 4 merchandise, or services. At a minimum, the list shall itemize
 5 the highest and lowest priced product and service regularly
 6 offered and shall include the name, address, and telephone
 7 number of the licensee and statements that the customer may
 8 choose only the items the customer desires, that the customer
 9 will be charged for only those items selected, and that there
 10 may be other charges for other items or other services.

11 (c) Failing to reasonably provide by telephone, upon
 12 request, accurate information regarding the retail prices of
 13 funeral merchandise and services offered for sale by that
 14 licensee.

15 (d) Failure by a funeral director to make full
 16 disclosure in the case of a funeral or direct disposition with
 17 regard to the use of funeral merchandise which is not to be
 18 disposed of with the body or failure to obtain written
 19 permission from the purchaser regarding disposition of such
 20 merchandise.

21 (e) Failure by any funeral director to fully disclose
 22 all of her or his available services and merchandise prior to
 23 the selection of a casket offered by a licensee. The full
 24 disclosure required shall identify what is included in the
 25 funeral or direct disposition and the prices of all services
 26 and merchandise provided by the licensee or registrant.

27 (f) Failing to have the price of any casket offered
 28 for sale clearly marked on or in the casket, whether the
 29 casket is displayed at a funeral establishment or at any other
 30 location, regardless of whether the licensee is in control of
 31 such location. If a licensee uses books, catalogs, brochures,

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1 or other printed display aids, the price of each casket shall
2 be clearly marked.

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

6 (13) CONTRACT OBLIGATIONS.--

7 (a) Failing without reasonable justification to timely
8 honor contracts entered into by the licensee or under the
9 licensee's license for funeral or burial merchandise or
10 services.

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

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

15 (a) Failing to adopt and implement standards for the
16 proper investigation and resolution of claims and complaints
17 received by a licensee relating to the licensee's activities
18 regulated by this chapter.

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

21 1. Failing to acknowledge and act promptly upon
22 communications from a licensee's customers and their
23 representatives with respect to claims or complaints relating
24 to the licensee's activities regulated by this chapter.

25 2. Denying claims or rejecting complaints received by
26 a licensee from a customer or customer's representative,
27 relating to the licensee's activities regulated by this
28 chapter, without first conducting reasonable investigation
29 based upon available information.

30 3. Attempting to settle a claim or complaint on the
31 basis of a material document which was altered without notice

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1 to, or without the knowledge or consent of, the contract
2 purchaser or her or his representative or legal guardian.

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

8 5. Failing to promptly provide, in relation to a
9 contract for funeral or burial merchandise or services entered
10 into by the licensee or under the licensee's license, a
11 reasonable explanation to the contract purchaser or her or his
12 representative or legal guardian of the licensee's basis for
13 denying or rejecting all or any part of a claim or complaint
14 submitted.

15 (c) Making a material misrepresentation to a contract
16 purchaser or her or his representative or legal guardian for
17 the purpose and with the intent of effecting settlement of a
18 claim or complaint or loss under a prepaid contract on less
19 favorable terms than those provided in, and contemplated by,
20 the prepaid contract.

21 (d) Failing to maintain a complete copy of every
22 complaint received by the licensee since the date of the last
23 examination of the licensee by the department. For purposes of
24 this subsection, the term "complaint" means any written
25 communication primarily expressing a grievance and which
26 communication is from:

27 1. A representative or family member of a deceased
28 person interred at the licensee's facilities or using the
29 licensee's services, or which deceased's remains were the
30 subject of any service provided by the licensee or licensee's
31 business; or

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1 2. A person, or such person's family member or
2 representative, who inquired of the licensee or licensee's
3 business concerning the purchase of, or who purchased or
4 contracted to purchase, any funeral or burial merchandise or
5 services from the licensee or licensee's business.

6 (15) MISCELLANEOUS FINANCIAL MATTERS.--

7 (a) Failing to timely pay any fee required by this
8 chapter.

9 (b) Failing to timely remit as required by this
10 chapter the required amounts to any trust fund required by
11 this chapter.

12 (c) Paying to or receiving from any organization,
13 agency, or person, either directly or indirectly, any
14 commission, bonus, kickback, or rebate in any form whatsoever
15 for any business regulated under this chapter, whether such
16 payments are made or received by the licensee, or her or his
17 agent, assistant, or employee; however, this provision shall
18 not prohibit the payment of commissions by a funeral director,
19 funeral establishment, cemetery, or monument establishment to
20 its preneed agents licensed pursuant to this chapter or to
21 licensees under this chapter.

22 Section 23. Section 497.153, Florida Statutes, is
23 created to read:

24 497.153 Disciplinary procedures and penalties.--

25 (1) JURISDICTION OF LICENSING AUTHORITY TO INVESTIGATE
26 AND PROSECUTE.--The expiration, nonrenewal, or surrender of
27 licensure under this chapter shall not eliminate jurisdiction
28 in the licensing authority to investigate and prosecute for
29 violations committed while licensed under this chapter. The
30 prosecution of any matter may be initiated or continued
31 notwithstanding the withdrawal of any complaint.

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1 (2) DETERMINATION OF PROBABLE CAUSE.--

2 (a) If the department shall determine that there is
3 reasonable cause to believe that any licensee under this
4 chapter is subject to disciplinary action under this chapter
5 and is not eligible for a citation or notice of noncompliance
6 pursuant to criteria established by the board, the department
7 shall present the matter to a probable cause panel of the
8 board.

9 (b) Prior to submitting a matter to the probable cause
10 panel, the licensee who is the subject of the matter shall be
11 provided by the department with a copy of any written
12 complaint received by the department in the matter and shall
13 be advised that she or he may, within 20 days after receipt of
14 a copy of such complaint from the department, submit to the
15 department a written response. Any response timely received by
16 the department shall be provided by the department to the
17 probable cause panel. Licensees may not appear in person or
18 through a representative at any probable cause panel
19 proceeding. This paragraph shall not apply to emergency
20 action.

21 (3) PROBABLE CAUSE PROCEEDINGS.--

22 (a) The board may provide, by rule, for multiple
23 probable cause panels composed of at least two members. The
24 board may provide, by rule, that one or more members of the
25 panel or panels may be a former board member. The length of
26 term or repetition of service of any such former board member
27 on a probable cause panel may vary according to the direction
28 of the board when authorized by board rule. Any probable cause
29 panel must include one of the board's former or present
30 consumer members, if one is available and willing to serve.
31 Any probable cause panel must include a present board member.

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1 The board shall enact rules consistent with this section
2 specifying, according to what categories of licensure are
3 represented on a probable cause panel, what categories of
4 licensee cases may be presented to that panel. Former board
5 members may be from the former Board of Funeral and Cemetery
6 Services or the former Board of Funeral Directors and
7 Embalmers. However, any former professional board member
8 serving on the probable cause panel must hold an active valid
9 license for that profession.

10 (b) The probable cause panel may make a reasonable
11 request to the department for additional investigative
12 information, and upon such request the department shall
13 provide such additional investigative information as is
14 necessary to the determination of probable cause. A request
15 for additional investigative information shall be made within
16 15 days after the date of receipt by the probable cause panel
17 of the investigative report of the department. The probable
18 cause panel shall make its determination as to the existence
19 of probable cause within 30 days after referral of the matter
20 to the probable cause panel by the department. The Chief
21 Financial Officer may grant extensions of the 15-day and the
22 30-day time limits. If the probable cause panel does not find
23 probable cause within the 30-day time limit, as may be
24 extended, or if the probable cause panel finds no probable
25 cause, the department may determine, within 10 days after the
26 panel fails to determine probable cause or 10 days after the
27 time limit has elapsed, that probable cause exists.

28 (c) The probable cause panel may not resolve or direct
29 resolution of a matter presented to it, by issuance of a
30 citation or a letter of guidance or noncompliance or other
31 informal resolution, without the concurrence of the

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1 department.

2 (d) The determination as to whether probable cause
3 exists shall be made by majority vote of the probable cause
4 panel of the board.

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

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

9 (a) Service of an administrative complaint may be in
10 person by department staff or any person authorized to make
11 service of process under the Florida rules of civil procedure.
12 Service upon a licensee may in the alternative be made by
13 certified mail, return receipt requested, to the last known
14 address of record provided by the licensee to the department.

15 (b) If after service of the administrative complaint
16 on a licensee the licensee does not dispute the facts alleged,
17 the department shall present the matter to the board for final
18 action.

19 (c) The department may at any time present to the
20 board a proposed settlement of any matter as to which probable
21 cause has been found. If the board accepts the proposed
22 settlement, it shall issue its final order adopting the
23 settlement. If the board does not accept such settlement, the
24 prosecution of the matter shall be resumed. No settlement of
25 any disciplinary matter as to which probable cause has been
26 found may be entered into by the board prior to receipt of a
27 recommended order of an administrative law judge without the
28 department's concurrence.

29 (d) Hearings concerning disputes as to any fact
30 alleged in a disciplinary action shall be held before an
31 administrative law judge of the Division of Administrative

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1 Hearings in accordance with chapter 120. The department shall
2 present the recommended order of the administrative law judge
3 to the board for final action.

4 (e) If at any time after probable cause has been found
5 in a matter the department shall conclude that the matter
6 should not be further prosecuted, the department may present
7 the matter to any probable cause panel of the board. If that
8 probable cause panel concurs with the department, the
9 prosecution may be terminated, without prejudice to subsequent
10 prosecution of the same matter. If the probable cause panel
11 does not concur with the department, the matter shall be
12 returned to the department for continued prosecution. Upon
13 commencement of taking of evidence in a matter before an
14 administrative law judge, the jurisdiction of the
15 administrative law judge may not be terminated except by order
16 of the administrative law judge or a court of competent
17 jurisdiction.

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

22 (5) PENALTIES.--

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

- 26 1. Denial of an application for a license.
- 27 2. Issuance of a written reprimand.
- 28 3. Placement of the licensee on probation for a period
29 of time and subject to such conditions as the board may
30 specify.

31 4. Restrictions on the authorized scope of practice of

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1 the licensee.

2 5. Requirements that the licensee complete additional
3 education or training as specified by the board.

4 6. Imposition of an administrative fine not to exceed
5 \$5,000 for each count or separate offense; provided, a
6 licensee may by settlement agree to a fine in excess of such
7 \$5,000 limitation.

8 7. Suspension of a license. A suspension may be for
9 such period and subject to such terms as the board shall
10 specify in its order imposing discipline. Unless ordered
11 otherwise by the board, during the period of suspension, the
12 person whose license has been suspended shall continue to file
13 all such reports, complete all continuing education, and pay
14 all fees as required under this chapter as if the license had
15 continued in full force. Upon expiration of the suspension
16 period, if within such period the license has not otherwise
17 terminated, the suspended license shall automatically be
18 reinstated unless the board has ordered that the licensee
19 apply for reinstatement, and the board may deny such
20 application if the board finds that the causes of the
21 suspension have not been resolved or that such person is
22 otherwise not in compliance with the requirements of the order
23 or this chapter.

24 8. Revocation of licensure. The board may specify by
25 final order on a case-by-case basis the period of time that
26 must elapse before a revoked licensee may apply or reapply for
27 any licensure under this chapter. The board may by order on a
28 case-by-case basis specify that a revocation is permanent and
29 that no future application for licensure under this chapter by
30 the revoked person or entity shall be accepted, processed or
31 approved. In no event shall any person or entity who has been

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1 revoked under this section subsequently be issued the same or
2 other licensure under this chapter unless such person shall
3 show by clear and convincing evidence that the person or
4 entity has been rehabilitated and otherwise qualifies for the
5 licensure applied for.

6 (b) In addition to any fine and other sanction
7 imposed, the board may order the payment by the licensee of
8 the reasonable costs of the department and the board
9 associated with investigation and prosecution the matter, and
10 may order the licensee to make restitution as directed by
11 board order to persons harmed by the violation.

12 (c) The failure of a licensee to timely comply with a
13 final order of the board imposing discipline shall be grounds
14 for emergency suspension of all licensure held by the licensee
15 under this chapter; provided, the department shall give
16 written notice to such licensee, at least 7 days before such
17 emergency suspension, of the department's intent to enter an
18 emergency order of suspension and the ground therefore, and
19 such emergency suspension shall not occur if during the 7-day
20 period the licensee shall provide the department with evidence
21 satisfactory to the department that the licensee was in
22 compliance or has come into compliance with the disciplinary
23 order. Any emergency suspension imposed shall be effective
24 when served, and shall terminate upon notice to the licensee
25 by the department that the department has received evidence
26 satisfactory to the department that the licensee has come into
27 compliance with the board's order, which notice the department
28 shall promptly provide to the licensee upon receipt of such
29 evidence. Notwithstanding the licensee's correction of any
30 noncompliance with a board order, such licensee shall be
31 liable for additional disciplinary action for failure to

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1 timely comply with an order of the board.

2 (d) Any order imposing any penalty pursuant to this
3 section shall recite the grounds upon which the penalty is
4 based.

5 (6) PROTECTION OF CUSTOMERS OF DISCIPLINED
6 LICENSEES.--In imposing any discipline under this section the
7 board may also impose by its order such restrictions,
8 conditions and requirements on the licensee and the licensee's
9 assets and the assets of any trust under this chapter utilized
10 by the licensee, as are reasonably necessary for the
11 protection of persons to whom the disciplined licensee is
12 obligated for the future performance or delivery of funeral or
13 burial merchandise or services. The board shall have
14 continuing jurisdiction over revoked persons and entities and
15 their assets and related trusts under this chapter, for the
16 purpose of and to the extent necessary for the protection of
17 persons to whom the disciplined licensee is obligated for the
18 future performance or delivery of funeral or burial
19 merchandise or services, and may issue such subsequent and
20 additional orders as from time to time the board deems
21 necessary or advisable for such purposes. The courts of this
22 state shall have jurisdiction to enforce the reasonable orders
23 of the board issued for such purposes.

24 (7) LIABILITY FOR AGENTS AND EMPLOYEES.--For purposes
25 of this section, the acts or omissions of any person employed
26 by or under contract to the licensee shall be treated as acts
27 or omissions of the licensee. However, the board may determine
28 that disciplinary action may be more appropriately taken
29 against an individual licensed preneed agent or licensed
30 branch rather than taking action against the sponsoring
31 preneed licensee.

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

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

8 (a) A determination by the department to exercise its
9 authority under this chapter to investigate, financially
10 examine, or inspect any person or entity; or a determination
11 by the department concerning how to conduct such
12 investigation, financial examination, or inspection; or a
13 determination by the department concerning the content of any
14 report of investigation, financial examination, or inspection.

15 (b) A determination by the department that there is
16 reasonable cause to believe that a licensee under this chapter
17 is subject to disciplinary action under this chapter and that
18 the matter should be presented to a probable cause panel of
19 the board, or that the licensee is not eligible for a citation
20 pursuant to criteria established by the board.

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

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

26 Section 24. Section 497.133, Florida Statutes, is
27 renumbered as section 497.154, Florida Statutes, to read:

28 497.154 ~~497.133~~ Disciplinary guidelines.--

29 (1) The board shall adopt, by rule, and periodically
30 review the disciplinary guidelines applicable to each ground
31 for disciplinary action which may be imposed by the board

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1 pursuant to this chapter, and any rule of the board or
2 department.

3 (2) The disciplinary guidelines shall specify a
4 meaningful range of designated penalties based upon the
5 severity and repetition of specific offenses, it being the
6 legislative intent that minor violations be distinguished from
7 those which endanger the public health, safety, or welfare;
8 that such guidelines provide reasonable and meaningful notice
9 to the public of likely penalties which may be imposed for
10 proscribed conduct; and that such penalties be consistently
11 applied by the board.

12 (3) A specific finding of mitigating or aggravating
13 circumstances shall allow the board to impose a penalty other
14 than that provided for in such guidelines. If applicable, the
15 board shall adopt by rule disciplinary guidelines to designate
16 possible mitigating and aggravating circumstances and the
17 variation and range of penalties permitted for such
18 circumstances.

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

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

27 (6) The administrative law judge, in recommending
28 penalties in any recommended order, must follow the penalty
29 guidelines established by the board and must state in writing
30 the mitigating or aggravating circumstances upon which the
31 recommended penalty is based.

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1 Section 25. Section 497.121, Florida Statutes, is
2 renumbered as section 497.155, Florida Statutes, and amended
3 to read:

4 497.155 ~~497.121~~ Disciplinary citations and minor
5 violations ~~Authority to issue citations.--~~

6 (1) CITATIONS.--

7 (a) Notwithstanding the provisions of s. 497.153
8 ~~497.131~~, the board shall adopt rules to permit the issuance of
9 citations. The citation shall be issued to the subject and
10 shall contain the subject's name and address, the subject's
11 license number if applicable, a brief factual statement, the
12 sections of the law allegedly violated, and the penalty
13 imposed. The citation must clearly state that the subject may
14 choose, in lieu of accepting the citation, to follow the
15 procedures under s. 497.153 ~~497.131~~. If the subject disputes
16 the matter in the citation, the procedures set forth in s.
17 497.153 ~~497.131~~ must be followed. However, if the subject does
18 not dispute the matter in the citation with the department
19 within 30 days after the citation is served, the citation
20 shall become a final order of the board and shall constitute
21 discipline. The penalty shall be a fine or other conditions as
22 established by rule.

23 ~~(b)(2)~~ The board shall adopt rules designating
24 violations for which a citation may be issued. Such rules
25 shall designate as citation violations those violations for
26 which there is no substantial threat to the public health,
27 safety, and welfare. Citations shall not be utilized if there
28 was any significant consumer harm resulting from the
29 violation.

30 ~~(c)(3)~~ The department shall be entitled to recover the
31 costs of investigation, in addition to any penalty provided

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1 according to board rule, as part of the penalty levied
 2 pursuant to the citation.

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

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

9 (2) MINOR VIOLATIONS.--

10 (a) The board may by rule specify violations of this
 11 chapter, and criteria for use by the department in identifying
 12 violations of this chapter, which are minor violations and
 13 which, if promptly corrected by the licensee upon notice by
 14 the department during investigation, may, with the concurrence
 15 of the department, result in closure of the investigation in
 16 the matter without further action by the department or the
 17 board.

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

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

25 (d) There may by rule be specified notices of
 26 noncompliance and other forms and procedures for use in
 27 implementation of this subsection.

28 Section 26. Section 497.156, Florida Statutes, is
 29 created to read:

30 497.156 Emergency action against licensees.--In
 31 addition to or in lieu of other actions authorized under this

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1 chapter for the enforcement of this chapter, the department
2 may issue emergency orders under s. 120.60(6) suspending or
3 restricting a license or ordering a licensee to cease or
4 desist from specified conduct, or taking other action deemed
5 necessary in the circumstances, but shall thereafter promptly
6 present the matter to a probable cause panel of the board.
7 Emergency orders shall be effective when issued, shall be
8 appealable as provided by law, and shall be enforceable in the
9 courts of this state.

10 Section 27. Section 497.157, Florida Statutes, is
11 created to read:

12 497.157 Unlicensed practice; remedies concerning
13 violations by unlicensed persons.--

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

17 (2)(a) When the department has reasonable cause to
18 believe that any person or entity not licensed under this
19 chapter has violated any provision of this chapter or any rule
20 adopted under this chapter, the department may issue an
21 administrative complaint to such person or entity, alleging
22 violation of this chapter and providing notice therein of
23 intent by the department to order such person to cease and
24 desist from the alleged violation of this chapter, to take
25 corrective action including payment of restitution to persons
26 adversely affected by the violation, to pay the department's
27 reasonable costs of investigation and prosecution, or to
28 impose a fine of up to \$10,000 upon such person for each
29 violation of this chapter alleged in the administrative
30 complaint.

31 (b) The issuance of the administrative complaint shall

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1 be a decision affecting substantial interests and shall
2 entitle the respondent therein to proceedings pursuant to s.
3 120.569, if such proceedings are requested by the respondent
4 in a writing received by the department within 21 days after
5 service of the administrative complaint. If such proceedings
6 are timely requested and the respondent shall contest any
7 material fact alleged in the administrative complaint, the
8 matter shall be heard before an administrative law judge of
9 the Division of Administrative Hearings, who shall issue her
10 or his recommended order to the department; otherwise, the
11 proceedings shall be before the Chief Financial Officer or her
12 or his designee. Upon conclusion of proceedings under s.
13 120.57 if the subject timely requested a hearing, or after the
14 expiration of 21 days after service of the administrative
15 complaint if no request for hearing is received within those
16 21 days, the department may take final agency action and issue
17 its final order concerning the matter, which final order
18 shall be enforceable as set forth in s. 120.69.

19 (3) Where the department determines that an emergency
20 exists regarding any violation of this chapter by any
21 unlicensed person or entity, the department may issue and
22 serve an immediate final order upon such unlicensed person or
23 entity, in accordance with s. 120.569(2)(n). Such an immediate
24 final order may impose such prohibitions and requirements as
25 are reasonably necessary to protect the public health, safety,
26 and welfare, and shall be effective when served.

27 (a) For the purpose of enforcing such an immediate
28 final order, the department may file an emergency or other
29 proceeding in the circuit courts of the state seeking
30 enforcement of the immediate final order by injunctive or
31 other order of the court. The court shall issue its injunction

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1 or other order enforcing the immediate final order pending
 2 administrative resolution of the matter under subsection (2),
 3 unless the court determines that such action would work a
 4 manifest injustice under the circumstances. Venue for judicial
 5 actions under this paragraph shall be, at the election of the
 6 department, in the courts of Leon County, or in a county where
 7 the respondent resides or has a place of business.

8 (b) After serving an immediate final order to cease
 9 and desist upon any person or entity, the department shall
 10 within 10 days issue and serve upon the same person or entity
 11 an administrative complaint as set forth in subsection (2),
 12 except that, absent order of a court to the contrary, the
 13 immediate final order shall be effective throughout the
 14 pendency of proceedings under subsection (2).

15 (4) For the purpose of this section, the violation of
 16 this chapter by a person who is not licensed under this
 17 chapter or by any person who aids and abets the unlicensed
 18 activity shall be presumed to be irreparable harm to the
 19 public health, safety, or welfare.

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

25 Section 28. Section 497.229, Florida Statutes, is
 26 renumbered as section 497.158, Florida Statutes, and amended
 27 to read:

28 497.158 ~~497.229~~ Court enforcement actions; Courts;
 29 powers; abatement of nuisances.--

30 (1) In addition to or in lieu of other actions
 31 authorized by this chapter, the department may petition the

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1 courts of this state for injunctive or other relief against
2 any licensed or unlicensed person, for the enforcement of this
3 chapter and orders issued under this chapter. The court shall
4 be authorized to impose a fine of up to \$5,000 per violation,
5 payable to the department, upon any person determined by the
6 court to have violated this chapter, and may order payment to
7 the department of the department's attorney's fees and
8 litigation costs, by any person found to have violated this
9 chapter.

10 (2)(1) In addition to all other means provided by law
11 for the enforcement by a court of a temporary restraining
12 order or an injunction, the circuit court may impound the
13 property of a licensee cemetery company, including books,
14 papers, documents, and records pertaining thereto, and may
15 appoint a receiver or administrator to prevent further
16 violation of this chapter.

17 (3)(2) A court-appointed receiver or administrator may
18 take any action to implement the provisions of the court
19 order, to ensure the performance of the order, and to remedy
20 any breach thereof.

21 (4)(3) Any nonconforming physical condition in a
22 cemetery or component thereof which is the result of a
23 violation of this chapter or of the rules adopted under this
24 chapter of the board relating to construction, physical
25 operations, or care and maintenance at the cemetery shall be
26 deemed a public nuisance, and the nonconforming physical
27 conditions caused by such violation may be abated as provided
28 in s. 60.05.

29 Section 29. Section 497.159, Florida Statutes, is
30 created to read:

31 497.159 Crimes.--

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1 (1) The theft of an examination in whole or in part or
2 the act of unauthorized reproducing or copying any examination
3 administered by the department or the board, whether such
4 examination is reproduced or copied in part or in whole and by
5 any means, constitutes a felony of the third degree,
6 punishable as provided in s. 775.082, s. 775.083, or s.
7 775.084.

8 (2) The act of knowingly giving false information in
9 the course of applying for or obtaining a license under this
10 chapter, with intent to mislead the board or a public employee
11 in the performance of her or his official duties, or the act
12 of attempting to obtain or obtaining a license under this
13 chapter by knowingly misleading statements or knowing
14 misrepresentations, constitutes a felony of the third degree,
15 punishable as provided in s. 775.082, s. 775.083, or s.
16 775.084.

17 (3) Any individual who willfully obstructs the
18 department or its examiner in any examination or investigation
19 authorized by this chapter is guilty of a misdemeanor of the
20 second degree and is, in addition to any disciplinary action
21 under this chapter, punishable as provided in s. 775.082 or s.
22 775.083.

23 (4) Any officer or director, or person occupying
24 similar status or performing similar functions, of a licensee
25 under this chapter who knowingly directs or causes the failure
26 to make required deposits to any trust fund required by this
27 chapter, or with knowledge that such required deposits are not
28 being made as required by law fails to report such failure to
29 the department, or who knowingly directs or causes the
30 unlawful withdrawal of funds from any trust fund required by
31 this chapter, commits a felony of the third degree, punishable

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1 as provided in s. 775.082, s. 775.083, or s. 775.084.

2 (5)(a) No cemetery company or other legal entity
 3 conducting or maintaining any public or private cemetery may
 4 deny burial space to any person because of race or color. A
 5 cemetery company or other entity operating any cemetery may
 6 designate parts of cemeteries or burial grounds for the
 7 specific use of persons whose religious code requires
 8 isolation. Religious institution cemeteries may limit burials
 9 to members of the religious institution and their families.

10 (b) Any cemetery company or other legal entity which
 11 violates the provisions of this subsection commits a
 12 misdemeanor of the second degree, punishable as provided in s.
 13 775.083, and each violation of this section constitutes a
 14 separate offense.

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

19 Section 30. Section 497.437, Florida Statutes, is
 20 renumbered as section 497.160, Florida Statutes, and amended
 21 to read:

22 (Substantial rewording of section. See
 23 s. 497.437, F.S., for present text)
 24 497.160 Receivership proceedings.--

25 (1) The department with the approval of the board may
 26 petition the circuit courts of this state for appointment of a
 27 receiver of any licensee or revoked or suspended licensee
 28 under this chapter, or person who has without license
 29 conducted activities requiring licensure under this chapter.
 30 The court shall appoint a receiver if the court shall
 31 determine that a receivership is necessary or advisable:

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1 (a) To ensure the orderly and proper conduct of a
2 licensee's professional business and affairs during or in the
3 aftermath of the administrative proceeding to revoke or
4 suspend the licensee.

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

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

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

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

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

20 (2) A receivership under this section may be
21 temporary, or for the winding up and dissolution of the
22 business, as the department may request and the court
23 determines to be necessary or advisable in the circumstances.
24 Venue of receivership proceedings may, at the department's
25 election, in Leon County, or the county where the subject of
26 the receivership is located. The appointed receiver shall be
27 the department or such person as the department may nominate
28 and the court shall approve. The provisions of part I of
29 chapter 631 shall be applicable to receiverships under this
30 section except to the extent the court shall determine the
31 application of particular of such provisions to be

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1 impracticable or would produce unfair results in the
2 circumstances. Expenditures by the department from its
3 budgeted funds, the Preneed Funeral Contract Consumer
4 Protection Trust Fund, and other regulatory trust funds
5 derived from this chapter, for implementation and effectuation
6 of such a receivership, shall be authorized; any such funds
7 expended shall be a claim against the estate in the
8 receivership proceedings.

9 (3) The department may adopt rules for the
10 implementation of this section.

11 Section 31. Section 497.161, Florida Statutes, is
12 created to read:

13 497.161 Other rulemaking provisions.--

14 (1) In addition to such other rules as are authorized
15 or required under this chapter, the following additional
16 rules, not inconsistent with this chapter, shall be authorized
17 by the licensing authority.

18 (a) Rules by the board defining any technical term
19 used but not defined in his chapter, and defining the terms
20 "at-need" and "preneed" as used in this chapter:

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

24 (c) Rules by the board governing the operation of
25 cemeteries in this state.

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

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

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

3 (g) Rules establishing procedures by which the
4 department may use the expert or technical advice of the board
5 or members of the board for the purposes of any investigation,
6 inspection, or financial examination, without thereby
7 disqualifying the board member from voting on final action in
8 the matter.

9 (h) In connection with the statutory revisions by the
10 2005 Regular Session of the Legislature merging chapters 470
11 and 497 as those chapters appeared in the 2004 edition of the
12 Florida Statutes and the elimination of the former boards
13 under those chapters and the movement of regulation out of the
14 Department of Business and Professional Regulation, the
15 licensing authority shall through July 1, 2006, be deemed to
16 have extraordinary rulemaking authority to adopt any and all
17 rules jointly agreed by the board and the department to be
18 necessary for the protection of the public concerning the
19 regulation of the professions and occupations regulated under
20 this chapter, or for the relief of licensees regulated under
21 this chapter concerning any impacts which the department and
22 the board jointly agree were unintended or not contemplated in
23 the enactment of the 2005 legislative changes. The authority
24 under this paragraph and any rules adopted under authority of
25 this paragraph shall expire July 1, 2006.

26 (2) In addition to challenges for any invalid exercise
27 of delegated legislative authority, no rule shall be adopted
28 under this chapter, and the administrative law judge upon such
29 a challenge by the department or the board, may declare all or
30 part of a rule or proposed rule invalid, if the rule or
31 proposed rule:

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

3 (b) Unreasonably restricts competition or the
4 availability of professional services in the state or in a
5 significant part of the state; or

6 (c) Unnecessarily increases the cost of professional
7 services without a corresponding or equivalent public benefit.

8 However, there shall not be created a presumption of
9 the existence of any of the conditions cited in this
10 subsection in the event that the rule or proposed rule is
11 challenged.

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

15 Section 32. Section 470.0201, Florida Statutes, is
16 renumbered as section 497.162, Florida Statutes, and amended
17 to read:

18 497.162 ~~470.0201~~ Health and safety education.--All
19 individuals not licensed under this chapter ~~by the department~~
20 who intend to be employed as operational personnel affiliated
21 with a direct disposal establishment, cinerator facility,
22 removal service, refrigeration facility, or centralized
23 embalming facility, as well as all nonlicensed individuals who
24 intend to be involved in the removal or transportation of
25 human remains on behalf of a funeral establishment, direct
26 disposal establishment, or cinerator facility shall complete
27 one course approved by the licensing authority ~~board~~ on
28 communicable diseases, within 10 days after the date that they
29 begin functioning as operational personnel on behalf of any
30 entity that is regulated by this chapter. The course shall not
31 exceed 3 hours and shall be offered at approved locations

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1 throughout the state. Such locations may include
2 establishments that are licensed ~~or registered~~ under this
3 chapter. The licensing authority board shall adopt rules to
4 implement and enforce this provision, which rules shall
5 include provisions that provide for the use of approved
6 videocassette courses and other types of audio, video, or home
7 study courses to fulfill the continuing education requirements
8 of this section.

9 Section 33. Section 497.163, Florida Statutes, is
10 created to read:

11 497.163 Restriction on requirement of citizenship.--No
12 person shall be disqualified from practicing an occupation or
13 profession regulated by this chapter solely because she or he
14 is not a United States citizen.

15 Section 34. Section 497.321, Florida Statutes, is
16 renumbered as section 497.164, Florida Statutes, and amended
17 to read:

18 497.164 ~~497.321~~ Solicitation of goods or services.--

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

22 (2) The board shall regulate such solicitation to
23 protect the public from solicitation which is intimidating,
24 overreaching, ~~vexatious~~, fraudulent, or misleading; which
25 utilizes undue influence; or which takes undue advantage of a
26 person's ignorance or emotional vulnerability.

27 (3) The board shall regulate any solicitation which
28 comprises an uninvited invasion of personal privacy. It is the
29 express finding of the Legislature that the public have a high
30 expectation of privacy in their personal residences, and the
31 department by rule shall restrict the hours or otherwise

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1 regulate such solicitation in the personal residence of a
 2 person unless the solicitation has been previously and
 3 expressly requested by the person solicited.

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

10 (5) At-need solicitation of sales of burial rights,
 11 merchandise, or services is prohibited. No person ~~cemetery~~
 12 ~~company or any agent or representative of that company~~ may
 13 contact the family or next of kin of a deceased person to sell
 14 services or merchandise unless the person ~~cemetery company or~~
 15 ~~an agent or representative of the company~~ has been initially
 16 called or contacted by the family or next of kin of such
 17 person or persons and requested to provide services or
 18 merchandise.

19 Section 35. Section 497.025, Florida Statutes, is
 20 renumbered as section 497.165, Florida Statutes, and amended
 21 to read:

22 (Substantial rewording of section. See
 23 s. 497.025, F.S., for present text.)

24 497.165 Liability of owners, directors, and officers
 25 regarding trust funds.--The owners, officers, and directors of
 26 any licensee under this chapter may be held jointly and
 27 severally liable for any deficiency in any trust fund required
 28 by this chapter, to the extent the deficiency arose during the
 29 period they were owners, officers or directors of the
 30 licensee, if their conduct, or their negligence in the
 31 performance of their duties, caused the deficiency or

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1 substantially contributed to conditions that allowed the
2 deficiency to arise or increase.

3 Section 36. Section 497.166, Florida Statutes, is
4 created to read:

5 497.166 Preneed sales.--

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

11 (2) Nothing in parts I, II, III, V, or VI of this
12 chapter shall understood to necessarily prohibit any licensee
13 under this chapter from selling preneed funerals and funeral
14 merchandise through its agents and employees, so long as such
15 sales are permitted by part IV of this chapter.

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

19 (b) The direct disposer in charge or a funeral
20 director acting as a direct disposer in charge of a direct
21 disposal establishment shall be responsible for the control
22 and activities of the establishment's preneed sales agents.

23 Section 37. Section 497.167, Florida Statutes, is
24 created to read:

25 497.167 Administrative matters.--

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

29 (2) The director of the division shall serve as
30 executive director of the board. The director is the agency
31 head of the division. The director shall be appointed by and

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1 serve at the pleasure of the Chief Financial Officer. The
 2 director shall be responsible for preparation of the agenda
 3 for each board meeting, and may make presentation to the board
 4 of department recommendations and reports, and shall perform
 5 such other duties as may be assigned by the Chief Financial
 6 Officer.

7 (3) There shall be submitted to the legislature a
 8 biennial budget for the board's operations at a time and in
 9 the manner provided by law.

10 (4) There shall be developed and implemented a
 11 training program for persons newly appointed to membership on
 12 the board. The program shall familiarize such persons with the
 13 substantive and procedural laws and rules which relate to the
 14 regulation under this chapter and with the structure of the
 15 department.

16 (5) There may be informational newsletters, bulletins,
 17 and brochures produced and provided to licensees and consumers
 18 concerning regulation under this chapter.

19 (6) The department shall allow applicants for new or
 20 renewal licenses and current licensees to be screened by the
 21 Title IV-D child support agency pursuant to s. 409.2598 to
 22 ensure compliance with a support obligation. The purpose of
 23 this subsection is to promote the public policy of this state
 24 as established in s. 409.2551. The department shall, when
 25 directed by the court, suspend or deny the license of any
 26 licensee found to have a delinquent support obligation, as
 27 defined in s. 409.2554. The department shall issue or
 28 reinstate the license without additional charge to the
 29 licensee when notified by the court that the licensee has
 30 complied with the terms of the court order. The department
 31 shall not be held liable for any license denial or suspension

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1 resulting from the discharge of its duties under this
2 subsection.

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

10 (8) Funds due from any licensee as a result of
11 disciplinary settlements under this chapter may be directed by
12 the board and department to use in support of training of
13 examiners, investigators, and inspectors concerning
14 examinations, investigations and inspections under this
15 chapter, and to the conduct of examinations and investigations
16 under this chapter, in order to enhance oversight and
17 enforcement of laws and regulations governing the activities
18 of licensees under this chapter.

19 (9) Any application under this chapter which must be
20 reviewed and acted upon by the board under this chapter, shall
21 be acted upon by the board at a regularly scheduled board
22 meeting, and such application must be complete at least 25
23 days in advance of a regularly scheduled board meeting to be
24 considered by the board at such board meeting. The time for
25 approval of completed applications under s. 120.60, shall be
26 deemed tolled between the date the application is complete,
27 and the next regularly scheduled board meeting at which the
28 application may be considered by the board.

29 (10) The board may establish by rule procedures and
30 requirements for the appearance before the board of any
31 applicant or principal of an applicant, to stand for oral

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1 interview by the board at a public meeting board, before an
2 application shall be deemed complete. Such rule may require
3 such appearance for all or specified categories of applicants
4 and may provide criteria for determining when such appearance
5 shall be required.

6 (11) In any instance in which a licensee or applicant
7 under this chapter is required to be in compliance with a
8 particular provision by, on, or before a certain date, and if
9 that date occurs on a Saturday, Sunday, or a legal holiday,
10 then the licensee or applicant is deemed to be in compliance
11 with the specific date requirement if the required action
12 occurs on the first succeeding day which is not a Saturday,
13 Sunday, or legal holiday.

14 (12) Notwithstanding anything to the contrary, any
15 elected official who is licensed pursuant to this chapter may
16 hold employment for compensation with any public agency
17 concurrent with such public service. Such dual service shall
18 be disclosed according to any disclosure required by
19 applicable law.

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

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

28 (15) The Department of Legal Affairs shall provide
29 legal services to the board within the Department of Financial
30 Services, but the primary responsibility of the Department of
31 Legal Affairs shall be to represent the interests of the

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1 citizens of the state by vigorously counseling the board with
2 respect to its obligations under the laws of the state.
3 Subject to the prior approval of the Attorney General, the
4 board may retain independent legal counsel to provide legal
5 advice to the board on a specific matter. Fees and costs of
6 such counsel shall be paid from the Regulatory Trust Fund.

7 Section 38. Section 497.168, Florida Statutes, is
8 created to read:

9 497.168 Members of Armed Forces in good standing with
10 administrative boards.--

11 (1) Any reserve member of the Armed Forces of the
12 United States, and any member of any element of the national
13 guard, now or hereafter called to active duty in the Armed
14 Forces of the United States for a continuous period of 30 or
15 more days, who at the time of being called to active duty was
16 licensed in good standing to practice a profession under this
17 chapter, shall remain in good standing, without registering,
18 paying dues or fees, or being required to perform any other
19 act, as long as she or he remains on such active duty and for
20 a period of 6 months after discharge from active duty.

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

26 Section 39. Section 497.527, Florida Statutes, is
27 renumbered as section 497.169, Florida Statutes, and amended
28 to read:

29 497.169 ~~497.527~~ Private actions; actions on behalf of
30 consumers; attorneys fee ~~Civil remedies~~.--

31 (1) The Attorney General, or the department on behalf

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1 of Florida residents, or any person may bring a civil action
2 against a person or company violating the provisions of this
3 chapter in the appropriate court of the county in which the
4 alleged violator resides or has ~~his or her~~ or his or its
5 principal place of business or in the county wherein the
6 alleged violation occurred. Upon adverse adjudication, the
7 defendant shall be liable for actual damages caused by such
8 violation. The court may, as provided by common law, award
9 punitive damages and may provide such equitable relief as it
10 deems proper or necessary, including enjoining the defendant
11 from further violations of this chapter.

12 (2) In any civil litigation resulting from a
13 transaction involving a violation of this chapter, the court
14 may award to the prevailing party, after judgment in the trial
15 court and exhaustion of any appeal, reasonable attorney's fees
16 and costs from the nonprevailing party in an amount to be
17 determined by the trial court. Any award of attorney's fees or
18 costs shall become a part of the judgment and shall be subject
19 to execution as the law allows.

20 (3) The provisions of this chapter are cumulative to
21 rights under the general civil and common law, and no action
22 of the department may abrogate such rights to damages or other
23 relief in any court.

24 Section 40. Section 497.531, Florida Statutes, is
25 renumbered as section 497.170, Florida Statutes, to read:

26 497.170 ~~497.531~~ Unauthorized arrangements.--

27 (1) Any arrangement to provide merchandise or services
28 as defined in this chapter, by which payment for such
29 merchandise or services is to be paid for through a financial
30 arrangement, other than as authorized pursuant to this
31 chapter, in which the provider of the merchandise or services

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1 is a beneficiary, party, agent, or owner is in violation of
 2 this chapter.

3 (2) Any person who provides merchandise or services
 4 and who knowingly becomes a beneficiary, agent, party, or
 5 coowner as described in subsection (1) is in violation of this
 6 chapter.

7 Section 41. Part II of chapter 497, consisting of
 8 sections 497.260, 497.261, 497.262, 497.263, 497.264, 497.265,
 9 497.266, 497.267, 497.268, 497.269, 497.270, 497.271, 497.272,
 10 497.273, 497.274, 497.275, 497.276, 497.277, 497.278, 497.280,
 11 497.281, 497.282, 497.283, 497.284, 497.285, 497.286, and
 12 497.287, is created to read:

13 PART II

14 CEMETERY REGULATION

15 Section 42. Section 497.003, Florida Statutes, is
 16 renumbered as section 497.260, Florida Statutes, and amended
 17 to read:

18 497.260 ~~497.003~~ Cemeteries; exemption; investigation
 19 and mediation.--

20 (1) The provisions of this chapter relating to
 21 cemeteries and all rules adopted pursuant thereto shall apply
 22 to all cemeteries except for:

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

25 (b) County and municipal cemeteries.

26 (c) Community and nonprofit association cemeteries
 27 which provide only single-level ground burial and do not sell
 28 burial spaces or burial merchandise.

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

31 (e) Cemeteries beneficially owned and operated since

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1 July 1, 1915, by a fraternal organization or its corporate
2 agent.

3 (f) A columbarium consisting of less than one-half
4 acre which is owned by and immediately contiguous to an
5 existing religious institution facility and is subject to
6 local government zoning. The religious institution
7 establishing such a columbarium shall ensure that the
8 columbarium is perpetually kept and maintained in a manner
9 consistent with the intent of this chapter. If the religious
10 institution relocates, the religious institution shall
11 relocate all of the urns and remains placed in the columbarium
12 which were placed therein during its use by the religious
13 institution.

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

16 (h) A mausoleum consisting of 2 acres or less which is
17 owned by and immediately contiguous to an existing religious
18 institution facility and is subject to local government
19 zoning. The religious institution establishing such a
20 mausoleum must ensure that the mausoleum is kept and
21 maintained in a manner consistent with the intent of this
22 chapter and limit its availability to members of the religious
23 institution. The religious institution establishing such a
24 mausoleum must have been incorporated for at least 25 years
25 and must have sufficient funds in an endowment fund to cover
26 the costs of construction of the mausoleum.

27 (2) Section 497.276(1) ~~497.309(1)~~ as to burial
28 records, and ss. 497.164, 497.152(1)(d), 497.280, and 497.284
29 ~~497.321, 497.325, 497.341, and 497.345~~ apply to all cemeteries
30 in this state.

31 (3) All cemeteries exempted under this chapter which

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1 are in excess of 5 acres must submit to the following
2 investigation and mediation procedure by the department in the
3 event of a consumer complaint:

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

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

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

12 (d) If the complaint still is not resolved, the
13 department shall conduct an investigation and mediate the
14 complaint;

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

20 (f) If all attempts to resolve the consumer complaint
21 fail, the cemetery shall be subject to proceedings for
22 penalties and discipline under this chapter if it is
23 determined in a proceeding complying with chapter 120 that the
24 cemetery is guilty of fraud, deceit, theft, gross negligence,
25 incompetence, unjustified failure to honor its contracts, or
26 failure to adequately maintain its premises. The department
27 may file and serve on the cemetery an administrative complaint
28 and cause the matter to be prosecuted and may thereafter issue
29 and enforce its final order in the matter pursuant to chapter
30 120.

31 (4) Any religious-institution-owned cemetery that is

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1 exempt under paragraph (1)(d), is located in a county with a
2 population of at least 1.3 million persons on July 1, 1996,
3 and was selling merchandise and services to the religious
4 institution's members prior to October 1, 1993, may establish
5 one additional exempt cemetery in such county after December
6 31, 2020.

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

11 (6)(a) This subsection applies to all cemeteries in
12 this state.

13 (b) No cemetery company or other legal entity
14 conducting or maintaining any public or private cemetery may
15 deny burial space to any person because of race or color. A
16 cemetery company or other entity operating any cemetery may
17 designate parts of cemeteries or burial grounds for the
18 specific use of persons whose religious code requires
19 isolation. Religious institution cemeteries may limit burials
20 to members of the religious institution and their families.

21 (c) Any cemetery company or other legal entity which
22 violates the provisions of this subsection commits a
23 misdemeanor of the second degree, punishable as provided in s.
24 775.083, and each violation of this section constitutes a
25 separate offense.

26 Section 43. Section 497.004, Florida Statutes, is
27 renumbered as section 497.261, Florida Statutes, to read:

28 497.261 ~~497.004~~ Existing companies, effect of this
29 chapter.--Cemetery companies existing on October 1, 1993,
30 shall continue in full force and effect but shall be operated
31 in accordance with the provisions of this chapter.

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1 Section 44. Section 497.0255, Florida Statutes, is
2 renumbered as section 497.262, Florida Statutes, and amended
3 to read:

4 497.262 ~~497.0255~~ Duty of care and maintenance of
5 licensed cemetery.--Every cemetery company or other entity
6 responsible for the care and maintenance of a licensed
7 cemetery in this state shall ensure that the grounds,
8 structures, and other improvements of the cemetery are well
9 cared for and maintained in a proper and dignified condition.
10 The licensing authority board shall adopt, by no later than
11 July 1, 1999, such rules as are necessary to implement and
12 enforce this section. In developing and adopting such
13 ~~promulgating said~~ rules, the licensing authority board may
14 define different classes of cemeteries or care and
15 maintenance, and may provide for different rules to apply to
16 each of said classes, if the designation of classes and the
17 application of different rules is in the public interest and
18 is supported by findings by the licensing authority board
19 based on evidence of industry practices, economic and physical
20 feasibility, location, or intended uses; provided, that the
21 rules shall provide minimum standards applicable to all
22 cemeteries. For example, and without limiting the generality
23 of the foregoing, the licensing authority board may determine
24 that a small rural cemetery with large trees and shade area
25 does not require, and may not be able to attain, the same
26 level of lawn care as a large urban cemetery with large open
27 grassy areas and sprinkler systems.

28 Section 45. Section 497.201, Florida Statutes, is
29 renumbered as section 497.263, Florida Statutes, and amended
30 to read:

31 (Substantial rewording of section. See

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1 s. 497.201, F.S., for present text.)
2 497.263 Cemetery companies; license required;
3 licensure requirements and procedures.--
4 (1) LICENSE REQUIRED.--No person may operate a
5 cemetery without first obtaining a license under this section,
6 unless specifically exempted from this chapter.
7 (2) APPLICATION PROCEDURES.--
8 (a) A person seeking a cemetery license under this
9 section shall apply for such licensure using forms and
10 procedures prescribed by rule.
11 (b) The applicant shall be corporation or a
12 partnership, or a limited liability company formed prior to
13 January 1, 2005 which limited liability company already holds
14 a license under this chapter.
15 (c) The application shall require the name, principle
16 place of business, date of formation, and federal tax
17 identification number, of the applicant.
18 (d) The application shall require such historical
19 sketches and audited or unaudited financial statements
20 concerning the applicant and each principal of applicant, as
21 the licensing authority may require by rule.
22 (e) The application shall state any and all names
23 under which the cemetery may do business if licensed, if
24 different from applicant's name.
25 (f) The application shall state the exact location of
26 the proposed cemetery.
27 (g) The proposed cemetery must contain at least 30
28 contiguous acres. The application shall state the exact number
29 of acres in the proposed cemetery.
30 (h) The applicant must have a net worth of \$50,000, as
31 attested to by a sworn statement signed by all officers of

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1 applicant. Such net worth must be continually maintained as a
2 condition of licensure.

3 (i) The application shall be accompanied by such
4 description of the proposed financial structure of the
5 cemetery, as the licensing authority may require by rule.

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

8 (k) The application shall be accompanied by such maps
9 or surveys of the proposed cemetery, and maps showing the
10 location of the proposed cemetery in the local area, as the
11 licensing authority may require by rule, and the licensing
12 authority may by rule require such maps or surveys of the
13 cemetery to be prepared by a licensed Florida professional
14 surveyor.

15 (l) The application shall include such description of
16 the development plans for the proposed cemetery, as the
17 licensing authority may require by rule.

18 (m) The application shall require the applicant to
19 disclose whether the applicant or any principal of applicant
20 has ever been convicted or found guilty of, or entered a plea
21 of no contest to, regardless of adjudication, any crime in any
22 jurisdiction. The licensing authority may require by rule
23 additional information to be provided concerning any
24 affirmative answers.

25 (n) The application shall require the applicant to
26 disclose whether the applicant or any principal of applicant
27 has ever had a license or the authority to practice a
28 profession or occupation refused, suspended, fined, denied, or
29 otherwise acted against or disciplined, by the licensing
30 authority of any jurisdiction. The licensing authority may
31 require by rule additional information to be provided

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1 concerning any affirmative answers. A licensing authority's
2 acceptance of a relinquishment of licensure, stipulation,
3 consent order, or other settlement, offered in response to or
4 in anticipation of the filing of charges against the license,
5 shall be construed as action against the license. The
6 licensing authority may require by rule additional information
7 to be provided concerning any affirmative answers.

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

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

15 (q) The application shall be signed by the president
16 of the applicant.

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

19 (s) The licensing authority may establish by rule
20 requirements for the appearance before the licensing authority
21 of the applicant and the applicant's principals, to stand for
22 oral interview by the licensing authority at a public
23 licensing authority meeting, before the application shall be
24 deemed complete.

25 (3) ACTION CONCERNING APPLICATIONS.--If the licensing
26 authority finds that the applicant meets the criteria
27 established in subsection (2), the applicant shall be notified
28 that a license will be issued when all of the following
29 conditions are satisfied:

30 (a) The establishment of a care and maintenance trust
31 fund containing not less than \$50,000 has been certified by a

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1 trust company operating pursuant to chapter 660, a state or
2 national bank holding trust powers, or a savings and loan
3 association holding trust powers as provided in s. 497.458,
4 pursuant to a trust agreement approved by the licensing
5 authority. The \$50,000 required for the care and maintenance
6 trust fund shall be over and above the \$50,000 net worth
7 required by subsection (2).

8 (b) The applicant files with the licensing authority
9 an opinion or certification from a Florida attorney in good
10 standing, or a Florida title company, in a form acceptable to
11 the licensing authority, that the applicant holds unencumbered
12 fee simple title to all land identified in the application.

13 (c) The applicant obtains approval of the local zoning
14 authorities regarding the cemetery, and files with the
15 licensing authority evidence satisfactory to the licensing
16 authority of such approval, or if no approval by local zoning
17 authorities is required, such approval of residents adjacent
18 to the proposed cemetery as the licensing authority may
19 require by rule.

20 (d) The licensing authority determines that the
21 applicant has designated as general manager of the cemetery a
22 person of integrity, and who has 3 years of cemetery
23 management experience as defined by rule of the licensing
24 authority, and who has the ability to operate a cemetery.

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

29 (f) Regarding the cemetery land identified in the
30 application, the applicant has recorded, and provides the
31 licensing authority with a written attestation of such

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1 chapter at any location other than that contained in the
2 application for the license.

3 (2) Any person or entity that seeks to purchase or
4 otherwise acquire control of any cemetery licensed under this
5 chapter, shall first apply to the licensing authority and
6 obtain approval of such purchase or change in control.

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

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

11 (c) For applications by a natural person, the
12 application shall state the applicant's name, residence
13 address, address of principal office or place of employment,
14 and social security number.

15 (d) For applications by an entity, the application
16 shall state applicant's name, address of principal place of
17 business or headquarters offices, the names and titles of all
18 officers of applicant, applicant's state of domicile and date
19 of formation, and applicant's federal tax identification
20 number.

21 (e) The application shall require such historical
22 sketches and audited or unaudited financial statements
23 concerning the applicant and each principal of the applicant,
24 as the licensing authority may require by rule.

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

30 (g) The application shall include such description of
31 the development plans the applicant has for the proposed

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1 cemetery, as the licensing authority may require by rule.

2 (h) The application shall require the applicant to
3 disclose whether the applicant or any principal of applicant
4 has ever been convicted or found guilty of, or entered a plea
5 of no contest to, regardless of adjudication, any crime in any
6 jurisdiction. The licensing authority may require by rule
7 additional information to be provided concerning any
8 affirmative answers.

9 (i) The application shall require the applicant to
10 disclose whether the applicant or any principal of applicant
11 has ever had a license or the authority to practice a
12 profession or occupation refused, suspended, fined, denied, or
13 otherwise acted against or disciplined, by the licensing
14 authority of any jurisdiction. The licensing authority may
15 require by rule additional information to be provided
16 concerning any affirmative answers. A licensing authority's
17 acceptance of a relinquishment of licensure, stipulation,
18 consent order, or other settlement, offered in response to or
19 in anticipation of the filing of charges against the license,
20 shall be construed as action against the license. The
21 licensing authority may require by rule additional information
22 to be provided concerning any affirmative answers.

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

26 (k) The applicant shall demonstrate by clear and
27 convincing evidence that the applicant has the ability,
28 experience, financial stability, and integrity to operate a
29 cemetery, and if the applicant is an entity, that applicant's
30 principals are of good character.

31 (l) The application shall be signed by the applicant

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1 if a natural person, otherwise by the president of the
2 applicant.

3 (m) The application shall be accompanied by a
4 nonrefundable application fee of \$5,000; provided, the fee
5 shall be \$500 if the application is in regards to a change in
6 ownership that will not be accompanied by any change in
7 ultimate control.

8 (n) The licensing authority may establish by rule
9 requirements for the appearance before the licensing authority
10 of the applicant and the applicant's principals, to stand for
11 oral interview by the licensing authority at a public
12 licensing authority meeting, before the application shall be
13 deemed complete.

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

16 ~~(2) Any person who seeks to purchase or acquire~~
17 ~~control of an existing licensed cemetery shall first apply to~~
18 ~~the board for approval of the proposed change of ownership.~~
19 ~~The application shall contain the name and address of the~~
20 ~~proposed new owner, a financial statement signed by all~~
21 ~~officers of the company attesting to a net worth of at least~~
22 ~~\$50,000, and other information required by the board. The~~
23 ~~board may approve a change of ownership only after it has~~
24 ~~conducted an investigation of the applicant and determined~~
25 ~~that the proposed new owner is qualified by character,~~
26 ~~experience, and financial responsibility to control and~~
27 ~~operate the cemetery in a legal and proper manner. The~~
28 ~~department may examine the records of the cemetery company as~~
29 ~~part of the investigation in accordance with this chapter. The~~
30 ~~application shall be accompanied by an investigation fee of~~
31 ~~\$5,000. Upon consummation of the purchase or acquisition of~~

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1 ~~control and upon receipt of all documents required by the~~
2 ~~board, the department shall issue the new license for that~~
3 ~~cemetery effective on the date of that purchase or acquisition~~
4 ~~of control.~~

5 Section 47. Section 497.213, Florida Statutes, is
6 renumbered as section 497.265, Florida Statutes, and amended
7 to read:

8 497.265 ~~497.213~~ Annual license fees.--

9 (1) The department shall collect from each cemetery
10 company operating under the provisions of this chapter an
11 annual license fee as follows:

12 (a) For a cemetery with less than \$25,000 annual gross
13 sales.....\$250.

14 (b) For a cemetery with at least \$25,000 but less than
15 \$100,000 annual gross
16 sales.....\$350.

17 (c) For a cemetery with annual gross sales of at least
18 \$100,000 but less than
19 \$250,000.....\$600.

20 (d) For a cemetery with annual gross sales of at least
21 \$250,000 but less than
22 \$500,000.....\$900.

23 (e) For a cemetery with annual gross sales of at least
24 \$500,000 but less than
25 \$750,000.....\$1,350.

26 (f) For a cemetery with annual gross sales of at least
27 \$750,000 but less than \$1
28 million.....\$2,250.

29 (g) For a cemetery with annual gross sales of at least
30 \$1 million but less than \$5
31 million.....\$3,250.

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1 (h) For a cemetery with annual gross sales of \$5
2 million or
3 more.....\$4,900.

4 (2) An application for license renewal shall be
5 submitted, along with the applicable license fee, on or before
6 December 31 each year in the case of an existing cemetery
7 company and before any sale of cemetery property in the case
8 of a new cemetery company or a change of ownership or control
9 pursuant to s. 497.264 ~~ss. 497.205 and 497.209~~. If the
10 renewal application and fee are not received by December 31,
11 the department shall collect a penalty in the amount of \$200
12 per month or fraction of a month for each month delinquent.
13 For the purposes of this subsection, a renewal application and
14 fee submitted by mail shall be considered timely submitted and
15 received if postmarked by December 31 of the applicable year.

16 Section 48. Section 497.237, Florida Statutes, is
17 renumbered as section 497.266, Florida Statutes, and amended
18 to read:

19 497.266 ~~497.237~~ Care and maintenance trust fund;
20 remedy of department for noncompliance.--

21 (1) No cemetery company may establish a cemetery, or
22 operate a cemetery if already established, without providing
23 for the future care and maintenance of the cemetery, for which
24 a care and maintenance trust fund shall be established, to be
25 known as "the care and maintenance trust fund of ____." The
26 trust fund shall be established with a trust company operating
27 pursuant to chapter 660, with a state or national bank holding
28 trust powers, or with a federal or state savings and loan
29 association holding trust powers. Trust funds which are with a
30 state or national bank or savings and loan association
31 licensed in this state on October 1, 1993, shall remain in

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1 force; however, when the amount of any such trust fund exceeds
2 the amount that is insured by an agency of the Federal
3 Government, the cemetery company shall transfer that trust
4 fund to a trust company operating pursuant to chapter 660, to
5 a state or national bank holding trust powers, or to a federal
6 or state savings and loan association holding trust powers.

7 (2) The cemetery company may appoint a person to
8 advise the trustee in the investment of the trust fund. The
9 licensing authority board must approve the appointment of the
10 initial trustee, and any subsequent changes of the trustee
11 shall also be approved by the licensing authority, pursuant to
12 procedures and utilizing forms as specified by rule board. If
13 a cemetery company refuses or otherwise fails to provide or
14 maintain an adequate care and maintenance trust fund in
15 accordance with the provisions of this chapter, the licensing
16 authority board, after reasonable notice, shall enforce
17 compliance. However, a nonprofit cemetery corporation which
18 has been incorporated and engaged in the cemetery business
19 prior to and continuously since 1915 and which has current
20 trust assets exceeding \$2 million is not required to designate
21 a corporate trustee. The trust fund agreement shall specify
22 the following: the name, location, and address of both the
23 licensee and the trustee, the terms and conditions of the
24 trust, a statement that the trust is established pursuant to
25 ss. 497.266 and 497.268, and showing the date of agreement,
26 together with the percentages required to be deposited
27 pursuant to this chapter.

28 (3) No person may withdraw or transfer any portion of
29 the corpus of the care and maintenance trust fund without
30 first obtaining written consent from the licensing authority
31 board. ~~Funds deposited pursuant to this chapter may not be~~

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1 ~~loaned to any cemetery company or person who is directly or~~
2 ~~indirectly engaged in the burial, funeral home, or cemetery~~
3 ~~business.~~

4 (4) The trustee of the trust established pursuant to
5 this section may only invest in investments and loan trust
6 funds, as prescribed in s. 497.458 ~~497.417~~. The trustee shall
7 take title to the property conveyed to the trust for the
8 purposes of investing, protecting, and conserving it for the
9 cemetery company; collecting income; and distributing the
10 principal and income as prescribed in this chapter. The
11 cemetery company is prohibited from sharing in the discharge
12 of the trustee's responsibilities under this subsection,
13 except that the cemetery company may request the trustee to
14 invest in tax-free investments.

15 Section 49. Section 497.241, Florida Statutes, is
16 renumbered as section 497.267, Florida Statutes, to read:

17 497.267 ~~497.241~~ Disposition of income of care and
18 maintenance trust fund; notice to purchasers and
19 depositors.--The net income of the care and maintenance trust
20 fund shall be used solely for the care and maintenance of the
21 cemetery, including maintenance of monuments, which
22 maintenance shall not be deemed to include the cleaning,
23 refinishing, repairing, or replacement of monuments; for
24 reasonable costs of administering the care and maintenance;
25 and for reasonable costs of administering the trust fund. At
26 the time of making a sale or receiving an initial deposit, the
27 cemetery company shall deliver to the person to whom the sale
28 is made, or who makes a deposit, a written instrument which
29 shall specifically state the purposes for which the income of
30 the trust fund shall be used.

31 Section 50. Section 497.245, Florida Statutes, is

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1 | renumbered as section 497.268, Florida Statutes, to read:

2 | 497.268 ~~497.245~~ Care and maintenance trust fund,
3 | percentage of payments for burial rights to be deposited.--

4 | (1) Each cemetery company shall set aside and deposit
5 | in its care and maintenance trust fund the following
6 | percentages or amounts for all sums received from sales of
7 | burial rights:

8 | (a) For burial rights, 10 percent of all payments
9 | received; however, for sales made after September 30, 1993, no
10 | deposit shall be less than \$25 per grave. For each burial
11 | right which is provided without charge, the deposit to the
12 | fund shall be \$25.

13 | (b) For mausoleums or columbaria, 10 percent of
14 | payments received.

15 | (c) For general endowments for the care and
16 | maintenance of the cemetery, the full amount of sums received
17 | when received.

18 | (d) For special endowments for a specific lot or grave
19 | or a family mausoleum, memorial, marker, or monument, the
20 | cemetery company may set aside the full amount received for
21 | this individual special care in a separate trust fund or by a
22 | deposit to a savings account in a bank or savings and loan
23 | association located within and authorized to do business in
24 | the state; however, if the licensee does not set up a separate
25 | trust fund or savings account for the special endowment, the
26 | full amount thereof shall be deposited into the care and
27 | maintenance trust fund as required of general endowments.

28 | (2) Deposits to the care and maintenance trust fund
29 | shall be made by the cemetery company not later than 30 days
30 | following the close of the calendar month in which any payment
31 | was received; however, when such payments are received in

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1 installments, the percentage of the installment payment placed
2 in trust must be identical to the percentage which the payment
3 received bears to the total cost for the burial rights. Trust
4 income may be used to pay for all usual and customary services
5 for the operation of a trust account, including, but not
6 limited to: reasonable trustee and custodian fees, investment
7 adviser fees, allocation fees, and taxes. If the net income is
8 not sufficient to pay the fees and other expenses, the fees
9 and other expenses shall be paid by the cemetery company.
10 Capital gains taxes shall be paid from the corpus.

11 (3) Any payments made to the care and maintenance
12 trust fund on contracts which are canceled shall be credited
13 against future obligations to the care and maintenance trust
14 fund, provided they have been refunded to the purchaser.

15 (4) When a cemetery which is exempt from the
16 provisions of this chapter changes ownership so as to lose its
17 exempt status, it shall establish and maintain a care and
18 maintenance trust fund pursuant to this chapter. The initial
19 deposit for establishment of this trust fund shall be \$25 per
20 space for all spaces either previously sold or contracted for
21 sale in the cemetery at the time of conversion or \$50,000,
22 whichever is greater.

23 (5) In each sales contract, reservation, or agreement
24 wherein burial rights are priced separately, the purchase
25 price of the burial rights shall be the only item subject to
26 care and maintenance trust fund deposits; but if the burial
27 rights are not priced separately, the full amount of the
28 contract, reservation, or agreement shall be subject to care
29 and maintenance trust fund deposits as provided in this
30 section, unless the purchase price of the burial rights can be
31 determined from the accounting records of the cemetery

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1 company.

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

8 Section 51. Section 497.249, Florida Statutes, is
9 renumbered as section 497.269, Florida Statutes, and amended
10 to read:

11 497.269 ~~497.249~~ Care and maintenance trust fund;
12 financial reports.--On or before April 1 of each year, the
13 trustee shall furnish adequate financial reports with respect
14 to the care and maintenance trust fund utilizing forms and
15 procedures specified by rule ~~on forms provided by the~~
16 ~~department~~. However, the department may require the trustee to
17 make such additional financial reports as it deems necessary.
18 In order to ensure that the proper deposits to the trust fund
19 have been made, the department shall examine the status of the
20 trust fund of the company on a semiannual basis for the first
21 2 years of the trust fund's existence.

22 Section 52. Section 497.253, Florida Statutes, is
23 renumbered as section 497.270, Florida Statutes, and amended
24 to read:

25 497.270 ~~497.253~~ Minimum acreage; sale or disposition
26 of cemetery lands.--

27 (1) No land in a licensed cemetery may be sold,
28 mortgaged, leased, or encumbered without prior approval of the
29 licensing authority pursuant to procedures specified by rule.
30 Such approval shall not be given unless it be shown that such
31 approval would be in the public interest. The licensing

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1 authority may adopt rules establishing criteria for approval
2 of the sale, mortgaging, leasing, or encumbering of cemetery
3 land. Each licensee shall set aside a minimum of 30 contiguous
4 acres of land for use by the licensee as a cemetery and shall
5 not sell, mortgage, lease, or encumber that property without
6 prior written approval of the department.

7 (2) Any lands owned by a licensee and dedicated for
8 use by it as a cemetery, which are in excess of a contiguous,
9 adjoining, or adjacent to the minimum of 30 contiguous acres
10 described in subsection (1), may be sold, conveyed, or
11 disposed of by the licensee, after obtaining written approval
12 pursuant to procedures and utilizing forms specified by rule
13 and consistent with of the department pursuant to subsection
14 (3), for use by the new owner for other purposes than as a
15 cemetery. All of the human remains which have been previously
16 interred therein shall first have been removed from the lands
17 proposed to be sold, conveyed, or disposed of; however, the
18 provisions of ss. 497.384 and 497.152(8)(e) ~~470.0295 and~~
19 ~~497.515(7)~~ must be complied with prior to any disinterment of
20 human remains. Any and all titles, interests, or burial rights
21 which may have been sold or contracted to be sold in lands
22 which are the subject of the sale shall be conveyed to and
23 revested in the licensee prior to consummation of any such
24 sale, conveyance, or disposition.

25 (3)(a) If the property to be sold, conveyed, or
26 disposed of under subsection (2) has been or is being used for
27 the permanent interment of human remains, the applicant for
28 approval of such sale, conveyance, or disposition shall cause
29 to be published, at least once a week for 4 consecutive weeks,
30 a notice meeting the standards of publication set forth in s.
31 125.66(4)(b)2. The notice shall describe the property in

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1 question and the proposed noncemetery use and shall advise
2 substantially affected persons that they may file a written
3 request for a hearing pursuant to chapter 120, within 14 days
4 after the date of last publication of the notice, with the
5 department if they object to granting the applicant's request
6 to sell, convey, or dispose of the subject property for
7 noncemetery uses.

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

11 (c) If the property in question has been used for the
12 permanent interment of human remains, the department shall
13 approve the application, in writing, if it finds that it would
14 not be contrary to the public interest. In determining whether
15 to approve the application, the department shall consider any
16 evidence presented concerning the following:

17 1. The historical significance of the subject
18 property, if any.

19 2. The archaeological significance of the subject
20 property, if any.

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

23 4. The impact of the proposed change in use of the
24 subject property upon the reasonable expectations of the
25 families of the deceased regarding whether the cemetery
26 property was to remain as a cemetery in perpetuity.

27 5. Whether any living relatives of the deceased
28 actively oppose the relocation of their deceased's remains and
29 the conversion of the subject property to noncemetery uses.

30 6. The elapsed time since the last interment in the
31 subject property.

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

3 (d) Any deed, mortgage, or other conveyance by a
4 cemetery company or other owner pursuant to subsections (a)
5 and (c) above must contain a disclosure in the following or
6 substantially similar form:

7
8 NOTICE: The property described herein was formerly used and
9 dedicated as a cemetery. Conveyance of this property and its
10 use for noncemetery purposes was authorized by the Florida
11 Department of Financial Services by Order No. _____, dated
12 _____.

13
14 (e) The department shall adopt such rules as are
15 necessary to carry out the provisions of this section.

16 (4) A licensee may convey and transfer to a
17 municipality or county its real and personal property,
18 together with moneys deposited in trust funds pursuant to this
19 chapter, provided the municipality or county will accept
20 responsibility for maintenance thereof and prior written
21 approval of the department is obtained.

22 (5) The provisions of subsections (1) and (2) relating
23 to a requirement for minimum acreage shall not apply to any
24 cemetery company licensed by the department on or before July
25 1, 2001, which owns a total of less than 30 acres of land;
26 however, no cemetery company shall dispose of any land without
27 the prior written consent of the department.

28 Section 53. Section 497.255, Florida Statutes, is
29 renumbered as section 497.271, Florida Statutes, and amended
30 to read:

31 497.271 ~~497.255~~ Standards for construction and

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1 significant alteration or renovation of mausoleums and
2 columbaria.--

3 (1) All newly constructed and significantly altered or
4 renovated mausoleums and columbaria must, in addition to
5 complying with applicable building codes, conform to the
6 standards adopted under this section.

7 (2) The licensing authority board shall adopt, by no
8 later than July 1, 1999, rules establishing minimum standards
9 for all newly constructed and significantly altered or
10 renovated mausoleums and columbaria; however, in the case of
11 significant alterations or renovations to existing structures,
12 the rules shall apply only, when physically feasible, to the
13 newly altered or renovated portion of such structures, except
14 as specified in subsection (4). In developing and adopting
15 such promulgating said rules, the licensing authority board
16 may define different classes of structures or construction
17 standards, and may provide for different rules to apply to
18 each of said classes, if the designation of classes and the
19 application of different rules is in the public interest and
20 is supported by findings by the licensing authority board
21 based on evidence of industry practices, economic and physical
22 feasibility, location, or intended uses; provided, that the
23 rules shall provide minimum standards applicable to all
24 construction. For example, and without limiting the generality
25 of the foregoing, the licensing authority board may determine
26 that a small single-story ground level mausoleum does not
27 require the same level of construction standards that a large
28 multistory mausoleum might require; or that a mausoleum
29 located in a low-lying area subject to frequent flooding or
30 hurricane threats might require different standards than one
31 located on high ground in an area not subject to frequent

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1 severe weather threats. The licensing authority board shall
2 develop the rules in cooperation with, and with technical
3 assistance from, the Florida Building Commission of the
4 Department of Community Affairs, to ensure that the rules are
5 in the proper form and content to be included as part of the
6 State Minimum Building Codes under part VII of chapter 553. If
7 the Florida Building Commission advises that some of the
8 standards proposed by the licensing authority board are not
9 appropriate for inclusion in such building codes, the
10 licensing authority board may choose to include those
11 standards in a distinct chapter of its rules entitled
12 "Non-Building-Code Standards for Mausoleums" or "Additional
13 Standards for Mausoleums," or other terminology to that
14 effect. If the licensing authority board elects to divide the
15 standards into two or more chapters, all such rules shall be
16 binding on licensees and others subject to the jurisdiction of
17 the licensing authority board, but only the chapter containing
18 provisions appropriate for building codes shall be transmitted
19 to the Florida Building Commission pursuant to subsection (3).
20 Such rules may be in the form of standards for design and
21 construction; methods, materials, and specifications for
22 construction; or other mechanisms. Such rules shall encompass,
23 at a minimum, the following standards:

24 (a) No structure may be built or significantly altered
25 for use for interment, entombment, or inurnment purposes
26 unless constructed of such material and workmanship as will
27 ensure its durability and permanence, as well as the safety,
28 convenience, comfort, and health of the community in which it
29 is located, as dictated and determined at the time by modern
30 mausoleum construction and engineering science.

31 (b) Such structure must be so arranged that the

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1 exterior of any vault, niche, or crypt may be readily examined
2 at any time by any person authorized by law to do so.

3 (c) Such structure must contain adequate provision for
4 drainage and ventilation.

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

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

13 (f) Suitable provisions must be made for securely and
14 permanently sealing each crypt with durable materials after
15 the interment or entombment of human remains, so that no
16 effluvia or odors may escape therefrom except as provided by
17 design and sanitary engineering standards. Panels for
18 permanent seals must be solid and constructed of materials of
19 sufficient weight, permanence, density, imperviousness, and
20 strength as to ensure their durability and continued
21 functioning. Permanent crypt sealing panels must be securely
22 installed and set in with high quality fire-resistant,
23 resilient, and durable materials after the interment or
24 entombment of human remains. The outer or exposed covering of
25 each crypt must be of a durable, permanent, fire-resistant
26 material; however, plastic, fiberglass, and wood are not
27 acceptable materials for such outer or exposed coverings.

28 (g) Interior and exterior fastenings for hangers,
29 clips, doors, and other objects must be of copper, copper-base
30 alloy, aluminum, or stainless steel of adequate gauges, or
31 other materials established by rule which provide equivalent

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1 or better strength and durability, and must be properly
2 installed.

3 (3) The licensing authority ~~board~~ shall transmit the
4 rules as adopted under subsection (2), hereinafter referred to
5 as the "mausoleum standards," to the Florida Building
6 Commission, which shall initiate rulemaking under chapter 120
7 to consider such mausoleum standards. If such mausoleum
8 standards are not deemed acceptable, they shall be returned by
9 the Florida Building Commission to the licensing authority
10 ~~board~~ with details of changes needed to make them acceptable.
11 If such mausoleum standards are acceptable, the Florida
12 Building Commission shall adopt a rule designating the
13 mausoleum standards as an approved revision to the State
14 Minimum Building Codes under part VII of chapter 553. When so
15 designated by the Florida Building Commission, such mausoleum
16 standards shall become a required element of the State Minimum
17 Building Codes under s. 553.73(2) and shall be transmitted to
18 each local enforcement agency, as defined in s. 553.71(5).
19 Such local enforcement agency shall consider and inspect for
20 compliance with such mausoleum standards as if they were part
21 of the local building code, but shall have no continuing duty
22 to inspect after final approval of the construction pursuant
23 to the local building code. Any further amendments to the
24 mausoleum standards shall be accomplished by the same
25 procedure. Such designated mausoleum standards, as from time
26 to time amended, shall be a part of the State Minimum Building
27 Codes under s. 553.73 until the adoption and effective date of
28 a new statewide uniform minimum building code, which may
29 supersede the mausoleum standards as provided by the law
30 enacting the new statewide uniform minimum building code.

31 (4) In addition to the rules adopted under subsection

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1 (2), the licensing authority board shall adopt rules providing
2 that following all interments, inurnments, and entombments in
3 mausoleums and columbaria occurring after the effective date
4 of such rules, whether newly constructed or existing, suitable
5 provision must be made, when physically feasible, for sealing
6 each crypt in accordance with standards adopted ~~promulgated~~
7 pursuant to paragraph (2)(f).

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

12 Section 54. Section 497.257, Florida Statutes, is
13 renumbered as section 497.272, Florida Statutes, and amended
14 to read:

15 497.272 ~~497.257~~ Construction of mausoleums,
16 columbaria, and belowground crypts; preconstruction trust
17 fund; compliance requirement.--

18 (1) A cemetery company shall start construction of
19 that section of a mausoleum, columbarium, or bank of
20 belowground crypts in which sales, contracts for sales,
21 reservations for sales, or agreements for sales are being made
22 within 4 years after the date of the first such sale or 50
23 percent of the mausoleum, columbarium, or belowground crypts
24 have been sold and the purchase price has been received,
25 whichever occurs first. The construction shall be completed
26 within 5 years after the date of the first sale made. However,
27 extensions for completion, not to exceed 1 year, may be
28 granted by the department for good cause shown. If the units
29 have not been completely constructed at the time of need or
30 the time specified herein, all moneys paid shall be refunded
31 upon request, plus interest earned thereon for that portion of

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1 the moneys deposited in the trust fund and an amount equal to
2 the interest that would have been earned on that portion of
3 the moneys that were not in trust.

4 (2) A cemetery company which plans to offer for sale
5 space in a section of a mausoleum, columbarium, or bank of
6 belowground crypts prior to construction shall establish a
7 preconstruction trust fund by written instrument. The
8 preconstruction trust fund shall be administered by a
9 corporate trustee and operated in conformity with s. 497.458
10 ~~497.417~~. The preconstruction trust fund shall be separate from
11 any other trust funds that may be required by this chapter.
12 The written instrument by which the trustee of the
13 preconstruction trust fund agrees to act as trustee shall
14 contain a statement that the trust is created pursuant to the
15 requirements of this section. The trust shall be subject to
16 examination by the licensing authority.

17 (3) Before a sale, contract for sale, reservation for
18 sale, or agreement for sale in a mausoleum section,
19 columbarium, or bank of belowground crypts may be made, the
20 cemetery company shall compute the amount to be deposited to
21 the preconstruction trust fund. The total amount to be
22 deposited in the fund for each unit of the project shall be
23 computed by dividing the cost of the project plus 10 percent
24 of the cost, as computed by a licensed contractor, engineer,
25 or architect, by the number of crypts in the section or bank
26 of belowground crypts or the number of niches in the
27 columbarium. When payments are received in installments, the
28 percentage of the installment payment placed in trust must be
29 identical to the percentage which the payment received bears
30 to the total cost of the contract, including other merchandise
31 and services purchased. Preconstruction trust fund payments

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1 shall be made within 30 days after the end of the month in
2 which payment is received.

3 (4) When the cemetery company delivers a completed
4 crypt or niche acceptable to the purchaser in lieu of the
5 crypt or niche purchased prior to construction, all sums
6 deposited to the preconstruction trust fund for that purchaser
7 shall be paid to the cemetery company.

8 (5) Each cemetery company may negotiate, at the time
9 of establishment of the preconstruction trust fund, a
10 procedure for withdrawal of the escrowed funds as a part of
11 the construction cost of the mausoleum section, columbarium,
12 or bank of belowground crypts contemplated, subject to the
13 approval of the department. Upon completion of the mausoleum
14 section, columbarium, or bank of belowground crypts, the
15 cemetery company shall certify completion to the trustee and
16 shall be entitled to withdraw all funds deposited to the
17 account thereof.

18 (6) If the mausoleum section, columbarium, or bank of
19 belowground crypts is not completed within the time limits set
20 out in this section, the trustee shall contract for and cause
21 the project to be completed and pay therefor from the trust
22 funds deposited to the project's account paying any balance,
23 less cost and expenses, to the cemetery company. The refund
24 provisions of subsection (1) apply only to the extent there
25 are funds remaining in excess of the costs to complete the
26 facilities, prior to any payments to the cemetery company.

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

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1 (8) In lieu of the payments outlined hereunder to the
 2 preconstruction trust fund, the cemetery company may deliver
 3 to the department a performance bond in an amount and by a
 4 surety company acceptable to the department.

5 Section 55. Section 497.305, Florida Statutes, is
 6 renumbered as section 497.273, Florida Statutes, and amended
 7 to read:

8 497.273 ~~497.305~~ Cemetery companies; authorized
 9 functions.--

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

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

14 (b) The exclusive interment, entombment, or inurnment
 15 of human remains, including the exclusive right to open,
 16 prepare for interment, and close all ground, mausoleum, and
 17 urn burials. Each preneed contract for burial rights or
 18 services shall disclose, pursuant to licensing authority ~~board~~
 19 rule, whether opening and closing of the burial space is
 20 included in the contract and, if not, the current prices for
 21 opening and closing and a statement that these prices are
 22 subject to change. Each cemetery which sells preneed contracts
 23 must offer opening and closing as part of a preneed contract.

24 (c) The exclusive initial preneed and at-need sale of
 25 interment or burial rights in earth, mausoleum, crypt, niche,
 26 or columbarium interment; however, nothing herein shall limit
 27 the right of a person owning interment or burial rights to
 28 sell those rights to third parties subject to the transfer of
 29 title by the cemetery company.

30 (d) The adoption of bylaws regulating the activities
 31 conducted within its boundaries, provided that no funeral

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1 | director licensed pursuant to this chapter ~~470~~ shall be denied
2 | access to any cemetery to conduct a funeral for or supervise a
3 | disinterment of human remains. All bylaws provided for herein
4 | shall be subject to the approval of the licensing authority
5 | ~~board~~ under the provisions of chapter 120 prior to becoming
6 | effective. The licensing authority ~~board~~ shall not approve any
7 | bylaw which unreasonably restricts the use of interment or
8 | burial rights, which unreasonably restricts competition, or
9 | which unreasonably increases the cost to the owner of
10 | interment or burial rights in utilizing these rights.

11 | (e) The nonexclusive preneed and at-need sale of
12 | monuments, memorials, markers, burial vaults, urns, flower
13 | vases, floral arrangements, and other similar merchandise for
14 | use within the cemetery.

15 | (f) The nonexclusive cremation of human remains,
16 | subject to provisions of s. 497.606 ~~470.025~~.

17 | (g) The entry into sales or management contracts with
18 | other persons. The cemetery company shall be responsible for
19 | the deposit of all moneys required by this part to be placed
20 | in a trust fund.

21 | (2) A full disclosure shall be made for all fees
22 | required for interment, entombment, or inurnment of human
23 | remains.

24 | (3) A cemetery company may adopt bylaws establishing
25 | minimum standards for burial merchandise or the installation
26 | thereof. Such bylaws shall include minimum standards for
27 | access to install burial merchandise. A cemetery company must
28 | comply with its adopted bylaws.

29 | Section 56. Section 497.274, Florida Statutes, is
30 | created to read:

31 | 497.274 Standards for grave spaces.--

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

9 (2)(a) Prior to the sale of grave spaces in any
 10 undeveloped areas of a licensed cemetery, the cemetery company
 11 shall prepare a map documenting the establishment of
 12 recoverable internal survey reference markers installed by the
 13 cemetery company no more than 100 feet apart in the areas
 14 planned for development. The internal reference markers shall
 15 be established with reference to survey markers that are no
 16 more than 200 feet apart which have been set by a surveyor and
 17 mapper licensed under chapter 472 and documented in a
 18 certified land survey. Both the map and the certified land
 19 survey shall be maintained by the cemetery company and shall
 20 be made available upon request to the department or members of
 21 the public.

22 (b) The map of the area proposed to be developed shall
 23 show:

- 24 1. The number of grave spaces available for sale.
- 25 2. The location of each grave space.
- 26 3. The number designation assigned to each grave
 27 space.
- 28 4. The dimensions of a standard adult grave space.

29 (3) Adult grave spaces established prior to October 1,
 30 2005, are not required to meet the standards established under
 31 this section for the dimensions or separation of grave spaces.

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1 Section 57. Section 497.275, Florida Statutes, is
2 created to read:

3 497.275 Identification of human remains in licensed
4 cemeteries.--On and after October 1, 2005, human remains
5 interred, entombed, or otherwise placed for final rest at
6 licensed cemeteries shall be identified as follows:

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

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

23 Section 58. Section 497.309, Florida Statutes, is
24 renumbered as section 497.276, Florida Statutes, and amended
25 to read:

26 497.276 ~~497.309~~ Records.--

27 (1) A record shall be kept of every burial in the
28 cemetery of a cemetery company, showing the date of burial and
29 the name of the person buried, together with lot, plot, and
30 space in which the burial was made. All financial records of
31 the cemetery company shall be available at its principal place

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1 of business in this state and shall be readily available at
2 all reasonable times for examination by the department.

3 (2) Notwithstanding the provisions of subsection (1),
4 the licensing authority board may, upon request, authorize a
5 cemetery company to maintain its financial records at a
6 location other than its principal place of business and may,
7 if necessary, require the company to make its books, accounts,
8 records, and documents available at a reasonable and
9 convenient location in this state.

10 (3) The licensing authority board may prescribe by
11 rule the minimum information to be shown in the books,
12 accounts, records, and documents of a cemetery company to
13 enable the department to determine the company's compliance
14 with this chapter, and may prescribe financial statements that
15 shall be prepared annually by licensed cemetery companies.

16 Section 59. Section 497.313, Florida Statutes, is
17 renumbered as section 497.277, Florida Statutes, to read:

18 497.277 ~~497.313~~ Other charges.--Other than the fees
19 for the sale of burial rights, burial merchandise, and burial
20 services, no other fee may be directly or indirectly charged,
21 contracted for, or received by a cemetery company as a
22 condition for a customer to use any burial right, burial
23 merchandise, or burial service, except for:

24 (1) Charges paid for opening and closing a grave and
25 vault installation.

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

28 (3) Charges for sales, documentary excise, and other
29 taxes actually and necessarily paid to a public official,
30 which charges must be supported in fact.

31 (4) Charges for credit life and credit disability

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1 insurance, as requested by the purchaser, the premiums for
 2 which may not exceed the applicable premiums chargeable in
 3 accordance with the rates filed with the Office of Insurance
 4 Regulation of the Financial Services Commission.

5 (5) Charges for interest on unpaid balances pursuant
 6 to chapter 687.

7 Section 60. Section 497.317, Florida Statutes, is
 8 renumbered as section 497.278, Florida Statutes, to read:

9 497.278 ~~497.317~~ Monuments; installation fees.--

10 (1) No cemetery company may charge a fee for the
 11 installation of a monument purchased or obtained from and to
 12 be installed by a person or firm other than the cemetery
 13 company or its agents.

14 (2) To verify that a monument is installed on the
 15 proper grave in accordance with cemetery bylaws, rules, or
 16 regulations, the cemetery company shall mark the place on the
 17 grave where the marker or monument is to be installed and
 18 shall inspect the installation when completed. Nothing in this
 19 subsection is intended to imply or require that a cemetery
 20 company shall have to lay out or engineer a grave site or
 21 grave sites for the installation of a marker or monument.

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

27 Section 61. Section 497.325, Florida Statutes, is
 28 renumbered as section 497.280, Florida Statutes, and amended
 29 to read:

30 497.280 ~~497.325~~ Illegal tying arrangements.--

31 (1) No person authorized to sell grave space may tie

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1 the purchase of any grave space to the purchase of a monument
2 from or through the seller of any other designated person or
3 corporation.

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

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

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

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

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

26
27 where the monument or installation service is not purchased
28 from the person authorized to sell grave space or the cemetery
29 company providing grave space or from or through any other
30 person or corporation designated by the person authorized to
31 sell grave space or the cemetery company providing grave

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1 space. No cemetery company may be held liable for the improper
2 installation of a monument where the monument is not installed
3 by the cemetery company or its agents.

4 (3) No program offering free burial rights may be
5 conditioned by any requirement to purchase additional burial
6 rights, funeral merchandise, or services. Any program offering
7 free burial rights shall comply with s. 817.415.

8 Section 62. Section 497.329, Florida Statutes, is
9 renumbered as section 497.281, Florida Statutes, and amended
10 to read:

11 497.281 ~~497.329~~ Licensure ~~Registration~~ of brokers of
12 burial rights.--

13 (1) No person shall receive compensation to act as a
14 third party to the sale or transfer of three or more burial
15 rights in a 12-month period unless the person pays a license
16 registration fee as determined by licensing authority rule but
17 not to exceed \$250 ~~of \$150~~ and is licensed ~~registered~~ with the
18 department as a burial rights broker in accordance with this
19 section.

20 (2) The department, by rule, shall provide for the
21 biennial renewal of licenses under this section ~~registrants~~
22 and a renewal fee as determined by licensing authority rule
23 but not to exceed \$250 ~~of \$100~~.

24 (3) This section shall not apply to persons otherwise
25 licensed ~~or registered~~ pursuant to this chapter.

26 (4) The licensing authority may by rule specify
27 records of brokerage transactions which shall be required to
28 be maintained by burial rights brokers licensed under this
29 subsection, and which shall be subject to inspection by the
30 department.

31 Section 63. Section 497.333, Florida Statutes, is

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1 renumbered as section 497.282, Florida Statutes, and amended
 2 to read:

3 497.282 ~~497.333~~ Disclosure of information to
 4 public.--A licensee offering to provide burial rights,
 5 merchandise, or services to the public shall:

6 (1) Provide by telephone, upon request, accurate
 7 information regarding the retail prices of burial merchandise
 8 and services offered for sale by the licensee.

9 (2) Fully disclose all regularly offered services and
 10 merchandise prior to the selection of burial services or
 11 merchandise. The full disclosure required shall identify the
 12 prices of all burial rights, services, and merchandise
 13 provided by the licensee.

14 (3) Not make any false or misleading statements of the
 15 legal requirement as to the necessity of a casket or outer
 16 burial container.

17 (4) Provide a good faith estimate of all fees and
 18 costs the customer will incur to use any burial rights,
 19 merchandise, or services purchased.

20 (5) Provide to the customer, upon request, a current
 21 copy of the bylaws of the licensee.

22 (6) Provide to the customer, upon the purchase of any
 23 burial right, merchandise, or service, a written contract, the
 24 form of which has been approved by the licensing authority
 25 pursuant to procedures specified by rule board.

26 (a) The written contract shall be completed as to all
 27 essential provisions prior to the signing of the contract by
 28 the customer.

29 (b) The written contract shall provide an itemization
 30 of the amounts charged for all services, merchandise, and
 31 fees, which itemization shall be clearly and conspicuously

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1 segregated from everything else on the written contract.

2 (c) A description of the merchandise covered by the
3 contract to include, when applicable, model, manufacturer, and
4 other relevant specifications.

5 (7) Provide the licensee's policy on cancellation and
6 refunds to each customer.

7 (8) In a manner established by rule of the licensing
8 authority board, provide on the signature page, clearly and
9 conspicuously in boldfaced 10-point type or larger, the
10 following:

11 (a) The words "purchase price."

12 (b) The amount to be trusted.

13 (c) The amount to be refunded upon contract
14 cancellation.

15 (d) The amounts allocated to merchandise, services,
16 and cash advances.

17 (e) The toll-free number of the department which is
18 available for questions or complaints.

19 (f) A statement that the purchaser shall have 30 days
20 from the date of execution of contract to cancel the contract
21 and receive a total refund of all moneys paid for items not
22 used.

23 (9) Effective October 1, 2006, display in its offices
24 for free distribution to all potential customers, and provide
25 to all customers at the time of sale, a brochure explaining
26 how and by whom cemeteries and preneed sales are regulated,
27 summarizing consumer rights under the law, and providing the
28 name, address, and phone number of the department's consumer
29 affairs division. The format and content of the brochure shall
30 be as prescribed by the rule. The licensing authority may
31 cause the publication of such brochures and by rule

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1 establishing requirements that cemetery and preneed licensees
2 purchase and make available such brochures as so published, in
3 the licensee's offices, to all potential customers.

4 (10) Provide to each customer a complete description
5 of any monument, marker, or memorialization to be placed at
6 the gravesite.

7 Section 64. Section 497.337, Florida Statutes, is
8 renumbered as section 497.283, Florida Statutes, and amended
9 to read:

10 497.283 ~~497.337~~ Prohibition on sale of personal
11 property or services.--

12 (1) This section applies to all cemetery companies
13 licensed pursuant to this chapter that offer for sale or sell
14 personal property or services which may be used in a cemetery
15 in connection with the burial of human remains or the
16 commemoration of the memory of a deceased human being and also
17 to any person in direct written contractual relationship with
18 licensed cemetery companies.

19 (2)(a) Except as otherwise provided in this chapter,
20 no cemetery company shall directly or indirectly enter into a
21 contract for the sale of personal property or services,
22 excluding burial or interment rights, which may be used in a
23 cemetery in connection with disposing of human remains, or
24 commemorating the memory of a deceased human being, if
25 delivery of the personal property or performance of the
26 service is to be made more than 120 days after receipt of
27 final payment under the contract of sale, except as provided
28 in s. 497.458 ~~497.417~~. This shall include, but not be limited
29 to, the sale for future delivery of burial vaults, grave
30 liners, urns, memorials, vases, foundations, memorial bases,
31 and similar merchandise and related services commonly sold or

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1 used in cemeteries and interment fees but excluding burial or
2 interment rights.

3 (b) For the purposes of this section, the term
4 "delivery" means actual delivery and installation at the time
5 of need or at the request of the owner or the owner's agent.
6 Merchandise is not considered delivered under paragraph (a) if
7 it is stored on the grounds of the cemetery or at a storage
8 facility except for monuments, markers, and permanent outer
9 burial receptacles that are stored in a protected environment
10 and are comprised of materials designed to withstand
11 prolonged, protected storage without adversely affecting the
12 structural integrity or aesthetic characteristics of such
13 permanent outer burial receptacles.

14 (c) In lieu of delivery as required by paragraph (b),
15 for sales to cemetery companies and funeral establishments,
16 and only for such sales, the manufacturer of a permanent outer
17 burial receptacle which meets standards adopted by rule ~~the~~
18 ~~board~~ may elect, at its discretion, to comply with the
19 delivery requirements of this section by annually submitting
20 for approval pursuant to procedures and forms as specified by
21 rule, in writing, evidence of the manufacturer's financial
22 responsibility with the licensing authority ~~board~~ for its
23 review and approval. The standards and procedures to establish
24 evidence of financial responsibility shall be those in s.
25 497.461 ~~497.423~~ or s. ~~497.425~~, with the manufacturer of
26 permanent outer burial receptacles which meet national
27 industry standards assuming the same rights and
28 responsibilities as those of a preneed licensee
29 ~~certificateholder~~ under s. 497.461 ~~497.423~~ or s. ~~497.425~~.

30 (3) No nonprofit cemetery corporation which has been
31 incorporated and engaged in the cemetery business prior to and

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1 continuously since 1915 and which has current trust assets
 2 exceeding \$2 million shall be required to designate a
 3 corporate trustee.

4 Section 65. Section 497.345, Florida Statutes, is
 5 renumbered as section 497.284, Florida Statutes, to read:

6 497.284 ~~497.345~~ Abandoned cemeteries; immunity;
 7 actions.--

8 (1) Notwithstanding any provision of law to the
 9 contrary, a county or municipality which has within its
 10 jurisdiction an abandoned cemetery or a cemetery that has not
 11 been reasonably maintained for a period in excess of 6 months
 12 may, upon notice to the department, take such action as is
 13 necessary and appropriate to provide for maintenance and
 14 security of the cemetery. The solicitation of private funds
 15 and the expenditure of public funds for the purposes
 16 enumerated in this subsection are hereby authorized, provided
 17 that no action taken by a county or municipality under this
 18 subsection shall establish an ongoing obligation or duty to
 19 provide continuous security or maintenance for any cemetery.

20 (2) No county or municipality nor any person under the
 21 supervision or direction of the county or municipality,
 22 providing good faith assistance in securing or maintaining a
 23 cemetery under subsection (1), may be subject to civil
 24 liabilities or penalties of any type for damages to property
 25 at the cemetery.

26 (3) A county or municipality that has maintained or
 27 secured a cemetery pursuant to the provisions of subsection
 28 (1) may maintain an action at law against the owner of the
 29 cemetery to recover an amount equal to the value of such
 30 maintenance or security.

31 Section 66. Section 497.349, Florida Statutes, is

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1 renumbered as section 497.285, Florida Statutes, and amended
2 to read:

3 497.285 ~~497.349~~ Inactive cemeteries.--

4 (1) A licensee shall be considered inactive upon the
5 acceptance of the surrender of its license by the department
6 or upon the nonreceipt by the department of the license
7 renewal fees required by s. 497.265 ~~497.213(2)~~.

8 (2) A cemetery licensee licensed to engage in preneed
9 sales shall cease all preneed sales to the public upon
10 becoming inactive in regards to its cemetery license. At-need
11 sales to the public shall cease within 30 days after becoming
12 inactive.

13 (3) Any licensee desiring to surrender its license to
14 the department shall first:

15 (a) File notice with the department.

16 (b) Submit copies of its existing trust agreements.

17 (c) Resolve to the department's satisfaction all
18 findings and violations resulting from the last examination
19 conducted.

20 (d) Pay all outstanding fines and invoices due the
21 department.

22 (e) Submit its current license.

23 (4) Upon receipt of the notice, the department shall
24 review the licensee's:

25 (a) Trust funds.

26 (b) Trust agreements.

27 (c) Care and maintenance of the cemetery grounds.

28 (5) After a review to the department's satisfaction,
29 the department shall terminate the license.

30 (6)(a) The care and maintenance trust fund of a
31 licensee shall be held intact and in trust after the licensee

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1 has become inactive, and funds in that trust fund shall be
2 disbursed to the cemetery on a regular basis for the upkeep of
3 the grounds.

4 (b) The merchandise trust fund of a licensee shall be
5 held intact and in trust after the licensee has become
6 inactive, and the funds in that trust fund shall be disbursed
7 in accordance with the requirements of the written contracts
8 until the fund has been exhausted.

9 Section 67. Section 497.353, Florida Statutes, is
10 renumbered as section 497.286, Florida Statutes, and amended
11 to read:

12 497.286 ~~497.353~~ Owners to provide addresses;
13 presumption of abandonment; abandonment procedures; sale of
14 abandoned unused burial rights.--

15 (1) For purposes of this section, all owners of burial
16 rights in any cemetery licensed under the provisions of this
17 chapter ~~the Florida Funeral and Cemetery Services Act~~ shall
18 have the legal duty to keep the cemetery companies informed in
19 writing of their residence addresses. Cemetery companies shall
20 notify their present burial rights owners by letter at the
21 owner's last known address and notify all future burial rights
22 owners, in the contract for sale and the certificate of
23 ownership, of the requirement to keep the cemetery company
24 informed in writing of their current residence address.

25 (2) There is hereby created a presumption that burial
26 rights in any cemetery licensed under this chapter have been
27 abandoned when an owner of unused burial rights has failed to
28 provide the cemetery with a current residence address for a
29 period of 50 consecutive years and the cemetery is unable to
30 communicate by certified letter with said owner of unused
31 burial rights for lack of address. No such presumption of

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1 abandonment shall exist for burial rights held in common
2 ownership which are adjoining, whether in a grave space, plot,
3 mausoleum, columbarium, or other place of interment, if any
4 such burial rights have been used within such common
5 ownership.

6 (3) Upon the occurrence of a presumption of
7 abandonment as set forth in subsection (2), a cemetery may
8 file with the department a certified notice attesting to the
9 abandonment of the burial rights. The notice shall do the
10 following:

11 (a) Describe the burial rights certified to have been
12 abandoned;

13 (b) Set forth the name of the owner or owners of the
14 burial rights, or if the owner is known to the cemetery to be
15 deceased, then the names, if known to the cemetery, of such
16 claimants as are heirs at law, next of kin, or specific
17 devisees under the will of the owner;

18 (c) Detail the facts with respect to the failure of
19 the owner or survivors as outlined in this section to keep the
20 cemetery informed of the owner's address for a period of 50
21 consecutive years or more; and

22 (d) Certify that no burial right has been exercised
23 which is held in common ownership with any abandoned burial
24 rights as set forth in subsection (2).

25 (4) Irrespective of diversity of ownership of the
26 burial rights, a cemetery may include in its certification
27 burial rights in as many owners as are certified to have been
28 abandoned.

29 (5) The department shall notice and publish the
30 approved abandoned burial rights in the manner provided by s.
31 717.118.

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1 (6) Within 120 days from the final notice and
2 publication as provided in subsection (5), the department
3 shall notify the cemetery if there has been no claim filed for
4 the burial rights, and the cemetery shall have the right to
5 sell such burial rights at a public sale subject to the
6 approval of the sale price by the department.

7 (7) Notice of the time and place of any sale held
8 pursuant to the provisions of this section shall be published
9 by the cemetery once in a newspaper of general circulation in
10 the county in which the cemetery is located, such publication
11 to be not less than 30 days prior to the date of sale.

12 (8) The proceeds derived from any sale shall be
13 disbursed in the following manner: an amount specified in s.
14 497.268 ~~497.245~~ shall be deposited to the cemetery care and
15 maintenance trust fund; an amount equal to the cemetery
16 company's actual and necessary costs incurred pursuant to this
17 section but not to exceed 10 percent of the selling price of
18 the abandoned burial right shall be deposited to the cemetery
19 company's operating account; and the balance of the proceeds
20 shall be deposited with the department within 20 days after
21 receipt of said funds. The department shall deposit all funds
22 received pursuant to this subsection in accordance with the
23 provisions of s. 717.123.

24 (9) Persons or their heirs who were owners of burial
25 rights which were sold under this section shall have the right
26 at any time to obtain equivalent burial rights in the cemetery
27 without further charge. If no burial rights are desired, such
28 persons or their heirs may obtain the amount paid to the
29 department in accordance with the provisions of s. 717.124.

30 (10) The cemetery shall set aside equivalent burial
31 rights equal to 10 percent of the abandoned burial rights sold

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1 under this section for the exclusive use of persons or their
2 heirs who were owners of burial rights which were sold under
3 this section, who have the right at any time to obtain
4 equivalent burial rights in the cemetery under this section.

5 (11) Persons who purchase burial rights at a sale
6 pursuant to this section shall have the right to sell,
7 alienate, or otherwise transfer said burial rights subject to
8 and in accordance with the rules and regulations of the
9 cemetery and payment of a reasonable transfer fee.

10 Section 68. Section 497.357, Florida Statutes, is
11 renumbered as section 497.287, Florida Statutes, and amended
12 to read:

13 497.287 ~~497.357~~ Report of identification of exempt
14 cemeteries.--

15 (1) All cemeteries in excess of 5 acres located in
16 this state that are exempt from the provisions of this chapter
17 shall be required to file a report of identification with the
18 department and pay a \$25 fee. The department shall maintain
19 such reports as public records. Such report of identification
20 shall be refiled every 5 years pursuant to a schedule set by
21 board rule. Solely for purposes of chapter 120, such report of
22 identification shall be considered a license registration with
23 the department.

24 (2) The report shall be submitted on a form and
25 pursuant to procedures specified by rule ~~approved by the~~
26 ~~board~~, and shall list the name and address of the authorized
27 agent who is responsible for conducting the business of the
28 cemetery and to whom inquiries about the cemetery can be
29 directed.

30 (3) The department ~~board~~ may institute proceedings in
31 any appropriate court for injunctive relief to enforce this

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1 section. Upon issuance of an injunctive order, the court shall
2 award the department its costs and attorney fees in the
3 action.

4 Section 69. Part III of chapter 497, Florida Statutes,
5 consisting of sections 497.365, 497.366, 497.367, 497.368,
6 497.369, 497.370, 497.371, 497.372, 497.373, 497.374, 497.375,
7 497.376, 497.377, 497.378, 497.379, 497.380, 497.381, 497.382,
8 497.383, 497.384, 497.385, 497.386, 497.387, 497.388, 497.389,
9 497.390, 497.391, and 497.392, is created to read:

10 PART III

11 FUNERAL DIRECTING, EMBALMING, AND RELATED SERVICES

12 Section 70. Section 497.365, Florida Statutes, is
13 created to read:

14 497.365 Licensure; inactive and delinquent status.--

15 (1) This section shall apply only to licenses issued
16 under this part. A licensee may practice a profession or
17 occupation regulated under this part only if the licensee has
18 an active status license. A licensee who practices a
19 profession without an active status license is in violation of
20 this chapter and the licensing authority may impose discipline
21 on the licensee.

22 (2) Pursuant to procedures specified by rule, a
23 licensee shall be permitted to choose, at the time of
24 licensure renewal, an active or inactive status. However, a
25 licensee who changes from inactive to active status is not
26 eligible to return to inactive status until the licensee
27 thereafter completes a licensure cycle on active status.

28 (3) There shall be imposed pursuant to rule a fee for
29 an inactive status license which is no greater than the fee
30 for an active status license.

31 (4) An inactive status licensee may change to active

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1 status at any time, provided the licensee meets all
2 requirements for active status, pays any additional licensure
3 fees necessary to equal those imposed on an active status
4 licensee, pays any applicable reactivation fees as set by the
5 licensing authority, and meets all continuing education
6 requirements as specified in this section.

7 (5) A licensee shall apply with a complete
8 application, as defined by rule of the licensing authority, to
9 renew an active or inactive status license, before the license
10 expires. Failure of a licensee to renew before the license
11 expires shall cause the license to become delinquent in the
12 license cycle following expiration.

13 (6) A delinquent status licensee must affirmatively
14 apply with a complete application, as defined by rule of the
15 licensing authority, for active or inactive status during the
16 licensure cycle in which a licensee becomes delinquent.
17 Failure by a delinquent status licensee to become active or
18 inactive before the expiration of the current licensure cycle
19 shall render the license null without any further action by
20 the board or the licensing authority. Any subsequent licensure
21 shall be as a result of applying for and meeting all
22 requirements imposed on an applicant for new licensure.

23 (7) There shall be imposed pursuant to rule an
24 additional delinquency fee, not to exceed the biennial renewal
25 fee for an active status license, on a delinquent status
26 licensee when such licensee applies for active or inactive
27 status.

28 (8) There shall be imposed pursuant to rule an
29 additional fee, not to exceed the biennial renewal fee for an
30 active status license, for processing a licensee's request to
31 change licensure status at any time other than at the

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1 beginning of a licensure cycle.

2 (9) There may be imposed pursuant to rule reasonable
3 conditions, excluding full reexamination but including part of
4 a national examination or a special purpose examination, to
5 assess current competency necessary to ensure that a licensee
6 who has been on inactive status for more than 4 consecutive
7 years and who applies for active status can practice with the
8 care and skill sufficient to protect the health, safety, and
9 welfare of the public. Reactivation requirements may differ
10 depending on the length of time licensees are inactive. The
11 costs to meet reactivation requirements shall be borne by
12 licensees requesting reactivation.

13 (10) Before reactivation, an inactive or delinquent
14 licensee shall meet the same continuing education
15 requirements, if any, imposed on an active status licensee for
16 all licensure periods in which the licensee was inactive or
17 delinquent.

18 (11) The status or a change in status of a licensee
19 shall not alter in any way the right to impose discipline or
20 to enforce discipline previously imposed on a licensee for
21 acts or omissions committed by the licensee while holding a
22 license, whether active, inactive, or delinquent.

23 Section 71. Section 497.366, Florida Statutes, is
24 created to read:

25 497.366 Licensure; renewal and cancellation notices.--

26 (1) At least 90 days before the end of a licensure
27 cycle, the licensing authority shall:

28 (a) Forward a licensure renewal notification to an
29 active or inactive licensee at the licensee's last known
30 address of record with the licensing authority.

31 (b) Forward a notice of pending cancellation of

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1 licensure to a delinquent status licensee at the licensee's
2 last known address of record with the licensing authority.

3 (2) Each licensure renewal notification and each
4 notice of pending cancellation of licensure must state
5 conspicuously that a licensee who remains on inactive status
6 for more than 4 years and who wishes to reactivate the license
7 may be required to demonstrate the competency to resume active
8 practice by sitting for a special purpose examination or by
9 completing other reactivation requirements, as defined by rule
10 of the licensing authority.

11 (3) This section shall apply only to licensees
12 licensed under this part.

13 Section 72. Section 497.367, Florida Statutes, is
14 created to read:

15 497.367 Instruction on HIV and AIDS, funeral directors
16 and embalmers.--

17 (1) Each person licensed as a funeral director or
18 embalmer under this chapter shall be required to complete an
19 approved continuing educational course on human
20 immunodeficiency virus and acquired immune deficiency
21 syndrome, at least every 2 years. The course shall consist of
22 education on the modes of transmission, infection control
23 procedures, clinical management, and prevention of human
24 immunodeficiency virus and acquired immune deficiency
25 syndrome. Such course shall include information on current
26 Florida law on acquired immune deficiency syndrome and its
27 impact on testing, confidentiality of test results, and
28 treatment of patients.

29 (2) Confirmation of completed continuing education
30 concerning each funeral director or embalmer licensee shall be
31 submitted according to procedures, forms, and methods as

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1 specified by rule of the licensing authority.

2 (3) There may be approved by the licensing authority
3 by rule or order additional equivalent courses that may be
4 used to satisfy the requirements in subsection (1). There may
5 be counted the hours required for completion of the course
6 included in the total continuing educational requirements as
7 required by law.

8 (4) Any person holding two or more licenses subject to
9 the provisions of this section shall only be required to take
10 the course once every 2 years notwithstanding the number of
11 licenses held by that person.

12 (5) Failure to timely comply with the above
13 requirements shall constitute grounds for disciplinary action
14 against the licensee.

15 (6) It shall be required as a condition of granting a
16 license as a funeral director and embalmer under this chapter
17 that an applicant making initial application for licensure
18 complete an educational course approved by the licensing
19 authority on human immunodeficiency virus and acquired immune
20 deficiency syndrome. An applicant who has not taken a course
21 at the time of licensure shall, upon an affidavit showing good
22 cause, be allowed 6 months to complete this requirement.

23 Section 73. Section 470.006, Florida Statutes, is
24 renumbered as section 497.368, Florida Statutes, and amended
25 to read:

26 497.368 470.006 Embalmers; licensure as an embalmer by
27 examination; provisional license.--

28 (1) Any person desiring to be licensed as an embalmer
29 shall apply to the licensing authority ~~department~~ to take the
30 licensure examination. The licensing authority ~~department~~
31 shall examine each applicant who has remitted an examination

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1 fee set by rule of the licensing authority ~~the board~~ not to
2 exceed \$200 plus the actual per applicant cost to the
3 licensing authority ~~department~~ for portions of the examination
4 and who ~~the board certifies~~ has:

5 (a) Completed the application form and remitted a
6 nonrefundable application fee set by the licensing authority
7 ~~board~~ not to exceed \$200 ~~\$50~~.

8 (b) Submitted proof satisfactory to the licensing
9 authority ~~board~~ that the applicant is at least 18 years of age
10 and is a recipient of a high school degree or equivalent.

11 (c) Had no conviction or finding of guilt, regardless
12 of adjudication, for a crime which directly relates to the
13 ability to practice embalming or the practice of embalming.

14 (d) Completed a course in mortuary science approved by
15 the licensing authority ~~board~~, which course embraces, at
16 least, the following subjects: theory and practice of
17 embalming, restorative art, pathology, anatomy, microbiology,
18 chemistry, hygiene, and public health and sanitation.

19 (e) Submitted proof of completion of a ~~board-approved~~
20 course on communicable diseases approved by the licensing
21 authority.

22 (2) The licensing authority ~~department~~ shall license
23 the applicant as an embalmer if the applicant:

24 (a) Passes an examination on the subjects of the
25 theory and practice of embalming, restorative art, pathology,
26 anatomy, microbiology, chemistry, hygiene, public health and
27 sanitation, and local, state, and federal laws and rules
28 relating to the disposition of dead human bodies; however,
29 there may ~~the board~~ by rule be approved by the licensing
30 authority ~~may adopt~~ the use of a national examination, such as
31 the embalming examination prepared by the Conference of

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1 Funeral Service Examining Boards, in lieu of part of this
 2 examination requirement; and

3 (b) Completes a 1-year internship under a licensed
 4 embalmer.

5 (3) Any applicant who has completed the required
 6 1-year internship and has been approved for examination as an
 7 embalmer may qualify for a provisional license to work in a
 8 licensed funeral establishment, under the direct supervision
 9 of a licensed embalmer for a limited period of 6 months as
 10 provided by rule of the licensing authority board. The fee for
 11 provisional licensure shall be set by rule of the licensing
 12 authority the board, but may not exceed ~~\$200~~\$125, and shall
 13 be nonrefundable and in addition to the fee required in
 14 subsection (1). This provisional license may be renewed no
 15 more than one time.

16 Section 74. Section 470.007, Florida Statutes, is
 17 renumbered as section 497.369, Florida Statutes, and amended
 18 to read:

19 497.369 ~~470.007~~ Embalmers; licensure as an embalmer by
 20 endorsement; licensure registration of a temporary embalmer.--

21 (1) The licensing authority department shall issue a
 22 license by endorsement to practice embalming to an applicant
 23 who has remitted an examination fee set by rule of the
 24 licensing authority the board not to exceed \$200 and who the
 25 licensing authority board certifies:

26 (a) Has completed the application form and remitted a
 27 nonrefundable application fee set by rule of the licensing
 28 authority the board not to exceed ~~\$200~~\$50.

29 (b)1. Holds a valid license to practice embalming in
 30 another state of the United States, provided that, when the
 31 applicant secured ~~his or her~~ or his original license, the

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1 requirements for licensure were substantially equivalent to or
2 more stringent than those existing in this state; or

3 2. Meets the qualifications for licensure in s.
4 497.368 ~~470.006~~, except that the internship requirement shall
5 be deemed to have been satisfied by 1 year's practice as a
6 licensed embalmer in another state, and has, within 10 years
7 prior to the date of application, successfully completed a
8 state, regional, or national examination in mortuary science,
9 which, as determined by rule of the licensing authority board,
10 is substantially equivalent to or more stringent than the
11 examination given by the licensing authority department.

12 (c) Has submitted proof of completion of a licensing
13 authority approved board-approved course on communicable
14 diseases.

15 (2) State, regional, or national examinations and
16 requirements for licensure in another state shall be presumed
17 to be substantially equivalent to or more stringent than the
18 examination and requirements in this state unless found
19 otherwise by rule of the licensing authority board.

20 (3) The licensing authority department shall not issue
21 a license by endorsement or a temporary license registration
22 to any applicant who is under investigation or prosecution in
23 any jurisdiction for an act which would constitute a violation
24 of this chapter until such time as the investigation or
25 prosecution is complete.

26 (4) Each applicant for licensure by endorsement must
27 pass the examination on local, state, and federal laws and
28 rules relating to the disposition of dead human bodies which
29 is required under s. 497.368 ~~470.006~~ and which shall be given
30 by the licensing authority department.

31 (5) There may be adopted by the licensing authority

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1 ~~The board may adopt~~ rules authorizing an applicant who has met
 2 the requirements of paragraphs (1)(b) and (c) and who is
 3 awaiting an opportunity to take the examination required by
 4 subsection (4) to be licensed ~~register~~ as a temporary licensed
 5 embalmer. A temporary licensed ~~registered~~ temporary embalmer
 6 may work as an embalmer in a licensed funeral establishment
 7 under the general supervision of a licensed embalmer. Such
 8 temporary license ~~registration~~ shall expire 60 days after the
 9 date of the next available examination required under
 10 subsection (4); however, the temporary license ~~registration~~
 11 may be renewed one time under the same conditions as initial
 12 issuance. The fee for issuance ~~registration~~ or renewal of an
 13 embalmer temporary license ~~registration as a temporary~~
 14 ~~embalmer~~ shall be set by rule of the licensing authority ~~the~~
 15 ~~board~~ but may not exceed \$200 ~~\$125~~. The fee required in this
 16 subsection shall be nonrefundable and in addition to the fee
 17 required in subsection (1).

18 Section 75. Section 470.008, Florida Statutes, is
 19 renumbered as section 497.370, Florida Statutes, and amended
 20 to read:

21 497.370 ~~470.008~~ Embalmers; licensure ~~Registration~~ of
 22 an embalmer intern.--

23 (1) Any person desiring to become an embalmer intern
 24 shall make application to the licensing authority ~~department~~
 25 on forms specified by rule ~~provided by the department~~,
 26 together with a nonrefundable fee determined by rule of the
 27 licensing authority but ~~not to exceed~~ \$200 ~~\$100~~. The
 28 application shall indicate the name and address of the
 29 licensed embalmer under whose supervision the intern will
 30 receive training and the name of the licensed funeral
 31 establishment or centralized embalming facility where such

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1 training is to be conducted. The embalmer intern shall intern
2 under the direct supervision of a licensed embalmer who has an
3 active, valid license under s. 497.368 or s. 497.369.

4 (2) An applicant for internship under this section
5 shall meet the requirements of s. 497.368(1)(b)-(e)
6 ~~470.006(1)(b)-(e)~~ prior to being licensed ~~registered by the~~
7 ~~board~~ as an embalmer intern.

8 (3) There shall be adopted ~~The board shall adopt~~ rules
9 establishing an embalmer internship program and criteria for
10 embalmer intern training agencies and supervisors. Any funeral
11 establishment or centralized embalming facility where
12 embalming is conducted must apply to the licensing authority
13 ~~board~~ for approval as an embalmer intern training agency.

14 (4) A funeral establishment or centralized embalming
15 facility designated as an embalmer intern training agency may
16 not exact a fee from any person obtaining intern training at
17 such funeral establishment or centralized embalming facility.

18 Section 76. Section 470.0085, Florida Statutes, is
19 renumbered as section 497.371, Florida Statutes, and amended
20 to read:

21 497.371 ~~470.0085~~ Embalmers; establishment of embalmer
22 apprentice program.--The licensing authority adopts ~~board may~~
23 ~~adopt~~ rules establishing an embalmer apprentice program. An
24 embalmer apprentice may perform only those tasks, functions,
25 and duties relating to embalming which are performed under the
26 direct supervision of an a licensed ~~who has an~~
27 active, valid license under s. 497.368 or s. 497.369. An
28 embalmer apprentice shall be eligible to serve in an
29 apprentice capacity for a period not to exceed 3 years ~~1 year~~
30 as may be determined by licensing authority ~~board~~ rule or for
31 a period not to exceed 5 ~~3~~ years if the apprentice is enrolled

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1 in and attending a course in mortuary science or funeral
2 service education at any mortuary college or funeral service
3 education college or school. An embalmer apprentice shall be
4 licensed ~~registered with the board~~ upon payment of a licensure
5 ~~registration~~ fee as determined by licensing authority rule but
6 not to exceed ~~\$200~~ \$50.

7 Section 77. Section 470.0087, Florida Statutes, is
8 renumbered as section 497.372, Florida Statutes, and amended
9 to read:

10 497.372 ~~470.0087~~ Funeral directing; conduct
11 constituting ~~Practice of~~ funeral directing.--

12 (1) The practice of funeral directing shall be
13 construed to consist of the following functions, which may be
14 performed only by a licensed funeral director:

15 (a) Selling or offering to sell funeral services on an
16 at-need basis.

17 (b) Planning or arranging, on an at-need basis, the
18 details of a funeral service with the family or friends of the
19 decedent or any other person responsible for such service;
20 setting the time of the service; establishing the type of
21 service to be rendered; acquiring the services of the clergy;
22 and obtaining vital information for the filing of death
23 certificates and obtaining of burial transit permits.

24 (c) Making, negotiating, or completing the financial
25 arrangements for a funeral service on an at-need basis,
26 provided that nonlicensed personnel may assist the funeral
27 director in performing such tasks.

28 (d) Directing, being in charge or apparent charge of,
29 or supervising, directly or indirectly, a visitation or
30 viewing. Such functions shall not require that a licensed
31 funeral director be physically present throughout the

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1 visitation or viewing, provided that the funeral director is
2 readily available by telephone for consultation.

3 (e) Directing, being in charge or apparent charge of,
4 or supervising, directly or indirectly, any funeral service
5 held in a funeral establishment, cemetery, or elsewhere.

6 (f) Directing, being in charge or apparent charge of,
7 or supervising, directly or indirectly, any memorial service
8 held prior to or within 72 hours of the burial or cremation,
9 if such memorial service is sold or arranged by a licensee
10 ~~certificateholder or registrant~~.

11 (g) Using in connection with one's name or employment
12 the words or terms "funeral director," "funeral
13 establishment," "undertaker," "mortician," or any other word,
14 term, title, or picture, or combination of any of the above,
15 that when considered in the context in which used would imply
16 that such person is engaged in the practice of funeral
17 directing or that such person is holding ~~himself or herself or~~
18 himself out to the public as being engaged in the practice of
19 funeral directing; provided, however, that nothing in this
20 paragraph shall prevent using the name of any owner, officer,
21 or corporate director of a funeral establishment, who is not a
22 licensee, in connection with the name of the funeral
23 establishment with which such individual is affiliated, so
24 long as such individual's affiliation is properly specified.

25 (h) Managing or supervising the operation of a funeral
26 establishment, except for administrative matters such as
27 budgeting, accounting and personnel, maintenance of buildings,
28 equipment and grounds, and routine clerical and recordkeeping
29 functions.

30 (2) The practice of funeral directing shall not be
31 construed to consist of the following functions:

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1 (a) The phoning-in or faxing of obituary notices;
2 ordering of flowers or merchandise; delivery of death
3 certificates to attending physicians; or clerical preparation
4 of death certificates, insurance forms, and any clerical tasks
5 that record the information compiled by the funeral director
6 or that are incidental to any of the functions specified
7 above.

8 (b) Furnishing standard printed price lists and other
9 disclosure information to the public by telephone or by
10 providing such lists to persons making inquiry.

11 (c) Removing or transporting human remains from the
12 place of death, or removing or transporting human remains from
13 or to a funeral establishment, centralized embalming facility,
14 refrigeration facility, cemetery, crematory, medical
15 examiner's office, common carrier, or other locations as
16 authorized and provided by law.

17 (d) Arranging, coordinating, or employing licensed
18 ~~registered~~ removal services, licensed ~~registered~~ refrigeration
19 facilities, or licensed ~~registered~~ centralized embalming
20 facilities.

21 (e) Any aspect of making preneed funeral arrangements
22 or entering into preneed contracts.

23 (f) Any functions normally performed by cemetery or
24 crematory personnel.

25 Section 78. Section 470.009, Florida Statutes, is
26 renumbered as section 497.373, Florida Statutes, and amended
27 to read:

28 497.373 ~~470.009~~ Funeral directing; licensure as a
29 funeral director by examination; provisional license.--

30 (1) Any person desiring to be licensed as a funeral
31 director shall apply to the licensing authority ~~department~~ to

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1 take the licensure examination. The licensing authority
 2 ~~department~~ shall examine each applicant who has remitted an
 3 examination fee set by rule of the licensing authority ~~the~~
 4 ~~board~~ not to exceed \$200 plus the actual per applicant cost to
 5 the licensing authority ~~department~~ for portions of the
 6 examination and who the licensing authority ~~board~~ certifies
 7 has:

8 (a) Completed the application form and remitted a
 9 nonrefundable application fee set by rule of the licensing
 10 authority ~~the board~~ not to exceed ~~\$200~~ \$50.

11 (b) Submitted proof satisfactory to the licensing
 12 authority ~~board~~ that the applicant is at least 18 years of age
 13 and is a recipient of a high school degree or equivalent.

14 (c) Had no conviction or finding of guilt, regardless
 15 of adjudication, for a crime which directly relates to the
 16 ability to practice funeral directing or the practice of
 17 funeral directing.

18 (d)1. Received an associate in arts degree, associate
 19 in science degree, or an associate in applied science degree
 20 in mortuary science approved by the licensing authority ~~board~~;
 21 or

22 2. Holds an associate degree or higher from a college
 23 or university accredited by a regional association of colleges
 24 and schools recognized by the United States Department of
 25 Education and is a graduate of at least an approved ~~a~~ 1-year
 26 course in mortuary science approved by the licensing authority
 27 ~~board~~.

28 (e) Submitted proof of completion of a ~~board-approved~~
 29 course on communicable diseases approved by the licensing
 30 authority.

31 (2) The licensing authority ~~department~~ shall license

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1 the applicant as a funeral director if ~~he or she~~ or he:

2 (a) Passes an examination on the subjects of the
 3 theory and practice of funeral directing, public health and
 4 sanitation, and local, state, and federal laws and rules
 5 relating to the disposition of dead human bodies; however,
 6 ~~there may be approved by rule the board by rule may adopt~~ the
 7 use of a national examination, such as the funeral service
 8 arts examination prepared by the Conference of Funeral Service
 9 Examining Boards, in lieu of part of this examination
 10 requirement.

11 (b) Completes a 1-year internship under a licensed
 12 funeral director.

13 (3) Any applicant who has completed the required
 14 1-year internship and has been approved for examination as a
 15 funeral director may qualify for a provisional license to work
 16 in a licensed funeral establishment, under the direct
 17 supervision of a licensed funeral director for a limited
 18 period of 6 months as provided by rule of the licensing
 19 authority ~~board~~. The fee for provisional licensure shall be
 20 set by rule of the licensing authority ~~the board~~ but may not
 21 exceed ~~\$200~~ \$125. The fee required in this subsection shall be
 22 nonrefundable and in addition to the fee required by
 23 subsection (1). This provisional license may be renewed no
 24 more than one time.

25 Section 79. Section 470.011, Florida Statutes, is
 26 renumbered as section 497.374, Florida Statutes, and amended
 27 to read:

28 497.374 ~~470.011~~ Funeral directing; licensure as a
 29 funeral director by endorsement; licensure ~~registration~~ of a
 30 temporary funeral director.--

31 (1) The licensing authority ~~department~~ shall issue a

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1 license by endorsement to practice funeral directing to an
2 applicant who has remitted a fee set by rule of the licensing
3 authority ~~the board~~ not to exceed \$200 and who ~~the board~~
4 certifies:

5 (a) Has completed the application form and remitted a
6 nonrefundable application fee set by rule of the licensing
7 authority ~~the board~~ not to exceed ~~\$200~~\$50.

8 (b)1. Holds a valid license to practice funeral
9 directing in another state of the United States, provided
10 that, when the applicant secured ~~his or her~~ or his original
11 license, the requirements for licensure were substantially
12 equivalent to or more stringent than those existing in this
13 state; or

14 2. Meets the qualifications for licensure in s.
15 497.373 ~~470.009~~ and has, within 10 years prior to the date of
16 application, successfully completed a state, regional, or
17 national examination in mortuary science, which, as determined
18 by rule of the licensing authority ~~board~~, is substantially
19 equivalent to or more stringent than the examination given by
20 the licensing authority ~~department~~.

21 (c) Has submitted proof of completion of a licensing
22 authority approved ~~board-approved~~ course on communicable
23 diseases.

24 (2) The licensing authority ~~department~~ shall not issue
25 a license by endorsement or a temporary license ~~registration~~
26 to any applicant who is under investigation or prosecution in
27 any jurisdiction for acts which would constitute a violation
28 of this chapter until such time as the investigation or
29 prosecution is complete.

30 (3) State, regional, or national examinations and
31 requirements for licensure in another state shall be presumed

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1 to be substantially equivalent to or more stringent than the
2 examination and requirements in this state unless found
3 otherwise by rule of the licensing authority board.

4 (4) Each applicant for licensure by endorsement must
5 pass the examination on local, state, and federal laws and
6 rules relating to the disposition of dead human bodies which
7 is required under s. 497.373 ~~470.009~~ and which shall be given
8 by the licensing authority department.

9 (5) ~~There may be adopted~~ ~~The board may adopt~~ rules
10 authorizing an applicant who has met the requirements of
11 paragraphs (1)(b) and (c) and who is awaiting an opportunity
12 to take the examination required by subsection (4) to obtain a
13 license register as a temporary funeral director. A licensed
14 ~~registered~~ temporary funeral director may work as a funeral
15 director in a licensed funeral establishment under the general
16 supervision of a ~~licensed~~ funeral director licensed under
17 subsection (1) or s. 497.373. Such license registration shall
18 expire 60 days after the date of the next available
19 examination required under subsection (4); however, the
20 temporary license registration may be renewed one time under
21 the same conditions as initial issuance. The fee for initial
22 issuance or renewal of a temporary license under this
23 subsection registration or renewal of registration as a
24 temporary funeral director shall be set by rule of the
25 licensing authority ~~the board~~ but may not exceed ~~\$200~~ \$125.
26 The fee required in this subsection shall be nonrefundable and
27 in addition to the fee required in subsection (1).

28 Section 80. Section 470.012, Florida Statutes, is
29 renumbered as section 497.375, Florida Statutes, and amended
30 to read:

31 497.375 ~~470.012~~ Funeral directing; licensure

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1 ~~Registration~~ of a funeral director intern.--

2 (1) Any person desiring to become a funeral director
3 intern shall make application ~~to the department~~ on forms as
4 required by rule ~~provided by the department~~, together with a
5 nonrefundable fee as determined by rule of the licensing
6 authority but not to exceed ~~\$200~~\$100. The application shall
7 indicate the name and address of the licensed funeral director
8 licensed under s. 497.373 or s. 497.374(1) under whose
9 supervision the intern will receive training and the name of
10 the licensed funeral establishment where such training is to
11 be conducted. The funeral director intern shall intern under
12 the direct supervision of a licensed funeral director who has
13 an active, valid license under s. 497.373 or s. 497.374(1).

14 (2) Rules shall be adopted ~~The board shall adopt rules~~
15 establishing a funeral director internship program and
16 criteria for funeral director intern training agencies and
17 supervisors. Any funeral establishment where funeral directing
18 is conducted may apply to the licensing authority ~~board~~ for
19 approval as a funeral director intern training agency.

20 (3) A funeral establishment designated as a funeral
21 director intern training agency may not exact a fee from any
22 person obtaining intern training at such funeral
23 establishment.

24 Section 81. Section 470.013, Florida Statutes, is
25 renumbered as section 497.376, Florida Statutes, and amended
26 to read:

27 497.376 ~~470.013~~ License as funeral director and
28 embalmer permitted; display of license.--

29 (1) Nothing in this chapter may be construed to
30 prohibit a person from holding a license as an embalmer and a
31 license as a funeral director at the same time.

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1 (2) There shall be adopted ~~The board shall adopt~~ rules
 2 which require each license issued under this chapter to be
 3 displayed in such a manner as to make it visible to the public
 4 and to facilitate inspection by the licensing authority
 5 ~~department~~. However, each licensee shall permanently affix a
 6 recent photograph of the licensee to each displayed license
 7 issued to that licensee as a funeral director or embalmer.

8 Section 82. Section 470.014, Florida Statutes, is
 9 renumbered as section 497.377, Florida Statutes, and amended
 10 to read:

11 497.377 ~~470.014~~ Concurrent internships.--The
 12 internship requirement for embalmers and funeral directors may
 13 be served concurrently pursuant to rules adopted by the
 14 licensing authority ~~board~~.

15 Section 83. Section 470.015, Florida Statutes, is
 16 renumbered as section 497.378, Florida Statutes, and amended
 17 to read:

18 497.378 ~~470.015~~ Renewal of funeral director and
 19 embalmer licenses.--

20 (1) There shall be renewed ~~The department shall renew~~
 21 a funeral director or embalmer license upon receipt of the
 22 renewal application and fee set by the licensing authority
 23 ~~board~~ not to exceed \$250. The licensing authority ~~board~~ may
 24 prescribe by rule continuing education requirements of up to
 25 12 classroom hours and may by rule establish criteria for
 26 accepting alternative nonclassroom continuing education on an
 27 hour-for-hour basis, in addition to a licensing
 28 authority-approved ~~board-approved~~ course on communicable
 29 diseases that includes the course on human immunodeficiency
 30 virus and acquired immune deficiency syndrome required by s.
 31 497.367 ~~455.2226~~, for the renewal of a funeral director or

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1 embalmer license. The rule board may provide for the waiver of
2 continuing education requirements in circumstances that would
3 justify the waiver, such as hardship, disability, or illness.
4 The continuing education requirement is not required after
5 July 1, 1996, for a licensee who is over the age of 75 years
6 if the licensee does not qualify as the sole person in charge
7 of an establishment or facility.

8 (2) The licensing authority department shall adopt
9 rules establishing a procedure for the biennial renewal of
10 licenses.

11 (3) The licensing authority board shall adopt rules to
12 establish requirements for the advertising of continuing
13 education courses.

14 Section 84. Section 470.016, Florida Statutes, is
15 renumbered as section 497.379, Florida Statutes, and amended
16 to read:

17 497.379 ~~470.016~~ Inactive status.--

18 (1) A funeral director or embalmer license that has
19 become inactive may be reactivated under s. 497.378 ~~470.015~~
20 upon application to the licensing authority department. The
21 licensing authority board shall prescribe by rule continuing
22 education requirements as a condition of reactivating a
23 license. The continuing education requirements for
24 reactivating a license may not exceed 12 classroom hours, and
25 the licensing authority board may by rule establish criteria
26 for accepting alternative nonclassroom continuing education on
27 an hour-for-hour basis, in addition to a licensing
28 authority-approved ~~board-approved~~ course on communicable
29 diseases, for each year the license was inactive.

30 (2) The licensing authority board shall prescribe by
31 rule an application fee for inactive status, a renewal fee for

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1 inactive status, a delinquency fee, and a fee for reactivation
2 of a license. None of these fees may exceed the biennial
3 renewal fee established by the licensing authority board for
4 an active license.

5 (3) The licensing authority department may not
6 reactivate a license unless the inactive or delinquent
7 licensee has paid any applicable biennial renewal or
8 delinquency fee, or both, and a reactivation fee.

9 Section 85. Section 470.024, Florida Statutes, is
10 renumbered as section 497.380, Florida Statutes, and amended
11 to read:

12 497.380 ~~470.024~~ Funeral establishment; licensure.--

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

23 (2) Each licensed funeral establishment may operate a
24 visitation chapel at a separate location within the county in
25 which the funeral establishment is located. A visitation
26 chapel must be a facility of not less than 500 square feet and
27 not more than 700 square feet and may be operated only when a
28 licensed funeral director is present at the facility. A
29 visitation chapel may be used only for visitation of a
30 deceased human body and may not be used for any other activity
31 permitted by this chapter.

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1 (3) No person may conduct, maintain, manage, or
2 operate a funeral establishment unless a funeral an
3 establishment operating license has been issued under this
4 chapter by the department for that funeral establishment.

5 (4) Application for a funeral establishment license
6 shall be made on forms and pursuant to procedures specified by
7 rule furnished by the department, shall be accompanied by a
8 nonrefundable fee not to exceed \$300 as set by licensing
9 authority board rule, and shall include the name of the
10 licensed funeral director who is in charge of that
11 establishment.

12 (5) A funeral establishment license shall be renewable
13 biennially pursuant to procedures, and upon payment of a
14 nonrefundable fee not to exceed \$300, as set by licensing
15 authority board rule. The licensing authority board may also
16 establish by rule a delinquency fee not to exceed \$50 per day.

17 (6) The practice of embalming done at a funeral
18 establishment shall only be practiced by an embalmer licensed
19 under this chapter.

20 (7) Each licensed funeral establishment shall have one
21 full-time funeral director in charge and shall have a licensed
22 funeral director reasonably available to the public during
23 normal business hours for that establishment. The full-time
24 funeral director in charge must have an active license and may
25 not be the full-time funeral director in charge of any other
26 funeral establishment or of any other direct disposal
27 establishment.

28 (8) The issuance of a license to operate a funeral
29 establishment to a person or entity who is not individually
30 licensed as a funeral director does not entitle the person to
31 practice funeral directing.

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1 (9) Each funeral establishment located at a specific
2 address shall be deemed to be a separate entity and shall
3 require separate licensing and compliance with the
4 requirements of this chapter. A funeral establishment may not
5 be operated at the same location as any other funeral
6 establishment or direct disposal establishment unless such
7 establishments were licensed as colocated establishments on
8 October 1, 1993.

9 (10) Every funeral establishment licensed under this
10 chapter shall at all times be subject to the inspection of all
11 its buildings, grounds, and vehicles used in the conduct of
12 its business, by the department or any of its designated
13 representatives or agents, or local or Department of Health
14 inspectors. The licensing authority board shall by rule
15 establish requirements for inspection of funeral
16 establishments.

17 (11) The licensing authority board shall set by rule
18 an annual inspection fee not to exceed ~~\$300~~^{\$100}, payable upon
19 application for licensure and upon each renewal of such
20 license.

21 (12) A change in ownership of a funeral establishment
22 shall be promptly reported pursuant to procedures established
23 by rule to the department and shall require the relicensure of
24 the funeral establishment, including reinspection and payment
25 of applicable fees.

26 (13) Each application for a funeral establishment
27 license shall identify every person with the ability to direct
28 the management or policies of the establishment and must
29 identify every person having more than a 10-percent ownership
30 interest in the establishment or the business or corporation
31 which owns the establishment. The licensing authority board

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1 may deny, suspend, or revoke the license if any person
2 identified in the application has been or thereafter is ever
3 ~~been~~ disciplined by a regulatory agency in any jurisdiction
4 for any offense that would constitute a violation of this
5 chapter. The licensing authority board may deny, suspend, or
6 revoke the license if any person identified in the application
7 has ever been convicted or found guilty of, or entered a plea
8 of nolo contendere to, regardless of adjudication, a crime in
9 any jurisdiction that directly relates to the ability to
10 operate a funeral establishment.

11 (14) Each funeral establishment must display at the
12 public entrance the name of the establishment and the name of
13 the full-time funeral director in charge. A funeral
14 establishment must transact its business under the name by
15 which it is licensed.

16 Section 86. Section 470.026, Florida Statutes, is
17 renumbered as section 497.381, Florida Statutes, and amended
18 to read:

19 497.381 ~~470.026~~ Solicitation of goods or services.--

20 (1) The licensing authority board shall adopt rules
21 regulating the solicitation of goods or services by licensees
22 ~~or registrants~~.

23 (2) The licensing authority board shall regulate such
24 solicitation to protect the public from solicitation which is
25 intimidating, overreaching, ~~vexatious~~, fraudulent, or
26 misleading; which utilizes undue influence; or which takes
27 undue advantage of a person's ignorance or emotional
28 vulnerability.

29 (3) The licensing authority board shall regulate such
30 solicitation which comprises an uninvited invasion of personal
31 privacy. It is the express finding of the Legislature that the

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1 public has a high expectation of privacy in one's personal
2 residence, and the licensing authority ~~board~~ by rule may
3 restrict the hours or otherwise regulate such solicitation in
4 the personal residence of a person unless the solicitation has
5 been previously and expressly requested by the person
6 solicited.

7 (4) Nothing in this chapter may be construed to
8 restrict the right of a person to lawfully advertise, direct
9 mail, or otherwise communicate in a manner not within the
10 definition of solicitation or to solicit the business of
11 anyone responding to such communication or otherwise
12 initiating discussion of the goods or services being offered.

13 (5) At-need solicitation of funeral merchandise or
14 services is prohibited. No funeral director or direct disposer
15 or her or his agent or representative may contact the family
16 or next of kin of a deceased person to sell services or
17 merchandise unless the funeral director or direct disposer or
18 her or his agent or representative has been initially called
19 or contacted by the family or next of kin of such person and
20 requested to provide her or his services or merchandise.

21 Section 87. Section 470.029, Florida Statutes, is
22 renumbered as section 497.382, Florida Statutes, and amended
23 to read:

24 497.382 ~~470.029~~ Reports of cases embalmed and bodies
25 handled.--

26 (1) Each funeral establishment, direct disposal
27 establishment, cinerator facility, and centralized embalming
28 facility shall report on a form prescribed and furnished by
29 the licensing authority ~~department~~ the name of the deceased
30 and such other information as may be required with respect to
31 each dead human body embalmed or otherwise handled by the

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1 establishment or facility. Such forms shall be signed by the
 2 embalmer who performs the embalming, if the body is embalmed,
 3 and the funeral director in charge of the establishment or
 4 facility or by the direct disposer who disposes of the body.
 5 The licensing authority board shall prescribe by rule the
 6 procedures in submitting such documentation. Reports required
 7 by this subsection shall be filed by the 20th 10th day of each
 8 month for final dispositions handled the preceding month.

9 (2) Funeral directors performing disinterments shall
 10 report, using a form and procedures specified by rule on a
 11 ~~form prescribed and furnished by the department~~, the name of
 12 the deceased and such other information as may be required by
 13 rule with respect to each dead human body disinterred.

14 Section 88. Section 470.0294, Florida Statutes, is
 15 renumbered as section 497.383, Florida Statutes, and amended
 16 to read:

17 497.383 470.0294 Additional rights of legally
 18 authorized persons.--

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

31 (2) Any ambiguity or dispute concerning the right of

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1 any legally authorized person to provide authorization under
 2 this chapter or the validity of any documentation purporting
 3 to grant that authorization shall be resolved by a court of
 4 competent jurisdiction.

5 Section 89. Section 470.0295, Florida Statutes, is
 6 renumbered as section 497.384, Florida Statutes, and amended
 7 to read:

8 497.384 ~~470.0295~~ Disinterment; transportation;
 9 authorization and notification.--

10 (1) The disinterment and reinterment of human remains
 11 shall require the physical presence of a licensed funeral
 12 director, unless the reinterment is to be made in the same
 13 cemetery.

14 (2) In order to ensure that any disinterment or
 15 transportation of a dead human body is conducted in a manner
 16 that properly protects the public health, safety, and welfare,
 17 the licensing authority ~~board~~ may adopt rules to regulate the
 18 disinterment and transportation of human remains.

19 (3) The funeral director shall obtain written
 20 authorization from a legally authorized person or a court of
 21 competent jurisdiction prior to the disinterment and
 22 reinterment of a dead human body.

23 (4) Notification must be provided licensing authority
 24 ~~to the board and department~~ as provided in s. 497.382 ~~470.029~~.

25 (5) The removal of human remains from a designated
 26 temporary storage area to a place of permanent burial within a
 27 cemetery shall not be considered a disinterment or
 28 reinterment.

29 Section 90. Section 470.0301, Florida Statutes, is
 30 renumbered as section 497.385, Florida Statutes, and amended
 31 to read:

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1 ~~497.385 470.0301~~ Removal services; refrigeration
 2 facilities; centralized embalming facilities.--In order to
 3 ensure that the removal, refrigeration, and embalming of all
 4 dead human bodies is conducted in a manner that properly
 5 protects the public's health and safety, the licensing
 6 authority board shall adopt rules to provide for the licensure
 7 registration of removal services, refrigeration facilities,
 8 and centralized embalming facilities operated independently of
 9 funeral establishments, direct disposal establishments, and
 10 cinerator facilities.

11 (1) REMOVAL SERVICES AND REFRIGERATION SERVICES.--

12 (a) Application for licensure registration of a
 13 removal service or a refrigeration service shall be made using
 14 forms and procedures as specified by rule ~~on forms furnished~~
 15 ~~by the department~~, shall be accompanied by a nonrefundable fee
 16 not to exceed \$300 as set by licensing authority board rule,
 17 and shall include the name of the business owner, manager in
 18 charge, business address, and copies of occupational and other
 19 local permits.

20 (b) The licensing authority board shall set by rule
 21 requirements for licensure registration of removal services
 22 and refrigeration services.

23 (c) The licensure Registration shall be renewed
 24 biennially pursuant to procedures and upon payment of a
 25 nonrefundable fee not to exceed \$300 as set by licensing
 26 authority board rule. The licensing authority board may also
 27 establish by rule a late renewal penalty fee not to exceed \$50
 28 per day. Any licensure registration not renewed within 30 days
 29 after its renewal date shall expire without further action ~~by~~
 30 ~~the department~~.

31 (d) Each business located at a specific address shall

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1 be deemed to be a separate entity and shall require separate
2 licensure registration and compliance with the requirements of
3 this chapter.

4 (e) Every licensee registrant under this section shall
5 at all times be subject to the inspection of all its
6 buildings, grounds, and vehicles used in the conduct of its
7 business, by the department or any of its designated
8 representatives or agents, or local or Department of Health
9 inspectors. The licensing authority board shall by rule
10 establish requirements for inspection of removal services and
11 refrigeration services.

12 (f) The licensing authority board shall set by rule an
13 annual inspection fee not to exceed ~~\$300~~\$100, payable upon
14 application for licensure registration and upon each renewal
15 of such licensure registration.

16 (g) A change in ownership shall be promptly reported
17 using forms and procedures specified by rule to the department
18 and may require the relicensure of the licensee registrant,
19 including reinspection and payment of applicable fees, as
20 required by rule.

21 (h) The licensing authority board may deny, suspend,
22 or revoke the licensure registration if any person identified
23 in the application has ever been disciplined by a regulatory
24 agency in any jurisdiction for any offense that would
25 constitute a violation of this chapter. The licensing
26 authority board may deny, suspend, or revoke the license of
27 registration if any person identified in the application who
28 has been convicted or found guilty of, or entered a plea of
29 nolo contendere to, regardless of adjudication, a crime in any
30 jurisdiction that directly relates to the ability to operate a
31 removal service or refrigeration service.

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1 (i) Each business must display at the public entrance
 2 the name of the establishment and the name of the full-time
 3 manager in charge. Each licensee ~~registrant~~ must transact its
 4 business under the name by which it is licensed ~~registered~~
 5 with the licensing authority ~~department~~.

6 (j) No person may conduct, maintain, manage, or
 7 operate a removal service or refrigeration service unless
 8 licensed ~~registration~~ for such service under this chapter ~~has~~
 9 ~~been issued by the department~~.

10 (k) Such removal services and refrigeration services
 11 may not enter into removal or refrigeration contracts with the
 12 general public.

13 (2) CENTRALIZED EMBALMING FACILITIES.--In order to
 14 ensure that all funeral establishments have access to
 15 embalming facilities that comply with all applicable health
 16 and safety requirements, the licensing authority ~~board~~ shall
 17 adopt rules to provide for the licensure ~~registration~~ and
 18 operation of centralized embalming facilities and shall
 19 require, at a minimum, the following:

20 (a) All centralized embalming facilities shall contain
 21 all of the equipment and meet all of the requirements that a
 22 preparation room located in a funeral establishment is
 23 required to meet, but such facilities shall not be required to
 24 comply with any of the other requirements for funeral
 25 establishments, as set forth in s. 497.380 ~~470.024~~.

26 (b) Each licensed centralized embalming facility shall
 27 have at least one full-time embalmer in charge. The full-time
 28 embalmer in charge must have an active license and may not be
 29 the full-time embalmer in charge, full-time funeral director
 30 in charge, or full-time direct disposer in charge of any other
 31 establishment licensed under this chapter.

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1 (c) Any person, regardless of whether such person is
2 otherwise regulated by this chapter, may own such a facility,
3 provided that such facility is operated in accordance with the
4 rules established by the licensing authority board.

5 (d) A centralized embalming facility may only provide
6 services to funeral establishments.

7 (e) The practice of embalming done at a centralized
8 embalming facility shall only be practiced by an embalmer
9 licensed under this chapter and shall be provided only to
10 licensed funeral establishments.

11 (f) Application for licensure registration of a
12 centralized embalming facility shall be made utilizing forms
13 and procedures prescribed by rule ~~on forms furnished by the~~
14 ~~department~~ and shall be accompanied by a nonrefundable fee not
15 to exceed \$300 as set by licensing authority board rule, and
16 licensure registration shall be renewed biennially pursuant to
17 procedures and upon payment of a nonrefundable fee not to
18 exceed \$300 as set by licensing authority board rule. The
19 licensing authority board may also establish by rule a late
20 fee not to exceed \$50 per day. Any licensure registration not
21 renewed within 30 days after the renewal date shall expire
22 without further action by the department.

23 (g) The licensing authority board shall set by rule an
24 annual inspection fee not to exceed ~~\$300~~\$100, payable upon
25 application for licensure registration and upon renewal of
26 such licensure registration.

27 (h) The licensing authority board shall, by rule,
28 establish operating procedures which shall require, at a
29 minimum, that centralized embalming facilities maintain a
30 system of identification of human remains received for
31 embalming.

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1 Section 91. Section 470.0315, Florida Statutes, is
2 renumbered as section 497.386, Florida Statutes, and amended
3 to read:

4 497.386 ~~470.0315~~ Storage, preservation, and
5 transportation of human remains.--

6 (1) A person may not store or maintain human remains
7 at any establishment or facility except an establishment or
8 facility licensed ~~or registered~~ under this chapter or a health
9 care facility, medical examiner's facility, morgue, or
10 cemetery holding facility.

11 (2) A dead human body may not be held in any place or
12 in transit over 24 hours after death or pending final
13 disposition unless the body is maintained under refrigeration
14 at a temperature of 40 degrees Fahrenheit or below or is
15 embalmed or otherwise preserved in a manner approved by the
16 licensing authority board in accordance with the provisions of
17 this chapter.

18 (3) A dead human body transported by common carrier or
19 any agency or individual authorized to carry dead human bodies
20 must be placed in a carrying container adequate to prevent the
21 seepage of fluids and escape of offensive odors. A dead human
22 body may be transported only when accompanied by a properly
23 completed burial-transit permit issued in accordance with the
24 provisions of chapter 382.

25 (4) The licensing authority board shall establish by
26 rule the minimal standards of acceptable and prevailing
27 practices for the handling and storing of dead human bodies,
28 provided that all human remains transported or stored must be
29 completely covered and at all times treated with dignity and
30 respect.

31 (5) A person who violates any provision of this

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1 section commits a misdemeanor of the first degree, punishable
2 as provided in s. 775.082 or s. 775.083.

3 Section 92. Section 470.032, Florida Statutes, is
4 renumbered as section 497.387, Florida Statutes, and amended
5 to read:

6 497.387 ~~470.032~~ Unlawful to remove or embalm body
7 without consent of proper official when crime is
8 suspected.--It is unlawful for a licensee under this chapter
9 ~~or registrant~~ to remove or embalm a dead human body when she
10 or he has information indicating crime or violence of any sort
11 in connection with the cause of death until permission of the
12 medical examiner or other lawfully authorized official has
13 first been obtained.

14 Section 93. Section 470.0355, Florida Statutes, is
15 renumbered as section 497.388, Florida Statutes, and amended
16 to read:

17 497.388 ~~470.0355~~ Identification of human remains.--

18 (1) PRIOR TO FINAL DISPOSITION.--

19 (a) The licensee ~~or registrant~~ in charge of the final
20 disposition of dead human remains shall, prior to final
21 disposition of such dead human remains, affix on the ankle or
22 wrist of the deceased, and ~~or~~ in the casket or alternative
23 container or cremation container, proper identification of the
24 dead human remains. The identification or tag shall be encased
25 in or consist of durable and long-lasting material containing
26 the name, date of birth, and date of death, ~~and social~~
27 ~~security number~~ of the deceased, if available. If the dead
28 human remains are cremated, proper identification shall be
29 placed in the container or urn containing the remains.

30 (b)(2) Any licensee ~~or registrant~~ responsible for
31 removal of dead human remains to any establishment, facility,

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1 or location shall ensure that the remains are identified by a
2 tag or other means of identification that is affixed to the
3 ankle or wrist of the deceased at the time the remains are
4 removed from the place of death or other location.

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

8 (2) IN UNLICENSED CEMETERIES.--The identification of
9 human remains interred in an unlicensed cemetery shall be the
10 responsibility of the licensed funeral establishment in charge
11 of the funeral arrangements for the deceased person. The
12 licensed funeral establishment in charge of the funeral
13 arrangements for the interment in an unlicensed cemetery of
14 human remains shall place on the outer burial container,
15 cremation interment container, or other container or on the
16 inside of a crypt or niche a tag or permanent identifying mark
17 containing the name of the decedent and the date of death, if
18 available. The materials and locations of the tag or mark
19 shall be more specifically described by rule of the licensing
20 authority.

21 (3) IN LICENSED CEMETERIES.--Human remains at licensed
22 cemeteries shall be identified as follows:

23 (a) Each licensed cemetery shall place on the outer
24 burial container, cremation interment container, or other
25 container or on the inside of a crypt or niche a tag or
26 permanent identifying marker containing the name of the
27 decedent and the date of death, if available. The materials
28 and the location of the tag or marker shall be more
29 specifically described by rule of the board.

30 (b) Each licensed cemetery may rely entirely on the
31 identity stated on the burial transit permit or on the

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1 identification supplied by a person licensed under this
2 chapter to establish the identity of the dead human remains
3 delivered by such person for burial and shall not be liable
4 for any differences between the identity shown on the burial
5 transit permit or identification and the actual identity of
6 the dead human remains delivered by such person and buried in
7 the cemetery.

8 (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal
9 establishments shall establish a system of identification of
10 human remains received which shall be designed to track the
11 identity of the remains from the time of receipt until
12 delivery of the remains to the authorized persons. This is in
13 addition to the requirements for identification of human
14 remains set forth in subsection (1). A copy of the
15 identification procedures shall be available, upon request, to
16 the department and legally authorized persons.

17 Section 94. Section 470.0375, Florida Statutes, is
18 renumbered as section 497.389, Florida Statutes, and amended
19 to read:

20 ~~497.389~~ ~~470.0375~~ Funeral establishments; cash advance
21 accounts; escrow refund accounts.--

22 (1) Funeral establishments may elect to maintain
23 special, segregated bank accounts to be used in conjunction
24 with making cash advances to vendors. The money in such
25 accounts may be used by the funeral establishments to pay
26 third-party vendors when such amounts must be paid before the
27 funeral establishment has been paid by the purchaser.

28 (2) Funeral establishments may elect to maintain
29 special, segregated escrow accounts to be used in conjunction
30 with making cash refunds to their purchasers. A funeral
31 establishment may deposit in such accounts any amounts paid by

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1 its purchasers that were in excess of the actual funeral costs
2 incurred and cash advances made by the funeral establishment.

3 Section 95. Section 470.038, Florida Statutes, is
4 renumbered as section 497.390, Florida Statutes, and amended
5 to read:

6 497.390 ~~470.038~~ Reciprocity.--In order to ensure that
7 funeral directors, embalmers, and direct disposers who are
8 licensed ~~or registered~~ in this state may be considered for
9 licensure or registration in other jurisdictions, the
10 licensing authority board may enter into reciprocity
11 agreements with other jurisdictions.

12 Section 96. Section 470.039, Florida Statutes, is
13 renumbered as section 497.391, Florida Statutes, and amended
14 to read:

15 497.391 ~~470.039~~ Exceptions.--

16 (1) Nothing in this chapter may be construed to limit
17 the sale of caskets, alternative containers, outer burial
18 containers, or funeral merchandise by any person on an at-need
19 basis.

20 (2) Nothing in this chapter may be construed to
21 override the written instructions or wishes of the deceased as
22 to how ~~his or her~~ or his body is to be disposed of, if such
23 instructions are reasonably available at the time of death.

24 Section 97. Section 470.0395, Florida Statutes, is
25 renumbered as section 497.392, Florida Statutes, and amended
26 to read:

27 497.392 ~~470.0395~~ Branch chapels.--Notwithstanding the
28 provisions of s. 497.380 ~~470.024~~, any licensed establishment
29 operating a branch chapel on June 30, 1979, in accordance with
30 the law then in effect, as determined by the licensing
31 authority board, may continue to operate such branch chapel

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1 for the sole and exclusive purpose of providing and holding
2 funeral services.

3 Section 98. Part IV of chapter 497, Florida Statutes,
4 consisting of sections 497.450, 497.451, 497.452, 497.453,
5 497.454, 497.455, 497.456, 497.457, 497.458, 497.459, 497.460,
6 497.461, 497.462, 497.463, 497.464, 497.465, 497.466, and
7 497.467, is created to read:

8 PART IV

9 PRENEED SALES

10 Section 99. Section 497.401, Florida Statutes, is
11 renumbered as section 497.450, Florida Statutes, to read:

12 497.450 ~~497.401~~ Preneed sales; chapter exclusive;
13 applicability of other laws.--Except as provided in this
14 chapter, preneed funeral merchandise or service contract
15 businesses and preneed burial merchandise or service contract
16 businesses shall be governed by this chapter and shall be
17 exempt from all provisions of the Florida Insurance Code.

18 Section 100. Section 497.403, Florida Statutes, is
19 renumbered as section 497.451, Florida Statutes, to read:

20 497.451 ~~497.403~~ Insurance business not
21 authorized.--Nothing in the Florida Insurance Code or this
22 chapter shall be deemed to authorize any preneed funeral
23 merchandise or service contract business or any preneed burial
24 merchandise or service business to transact any insurance
25 business, other than that of preneed funeral merchandise or
26 service insurance or preneed burial merchandise or service
27 insurance, or otherwise to engage in any other type of
28 insurance unless it is authorized under a certificate of
29 authority issued under the provisions of the Florida Insurance
30 Code. Any insurance business transacted under this section
31 must comply with the provisions of s. 626.785.

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1 Section 101. Section 497.405, Florida Statutes, is
2 renumbered as section 497.452, Florida Statutes, and amended
3 to read:

4 497.452 ~~497.405~~ Preneed license ~~Certificate of~~
5 ~~authority~~ required.--

6 (1)(a) No person, including any cemetery exempt under
7 s. 497.260 ~~497.003~~, may sell, advertise to sell, or make an
8 arrangement for a preneed contract without first having a
9 valid preneed license ~~certificate of authority~~.

10 (b) No person, including any cemetery exempt under s.
11 497.260 ~~497.003~~, may sell, advertise to sell, or make an
12 arrangement for services, merchandise, or burial rights on a
13 preneed basis unless such person is authorized pursuant to
14 this chapter to provide such services, merchandise, or burial
15 rights on an at-need basis.

16 (2)(a) No person may receive any funds for payment on
17 a preneed contract who does not hold a valid preneed license
18 ~~certificate of authority~~.

19 (b) The provisions of paragraph (a) do not apply to a
20 trust company operating pursuant to chapter 660, to a national
21 or state bank holding trust powers, or to a federal or state
22 savings and loan association having trust powers which
23 company, bank, or association receives any money in trust
24 pursuant to the sale of a preneed contract.

25 (c) The provisions of paragraph (a) do not apply to
26 any Florida corporation existing under chapter 607 acting as a
27 servicing agent hereunder in which the stock of such
28 corporation is held by 100 or more persons licensed pursuant
29 to part III of this chapter ~~470~~, provided no one stockholder
30 holds, owns, votes, or has proxies for more than 5 percent of
31 the issued stock of such corporation; provided the corporation

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1 has a blanket fidelity bond, covering all employees handling
2 the funds, in the amount of \$50,000 or more issued by a
3 licensed insurance carrier in this state; and provided the
4 corporation processes the funds directly to and from the
5 trustee within the applicable time limits set forth in this
6 chapter. The department may require any person claiming that
7 the provisions of this paragraph exempt it from the provisions
8 of paragraph (a) to demonstrate to the satisfaction of the
9 department that it meets the requirements of this paragraph.

10 (3) No person may obtain a preneed license ~~certificate~~
11 ~~of authority~~ under this chapter for the preneed sale of
12 merchandise or services unless such person or its agent, in
13 the case of a corporate entity, holds a license as a funeral
14 establishment, ~~or cemetery company, or registration as a~~
15 direct disposal establishment, or monument establishment ~~under~~
16 ~~chapter 470.~~

17 (4) The provisions of this section do not apply to
18 religious-institution-owned cemeteries exempt under s.
19 497.260(1)(d) ~~497.003(1)(d)~~, in counties with a population of
20 at least 960,000 persons on July 1, 1996, with respect to the
21 sale to the religious institution's members and their families
22 of interment rights, mausoleums, crypts, cremation niches,
23 cremation interment containers, vaults, liners, urns,
24 memorials, vases, foundations, memorial bases, floral
25 arrangements, monuments, markers, engraving, and the opening
26 and closing of interment rights, mausoleums, crypts, ~~and~~
27 cremation niches, and cremation interment containers, if such
28 cemeteries have engaged in the sale of preneed contracts prior
29 to October 1, 1993, and maintain a positive net worth at the
30 end of each fiscal year of the cemetery.

31 Section 102. Section 497.407, Florida Statutes, is

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1 renumbered as section 497.453, Florida Statutes, and amended
2 to read:

3 (Substantial rewording of section. See
4 s. 497.407, F.S., for present text.)
5 497.453 Application for preneed license, procedures
6 and criteria; renewal; reports.--

7 (1) PRENEED LICENSE APPLICATION PROCEDURES.--

8 (a) A person seeking a license to enter into preneed
9 contracts shall apply for such licensure using forms
10 prescribed by rule.

11 (b) The application shall require the name, business
12 address, residence address, date and place of birth or
13 incorporation, and business phone number, of applicant and all
14 principals of applicant. The application shall require the
15 applicant's social security number, or if the applicant is an
16 entity, its federal tax identification number.

17 (c) The application may require information as to the
18 applicant's financial resources.

19 (d) The application may require information as to the
20 educational and employment history of an individual applicant;
21 and as to applicants that are not natural persons, the
22 business and employment history of the applicant and
23 principals of applicant.

24 (e) The application shall require the applicant to
25 disclose whether the applicant or any of applicant's
26 principals has ever been convicted or found guilty of, or
27 entered a plea of no contest to, regardless of adjudication,
28 any crime in any jurisdiction.

29 (f) The application shall require the applicant to
30 disclose whether the applicant or any of applicant's
31 principals has ever had a license or the authority to practice

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1 a profession or occupation refused, suspended, fined, denied,
2 or otherwise acted against or disciplined, by the licensing
3 authority of any jurisdiction. A licensing authority's
4 acceptance of a relinquishment of licensure, stipulation,
5 consent order, or other settlement, offered in response to or
6 in anticipation of the filing of charges against the license,
7 shall be construed as action against the license.

8 (g) The application shall require the applicant and
9 its principals to provide fingerprints in accordance with part
10 I of this chapter.

11 (h) The application shall state the name and license
12 number of the funeral establishment, cemetery company, direct
13 disposal establishment, or monument establishment, under whose
14 license the preneed application is made.

15 (i) The application shall state the types of preneed
16 contracts proposed to be written.

17 (j) The application shall disclose the existence of
18 all preneed contracts for service or merchandise entered into
19 by the applicant, or by any other entity under common control
20 with the applicant, without or prior to authorization under
21 this section or predecessors to this section. As to each such
22 contract the applicant shall disclose the name and address of
23 the contract purchaser, the status of the contract, and what
24 steps or measures the applicant has taken to ensure
25 performance of unfulfilled contracts, setting forth the
26 treatment and status of funds received from the customer in
27 regard to the contract, and stating the name and address of
28 any institution where such funds are deposited and the number
29 used by the institution to identify the account. With respect
30 to contracts entered into before January 1, 1983, an
31 application to issue or renew a preneed license may not be

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1 denied solely on the basis of such disclosure. The purchaser
2 of any such contract may not be required to liquidate the
3 account if such account was established before July 1, 1965.
4 Information disclosed may be used by the licensing authority
5 to notify the contract purchaser and the institution in which
6 such funds are deposited should the holder of a preneed be
7 unable to fulfill the requirements of the contract.

8 (k) The application shall require the applicant to
9 demonstrate that applicant complies and will comply with all
10 requirements for preneed contract licensure under this
11 chapter.

12 (l) The application may require any other information
13 considered necessary by the department or board to meet its
14 responsibilities under this chapter.

15 (m) The application shall be sworn to and signed by
16 the applicant if a natural person, or by the president of an
17 applicant that is not a natural person.

18 (n) The application shall be accompanied by a
19 nonrefundable fee as determined by licensing authority rule
20 but not to exceed \$500.

21 (2) ACTION CONCERNING APPLICATIONS.--A duly completed
22 application for licensure under this section, accompanied by
23 the required fees, shall be approved and license issued, if
24 the licensing authority determines that the following
25 conditions are met:

26 (a) The application is made by a funeral
27 establishment, cemetery company, direct disposal
28 establishment, or monument establishment, or on behalf of one
29 of the preceding licensees by its agent in the case of a
30 corporate entity, licensed and in good standing under this
31 chapter.

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1 (b) Applicant meets net worth requirements specified
2 by rule of the licensing authority.

3 (c) Applicant has and will have the ability to
4 discharge her or his liabilities as they become due in the
5 normal course of business, and has and will have sufficient
6 funds available during the calendar year to perform her or his
7 obligations under her or his contracts.

8 (d) If the applicant or any entity under common
9 control with the applicant has entered into preneed contracts
10 prior to being authorized to do so under the laws of this
11 state:

12 1. The licensing authority determines that adequate
13 provision has been made to ensure the performance of such
14 contracts.

15 2. The licensing authority determines that the
16 improper sale of such preneed contracts prior to authorization
17 under this chapter does not indicate , under the facts of the
18 particular application in issue, that applicant has a
19 disregard of the laws of this state such as would expose the
20 public to unreasonable risk if the applicant were issued a
21 preneed license.

22 3. Nothing in this section shall imply any
23 authorization to enter into preneed contracts without
24 authorization under this chapter.

25 (e) Neither applicant nor applicant's principals have
26 a demonstrated history of conducting their business affairs to
27 the detriment of the public.

28 (f) Applicant and applicant's principals are of good
29 character and have no demonstrated history of lack of
30 trustworthiness or integrity in business or professional
31 matters.

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1 (q) The applicant does and will comply with all other
2 requirements of this chapter relating to preneed licensure.

3 (3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.--It
4 is the policy of this state to encourage competition for the
5 public benefit in the preneed contract business by, among
6 other means, the entry of new licensees into that business. To
7 facilitate issuance of licenses concerning applications judged
8 by the licensing authority to be borderline as to
9 qualification for licensure, the licensing authority may issue
10 a new license under this section on a probationary basis,
11 subject to conditions specified by the licensing authority on
12 a case-by-case basis, which conditions may impose special
13 monitoring, reporting, and restrictions on operations for up
14 to the first 12 months of licensure, to ensure the licensee's
15 responsibleness, competency, financial stability, and
16 compliance with this chapter. Provided, no such probationary
17 license shall be issued unless the licensing authority
18 determines that issuance would not pose an unreasonable risk
19 to the public, and the licensing authority must within 12
20 months after issuance of the license either remove the
21 probationary status or determine that the licensee is not
22 qualified for licensure under this chapter and institute
23 proceedings for revocation of licensure.

24 (4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.--

25 (a) Each licensee under this section must provide
26 notice as required by rule prior to any change in control of
27 the licensee. Any such change is subject to disapproval or to
28 reasonable conditions imposed by the licensing authority, for
29 the protection of the public to ensure compliance with this
30 chapter, based upon criteria established by rule, which
31 criteria shall promote the purposes of this part in protecting

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1 the consumer.

2 (b) The licensing authority may authorize the transfer
3 of a preneed license and establish by rule a fee for the
4 transfer in an amount not to exceed \$500. Upon receipt of an
5 application for transfer, the executive director may grant a
6 temporary preneed license to the proposed transferee, based
7 upon criteria established by the licensing authority by rule,
8 which criteria shall promote the purposes of this chapter in
9 protecting the consumer. Such a temporary preneed license
10 shall expire at the conclusion of the next regular meeting of
11 the board unless renewed by the board. The licensing authority
12 may by rule establish forms and procedures for the
13 implementation of this paragraph.

14 (5) RENEWAL OF LICENSES.--

15 (a) A preneed license shall expire annually on June 1,
16 unless renewed, or at such other time or times as may be
17 provided by rule. The application for renewal of the license
18 shall be on forms prescribed by rule and shall be accompanied
19 a renewal fee as specified in paragraph (c).

20 (b) Within 3 months after the end of its fiscal
21 period, or within an extension of time therefore, as the
22 department for good cause may grant, the licensee shall file
23 with the department a full and true statement of her or his
24 financial condition, transactions, and affairs, prepared on a
25 basis as adopted by rule, as of the end of the preceding
26 fiscal period or at such other time or times as may be
27 required by rule, together with such other information and
28 data which may be required by rule. To facilitate uniformity
29 in financial statements and to facilitate department analysis,
30 there may be adopted by rule a form for financial statements.

31 (c) Each annual application for renewal of a preneed

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1 license shall be accompanied by the appropriate fee as
2 follows:

3 1. For a preneed licensee with no preneed contract
4 sales during the immediately preceding year.....\$ 300.

5 2. For a preneed licensee with at least 1 but fewer
6 than 50 preneed contract sales during the immediately
7 preceding year.....\$400.

8 3. For a preneed licensee with at least 50 but fewer
9 than 250 preneed contract sales during the immediately
10 preceding year.....\$500.

11 4. For a preneed licensee with at least 250 but fewer
12 than 1,000 preneed contract sales during the immediately
13 preceding year.....\$850.

14 5. For a preneed licensee with at least 1,000 but
15 fewer than 2,500 preneed contract sales during the immediately
16 preceding ear.....\$1,500.

17 6. For a preneed licensee with at least 2,500 but
18 fewer than 5,000 preneed contract sales during the immediately
19 preceding year.....\$2,500.

20 7. For a preneed licensee with at least 5,000 but
21 fewer than 15,000 preneed contract sales during the
22 immediately preceding year.....\$6,000.

23 8. For a preneed licensee with at least 15,000 but
24 fewer than 30,000 preneed contract sales during the
25 immediately preceding year.....\$12,500.

26 9. For a preneed licensee with 30,000 preneed contract
27 sales or more during the immediately preceding year...\$18,500.

28 (d) An application for renewal shall disclose the
29 existence of all preneed contracts for service or merchandise
30 funded by any method other than a method permitted by this
31 chapter, which contracts are known to the applicant and were

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1 entered into by the applicant, or any other entity under
2 common control with the applicant, during the annual license
3 period then ending. Such disclosure shall include the name and
4 address of the contract purchaser, the name and address of the
5 institution where such funds are deposited, and the number
6 used by the institution to identify the account.

7 (e) In addition to any other penalty that may be
8 provided for under this chapter, there may be levied a late
9 fee as determined by licensing authority rule but not to
10 exceed \$50 a day for each day the preneed licensee fails to
11 file its annual statement, and there may be levied a late fee
12 as determined by licensing authority rule but not to exceed
13 \$50 a day for each day the preneed licensee fails to file the
14 statement of activities of the trust. Upon notice to the
15 preneed licensee by the department that the preneed licensee
16 has failed to file the annual statement or the statement of
17 activities of the trust, the preneed licensee's authority to
18 sell preneed contracts shall cease while such default
19 continues.

20 (6) QUARTERLY PAYMENTS.--In addition to other amounts
21 required to be paid by this section, each preneed licensee
22 shall pay to the Regulatory Trust Fund an amount established
23 by rule not to exceed \$10 for each preneed contract entered
24 into. This amount must be paid within 60 days after the end of
25 each quarter. These funds must be used to defray the cost of
26 in administering the provisions of this part.

27 (7) BRANCH OPERATIONS AND LICENSURE.--

28 (a) Any person or entity that is part of a common
29 business enterprise that has a preneed license issued pursuant
30 to this section and desires to operate under a name other than
31 that of the common business enterprise, may submit an

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1 application on a form adopted by rule to become a branch
2 licensee. The application shall be accompanied by an
3 application fee as determined by licensing authority rule but
4 not to exceed \$300.

5 (b) Upon a determination that such applicant qualifies
6 to sell preneed contracts under this part except for the
7 requirements of paragraph (2)(c), and if the preneed licensee
8 meets the requirements of such paragraph and is in compliance
9 with all requirements of this part regarding its preneed
10 license and operations thereunder, a branch license shall be
11 issued.

12 (c) Branch licenses shall be renewed annually by
13 payment of a renewal fee set by licensing authority rule and
14 not to exceed \$300. Branch licenses may be renewed only so
15 long as the preneed license of the sponsoring preneed licensee
16 remains in good standing.

17 (d) Violations of this part by the branch shall be
18 deemed to be violations of this part by its sponsoring preneed
19 licensee, unless the licensing authority determines that
20 extenuating circumstances indicate that it would be unjust to
21 attribute the branch's misconduct to the sponsoring preneed
22 licensee. Preneed sales of the branch shall be deemed to be
23 sales of the sponsoring licensee for purposes of renewal fees
24 and trust requirements under this chapter.

25 (e) The sponsoring preneed licensee shall be
26 responsible for performance of preneed contracts entered into
27 by its branches if the branch does not timely fulfill any such
28 contract.

29 (8) ANNUAL TRUST REPORTS.--On or before April 1 of
30 each year, the preneed licensee shall file in the form
31 prescribed by rule a full and true statement as to the

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1 activities of any trust established by it pursuant to this
 2 part for the preceding calendar year.

3 (9) DEPOSIT OF FUNDS.--All sums collected under this
 4 section shall be deposited to the credit of the Regulatory
 5 Trust Fund.

6 Section 103. Section 497.409, Florida Statutes, is
 7 renumbered as section 497.454, Florida Statutes, and amended
 8 to read:

9 497.454 497.409 Approval of preneed contract and
 10 related forms.--

11 (1) Preneed contract forms and related forms shall be
 12 filed with and approved by the licensing authority prior to
 13 use, pursuant to procedures specified by rule board. The
 14 licensing authority board may not approve any preneed contract
 15 form that does not provide for sequential prenumbering
 16 thereon.

17 (2) A form filed for approval under this section shall
 18 be approved unless it is determined that it:

19 (a) Is in any respect in violation of, or does not
 20 comply with, this chapter.

21 (b) Contains, or incorporates by reference any
 22 inconsistent, ambiguous, or misleading clauses, or exceptions
 23 and conditions which deceptively affect the benefits
 24 purportedly provided to the customer in the general terms of
 25 the contract.

26 (c) Has any title, heading, or other indication of its
 27 contents which is misleading.

28 (d) Is printed or otherwise reproduced in such manner
 29 as to render any material provision substantially illegible,
 30 or contains variations in print size which de-emphasize
 31 provisions which limit or restrict the customers rights under

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1 the contract.

2 (e) Contains provisions that are unfair or inequitable
 3 or contrary to the public policy of this state or that
 4 encourage misrepresentation.

5 (f) Does not provide for the specification in
 6 reasonable detail of the type, size, and design of merchandise
 7 and the description of service to be delivered or performed.

8 (3)(2) Specific disclosure regarding the preneed
 9 licensee's certificateholder's ability to select either trust
 10 funding or the financial responsibility alternative as set
 11 forth in s. 497.461 ~~497.423~~ or s. ~~497.425~~ in connection with
 12 the receipt of preneed contract proceeds is required in the
 13 preneed contract.

14 Section 104. Section 497.411, Florida Statutes, is
 15 renumbered as section 497.455, Florida Statutes, and amended
 16 to read:

17 497.455 ~~497.411~~ Nonconforming contracts.--Any preneed
 18 contract that requires the moneys paid to the seller or
 19 trustee to be placed in trust and fails to comply with s.
 20 497.458 ~~497.417~~ shall comply with and be construed under s.
 21 497.464 ~~497.429~~.

22 Section 105. Section 497.413, Florida Statutes, is
 23 renumbered as section 497.456, Florida Statutes, and amended
 24 to read:

25 497.456 ~~497.413~~ Preneed Funeral Contract Consumer
 26 Protection Trust Fund.--

27 (1) There is hereby created in the department the
 28 Preneed Funeral Contract Consumer Protection Trust Fund to be
 29 administered and regulated by the licensing authority ~~board~~.

30 (2) Within 60 days after the end of each calendar
 31 quarter, for each preneed contract written during the quarter

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1 and not canceled within 30 days after the date of the
2 execution of the contract, each preneed licensee
3 ~~certificateholder~~, whether funding preneed contracts by the
4 sale of insurance or by establishing a trust pursuant to s.
5 497.458 or s. 497.464 ~~497.417 or s. 497.429~~, shall remit the
6 sum of \$2.50 for each preneed contract having a purchase price
7 of \$1,500 or less, and the sum of \$5 for each preneed contract
8 having a purchase price in excess of \$1,500; and each preneed
9 licensee ~~certificateholder~~ utilizing s. 497.461 or s. 497.462
10 ~~497.423 or s. 497.425~~ shall remit the sum of \$5 for each
11 preneed contract having a purchase price of \$1,500 or less,
12 and the sum of \$10 for each preneed contract having a purchase
13 price in excess of \$1,500.

14 (3) In addition to the amounts specified in subsection
15 (2), each remittance shall contain such other additional
16 information as needed by the licensing authority ~~board~~ to
17 carry out its responsibilities under this chapter and as
18 prescribed by rule ~~of the board~~.

19 (4) All funds received by the licensing authority
20 ~~board or the department~~ pursuant to this section shall be
21 deposited into the Preneed Funeral Contract Consumer
22 Protection Trust Fund.

23 (5) The amounts remitted for deposit into the Preneed
24 Funeral Contract Consumer Protection Trust Fund shall not be
25 deemed proceeds from the sale of a preneed contract within the
26 meaning of this chapter.

27 (6) Upon the commencement of a delinquency proceeding
28 pursuant to this chapter against a preneed licensee
29 ~~certificateholder~~, the licensing authority ~~board~~ may use up to
30 50 percent of the balance of the trust fund not already
31 committed to a prior delinquency proceeding solely for the

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1 purpose of providing restitution to preneed contract
2 purchasers and their estates due to a preneed licensee's
3 ~~certificateholder's~~ failure to provide the benefits of a
4 preneed contract or failure to refund the appropriate
5 principal amount by reason of cancellation thereof. The
6 balance of the trust fund shall be determined as of the date
7 of the delinquency proceeding.

8 (7) In any situation in which a delinquency proceeding
9 has not commenced, the licensing authority board may, in its
10 discretion, use the trust fund for the purpose of providing
11 restitution to any consumer, owner, or beneficiary of a
12 preneed contract or similar regulated arrangement under this
13 chapter entered into after June 30, 1977. If, after
14 investigation, the licensing authority board determines that a
15 preneed licensee certificateholder has breached a preneed
16 contract by failing to provide benefits or an appropriate
17 refund, or that a provider, who is a former preneed licensee
18 ~~certificateholder~~ or an establishment which has been regulated
19 under this chapter ~~or chapter 470~~, has sold a preneed contract
20 and has failed to fulfill the arrangement or provide the
21 appropriate refund, and such preneed licensee
22 ~~certificateholder~~ or provider does not provide or does not
23 possess adequate funds to provide appropriate refunds,
24 payments from the trust fund may be authorized by the
25 licensing authority board. In considering whether payments
26 shall be made or when considering who will be responsible for
27 such payments, the licensing authority board shall consider
28 whether the preneed licensee certificateholder or previous
29 provider has been acquired by a successor who is or should be
30 responsible for the liabilities of the defaulting entity. With
31 respect to preneed contracts funded by life insurance,

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1 payments from the fund shall be made: if the insurer is
2 insolvent, but only to the extent that funds are not available
3 through the liquidation proceeding of the insurer; or if the
4 preneed licensee ~~certificateholder~~ is unable to perform under
5 the contract and the insurance proceeds are not sufficient to
6 cover the cost of the merchandise and services contracted for.
7 In no event shall the licensing authority ~~board~~ approve
8 payments in excess of the insurance policy limits unless it
9 determines that at the time of sale of the preneed contract,
10 the insurance policy would have paid for the services and
11 merchandise contracted for. Such monetary relief shall be in
12 an amount as the licensing authority ~~board~~ may determine and
13 shall be payable in such manner and upon such conditions and
14 terms as the licensing authority ~~board~~ may prescribe. However,
15 with respect to preneed contracts to be funded pursuant to s.
16 497.458, s. 497.459, s. 497.461, or s. 497.462 ~~s. 497.417, s.~~
17 ~~497.419, s. 497.423, or s. 497.425~~, any restitution made
18 pursuant to this subsection shall not exceed, as to any single
19 contract or arrangement, the lesser of the gross amount paid
20 under the contract or 4 percent of the uncommitted assets of
21 the trust fund. With respect to preneed contracts funded by
22 life insurance policies, any restitution shall not exceed, as
23 to any single contract or arrangement, the lesser of the face
24 amount of the policy, the actual cost of the arrangement
25 contracted for, or 4 percent of the uncommitted assets of the
26 trust fund. The total of all restitutions made to all
27 applicants under this subsection in a single fiscal year shall
28 not exceed the greater of 30 percent of the uncommitted assets
29 of the trust fund as of the end of the most recent fiscal year
30 or \$120,000. The department may use moneys in the trust fund
31 to contract with independent vendors pursuant to chapter 287

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1 to administer the requirements of this subsection.

2 (8) All moneys deposited in the Preneed Funeral
3 Contract Consumer Protection Trust Fund together with all
4 accumulated income shall be used only for the purposes
5 expressed authorized by this chapter ~~in this section~~ and shall
6 not be subject to any liens, charges, judgments, garnishments,
7 or other creditor's claims against the preneed licensee
8 ~~certificateholder~~, any trustee utilized by the preneed
9 licensee ~~certificateholder~~, any company providing a surety
10 bond as specified in this chapter, or any purchaser of a
11 preneed contract. No preneed contract purchaser shall have any
12 vested rights in the trust fund.

13 (9) If restitution is paid to a preneed contract
14 purchaser or her or his estate in accordance with this
15 section, the amount of restitution paid shall not exceed the
16 gross amount of the principal payments made by the purchaser
17 on its contract.

18 (10) Whenever the licensing authority ~~board~~ makes
19 payments from the trust fund to a purchaser or its estate, the
20 licensing authority ~~board~~ shall be subrogated to the
21 purchaser's rights under the contract, and any amounts so
22 collected by the licensing authority ~~board~~ shall be deposited
23 in the Preneed Funeral Contract Consumer Protection Trust
24 Fund.

25 (11) No person shall make, publish, disseminate,
26 circulate, or place before the public, or cause, directly or
27 indirectly, to be made, published, disseminated, circulated,
28 or placed before the public, in a newspaper, magazine, or
29 other publication, or in the form of a notice, circular,
30 pamphlet, letter, or poster, or over any radio station or
31 television station, or in any other way, any advertisement,

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1 announcement, or statement which uses the existence of the
2 Preneed Funeral Contract Consumer Protection Trust Fund for
3 the purpose of sales, solicitation, or inducement to purchase
4 any form of preneed contract covered under this chapter.

5 (12) Notwithstanding the fee structure in subsection
6 (2), the department shall review the status of the trust fund
7 annually, and if it determines that the uncommitted trust fund
8 balance exceeds \$1 million, the licensing authority board may
9 by rule lower the required payments to the trust fund to an
10 amount not less than \$1 per preneed contract.

11 (13) Regarding the Preneed Funeral Contract Consumer
12 Protection Trust Fund, the licensing authority shall have
13 authority to adopt rules for the implementation of this
14 section, including:

15 (a) Forms to be used in filing claims against the
16 trust fund.

17 (b) Procedures to be used for filing claims against
18 the trust fund.

19 (c) Information and supporting documentation that must
20 be provided by claimants to support claims against the trust
21 fund.

22 (d) Procedures for the investigation of claims against
23 the trust fund.

24 (e) Criteria to be used in determining whether a claim
25 is allowable and in what amount.

26 (f) Forms and procedures to be used by preneed
27 licensees in making remittances to the trust fund required by
28 this chapter.

29 Section 106. Section 497.415, Florida Statutes, is
30 renumbered as section 497.457, Florida Statutes, and amended
31 to read:

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1 497.457 ~~497.415~~ Ownership of proceeds received on
 2 contracts.--

3 (1) Subject to the provisions of this chapter, all
 4 funds paid pursuant to a preneed contract by a purchaser to a
 5 preneed licensee ~~certificateholder~~ shall be the sole property
 6 of, and within the full dominion and control of, said preneed
 7 licensee ~~certificateholder~~.

8 (2) Subject to the provisions of this chapter, the
 9 relationship between the purchaser of a preneed contract and a
 10 preneed licensee ~~certificateholder~~ shall be deemed for all
 11 purposes as a debtor-creditor relationship.

12 Section 107. Section 497.417, Florida Statutes, is
 13 renumbered as section 497.458, Florida Statutes, and amended
 14 to read:

15 497.458 ~~497.417~~ Disposition of proceeds received on
 16 contracts.--

17 (1)(a) Any person who is paid, collects, or receives
 18 funds under a preneed contract for funeral services or
 19 merchandise or burial services or merchandise shall deposit an
 20 amount at least equal to the sum of 70 percent of the purchase
 21 price collected for all services sold and facilities rented;
 22 100 percent of the purchase price collected for all cash
 23 advance items sold; and 30 percent of the purchase price
 24 collected or 110 percent of the wholesale cost, whichever is
 25 greater, for each item of merchandise sold.

26 (b) The method of determining wholesale cost shall be
 27 established by rule of the licensing authority ~~board~~ and shall
 28 be based upon the preneed licensee's ~~certificateholder's~~
 29 stated wholesale cost for the 12-month period beginning July 1
 30 during which the initial deposit to the preneed trust fund for
 31 the preneed contract is made.

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1 (c) Such deposits shall be made within 30 days after
2 the end of the calendar month in which payment is received,
3 under the terms of a revocable trust instrument entered into
4 with a trust company operating pursuant to chapter 660, with a
5 national or state bank holding trust powers, or with a federal
6 or state savings and loan association holding trust powers.

7 (d) The trustee shall take title to the property
8 conveyed to the trust for the purpose of investing,
9 protecting, and conserving it for the preneed licensee
10 ~~certificateholder~~; collecting income; and distributing the
11 principal and income as prescribed in this chapter. The
12 preneed licensee ~~certificateholder~~ is prohibited from sharing
13 in the discharge of these responsibilities, except that the
14 preneed licensee ~~certificateholder~~ may request the trustee to
15 invest in tax-free investments and may appoint an adviser to
16 the trustee. The licensing authority may adopt rules limiting
17 or otherwise specifying the degree to which the trustee may
18 rely on the investment advice of an investment adviser
19 appointed by the preneed licensee. The licensing authority may
20 adopt rules limiting or prohibiting payment of fees by the
21 trust to investment advisors that are employees or principals
22 of the licensee to whom the trust fund relates.

23 (e) The trust agreement shall be submitted to the
24 licensing authority ~~board~~ for approval and filing prior to
25 use. The licensing authority may adopt rules specifying
26 procedures and establishing criteria and requirements not
27 inconsistent with this chapter for approval of trusts
28 submitted under this paragraph.

29 (f) The deposited funds shall be held in trust, both
30 as to principal and income earned thereon, and shall remain
31 intact, except that the cost of the operation of the trust or

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1 trust account authorized by this section may be deducted from
2 the income earned thereon.

3 (g) The preneed contract purchaser shall have no
4 interest whatsoever in, or power whatsoever over, funds
5 deposited in trust pursuant to this section.

6 (h) In no event may said funds be loaned to a preneed
7 licensee certificateholder, an affiliate of a preneed licensee
8 certificateholder, or any person directly or indirectly
9 engaged in the burial, funeral home, or cemetery business.

10 (i) ~~Furthermore,~~ The preneed licensee's
11 ~~certificateholder's~~ interest in said trust shall not be
12 pledged as collateral for any loans, debts, or liabilities of
13 the preneed licensee certificateholder and shall not be
14 transferred to any person without the prior written approval
15 from the department and the trustee which shall not be
16 unreasonably withheld.

17 (j) Even though the preneed licensee certificateholder
18 shall be deemed and treated as the settlor and beneficiary of
19 said trust for all purposes, all of said trust funds are
20 exempt from all claims of creditors of the preneed licensee
21 certificateholder except as to the claims of the preneed
22 contract purchaser, her or his representative, the board, or
23 the department.

24 (2) Except as provided in s. 497.283 ~~497.337~~, the
25 delivery of funeral merchandise before the death of the person
26 for whom it is purchased does not constitute performance or
27 fulfillment, either wholly or in part, of any preneed contract
28 entered into after July 1, 1977.

29 (3)(a) The trustee shall make regular valuations of
30 assets it holds in trust and provide a report of such
31 valuations to the preneed licensee certificateholder at least

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1 quarterly.

2 **(b)** Any person who withdraws appreciation in the value
3 of trust, other than the pro rata portion of such appreciation
4 which may be withdrawn upon the death of a contract
5 beneficiary or upon cancellation of a preneed contract, shall
6 be required to make additional deposits from her or his own
7 funds to restore the aggregate value of assets to the value of
8 funds deposited in trust, but excluding from the funds
9 deposited those funds paid out upon preneed contracts which
10 such person has fully performed or which have been otherwise
11 withdrawn, as provided for in this chapter.

12 **(c)** The preneed licensee ~~certificateholder~~ shall be
13 liable to third parties to the extent that income from the
14 trust is not sufficient to pay the expenses of the trust.

15 **(4)(a)** Trust funds shall not be invested in or loaned
16 to or for the benefit of any business venture in which the
17 preneed licensee, its principals, or persons related by blood
18 or marriage to the licensee or its principals, have a direct
19 or indirect interest, without the prior approval of the
20 licensing authority.

21 **(b)** Trust funds shall not be loaned to or for the
22 benefit of the preneed licensee, its principals, or persons
23 related by blood or marriage to the licensee or its
24 principals, without the prior approval of the licensing
25 authority.

26 **(c)** No approval of such loans or investments shall be
27 given unless it be shown by clear and convincing evidence that
28 such loan or investment would be in the interest of the
29 preneed contract holders whose contracts are secured by the
30 trust funds.

31 **(d)** The licensing authority may adopt rules exempting

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1 from the prohibition of this subsection, pursuant to criteria
2 established in such rule, the investment of trust funds in
3 investments, such as widely and publicly traded stocks and
4 bonds, notwithstanding that the licensee, its principals, or
5 persons related by blood or marriage to the licensee or its
6 principals have an interest by investment in the same entity,
7 where neither the licensee, its principals, or persons related
8 by blood or marriage to the licensee or its principals, have
9 the ability to control the entity invested in, and it would be
10 in the interest of the preneed contract holders whose
11 contracts are secured by the trust funds, to allow the
12 investment.

13 ~~(5)(4)~~ The trustee of the trust established pursuant
14 to this section shall only have the power to:

15 (a) Invest in investments as prescribed in s. 215.47
16 and exercise the powers set forth in part IV of chapter 737,
17 provided that the licensing authority board may by order
18 require the trustee to liquidate or dispose of any investment
19 within 30 days after such order, or within such other times as
20 the order may direct. The licensing authority may issue such
21 order if it determines that the investment violates any
22 provision of this chapter or is not in the best interests of
23 the preneed contract holders whose contracts are secured by
24 the trust funds.

25 (b) Borrow money up to an aggregate amount of 10
26 percent of trust assets, at interest rates then prevailing
27 from any individual, bank, insurance company, or other source,
28 irrespective of whether any such person is then acting as
29 trustee, and to create security interests in no more than 10
30 percent of trust assets by mortgage, pledge, or otherwise,
31 upon the terms and conditions and for such purposes as the

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1 trustee may deem advisable.

2 (c) Commingle the property of the trust with the
3 property of any other trust established pursuant to this
4 chapter and make corresponding allocations and divisions of
5 assets, liabilities, income, and expenses.

6 ~~(6)(5)~~ The preneed licensee ~~certificateholder~~, at her
7 or his election, shall have the right and power, at any time,
8 to revest in it title to the trust assets, or its pro rata
9 share thereof, provided it has complied with s. 497.461.~~+~~

10 ~~(a) Section 497.423;~~

11 ~~(b) Contracts written prior to July 1, 2001, under s.~~
12 ~~497.425; or~~

13 ~~(c) Contracts written prior to December 31, 2004,~~
14 ~~under s. 497.425 for any certificateholder authorized to do~~
15 ~~business in this state that has total bonded liability~~
16 ~~exceeding \$100 million as of July 1, 2001.~~

17 ~~(7)(6)~~ Notwithstanding anything contained in this
18 chapter to the contrary, the preneed licensee
19 ~~certificateholder~~, via its election to sell or offer for sale
20 preneed contracts subject to this section, shall represent and
21 warrant, and is hereby deemed to have done such, to all
22 federal and Florida taxing authorities, as well as to all
23 potential and actual preneed contract purchasers, that:

24 (a) Section 497.461 ~~497.423~~ is a viable option
25 available to it at any and all relevant times;

26 (b) Section 497.462 ~~497.425~~ is a viable option
27 available to it at any and all relevant times for contracts
28 written prior to July 1, 2001, for funds not held in trust as
29 of July 1, 2001; or

30 (c) For any preneed licensee ~~certificateholder~~
31 authorized to do business in this state that has total bonded

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1 liability exceeding \$100 million as of July 1, 2001, s.
 2 497.462 ~~497.425~~ is a viable option to it at any and all
 3 relevant times for contracts written prior to December 31,
 4 2004, for funds not held in trust as of July 1, 2001.

5 ~~(8)(7)~~ If in the preneed licensee's
 6 ~~certificateholder's~~ opinion it does not have the ability to
 7 select the financial responsibility alternative of s. 497.461
 8 or s. 497.462 ~~497.423~~ or s. ~~497.425~~, then the preneed license
 9 ~~it~~ shall not have the right to sell or solicit preneed
 10 ~~contracts pursuant to this section.~~

11 (9) The amounts required to be placed in trust by this
 12 section for contracts previously entered into shall be as
 13 follows:

14 (a) For contracts entered into before October 1, 1993,
 15 the trust amounts as amended by s. 6, chapter 83-816, Laws of
 16 Florida, shall apply.

17 (b) For contracts entered into on or after October 1,
 18 1993, the trust amounts as amended by s. 98, chapter 93-399,
 19 Laws of Florida shall apply.

20 ~~(8) This section, as amended by s. 6, chapter 83-316,~~
 21 ~~Laws of Florida, applies to preneed contracts entered into~~
 22 ~~before October 1, 1993, and as amended by s. 98, chapter~~
 23 ~~93-399, Laws of Florida, applies to preneed contracts entered~~
 24 ~~into on or after October 1, 1993.~~

25 Section 108. Section 497.419, Florida Statutes, is
 26 renumbered as section 497.459, Florida Statutes, and amended
 27 to read:

28 497.459 ~~497.419~~ Cancellation of, or default on,
 29 preneed contracts.--

30 (1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.-- A
 31 purchaser, by providing written notice to the preneed licensee

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1 ~~certificateholder~~, may cancel a preneed contract within 30
 2 days of the date that the contract was executed provided that
 3 the burial rights, merchandise and services have not yet been
 4 used. Upon providing such notice, the purchaser shall be
 5 entitled to a complete refund of the amount paid, except for
 6 the amount allocable to any burial rights, merchandise or
 7 services that have been used, and shall be released from all
 8 obligations under the contract. This subsection shall apply to
 9 all items that are purchased as part of a preneed contract,
 10 including burial rights, regardless of whether such burial
 11 rights are purchased as part of a preneed contract or
 12 purchased separately.

13 (2) CANCELLATION BY PURCHASER AFTER 30 DAYS.--

14 (a) A purchaser, by providing written notice to the
 15 preneed licensee ~~certificateholder~~, may cancel the services,
 16 facilities, and cash advance items portions of a preneed
 17 contract at any time, and shall be entitled to a full refund
 18 of the purchase price allocable to such items. Any accumulated
 19 earnings allocable to such preneed contract shall be paid to
 20 the preneed licensee ~~certificateholder~~ upon such cancellation.

21 (b)(3) Subject to subparagraphs 1. and 2., paragraphs
 22 ~~(a) and (b)~~ a purchaser may cancel the merchandise portion of
 23 a preneed contract by providing written notice to the preneed
 24 licensee ~~certificateholder~~, and shall be entitled to a full
 25 refund of the purchase price allocable to the specific item or
 26 items of merchandise that the preneed licensee
 27 ~~certificateholder~~ cannot or does not deliver in accordance
 28 with this subsection.

29 1.(a) Such refund shall be provided only if at the
 30 time that the preneed licensee ~~certificateholder~~ is required
 31 to fulfill its obligations under the preneed contract the

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1 ~~preneed licensee certificateholder~~ does not or cannot comply
2 with the terms of the contract by actually delivering the
3 merchandise, within a reasonable time, depending upon the
4 nature of the merchandise purchased, after having been
5 requested to do so.

6 ~~2.(b)~~ In order to fulfill its obligations under the
7 preneed contract, a ~~preneed licensee certificateholder~~ may
8 elect either or both of the following options:

9 ~~a.1.~~ Subcontract with a person located outside the
10 ~~preneed licensee's certificateholder's~~ market area to provide
11 the merchandise; or

12 ~~b.2.~~ Provide other items of equal or greater quality.

13 ~~(3)(4)~~ REQUIRED DISCLOSURE.--Each preneed licensee
14 ~~certificateholder~~ shall provide in conspicuous type in its
15 contract that the contract purchaser may cancel the contract
16 and receive a full refund within 30 days of the date of
17 execution of the contract. The failure to make such provision
18 shall not impair the contract purchaser's right to
19 cancellation and refund as provided in this section.

20 ~~(4)(5)~~ BREACH OF CONTRACT BY SELLER.--Upon breach of
21 contract or failure of the ~~preneed licensee certificateholder~~
22 to provide funeral merchandise or services under a preneed
23 contract, the contract purchaser shall be entitled to a refund
24 of all money paid on the contract. Such refund shall be made
25 within 30 days after receipt by the preneed licensee
26 ~~certificateholder~~ of the contract purchaser's written request
27 for refund.

28 ~~(5)(6)~~ DEFAULT BY PURCHASER.--If a purchaser is 90
29 days past due in making payments on a preneed contract, the
30 contract shall be considered to be in default, and the preneed
31 licensee certificateholder shall be entitled to cancel the

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1 contract, withdraw all funds in trust allocable to merchandise
2 items, and retain such funds as liquidated damages. Upon
3 making such withdrawal, the preneed licensee ~~certificateholder~~
4 shall return all funds in trust allocable to services,
5 facilities, or cash advance items to the purchaser, provided
6 that the preneed licensee ~~certificateholder~~ has provided the
7 purchaser with 30 days' written notice of its intention to
8 exercise any of its rights under this provision. The board may
9 by rule specify the required format and content of the notice
10 required under this subsection and the manner in which the
11 notice shall be sent.

12 ~~(6)(7)~~ OTHER PROVISIONS.--

13 (a) All preneed contracts are cancelable and revocable
14 as provided in this section, provided that a preneed contract
15 does not restrict any contract purchaser who is a qualified
16 applicant for, or a recipient of, supplemental security
17 income, temporary cash assistance, or Medicaid from making her
18 or his contract irrevocable.

19 (b) The amounts required to be refunded by this
20 section for contracts previously entered into shall be as
21 follows:

22 1. For contracts entered into before October 1, 1993,
23 the refund amounts as amended by s. 7, chapter 83-816, Laws of
24 Florida, shall apply.

25 2. For contracts entered into on or after October 1,
26 1993, the refund amounts as amended by s. 99, chapter 93-399,
27 Laws of Florida, shall apply.

28 ~~(8) This section, as amended by s. 7, chapter 83-316,~~
29 ~~Laws of Florida, applies to preneed contracts entered into~~
30 ~~before October 1, 1993, and as amended by s. 98, chapter~~
31 ~~93-399, Laws of Florida, applies to preneed contracts entered~~

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1 ~~into on or after October 1, 1993.~~

2 ~~(c)(9)~~ Persons who purchase merchandise or burial
3 rights pursuant to this chapter shall have the right to sell,
4 alienate, or otherwise transfer the merchandise or burial
5 rights subject to and in accordance with rules adopted by the
6 licensing authority board.

7 ~~(d)(10)~~ All refunds required to be made under this
8 section to a purchaser who has canceled a contract must be
9 made within 30 days after the date written notice of
10 cancellation is received by the preneed licensee
11 ~~certificateholder~~.

12 Section 109. Section 497.421, Florida Statutes, is
13 renumbered as section 497.460, Florida Statutes, and amended
14 to read:

15 497.460 ~~497.421~~ Payment of funds upon death of named
16 beneficiary.--Disbursements of funds discharging any preneed
17 contract fulfilled after September 30, 1993, shall be made by
18 the trustee to the preneed licensee ~~certificateholder~~ upon
19 receipt of a certified copy of the death certificate of the
20 contract beneficiary or satisfactory evidence as established
21 by rule of the licensing authority ~~the board~~ that the preneed
22 contract has been performed in whole or in part. However, if
23 the contract is only partially performed, the disbursement
24 shall only cover that portion of the contract performed. In
25 the event of any contract default by the contract purchaser,
26 or in the event that the funeral merchandise or service or
27 burial merchandise or service contracted for is not provided
28 or is not desired by the heirs or personal representative of
29 the contract beneficiary, the trustee shall return, within 30
30 days after its receipt of a written request therefor, funds
31 paid on the contract to the preneed licensee ~~certificateholder~~

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1 or to its assigns, subject to the provisions of s. 497.459
2 ~~497.419~~.

3 Section 110. Section 497.423, Florida Statutes, is
4 renumbered as section 497.461, Florida Statutes, and amended
5 to read:

6 497.461 ~~497.423~~ Surety bonding ~~Evidence of financial~~
7 ~~responsibility~~ as alternative to trust deposit.--

8 (1) In lieu of depositing funds into a trust as
9 required by s. 497.548(1) or s. 497.464 ~~497.417(1)~~ or s.
10 ~~497.429~~, a preneed licensee ~~certificateholder~~ may elect
11 annually, at its discretion, to comply with this section by
12 filing annually a written request with, and receiving annual
13 approval from, the licensing authority ~~board~~.

14 (2) No preneed licensee ~~certificateholder~~ shall
15 utilize this section unless it has filed annually a written
16 request with, and received approval by, the licensing
17 authority ~~board~~.

18 (3) The preneed licensee ~~certificateholder~~ receiving
19 approval from the licensing authority ~~board~~ to comply with
20 this section shall maintain compliance with this section at
21 all times during the period this election is in effect.

22 (4) The preneed licensee's ~~certificateholder's~~ request
23 to be governed by this section shall be in the form prescribed
24 by rule by the licensing authority ~~board~~ and shall be
25 accompanied by, in addition to other information that the
26 licensing authority ~~board~~ may require by rule, the surety
27 bond, the audited financial statements, and proof of the other
28 requirements specified in this section, all as described in
29 this section.

30 (5) For each 12-month period, or any part thereof, in
31 which this section is applicable, the electing preneed

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1 licensee ~~certificateholder~~ shall maintain a bond, issued by a
 2 surety company admitted to do business in this state, in an
 3 amount at least equal to the sum of:

4 (a) All amounts not currently in trust.~~7~~

5 (b) An amount equal to the total purchase price for
 6 all installed preneed contracts where the total purchase price
 7 has not been collected, excluding those amounts already in
 8 trust.~~7~~

9 (c) All amounts the preneed licensee ~~certificateholder~~
 10 intends to remove from trust if the licensing authority board
 11 approves the preneed licensee's ~~certificateholder's~~ request to
 12 comply with this section.~~7~~ ~~and~~

13 (d) An amount equal to 70 percent of the total
 14 purchase price for each preneed contract the preneed licensee
 15 ~~certificateholder~~ expects to sell in the year for which the
 16 preneed licensee ~~certificateholder~~ is electing to comply with
 17 this section.

18 (6) The surety bond shall be conditioned in such a
 19 manner to secure the faithful performance of all conditions of
 20 any preneed contracts for which the preneed licensee

21 ~~certificateholder~~ was required to have covered by the amount
 22 of the bond, including refunds requested pursuant to ss.

23 497.459 and 497.460 ~~497.419 and 497.421~~. The surety bond shall

24 also guarantee the financial responsibility of such preneed
 25 licensee ~~certificateholder~~ against its default arising out of

26 any of its preneed contracts. The terms of the surety bond
 27 shall cover liabilities arising from all moneys received by

28 the electing preneed licensee ~~certificateholder~~ from preneed
 29 contracts for which the preneed licensee ~~certificateholder~~ was

30 required to have covered by the amount of the bond during the
 31 time the bond is in effect, and the liability of the surety

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1 shall continue until the contracts thereunder are fulfilled.
2 The bond shall be in favor of the state for the benefit of any
3 person damaged as a result of purchasing a preneed contract
4 from the preneed licensee ~~certificateholder~~. The aggregate
5 liability of the surety to all persons for all breaches of the
6 conditions of the bonds shall in no event exceed the amount of
7 the bond. The per preneed contract liability shall not exceed
8 the amount of the funds received by the preneed licensee
9 ~~certificateholder~~ per preneed contract during the effective
10 period in which the bond is issued. The bond shall be filed
11 and maintained with the licensing authority ~~board~~.

12 (7)(6) The amount of the surety bond shall, upon order
13 of the licensing authority ~~board~~, be increased if, in the
14 licensing authority's ~~board's~~ discretion, it finds such
15 increase to be warranted by the volume of preneed contracts
16 handled, or expected to be handled, by the preneed licensee
17 ~~certificateholder~~.

18 (8) The surety bond shall be in a form to be approved
19 by the licensing authority ~~board~~, and the licensing authority
20 ~~board~~ shall have the right to disapprove any bond which does
21 not provide assurance as provided in, and required by, this
22 section.

23 (9)(7) The bond shall be maintained unimpaired for as
24 long as the preneed licensee ~~certificateholder~~ continues in
25 business in this state and continues to utilize this section.
26 Whenever the preneed licensee ~~certificateholder~~ notifies the
27 licensing authority ~~board~~ that it no longer desires to be
28 governed by this section and furnishes to the licensing
29 authority ~~board~~ satisfactory proof that it has discharged or
30 otherwise adequately provided for all of its obligations to
31 its preneed contract purchasers covered by the bond, such as

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1 by evidence satisfactory to the licensing authority board
2 demonstrating that s. 497.458 or s. 497.464 ~~497.417 or s.~~
3 ~~497.429~~ has been complied with, the licensing authority board
4 shall release the bond to the entitled parties, provided said
5 parties acknowledge receipt of same.

6 ~~(10)(8)~~ No surety bond used to comply with this
7 section shall be canceled or subject to cancellation unless at
8 least 60 days' advance notice thereof, in writing, is filed
9 with the licensing authority board, by the surety company. The
10 cancellation of the bond shall not relieve the obligation of
11 the surety company for claims arising out of contracts issued
12 or otherwise covered before cancellation of the bond.

13 (11) In the event that notice of cancellation
14 ~~termination~~ of the bond is filed with the licensing authority
15 board, the preneed licensee certificateholder insured
16 thereunder shall, within 30 days of the filing of the notice
17 of termination with the licensing authority board, provide the
18 licensing authority board with a replacement bond or with
19 evidence which is satisfactory to the licensing authority
20 board demonstrating that s. 497.458 or s. 497.464 ~~497.417 or~~
21 ~~s. 497.429~~ has been fully complied with. If within 30 days of
22 filing of the notice of termination with the licensing
23 authority board no replacement bond acceptable to the
24 licensing authority board or no evidence satisfactory to the
25 licensing authority board demonstrating that s. 497.458 or s.
26 497.464 ~~497.417 or s. 497.429~~ has been complied with is filed
27 with the licensing authority board, the licensing authority
28 board shall suspend the license of the preneed licensee
29 certificateholder until the preneed licensee certificateholder
30 files a replacement bond acceptable to the board or
31 demonstrates to the satisfaction of the licensing authority

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1 ~~board~~ that it has complied with s. 497.458 or s. 497.464
2 ~~497.417~~ or s. ~~497.429~~.

3 ~~(12)(9)~~ In lieu of the surety bond, the licensing
4 authority board may provide by rule for other forms of
5 security or insurance.

6 ~~(13)(10)~~ Every preneed licensee ~~certificateholder~~
7 electing to be governed by this section shall have its
8 financial statements, submitted to the department pursuant to
9 s. 497.453 ~~497.407~~, audited by an independent public
10 accountant certified pursuant to chapter 473. The financial
11 statements shall contain, in accordance with generally
12 accepted accounting principles, for two or more consecutive
13 annual periods, the following:

14 (a) The certified public accountant's unqualified
15 opinion or, in the case of a qualified opinion, a qualified
16 opinion acceptable to the licensing authority board, and:

- 17 1. A balance sheet;
18 2. A statement of income and expenses; and
19 3. A statement of changes in financial position.

20 (b) Notes to the financial statements considered
21 customary or necessary for full disclosure and adequate
22 understanding of the financial statements, financial
23 condition, and operation of the preneed licensee
24 ~~certificateholder~~. The notes shall include a schedule, based
25 upon statutory accounting principles, indicating that the
26 preneed licensee ~~certificateholder~~ which has held a license
27 ~~certificate~~ pursuant to this chapter for less than 10 years
28 has a current ratio of no less than 3 to 1 of current assets
29 to current liabilities and net assets of at least \$600,000 or
30 that the preneed licensee ~~certificateholder~~ which has held a
31 license ~~certificate~~ pursuant to this chapter for 10 years or

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1 more has a current ratio of no less than 2 to 1 of current
2 assets to current liabilities and net assets of at least
3 \$400,000.

4 (c) An indication that the preneed licensee
5 ~~certificateholder~~ has sufficient funds available to perform
6 the obligations under all its preneed contracts.

7 ~~(14)(11)~~ The licensing authority board may require
8 that the audited financial statements be prepared on a
9 calendar-year basis.

10 ~~(15)(12)~~ The electing preneed licensee
11 ~~certificateholder~~ shall provide the licensing authority board
12 interim unaudited financial statements on a quarterly basis
13 demonstrating financial compliance with this section.

14 ~~(16)(13)~~ In lieu of subsections ~~(4)-(14)(4)-(11)~~, a
15 preneed licensee certificateholder with net assets of at least
16 \$25,000 may request to comply with this section by providing a
17 written guarantee from a qualified guaranteeing organization.
18 If the preneed licensee certificateholder so elects, the
19 preneed licensee's certificateholder's requests to be governed
20 by this section shall be in the form prescribed by rule the
21 ~~board~~ and shall be accompanied by, in addition to other
22 information the licensing authority board may require by rule,
23 a written guarantee approved by the licensing authority board
24 as meeting the requirements of this section from a qualified
25 guaranteeing organization, acceptable to the licensing
26 authority board, which:

27 (a) Is either a preneed licensee certificateholder or
28 servicing agent.

29 (b) Is a corporation formed under the laws of this
30 state or of another state, district, territory, or possession
31 of the United States.

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1 (c) Has been in operation for 10 or more years.

2 (d) Submits to the licensing authority board its
3 annual financial statements audited by an independent public
4 accountant certified pursuant to chapter 473. The financial
5 statements shall contain, in accordance with generally
6 accepted accounting principles, for two or more consecutive
7 annual periods, the following:

8 1. The certified public accountant's unqualified
9 opinion or, in the case of a qualified opinion, a qualified
10 opinion acceptable to the licensing authority board, and:

11 a. A balance sheet;

12 b. A statement of income and expenses; and

13 c. A statement of changes in financial position.

14 2. Notes to the financial statements considered
15 customary or necessary for full disclosure and adequate
16 understanding of the financial statements, financial
17 condition, and operation of the preneed licensee
18 ~~certificateholder~~. The notes shall include a schedule, based
19 upon statutory accounting principles, indicating that the
20 guaranteeing organization has a current ratio of no less than
21 2 to 1 of current assets to current liabilities and net assets
22 of at least \$250,000.

23 (e) Has sufficient funds available to perform the
24 obligations under its guarantees.

25 (f) Has complied with subsections ~~(5)-(11)(5), (6),~~
26 ~~(7), and (8)~~, except that the bond shall be maintained by the
27 guaranteeing organization in the minimum aggregate principal
28 amount of \$1 million.

29 (g) Has principals, including directors, officers,
30 stockholders, employees, and agents that are of good moral
31 character and have reputations for fair dealing in business

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1 matters, both as determined by the licensing authority board.

2 Section 111. Section 497.425, Florida Statutes, is
3 renumbered as section 497.462, Florida Statutes, and amended
4 to read:

5 497.462 ~~497.425~~ Other alternatives to deposits under
6 s. 497.458 ~~497.417~~.--

7 (1)(a) As an alternative to the requirements of s.
8 497.458 ~~497.417~~ that relate to trust funds for contracts
9 written prior to July 1, 2001, or that relate to trust funds
10 for contracts written prior to December 31, 2004, by any
11 preneed licensee ~~certificateholder~~ authorized to do business
12 in this state that has total bonded liability exceeding \$100
13 million as of July 1, 2001, and subject to the other
14 restrictions of this section, a preneed licensee
15 ~~certificateholder~~ may purchase a surety bond for funds not
16 held in trust as of July 1, 2001, in an amount not less than
17 the aggregate value of outstanding liabilities on undelivered
18 preneed contracts for merchandise and services. For the
19 purpose of this section, the term "outstanding liabilities"
20 means the gross replacement or wholesale value of the preneed
21 merchandise and services. The bond shall be made payable to
22 the State of Florida for the benefit of the licensing
23 authority board and all purchasers of preneed cemetery
24 merchandise or services. The bond must be approved by the
25 licensing authority board.

26 (b) The amount of the bond shall be based on a report
27 documenting the outstanding liabilities of the preneed
28 licensee ~~certificateholder~~ and shall be prepared by the
29 preneed licensee ~~certificateholder~~ using generally accepted
30 accounting principles and signed by the preneed licensee's
31 ~~certificateholder's~~ chief financial officer.

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1 (c) The report shall be compiled as of the end of the
2 preneed licensee's certificateholder's fiscal year and updated
3 annually. The amount of the bond shall be increased or
4 decreased as necessary to correlate with changes in the
5 outstanding liabilities.

6 (d) If a preneed licensee certificateholder fails to
7 maintain a bond pursuant to this section, the preneed licensee
8 certificateholder shall cease the sale of preneed merchandise
9 and services.

10 (2) Upon prior approval by the licensing authority
11 board, the preneed licensee certificateholder may file a
12 letter of credit with the licensing authority board in lieu of
13 a surety bond. Such letter of credit must be in a form, and is
14 subject to terms and conditions, prescribed by the board. It
15 may be revoked only with the express approval of the licensing
16 authority board.

17 (3)(a) A buyer of preneed merchandise or services who
18 does not receive such services or merchandise due to the
19 economic failure, closing, or bankruptcy of the preneed
20 licensee certificateholder must file a claim with the surety
21 as a prerequisite to payment of the claim and, if the claim is
22 not paid, may bring an action based on the bond and recover
23 against the surety. In the case of a letter of credit or cash
24 deposit that has been filed with the licensing authority
25 board, the buyer may file a claim with the licensing authority
26 board.

27 (b) In order to qualify for recovery on any claim
28 under paragraph (a), the buyer must file the claim no later
29 than 1 year after the date on which the preneed licensee
30 certificateholder closed or bankruptcy was filed.

31 (c) The licensing authority board may file a claim

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1 with the surety on behalf of any buyer under paragraph (a).
2 The surety shall pay the amount of the claims to the licensing
3 authority board for distribution to claimants entitled to
4 restitution and shall be relieved of liability to that extent.

5 (d) The liability of the surety under any bond may not
6 exceed the aggregate amount of the bond, regardless of the
7 number or amount of claims filed.

8 (e) If the total value of the claims filed exceeds the
9 amount of the bond, the surety shall pay the amount of the
10 bond to the licensing authority board for distribution to
11 claimants entitled to restitution and shall be relieved of all
12 liability under the bond.

13 (4) The preneed licensee certificateholder shall
14 maintain accurate records of the bond and premium payments on
15 it, which records shall be open to inspection by the licensing
16 authority board.

17 ~~(5) For purposes of this section, a preneed contract~~
18 ~~is a contract calling for the delivery of merchandise and~~
19 ~~services in the future and entered into before the death of~~
20 ~~the prospective recipient.~~

21 ~~(5)(6)~~ This act does not relieve the preneed licensee
22 certificateholder or other entity from liability for
23 nonperformance of contractual terms unless the preneed
24 licensee certificateholder cannot deliver the merchandise or
25 services because of a national emergency, strike, or act of
26 God.

27 ~~(6)(7)~~ The licensing authority board may require the
28 holder of any assets of the preneed licensee certificateholder
29 to furnish written verification of the financial report
30 required to be submitted by the preneed licensee
31 certificateholder or other entity.

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1 ~~(7)(8)~~ Any preneed contract which promises future
2 delivery of merchandise at no cost constitutes a paid-up
3 contract. Merchandise which has been delivered is not covered
4 by the required performance bond or letter of credit even
5 though the contract is not completely paid. The preneed
6 licensee ~~certificateholder~~ may not cancel a contract unless
7 the purchaser is in default according to the terms of the
8 contract and subject to the requirements of s. 497.459. A
9 contract sold, discounted, and transferred to a third party
10 constitutes a paid-up contract for the purposes of the
11 performance bond or letter of credit.

12 ~~(8)(9)~~ Each contract must state the type, size, and
13 design of merchandise and the description of service to be
14 delivered or performed.

15 ~~(9)(10)~~ A purchaser and a preneed licensee
16 ~~certificateholder~~ who are parties to a preneed contract
17 executed prior to July 2, 1988, may enter into an amended
18 preneed contract which is made subject to this section. On and
19 after January 1, 2006, this subsection may no longer be used
20 to make any additional contracts subject to a bond under this
21 section, provided that contracts already amended and made
22 subject to a bond as of December 31, 2005, may remain under
23 such bond.

24 ~~(10)(11)~~ The licensing authority ~~board~~ may adopt forms
25 and rules necessary to implement this section, including, but
26 not limited to, rules which ensure that the surety bond and
27 line of credit provide liability coverage for preneed
28 merchandise and services.

29 ~~(11)(12)~~ Preneed licensees ~~Certificateholders~~ may
30 utilize the bonding alternatives to s. 497.458 ~~497.417~~
31 provided in this section only for contracts written prior to

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1 July 1, 2001, for funds not held in trust as of July 1, 2001,
 2 or for contracts written prior to December 31, 2004, by any
 3 preneed licensee ~~certificateholder~~ authorized to do business
 4 in this state that has total bonded liability exceeding \$100
 5 million as of July 1, 2001, for funds not held in trust as of
 6 July 1, 2001.

7 Section 112. Section 497.427, Florida Statutes, is
 8 renumbered as section 497.463, Florida Statutes, and amended
 9 to read:

10 497.463 ~~497.427~~ Existing merchandise trust funds;
 11 proof of compliance with law.--The preneed licensee
 12 ~~certificateholder~~ shall present to the licensing authority
 13 ~~board~~ prior to the implementation of the alternatives provided
 14 in s. 497.462 ~~497.425~~ documentation which demonstrates that
 15 the existing merchandise trust fund complies with the law and
 16 that the elected alternative plan conforms to the requirements
 17 of this chapter.

18 Section 113. Section 497.429, Florida Statutes, is
 19 renumbered as section 497.464, Florida Statutes, and amended
 20 to read:

21 497.464 ~~497.429~~ Alternative preneed contracts.--

22 (1) Nothing in this chapter shall prevent the
 23 purchaser and the preneed licensee ~~certificateholder~~ from
 24 executing a preneed contract upon the terms stated in this
 25 section. Such contracts shall be subject to all provisions of
 26 this chapter except:

27 (a) Section 497.454(2) ~~497.409(2)~~.

28 (b) Section 497.457 ~~497.415~~.

29 (c) Section 497.458(1), (3), and (6) ~~497.417(1), (3),~~
 30 ~~and (5)~~.

31 (d) Section 497.459(1), (2), and (4) ~~497.419(1), (2),~~

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1 ~~and (5).~~

2 (e) Section 497.460 ~~497.421~~.

3 (f) Section 497.461 ~~497.423~~.

4 (g) Section 497.462 ~~497.425~~.

5 (2) The contract must require that a trust be
 6 established by the preneed licensee ~~certificateholder~~ on
 7 behalf of, and for the use, benefit, and protection of, the
 8 purchaser and that the trustee must be a trust company
 9 operating pursuant to chapter 660, a national or state bank
 10 holding trust powers, or a federal or state savings and loan
 11 association holding trust powers.

12 (3) The contract must require that the purchaser make
 13 all payments required by the contract directly to the trustee
 14 or its qualified servicing agent and that the funds shall be
 15 deposited in this state, subject to the terms of a trust
 16 instrument approved by the licensing authority ~~board~~. The
 17 licensing authority may adopt rules establishing procedures
 18 and forms for the submission of trust instruments for approval
 19 by the licensing authority, establishing criteria for the
 20 approval of such trust instruments, and specifying information
 21 required to be provided by the applicant in connection with
 22 submission of a trust instrument for approval. A copy of the
 23 trust instrument shall be made available to the purchaser, at
 24 any reasonable time, upon request.

25 (4) The contract or trust instrument shall expressly
 26 state that the preneed licensee ~~certificateholder~~ does not
 27 have any dominion or control over the trust or its assets,
 28 except to the extent that subsection (6) applies, until such
 29 time as the preneed contract is entirely completed or
 30 performed.

31 (5) The trust instrument shall prohibit the trustee

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1 from distributing any appreciation on the trust to any person
2 and shall require that the trustee accumulate the entire net
3 income of the trust, or its pro rata share thereof. The
4 accumulated net income shall be distributed to the preneed
5 licensee ~~certificateholder~~ upon cancellation or performance of
6 the contract.

7 (6) The contract and trust instrument may provide that
8 the preneed licensee ~~certificateholder~~ may receive a current
9 distribution of not more than 10 percent of all funds paid or
10 collected by the trustee and may further provide for
11 liquidated damages during the first 3 years after the
12 execution of the contract of not more than 10 percent of all
13 the funds paid on the preneed contract, except that no
14 liquidated damages shall apply for cancellation within 30 days
15 of the date of execution of the contract.

16 (7) Disbursement of funds discharging any preneed
17 contract shall be made by the trustee to the person issuing or
18 writing such contract upon receipt of a certified copy of the
19 death certificate of the contract beneficiary and evidence
20 satisfactory to the trustee that the preneed contract has been
21 fully performed. In the event of any contract default by the
22 contract purchaser, or in the event that the funeral
23 merchandise or service contracted for is not provided or is
24 not desired by the purchaser or the heirs or personal
25 representative of the contract beneficiary, the trustee shall
26 return, within 30 days after its receipt of a written request
27 therefor, funds paid on the contract to the contract purchaser
28 or to her or his assigns, heirs, or personal representative,
29 subject to the lawful liquidation damage provision in the
30 contract.

31 (8) The contract shall provide, in conspicuous type,

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1 that the purchaser may receive a federal income tax
 2 informational statement, pursuant to the grantor trust rules
 3 of ss. 671 et seq. of the Internal Revenue Code of 1986, as
 4 amended, from the trustee reflecting all of the income earned
 5 by the trust; and, accordingly, the purchaser should seek the
 6 advice of an independent tax professional for the tax impact
 7 upon the purchaser as a result of executing the preneed
 8 contract.

9 (9) The contract may provide that the preneed licensee
 10 ~~certificateholder~~ may cancel the contract, but only in the
 11 event that the purchaser is more than 90 days in default of
 12 the terms of the contract; and, unless subject to the
 13 provisions of s. 497.459(5) ~~497.419(6)~~, must provide that the
 14 purchaser, or her or his representative, has the right, at any
 15 time prior to the performance of the contract, to cancel the
 16 preneed contract and revest title to all the funds paid on the
 17 preneed contract, except for applicable liquidated damages,
 18 and the preneed licensee's ~~certificateholder's~~ rights in the
 19 net income of the trust.

20 (10) The contract or trust agreement may require the
 21 trustee to invest in solely tax-free investments.

22 (11) In the event the parties execute a contract
 23 pursuant to this section, the purchaser shall be deemed, and
 24 treated for all purposes, as the settlor of the trust
 25 established thereunder.

26 Section 114. Section 497.436, Florida Statutes, is
 27 renumbered as section 497.465, Florida Statutes, and amended
 28 to read:

29 497.465 ~~497.436~~ Inactive, surrendered, and revoked
 30 preneed licensees ~~certificateholders~~.--

31 (1) A preneed licensee ~~certificateholder~~ shall be

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1 | considered inactive upon the acceptance of the surrender of
2 | its license by the licensing authority board or upon the
3 | nonreceipt by the licensing authority board of the preneed
4 | license certificate of authority renewal application and fees
5 | required by s. 497.265 ~~497.213(2)~~.

6 | (2) A preneed licensee certificateholder shall cease
7 | all preneed sales to the public upon becoming inactive. The
8 | preneed licensee certificateholder shall collect and deposit
9 | into trust all of the funds paid toward preneed contracts sold
10 | prior to becoming inactive.

11 | (3) Any preneed licensee certificateholder desiring to
12 | surrender its license to the licensing authority board shall
13 | first:

14 | (a) File notice with the licensing authority board.

15 | (b) Submit copies of its existing trust agreements.

16 | (c) Submit a sample copy of each type of preneed
17 | contract sold.

18 | (d) Resolve to the licensing authority's board's
19 | satisfaction all unresolved findings and violations resulting
20 | from prior examinations ~~the last examination~~ conducted.

21 | (e) Pay all outstanding fines and invoices due the
22 | licensing authority board.

23 | (f) Submit its current preneed license certificate of
24 | authority.

25 | (4) Upon receipt of the notice, the licensing
26 | authority board shall review the preneed licensee's
27 | certificateholder's:

28 | (a) Trust funds.

29 | (b) Trust agreements.

30 | (c) Evidence of all outstanding preneed contracts.

31 | (5) After a review to the licensing authority's

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1 ~~board's~~ satisfaction, the licensing authority board shall
2 terminate the preneed license certificate of authority by an
3 order which shall set forth the conditions of termination
4 established by the licensing authority board to ensure that
5 the preneed funds will be available for their intended
6 purpose.

7 (6) The trust fund of the preneed licensee
8 ~~certificateholder~~ shall be held intact and in trust after the
9 preneed licensee certificateholder has become inactive, and
10 the funds in that trust shall be disbursed in accordance with
11 the requirements of the written contracts and this chapter
12 until the funds have been exhausted.

13 (7) The licensing authority board shall continue to
14 have jurisdiction over the inactive preneed licensee and the
15 trust funds certificateholder as if the preneed license
16 certificate were active and to require such reports and
17 inspect such records as the licensing authority board deems
18 appropriate so long as there are funds in trust or preneed
19 contracts that are not fulfilled.

20 (8) In addition to any other terms of revocation or
21 suspension ordered pursuant to this chapter, s. 497.233, the
22 provisions of this section shall also apply in the event of
23 revocation or suspension of a preneed license, unless the
24 provisions of the suspension or revocation order specifically
25 provide otherwise.

26 (9) The licensing authority may adopt rules for the
27 implementation of this section, for the purpose of ensuring a
28 thorough review and investigation of the status and condition
29 of the preneed licensee's business affairs for the protection
30 of the licensee's preneed customers. Such rules may include:

31 (a) The form of notice required by paragraph (3)(a),

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1 and the information or materials to be contained in or
 2 accompany the notice or otherwise to be provided, which may
 3 include any information or materials the licensing authority
 4 deems needed for the discharge of its responsibilities under
 5 this section.

6 (b) Requirements for the submission of sworn
 7 affidavits by or the taking of sworn testimony from the
 8 licensee and its principals and employees and sales agents.

9 (c) Requirements for submission of unaudited or
 10 audited financial statements, as the licensing authority deems
 11 advisable.

12 Section 115. Section 497.439, Florida Statutes, is
 13 renumbered as section 497.466, Florida Statutes, and amended
 14 to read:

15 497.466 ~~497.439~~ Preneed sales agents, license
 16 required; application procedures and criteria; responsibility
 17 of preneed licensee.--

18 (1) GENERAL PROVISIONS APPLICABLE TO PRENEED SALES
 19 AGENTS.--

20 (a) All individuals who offer preneed contracts to the
 21 public, or who execute preneed contracts on behalf of a
 22 preneed licensee certificateholder, including all individuals
 23 who offer, sell, or sign contracts for the preneed sale of
 24 burial rights, shall be licensed ~~registered with the board~~ as
 25 preneed sales agents, pursuant to this section, unless such
 26 individuals are licensed as funeral directors pursuant to this
 27 chapter.

28 (b)(2) All preneed sales agents and funeral directors
 29 acting as preneed sales agents must be employed by or under
 30 written contract with ~~affiliated~~ with the preneed licensee
 31 ~~certificateholder~~ that they are representing.

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1 ~~(c)(3)~~ A preneed licensee ~~certificateholder~~ shall be
2 responsible for the activities of all preneed sales agents and
3 all funeral directors acting as preneed sales agents, who are
4 affiliated with the preneed licensee ~~certificateholder~~ and who
5 perform any type of preneed-related activity on behalf of the
6 preneed licensee ~~certificateholder~~. In addition to the preneed
7 sales agents and funeral directors acting as preneed sales
8 agents, each preneed licensee ~~certificateholder~~ shall also be
9 subject to discipline if its preneed sales agents or funeral
10 directors acting as preneed sales agents violate any provision
11 of this chapter.

12 ~~(d)(4)~~ A preneed sales agent and a funeral director
13 acting as a preneed sales agent shall be authorized to sell,
14 offer, and execute preneed contracts on behalf of all entities
15 owned or operated by its sponsoring preneed licensee
16 ~~certificateholder~~.

17 ~~(e)~~ An individual may be licensed as a preneed sales
18 agent on behalf of more than one preneed licensee, provided
19 that the individual has received the written consent of all
20 such preneed licensees and makes separate application under
21 this section for each such agency.

22 ~~(f)~~ A sponsoring preneed licensee shall notify the
23 department in writing within 30 days after the sponsored
24 preneed sales agent's authority to represent that preneed
25 licensee has terminated.

26 ~~(2)~~ APPLICATION PROCEDURES.--

27 ~~(a)~~ A person seeking licensure as a preneed sales
28 agent shall apply for such licensure using forms prescribed by
29 rule of the licensing authority.

30 ~~(b)~~ The application shall require the name, residence
31 address, residence phone number if any, and date and place of

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1 birth, of the preneed sales agent applicant. Applicants shall
2 be at least 18 years of age. The application shall require
3 identification of the name, address, and license number of the
4 sponsoring preneed licensee. The application shall require the
5 preneed sales agent applicant's social security number and the
6 federal tax identification number of the sponsoring preneed
7 licensee.

8 (c) The application shall require information as to
9 the educational and employment history of the preneed sales
10 agent applicant.

11 (d) The application shall require the preneed sales
12 agent applicant to disclose whether the preneed sales agent
13 applicant has ever been convicted or found guilty of, or
14 entered a plea of no contest to, regardless of adjudication,
15 any crime in any jurisdiction.

16 (e) The application shall require the preneed sales
17 agent applicant to disclose whether the preneed sales agent
18 applicant has ever had a license or the authority to practice
19 a profession or occupation refused, suspended, fined, denied,
20 or otherwise acted against or disciplined, by the licensing
21 authority of any jurisdiction. A licensing authority's
22 acceptance of a relinquishment of licensure, stipulation,
23 consent order, or other settlement, offered in response to or
24 in anticipation of the filing of charges against the license,
25 shall be construed as action against the license.

26 (f) The application shall require a representation by
27 the sponsoring preneed licensee, that:

28 1. The sponsoring preneed licensee's license is in
29 good standing.

30 2. Upon licensure as a preneed sales agent the
31 sponsored preneed sales agent applicant will be authorized to

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1 offer, sell, and sign preneed contracts on behalf of the
2 preneed licensee.

3 3. The preneed licensee has trained the applicant in
4 the provisions of this chapter relating to preneed sales, the
5 provisions of the preneed licensee's preneed contracts, and
6 the nature of the merchandise, services, or burial rights sold
7 by the preneed licensee.

8 (g) The application shall require the preneed sales
9 agent applicant to indicate whether the applicant has any type
10 of working relationship with any other preneed licensee or
11 insurance company, and if yes, to identify such other preneed
12 licensee or insurance company, as the case may be.

13 (h) The applicant shall be required to submit her or
14 his fingerprints in accordance with part I of this chapter.

15 (i) The application shall be signed by the applicant
16 and by an officer or manager of the sponsoring preneed
17 licensee.

18 (j) The application shall be accompanied by a
19 nonrefundable fee of \$100. The licensing authority may from
20 time to time increase such fee but not to exceed \$200.

21 (3) ACTION CONCERNING APPLICATIONS; TEMPORARY AND
22 REGULAR LICENSURE.--

23 (a) An applicant shall be deemed to have been issued a
24 temporary preneed sales agent license and may begin
25 functioning as a preneed sales agent, immediately upon receipt
26 by the department of a duly completed application for
27 licensure under this section, if the application shows an
28 applicant of at least 18 years of age who has answered in the
29 negative regarding paragraphs (2)(d) and (e) relating to prior
30 criminal and disciplinary actions, and which application is
31 accompanied by the required application fee. The temporary

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1 preneed sales agent license shall be valid for 90 days unless
2 earlier suspended by the licensing authority for cause. If the
3 application is approved by the board within the 90-day period,
4 the temporary license shall be deemed converted to a regular
5 biennial license which shall expire in accordance with the
6 schedule established by the licensing authority by rule.

7 (b)1. A person who cannot truthfully answer in the
8 negative regarding paragraphs (2)(d) and (e) relating to prior
9 criminal and disciplinary actions, may apply to the licensing
10 authority for issuance of a preneed sales agent license
11 notwithstanding such criminal or disciplinary record. The
12 licensing authority may by rule specify forms and procedures
13 for use by such persons in applying for preneed sales agent
14 licensure, to be used by such persons in lieu of the forms and
15 procedures specified under paragraph (a). Licensure shall be
16 granted unless the licensing authority reasonably determines
17 that the prior criminal or disciplinary record indicates that
18 the granting of licensure would pose unreasonable risk to the
19 public.

20 2. To facilitate issuance of licenses concerning
21 applicants with criminal or disciplinary records which the
22 licensing authority judges to make the applicant borderline as
23 to qualification for licensure, the licensing authority may
24 issue a new license under this section on a probationary
25 basis, subject to conditions specified by the licensing
26 authority on a case-by-case basis, which conditions may impose
27 special monitoring, reporting, and restrictions on operations
28 for up to the first 24 months of licensure, to ensure the
29 preneed sales agent licensee's integrity, trustworthiness, and
30 compliance with this chapter. Provided, no such probationary
31 license shall be issued unless the licensing authority

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1 determines that issuance would not pose an unreasonable risk
2 to the public, and the licensing authority must within 24
3 months after issuance of the license either remove the
4 probationary status or determine that the licensee is not
5 qualified for licensure under this chapter and institute
6 proceedings for revocation of licensure. The licensing
7 authority may adopt rules prescribing criteria and procedures
8 for issuance of such probationary licenses.

9 (4) RENEWAL OF LICENSES.--Nontemporary preneed sales
10 agent licenses under this section shall be renewed biennially
11 in accordance with a schedule, forms, and procedures
12 established by rule. The nonrefundable biennial renewal fee
13 shall be as determined by licensing authority rule but not to
14 exceed \$200.

15 (5) SIMPLIFIED PROCEDURES FOR SUBSEQUENT CHANGE OF
16 SPONSORING LICENSEE.--The board may by rule establish
17 simplified requirements and procedures under which any preneed
18 sales agent who, within the 12 months preceding application
19 under this subsection held in good standing a preneed sales
20 agent license under this section, may obtain a preneed sales
21 agent's license under this section to represent a different
22 sponsoring preneed licensee. The simplified requirements shall
23 dispense with the requirement for submission of fingerprints.
24 The licensing authority may by rule prescribe forms to be used
25 by applicants under this subsection, which forms may dispense
26 with the requirement for any information not deemed by the
27 licensing authority to be necessary to tracking the identify
28 of the preneed licensee responsible for the activities of the
29 preneed sales agent. No preneed sales agent licensee whose
30 sales agent license issued by the board was revoked or
31 suspended or otherwise terminated while in other than good

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1 standing, shall be eligible to use the simplified requirements
 2 and procedures. The issuance of a preneed sales agent license
 3 under this subsection shall not operate as a bar to any
 4 subsequent disciplinary action relating to grounds arising
 5 prior to obtaining the license under this subsection. There
 6 shall be a fee payable to the department under such simplified
 7 procedures, which fee shall be the same as the fee paid upon
 8 initial application for preneed sales agent license, except
 9 that no fingerprint fee shall be required if such fingerprint
 10 fee is required for initial applications.

11 ~~(5) An individual may begin functioning as a preneed~~
 12 ~~sales agent as soon as a completed application for~~
 13 ~~registration, as set forth in subsection (7), is sent to the~~
 14 ~~department.~~

15 ~~(6) The qualifications for a preneed sales agent are~~
 16 ~~as follows:~~

17 ~~(a) The applicant must be at least 18 years of age.~~

18 ~~(b) The applicant must be in good standing with the~~
 19 ~~board.~~

20 ~~(c) The applicant must not have any felony or~~
 21 ~~misdeemeanor convictions that relate to any activity regulated~~
 22 ~~by this chapter.~~

23 ~~(7) An application for registration as a preneed sales~~
 24 ~~agent shall be submitted to the department with an application~~
 25 ~~fee of \$100 by the certificateholder in a form that has been~~
 26 ~~prescribed by department rule and approved by the board. Such~~
 27 ~~application shall contain, at a minimum, the following:~~

28 ~~(a) The name, address, social security number, and~~
 29 ~~date of birth of the applicant and such other information as~~
 30 ~~the board may reasonably require of the applicant.~~

31 ~~(b) The name, address, and license number of the~~

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1 ~~sponsoring certificateholder.~~

2 ~~(c) A representation, signed by the applicant, that~~
3 ~~the applicant meets the requirements set forth in subsection~~
4 ~~(6).~~

5 ~~(d) A representation, signed by the certificateholder,~~
6 ~~that the applicant is authorized to offer, sell, and sign~~
7 ~~preneed contracts on behalf of the certificateholder, and that~~
8 ~~the certificateholder has trained the applicant in the~~
9 ~~provisions of this chapter relating to preneed sales as~~
10 ~~determined by the board, the provisions of the~~
11 ~~certificateholder's preneed contract, and the nature of the~~
12 ~~merchandise, services, or burial rights sold by the~~
13 ~~certificateholder.~~

14 ~~(e) A statement indicating whether the applicant has~~
15 ~~any type of working relationship with any other~~
16 ~~certificateholder or insurance company.~~

17 ~~(8) An individual may be registered as a preneed sales~~
18 ~~agent on behalf of more than one certificateholder, provided~~
19 ~~that the individual has received the written consent of all~~
20 ~~such certificateholders.~~

21 ~~(9) A certificateholder who has registered a preneed~~
22 ~~sales agent shall notify the department within 30 days after~~
23 ~~such individual's status as a preneed sales agent has been~~
24 ~~terminated.~~

25 ~~(10) Upon receipt of an application that complies with~~
26 ~~all of the requirements of subsection (7), the department~~
27 ~~shall register the applicant. The department shall by rule~~
28 ~~provide for biennial renewal of registration and a renewal fee~~
29 ~~of \$150.~~

30 Section 116. Section 497.441, Florida Statutes, is
31 renumbered as section 497.467, Florida Statutes, and amended

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1 (a) The application shall require the applicant's name
2 and address, and the name and address of all principals of the
3 applicant. The application shall require the applicant's
4 social security number, or if the applicant is an entity, its
5 federal tax identification number.

6 (b) The application may require information as to the
7 applicant's financial resources, and may require information
8 as to the experience of the applicant and its principals in
9 the monument establishment business or death care industry.

10 (c) The application shall require the applicant to
11 disclose whether the applicant or any of its principals has
12 ever been convicted or found guilty of, or entered a plea of
13 no contest to, regardless of adjudication, any crime in any
14 jurisdiction.

15 (d) The application shall require the applicant to
16 disclose whether the applicant or any of its principals has
17 ever had a license or the authority to practice a profession
18 or occupation revoked, suspended, fined, denied, or otherwise
19 acted against or disciplined, by the licensing authority of
20 any jurisdiction.

21 (e) The application shall require the applicant's
22 principals to provide fingerprints in accordance with part I
23 of this chapter.

24 (f) The applicant shall be a natural person at least
25 18 years of age, a corporation, a partnership, or a limited
26 liability company formed prior to January 1, 2005 which
27 limited liability company already holds a license under this
28 chapter.

29 (g) The applications shall require the applicant to
30 demonstrate that the applicant has, or will have before
31 commencing operations, the facilities required under this

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1 part.

2 (h) The application shall be signed by the applicant
3 if a natural person, or by the president of an applicant that
4 is a corporation.

5 (i) The application shall be accompanied by an
6 application fee as determined by licensing authority rule but
7 not to exceed \$500.

8 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
9 application for licensure as a monument establishment,
10 accompanied by the required application fee, shall be approved
11 unless there is shown by clear and convincing evidence that
12 the applicant will not, before commencing operations, have the
13 facilities required by this part or that issuance of the
14 license would pose an unreasonable risk to the public because
15 one or more of the following factors:

16 (a) The applicant's lack of experience.

17 (b) The applicant's lack of financial resources.

18 (c) The criminal or disciplinary record of applicant
19 or its principals.

20 (d) A demonstrated history of violations of the laws
21 of this state by applicant or its principals regarding the
22 funeral or cemetery business or other business activities.

23 (e) A demonstrated history of lack of trustworthiness
24 or integrity on the part of the applicant or its principals.

25 (4) PROBATIONARY STATUS.--It is the policy of this
26 state to encourage competition for the public benefit in the
27 monument establishment business by, among other means, the
28 entry of new licensees into the monument establishment
29 business. To facilitate issuance of licenses concerning
30 applications judged by the licensing authority to be
31 borderline as to qualification for licensure, the licensing

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1 authority may issue new monument establishment licenses on a
2 probationary basis, subject to conditions specified by the
3 licensing authority on a case-by-case basis, which conditions
4 may impose special monitoring, reporting, and restrictions on
5 operations for up to the first 24 months of licensure, to
6 ensure the licensee's responsibleness, competency, and
7 financial stability. However, no such probationary license
8 shall be issued unless the licensing authority determines that
9 issuance would not pose an unreasonable risk to the public,
10 and the licensing authority must within 24 months after
11 issuance of the license either remove the probationary status
12 or determine that the licensee is not qualified for licensure
13 and institute proceedings for revocation of licensure.

14 (5) LICENSE NOT TRANSFERABLE OR ASSIGNABLE.--A
15 monument establishment license shall not be transferable or
16 assignable.

17 Section 119. Section 497.551, Florida Statutes, is
18 created to read:

19 497.551 Renewal of monument establishment licensure.--

20 (1) A monument establishment license must be renewed
21 biennially by the licensee.

22 (2) A monument establishment licensee that does not
23 hold a preneed sales license as of 90 days prior to the date
24 its monument establishment license renewal is due, shall renew
25 its monument establishment license by payment of a renewal fee
26 established by rule not to exceed \$250.

27 (3) A monument establishment licensee which as of 90
28 days prior to its monument establishment license renewal date
29 also holds a preneed sales license issued under this chapter,
30 shall renew its monument establishment license by payment of a
31 renewal fee determined by its total gross aggregate at-need

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1 and preened retail sales for the 12-month period ending 2 full
2 calendar months prior to the month in which the renewal is
3 required, as follow:

4 (a) Total sales of \$1 to \$50,000, renewal fee \$1,000.

5 (b) Total sales \$50,001 to \$250,000, renewal fee
6 \$1,500.

7 (c) Total sales of \$250,001 to \$500,000, renewal fee
8 \$2,000.

9 (d) Total sales over \$500,000, renewal fee \$2,500.

10 (4) Rules may be adopted providing procedures, forms,
11 and uniform timeframes for monument establishment license
12 renewals.

13 Section 120. Section 497.552, Florida Statutes, is
14 created to read:

15 497.552 Required facilities.--Effective January 1,
16 2006, a monument establishment shall at all times have and
17 maintain a full-service place of business at a specific street
18 address or location in Florida complying with the following
19 requirements:

20 (1) It shall include an office for the conduct of its
21 business including the reception of customers.

22 (2) It shall include a display area in which is
23 displayed a selection of monuments, markers, and related
24 products for inspection by customers prior to sale.

25 (3) Its office and display area shall normally be open
26 to the public weekdays during normal business hours.

27 (4) It shall have facilities for inscribing monuments,
28 and equipment to deliver and install markers and monuments.

29 (5) It shall comply with any local government zoning
30 regulations and may not be located on tax-exempt property.

31 Section 121. Section 497.553, Florida Statutes, is
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1 created to read:

2 497.553 Regulation of monument establishments.--

3 (1) The Department of Financial Services shall
4 establish and implement an inspection program for all monument
5 establishments in accordance with the requirements of this
6 act.

7 (2) Commencing January 1, 2006, all retail sales by
8 monument establishments shall be on a sales agreement form
9 filed by the monument establishment with and approved by the
10 licensing authority. Sales agreement forms must provide a
11 complete description of any monument, marker, or related
12 product to be delivered, and shall prominently and clearly
13 specify the agreed date for delivery and installation.
14 Procedures for submission and approval of such forms shall be
15 established by rule.

16 (3) Commencing January 1, 2006, all monument
17 establishments shall have written procedures for the receipt,
18 investigation, and disposition of customer complaints, and
19 shall ensure that their staff who receive or process such
20 complaints are familiar with and follow such procedures.

21 (4) Commencing January 1, 2006, all monument
22 establishments shall maintain for inspection by the department
23 records of written complaints received by the monument
24 establishment. Such complaint records shall include a
25 chronological log of written complaints received, in which the
26 name and address of each complainant and date of complaint is
27 entered consecutively within 10 business days of receipt of
28 each complaint. The licensing authority may by rule establish
29 requirements regarding the format of complaint logs, including
30 whether they may be maintained electronically, or shall be
31 maintained by pen and ink on paper; the licensing authority

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1 may by order direct a licensee to maintain complaint logs by
2 pen and ink in writing. The original or complete copy of each
3 written complaint received by a monument establishment, and
4 all subsequent correspondence related to such complaint, shall
5 be maintained by the monument establishment, for inspection by
6 the department, for the longer of 24 months or 12 months after
7 the most recent department inspection during which the
8 complaint was in the monument establishment's complaint
9 records and available for the department's review.

10 (5) Commencing January 1, 2006, the failure of a
11 monument establishment to deliver and install a purchased
12 monument or marker by the date agreed in the sales agreement
13 shall entitle the customer to a full refund of all amounts
14 paid by the customer for the monument and its delivery and
15 installation, unless the monument establishment has obtained a
16 written agreement from the customer extending the delivery
17 date. Such refund shall be made within 30 days after receipt
18 by the monument establishment of the customer's written
19 request for a refund. This subsection does not preclude the
20 purchase and installation of a new monument from any other
21 registered monument establishment or preneed sales licensee.

22 Section 122. Section 497.554, Florida Statutes, is
23 created to read:

24 497.554 Monument establishment sales
25 representatives.--

26 (1) LICENSE REQUIRED.--Each person selling monuments,
27 markers, or related products for a monument establishment must
28 be licensed as a monument establishment sales agent. This
29 requirement shall apply notwithstanding that such person is
30 already registered or licensed in another capacity pursuant to
31 this chapter.

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1 (2) APPLICATION PROCEDURES.--Licensure as an monument
2 establishment sale agent shall be by submission of an
3 application for licensure to the department on a form
4 prescribed by rule.

5 (a) The application shall require the applicant to
6 state her or his name, residence and business address,
7 business phone number, social security number, and the name
8 and address of the monument establishment for which the
9 applicant will be selling.

10 (b) The application shall require the applicant to
11 disclose whether the applicant has ever been convicted or
12 found guilty of, or entered a plea of no contest to,
13 regardless of adjudication, any crime in any jurisdiction.

14 (c) The application shall require the applicant to
15 disclose whether the applicant has ever had a license or the
16 authority to practice a profession or occupation revoked,
17 suspended, fined, denied, or otherwise acted against or
18 disciplined, by the licensing authority of any jurisdiction.

19 (d) The application shall be signed by the applicant
20 and the owner or an officer of the sponsoring monument
21 establishment.

22 (e) The monument establishment sales agent application
23 shall be accompanied by a fee of \$50. The licensing authority
24 may from time to time increase the application fee by rule but
25 not to exceed \$200.

26 (3) APPROVAL OR DENIAL OF APPLICATION.--

27 (a) If a properly completed application accompanied by
28 the required application fee indicates the applicant has no
29 criminal or disciplinary record, the requested licensure shall
30 be deemed granted upon receipt of the duly completed
31 application by the department.

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1 (b) If the application indicates the applicant has any
2 criminal or disciplinary history, licensure shall be granted
3 unless the licensing authority determines that the licensure
4 of the applicant would pose a substantial threat to the
5 welfare of the public with which the applicant might be
6 dealing as a monument establishment sales agent. Rules may be
7 adopted providing criteria for evaluating criminal and
8 disciplinary records as they may affect applications for
9 licensure under this section.

10 (4) TERMINATION OF AUTHORITY.--

11 (a) Once issued, a monument establishment sales agent
12 license of an agent not licensed to make preneed sales shall
13 remain in effect without renewal until surrendered, or the
14 sponsoring monument establishment terminates the agent's
15 authority to sell on behalf of that monument establishment, or
16 the license is revoked or suspended by the licensing authority
17 for cause.

18 (b) The monument establishment whose officer signed
19 the sales agent application shall terminate that agent's
20 authority to sell on behalf of that monument establishment,
21 and the monument establishment in writing shall advise the
22 licensing authority of such termination within 30 days after
23 the termination.

24 (5) RESPONSIBILITY FOR AGENTS.--The sponsoring
25 monument establishment shall be responsible for the activities
26 of its sales agents concerning their sales activities and
27 shall reasonably supervise such activities.

28 (6) AGENT LICENSE REQUIRED.--A person selling
29 monuments, markers, and related products on a preneed basis
30 for a monument establishment that has been issued a preneed
31 sales license must also obtain authorization as a preneed

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1 sales agent under part IV of this chapter.

2 Section 123. Section 497.555, Florida Statutes, is
3 created to read:

4 497.555 Required rules.--Rules shall be adopted
5 establishing minimum standards for access to all cemeteries by
6 licensed monument establishments, for the purpose of
7 delivering and installing markers and monuments. In all cases,
8 cemeteries must comply with these minimum standards.

9 Section 124. Section 497.556, Florida Statutes, is
10 created to read:

11 497.556 Requirements relating to monument
12 establishments.--

13 (1) INITIAL LICENSURE.--No monument establishment
14 shall be issued a license to engage in preneed sales under
15 this chapter unless the monument establishment shall, in
16 addition to the other requirements of this part for issuance
17 of a preneed license, meet the following requirements:

18 (a) The monument establishment or its principals shall
19 demonstrate at least 3 years of experience in the operation of
20 a monument establishment.

21 (b) The monument establishment shall demonstrate that
22 it has a net worth of at least \$10,000 pursuant to generally
23 accepted accounting principles. If the monument establishment
24 applying for preneed licensure cannot demonstrate a net worth
25 of at least \$10,000, the licensing authority may in accordance
26 with subsection (3) accept alternative factors or arrangements
27 as substituting for the \$10,000 net worth requirement, and
28 issue the license on that basis. A monument establishment
29 which is issued a preneed sales license based upon subsection
30 (3) shall be subject to subsection (2) regarding subsequent
31 renewals of its preneed sales license.

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1 (2) RENEWAL LICENSURE.--Each monument establishment
2 seeking to renew its preneed sales license shall demonstrate,
3 in addition to the other requirements of part IV of this
4 chapter relating to renewal of preneed licenses, a net worth
5 of \$10,000 as of the year end for its fiscal year most
6 recently concluded prior to the renewal date. Such net worth
7 shall be demonstrated in financial statements prepared in
8 accordance with generally accepted accounting principles and
9 filed with the licensing authority. If the monument
10 establishment seeking renewal of its preneed licensure cannot
11 demonstrate the required net worth the licensing authority may
12 in accordance with subsection (3) accept alternative factors
13 or arrangements as substituting for the \$10,000 net worth
14 requirement and renew the license for that renewal cycle on
15 that basis.

16 (3) ALTERNATIVES TO \$10,000 NET WORTH REQUIREMENT.--

17 (a) A monument establishment that cannot demonstrate
18 the required \$10,000 net worth may voluntarily submit to the
19 licensing authority and request acceptance of alternative
20 evidence of financial stability and resources or agree to
21 additional oversight in lieu of the required net worth. Such
22 additional evidence or oversight may include, as appropriate,
23 one or more of the following:

24 1. An agreement to submit monthly financial statements
25 of the entity.

26 2. An agreement to submit quarterly financial
27 statements of the entity.

28 3. An appraisal of the entity's property or broker's
29 opinion of the entity's assets.

30 4. A credit report of the entity or its principals.

31 5. A subordination-of-debt agreement from the entity's

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1 principals.

2 6. An indemnification or subrogation agreement binding
3 the entity and its principals.

4 7. A guarantee agreement for the entity from its
5 principals.

6 8. A written explanation of past financial activity.

7 9. Submission of a 12-month projected business plan
8 that includes:

9 a. A statement of cash flows.

10 b. Pro forma income statements, with sources of
11 revenues identified.

12 c. Marketing initiatives.

13 10. Submission of previous department examination
14 reports.

15 11. An agreement of 100 percent voluntary trust by the
16 entity.

17 (b) The licensing authority may accept such
18 alternative evidence or arrangements in lieu of the required
19 net worth only if the licensing authority determines such
20 alternative evidence or arrangements are an adequate
21 substitute for \$10,000 of net worth and that acceptance would
22 not substantially increase the risk to existing or future
23 customers of nonperformance by the monument establishment on
24 its retail sales agreements.

25 (4) BRANCH OPERATIONS.--A licensed monument
26 establishment under common control with another monument
27 establishment, funeral establishment, or licensed cemetery,
28 which other monument establishment, funeral establishment, or
29 licensed cemetery holds a preneed sales license in good
30 standing, may engage in preneed sales under and as a branch of
31 that other entity's preneed sales license, if there is

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1 compliance with the usual requirements of this part for branch
 2 operation, and the entity holding the preneed sales license
 3 executes and files with the licensing authority a written
 4 agreement in a form acceptable to the licensing authority,
 5 guaranteeing performance of the preneed sales of the branch.

6 Section 125. Part VI of chapter 497, Florida Statutes,
 7 consisting of sections 497.601, 497.602, 497.603, 497.604,
 8 497.605, 497.606, 497.607, and 497.608, is created to read:

9 PART VI

10 CREMATION, CREMATORIES, AND DIRECT DISPOSITION

11 Section 126. Section 470.0165, Florida Statutes, is
 12 renumbered as section 497.601, Florida Statutes, and amended
 13 to read:

14 497.601 ~~470.0165~~ Direct disposition; duties.--

15 (1) Those individuals licensed ~~registered~~ as direct
 16 disposers may perform only those functions set forth below:

17 (a) Remove human remains from the place of death and
 18 store human remains in registered direct disposal
 19 establishments.

20 (b) Secure pertinent information from the decedent's
 21 next of kin in order to complete the death certificate and to
 22 file for the necessary permits for direct disposition.

23 (c) Obtain the necessary permits for direct
 24 disposition and arrange for obituaries and death notices to be
 25 placed in newspapers; provided, however, that the name of the
 26 direct disposal establishment may not appear in any death
 27 notice or obituary if any funeral service, memorial service,
 28 or graveside service is to take place and such service is
 29 mentioned in the death notice or obituary.

30 (d) Refrigerate human remains prior to direct
 31 disposition and transport human remains to a direct disposal

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1 establishment for direct disposition.

2 (e) Contract with a removal service or refrigeration
3 facility to provide such services or facilities to a direct
4 disposal establishment.

5 (2) Direct disposers or funeral directors functioning
6 as direct disposers may not, in their capacity as direct
7 disposers, sell, conduct, or arrange for burials, funeral
8 services, memorial services, visitations, or viewings; hold
9 themselves out to the public as funeral directors; or use any
10 name, title, or advertisement that may tend to connote that
11 they are funeral directors. These prohibitions shall apply
12 regardless of the fact that such individuals may be licensed
13 as funeral directors.

14 (3) Provided that direct disposers limit their
15 activities to those functions set forth in subsection (1),
16 those activities shall not be deemed to constitute funeral
17 directing or embalming or the functions performed by a funeral
18 director or embalmer as otherwise set forth in this chapter.

19 Section 127. Section 470.017, Florida Statutes, is
20 renumbered as section 497.602, Florida Statutes, and amended
21 to read:

22 (Substantial rewording of section. See
23 s. 470.017, F.S., for present text.)
24 497.602 Direct disposers, license required; licensing
25 procedures and criteria; regulation.--

26 (1) LICENSE REQUIRED.--Any person who is not a
27 licensed funeral director and who engages in the practice of
28 direct disposition must be licensed pursuant to this section
29 as a direct disposer.

30 (2) APPLICATION PROCEDURES.--

31 (a) A person seeking licensure as a direct disposer

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1 shall apply for such licensure using forms prescribed by rule.

2 (b) The application shall require the name, residence
3 address, date and place of birth, and social security number,
4 of the applicant.

5 (c) The application may require information as to the
6 educational and employment history of the applicant.

7 (d) The application shall require the applicant to
8 disclose whether the applicant has ever been convicted or
9 found guilty of, or entered a plea of no contest to,
10 regardless of adjudication, any crime in any jurisdiction.

11 (e) The application shall require the applicant to
12 disclose whether the applicant has ever had a license or the
13 authority to practice a profession or occupation refused,
14 suspended, fined, denied, or otherwise acted against or
15 disciplined, by the licensing authority of any jurisdiction. A
16 licensing authority's acceptance of a relinquishment of
17 licensure, stipulation, consent order, or other settlement,
18 offered in response to or in anticipation of the filing of
19 charges against the license, shall be construed as action
20 against the license.

21 (f) The application shall require the applicant to
22 provide fingerprints in accordance with part I of this
23 chapter.

24 (g) The application shall require the applicant to
25 demonstrate that the applicant does, or will before commencing
26 operations under the license, comply with all requirements of
27 this chapter relating to the licensure applied for.

28 (h) The application shall be signed by the applicant.

29 (i) The application shall be accompanied by a
30 nonrefundable fee of \$300. The licensing authority may from
31 time to time increase the fee by rule but not to exceed more

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1 than \$500.

2 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
3 application for licensure under this section, accompanied by
4 the required fees, shall be approved if the licensing
5 authority determines that the following conditions are met:

6 (a) The applicant is a natural person at least 18
7 years of age and a high school graduate or equivalent.

8 (b) Applicant has taken and received a passing grade
9 in a college credit course in Florida mortuary law.

10 (c) Applicant has completed a course on communicable
11 diseases approved by the licensing authority.

12 (d) Applicant has passed an examination prepared by
13 the department on the local, state, and federal laws and rules
14 relating to the disposition of dead human bodies.

15 (e) The applicant does or will prior to commencing
16 operations under the license comply with all requirements of
17 this chapter relating to the license applied for.

18 (f) Applicant is of good character and has no
19 demonstrated history of lack of trustworthiness or integrity
20 in business or professional matters.

21 (4) ISSUANCE OF LICENSE.--Upon approval of the
22 application by the licensing authority, the license shall be
23 issued.

24 (5) DISPLAY OF LICENSE.--There shall be adopted rules
25 which require each license issued under this section to be
26 displayed in such a manner as to make it visible to the public
27 and to facilitate inspection by the department. Each licensee
28 shall permanently affix a recent photograph of the licensee to
29 each displayed license issued to that licensee as a direct
30 disposer.

31 Section 128. Section 470.018, Florida Statutes, is
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1 renumbered as section 497.603, Florida Statutes, and amended
2 to read:

3 497.603 470.018 Direct disposers, renewal of license
4 Renewal of registration of direct disposer.--

5 (1) A direct disposer's renewal of license ~~The~~
6 ~~department shall renew a registration~~ upon receipt of the
7 renewal application and fee set by rule of the licensing
8 authority but ~~the department~~ not to exceed \$250.

9 (2) There shall be adopted ~~The department shall adopt~~
10 rules establishing a schedule and forms and procedure for the
11 biennial renewal of licenses as direct disposers ~~registrations~~
12 . There shall be adopted ~~The board shall prescribe~~ by rule
13 continuing education requirements of up to 6 3 classroom hours
14 and there may by rule be established ~~establish~~ criteria for
15 accepting alternative nonclassroom continuing education on an
16 hour-for-hour basis, in addition to an approved a
17 ~~board-approved~~ course on communicable diseases that includes
18 the course on human immunodeficiency virus and acquired immune
19 deficiency syndrome required by s. 497.367 455.2226, for the
20 renewal of a license as a direct disposer ~~registration~~.

21 Section 129. Section 470.021, Florida Statutes, is
22 renumbered as section 497.604, Florida Statutes, and amended
23 to read:

24 (Substantial rewording of section. See
25 s. 470.021, F.S., for present text.)

26 497.604 Direct disposal establishments, license
27 required; licensing procedures and criteria; license renewal;
28 regulation.--

29 (1) LICENSE REQUIRED.--A direct disposer shall
30 practice at a direct disposal establishment which has been
31 licensed under this section and which may be a cinerator

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1 facility licensed under s. 497.606. No person may open or
2 maintain an establishment at which to engage in or hold
3 herself or himself out as engaging in the practice of direct
4 disposition unless such establishment is licensed pursuant to
5 this section.

6 (2) APPLICATION PROCEDURES.--

7 (a) A person seeking licensure as a direct disposal
8 establishment shall apply for such licensure using forms
9 prescribed by rule.

10 (b) The application shall require the name, business
11 address, residence address, date and place of birth or
12 incorporation, and business phone number, of applicant and all
13 principals of applicant. The application shall require the
14 applicant's social security number, or if the applicant is an
15 entity, its federal tax identification number.

16 (c) The application shall name the licensed direct
17 disposer or licensed funeral director who will acting as a
18 direct disposer in charge of the direct disposal
19 establishment.

20 (d) The application may require information as to the
21 applicant's financial resources.

22 (e) The application may require information as to the
23 educational and employment history of an individual applicant;
24 and as to applicants that are not natural persons, the
25 business and employment history of the applicant and
26 principals of applicant.

27 (f) The application shall require the applicant to
28 disclose whether the applicant or any of applicant's
29 principals including its proposed supervising licensee has
30 ever been convicted or found guilty of, or entered a plea of
31 no contest to, regardless of adjudication, any crime in any

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1 jurisdiction.

2 (g) The application shall require the applicant to
3 disclose whether the applicant or any of applicant's
4 principals including its proposed supervising licensee has
5 ever had a license or the authority to practice a profession
6 or occupation refused, suspended, fined, denied, or otherwise
7 acted against or disciplined, by the licensing authority of
8 any jurisdiction. A licensing authority's acceptance of a
9 relinquishment of licensure, stipulation, consent order, or
10 other settlement, offered in response to or in anticipation of
11 the filing of charges against the license, shall be construed
12 as action against the license.

13 (h) The application shall require the applicant and
14 its principals to provide fingerprints in accordance with part
15 I of this chapter.

16 (i) The application shall require the applicant to
17 demonstrate that the applicant does, or will before commencing
18 operations under the license, comply with all requirements of
19 this chapter relating to the licensure applied for.

20 (j) The application shall be signed by the applicant
21 if a natural person, or by the president of an applicant that
22 is not a natural person.

23 (k) The application shall be accompanied by a
24 nonrefundable fee of \$300. The licensing authority may from
25 time to time by rule increase the fee but not to exceed \$500.

26 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
27 application for licensure under this section, accompanied by
28 the required fee, shall be approved if the licensing authority
29 determines that the following conditions are met:

30 (a) The applicant is a natural person at least 18
31 years of age, a corporation, a partnership, or a limited

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1 liability company formed prior to January 1, 2006, which
2 limited liability company already holds a license under this
3 chapter.

4 (b) The applicant does or will prior to commencing
5 operations under the license comply with all requirements of
6 this chapter relating to the license applied for.

7 (c) Applicant and applicant's principals are of good
8 character and have no demonstrated history of lack of
9 trustworthiness or integrity in business or professional
10 matters.

11 (4) ISSUANCE OF LICENSE.--Upon approval of the
12 application by the licensing authority, the license shall be
13 issued.

14 (5) PROBATIONARY STATUS.--It is the policy of this
15 state to encourage competition for the public benefit in the
16 direct disposal establishment business by, among other means,
17 the entry of new licensees into that business. To facilitate
18 issuance of licenses concerning applications judged by the
19 licensing authority to be borderline as to qualification for
20 licensure, the licensing authority may issue a new license
21 under this section on a probationary basis, subject to
22 conditions specified by the licensing authority on a
23 case-by-case basis, which conditions may impose special
24 monitoring, reporting, and restrictions on operations for up
25 to the first 24 months of licensure, to ensure the licensee's
26 responsibleness, competency, financial stability, and
27 compliance with this chapter. However, no such probationary
28 license shall be issued unless the licensing authority
29 determines that issuance would not pose an unreasonable risk
30 to the public, and the licensing authority must within 24
31 months after issuance of the license either remove the

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1 probationary status or determine that the licensee is not
2 qualified for licensure under this chapter and institute
3 proceedings for revocation of licensure.

4 (6) RENEWAL OF LICENSE.--A direct disposal
5 establishment license shall be renewed biennially pursuant to
6 schedule, forms, procedures and upon payment of a fee of \$200.
7 The licensing authority may from time to time increase the fee
8 by rule but not to exceed \$400.

9 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee
10 under this section must provide notice as required by rule
11 prior to any change in location or control of the licensee or
12 licensed person in charge of the licensee's operations. Any
13 such change is subject to disapproval or to reasonable
14 conditions imposed by the licensing authority, for the
15 protection of the public to ensure compliance with this
16 chapter.

17 (8) SUPERVISION OF FACILITIES.--Each direct disposal
18 establishment shall have one full-time licensed direct
19 disposer or licensed funeral director acting as a direct
20 disposer in charge and reasonably available to the public
21 during normal business hours for that establishment. Such
22 person may be in charge of only one facility. Such licensed
23 funeral director or licensed direct disposer shall be
24 responsible for making sure the facility, its operations, and
25 all persons employed in the facility comply with all
26 applicable state and federal laws and rules.

27 (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.--
28 (a) There shall be established by rule standards for
29 direct disposal establishments, including, but not limited to,
30 requirements for refrigeration and storage of dead human
31 bodies.

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1 (b) The practice of direct disposition must be engaged
 2 in at a fixed location of at least 625 interior contiguous
 3 square feet and must maintain or make arrangements for
 4 suitable capacity for the refrigeration and storage of dead
 5 human bodies handled and stored by the establishment.

6 (c) Each direct disposal establishment shall at all
 7 times be subject to the inspection of all its buildings,
 8 grounds, and vehicles used in the conduct of its business, by
 9 the department, the Department of Health, and local government
 10 inspectors and by their agents. There shall be adopted rules
 11 which establish such inspection requirements. There shall be
 12 adopted by rule of the licensing authority an annual
 13 inspection fee not to exceed \$300, payable upon issuance of
 14 license and upon each renewal of such license.

15 (d) Each direct disposal establishment must display at
 16 the public entrance the name of the establishment and the name
 17 of the direct disposer or licensed funeral director acting as
 18 a direct disposer responsible for that establishment. A direct
 19 disposal establishment must transact its business under the
 20 name by which it is licensed.

21 (e) A direct disposal establishment may not be
 22 operated at the same location as any other direct disposal
 23 establishment or funeral establishment unless such
 24 establishments were licensed as colocated establishments on
 25 July 1, 2000.

26 Section 130. Section 470.022, Florida Statutes, is
 27 renumbered as section 497.605, Florida Statutes, and amended
 28 to read:

29 497.605 ~~470.022~~ Direct disposition not funeral
 30 directing.--The duties, functions, and services performed by a
 31 direct disposer licensee ~~registrant~~, as provided by this

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1 chapter, shall not be deemed to constitute funeral directing
 2 or embalming or the duties, functions, or services performed
 3 by a funeral director or embalmer as otherwise defined and
 4 provided by this chapter.

5 Section 131. Section 470.025, Florida Statutes, is
 6 renumbered as section 497.606, Florida Statutes, and amended
 7 to read:

8 (Substantial rewording of section. See
 9 s. 470.025, F.S., for present text.)

10 497.606 Cinerator facility, licensure required;
 11 licensing procedures and criteria; license renewal;
 12 regulation.--

13 (1) LICENSE REQUIRED.--No person may conduct,
 14 maintain, manage, or operate a cinerator facility unless a
 15 license for such facility has been issued and is in good
 16 standing under this section.

17 (2) APPLICATION PROCEDURES.--

18 (a) A person seeking licensure as a cinerator facility
 19 shall apply for such licensure using forms prescribed by rule.

20 (b) The application shall require the name, business
 21 address, residence address, date and place of birth or
 22 incorporation, and business phone number, of applicant and all
 23 principals of applicant. The application shall require the
 24 applicant's social security number, or if the applicant is an
 25 entity, its federal tax identification number.

26 (c) The application shall name the licensed funeral
 27 director or licensed direct disposer who will be in charge of
 28 the cinerator facility.

29 (d) The application may require information as to the
 30 applicant's financial resources.

31 (e) The application may require information as to the

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1 educational and employment history of an individual applicant,
2 and as to applicants that are not natural persons, the
3 business and employment history of the applicant and
4 principals of applicant.

5 (f) The application shall require the applicant to
6 disclose whether the applicant or any of applicant's
7 principals including its proposed supervising licensee has
8 ever been convicted or found guilty of, or entered a plea of
9 no contest to, regardless of adjudication, any crime in any
10 jurisdiction.

11 (g) The application shall require the applicant to
12 disclose whether the applicant or any of applicant's
13 principals including its proposed supervising licensee has
14 ever had a license or the authority to practice a profession
15 or occupation refused, suspended, fined, denied, or otherwise
16 acted against or disciplined, by the licensing authority of
17 any jurisdiction. A licensing authority's acceptance of a
18 relinquishment of licensure, stipulation, consent order, or
19 other settlement, offered in response to or in anticipation of
20 the filing of charges against the license, shall be construed
21 as action against the license.

22 (h) The application shall require the applicant and
23 its principals to provide fingerprints in accordance with part
24 I of this chapter.

25 (i) The application shall require the applicant to
26 demonstrate that the applicant does, or will before commencing
27 operations under the license, comply with all requirements of
28 this chapter relating to the licensure applied for.

29 (j) The application shall be signed by the applicant
30 if a natural person, or by the president of an applicant that
31 is not a natural person.

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1 (k) The application shall be accompanied by a
2 nonrefundable fee of \$300. The licensing authority may from
3 time to time increase the fee by rule but not to exceed \$500.

4 (3) ACTION CONCERNING APPLICATIONS.--A duly completed
5 application for licensure under this section, accompanied by
6 the required fee, shall be approved if the licensing authority
7 determines that the following conditions are met:

8 (a) No license may be issued unless the cinerator
9 facility has been inspected and approved as meeting all
10 requirements as set forth by the department, the Department of
11 Health, the Department of Environmental Protection, or any
12 local ordinance regulating the facility.

13 (b) The applicant is a natural person at least 18
14 years of age, a corporation, a partnership, or a limited
15 liability company formed prior to January 1, 2006, which
16 limited liability company already holds a license under this
17 chapter.

18 (c) The applicant does or will prior to commencing
19 operations under the license comply with all requirements of
20 this chapter relating to the license applied for.

21 (d) Applicant and applicant's principals are of good
22 character and have no demonstrated history of lack of
23 trustworthiness or integrity in business or professional
24 matters.

25 (4) PROBATIONARY STATUS.--It is the policy of this
26 state to encourage competition for the public benefit in the
27 cinerator facility business by, among other means, the entry
28 of new licensees into that business. To facilitate issuance of
29 licenses concerning applications judged by the licensing
30 authority to be borderline as to qualification for licensure,
31 the licensing authority may issue a new license under this

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1 section on a probationary basis, subject to conditions
2 specified by the licensing authority on a case-by-case basis,
3 which conditions may impose special monitoring, reporting, and
4 restrictions on operations for up to the first 24 months of
5 licensure, to ensure the licensee's responsibility,
6 competency, financial stability, and compliance with this
7 chapter. Provided, no such probationary license shall be
8 issued unless the licensing authority determines that issuance
9 would not pose an unreasonable risk to the public, and the
10 licensing authority must within 24 months after issuance of
11 the license either remove the probationary status or determine
12 that the licensee is not qualified for licensure under this
13 chapter and institute proceedings for revocation of licensure.

14 (5) ISSUANCE OF LICENSE.--Upon approval of the
15 application by the licensing authority, the license shall be
16 issued.

17 (6) RENEWAL OF LICENSE.--Licenses under this section
18 shall be renewed biennially in accordance with a schedule,
19 forms, and procedures established by rule. The nonrefundable
20 and nonproratable biennial renewal fee shall be as determined
21 by licensing authority rule but not to exceed \$500.

22 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee
23 under this section must provide notice as required by rule
24 prior to any change in location, control, or licensed person
25 in charge. Any such change is subject to disapproval or to
26 reasonable conditions imposed by the licensing authority, for
27 the protection of the public to ensure compliance with this
28 chapter.

29 (8) SUPERVISION OF FACILITIES.--Each cinerator
30 facility shall have one full-time licensed direct disposer or
31 licensed funeral director in charge for that facility. Such

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1 person may be in charge of only one facility. Such licensed
2 funeral director or licensed direct disposer shall be
3 responsible for making sure the facility, its operations, and
4 all persons employed in the facility comply with all
5 applicable state and federal laws and rules.

6 (9) REGULATION OF CINERATOR FACILITIES.--

7 (a) There shall be established by rule standards for
8 cinerator facilities, including, but not limited to,
9 requirements for refrigeration and storage of dead human
10 bodies, use of forms and contracts, and record retention.

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

17 (c) Each cinerator facility shall at all times be
18 subject to the inspection of all its buildings, grounds,
19 records, equipment, and vehicles used in the conduct of its
20 business, by the department, the Department of Environmental
21 Protection, the Department of Health, and local government
22 inspectors and by their agents. Rules shall be adopted which
23 establish such inspection requirements. There shall by rule of
24 the licensing authority be adopted an annual inspection fee
25 not to exceed \$300, payable prior to issuance of license and
26 upon each renewal of such license.

27 (d) A cinerator facility licensed under this section
28 shall only receive dead human bodies for cremation. A
29 cinerator facility may not receive other materials, or
30 medical, hazardous, and biohazardous waste, for the purpose of
31 disposal in a retort.

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1 (e) Each cinerator facility must display at its public
2 entrance the name of the facility and the name of the funeral
3 director or direct disposer responsible for that facility. A
4 cinerator facility must transact its business under the name
5 by which it is licensed.

6 (f) A cinerator facility located at the same address
7 as a funeral establishment may not have a direct disposer as
8 its individual in charge.

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

22 (h) Each cinerator facility shall ensure that all
23 alternative containers, cremation containers, or caskets used
24 for cremation contain no amount of chlorinated plastics not
25 authorized by the Department of Environmental Protection, that
26 they also are composed of readily combustible materials
27 suitable for cremation, able to be closed to provide a
28 complete covering for the human remains, resistant to leakage
29 or spillage, rigid enough for handling with ease, and able to
30 provide for the health, safety, and personal integrity of the
31 public and crematory personnel.

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1 renumbered as section 497.607, Florida Statutes, and amended
2 to read:

3 497.607 ~~470.0255~~ Cremation; procedure required.--

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

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

25 (3) Pursuant to the request of a legally authorized
26 person and incidental to final disposition, cremation may be
27 performed on parts of human remains. This subsection does not
28 authorize the cremation of body parts as defined in s.
29 497.005.

30 Section 133. Section 497.608, Florida Statutes, is
31 created to read:

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1 497.608 Liability for unintentional commingling of the
2 residue of the cremation process.--

3 (1) The Legislature recognizes that the unintentional
4 or incidental commingling of the residue of the cremation of
5 human remains is an inevitable byproduct of the cremation
6 process in a cinerator retort or cremation chamber.

7 (2) The operator of a cinerator facility shall
8 establish written procedures for the removal of cremated
9 remains, to the extent possible, resulting from the cremation
10 of a human body and the postcremation processing, shipping,
11 packing or identifying of those remains. The operator of a
12 cinerator facility shall file its written procedures, and any
13 revisions to those written procedures, with the licensing
14 authority for its approval, and effective January 1, 2006, the
15 cremation facility shall not be operated unless it has and
16 follows such written procedures approved by the licensing
17 authority; provided, the licensing authority may adopt by rule
18 standard uniform procedures for the removal of such cremated
19 remains, which may be adopted by any cinerator facility in
20 lieu of promulgating, filing, and obtaining approval of
21 procedures. A cinerator facility choosing to the utilize
22 standard uniform procedures specified by rule shall file
23 notice of its choice with the licensing authority pursuant to
24 procedures and forms specified by rule.

25 (3) If an operator follows the procedures set forth in
26 written procedures filed and approved by the licensing
27 authority, or adopts and follows the standard uniform
28 procedures adopted by the licensing authority, the operator
29 shall not liable for the unintentional or the incidental
30 commingling of cremated remains resulting from more than one
31 cremation cycle or from postcremation processing, shipping,

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1 packing, or identifying those remains.

2 (4) A copy of the procedures being utilized by a
3 cinerator facility shall be provided by the cinerator facility
4 upon request, to customers and their representatives, the
5 department, and other legally authorized persons.

6 Section 134. Section 20.121, Florida Statutes, is
7 amended to read:

8 20.121 Department of Financial Services.--There is
9 created a Department of Financial Services.

10 (1) DEPARTMENT HEAD.--The head of the Department of
11 Financial Services is the Chief Financial Officer.

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

14 (a) The Division of Accounting and Auditing, which
15 shall include the following bureau and office:

16 1. The Bureau of Unclaimed Property.

17 2. The Office of Fiscal Integrity which shall function
18 as a criminal justice agency for purposes of ss.

19 943.045-943.08 and shall have a separate budget. The office
20 may conduct investigations within or outside this state as the

21 bureau deems necessary to aid in the enforcement of this

22 section. If during an investigation the office has reason to

23 believe that any criminal law of this state has or may have

24 been violated, the office shall refer any records tending to

25 show such violation to state or federal law enforcement or

26 prosecutorial agencies and shall provide investigative

27 assistance to those agencies as required.

28 (b) The Division of State Fire Marshal.

29 (c) The Division of Risk Management.

30 (d) The Division of Treasury, which shall include a

31 Bureau of Deferred Compensation responsible for administering

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1 the Government Employees Deferred Compensation Plan
2 established under s. 112.215 for state employees.

3 (e) The Division of Insurance Fraud.

4 (f) The Division of Rehabilitation and Liquidation.

5 (g) The Division of Insurance Agents and Agency
6 Services.

7 (h) The Division of Consumer Services, ~~which shall~~
8 ~~include a Bureau of Funeral and Cemetery Services.~~

9 1. The Division of Consumer Services shall perform the
10 following functions concerning products or services regulated
11 by the Department of Financial Services or by either office of
12 the Financial Services Commission:

13 a. Receive inquiries and complaints from consumers.†

14 b. Prepare and disseminate such information as the
15 department deems appropriate to inform or assist consumers.†

16 c. Provide direct assistance and advocacy for
17 consumers who request such assistance or advocacy.†

18 d. With respect to apparent or potential violations of
19 law or applicable rules by a person or entity licensed by the
20 department or by either office of the commission, report such
21 apparent or potential violation to the appropriate division of
22 the department or office of the commission, which may take
23 such further action as it deems appropriate.

24 2. Any person licensed or issued a certificate of
25 authority by the department or by the Office of Insurance
26 Regulation shall respond, in writing, to the Division of
27 Consumer Services within 20 days after receipt of a written
28 request for information from the division concerning a
29 consumer complaint. The response must address the issues and
30 allegations raised in this complaint. The division may, in its
31 discretion, impose an administrative penalty for failure to

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1 | comply with this subparagraph in an amount up to \$2,500 per
2 | violation upon any entity licensed by the department or the
3 | Office of Insurance Regulation and \$250 for the first
4 | violation, \$500 for the second violation and up to \$1,000 per
5 | violation thereafter upon any individual licensed by the
6 | department or the Office of Insurance Regulation.

7 | 3. The department may adopt rules to implement the
8 | provisions of this paragraph.

9 | 4. The powers, duties, and responsibilities expressed
10 | or granted in this paragraph shall not limit the powers,
11 | duties, and responsibilities of the Department of Financial
12 | Services, the Financial Services Commission, the Office of
13 | Insurance Regulation, or the Office of Financial Regulation
14 | set forth elsewhere in the Florida Statutes.

15 | (i) The Division of Workers' Compensation.

16 | (j) The Division of Administration.

17 | (k) The Division of Legal Services.

18 | (l) The Division of Information Systems.

19 | (m) The Office of Insurance Consumer Advocate.

20 | (n) The Division of Funeral, Cemetery, and Consumer
21 | Services.

22 | (3) FINANCIAL SERVICES COMMISSION.--Effective January
23 | 7, 2003, there is created within the Department of Financial
24 | Services the Financial Services Commission, composed of the
25 | Governor, the Attorney General, the Chief Financial Officer,
26 | and the Commissioner of Agriculture, which shall for purposes
27 | of this section be referred to as the commission. Commission
28 | members shall serve as agency head of the Financial Services
29 | Commission. The commission shall be a separate budget entity
30 | and shall be exempt from the provisions of s. 20.052.

31 | Commission action shall be by majority vote consisting of at

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1 least three affirmative votes. The commission shall not be
2 subject to control, supervision, or direction by the
3 Department of Financial Services in any manner, including
4 purchasing, transactions involving real or personal property,
5 personnel, or budgetary matters.

6 (a) Structure.--The major structural unit of the
7 commission is the office. Each office shall be headed by a
8 director. The following offices are established:

9 1. The Office of Insurance Regulation, which shall be
10 responsible for all activities concerning insurers and other
11 risk bearing entities, including licensing, rates, policy
12 forms, market conduct, claims, adjusters, issuance of
13 certificates of authority, solvency, viatical settlements,
14 premium financing, and administrative supervision, as provided
15 under the insurance code or chapter 636. The head of the
16 Office of Insurance Regulation is the Director of the Office
17 of Insurance Regulation.

18 2. The Office of Financial Regulation, which shall be
19 responsible for all activities of the Financial Services
20 Commission relating to the regulation of banks, credit unions,
21 other financial institutions, finance companies, and the
22 securities industry. The head of the office is the Director of
23 the Office of Financial Regulation. The Office of Financial
24 Regulation shall include a Bureau of Financial Investigations,
25 which shall function as a criminal justice agency for purposes
26 of ss. 943.045-943.08 and shall have a separate budget. The
27 bureau may conduct investigations within or outside this state
28 as the bureau deems necessary to aid in the enforcement of
29 this section. If, during an investigation, the office has
30 reason to believe that any criminal law of this state has or
31 may have been violated, the office shall refer any records

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1 tending to show such violation to state or federal law
 2 enforcement or prosecutorial agencies and shall provide
 3 investigative assistance to those agencies as required.

4 (b) Organization.--The commission shall establish by
 5 rule any additional organizational structure of the offices.
 6 It is the intent of the Legislature to provide the commission
 7 with the flexibility to organize the offices in any manner
 8 they determine appropriate to promote both efficiency and
 9 accountability.

10 (c) Powers.--Commission members shall serve as the
 11 agency head for purposes of rulemaking under ss.
 12 120.536-120.565 by the commission and all subunits of the
 13 commission. Each director is agency head for purposes of final
 14 agency action under chapter 120 for all areas within the
 15 regulatory authority delegated to the director's office.

16 (d) Appointment and qualifications of directors.--The
 17 commission shall appoint or remove each director by a majority
 18 vote consisting of at least three affirmative votes, with both
 19 the Governor and the Chief Financial Officer on the prevailing
 20 side. The minimum qualifications of the directors are as
 21 follows:

22 1. Prior to appointment as director, the Director of
 23 the Office of Insurance Regulation must have had, within the
 24 previous 10 years, at least 5 years of responsible private
 25 sector experience working full time in areas within the scope
 26 of the subject matter jurisdiction of the Office of Insurance
 27 Regulation or at least 5 years of experience as a senior
 28 examiner or other senior employee of a state or federal agency
 29 having regulatory responsibility over insurers or insurance
 30 agencies.

31 2. Prior to appointment as director, the Director of

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1 the Office of Financial Regulation must have had, within the
2 previous 10 years, at least 5 years of responsible private
3 sector experience working full time in areas within the
4 subject matter jurisdiction of the Office of Financial
5 Regulation or at least 5 years of experience as a senior
6 examiner or other senior employee of a state or federal agency
7 having regulatory responsibility over financial institutions,
8 finance companies, or securities companies.

9 (e) Administrative support.--The offices shall have a
10 sufficient number of attorneys, examiners, investigators,
11 other professional personnel to carry out their
12 responsibilities and administrative personnel as determined
13 annually in the appropriations process. The Department of
14 Financial Services shall provide administrative and
15 information systems support to the offices.

16 (f) Records retention schedules.--The commission and
17 the offices may destroy general correspondence files and also
18 any other records that they deem no longer necessary to
19 preserve in accordance with retention schedules and
20 destruction notices established under rules of the Division of
21 Library and Information Services, records and information
22 management program, of the Department of State. Such schedules
23 and notices relating to financial records of the commission
24 and offices shall be subject to the approval of the Auditor
25 General.

26 (g) Records storage.--The commission and offices may
27 photograph, microphotograph, or reproduce on film such
28 documents and records as they may select, in such manner that
29 each page will be exposed in exact conformity with the
30 original. After reproduction and filing, original documents
31 and records may be destroyed in accordance with the provisions

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1 of paragraph (f).

2 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER
 3 SERVICES.--The Board of Funeral, Cemetery, and Consumer
 4 Services is created within the Division of Funeral, Cemetery,
 5 and Consumer Services of the Department of Financial Services.

6 ~~(5)~~(4) TRANSITIONAL RULES.--Effective January 7, 2003,
 7 the rules of the Department of Banking and Finance and of the
 8 Department of Insurance that were in effect on January 6,
 9 2003, shall become rules of the Department of Financial
 10 Services or the Financial Services Commission as is
 11 appropriate to the corresponding regulatory or constitutional
 12 function and shall remain in effect until specifically amended
 13 or repealed in the manner provided by law.

14 Section 135. Paragraph (a) of subsection (4) of
 15 section 20.165, Florida Statutes, is amended to read:

16 20.165 Department of Business and Professional
 17 Regulation.--There is created a Department of Business and
 18 Professional Regulation.

19 (4)(a) The following boards are established within the
 20 Division of Professions:

- 21 1. Board of Architecture and Interior Design, created
 22 under part I of chapter 481.
- 23 2. Florida Board of Auctioneers, created under part VI
 24 of chapter 468.
- 25 3. Barbers' Board, created under chapter 476.
- 26 4. Florida Building Code Administrators and Inspectors
 27 Board, created under part XII of chapter 468.
- 28 5. Construction Industry Licensing Board, created
 29 under part I of chapter 489.
- 30 6. Board of Cosmetology, created under chapter 477.
- 31 7. Electrical Contractors' Licensing Board, created

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1 under part II of chapter 489.

2 8. Board of Employee Leasing Companies, created under
3 part XI of chapter 468.

4 ~~9. Board of Funeral Directors and Embalmers, created~~
5 ~~under chapter 470.~~

6 ~~9.10.~~ Board of Landscape Architecture, created under
7 part II of chapter 481.

8 ~~10.11.~~ Board of Pilot Commissioners, created under
9 chapter 310.

10 ~~11.12.~~ Board of Professional Engineers, created under
11 chapter 471.

12 ~~12.13.~~ Board of Professional Geologists, created under
13 chapter 492.

14 ~~13.14.~~ Board of Professional Surveyors and Mappers,
15 created under chapter 472.

16 ~~14.15.~~ Board of Veterinary Medicine, created under
17 chapter 474.

18 Section 136. Paragraph (a) of subsection (1) of
19 section 316.1974, Florida Statutes, is amended to read:

20 316.1974 Funeral procession right-of-way and
21 liability.--

22 (1) DEFINITIONS.--

23 (a) "Funeral director" and "funeral establishment"

24 shall have the same meaning as set forth in s. 497.005

25 ~~470.002.~~

26 Section 137. Paragraph (a) of subsection (2) of
27 section 381.0098, Florida Statutes, is amended to read:

28 381.0098 Biomedical waste.--

29 (2) DEFINITIONS.--As used in this section, the term:

30 (a) "Biomedical waste" means any solid or liquid waste

31 which may present a threat of infection to humans. The term

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1 includes, but is not limited to, nonliquid human tissue and
2 body parts; laboratory and veterinary waste which contains
3 human-disease-causing agents; discarded disposable sharps;
4 human blood, blood products, and body fluids; and other
5 materials which in the opinion of the department represent a
6 significant risk of infection to persons outside the
7 generating facility. The term does not include human remains
8 that are disposed of by persons licensed under chapter 497
9 ~~470~~.

10 Section 138. Subsection (7) of section 382.002,
11 Florida Statutes, is amended to read:

12 382.002 Definitions.--As used in this chapter, the
13 term:

14 (7) "Funeral director" means a licensed funeral
15 director or direct disposer licensed pursuant to chapter 497
16 ~~470~~ or other person who first assumes custody of or effects
17 the final disposition of a dead body or a fetus as described
18 in subsection (5).

19 Section 139. Subsections (21), (37), and (39) of
20 section 403.703, Florida Statutes, are amended to read:

21 403.703 Definitions.--As used in this act, unless the
22 context clearly indicates otherwise, the term:

23 (21) "Hazardous waste" means solid waste, or a
24 combination of solid wastes, which, because of its quantity,
25 concentration, or physical, chemical, or infectious
26 characteristics, may cause, or significantly contribute to, an
27 increase in mortality or an increase in serious irreversible
28 or incapacitating reversible illness or may pose a substantial
29 present or potential hazard to human health or the environment
30 when improperly transported, disposed of, stored, treated, or
31 otherwise managed. The term does not include human remains

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1 that are disposed of by persons licensed under chapter 497
2 ~~470~~.

3 (37) "Biomedical waste" means any solid waste or
4 liquid waste which may present a threat of infection to
5 humans. The term includes, but is not limited to, nonliquid
6 human tissue and body parts; laboratory and veterinary waste
7 which contain human-disease-causing agents; discarded
8 disposable sharps; human blood, and human blood products and
9 body fluids; and other materials which in the opinion of the
10 Department of Health represent a significant risk of infection
11 to persons outside the generating facility. The term does not
12 include human remains that are disposed of by persons licensed
13 under chapter 497 ~~470~~.

14 (39) "Biological waste" means solid waste that causes
15 or has the capability of causing disease or infection and
16 includes, but is not limited to, biomedical waste, diseased or
17 dead animals, and other wastes capable of transmitting
18 pathogens to humans or animals. The term does not include
19 human remains that are disposed of by persons licensed under
20 chapter 497 ~~470~~.

21 Section 140. Paragraph (a) of subsection (1) of
22 section 406.02, Florida Statutes, is amended to read:

23 406.02 Medical Examiners Commission; membership;
24 terms; duties; staff.--

25 (1) There is created the Medical Examiners Commission
26 within the Department of Law Enforcement. The commission shall
27 consist of nine persons appointed or selected as follows:

28 (a) The Governor shall appoint:

29 1. Two members who are physicians licensed pursuant to
30 chapter 458 or chapter 459 and who are active district medical
31 examiners;

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1 2. One member who is a funeral director licensed
2 pursuant to chapter 497 ~~470~~;

3 3. One member who is a state attorney;

4 4. One member who is a public defender;

5 5. One member who is a sheriff; and

6 6. One member who is a county commissioner.

7 Section 141. Section 406.50, Florida Statutes, is
8 amended to read:

9 406.50 Unclaimed dead bodies or human remains;
10 disposition, procedure.--All public officers, agents, or
11 employees of every county, city, village, town, or
12 municipality and every person in charge of any prison, morgue,
13 hospital, funeral parlor, or mortuary and all other persons
14 coming into possession, charge, or control of any dead human
15 body or remains which are unclaimed or which are required to
16 be buried or cremated at public expense are hereby required to
17 notify, immediately, the anatomical board, whenever any such
18 body, bodies, or remains come into its possession, charge, or
19 control. Notification of the anatomical board is not required
20 if the death was caused by crushing injury, the deceased had a
21 contagious disease, an autopsy was required to determine cause
22 of death, the body was in a state of severe decomposition, or
23 a family member objects to use of the body for medical
24 education and research.

25 (1) The person or entity in charge or control of the
26 dead body or human remains shall make a reasonable effort to
27 determine:

28 (a) The identity of the deceased person and shall
29 further make a reasonable effort to contact any relatives of
30 such deceased person.

31 (b) Whether or not the deceased person is entitled to

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1 burial in a national cemetery as a veteran of the armed forces
2 and, if so, shall make arrangements for such burial services
3 in accordance with the provisions of 38 C.F.R. For purposes of
4 this subsection, "a reasonable effort" includes contacting the
5 county veterans service office or regional office of the
6 United States Department of Veterans Affairs.

7 (2) Such dead human bodies as described in this
8 chapter shall be delivered to the anatomical board as soon as
9 possible after death.

10 (3) Nothing herein shall affect the right of a medical
11 examiner to hold such dead body or remains for the purpose of
12 investigating the cause of death, nor shall this chapter
13 affect the right of any court of competent jurisdiction to
14 enter an order affecting the disposition of such body or
15 remains.

16 (4) In the event more than one legally authorized
17 person claims a body for interment, the requests shall be
18 prioritized in accordance with s. 732.103.

19
20 For purposes of this chapter, the term "anatomical board"
21 means the anatomical board of this state located at the
22 University of Florida Health Science Center, and the term
23 "unclaimed" means a dead body or human remains that is not
24 claimed by a legally authorized person, as defined in s.
25 497.005, for interment at that person's expense.

26 Section 142. Section 406.52, Florida Statutes, is
27 amended to read:

28 406.52 Retention of bodies before use; unfit or excess
29 number of bodies, disposition procedure.--All bodies received
30 by the anatomical board shall be retained in receiving vaults
31 for a period of not less than 48 hours before allowing their

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1 use for medical science; if at any time more bodies are made
2 available to the anatomical board than can be used for medical
3 science under its jurisdiction, or if a body shall be deemed
4 by the anatomical board to be unfit for anatomical purposes,
5 the anatomical board may notify, in writing, the county
6 commissioners or other legally authorized person, as defined
7 in s. 497.005 ~~470.002~~, in the county where such person died,
8 to cause it to be buried or cremated in accordance with the
9 rules, laws and practices for disposing of such unclaimed
10 bodies. However, prior to having any body buried or cremated,
11 the county shall make a reasonable effort to determine the
12 identity of the body and shall further make a reasonable
13 effort to contact any relatives of the deceased person. If a
14 relative of the deceased person is contacted and expresses a
15 preference for either burial or cremation, the county shall
16 make a reasonable effort to accommodate the request of the
17 relative. For purposes of this section, the county
18 commissioners of the county where such person died shall be
19 considered a legally authorized person as defined in s.
20 497.005 ~~470.002~~. A person licensed under ~~chapter 470~~ or
21 chapter 497 shall not be liable for any damages resulting from
22 cremating or burying such body at the direction of the
23 county's legally authorized person.

24 Section 143. Section 406.53, Florida Statutes, is
25 amended to read:

26 406.53 Death of indigents; notice; delivery to the
27 anatomical board when unclaimed; exceptions; assessment of
28 fees.--

29 (1) Notice of death to the anatomical board in cases
30 of indigent persons is not required if:

31 (a) Death was caused by crushing injury.

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1 (b) The deceased had a contagious disease.

2 (c) An autopsy was required to determine cause of
3 death.

4 (d) The body was in a state of severe decomposition.

5 (e) Any relative, by blood or marriage, claims the
6 body for burial at the expense of such relative, but the body
7 shall be surrendered to the claimant for interment, but if
8 such relative is indigent, in a manner consistent with the
9 policy of the agency in possession or control of the body.

10 (f) Any friend or any representative of a fraternal
11 society of which the deceased was a member, or a
12 representative of any charitable or religious organization, or
13 a governmental agency which was providing residential care to
14 the indigent person at the time of his or her death claims the
15 body for burial at his or her, its, or their expense.

16 (g) The deceased person was an honorably discharged
17 member of the Armed Forces of the United States or the state
18 who served during a period of wartime service as defined in s.
19 1.01(14); but such body shall be buried in accordance with the
20 provisions of the existing laws.

21 (2) When the Department of Health claims the body of a
22 client according to this section, the department shall assess
23 fees for burial pursuant to s. 402.33.

24 (3) For purposes of this chapter, the term indigent
25 shall be 100 percent of the federal poverty level recognized
26 by the Federal Income Guidelines produced by the United States
27 Department of Health and Human Services.

28 Section 144. Subsection (1) of section 455.2226,
29 Florida Statutes, is amended to read:

30 455.2226 Funeral directors and embalmers; instruction
31 on HIV and AIDS.--

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1 (1) The Board of Funeral Directors and Embalmers shall
2 require each person licensed or certified under chapter 497
3 ~~470~~ to complete a continuing educational course, approved by
4 the board, on human immunodeficiency virus and acquired immune
5 deficiency syndrome as part of biennial relicensure or
6 recertification. The course shall consist of education on the
7 modes of transmission, infection control procedures, clinical
8 management, and prevention of human immunodeficiency virus and
9 acquired immune deficiency syndrome. Such course shall include
10 information on current Florida law on acquired immune
11 deficiency syndrome and its impact on testing, confidentiality
12 of test results, and treatment of patients.

13 Section 145. Paragraph (b) of subsection (1) of
14 section 501.022, Florida Statutes, is amended to read:

15 501.022 Home solicitation sale; permit required.--

16 (1)

17 (b) The following are excluded from the operation of
18 this section:

19 1. Bona fide agents, business representatives, or
20 salespersons making calls or soliciting orders at the usual
21 place of business of a customer regarding products or services
22 for use in connection with the customer's business.

23 2. Solicitors, salespersons, or agents making a call
24 or business visit upon the express invitation, oral or
25 written, of an inhabitant of the premises or her or his agent.

26 3. Telephone solicitors, salespersons, or agents
27 making calls which involve transactions that are unsolicited
28 by the consumer and consummated by telephone and without any
29 other contact between the buyer and the seller or its
30 representative prior to delivery of the goods or performance
31 of the services.

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1 4. Solicitors, salespersons, or agents conducting a
2 sale, lease, or rental of consumer goods or services by
3 sample, catalog, or brochure for future delivery.

4 5. Minors, as defined in s. 1.01(13), conducting home
5 solicitation sales under the supervision of an adult
6 supervisor who holds a valid home solicitation sale permit.
7 Minors excluded from operation of this section must, however,
8 carry personal identification which includes their full name,
9 date of birth, residence address, and employer and the name
10 and permit number of their adult supervisor.

11 6. Those sellers or their representatives that are
12 currently regulated as to the sale of goods and services by
13 ~~chapter 470~~, chapter 475, or chapter 497.

14 7. Solicitors, salespersons, or agents making calls or
15 soliciting orders on behalf of a religious, charitable,
16 scientific, educational, or veterans' institution or
17 organization holding a sales tax exemption certificate under
18 s. 212.08(7)(a).

19 Section 146. Subsection (15) of section 501.604,
20 Florida Statutes, is amended to read:

21 501.604 Exemptions.--The provisions of this part,
22 except ss. 501.608 and 501.616(6) and (7), do not apply to:

23 (15) A person who is licensed pursuant to ~~chapter 470~~
24 ~~or~~ chapter 497 and who is soliciting within the scope of the
25 license.

26 Section 147. Paragraph (d) of subsection (1) of
27 section 626.785, Florida Statutes, is amended to read:

28 626.785 Qualifications for license.--

29 (1) The department shall not grant or issue a license
30 as life agent to any individual found by it to be
31 untrustworthy or incompetent, or who does not meet the

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1 following qualifications:

2 (d) Must not be a funeral director or direct disposer,
3 or an employee or representative thereof, or have an office
4 in, or in connection with, a funeral establishment, except
5 that a funeral establishment may contract with a life
6 insurance agent to sell a preneed contract as defined in s.
7 497.005 ~~chapter 497~~. Notwithstanding other provisions of this
8 chapter, such insurance agent may sell limited policies of
9 insurance covering the expense of final disposition or burial
10 of an insured in the amount of \$12,500, plus an annual
11 percentage increase based on the Annual Consumer Price Index
12 compiled by the United States Department of Labor, beginning
13 with the Annual Consumer Price Index announced by the United
14 States Department of Labor for the year 2003.

15 Section 148. Section 765.519, Florida Statutes, is
16 amended to read:

17 765.519 Eucleation of eyes by licensed funeral
18 directors.--With respect to a gift of an eye as provided for
19 in this part, a licensed funeral director as defined in
20 chapter 497 ~~470~~ who has completed a course in eye enucleation
21 and has received a certificate of competence from the
22 Department of Ophthalmology of the University of Florida
23 School of Medicine, the University of South Florida School of
24 Medicine, or the University of Miami School of Medicine may
25 enucleate eyes for gift after proper certification of death by
26 a physician and in compliance with the intent of the gift as
27 defined in this chapter. No properly certified funeral
28 director acting in accordance with the terms of this part
29 shall have any civil or criminal liability for eye
30 enucleation.

31 Section 149. (1) All of the statutory powers, duties

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1 and functions, records, personnel, property, and unexpended
2 balances of appropriations, allocations, or other funds for
3 the administration of chapter 470, Florida Statutes, related
4 to the Board of Funeral Directors and Embalmers, shall be
5 transferred by a type two transfer, as defined in section
6 20.06(2), Florida Statutes, from the Department of Business
7 and Professional Regulation to the Department of Financial
8 Services.

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

18 Section 150. (1) The transfer of regulatory authority
19 under chapter 470, Florida Statutes, provided by this act
20 shall not affect the validity of any judicial or
21 administrative action pending as of 11:59 p.m. on the day
22 before the effective date of this act, to which action the
23 Board of Funeral Directors and Embalmers, or the Department of
24 Business and Professional Regulation in relation to the Board
25 of Funeral Directors and Embalmers, are at that time parties,
26 and the Board of Funeral, Cemetery, and Consumer Services or
27 the Department of Financial Services, as appropriate, shall be
28 substituted as a party in interest in any such action.

29 (2) The transfer of regulatory authority under chapter
30 497, Florida Statutes, provided by this act shall not affect
31 the validity of any judicial or administrative action pending

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1 as of 11:59 p.m. on the day prior to this act taking effect,
2 to which action the Board of Funeral and Cemetery Services, or
3 the Department of Financial Services in relation to the Board
4 of Funeral and Cemetery Services, is at that time a party, and
5 the Board of Funeral, Cemetery, and Consumer Services, or the
6 Department of Financial Services, as appropriate, shall be
7 substituted as a party in interest in any such action.

8 Section 151. (1) All lawful orders issued by the
9 Board of Funeral Directors and Embalmers, or by the Department
10 of Business and Professional Regulation, implementing or
11 enforcing or otherwise in regard to any provision of chapter
12 470, Florida Statutes, issued prior to the effective date of
13 this act, shall remain in effect and be enforceable after the
14 effective date of this act, unless thereafter modified in
15 accordance with law.

16 (2) All lawful orders issued by the Board of Funeral
17 and Cemetery Services, or the Department of Financial Services
18 in regard to the Board of Funeral and Cemetery Services,
19 implementing or enforcing or otherwise in regard to any
20 provision of chapter 497, Florida Statutes, issued prior to
21 the effective date of this act, shall remain in effect and be
22 enforceable after the effective date of this act.

23 Section 152. (1) The rules of the Board of Funeral
24 Directors and Embalmers and of the Department of Business and
25 Professional Regulation relating to the Board of Funeral
26 Directors and Embalmers or implementation of chapter 470,
27 Florida Statutes, which were in effect at 11:59 p.m. on the
28 day prior to this act taking effect shall become the rules of
29 the Department of Financial Services and the Board of Funeral,
30 Cemetery, and Consumer Services and shall remain in effect
31 until amended or repealed in the manner provided by law.

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1 (2) The rules of the Board of Funeral and Cemetery
 2 Services which were in effect at 11:59 p.m. on the day prior
 3 to this act taking effect shall become the rules of the
 4 Department of Financial Services and the Board of Funeral,
 5 Cemetery, and Consumer Services and shall remain in effect
 6 until specifically amended or repealed in the manner provided
 7 by law.

8 (3) The rules of the Department of Financial Services
 9 relating to chapter 497, Florida Statutes, which were in
 10 effect at 11:59 P.M. on the day prior to this act taking
 11 effect shall continue in force until thereafter repealed or
 12 amended pursuant to chapter 120, Florida Statutes, and this
 13 act.

14 Section 153. (1) Notwithstanding the transfer of
 15 regulatory authority over chapters 470 and 497, Florida
 16 Statutes, provided by this act, persons and entities holding
 17 in good standing any license under chapters 470 or 497,
 18 Florida Statutes, as of 11:59 p.m. on the day prior to the
 19 effective date of this act, shall be deemed to hold in good
 20 standing a license in the same capacity under chapter 497,
 21 Florida Statutes, as of the effective date of this act.

22 (2) Notwithstanding the transfer of regulatory
 23 authority over chapters 470 and 497, Florida Statutes,
 24 provided by this act, persons and entities holding in good
 25 standing a preneed certificate of authority under chapter 497,
 26 Florida Statutes, as of 11:59 p.m. on the day prior to the
 27 effective date of this act, shall be deemed to hold in good
 28 standing a preneed license under part IV of chapter 497,
 29 Florida Statutes, as of the effective date of this act, and
 30 their certificate of authority shall be deemed a preneed
 31 license for purposes of chapter 497, Florida Statutes.

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1 (3) Notwithstanding the transfer of regulatory
2 authority over chapters 470 and 497, Florida Statutes,
3 provided by this act, persons and entities holding in good
4 standing any registration under chapters 470 or 497, Florida
5 Statutes, as of 11:59 p.m. on the day prior to the effective
6 date of this act, shall as of the effective date of this act
7 be deemed to be licensed in the same capacity in which they
8 were formerly registered, and their registration shall
9 thereafter be deemed a license for purposes of chapter 497,
10 Florida Statutes.

11 Section 154. The Legislature recognizes that there is
12 a need to conform the Florida Statutes to the policy decisions
13 reflected in the provisions of this act. The Division of
14 Statutory Revision is directed to provide the relevant
15 substantive committees of the Senate and the House of
16 Representatives with assistance, upon request, to enable such
17 committees to prepare draft legislation to conform the Florida
18 Statutes to the provisions of this act.

19 Section 155. Effective at 11:59 p.m. on September 30,
20 2005, the Board of Funeral and Cemetery Services and the Board
21 of Funeral Directors and Embalmers are abolished.

22 Section 156. Sections 470.001, 470.002, 470.003,
23 470.005, 470.019, 470.023, 470.027, 470.028, 470.031, 470.033,
24 470.034, 470.035, 470.036, 497.105, 497.109, 497.111, 497.113,
25 497.115, 497.117, 497.119, 497.123, 497.125, 497.127, 497.129,
26 497.131, 497.135, 497.137, 497.209, 497.217, 497.221, 497.225,
27 497.233, 497.301, 497.341, 497.431, 497.435, 497.443, 497.445,
28 497.447, 497.515, 497.517, 497.519, and 497.529, Florida
29 Statutes, are repealed.

30 Section 157. Except as otherwise provided herein, this
31 act shall take effect October 1, 2005.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

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

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1 certificates issued under chs. 470 and 497,
2 F.S.; providing for continued validity of rules
3 of the Board of Funeral and Cemetery Services,
4 the Board of Funeral Directors and Embalmers,
5 and the Department of Business and Professional
6 Regulation, adopted under or in relation to ch.
7 470, F.S., or ch. 497, F.S.; providing for
8 continued validity of orders entered by the
9 Board of Funeral and Cemetery Services, the
10 Board of Funeral Directors and Embalmers, and
11 the Department of Business and Professional
12 Regulation for or in relation to the
13 enforcement of ch. 470, F.S., or ch. 497, F.S. ;
14 providing for the substitution of the
15 Department of Financial Services and the Board
16 of Funeral, Cemetery, and Consumer Services as
17 parties in pending litigation; providing for
18 type two transfers; eliminating or
19 consolidating duplicative provisions from chs.
20 470 and 497, F.S.; replacing references to
21 registrations, registrants, certificates, and
22 certificateholders with references to licenses
23 and licensees; conforming internal statutory
24 references; amending ss. 497.001, 497.002,
25 497.005, 497.101, 497.103, and 497.107, F.S.,
26 to conform; amending and renumbering ss.
27 470.006, 470.007, 470.008, 470.0085, 470.0087,
28 470.009, 470.011, 470.012, 470.013, 470.014,
29 470.015, 470.016, 470.0165, 470.017, 470.018,
30 470.0201, 470.021, 470.022, 470.024, 470.025,
31 470.0255, 470.026, 470.029, 470.0294, 470.0295,

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1 470.0301, 470.0315, 470.032, 470.0355,
2 470.0375, 470.038, 470.039, 470.0395, 497.003,
3 497.004, 497.025, 497.0255, 497.121, 497.133,
4 497.201, 497.205, 497.213, 497.229, 497.237,
5 497.241, 497.245, 497.249, 497.253, 497.255,
6 497.257, 497.305, 497.309, 497.313, 497.317,
7 497.321, 497.325, 497.329, 497.333, 497.337,
8 497.345, 497.349, 497.353, 497.357, 497.361,
9 497.401, 497.403, 497.405, 497.407, 497.409,
10 497.411, 497.413, 497.415, 497.417, 497.419,
11 497.421, 497.423, 497.425, 497.427, 497.429,
12 497.436, 497.437, 497.439, 497.441, 497.525,
13 497.527, and 497.531, F.S., to conform;
14 creating ss. 497.0021, 497.141, 497.142,
15 497.143, 497.144, 497.145, 497.146, 497.147,
16 497.148, 497.149, 497.150, 497.151, 497.152,
17 497.153, 497.156, 497.157, 497.159, 497.161,
18 497.163, 497.166, 497.167, 497.168, 497.274,
19 497.275, 497.365, 497.366, 497.367, 497.551,
20 497.552, 497.553, 497.554, 497.555, 497.556,
21 and 497.608, F.S.; amending chapter name;
22 clarifying purpose and intent of chapter;
23 amending and providing additional definitions;
24 creating the Board of Funeral, Cemetery, and
25 Consumer Services, identifying criteria for
26 membership, describing procedures for
27 appointment of members, and providing
28 administrative procedures regarding operation;
29 allocating authority and responsibility between
30 the board and the Department of Financial
31 Services; providing procedures for establishing

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1 and processing fees; providing for creation of
2 disciplinary guidelines; providing for the
3 issuance of disciplinary citations; providing
4 authority for judicial actions to terminate
5 violations and abate nuisances; establishing
6 health and safety education requirements;
7 establishing authority and requirements for the
8 regulation of solicitation of goods and
9 services; establishing liability of owners and
10 others for trust fund deficits; authorizing and
11 clarifying provisions regarding private
12 actions; prohibiting unauthorized arrangements
13 for the sale of funeral or burial merchandiser
14 services; clarifying authority and procedures
15 regarding complaints against unlicensed
16 cemeteries; establishing prohibitions against
17 discrimination based on race or color;
18 providing procedures for the transfer of
19 cemetery licenses; requiring reference to
20 authorizing statute in trust instrument's;
21 clarifying requirements for minimum acreage in
22 cemeteries; establishing requirements for sale,
23 leasing, or encumbering cemetery lands;
24 amending requirements regarding illegal tying
25 arrangements; establishing requirements
26 regarding burial rights brokers; establishing
27 requirements regarding informational brochures
28 to be provided by cemeteries to customers;
29 authorizing payment of court costs and attorney
30 fees in litigation to enforce reporting
31 requirements by unlicensed cemeteries;

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1 authorizing fees to be specified by the board
2 subject to caps; providing rulemaking authority
3 to the board and the department; establishing
4 and clarifying requirements regarding the
5 processing of the human bodies; establishing
6 requirements for the approval of preneed
7 contract forms and related forms; authorizing
8 rules regarding the reliance by preneed
9 trustees on the advice of investment advisers,
10 and restricting payments to investment
11 advisers; establishing restrictions on the
12 investing or loaning of preneed trust funds;
13 providing additional authority in the board
14 concerning orders to liquidate specified
15 preneed trust fund investments; providing
16 additional authority in the board regarding the
17 requirements of preneed trust instrument's;
18 providing requirements and additional authority
19 in the board regarding surrender of preneed
20 licenses; providing procedures and requirements
21 regarding application and issuance of licenses
22 to preneed sales agents; clarifying and
23 establishing requirements regarding persons
24 legally authorized to authorize burial and
25 funeral services and procedures; clarifying
26 applicability of parts; providing general
27 procedures applicable to licensing; providing
28 authority and procedures regarding submission
29 and processing of fingerprints; providing
30 authority and procedures for limited licensing
31 of retired professionals; providing procedures

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1 and requirements regarding licensing
2 examinations; allowing use of professional
3 testing services; providing requirements for
4 notification of licensee change of address;
5 providing procedures and requirements for
6 continuing education; providing requirements
7 for monitoring of continuing education by
8 licensees; providing procedures and authority
9 for investigations, inspections, and hearings
10 to be conducted by the department; providing
11 procedures and authority for financial and
12 compliance examinations of licensees by the
13 department; establishing requirements and
14 authority regarding retention of complaints and
15 creation of complaint logs; establishing
16 grounds for disciplinary action; establishing
17 disciplinary procedures and authorizing
18 penalties; providing authority and procedures
19 for action against unlicensed practice;
20 identifying conduct constituting criminal
21 violations; authorizing and providing
22 procedures for receivership proceedings;
23 authorizing rules; providing restrictions in
24 relation to citizenship; establishing
25 responsibility of licensees regarding preneed
26 sales by persons under their supervision;
27 clarifying the relationship of part IV to other
28 parts of the chapter; requiring toll-free
29 telephone hotline; identifying and providing
30 authority and procedures regarding executive
31 director of the board; establishing

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1 requirements for submission for budget;
2 establishing requirements for training program
3 for the board members; authorizing newsletters
4 and other informational communications with
5 licensees; authorizing screen of licensed
6 records in relation to child support
7 requirements; clarifying status in regard to
8 insurance coverage and immunity of agents
9 retained by the department; authorizing use of
10 disciplinary settlement funds for training of
11 staff; establishing deadlines for completeness
12 of applications for submission and board
13 meetings; authorizing rules record applicants
14 to appear before the board for oral interview
15 by the board; establishing procedures for
16 calculating deadlines for filings by licensees;
17 clarifying status of elected officials licensed
18 under the chapter; providing for presentation
19 of applications to the board by the department;
20 providing standing to the department in
21 judicial proceedings; providing for certain
22 legal services to the board by the Department
23 of Legal Affairs; establishing requirements and
24 authority regarding member of the military
25 reserves; establishing procedures and fees for
26 application for licensure as a cemetery;
27 establishing standards and mapping requirements
28 for grave spaces; establishing requirements for
29 placement of identification tags on grave
30 vaults, mausoleum crypts, and other outer
31 burial containers, in licensed cemeteries;

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1 establishing requirements and procedures
2 regarding inactive and delinquent licenses
3 under part III; establishing requirements for
4 sending renewal and cancellation of licensed
5 notices; establishing requirements for
6 instruction on HIV and AIDS; authorizing fees
7 to be determined by the board subject to
8 specified caps; providing rulemaking authority
9 to the board and department; establishing and
10 clarifying requirements regarding the handling
11 and processing of dead human bodies;
12 establishing requirements regarding
13 identification of human remains in licensed and
14 unlicensed cemeteries, and by direct disposal
15 establishments; establishing procedures and
16 requirements regarding application for preneed
17 license; authorizing issuance of licenses on
18 probationary status; establishing procedures
19 and requirements for change in control of the
20 preneed license; establishing requirements
21 regarding renewal of preneed licenses;
22 establishing requirements and procedures for
23 the licensure and operation of preneed
24 branches; establishing requirements regarding
25 reports by preneed trusts; establishing
26 procedures and requirements for the licensure
27 of monument establishment businesses;
28 establishing requirements for the renewal of
29 monument establishment licenses; establishing
30 requirements for approval of sales agreement
31 forms used by monument establishments;

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1 establishing requirements for procedures by
2 monument establishments in relation to
3 complaints from customers; establishing
4 requirements for refund of moneys to customers
5 in regard to failure to deliver monuments
6 according to contract terms; establishing
7 requirements and procedures for the licensing
8 of sales persons employed by monument
9 establishments; establishing procedures and
10 requirements regarding licensure of monument
11 establishments to engage in preneed sales;
12 establishing requirements and procedures for
13 licensure of direct disposers; establishing
14 requirements and procedures for licensure of
15 direct disposal establishments; establishing
16 requirements applicable to the operation of
17 direct disposal establishments; establishing
18 procedures and requirements for the licensure
19 of cinerator facilities; establishing
20 requirements and procedures for the supervision
21 and operation of cinerator facilities;
22 establishing restrictions on liability for
23 unintentional commingling of cremation
24 residues; amending ss. 20.121, 20.165,
25 316.1974, 381.0098, 382.002, 403.703, 406.02,
26 406.50, 406.52, 406.53, 455.2226, 501.022,
27 501.604, 626.785, and 765.519, F.S.; conforming
28 references; repealing ss. 470.001, 470.002,
29 470.003, 470.005, 470.019, 470.023, 470.027,
30 470.028, 470.031, 470.033, 470.034, 470.035,
31 470.036, 497.105, 497.109, 497.111, 497.113,

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1 497.115, 497.117, 497.119, 497.123, 497.125,
2 497.127, 497.129, 497.131, 497.135, 497.137,
3 497.209, 497.217, 497.221, 497.225, 497.233,
4 497.301, 497.341, 497.431, 497.435, 497.443,
5 497.445, 497.447, 497.515, 497.517, 497.519,
6 and 497.529, F.S., to conform; providing
7 effective dates.

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