

By Senator Pruitt

28-715-04

1 A bill to be entitled
2 An act relating to funeral directing,
3 embalming, direct disposition, and cemetery
4 services; amending s. 20.121, F.S.;
5 establishing the Division of Funeral, Cemetery,
6 and Consumer Services and the Board of Funeral,
7 Cemetery, and Consumer Services within the
8 Department of Financial Services; amending s.
9 20.165, F.S.; abolishing the Board of Funeral
10 Directors and Embalmers within the Department
11 of Business and Professional Regulation;
12 amending s. 455.2226, F.S.; conforming a
13 reference; amending ss. 470.002 and 497.005,
14 F.S.; conforming definitions; amending s.
15 497.105, F.S.; conforming references; repealing
16 ss. 470.003, 497.107, and 497.109, F.S.,
17 relating to the Board of Funeral Directors and
18 Embalmers and the Board of Funeral and Cemetery
19 Services, to conform; amending s. 497.101,
20 F.S.; creating the Board of Funeral, Cemetery,
21 and Consumer Services; providing for the
22 appointment of board members; providing terms
23 of office; providing grounds for removal or
24 suspension of a member; providing immunity from
25 liability for members acting in an official
26 capacity; specifying the headquarters for the
27 board; providing for compensation and
28 reimbursement for per diem expenses; creating
29 s. 497.102, F.S.; providing for the authority
30 of the board; creating s. 497.1021, F.S.;
31 providing duties of the Division of Funeral,

1 Cemetery, and Consumer Services; providing
2 powers of enforcement; creating s. 497.1022,
3 F.S.; establishing the office of the director
4 of the division; providing duties of the Chief
5 Financial Officer under chapters 470 and 497,
6 F.S.; providing for a type two transfer of the
7 Board of Funeral Directors and Embalmers to the
8 Department of Financial Services; providing for
9 validity of judicial and administrative
10 actions; providing for validity of licenses;
11 providing for continuity of rules; abolishing
12 the Board of Funeral and Cemetery Services and
13 the Board of Funeral Directors and Embalmers;
14 providing for deposit of fees; directing the
15 Division of Statutory Revision to conform the
16 statutes; amending s. 470.002, F.S.; revising
17 and providing definitions; amending s.
18 470.0085, F.S.; extending the embalmer
19 apprentice period; amending s. 470.018, F.S.;
20 increasing continuing education requirements;
21 amending s. 470.021, F.S.; providing additional
22 requirements for a direct disposal
23 establishment; providing inspection
24 requirements and criteria; amending s. 470.024,
25 F.S.; revising requirements for a funeral
26 establishment; amending s. 470.025, F.S.;
27 revising cremation requirements for cinerator
28 facilities relating to simultaneous cremations,
29 body parts, cremation containers, and the
30 cremation chamber; providing an exemption from
31 liability for unintentional or incidental

1 commingling of remains under certain
2 conditions; amending s. 470.0255, F.S.;
3 providing for cremation of parts of human
4 bodies incidental to final disposition;
5 amending s. 470.028, F.S.; providing for
6 control and supervision of preneed agents;
7 amending s. 470.029, F.S.; extending the filing
8 time for reports of bodies embalmed or handled;
9 amending s. 470.031, F.S.; prohibiting any
10 guarantee on the future price of any goods or
11 services; providing penalties; amending s.
12 470.0355, F.S.; revising requirements for
13 identification of human remains prior to final
14 disposition; providing requirements for
15 identification of human remains in licensed and
16 unlicensed cemeteries and by direct disposal
17 establishments; reenacting s. 470.036(1)(a),
18 F.S., relating to disciplinary proceedings, to
19 incorporate the amendment to s. 470.031, F.S.,
20 in a reference thereto; amending s. 497.005,
21 F.S.; revising and providing definitions;
22 amending s. 497.305, F.S.; requiring that a
23 cemetery company comply with its adopted
24 bylaws; creating s. 497.306, F.S.; providing
25 dimension and spacing standards for grave
26 spaces; requiring a map of reference markers
27 and a land survey for areas proposed to be
28 developed by a licensed cemetery company;
29 exempting adult grave spaces previously
30 established; creating s. 497.307, F.S.;
31 providing requirements for identification of

1 human remains in licensed cemeteries; amending
2 s. 497.325, F.S.; providing for procedures
3 established by other entities operating a
4 cemetery; amending s. 497.333, F.S.; providing
5 for disclosure of certain information to
6 customers; amending s. 497.361, F.S.; providing
7 for approval of contracts; creating s. 497.365,
8 F.S.; providing for regulation of monument
9 establishments by the Department of Financial
10 Services; providing for inspections; providing
11 for rules; providing that the department may
12 not unreasonably restrict commerce; creating s.
13 497.371, F.S.; providing for specifications for
14 business locations; creating s. 497.379, F.S.;
15 providing for the licensure of monument
16 establishments that sell preneed contracts;
17 creating s. 497.385, F.S.; providing for
18 registration of monument sales representatives;
19 creating s. 497.391, F.S.; providing for
20 approval of preneed contracts by the board;
21 creating s. 497.395, F.S.; providing financial
22 requirements for monument establishments;
23 providing requirements for minimum net worth;
24 providing for submission of financial
25 statements; providing for minimum sales volume
26 with respect to preneed contracts; providing
27 for guarantee agreements; providing for
28 additional oversight in lieu of financial
29 requirements; amending s. 497.405, F.S.;
30 prohibiting any person from advertising for
31 sale or making any arrangement for a preneed

1 contract without having a valid certificate of
2 authority; expanding the exemption from the
3 required certificate of authority for certain
4 religious-institution-owned cemeteries to
5 include the sale and opening or closing of
6 cremation interment containers to members and
7 family members of the religious institution;
8 amending s. 497.419, F.S.; requiring preneed
9 contracts to include in the refund notice the
10 exclusion for amounts allocable to burial
11 rights, merchandise, and services used by the
12 purchaser; providing conditions for breach of
13 contract by certificateholder and for rights of
14 purchaser; amending s. 497.436, F.S.;
15 authorizing the Board of Funeral and Cemetery
16 Services to review the trust funds, trust
17 agreements, and outstanding preneed contracts
18 of, and perform other procedures at its
19 discretion with respect to, a certificateholder
20 filing notice to become inactive; providing
21 effective dates.

22

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

24

25 Section 1. Effective January 1, 2005, paragraph (n) is
26 added to subsection (2) of section 20.121, Florida Statutes,
27 and present subsection (4) of that section is redesigned as
28 subsection (5) and a new subsection (4) is added to that
29 section, to read:

30

31

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

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

3 (n) Division of Funeral, Cemetery, and Consumer
4 Services.

5 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER
6 SERVICES.--There is created within the Department of Financial
7 Services the Board of Funeral, Cemetery, and Consumer
8 Services.

9 Section 2. Effective January 1, 2005, paragraph (a) of
10 subsection (4) of section 20.165, Florida Statutes, is amended
11 to read:

12 20.165 Department of Business and Professional
13 Regulation.--There is created a Department of Business and
14 Professional Regulation.

15 (4)(a) The following boards are established within the
16 Division of Professions:

17 1. Board of Architecture and Interior Design, created
18 under part I of chapter 481.

19 2. Florida Board of Auctioneers, created under part VI
20 of chapter 468.

21 3. Barbers' Board, created under chapter 476.

22 4. Florida Building Code Administrators and Inspectors
23 Board, created under part XII of chapter 468.

24 5. Construction Industry Licensing Board, created
25 under part I of chapter 489.

26 6. Board of Cosmetology, created under chapter 477.

27 7. Electrical Contractors' Licensing Board, created
28 under part II of chapter 489.

29 8. Board of Employee Leasing Companies, created under
30 part XI of chapter 468.

31

1 ~~9. Board of Funeral Directors and Embalmers, created~~
2 ~~under chapter 470.~~

3 9.10. Board of Landscape Architecture, created under
4 part II of chapter 481.

5 10.11. Board of Pilot Commissioners, created under
6 chapter 310.

7 11.12. Board of Professional Engineers, created under
8 chapter 471.

9 12.13. Board of Professional Geologists, created under
10 chapter 492.

11 13.14. Board of Professional Surveyors and Mappers,
12 created under chapter 472.

13 14.15. Board of Veterinary Medicine, created under
14 chapter 474.

15 Section 3. Effective January 1, 2005, subsection (1)
16 of section 455.2226, Florida Statutes, is amended to read:

17 455.2226 Funeral directors and embalmers; instruction
18 on HIV and AIDS.--

19 (1) The Board of Funeral, Cemetery, and Consumer
20 Services ~~Funeral Directors and Embalmers~~ shall require each
21 person licensed or certified under chapter 470 to complete a
22 continuing educational course, approved by the board, on human
23 immunodeficiency virus and acquired immune deficiency syndrome
24 as part of biennial relicensure or recertification. The course
25 shall consist of education on the modes of transmission,
26 infection control procedures, clinical management, and
27 prevention of human immunodeficiency virus and acquired immune
28 deficiency syndrome. Such course shall include information on
29 current Florida law on acquired immune deficiency syndrome and
30 its impact on testing, confidentiality of test results, and
31 treatment of patients.

1 Section 4. Effective January 1, 2005, subsections (3)
2 and (14) of section 470.002, Florida Statutes, as amended by
3 this act, are amended to read:

4 470.002 Definitions.--As used in this chapter:

5 (3) "Board" means the Board of Funeral, Cemetery, and
6 Consumer Services ~~Funeral Directors and Embalmers~~.

7 (14) "Department" means the Department of Financial
8 Services ~~Business and Professional Regulation~~.

9 Section 5. Effective January 1, 2005, subsection (4)
10 of section 497.005, Florida Statutes, as amended by this act,
11 is amended, and subsections (36) and (37) are added to that
12 section, to read:

13 497.005 Definitions.--As used in this chapter:

14 (4) "Board" means the Board of Funeral, Cemetery, and
15 Consumer Services ~~Funeral and Cemetery Services~~.

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

18 (37) "Division" means the Division of Funeral,
19 Cemetery, and Consumer Services within the Department of
20 Financial Services.

21 Section 6. Effective January 1, 2005, subsection (2)
22 of section 497.105, Florida Statutes, is amended to read:

23 497.105 Department; powers and duties.--The department
24 shall:

25 (2) Appoint the executive director of the board ~~of~~
26 ~~Funeral and Cemetery Services~~, subject to the approval of the
27 board.

28 Section 7. Effective January 1, 2005, sections
29 470.003, 497.107, 497.109, Florida Statutes, are repealed.

30 Section 8. Effective January 1, 2005, section 497.101,
31 Florida Statutes, is amended to read:

1 (Substantial rewording of section. See
2 s. 497.101, F.S., for present text.)
3 497.101 Board of Funeral, Cemetery, and Consumer
4 Services; membership; appointment; terms.--
5 (1) The Board of Funeral, Cemetery, and Consumer
6 Services is created within the Department of Financial
7 Services and shall consist of 10 members, nine of whom shall
8 be appointed by the Governor from nominations made by the
9 Chief Financial Officer and confirmed by the Senate. The
10 Chief Financial Officer shall nominate three persons for each
11 of the nine vacancies on the board, and the Governor shall
12 fill each vacancy on the board by appointing one of the three
13 persons nominated by the Chief Financial Officer to fill that
14 vacancy. If the Governor objects to each of the three
15 nominations for a vacancy, she or he shall inform the Chief
16 Financial Officer in writing. Upon notification of an
17 objection by the Governor, the Chief Financial Officer shall
18 submit three additional nominations for that vacancy until the
19 vacancy is filled. One member must be the State Health
20 Officer or his or her designee.
21 (2) Two members of the board must be funeral directors
22 licensed under chapter 470 who are associated with a funeral
23 establishment. One member of the board must be a funeral
24 director licensed under chapter 470 who is associated with a
25 funeral establishment licensed pursuant to chapter 470 which
26 has a valid certificate of authority issued pursuant to this
27 chapter and who owns or operates a cinerator facility approved
28 pursuant to chapters 403 and 470. Two members of the board
29 must be persons whose primary occupation is associated with a
30 cemetery company licensed pursuant to this chapter. Three
31 members of the board must be consumers who are residents of

1 the state; have never been licensed as funeral directors or
2 embalmers; are not connected with a cemetery or cemetery
3 company licensed pursuant to this chapter; and are not
4 connected with the death care industry or the practice of
5 embalming, funeral directing, or direct disposition. One of
6 the consumer members must be at least 60 years of age or older
7 and one must be licensed as a certified public accountant
8 pursuant to chapter 473. One member of the board must be a
9 monument dealer licensed under this chapter. One member must
10 be the State Health Officer or his or her designee.

11 (3) Board members shall be appointed for terms of 4
12 years and the State Health Officer shall serve as long as that
13 person holds that office. The designee of the State Health
14 Officer shall serve at the pleasure of the Governor. When the
15 terms of the initial board members expire, the Chief Financial
16 Officer shall stagger the terms of the successor members as
17 follows: one funeral director, one cemetery representative,
18 the monument dealer, and one consumer member shall be
19 appointed for terms of 2 years, and the remaining members
20 shall be appointed for terms of 4 years. All subsequent terms
21 shall be for 4 years.

22 (4) The Governor may suspend or remove any board
23 member for malfeasance or misfeasance, neglect of duty,
24 incompetence, substantial inability to perform official
25 duties, commission of a crime, or for other substantial cause
26 as determined by the Governor to evidence a lack of fitness to
27 sit on the board. A board member shall be deemed to have
28 resigned his or her board membership, and that position shall
29 be deemed vacant, upon the failure of the member to attend
30 three consecutive meetings of the board or at least half of
31 the meetings of the board during any 12-month period, unless

1 the Chief Financial Officer determines that there was good and
2 adequate justification for the absences and that such absences
3 are not likely to continue.

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

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

23 (7) A board member shall be compensated \$50 for each
24 day the member attends an official meeting and each day the
25 member participates at the request of the board's executive
26 director in any other business involving the board. To the
27 extent authorized by the s. 112.061, a board member is
28 entitled to reimbursement for expenses incurred in connection
29 with official duties. Out-of-state travel by board members on
30 official business shall, in each specific instance, require
31 the advance approval of the board's executive director in

1 order for the travel to be eligible for reimbursement of
2 expenses.

3 Section 9. Effective January 1, 2005, section 497.102,
4 Florida Statutes, is created to read:

5 497.102 Authority of the board.--

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

11 (2) For purposes of enforcement of chapter 455
12 regarding chapter 470, on and after January 1, 2005,
13 references in chapter 455 to the Department of Business and
14 Professional Regulation or the secretary of that department
15 shall instead refer to the Department of Financial Services or
16 the Chief Financial Officer, as the context may require.

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

24 Section 10. Effective January 1, 2005, section
25 497.1021, Florida Statutes, is created to read:

26 497.1021 Division of Funeral, Cemetery, and Consumer
27 Services.--

28 (1) There is created within the Department of
29 Financial Services the Division of Funeral, Cemetery, and
30 Consumer Services. The division shall enforce the provisions
31

1 of chapter 470 and this chapter and perform such other acts as
2 may be necessary to carry out the provisions of this chapter.

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

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

14 Section 11. Effective January 1, 2005, section
15 497.1022, Florida Statutes, is created to read:

16 497.1022 Director of the Division of Funeral,
17 Cemetery, and Consumer Services.--

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

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

29 Section 12. Effective January 1, 2005, all duties
30 performed by the Secretary of the Department of Business and
31 Professional Regulation under chapter 470, Florida Statutes,

1 shall be performed by the Chief Financial Officer under the
2 provisions of this act. The duties may be delegated by the
3 Chief Financial Officer to the Director of the Division of
4 Funeral, Cemetery, and Consumer Services.

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

15 (2) The transfer of regulatory authority over chapter
16 470, Florida Statutes, provided by this act shall not affect
17 the validity of any judicial or administrative action
18 involving the Board of Funeral Directors and Embalmers or the
19 Department of Business and Professional Regulation pending on
20 December 31, 2004, and the Department of Financial Services or
21 the Board of Funeral, Cemetery, and Consumer Services shall be
22 substituted as a party in interest in any such action.

23 (3) Notwithstanding the transfer of regulatory
24 authority over chapter 470, Florida Statutes, provided by this
25 act, all licenses and registrations issued pursuant to chapter
26 470, Florida Statutes, which are valid on December 31, 2004,
27 shall remain in effect, subject to the provisions of chapters
28 470 and 455, Florida Statutes.

29 (4) The rules of the Board of Funeral Directors and
30 Embalmers and the Department of Business and Professional
31 Regulation which were in effect on midnight, December 31,

1 2004, shall become the rules of the Department of Financial
2 Services as is appropriate to the corresponding regulatory
3 function and shall remain in effect until specifically amended
4 or repealed in the manner provided by law.

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

14 (6) The transfer of regulatory authority over chapter
15 497, Florida Statutes, provided by this act shall not affect
16 the validity of any judicial or administrative action
17 involving the Board of Funeral and Cemetery Services pending
18 on December 31, 2004, and the Board of Funeral, Cemetery, and
19 Consumer Services shall be substituted as a party in interest
20 in any such action.

21 (7) Notwithstanding the transfer of regulatory
22 authority over chapter 497, Florida Statutes, provided by this
23 act, all licenses and registrations issued pursuant to chapter
24 497, Florida Statutes, which are valid on December 31, 2004,
25 shall remain in effect subject to the provisions of chapter
26 497, Florida Statutes.

27 (8) The rules of the Board of Funeral and Cemetery
28 Services which were in effect on midnight, December 31, 2004,
29 shall remain in effect until specifically amended or repealed
30 in the manner provided by law.

31 (9) This section shall take effect on January 1, 2005.

1 Section 14. Effective midnight December 31, 2004, the
2 Board of Funeral and Cemetery Services and the Board of
3 Funeral Directors and Embalmers are abolished.

4 Section 15. Effective January 1, 2005, all fees
5 collected pursuant to the provisions of chapters 470 and 497,
6 Florida Statutes, shall be deposited in the Regulatory Trust
7 Fund in the Department of Financial Services.

8 Section 16. The Legislature recognizes that there is a
9 need to conform the Florida Statutes to the policy decisions
10 reflected in the provisions of this act. The Division of
11 Statutory Revision is directed to provide the relevant
12 substantive committees of the Senate and the House of
13 Representatives with assistance, upon request, to enable such
14 committees to prepare draft legislation to conform the Florida
15 Statutes to the provisions of this act.

16 Section 17. Section 470.002, Florida Statutes, is
17 amended to read:

18 470.002 Definitions.--As used in this chapter:

19 ~~(1)~~~~(15)~~ "Alternative container" means a nonmetal
20 receptacle or enclosure which is less expensive than a casket
21 and of sufficient strength to be used to hold and transport a
22 dead human body.

23 ~~(2)~~~~(22)~~ "At-need solicitation" means any uninvited
24 contact by a funeral director or direct disposer for the
25 purpose of the sale of funeral services or merchandise to the
26 family or next of kin of a person after that person has died.

27 ~~(3)~~~~(2)~~ "Board" means the Board of Funeral Directors
28 and Embalmers.

29 ~~(4)~~ "Body parts" means:

30 (a) Limbs or other portions of the anatomy which are
31 removed from a person or human remains for medical purposes

1 during treatment, surgery, biopsy, autopsy, or medical
2 research; or

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

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

9 (6)(27) "Centralized embalming facility" means a
10 facility, not physically connected with a funeral
11 establishment, in which embalming takes place.

12 (7)(14) "Cinerator" means a facility where dead human
13 bodies are reduced to a residue, including bone fragments, by
14 direct flame, also known as "cremation," or by intense heat,
15 also known as "calcination."

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

19 (9) "Cremated remains" means all the remains of the
20 human body recovered after the completion of the cremation
21 process, including processing or pulverization which leaves
22 only bone fragments reduced to unidentifiable dimensions and
23 may include the residue of any foreign matter, including
24 casket material, bridgework, or eyeglasses that were cremated
25 with the human remains.

26 (10)(24) "Cremation" means the technical process,
27 using direct flame and heat or chemical means, which reduces
28 human remains to bone fragments through heat and evaporation.
29 Cremation includes the processing and usually includes the
30 pulverization of the bone fragments includes any mechanical or
31 thermal process whereby a dead human body is reduced to ashes

1 ~~and bone fragments. Cremation also includes any other~~
2 ~~mechanical or thermal process whereby human remains are~~
3 ~~pulverized, burned, recremented, or otherwise further reduced~~
4 ~~in size or quantity.~~

5 (11) "Cremation chamber" means the enclosed space
6 within which the cremation process takes place. Cremation
7 chambers covered by these procedures must be used exclusively
8 for the cremation of human remains.

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

13 (a) Be composed of readily combustible materials
14 suitable for cremation.

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

17 (c) Be resistant to leakage or spillage.

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

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

21 (13) "Cremation interment container" means a rigid
22 outer container that, subject to a cemetery's rules and
23 regulations, is composed of concrete, steel, fiberglass, or
24 some similar material in which an urn is placed prior to being
25 interred in the ground and that is designed to support the
26 earth above the urn.

27 (14)~~(1)~~ "Department" means the Department of Business
28 and Professional Regulation.

29 (15)~~(8)~~ "Direct disposal establishment" means a
30 facility registered under this chapter where a direct disposer
31 practices direct disposition.

1 ~~(16)(9)~~ "Direct disposer" means any person registered
2 under this chapter to practice direct disposition in this
3 state.

4 ~~(17)(28)~~ "Disinterment" means removal of a dead human
5 body from earth interment or aboveground interment.

6 ~~(18)(5)~~ "Embalmer" means any person licensed under
7 this chapter to practice embalming in this state.

8 ~~(19)(11)~~ "Final disposition" means the final disposal
9 of a dead human body by earth interment, aboveground
10 interment, cremation, burial at sea, or delivery to a medical
11 institution for lawful dissection if the medical institution
12 assumes responsibility for disposal. "Final disposition" does
13 not include the disposal or distribution of ashes and residue
14 of cremated human remains.

15 ~~(20)(13)~~ "Funeral" or "funeral service" means the
16 observances, services, or ceremonies held to commemorate the
17 life of a specific deceased human being, and at which the
18 human remains are present.

19 ~~(21)(3)~~ "Funeral director" means any person licensed
20 under this chapter to practice funeral directing in this
21 state.

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

25 ~~(23)(12)~~ "Funeral merchandise" or "merchandise" means
26 any merchandise commonly sold in connection with the funeral,
27 final disposition, or memorialization of human remains,
28 including, but not limited to, caskets, outer burial
29 containers, alternative containers, cremation containers,
30 cremation interment containers, urns, monuments, private
31 mausoleums, flowers, shrubs, benches, vases, acknowledgment

1 cards, register books, memory folders, prayer cards, and
2 clothing.

3 (24)~~(23)~~ "Human remains" or "remains," "dead human
4 body" or "dead human bodies," means the body of a deceased
5 human person for which a death certificate or fetal death
6 certificate is required under chapter 382 and includes the
7 body in any stage of decomposition and the residue of cremated
8 human bodies.

9 (25)~~(18)~~ "Legally authorized person" means, in the
10 priority listed, the decedent, when written inter vivos
11 authorizations and directions are provided by the decedent,
12 the surviving spouse, unless the spouse has been arrested for
13 committing against the deceased an act of domestic violence as
14 defined in s. 741.28 which resulted in or contributed to the
15 death of the deceased, a son or daughter who is 18 years of
16 age or older, a parent, a brother or sister 18 years of age or
17 over, a grandchild who is 18 years of age or older, or a
18 grandparent; or any person in the next degree of kinship. In
19 addition, the term may include, if no family exists or is
20 available, the following: the guardian of the dead person at
21 the time of death; the personal representative of the
22 deceased; the attorney in fact of the dead person at the time
23 of death; the health surrogate of the dead person at the time
24 of death; a public health officer; the medical examiner,
25 county commission or administrator acting under part II of
26 chapter 406, or other public administrator; a representative
27 of a nursing home or other health care institution in charge
28 of final disposition; or a friend or other person not listed
29 in this subsection who is willing to assume the responsibility
30 as authorized person. Where there is a person in any priority
31 class listed in this subsection, the funeral establishment

1 shall rely upon the authorization of any one legally
2 authorized person of that class if that individual represents
3 that he or she is not aware of any objection to the cremation
4 of the deceased's human remains by others in the same class of
5 the person making the representation or of any person in a
6 higher priority class.

7 (26) "Niche" means a compartment or cubicle for the
8 memorialization or permanent placement of a container or urn
9 containing cremated remains.

10 (27)~~(19)~~ "Outer burial container" means an enclosure
11 into which a casket is placed, including, but not limited to,
12 a vault made of concrete, steel, fiberglass, or copper, a
13 sectional concrete enclosure, a crypt, or a wooden enclosure.

14 (28)~~(20)~~ "Personal residence" means any residential
15 building in which one temporarily or permanently maintains his
16 or her abode, including, but not limited to, an apartment or a
17 hotel, motel, nursing home, convalescent home, home for the
18 aged, or a public or private institution.

19 (29)~~(10)~~ "Practice of direct disposition" means the
20 cremation of human remains without preparation of the human
21 remains by embalming and without any attendant services or
22 rites such as funeral or graveside services or the making of
23 arrangements for such final disposition.

24 (30)~~(6)~~ "Practice of embalming" means disinfecting or
25 preserving or attempting to disinfect or preserve dead human
26 bodies by replacing certain body fluids with preserving and
27 disinfecting chemicals.

28 (31)~~(4)~~ "Practice of funeral directing" means the
29 performance by a licensed funeral director of any of those
30 functions authorized by s. 470.0087.

31

1 ~~(32)(21)~~ "Preneed sales agent" means any person who is
2 registered under chapter 497 to sell preneed burial or funeral
3 service and merchandise contracts or direct disposition
4 contracts in this state.

5 (33) "Processing" means the reduction of identifiable
6 bone fragments after the completion of the cremation process
7 to unidentifiable bone fragments by manual means.

8 (34) "Pulverization" means the reduction of
9 identifiable bone fragments after the completion of the
10 cremation and processing to granulated particles by manual or
11 mechanical means.

12 ~~(35)(25)~~ "Refrigeration facility" means a facility
13 that is not physically connected with a funeral establishment,
14 crematory or direct disposal establishment, that maintains
15 space and equipment for the storage and refrigeration of dead
16 human bodies, and that offers its service to funeral directors
17 and funeral establishments for a fee.

18 ~~(36)(26)~~ "Removal service" means any service that
19 operates independently of a funeral establishment, that
20 handles the initial removal of dead human bodies, and that
21 offers its service to funeral establishments and direct
22 disposal establishments for a fee.

23 ~~(37)(17)~~ "Solicitation" means any communication which
24 directly or implicitly requests an immediate oral response
25 from the recipient.

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

30 (39) "Urn" means a receptacle designed to permanently
31 encase cremated remains.

1 Section 18. Section 470.0085, Florida Statutes, is
2 amended to read:

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

17 Section 19. Subsection (2) of section 470.018, Florida
18 Statutes, is amended to read:

19 470.018 Renewal of registration of direct disposer.--

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

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

1 Section 20. Subsections (2) and (5) of section
2 470.021, Florida Statutes, are amended to read:

3 470.021 Direct disposal establishment; standards and
4 location; registration.--

5 (2) The practice of direct disposition must be engaged
6 in at a fixed location of at least 625 interior contiguous
7 square feet and must maintain or make arrangements for
8 suitable capacity for the refrigeration and storage of dead
9 human bodies handled and stored by the establishment. No
10 person may open or maintain an establishment at which to
11 engage in or hold himself or herself out as engaging in the
12 practice of direct disposition unless such establishment is
13 registered with the board. Any change in location of such
14 establishment shall be reported promptly to the board as
15 prescribed by rule of the board.

16 (5)(a) Each direct disposal establishment shall at all
17 times be subject to the inspection of all its buildings,
18 grounds, and vehicles used in the conduct of its business, by
19 the department, the Department of Health, and local government
20 inspectors and by their agents. The board shall adopt rules
21 which establish such inspection requirements.

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

25 (c) Each cinerator facility must be inspected prior to
26 the issuance and renewal of its license and shall:

27 1. Maintain one or more retorts for the reduction of
28 dead human bodies.

29 2. Maintain refrigeration that satisfies the standards
30 set by the Department of Health and contains a sufficient
31

1 number of shelves for the average daily number of bodies
2 stored, if unembalmed bodies are kept at the site.

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

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

10 5. Maintain the premises in a clean and sanitary
11 condition.

12 6. Have appropriate Department of Environmental
13 Protection permits.

14 7. Retain all signed contracts for a period of at
15 least 2 years.

16 Section 21. Subsection (1) of section 470.024, Florida
17 Statutes, is amended to read:

18 470.024 Funeral establishment; licensure.--

19 (1) A funeral establishment shall be a place at a
20 specific street address or location consisting of at least
21 1,250 contiguous interior square feet and must maintain or
22 make arrangements for ~~either~~ suitable capacity for the
23 refrigeration and storage of dead human bodies handled and
24 stored by the establishment and ~~or~~ a preparation room equipped
25 with necessary ventilation and drainage and containing
26 necessary instruments for embalming dead human bodies or must
27 make arrangements for a preparation room as established by
28 board rule.

29 Section 22. Subsections (6), (13), (14), and (15) of
30 section 470.025, Florida Statutes, are amended, and subsection
31 (16) is added to that section, to read:

1 470.025 Cinerator facility; licensure.--

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

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

21 (14) Each cinerator facility shall ensure that all
22 alternative containers, cremation containers, or caskets used
23 for cremation contain no amount of chlorinated plastics not
24 authorized by the Department of Environmental Protection, that
25 they also are composed of readily combustible materials
26 suitable for cremation, able to be closed to provide a
27 complete covering for the human remains, resistant to leakage
28 or spillage, rigid enough for handling with ease, and able to
29 provide for the health, safety, and personal integrity of the
30 public and crematory personnel.

31

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

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

15 Section 23. Section 470.0255, Florida Statutes, is
16 amended to read:

17 470.0255 Cremation; procedure required.--

18 (1) At the time of the arrangement for a cremation
19 performed by any person licensed pursuant to this chapter, the
20 person contracting for cremation services shall be required to
21 designate his or her intentions with respect to the
22 disposition of the cremated remains of the deceased in a
23 signed declaration of intent which shall be provided by and
24 retained by the funeral or direct disposal establishment. A
25 cremation may not be performed until a legally authorized
26 person gives written authorization for such cremation. The
27 cremation must be performed within 48 hours after a specified
28 time which has been agreed to in writing by the person
29 authorizing the cremation.

30 (2) With respect to any person who intends to provide
31 for the cremation of the deceased, if, after a period of 120

1 days from the time of cremation the cremated remains have not
2 been claimed, the funeral or direct disposal establishment may
3 dispose of the cremated remains. Such disposal shall include
4 scattering them at sea or placing them in a licensed cemetery
5 scatter garden or pond or in a church columbarium or otherwise
6 disposing of the remains as provided by rule of the department
7 or board.

8 (3) Pursuant to the request of a legally authorized
9 person and incidental to final disposition, cremation may be
10 performed on parts of human remains. This subsection does not
11 authorize the cremation of body parts as defined in s.
12 470.002.

13 Section 24. Section 470.028, Florida Statutes, is
14 amended to read:

15 470.028 Preneed sales; registration of agents; control
16 and supervision of agents.--

17 (1) All sales of preneed funeral service contracts or
18 direct disposition contracts shall be made pursuant to chapter
19 497.

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

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

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

31

1 (b) The direct disposer in charge or a funeral
2 director acting as a direct disposer in charge of a direct
3 disposal establishment shall be responsible for the control
4 and activities of the establishment's preneed agents.

5 Section 25. Subsection (1) of section 470.029, Florida
6 Statutes, is amended to read:

7 470.029 Reports of cases embalmed and bodies
8 handled.--

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

23 Section 26. Section 470.031, Florida Statutes, is
24 amended to read:

25 470.031 Prohibitions; penalties.--

26 (1) No person may:

27 (a) Practice funeral directing, embalming, or direct
28 disposition unless the person holds an active license or
29 registration under this chapter.

30
31

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

4 (c) Represent as his or her own the license or
5 registration of another.

6 (d) Give false or forged evidence to the board, a
7 member thereof, or the department for the purpose of obtaining
8 a license or registration.

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

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

13 (g) Knowingly conceal information relative to
14 violations of this chapter.

15 (h) Operate an unlicensed cinerator facility.

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

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

21 Section 27. Section 470.0355, Florida Statutes, is
22 amended to read:

23 470.0355 Identification of human remains.--

24 (1) PRIOR TO FINAL DISPOSITION.--

25 (a)~~(1)~~ The licensee or registrant in charge of the
26 final disposition of dead human remains shall, prior to final
27 disposition of such dead human remains, affix on the ankle or
28 wrist of the deceased, and ~~or~~ in the casket or alternative
29 container or cremation container, proper identification of the
30 dead human remains. The identification or tag shall be encased
31 in or consist of durable and long-lasting material containing

1 the name, date of birth, and date of death, ~~and social~~
2 ~~security number~~ of the deceased, if available. If the dead
3 human remains are cremated, proper identification shall be
4 placed in the container or urn containing the remains.

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

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

14 (2) IN UNLICENSED CEMETERIES.--Effective October 1,
15 2004, the identification of human remains interred in an
16 unlicensed cemetery shall be the responsibility of the
17 licensed funeral establishment in charge of the funeral
18 arrangements for the deceased person. The licensed funeral
19 establishment in charge of the funeral arrangements for the
20 interment in an unlicensed cemetery of human remains shall
21 place on the outer burial container, cremation interment
22 container, or other container or on the inside of a crypt or
23 niche a tag or permanent identifying mark containing the name
24 of the decedent and the date of death, if available. The
25 materials and locations of the tag or mark shall be more
26 specifically described by rule of the board.

27 (3) IN LICENSED CEMETERIES.--Effective October 1,
28 2004, human remains at licensed cemeteries shall be identified
29 as follows:

30 (a) Each licensed cemetery shall place on the outer
31 burial container, cremation interment container, or other

1 container or on the inside of a crypt or niche a tag or
2 permanent identifying marker containing the name of the
3 decedent and the date of death, if available. The materials
4 and the location of the tag or marker shall be more
5 specifically described by rule of the board.

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

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

24 Section 28. For the purpose of incorporating the
25 amendment to section 470.031, Florida Statutes, in a reference
26 thereto, paragraph (a) of subsection (1) of section 470.036,
27 Florida Statutes, is reenacted to read:

28 470.036 Disciplinary proceedings.--

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

31

1 (a) Violation of any provision of s. 455.227(1) or s.
2 470.031.

3 Section 29. Section 497.005, Florida Statutes, is
4 amended to read:

5 497.005 Definitions.--As used in this chapter:

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

10 (2) "Bank of belowground crypts" means any
11 construction unit of belowground crypts which is acceptable to
12 the department and which a cemetery uses to initiate its
13 belowground crypt program or to add to existing belowground
14 crypt structures.

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

19 (4) "Board" means the Board of Funeral and Cemetery
20 Services.

21 (5) "Burial merchandise," "funeral merchandise," or
22 "merchandise" means any personal property offered or sold by
23 any person for use in connection with the final disposition,
24 memorialization, interment, entombment, or inurnment of human
25 remains.

26 (6) "Burial right" means the right to use a grave
27 space, mausoleum, columbarium, ossuary, or scattering garden
28 for the interment, entombment, inurnment, or other disposition
29 of human remains.

30 (7) "Burial service," "funeral service," or "service"
31 means any service offered or provided by any person in

1 connection with the final disposition, memorialization,
2 interment, entombment, or inurnment of human remains.

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

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

30 (10) "Cemetery" means a place dedicated to and used or
31 intended to be used for the permanent interment of human

1 remains. A cemetery may contain land or earth interment;
2 mausoleum, vault, or crypt interment; a columbarium, ossuary,
3 scattering garden, or other structure or place used or
4 intended to be used for the interment or disposition of
5 cremated human remains; or any combination of one or more of
6 such structures or places.

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

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

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

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

23 (15) "Cremation" includes any mechanical or thermal
24 process whereby a dead human body is reduced to ashes.
25 Cremation also includes any other mechanical or thermal
26 process whereby human remains are pulverized, burned,
27 reinterred, or otherwise further reduced in size or quantity.

28 (16) "Department" means the Department of Financial
29 Services.

30
31

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

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

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

12 (20) "Grave space" means a space of ground in a
13 cemetery intended to be used for the interment in the ground
14 of human remains.

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

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

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

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

28 (25) "Monument establishment" means a facility that
29 operates independently of a cemetery or funeral establishment
30 and that offers to sell monuments or monument services to the
31 public for placement in a cemetery.

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

10 (27) "Net worth" means total assets minus total
11 liabilities pursuant to generally accepted accounting
12 principles.

13 (28) "Niche" means a compartment or cubicle for the
14 memorialization or permanent placement of an urn containing
15 cremated remains.

16 (29)~~(28)~~ "Ossuary" means a receptacle used for the
17 communal placement of cremated human remains without benefit
18 of an urn or any other container in which remains will be
19 commingled with other cremated human remains and are
20 nonrecoverable. It may or may not include memorialization.

21 (30)~~(29)~~ "Outer burial container" means an enclosure
22 into which a casket is placed and includes, but is not limited
23 to, vaults made of concrete, steel, fiberglass, or copper;
24 sectional concrete enclosures; crypts; and wooden enclosures.

25 (31)~~(30)~~ "Preneed contract" means any arrangement or
26 method, of which the provider of funeral merchandise or
27 services has actual knowledge, whereby any person agrees to
28 furnish funeral merchandise or service in the future.

29 (32)~~(31)~~ "Religious institution" means an organization
30 formed primarily for religious purposes which has qualified
31 for exemption from federal income tax as an exempt

1 organization under the provisions of s. 501(c)(3) of the
2 Internal Revenue Code of 1986, as amended.

3 (33)~~(32)~~ "Scattering garden" means a location set
4 aside, within a cemetery, which is used for the spreading or
5 broadcasting of cremated remains that have been removed from
6 their container and can be mixed with or placed on top of the
7 soil or ground cover or buried in an underground receptacle on
8 a commingled basis and that are nonrecoverable. It may or may
9 not include memorialization.

10 (34)~~(33)~~ "Servicing agent" means any person acting as
11 an independent contractor whose fiduciary responsibility is to
12 assist both the trustee and certificateholder hereunder in
13 administrating their responsibilities pursuant to this
14 chapter.

15 (35)~~(34)~~ "Solicitation" means any communication that
16 ~~which~~ directly or implicitly requests an immediate oral
17 response from the recipient.

18 (36)~~(35)~~ "Statutory accounting" means generally
19 accepted accounting principles, except as modified by this
20 chapter.

21 (37) "Urn" means a receptacle designed to permanently
22 encase cremated remains.

23 Section 30. Subsection (3) of section 497.305, Florida
24 Statutes, is amended to read:

25 497.305 Cemetery companies; authorized functions.--

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

31

1 Section 31. Section 497.306, Florida Statutes, is
2 created to read:

3 497.306 Standards for grave spaces.--

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

12 (2)(a) Effective October 1, 2004, and prior to the
13 sale of grave spaces in any undeveloped areas of a licensed
14 cemetery, the cemetery company shall prepare a map documenting
15 the establishment of recoverable internal survey reference
16 markers installed by the cemetery company no more than 100
17 feet apart in the areas planned for development. The internal
18 reference markers shall be established with reference to
19 survey markers that are no more than 200 feet apart which have
20 been set by a surveyor and mapper licensed under chapter 472
21 and documented in a certified land survey. Both the map and
22 the certified land survey shall be maintained by the cemetery
23 company and shall be made available upon request to the
24 department or members of the public.

25 (b) The map of the area proposed to be developed shall
26 show:

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

1 (3) Adult grave spaces established prior to October 1,
2 2004, are not required to meet the standards established under
3 this section for the dimensions or separation of grave spaces.

4 Section 32. Section 497.307, Florida Statutes, is
5 created to read:

6 497.307 Identification of human remains in licensed
7 cemeteries.--On and after October 1, 2004, human remains
8 interred, entombed, scattered, or otherwise placed for final
9 rest at licensed cemeteries shall be identified as follows:

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

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

26 Section 33. Subsection (2) of section 497.325, Florida
27 Statutes, is amended to read:

28 497.325 Illegal tying arrangements.--

29 (2)(a) Noncemetery licensed persons and firms shall
30 have the right to sell monuments and to perform or provide on
31 cemetery property foundation, preparation, and installation

1 services for monuments. However, a cemetery company or any
2 other entity owning and operating a cemetery may establish
3 reasonable rules regarding the style and size of a monument or
4 its foundation, provided such rules are applicable to all
5 monuments from whatever source obtained and are enforced
6 uniformly as to all monuments. Such rules shall be
7 conspicuously posted and readily accessible to inspection and
8 copy by interested persons.

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

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

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

17 3. Waive liability with respect to damage caused by
18 cemetery employees or agents to a monument after installation,
19 where the monument or installation service is not purchased
20 from the person authorized to sell grave space or the cemetery
21 company or other legal entity providing grave space or from or
22 through any other person or corporation designated by the
23 person authorized to sell grave space or the cemetery company
24 or other legal entity providing grave space. A ~~No~~ cemetery
25 company or other entity owning and operating a cemetery may
26 not be held liable for the improper installation of a monument
27 where the monument is not installed by the cemetery company or
28 its agents or by such other entity or its agents.

29 Section 34. Subsection (9) is added to section
30 497.333, Florida Statutes, to read:

31

1 497.333 Disclosure of information to public.--A
2 licensee offering to provide burial rights, merchandise, or
3 services to the public shall:

4 (9) Provide to each customer a complete description of
5 any monument, marker, or memorialization to be placed at the
6 gravesite.

7 Section 35. Subsection (5) of section 497.361, Florida
8 Statutes, is amended and subsections (6) and (7) are added to
9 said section to read:

10 497.361 Registration of monument establishments.--

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

25 (6) All contracts with the public must be approved by
26 the Department of Financial Services and must provide a
27 complete description of any monument, marker, or related
28 product to be delivered.

29 (7) A certificate of authority may not be transferred
30 or assigned.

31

1 Section 36. Section 497.365, Florida Statutes, is
2 created to read:

3 497.365 Regulation of monument establishments.--

4 (1) The Department of Financial Services shall
5 establish an inspection program for all monument
6 establishments in accordance with the requirements of this
7 act.

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

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

18 Section 37. Section 497.371, Florida Statutes, is
19 created to read:

20 497.371 Monument establishment business location.--

21 (1) A monument establishment shall be a place at a
22 specific street address or location consisting of an office
23 and display area for monuments, markers, and related products.
24 The place where the establishment is located must comply with
25 the local government zoning regulations and may not be located
26 on tax-exempt property.

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

31

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

5 Section 38. Section 497.379, Florida Statutes, is
6 created to read:

7 497.379 Licensure of monument establishments to sell
8 preneed contracts.--A monument establishment, including an
9 existing registered or unregistered monument establishment,
10 may not sell a preneed contract without first having obtained
11 a valid certificate of authority from the Department of
12 Financial Services. A person may not be issued a certificate
13 of authority as a monument establishment to sell preneed
14 contracts unless such person has at least 3 years' experience
15 in the operation and management of an establishment selling
16 monuments, markers, and related products.

17 Section 39. Section 497.385, Florida Statutes, is
18 created to read:

19 497.385 Monument establishment; sales
20 representative.--Each person selling monuments, markers, and
21 related products for a monument establishment must register
22 with the board, including any person registered or licensed
23 pursuant to chapter 470 or this chapter. A person selling
24 monuments, markers, and related products for a monument
25 establishment that has been issued a certificate of authority
26 must register as a preneed agent pursuant to the requirements
27 of this chapter.

28 Section 40. Section 497.391, Florida Statutes, is
29 created to read:

30 497.391 Monument establishment; preneed
31 contracts.--Effective January 1, 2005, a monument dealer or

1 establishment may not write a preneed contract unless that
2 contract has been approved by the board. Any monument dealer
3 or establishment that is paid, collects, or receives funds
4 under a preneed contract for services or merchandise shall
5 comply with the provisions of ss. 497.417 and 497.413.

6 Section 41. Section 497.395, Florida Statutes, is
7 created to read:

8 497.395 Licensed monument establishment; financial
9 requirements.--

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

18 (2) All licensed monument establishments holding a
19 certificate of authority or an applicant must submit its most
20 recent year-end financial statements, including a balance
21 sheet and income statement, with the certificate of authority
22 application and annually thereafter as provided in s.
23 497.407(1). The financial statement must be prepared in
24 accordance with generally accepted accounting principles, as
25 those principles have been defined by the Florida Board of
26 Accountancy in the Florida Administrative Code. If the
27 applicant does not have the minimum net worth as set forth in
28 subsection (3), lacks sufficient liquid assets to satisfy
29 current liabilities, or does not appear to have any
30 substantial long-term assets, the department shall request
31

1 additional financial information concerning financial
2 statements and the statement of cash flow.

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

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

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

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

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

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

24 (5) If the certificateholder or applicant does not
25 meet the financial requirements in subsection (3), the entity
26 may voluntarily submit to the board additional evidence or
27 agree to additional oversight as to meeting the requirements
28 of subsection (1) as a condition of receiving or retaining a
29 certificate of authority. Such additional evidence or
30 oversight shall include, as appropriate:

31

- 1 (a) An agreement to submit monthly financial
2 statements of the entity;
3 (b) An agreement to submit quarterly financial
4 statements of the entity;
5 (c) An appraisal of the entity's property or broker's
6 opinion of the entity's assets;
7 (d) A credit report of the entity or its principal
8 owners;
9 (e) Subordination-of-debt agreement from the entity's
10 principal owners;
11 (f) An indemnification or subrogation agreement
12 binding the entity and principal owners;
13 (g) A guarantee agreement for the entity from its
14 principal owners;
15 (h) Written explanation of past financial activity;
16 (i) Submission of the 12-month projected business plan
17 that includes:
18 1. A statement of cash flows;
19 2. Pro forma income statements, with sources of
20 revenues identified; and
21 3. Marketing initiatives;
22 (j) Submission of previous department examination
23 reports; or
24 (k) An agreement of 100 percent voluntary trust by the
25 entity.
26 Section 42. Subsections (1), (3), and (4) of section
27 497.405, Florida Statutes, are amended to read:
28 497.405 Certificate of authority required.--
29 (1)(a) No person, including any cemetery exempt under
30 s. 497.003, may sell, advertise to sell, or make an
31

1 arrangement for a preneed contract without first having a
2 valid certificate of authority.

3 (b) No person, including any cemetery exempt under s.
4 497.003, may sell, advertise to sell, or make an arrangement
5 for services, merchandise, or burial rights on a preneed basis
6 unless such person is authorized pursuant to this chapter to
7 provide such services, merchandise, or burial rights on an
8 at-need basis.

9 (3) No person may obtain a certificate of authority
10 under this chapter for the preneed sale of services unless
11 such person or its agent, in the case of a corporate entity,
12 holds a license as a funeral establishment or cemetery
13 company, ~~or~~ registration as a direct disposal establishment
14 under chapter 470, or certification as a monument
15 establishment under this chapter.

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

30
31

1 Section 43. Subsection (4) of section 497.419, Florida
2 Statutes, is amended, and subsection (11) is added to that
3 section, to read:

4 497.419 Cancellation of, or default on, preneed
5 contracts.--

6 (4) Each certificateholder shall provide in
7 conspicuous type in its contract that the contract purchaser
8 may cancel the contract and receive a full refund within 30
9 days after of the date of execution of the contract, except
10 for those amounts allocable to any burial rights, merchandise,
11 or services that have been used by the purchaser. The failure
12 to make such provision shall not impair the contract
13 purchaser's right to cancellation and refund as provided in
14 this section.

15 (11) Failure to install a monument within 180 days
16 after interment shall be considered a breach of contract
17 unless the certificateholder has a written agreement to extend
18 the installation date. The purchaser shall be entitled to a
19 refund of all money paid for the merchandise. Such refund
20 shall be made within 30 days after receipt by the
21 certificateholder of the purchaser's written request for a
22 refund. This subsection does not preclude the purchase and
23 installation of a new monument from any other registered
24 monument establishment or certificateholder.

25 Section 44. Subsection (4) of section 497.436, Florida
26 Statutes, is amended to read:

27 497.436 Inactive and revoked certificateholders.--

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

30 (a) shall Review the certificateholder's:

31 1.(a) Trust funds.

- 1 ~~2.(b)~~ Trust agreements.
- 2 ~~3.(c)~~ Evidence of all outstanding preneed contracts.
- 3 (b) Perform other procedures the board deems
- 4 necessary.

5 Section 45. Except as otherwise expressly provided in
6 this act, this act shall take effect July 1, 2004.

7
8 *****

9 SENATE SUMMARY

10 Creates the Division of Funeral, Cemetery, and Consumer
11 Services within the Department of Financial Services.
12 Effective January 1, 2005, transfers the duties and
13 authority of the Board of Funeral Directors and Embalmers
14 and the duties and authority of the Board of Funeral and
15 Cemetery Services to the new Board of Funeral, Cemetery,
16 and Consumer Services. Establishes the composition,
17 terms, powers, and duties of the board. Provides for the
18 office of the director of the new division, including his
19 or her duties and responsibilities. Increases the period
20 that an embalmer apprentice may serve in an apprentice
21 capacity. Amends requirements relating to the practice of
22 direct disposal. Increases the maximum number of
23 classroom hours of continuing education needed for
24 renewal of a direct disposer registration. Revises
25 requirements for cinerator facilities. Provides
26 requirements for identifying human remains. Provides
27 standards for grave spaces. Provides for the regulation
28 of monument establishments and establishes qualification
29 requirements. Provides requirements for preneed
30 contracts. Provides for annual fees. (See bill for
31 details.)