

1  
2 An act relating to regulation of the funeral  
3 and cemetery industry; providing a short title;  
4 creating in the Department of Financial  
5 Services the Division of Funeral, Cemetery, and  
6 Consumer Services; creating in the Department  
7 of Financial Services the Board of Funeral,  
8 Cemetery, and Consumer Services; abolishing the  
9 Board of Funeral and Cemetery Services;  
10 abolishing the Board of Funeral Directors and  
11 Embalmers; consolidating regulation under chs.  
12 470 and 497, F.S., into ch. 497, F.S., under  
13 the Board of Funeral, Cemetery, and Consumer  
14 Services in the Department of Financial  
15 Services; removing responsibility regarding ch.  
16 470, F.S., from the Department of Business and  
17 Professional Regulation; dividing ch. 497,  
18 F.S., into part I relating to general  
19 provisions, part II relating to cemetery  
20 regulation, part III relating to funeral  
21 directing, embalming, and related services,  
22 part IV relating to preneed sales, part V  
23 relating to monument establishments, and part  
24 VI relating to cremation, crematories, and  
25 direct disposition; providing for the continued  
26 validity of licenses, registrations, and  
27 certificates issued under chs. 470 and 497,  
28 F.S.; providing for continued validity of rules  
29 of the Board of Funeral and Cemetery Services,  
30 the Board of Funeral Directors and Embalmers,  
31 and the Department of Business and Professional

1 Regulation, adopted under or in relation to ch.  
2 470, F.S., or ch. 497, F.S.; providing for  
3 continued validity of orders entered by the  
4 Board of Funeral and Cemetery Services, the  
5 Board of Funeral Directors and Embalmers, and  
6 the Department of Business and Professional  
7 Regulation for or in relation to the  
8 enforcement of ch. 470, F.S., or ch. 497, F.S.;  
9 providing for the substitution of the  
10 Department of Financial Services and the Board  
11 of Funeral, Cemetery, and Consumer Services as  
12 parties in pending litigation; providing for  
13 type two transfers; providing for a  
14 transitional timeline and procedures;  
15 eliminating or consolidating duplicative  
16 provisions from chs. 470 and 497, F.S.;  
17 replacing references to registrations,  
18 registrants, certificates, and  
19 certificateholders with references to licenses  
20 and licensees; conforming internal statutory  
21 references; amending ss. 497.001, 497.002,  
22 497.005, 497.101, 497.103, and 497.107, F.S.,  
23 to conform; amending and renumbering ss.  
24 470.006, 470.007, 470.008, 470.0085, 470.0087,  
25 470.009, 470.011, 470.012, 470.013, 470.014,  
26 470.015, 470.016, 470.0165, 470.017, 470.018,  
27 470.0201, 470.021, 470.022, 470.024, 470.025,  
28 470.0255, 470.026, 470.029, 470.0294, 470.0295,  
29 470.0301, 470.0315, 470.032, 470.0355,  
30 470.0375, 470.038, 470.039, 470.0395, 497.003,  
31 497.004, 497.025, 497.0255, 497.121, 497.133,

ENROLLED

2004 Legislature

CS for CS for SB 528, 1st Engrossed

1 | 497.201, 497.205, 497.213, 497.229, 497.237,  
2 | 497.241, 497.245, 497.249, 497.253, 497.255,  
3 | 497.257, 497.305, 497.309, 497.313, 497.317,  
4 | 497.321, 497.325, 497.329, 497.333, 497.337,  
5 | 497.345, 497.349, 497.353, 497.357, 497.361,  
6 | 497.401, 497.403, 497.405, 497.407, 497.409,  
7 | 497.411, 497.413, 497.415, 497.417, 497.419,  
8 | 497.421, 497.423, 497.425, 497.427, 497.429,  
9 | 497.436, 497.437, 497.439, 497.441, 497.525,  
10 | 497.527, and 497.531, F.S., to conform;  
11 | creating ss. 497.0021, 497.141, 497.142,  
12 | 497.143, 497.144, 497.145, 497.146, 497.147,  
13 | 497.148, 497.149, 497.150, 497.151, 497.152,  
14 | 497.153, 497.156, 497.157, 497.159, 497.161,  
15 | 497.163, 497.166, 497.167, 497.168, 497.274,  
16 | 497.275, 497.365, 497.366, 497.367, 497.551,  
17 | 497.552, 497.553, 497.554, 497.555, 497.556,  
18 | and 497.608, F.S.; amending chapter name;  
19 | clarifying purpose and intent of chapter;  
20 | amending and providing additional definitions;  
21 | creating the Board of Funeral, Cemetery, and  
22 | Consumer Services, identifying criteria for  
23 | membership, describing procedures for  
24 | appointment of members, and providing  
25 | administrative procedures regarding operation;  
26 | allocating authority and responsibility between  
27 | the board and the Department of Financial  
28 | Services; providing procedures for establishing  
29 | and processing fees; providing for creation of  
30 | disciplinary guidelines; providing for the  
31 | issuance of disciplinary citations; providing

1 authority for judicial actions to terminate  
2 violations and abate nuisances; establishing  
3 health and safety education requirements;  
4 establishing authority and requirements for the  
5 regulation of solicitation of goods and  
6 services; establishing liability of owners and  
7 others for trust fund deficits; authorizing and  
8 clarifying provisions regarding private  
9 actions; prohibiting unauthorized arrangements  
10 for the sale of funeral or burial merchandiser  
11 services; clarifying authority and procedures  
12 regarding complaints against unlicensed  
13 cemeteries; establishing prohibitions against  
14 discrimination based on race or color;  
15 providing procedures for the transfer of  
16 cemetery licenses; requiring reference to  
17 authorizing statute in trust instrument's;  
18 clarifying requirements for minimum acreage in  
19 cemeteries; establishing requirements for sale,  
20 leasing, or encumbering cemetery lands;  
21 amending requirements regarding illegal tying  
22 arrangements; establishing requirements  
23 regarding burial rights brokers; establishing  
24 requirements regarding informational brochures  
25 to be provided by cemeteries to customers;  
26 authorizing payment of court costs and attorney  
27 fees in litigation to enforce reporting  
28 requirements by unlicensed cemeteries;  
29 authorizing fees to be specified by the board  
30 subject to caps; providing rulemaking authority  
31 to the board and the department; establishing

1 and clarifying requirements regarding the  
2 processing of the human bodies; establishing  
3 requirements for the approval of preneed  
4 contract forms and related forms; authorizing  
5 rules regarding the reliance by preneed  
6 trustees on the advice of investment advisers,  
7 and restricting payments to investment  
8 advisers; establishing restrictions on the  
9 investing or loaning of preneed trust funds;  
10 providing additional authority in the board  
11 concerning orders to liquidate specified  
12 preneed trust fund investments; providing  
13 additional authority in the board regarding the  
14 requirements of preneed trust instrument's;  
15 providing requirements and additional authority  
16 in the board regarding surrender of preneed  
17 licenses; providing procedures and requirements  
18 regarding application and issuance of licenses  
19 to preneed sales agents; clarifying and  
20 establishing requirements regarding persons  
21 legally authorized to authorize burial and  
22 funeral services and procedures; clarifying  
23 applicability of parts; providing general  
24 procedures applicable to licensing; providing  
25 authority and procedures regarding submission  
26 and processing of fingerprints; providing  
27 authority and procedures for limited licensing  
28 of retired professionals; providing procedures  
29 and requirements regarding licensing  
30 examinations; allowing use of professional  
31 testing services; providing requirements for

1 notification of licensee change of address;  
2 providing procedures and requirements for  
3 continuing education; providing requirements  
4 for monitoring of continuing education by  
5 licensees; providing procedures and authority  
6 for investigations, inspections, and hearings  
7 to be conducted by the department; providing  
8 procedures and authority for financial and  
9 compliance examinations of licensees by the  
10 department; establishing requirements and  
11 authority regarding retention of complaints and  
12 creation of complaint logs; establishing  
13 grounds for disciplinary action; establishing  
14 disciplinary procedures and authorizing  
15 penalties; providing authority and procedures  
16 for action against unlicensed practice;  
17 identifying conduct constituting criminal  
18 violations; authorizing and providing  
19 procedures for receivership proceedings;  
20 authorizing rules; providing restrictions in  
21 relation to citizenship; establishing  
22 responsibility of licensees regarding preneed  
23 sales by persons under their supervision;  
24 clarifying the relationship of part IV to other  
25 parts of the chapter; requiring toll-free  
26 telephone hotline; identifying and providing  
27 authority and procedures regarding executive  
28 director of the board; establishing  
29 requirements for submission for budget;  
30 establishing requirements for training program  
31 for the board members; authorizing newsletters

1 and other informational communications with  
2 licensees; authorizing screen of licensed  
3 records in relation to child support  
4 requirements; clarifying status in regard to  
5 insurance coverage and immunity of agents  
6 retained by the department; authorizing use of  
7 disciplinary settlement funds for training of  
8 staff; establishing deadlines for completeness  
9 of applications for submission and board  
10 meetings; authorizing rules record applicants  
11 to appear before the board for oral interview  
12 by the board; establishing procedures for  
13 calculating deadlines for filings by licensees;  
14 clarifying status of elected officials licensed  
15 under the chapter; providing for presentation  
16 of applications to the board by the department;  
17 providing standing to the department in  
18 judicial proceedings; providing for certain  
19 legal services to the board by the Department  
20 of Legal Affairs; establishing requirements and  
21 authority regarding member of the military  
22 reserves; establishing procedures and fees for  
23 application for licensure as a cemetery;  
24 establishing standards and mapping requirements  
25 for grave spaces; establishing requirements for  
26 placement of identification tags on grave  
27 vaults, mausoleum crypts, and other outer  
28 burial containers, in licensed cemeteries;  
29 establishing requirements and procedures  
30 regarding inactive and delinquent licenses  
31 under part III; establishing requirements for

1 sending renewal and cancellation of licensed  
2 notices; establishing requirements for  
3 instruction on HIV and AIDS; authorizing fees  
4 to be determined by the board subject to  
5 specified caps; providing rulemaking authority  
6 to the board and department; establishing and  
7 clarifying requirements regarding the handling  
8 and processing of dead human bodies;  
9 establishing requirements regarding  
10 identification of human remains in licensed and  
11 unlicensed cemeteries, and by direct disposal  
12 establishments; establishing procedures and  
13 requirements regarding application for preneed  
14 license; authorizing issuance of licenses on  
15 probationary status; establishing procedures  
16 and requirements for change in control of the  
17 preneed license; establishing requirements  
18 regarding renewal of preneed licenses;  
19 establishing requirements and procedures for  
20 the licensure and operation of preneed  
21 branches; establishing requirements regarding  
22 reports by preneed trusts; establishing  
23 procedures and requirements for the licensure  
24 of monument establishment businesses;  
25 establishing requirements for the renewal of  
26 monument establishment licenses; establishing  
27 requirements for approval of sales agreement  
28 forms used by monument establishments;  
29 establishing requirements for procedures by  
30 monument establishments in relation to  
31 complaints from customers; establishing



1 requirements for refund of moneys to customers  
2 in regard to failure to deliver monuments  
3 according to contract terms; establishing  
4 requirements and procedures for the licensing  
5 of sales persons employed by monument  
6 establishments; establishing procedures and  
7 requirements regarding licensure of monument  
8 establishments to engage in preneed sales;  
9 establishing requirements and procedures for  
10 licensure of direct disposers; establishing  
11 requirements and procedures for licensure of  
12 direct disposal establishments; establishing  
13 requirements applicable to the operation of  
14 direct disposal establishments; establishing  
15 procedures and requirements for the licensure  
16 of cinerator facilities; establishing  
17 requirements and procedures for the supervision  
18 and operation of cinerator facilities;  
19 establishing restrictions on liability for  
20 unintentional commingling of cremation  
21 residues; amending ss. 20.121, 20.165,  
22 316.1974, 381.0098, 382.002, 403.703, 406.02,  
23 406.50, 406.52, 406.53, 455.2226, 501.022,  
24 501.604, 626.785, and 765.519, F.S.; conforming  
25 references; repealing ss. 470.001, 470.002,  
26 470.003, 470.005, 470.019, 470.023, 470.027,  
27 470.028, 470.031, 470.033, 470.034, 470.035,  
28 470.036, 497.105, 497.109, 497.111, 497.113,  
29 497.115, 497.117, 497.119, 497.123, 497.125,  
30 497.127, 497.129, 497.131, 497.135, 497.137,  
31 497.209, 497.217, 497.221, 497.225, 497.233,



1 grounds properly may cause significant emotional stress.  
2 Therefore, it is necessary in the interest of the public  
3 welfare to regulate preneed sales and cemeteries  
4 ~~certificatcholders, licensees, registrants, and cemetery~~  
5 ~~companies~~ in this state. However, restrictions shall be  
6 imposed only to the extent necessary to protect the public  
7 from significant or discernible harm or damage and not in a  
8 manner which will unreasonably affect the competitive market.

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

18 (3) The Legislature deems it necessary in the interest  
19 of public health and safety to establish minimum  
20 qualifications for entry into the professions and occupations  
21 of embalming, funeral directing, cremation, direct  
22 disposition, and monument sales, to regulate such activities,  
23 and to provide for swift and effective discipline for those  
24 practitioners who violate the law.

25 Section 5. Section 497.0021, Florida Statutes, is  
26 created to read:

27 497.0021 Applicability of parts.--The provisions of  
28 this part shall be applicable to and supplement the provisions  
29 of parts II, III, IV, V, and VI of this chapter and shall be  
30 applicable to all licensees under this chapter, except to the  
31 extent specifically provided otherwise in this chapter.

1 Section 6. Section 497.005, Florida Statutes, is  
2 amended to read:

3 497.005 Definitions.--As used in this chapter:

4 (1) "Alternative container" means a nonmetal  
5 receptacle or enclosure which is less expensive than a casket  
6 and of sufficient strength to be used to hold and transport a  
7 dead human body.

8 ~~(2)(1)~~ "At-need solicitation" means any uninvited  
9 contact by a licensee or her or his agent for the purpose of  
10 the sale of burial services or merchandise to the family or  
11 next of kin of a person after her or his death has occurred.

12 ~~(3)(2)~~ "Bank of belowground crypts" means any  
13 construction unit of belowground crypts which is acceptable to  
14 the department and which a cemetery uses to initiate its  
15 belowground crypt program or to add to existing belowground  
16 crypt structures.

17 ~~(4)(3)~~ "Belowground crypts" consist of interment space  
18 in preplaced chambers, either side by side or multiple depth,  
19 covered by earth and sod and known also as "lawn crypts,"  
20 "westminsters," or "turf-top crypts."

21 ~~(5)(4)~~ "Board" means the Board of Funeral, ~~and~~  
22 Cemetery, and Consumer Services.

23 (6) "Body parts" means:

24 (a) Limbs or other portions of the anatomy which are  
25 removed from a person or human remains for medical purposes  
26 during treatment, surgery, biopsy, autopsy, or medical  
27 research; or

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

30 ~~(7)(5)~~ "Burial merchandise," "funeral merchandise," or  
31 "merchandise" means any personal property offered or sold by

1 any person for use in connection with the final disposition,  
2 memorialization, interment, entombment, or inurnment of human  
3 remains.

4 ~~(8)(6)~~ "Burial right" means the right to use a grave  
5 space, mausoleum, columbarium, ossuary, or scattering garden  
6 for the interment, entombment, inurnment, or other disposition  
7 of human remains.

8 ~~(9)(7)~~ "Burial service," "funeral service," or  
9 "service" means any service offered or provided by any person  
10 in connection with the final disposition, memorialization,  
11 interment, entombment, or inurnment of human remains.

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

1 destruction. "Care and maintenance" does not include expenses  
2 for the construction and development of new grave spaces or  
3 interment structures to be sold to the public.

4 ~~(11)(9)~~ "Casket" means a rigid container which is  
5 designed for the encasement of human remains and which is  
6 usually constructed of wood or metal, ornamented, and lined  
7 with fabric.

8 ~~(12)(10)~~ "Cemetery" means a place dedicated to and  
9 used or intended to be used for the permanent interment of  
10 human remains. A cemetery may contain land or earth interment;  
11 mausoleum, vault, or crypt interment; a columbarium, ossuary,  
12 scattering garden, or other structure or place used or  
13 intended to be used for the interment or disposition of  
14 cremated ~~human~~ remains; or any combination of one or more of  
15 such structures or places.

16 ~~(13)(11)~~ "Cemetery company" means any legal entity  
17 that owns or controls cemetery lands or property.

18 (14) "Centralized embalming facility" means a  
19 facility, not physically connected with a funeral  
20 establishment, in which embalming takes place.

21 ~~(12) "Certificateholder" or "licensee" means the~~  
22 ~~person or entity that is authorized under this chapter to sell~~  
23 ~~preneed funeral or burial services, preneed funeral or burial~~  
24 ~~merchandise, or burial rights. Each term shall include the~~  
25 ~~other, as applicable, as the context requires. For the~~  
26 ~~purposes of chapter 120, all certificateholders, licensees,~~  
27 ~~and registrants shall be considered licensees.~~

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

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

4           ~~(17)(13)~~ "Columbarium" means a structure or building  
5 which is substantially exposed above the ground and which is  
6 intended to be used for the inurnment of cremated ~~human~~  
7 remains.

8           ~~(18)(14)~~ "Common business enterprise" means a group of  
9 two or more business entities that share common ownership in  
10 excess of 50 percent.

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

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

29           ~~(21)(15)~~ "Cremation" means the technical process,  
30 using direct flame and heat or chemical means, which reduces  
31 human remains to bone fragments through heat and evaporation.

1 Cremation includes the processing and usually includes the  
2 pulverization of the bone fragments ~~includes any mechanical or~~  
3 ~~thermal process whereby a dead human body is reduced to ashes.~~  
4 ~~Cremation also includes any other mechanical or thermal~~  
5 ~~process whereby human remains are pulverized, burned,~~  
6 ~~recremated, or otherwise further reduced in size or quantity.~~

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

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

15 (a) Be composed of readily combustible materials  
16 suitable for cremation.

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

19 (c) Be resistant to leakage or spillage.

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

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

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

29 ~~(25)(16)~~ "Department" means the Department of  
30 Financial Services.

31



1           (26) "Direct disposal establishment" means a facility  
2 licensed under this chapter where a direct disposer practices  
3 direct disposition.

4           ~~(27)(17)~~ "Direct disposer" means any person licensed  
5 under this chapter ~~who is registered in this state~~ to practice  
6 direct disposition in this state pursuant to the provisions of  
7 ~~chapter 470.~~

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

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

12           (30) "Division" means the Division of Funeral,  
13 Cemetery, and Consumer Services within the Department of  
14 Financial Services.

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

17           ~~(32)(18)~~ "Final disposition" means the final disposal  
18 of a dead human body by earth interment, aboveground  
19 interment, cremation, burial at sea, or delivery to a medical  
20 institution for lawful dissection if the medical institution  
21 assumes responsibility for disposal. "Final disposition" does  
22 not include the disposal or distribution of ashes and residue  
23 of cremated remains whether by interment, entombment, burial  
24 at sea, cremation, or any other means and includes, but is not  
25 limited to, any other disposition of remains for which a  
26 segregated charge is imposed.

27           (33) "Funeral" or "funeral service" means the  
28 observances, services, or ceremonies held to commemorate the  
29 life of a specific deceased human being and at which the human  
30 remains are present.

31

1           ~~(34)(19)~~ "Funeral director" means any person licensed  
2 under this chapter in this state to practice funeral directing  
3 in this state pursuant to the provisions of chapter 470 .

4           (35) "Funeral establishment" means a facility licensed  
5 under this chapter where a funeral director or embalmer  
6 practices funeral directing or embalming.

7           (36) "Funeral merchandise" or "merchandise" means any  
8 merchandise commonly sold in connection with the funeral,  
9 final disposition, or memorialization of human remains,  
10 including, but not limited to, caskets, outer burial  
11 containers, alternative containers, cremation containers,  
12 cremation interment containers, urns, monuments, private  
13 mausoleums, flowers, benches, vases, acknowledgment cards,  
14 register books, memory folders, prayer cards, and clothing.

15           ~~(37)(20)~~ "Grave space" means a space of ground in a  
16 cemetery intended to be used for the interment in the ground  
17 of human remains.

18           ~~(38)(21)~~ "Human remains" or "remains," or "dead human  
19 body" or "dead human bodies," means the body of a deceased  
20 human person for which a death certificate or fetal death  
21 certificate is required under chapter 382 and includes the  
22 body in any stage of decomposition and the residue of cremated  
23 human bodies ~~means the bodies of deceased persons and includes~~  
24 ~~bodies in any stage of decomposition and cremated remains.~~

25           (39) "Legally authorized person" means, in the  
26 priority listed, the decedent, when written inter vivos  
27 authorizations and directions are provided by the decedent;  
28 the surviving spouse, unless the spouse has been arrested for  
29 committing against the deceased an act of domestic violence as  
30 defined in s. 741.28 which resulted in or contributed to the  
31 death of the deceased; a son or daughter who is 18 years of

1 age or older; a parent; a brother or sister who is 18 years of  
2 age or older; a grandchild who is 18 years of age or older; a  
3 grandparent; or any person in the next degree of kinship. In  
4 addition, the term may include, if no family member exists or  
5 is available, the guardian of the dead person at the time of  
6 death; the personal representative of the deceased; the  
7 attorney in fact of the dead person at the time of death; the  
8 health surrogate of the dead person at the time of death; a  
9 public health officer; the medical examiner, county  
10 commission, or administrator acting under part II of chapter  
11 406 or other public administrator; a representative of a  
12 nursing home or other health care institution in charge of  
13 final disposition; or a friend or other person not listed in  
14 this subsection who is willing to assume the responsibility as  
15 the legally authorized person. Where there is a person in any  
16 priority class listed in this subsection, the funeral  
17 establishment shall rely upon the authorization of any one  
18 legally authorized person of that class if that individual  
19 represents that she or he is not aware of any objection to the  
20 cremation of the deceased's human remains by others in the  
21 same class of the person making the representation or of any  
22 person in a higher priority class.

23 (40) "License" includes all authorizations required or  
24 issued under this chapter, except where expressly indicated  
25 otherwise, and shall be understood to include authorizations  
26 previously referred to as registrations or certificates of  
27 authority in chapters 470 and 497 as those chapters appeared  
28 in the 2004 edition of the Florida Statutes.

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

1           ~~(42)(22)~~ "Mausoleum" means a structure or building  
2 which is substantially exposed above the ground and which is  
3 intended to be used for the entombment of human remains.

4           ~~(43)(23)~~ "Mausoleum section" means any construction  
5 unit of a mausoleum which is acceptable to the department and  
6 which a cemetery uses to initiate its mausoleum program or to  
7 add to its existing mausoleum structures.

8           ~~(44)(24)~~ "Monument" means any product used for  
9 identifying a grave site and cemetery memorials of all types,  
10 including monuments, markers, and vases.

11           ~~(45)(25)~~ "Monument establishment" means a facility  
12 that operates independently of a cemetery or funeral  
13 establishment and that offers to sell monuments or monument  
14 services to the public for placement in a cemetery.

15           ~~(46)(26)~~ "Net assets" means the amount by which the  
16 total assets of a licensee ~~certificateholder~~, excluding  
17 goodwill, franchises, customer lists, patents, trademarks, and  
18 receivables from or advances to officers, directors,  
19 employees, salespersons, and affiliated companies, exceed  
20 total liabilities of the licensee ~~certificateholder~~. For  
21 purposes of this definition, the term "total liabilities" does  
22 not include the capital stock, paid-in capital, or retained  
23 earnings of the licensee ~~certificateholder~~.

24           ~~(47)(27)~~ "Net worth" means total assets minus total  
25 liabilities pursuant to generally accepted accounting  
26 principles.

27           (48) "Niche" means a compartment or cubicle for the  
28 memorialization or permanent placement of a container or urn  
29 containing cremated remains.

30           ~~(49)(28)~~ "Ossuary" means a receptacle used for the  
31 communal placement of cremated ~~human~~ remains without benefit

1 of an urn or any other container in which cremated remains may  
2 be commingled with other cremated remains and are  
3 nonrecoverable. It may or may not include memorialization.

4 ~~(50)(29)~~ "Outer burial container" means an enclosure  
5 into which a casket is placed and includes, but is not limited  
6 to, vaults made of concrete, steel, fiberglass, or copper;  
7 sectional concrete enclosures; crypts; and wooden enclosures.

8 (51) "Person" when used without qualification such as  
9 "natural" or "individual" includes both natural persons and  
10 legal entities.

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

16 (53) "Practice of direct disposition" means the  
17 cremation of human remains without preparation of the human  
18 remains by embalming and without any attendant services or  
19 rites such as funeral or graveside services or the making of  
20 arrangements for such final disposition.

21 (54) "Practice of embalming" means disinfecting or  
22 preserving or attempting to disinfect or preserve dead human  
23 bodies by replacing certain body fluids with preserving and  
24 disinfecting chemicals.

25 (55) "Practice of funeral directing" means the  
26 performance by a licensed funeral director of any of those  
27 functions authorized by s. 497.372.

28 ~~(56)(30)~~ "Preneed contract" means any arrangement or  
29 method, of which the provider of funeral merchandise or  
30 services has actual knowledge, whereby any person agrees to  
31 furnish funeral merchandise or service in the future.

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

5           (58) "Principal" means and includes the sole  
6 proprietor of a sole proprietorship; all partners of a  
7 partnership; all members of a limited liability company;  
8 regarding a corporation, all directors and officers, and all  
9 stockholders controlling more than 10 percent of the voting  
10 stock; and all other persons who can exercise control over the  
11 person or entity.

12           (59) "Processing" means the reduction of identifiable  
13 bone fragments after the completion of the cremation process  
14 to unidentifiable bone fragments by manual means.

15           (60) "Profession" and "occupation" are used  
16 interchangeably in this chapter. The use of the word  
17 "profession" in this chapter with respect to any activities  
18 regulated under this chapter shall not be deemed to mean that  
19 such activities are not occupations for other purposes in  
20 state or federal law.

21           (61) "Pulverization" means the reduction of  
22 identifiable bone fragments after the completion of the  
23 cremation and processing to granulated particles by manual or  
24 mechanical means.

25           (62) "Refrigeration facility" means a facility that is  
26 not physically connected with a funeral establishment,  
27 crematory, or direct disposal establishment, that maintains  
28 space and equipment for the storage and refrigeration of dead  
29 human bodies, and that offers its service to funeral directors  
30 and funeral establishments for a fee.

31

1       ~~(63)(31)~~ "Religious institution" means an organization  
2 formed primarily for religious purposes which has qualified  
3 for exemption from federal income tax as an exempt  
4 organization under the provisions of s. 501(c)(3) of the  
5 Internal Revenue Code of 1986, as amended.

6       (64) "Removal service" means any service that operates  
7 independently of a funeral establishment, that handles the  
8 initial removal of dead human bodies, and that offers its  
9 service to funeral establishments and direct disposal  
10 establishments for a fee.

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

13       ~~(66)(32)~~ "Scattering garden" means a location set  
14 aside, within a cemetery, which is used for the spreading or  
15 broadcasting of cremated remains that have been removed from  
16 their container and can be mixed with or placed on top of the  
17 soil or ground cover or buried in an underground receptacle on  
18 a commingled basis and that are nonrecoverable. It may or may  
19 not include memorialization.

20       ~~(67)(33)~~ "Servicing agent" means any person acting as  
21 an independent contractor whose fiduciary responsibility is to  
22 assist both the trustee and licensee ~~certificateholder~~  
23 ~~hereunder~~ in administering their responsibilities pursuant to  
24 this chapter.

25       ~~(68)(34)~~ "Solicitation" means any communication which  
26 directly or implicitly requests an immediate oral response  
27 from the recipient.

28       ~~(69)(35)~~ "Statutory accounting" means generally  
29 accepted accounting principles, except as modified by this  
30 chapter.

31

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

5           (71) "Urn" means a receptacle designed to permanently  
6 encase cremated remains.

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

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

11           497.101 Board of Funeral, Cemetery, and Consumer  
12 Services; membership; appointment; terms.--

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

29           (2) Two members of the board must be funeral directors  
30 licensed under part III of this chapter who are associated  
31 with a funeral establishment. One member of the board must be



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

23 (3) Board members shall be appointed for terms of 4  
24 years, and the State Health Officer shall serve as long as  
25 that person holds that office. The designee of the State  
26 Health Officer shall serve at the pleasure of the Governor.  
27 When the terms of the initial board members expire, the Chief  
28 Financial Officer shall stagger the terms of the successor  
29 members as follows: one funeral director, one cemetery  
30 representative, the monument dealer, and one consumer member  
31 shall be appointed for terms of 2 years, and the remaining

1 members shall be appointed for terms of 4 years. All  
2 subsequent terms shall be for 4 years.

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

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

22 (6) The headquarters and records of the board shall be  
23 in the Division of Funeral, Cemetery, and Consumer Services of  
24 the Department of Financial Services in the City of  
25 Tallahassee. The board may be contacted through the Division  
26 of Funeral, Cemetery, and Consumer Services of the Department  
27 of Financial Services in the City of Tallahassee. The Chief  
28 Financial Officer shall annually appoint from among the board  
29 members a chair and vice chair of the board. The board shall  
30 meet at least every 6 months, and more often as necessary.  
31 Special meetings of the board shall be convened upon the

1 direction of the Chief Financial Officer. A quorum is  
2 necessary for the conduct of business by the board. Unless  
3 otherwise provided by law, six board members shall constitute  
4 a quorum for the conduct of the board's business.

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

16 Section 8. Section 497.103, Florida Statutes, is  
17 amended to read:

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

20 497.103 Rulemaking authority of board and  
21 department.--

22 (1) BOARD AUTHORITY.--Subject to the provisions of  
23 this section, all authority provided under this chapter,  
24 including rulemaking authority, relating to the following  
25 matters, is vested solely in the board, and the board shall be  
26 deemed the licensing authority as to such matters:

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

30 (b) Authority to specify who may conduct practical  
31 examination under this chapter.

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

1           (m) Authority to determine standards of construction  
2 applicable to facilities utilized by licensees under this  
3 chapter.

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

8           (o) Authority to specify required access to be  
9 provided by cemeteries to monument establishments licensed  
10 under this chapter.

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

15           (q) Authority to specify the amount and content of  
16 continuing education required of licensees and the  
17 acceptability of continuing education by distance learning.

18           (r) Authority to approve or disapprove providers of  
19 continuing education.

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

23           (t) Authority regarding establishing requirements to  
24 maintain complaint logs and complaint records.

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

28           (v) Authority to determine through probable cause  
29 panels of the board whether proposed administrative  
30 prosecutions of licensees shall go forward.

31

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

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

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

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

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

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

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

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

31

1           (a) Authority relating to the conduct of  
2 investigations, financial examinations, and inspections,  
3 including, but not limited to:  
4           1. Determination of applicants, licensees, and other  
5 persons to be investigated, subjected to financial  
6 examination, or inspected.  
7           2. The frequency, duration, and extent of  
8 investigations, financial examinations, and inspections.  
9           3. Techniques and procedures utilized in, and staff  
10 assigned to, investigations, financial examinations, and  
11 inspections.  
12           4. Establishment of requirements binding upon  
13 licensees and other persons regarding records and information  
14 to be produced or provided, and access to facilities and  
15 staff, in regard to investigations, financial examinations,  
16 and inspections.  
17           5. Preparation and filing of reports concerning  
18 investigations, financial examinations, and inspections.  
19           (b) Authority to receive fees and other amounts  
20 payable under this chapter to the licensing authority or to  
21 the Regulatory Trust Fund or Preneed Funeral Contract Consumer  
22 Protection Trust Fund from licensees, applicants, and others  
23 and to process and deposit such receipts in accordance with  
24 this chapter and the laws of this state.  
25           (c) Authority to prescribe forms and procedures to be  
26 used by applicants or licensees relating to any and all  
27 applications, filings, or reports of any type that are made  
28 with or submitted to the licensing authority by any person or  
29 entity pursuant to this chapter, including, but not limited  
30 to, applications for licenses of any type under this chapter,  
31 applications for renewal of license, applications for approval

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

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

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

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

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

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

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



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  
31

1           (m) Authority to take emergency action against any  
2 licensee under this chapter without prior consultation with  
3 the board.

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

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

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

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

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

1 Financial Officer's recommendation. The Chief Financial  
2 Officer's recommendation to the board shall be in regard to  
3 one or more of the following matters:

4       1. Protecting the public from any significant and  
5 discernible harm or damage.

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

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

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

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

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

12           (5) RULEMAKING.--

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

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

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

29           (6) FINAL ORDERS.--

30           (a) The board shall have authority to take final  
31 action and issue final orders as to all matters under its

1 authority. The chairperson of the board shall be authorized to  
2 sign orders of the board and may delegate such authority to  
3 the executive director of the board.

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

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

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

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

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

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

25 Section 9. Section 497.107, Florida Statutes, is  
26 amended to read:

27 497.107 Headquarters.--The Board of Funeral, ~~and~~  
28 Cemetery, and Consumer Services may be contacted through  
29 division at the headquarters of the department in the City of  
30 Tallahassee.  
31

1           Section 10. Section 497.525, Florida Statutes, is  
2 renumbered as section 497.140, Florida Statutes, and amended  
3 to read:

4           (Substantial rewording of section. See  
5           s. 497.525, F.S., for present text.)  
6           497.140 Fees.--

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

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

31

1 department shall set fees on behalf of the board to cover  
2 anticipated costs.

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

10 (2) All moneys collected under this chapter shall be  
11 paid into the Regulatory Trust Fund, except as otherwise  
12 expressly provided in this chapter, for the purpose of  
13 providing for the payment of all expenses in respect to the  
14 administration of this chapter.

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

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

22 (5) The department shall charge a fee not to exceed  
23 \$25 for the certification of a public record. The fee shall be  
24 determined by rule of the department. The department shall  
25 assess a fee for duplication of a public record as provided in  
26 s. 119.07(1)(a) and (b).

27 (6)(a) The department shall impose, upon initial  
28 licensure and each renewal thereof, a special unlicensed  
29 activity fee of \$5 per licensee, in addition to all other fees  
30 provided for in this chapter. Such fee shall be used by the  
31 department to fund efforts to identify and combat unlicensed

1 activity which violates this chapter. Such fee shall be in  
2 addition to all other fees collected from each licensee and  
3 shall be deposited in a separate account of the Regulatory  
4 Trust Fund; however, the department is not limited to the  
5 funds in such an account for combating improper unlicensed  
6 activity in violation of this chapter.

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

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

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

31



1           Section 11. Section 497.141, Florida Statutes, is  
2 created to read:

3           497.141 Licensing; general application procedures.--

4           (1) The provisions of this section shall supplement  
5 and implement all provisions of this chapter relating to  
6 application for licensure.

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

1 and which might affect the decision of the department or the  
2 board.

3 (3) The department shall conduct such investigation of  
4 the applicant and the application as the department deems  
5 necessary or advisable to establish the correctness of matters  
6 stated in the application and to determine whether the  
7 applicable licensing criteria are met and shall make  
8 recommendations in those regards to the board.

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

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

27 (6) When any administrative law judge conducts a  
28 hearing pursuant to the provisions of chapter 120 with respect  
29 to the issuance or denial of a license under this chapter, the  
30 administrative law judge shall submit her or his recommended  
31 order to the board, which shall thereupon issue a final order.

1 The applicant for a license may appeal the final order in  
2 accordance with the provisions of chapter 120.

3 (7) A privilege against civil liability is hereby  
4 granted to any witness for any information furnished by the  
5 witness in any proceeding pursuant to this section, unless the  
6 witness acted in bad faith or with malice in providing such  
7 information.

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

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

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1           (10) No license issued under this chapter shall be  
2 assignable or transferable except to the extent specifically  
3 provided by this chapter.

4           (11) The department shall implement a system for  
5 administration of the overall licensing process, including the  
6 processing and tracking of applications for licensure, the  
7 issuance of licenses approved by the board, the tracking of  
8 licenses issued, the administration of the license renewal  
9 process, and the collection and processing of fees related to  
10 those activities. The system may use staff and facilities of  
11 the department or the department may enter into a contract for  
12 all or any part of such system, upon such terms and conditions  
13 as the department deems advisable, and such contract may be  
14 with another government agency or a private business.

15           Section 12. Section 497.142, Florida Statutes, is  
16 created to read:

17           497.142 Licensing; fingerprinting and criminal  
18 background checks.--

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

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

27           (3) The department shall submit the fingerprints to or  
28 cause them to be submitted to the Department of Law  
29 Enforcement for the purpose of ascertaining whether the person  
30 fingerprinted has a criminal history in any state or before  
31

1 the Federal Government and, if so, the nature of the criminal  
2 history.

3 (4) The Department of Law Enforcement may accept  
4 fingerprints of any applicant under this chapter, any  
5 principal of any such applicant, and any other person who is  
6 examined or investigated or who is subject to examination or  
7 investigation under the provisions of this chapter.

8 (5) The Department of Law Enforcement may, to the  
9 extent provided for by federal law, exchange state,  
10 multistate, and federal criminal history records with the  
11 department and the board for the purpose of the issuance,  
12 denial, suspension, or revocation of any license or other  
13 application under this chapter.

14 (6) The Department of Law Enforcement may accept  
15 fingerprints of any other person required by statute or rule  
16 to submit fingerprints to the department or board or any  
17 applicant or licensee regulated by the department or board who  
18 is required to demonstrate that she or he has not been  
19 convicted of or pled guilty or nolo contendere to a felony or  
20 a misdemeanor.

21 (7) The Department of Law Enforcement shall, upon  
22 receipt of fingerprints from the department, submit the  
23 fingerprints to the Federal Bureau of Investigation to check  
24 federal criminal history records.

25 (8) Statewide criminal records obtained through the  
26 Department of Law Enforcement, federal criminal records  
27 obtained through the Federal Bureau of Investigation, and  
28 local criminal records obtained through local law enforcement  
29 agencies shall be used by the department and board for the  
30 purpose of issuance, denial, suspension, or revocation of  
31

1 certificates of authority, certifications, or licenses issued  
2 to operate in this state.

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

8 (10) If any applicant under this chapter has been,  
9 within the 10 years preceding the application under this  
10 chapter, convicted or found guilty of, or entered a plea of  
11 nolo contendere to, regardless of adjudication, any crime in  
12 any jurisdiction, the application shall not be deemed complete  
13 until such time as the applicant provides such certified true  
14 copies of the court records evidencing the conviction,  
15 finding, or plea, as the licensing authority may by rule  
16 require.

17 Section 13. Section 497.143, Florida Statutes, is  
18 created to read:

19 497.143 Licensing; limited licenses for retired  
20 professionals.--

21 (1) It is the intent of the Legislature that, absent a  
22 threat to the health, safety, and welfare of the public, the  
23 use of retired professionals in good standing to serve the  
24 indigent, underserved, or critical need populations of this  
25 state should be encouraged. To that end, rules may be adopted  
26 to permit practice by retired professionals as limited  
27 licensees under this section.

28 (2) Any person desiring to obtain a limited license,  
29 when permitted by rule, shall submit to the department an  
30 application and fee, not to exceed \$300, and an affidavit  
31 stating that the applicant has been licensed to practice in

1 any jurisdiction in the United States for at least 10 years in  
2 the profession for which the applicant seeks a limited  
3 license. The affidavit shall also state that the applicant has  
4 retired or intends to retire from the practice of that  
5 profession and intends to practice only pursuant to the  
6 restrictions of the limited license granted pursuant to this  
7 section. If the applicant for a limited license submits a  
8 notarized statement from the employer stating that the  
9 applicant will not receive monetary compensation for any  
10 service involving the practice of her or his profession, the  
11 application and all licensure fees shall be waived.

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

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

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

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

5           Section 14. Section 497.144, Florida Statutes, is  
6 created to read:

7           497.144 Licensing; examinations, general provisions.--

8           (1) The department shall, with the approval of the  
9 board, provide, contract, or approve services for the  
10 development, preparation, administration, scoring, score  
11 reporting, and evaluation of all examinations and may use  
12 professional testing services for the development,  
13 preparation, and evaluation of examinations, when such  
14 services are available. The department may contract with the  
15 Department of Business and Professional Regulation for any  
16 examination services.

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

20           (3) For each examination there shall by rule be  
21 specified the general areas of competency to be covered by the  
22 examination, the relative weight to be assigned in grading  
23 each area tested, the score necessary to achieve a passing  
24 grade, and the fees, where applicable, to cover the actual  
25 cost for any purchase, development, and administration of the  
26 required examination. However, statutory fee caps shall apply.  
27 This subsection does not apply to national examinations  
28 approved and administered pursuant to subsection (5).

29           (4) If a practical examination is utilized, rules  
30 shall specify the criteria by which examiners are to be  
31 selected, the grading criteria to be used by the examiner, the



1 relative weight to be assigned in grading each criterion, and  
2 the score necessary to achieve a passing grade. Procedures for  
3 practical examinations shall be specified by rule. Board  
4 members may serve as examiners at a practical examination with  
5 the consent of the board.

6 (5) The board may approve the use of any national  
7 examination. Providers of examinations may be either profit or  
8 nonprofit entities. The name and number of a candidate may be  
9 provided to a national contractor for the limited purpose of  
10 preparing the grade tape and information to be returned to the  
11 department or, to the extent otherwise specified by rule, the  
12 candidate may apply directly to the vendor of the national  
13 examination. The department may delegate to the board the duty  
14 to provide and administer the examination.

15 (6) Rules may be adopted establishing procedures and  
16 requirements for the security and monitoring of examinations.  
17 In order to maintain the security of examinations, the  
18 department may seek fines and injunctive relief in the courts  
19 of this state against an examinee who violates applicable  
20 security rules. The department, or any agent thereof, may, for  
21 the purposes of investigation, confiscate any written,  
22 photographic, or recording material or device in the  
23 possession of the examinee at the examination site which the  
24 department deems necessary to enforce the security of  
25 examinations.

26 (7) The department may, with the approval of the board  
27 and for a fee, share with any other state's licensing  
28 authority an examination developed by or for the board unless  
29 prohibited by a contract entered into by the department for  
30 development or purchase of the examination. The department  
31 shall establish guidelines that ensure security of a shared

1 examination and shall require that any other state's licensing  
2 authority comply with those guidelines.

3 (8) If both a written and a practical examination are  
4 given, an applicant shall be required to retake only the  
5 portion of the examination for which she or he failed to  
6 achieve a passing grade, if she or he successfully passes that  
7 portion within a reasonable time of her or his passing the  
8 other portion. Rules may be adopted establishing procedures  
9 and reasonable times for retaking failed portions of any  
10 examination.

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

22 (10) For each examination administered under this  
23 chapter, an accurate record of each applicant's examination  
24 questions, answers, papers, grades, and grading key shall be  
25 kept for a period of not less than 2 years immediately  
26 following the examination, and such record shall thereafter be  
27 maintained or destroyed as provided in chapters 119 and 257.  
28 This subsection does not apply to national examinations  
29 approved and administered pursuant to this section.

30 (11) In addition to meeting any other requirements for  
31 licensure by examination or by endorsement, an applicant may

1 be required by the board to pass an examination pertaining to  
2 state laws and rules applicable to the practice of the  
3 profession regulated under this chapter.

4 (12) Examinations and reexaminations for any license  
5 under this chapter shall be administered in the English  
6 language unless 15 or more applicants request that the  
7 examination or reexamination be administered in their native  
8 language. Such requests must be received at least 6 months  
9 prior to the examination or reexamination. In the event that  
10 such examination or reexamination is administered in a foreign  
11 language, the full cost to the board and department of  
12 preparing and administering the examination shall be borne by  
13 the applicants. Where the taking of a national examination is  
14 required by this chapter or rule adopted under this chapter,  
15 the examination may not be required to be given in any  
16 language other than English unless the national examination is  
17 available in the requested language. Rules may be adopted  
18 establishing procedures for requesting examinations in  
19 languages other than English and establishing the costs  
20 related to such examinations.

21 (13) Unless an applicant notifies the department at  
22 least 5 days prior to an examination hearing of the  
23 applicant's inability to attend or unless an applicant can  
24 demonstrate an extreme emergency for failing to attend, the  
25 department may require an applicant who fails to attend to pay  
26 reasonable attorney's fees, costs, and court costs of the  
27 department for the examination hearing.

28 Section 15. Section 497.145, Florida Statutes, is  
29 created to read:

30 497.145 Licensing; use of professional testing  
31 services.--Notwithstanding any other provision of law to the

1 contrary, the department may use a professional testing  
2 service to prepare, administer, grade, and evaluate any  
3 computerized examination, when that service is available and  
4 approved by the board.

5 Section 16. Section 497.146, Florida Statutes, is  
6 created to read:

7 497.146 Licensing; address of record; changes;  
8 licensee responsibility.--Each licensee under this chapter is  
9 responsible for notifying the department in writing of the  
10 licensee's current business and residence mailing address and  
11 the street address of the licensee's primary place of practice  
12 and shall notify the department in writing within 30 days  
13 after any change in such information, in accordance with  
14 procedures and forms prescribed by rule. Notwithstanding any  
15 other provision of law, service by regular mail to a  
16 licensee's last known address of record with the department  
17 constitutes adequate and sufficient notice to the licensee for  
18 any official communication to the licensee by the board or the  
19 department, except when other service is expressly required by  
20 this chapter. Rules may be adopted establishing forms and  
21 procedures for licensees to provide the notice required by  
22 this section.

23 Section 17. Section 497.147, Florida Statutes, is  
24 created to read:

25 497.147 Continuing education; general provisions.--

26 (1) As to any licensure under this chapter that  
27 requires prelicensure training or continuing education for  
28 renewal of a license, no such training or continuing education  
29 shall be accepted in satisfaction of the requirements of this  
30 chapter, unless approved by the board.

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

4       (3) The licensing authority may provide by rule that  
5 distance learning may be used to satisfy continuing education  
6 requirements and may specify conditions applicable to such  
7 distance learning for credit under this chapter.

8       (4) The licensing authority is authorized to adopt  
9 rules to implement requirements regarding prelicensure  
10 training and continuing education requirements under this  
11 chapter. Persons providing prelicensure training or continuing  
12 education for credit against the requirements of this chapter  
13 are hereinafter referred to as "providers."

14       (a) The rules may establish criteria for obtaining  
15 approval from the licensing authority as a provider, and for  
16 periodic renewal of such approval, and may establish  
17 procedures and forms for use in applying to obtain and renew  
18 such approval from the licensing authority.

19       (b) The rules may establish conditions and  
20 requirements applicable to providers, including, but not  
21 limited to:

22           1. Periodic submission by the provider to the  
23 licensing authority of information and documentation as to  
24 course materials, class locations and schedules, names of  
25 scheduled instructors, resumes of instructors, and  
26 descriptions of facilities.

27           2. Requirements for periodic reporting by the provider  
28 to the licensing authority of information concerning  
29 enrollment, attendance, and status of persons enrolled for  
30 credit under this chapter.

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- 1           3. Requirements for inspection by the licensing  
2 authority of records of the provider related to training or  
3 continuing education of applicants and licensees under this  
4 chapter.
- 5           4. Requirements for announced or unannounced  
6 attendance by department staff or board members at scheduled  
7 classes or training, for the purpose of ensuring that the  
8 training meets the requirements of this chapter and rules  
9 adopted under this chapter.
- 10           5. Requirements for written contracts or agreements  
11 required to be entered into by providers with the licensing  
12 authority as a prerequisite to acceptance of training or  
13 continuing education provided by such provider for credit  
14 under this chapter.
- 15           6. Requirements regarding retention of records by the  
16 provider regarding training or continuing education for which  
17 credit has been given to any licensee under this chapter.
- 18           7. Procedures and criteria for terminating the status  
19 of any provider as an approved source of training or  
20 continuing education for credit under this chapter.
- 21           8. Requirements for fees to accompany applications  
22 from providers for approval or renewal of approval as a  
23 provider, not to exceed \$250 per year. The rules may exempt  
24 nonprofit entities from such fees.
- 25           (c) The rules may list all approved providers and  
26 identify the training or continuing education each provider is  
27 approved to provide for credit under this chapter.
- 28           (d) Such rules may establish procedures and forms for  
29 use by applicants, licensees, and providers in reporting  
30 completed training and continuing education to the licensing  
31 authority.

1           (5) The board may by rule provide up to 5 hours of  
2 continuing education credit per continuing education reporting  
3 period for licensees attending board meetings or selected  
4 types or portions of board meetings, as specified by such  
5 rules. The rules may limit the number of times such credit may  
6 be utilized by a licensee. The rules may include provisions as  
7 to the minimum amount of time that must be spent in the board  
8 meeting room viewing proceedings, which may be more than 5  
9 hours of attendance, requirements for advance notice by  
10 licensees to department staff of proposed attendance,  
11 requirements to sign in and out of the meeting room on lists  
12 maintained at the meeting site by department staff, forms that  
13 must be completed by the licensee to obtain such credit, and  
14 such other requirements deemed by the board to be advisable or  
15 necessary to prevent abuse of such rules and to ensure that  
16 useful information is obtained by licensees as a result of  
17 attendance. Procedural requirements of such rules requiring  
18 action by the department shall be subject to approval by the  
19 department prior to promulgation.

20           Section 18. Section 497.148, Florida Statutes, is  
21 created to read:

22           497.148 Continuing education; monitoring of  
23 compliance.--The department shall establish a system to  
24 monitor licensee compliance with applicable trainings and  
25 continuing education requirements and to determine each  
26 licensee's continuing education status. The department is  
27 authorized to provide for a phase-in of the compliance  
28 monitoring system. The compliance monitoring system may use  
29 staff and facilities of the department, or the department may  
30 enter into a contract for compliance monitoring services, upon  
31 such terms and conditions as the department deems advisable.

1 Such contract may be with another government agency or a  
2 private business.

3 Section 19. Section 497.149, Florida Statutes, is  
4 created to read:

5 497.149 Investigations, hearings, and inspections.--

6 (1) INVESTIGATIONS.--Investigations shall be conducted  
7 by the department. The following provisions shall apply  
8 concerning investigations:

9 (a) There shall be investigated all complaints  
10 directly or indirectly alleging violation of any provision of  
11 this chapter or rules adopted pursuant to this chapter.  
12 Investigations may be conducted regarding any applicant for  
13 licensure under this chapter to ensure that the applicant  
14 satisfies the requirements for licensure and to ensure the  
15 accuracy and truthfulness of any matters represented to the  
16 department or the board in connection with the application.  
17 There may be such investigations of persons and entities not  
18 licensed under this chapter to determine if they are engaging  
19 in activities for which a license under this chapter is  
20 required, or are otherwise in violation of this chapter, as is  
21 deemed necessary to ensure compliance with this chapter. There  
22 may be conducted such other investigations, in addition to  
23 investigations expressly authorized or required by this  
24 chapter, as are deemed necessary or advisable by the  
25 department to determine whether any person is, has, or may  
26 violate any provision of this chapter or to secure information  
27 useful in the lawful administration of this chapter.

28 (b) Every person and entity being investigated, and  
29 its officers, attorneys, unless it violates the  
30 attorney-client privilege, employees, agents, and  
31 representatives, shall make freely available to the department



1 the accounts, records, documents, files, information, assets,  
2 business premises, and matters in their possession or control  
3 relating to the subject of the investigation. If records  
4 relating to a licensee or to activities regulated by this  
5 chapter are maintained by an agent on premises owned or  
6 operated by a third party, the agent and the third party shall  
7 provide the department access to the records.

8 (c) If the department finds any accounts or records of  
9 a licensee required by this chapter to be created and  
10 maintained by the licensee to be inadequate or inadequately  
11 kept or posted, it may employ experts to reconstruct, rewrite,  
12 post, or balance them at the expense of the person being  
13 investigated, provided the person has failed to maintain,  
14 complete, or correct such records or accounting after the  
15 department has given her or him notice and a reasonable  
16 opportunity to do so.

17 (d) In connection with any investigation under this  
18 chapter, the department may administer oaths, examine  
19 witnesses, and receive oral and documentary evidence, require  
20 the licensee to answer under oath interrogatories propounded  
21 by the department, issue a subpoena for testimony or the  
22 production of records to any person believed to have  
23 information or materials relevant to the subject matter of the  
24 investigation, and compel such attendance and testimony and  
25 the production of such materials for inspection and copying.  
26 If any person refuses to comply with any such subpoena or to  
27 testify as to any matter concerning which she or he may be  
28 lawfully interrogated, the Circuit Court of Leon County or of  
29 the county wherein such examination, investigation, or hearing  
30 is being conducted, or of the county wherein such person  
31 resides, may, on the application of the department, issue an

1 order requiring such person to comply with the subpoena and to  
2 testify. Subpoenas may be served, and proof of such service  
3 made, by any employee of the department.

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

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

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

14 (b) Every licensee being inspected, and its employees,  
15 officers, attorneys, unless it violates the attorney-client  
16 privilege, employees, agents, and representatives, shall  
17 freely and immediately make available to the department for  
18 inspection during normal business hours the licensee's entire  
19 premises and the records and information in their possession  
20 or control relating to the inspection.

21 (c) The department may adopt rules regarding  
22 inspection procedures.

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

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

30 Section 20. Section 497.150, Florida Statutes, is  
31 created to read:

1           497.150 Compliance examinations of existing  
2 licensees.--

3           (1) There may be examined by the department the  
4 facilities, records, operations, trust accounts, and financial  
5 affairs of licensees under this chapter, as often as may be  
6 deemed necessary by the department, to ensure compliance with  
7 the provisions of this chapter and rules adopted under this  
8 chapter. The provisions of this section shall apply to  
9 examinations conducted by the department under this chapter.

10           (2) The examination may, as deemed necessary by the  
11 department, include examination of the affairs, transactions,  
12 accounts, and records of the licensee's agents and controlling  
13 or controlled person, relating directly or indirectly to the  
14 licensee.

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

19           (4) Every person being examined, and its officers,  
20 attorneys, unless it violates the attorney-client privilege,  
21 employees, agents, and representatives, shall make freely  
22 available the accounts, records, documents, files,  
23 information, assets, and matters in their possession or  
24 control relating to the subject of the examination.

25           (5) The licensee shall provide for the department  
26 examiner's use during the examination such suitable private  
27 office work location and facilities, including desk, chair,  
28 and adequate lighting and ventilation, as are reasonably  
29 available on the licensee's premises.

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

1 chapter to be inadequate or inadequately kept or posted, it  
2 may be employ experts to reconstruct, rewrite, post, or  
3 balance them at the expense of the person being examined,  
4 provided the person has failed to maintain, complete, or  
5 correct such records or accounting after the department has  
6 given her or him notice and a reasonable opportunity to do so.

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

25 (8) The department shall furnish a copy of any  
26 examination report to the licensee examined within a  
27 reasonable period of time, and the licensee shall have 30 days  
28 thereafter in which to prepare and provide the department a  
29 response to the examination report. No examination report  
30 shall be filed by the department until such 30-day period has  
31 elapsed. If the licensee provides a written response to the

1 department within such 30-day period, the response shall be  
2 attached to and made a part of the report as filed in the  
3 department's files.

4 (9) The examination report when so filed shall  
5 thereafter be admissible in evidence in any judicial or  
6 administrative action or proceeding brought by the department  
7 against the person examined, or against its officers,  
8 employees, or agents, or for the enforcement of an  
9 investigative subpoena issued by the department in any  
10 investigation of, involving, or relating to the person  
11 examined. In all other proceedings, the admissibility of the  
12 examination report is governed by the evidence code. The  
13 department or its examiners may at any time testify and offer  
14 other proper evidence as to information secured or matters  
15 discovered during the course of an examination, whether or not  
16 a written report of the examination has been made, furnished,  
17 or filed in the department.

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

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

26 (12) The department may adopt rules pursuant to ss.  
27 120.536(1) and 120.54 for the implementation of this section.

28 Section 21. Section 497.151, Florida Statutes, is  
29 created to read:

30 497.151 Complaints; logs; procedures.--  
31

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

3       (2) Licensees shall cause to be maintained on a  
4 continuing basis a log of all written complaints received by  
5 the licensee regarding any aspect of the licensee's  
6 operations. The log shall show the complainant's name, the  
7 date the complaint was received, and the complainant's address  
8 and phone number if shown in the complaint. Each written  
9 complaint received shall be entered into the complaint log  
10 within 10 days after receiving such complaint. The licensing  
11 authority may by rule establish requirements relating to  
12 complaint logs, including whether the log may be  
13 electronically maintained or must be kept in writing by pen  
14 and ink. Each licensee under this chapter shall retain in its  
15 records all written complaints received by the licensee or the  
16 licensee's staff. All complaint logs, and all written  
17 complaints and related papers, shall be retained by the  
18 licensee until the completion of the next examination by the  
19 department of the licensee, which examination covers the  
20 period the complaint was received or such other period as the  
21 licensing authority may by rule require.

22       (3) Rules may be adopted modifying the requirements of  
23 this section as applied to different categories of licensees  
24 under this chapter, if the board determines that the  
25 requirements of this section are impractical as to any  
26 category of licensees.

27       Section 22. Section 497.152, Florida Statutes, is  
28 created to read:

29       497.152 Disciplinary grounds.--This section sets forth  
30 conduct which is prohibited and which shall constitute grounds  
31 for denial of any application, imposition of discipline, and

1 other enforcement action against the licensee or other person  
2 committing such conduct. For purposes of this section, the  
3 requirements of this chapter include the requirements of rules  
4 adopted under authority of this chapter. No subsection heading  
5 in this section shall be interpreted as limiting the  
6 applicability of any paragraph within the subsection.

7 (1) GENERAL PROVISIONS.--The generality of the  
8 provisions of this subsection shall not be deemed to be  
9 limited by the provisions of any other subsection.

10 (a) Violating any provision of this chapter or any  
11 lawful order of the board or department or of the statutory  
12 predecessors to the board or department.

13 (b) Committing fraud, deceit, negligence,  
14 incompetency, or misconduct in the practice of any of the  
15 activities regulated under this chapter.

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

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

22 (2) CRIMINAL ACTIVITY.--Being convicted or found  
23 guilty of, or entering a plea of nolo contendere to,  
24 regardless of adjudication, a crime in any jurisdiction which  
25 relates to the practice of, or the ability to practice, a  
26 licensee's profession or occupation under this chapter.

27 (3) DISCIPLINARY ACTION BY OTHER AUTHORITIES.--Having  
28 a license or the authority to practice a profession or  
29 occupation revoked, suspended, fined, denied, or otherwise  
30 acted against or disciplined by the licensing authority of any  
31 jurisdiction, including its agencies or subdivisions, for

1 conduct that would constitute a violation of this chapter if  
2 committed in this state or upon grounds which directly relate  
3 to the ability to practice under this chapter. The licensing  
4 authority's acceptance of a relinquishment of licensure,  
5 stipulation, consent order, or other settlement offered in  
6 response to or in anticipation of the filing of charges  
7 against the license shall be construed as action against the  
8 license.

9 (4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT  
10 AGENCIES.--

11 (a) Improperly interfering with an investigation or  
12 inspection authorized by statute or with any disciplinary  
13 proceeding.

14 (b) Failure to comply with a lawfully issued subpoena  
15 of the department.

16 (c) Refusal to produce records to the department or  
17 board in connection with any activity regulated pursuant to  
18 this chapter.

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

21 (e) Knowingly concealing information relative to  
22 violations of this chapter.

23 (f) Attempting to obtain, obtaining, or renewing a  
24 license under this chapter by bribery, false or forged  
25 evidence, or misrepresentation or through an error of the  
26 department or board.

27 (g) Making or filing a report or statement to or with  
28 any government entity which the licensee knows or has reason  
29 to know to be false; or intentionally or negligently failing  
30 to file a report or record required to be filed with any  
31 government entity, or willfully impeding or obstructing



1 another person to do so, or inducing another person to impede  
2 or obstruct such filing.  
3 (h) Failing to perform any statutory or legal  
4 obligation placed upon a licensee.  
5 (5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED  
6 PRACTICE.--  
7 (a) Practicing or offering to practice beyond the  
8 scope permitted by this chapter and rules adopted under this  
9 chapter for the type of licensure held or accepting and  
10 performing professional responsibilities the licensee knows,  
11 or has reason to know, the licensee is not competent to  
12 perform.  
13 (b) Practicing or attempting to practice with a  
14 revoked, suspended, inactive, or delinquent license.  
15 (c) Representing as her or his own the license of  
16 another.  
17 (d) Aiding, assisting, procuring, employing, or  
18 advising any person or entity to practice a profession or  
19 occupation regulated by this chapter without required  
20 licensure under this chapter.  
21 (e) Aiding, assisting, procuring, employing, or  
22 advising any person or entity to operate or in operating an  
23 establishment regulated by this chapter without the required  
24 licensure under this chapter.  
25 (f) Delegating to any person the performance of  
26 professional activities, or contracting with any person for  
27 the performance of professional activities by such person,  
28 when the licensee knows or has reason to know the person is  
29 not qualified by training, experience, and authorization to  
30 perform such responsibilities.  
31

1           (g) Using the name or title "funeral director,"  
2 "embalmer," "direct disposer," or other title suggesting  
3 licensure which the person using such name or title does not  
4 hold.

5           (h) Engaging by a direct disposer in the practice of  
6 direct burial or offering the at-need or preneed service of  
7 direct burial.

8           (6) EDUCATIONAL REQUIREMENTS.--

9           (a) Failing to comply with applicable educational  
10 course requirements pursuant to this chapter or rules adopted  
11 under this chapter regarding human immunodeficiency virus and  
12 acquired immune deficiency syndrome.

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

15           (7) RELATIONS WITH OTHER LICENSEES.--

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

19           (b) Making any misleading statements or  
20 misrepresentations as to the financial condition of any  
21 person, or which are falsely and maliciously critical of any  
22 person for the purpose damaging that person's business  
23 regulated under this chapter.

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

26           (a) Violation of any state law or rule or any  
27 municipal or county ordinance or regulation affecting the  
28 handling, custody, care, or transportation of dead human  
29 bodies.

30           (b) Refusing to surrender promptly the custody of a  
31 dead human body upon the express order of the person legally

1 authorized to its custody; however, this provision shall be  
2 subject to any state or local laws or rules governing custody  
3 or transportation of dead human bodies.

4 (c) Taking possession of a dead human body without  
5 first having obtained written or oral permission from a  
6 legally authorized person. If oral permission is granted, the  
7 licensee must obtain written permission within a reasonable  
8 time as established by rule.

9 (d) Embalming human remains without first having  
10 obtained written or oral permission from a legally authorized  
11 person; however, washing and other public health procedures,  
12 such as closing of the orifices by placing cotton soaked in a  
13 disinfectant in such orifices until authorization to embalm is  
14 received, shall not be precluded. If oral permission is  
15 granted, the licensee must obtain written permission within a  
16 reasonable time as established by board rule.

17 (e) Failing to obtain written authorization from the  
18 family or next of kin of the deceased prior to entombment,  
19 interment, disinterment, disentombment, or disinurnment of the  
20 remains of any human being.

21 (9) SALES PRACTICES IN GENERAL.--

22 (a) Soliciting by the licensee, or by her or his  
23 agent, assistant, or employee, through the use of fraud, undue  
24 influence, intimidation, overreaching, or other means which  
25 takes advantage of a customer's ignorance or emotional  
26 vulnerability.

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

30 (c) Discouraging a customer's purchase of any funeral  
31 merchandise or service which is advertised or offered for

1 sale, with the purpose of encouraging the purchase of  
2 additional or more expensive merchandise or service, by  
3 disparaging its quality or appearance, except that true  
4 factual statements concerning features, design, or  
5 construction do not constitute disparagement; by  
6 misrepresenting its availability or any delay involved in  
7 obtaining it; or by suggesting directly or by implication that  
8 a customer's concern for price or expressed interest in  
9 inexpensive funeral merchandise or services is improper,  
10 inappropriate, or indicative of diminished respect or  
11 affection for the deceased.

12 (d) Misrepresenting the benefits, advantages,  
13 conditions, or terms of any contract to provide any services  
14 or merchandise regulated under this chapter.

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

17 (f) Directly or indirectly making any deceptive,  
18 misleading, or untrue representations, whether oral or  
19 written, or employing any trick, scheme, or artifice, in or  
20 related to the practice of a profession or occupation  
21 regulated under this chapter, including in the advertising or  
22 sale of any merchandise or services related to the practice of  
23 the profession or occupation.

24 (10) SPECIFIC MISREPRESENTATIONS.--

25 (a) Making any false or misleading statement of the  
26 legal requirement as to the necessity of any particular burial  
27 or funeral merchandise or services.

28 (b) Making any oral, written, or visual  
29 representations, directly or indirectly, that any funeral  
30 merchandise or service is offered for sale when such is not a  
31 bona fide offer to sell such merchandise or service.

1           (c) Making any misrepresentation for the purpose of  
2 inducing, or tending to induce, the lapse, forfeiture,  
3 exchange, conversion, or surrender of any preneed contract or  
4 any life insurance policy pledged or assigned to secure  
5 payment for funeral or burial goods or services.

6           (d) Misrepresenting pertinent facts or prepaid  
7 contract provisions relating to funeral or burial merchandise  
8 or services.

9           (e) Misrepresenting the amount advanced on behalf of a  
10 customer for any item of service or merchandise, including,  
11 but not limited to, cemetery or crematory services,  
12 pallbearers, public transportation, clergy honoraria, flowers,  
13 musicians or singers, nurses, obituary notices, gratuities,  
14 and death certificates, described as cash advances,  
15 accommodations, or words of similar import on the contract,  
16 final bill, or other written evidence of agreement or  
17 obligation furnished to customers; however, nothing in this  
18 paragraph shall require disclosure of a discount or rebate  
19 which may accrue to a licensee subsequent to making a cash  
20 advance.

21           (f) Making any false or misleading statement or claim  
22 that natural decomposition or decay of human remains can be  
23 prevented or substantially delayed by embalming, use of a  
24 gasketed or ungasketed casket, or use of an adhesive or  
25 nonadhesive closure on an outer burial container.

26           (g) Making any false or misleading statement, oral or  
27 written, directly or indirectly, regarding any law or rule  
28 pertaining to the preparation for disposition, transportation  
29 for disposition, or disposition of dead human bodies.

30           (h) Making any false or misleading statements of the  
31 legal requirement as to the conditions under which

1 preservation of a dead human body is required or as to the  
2 necessity of a casket or outer burial container.

3 (11) SPECIFIC SALES PRACTICES.--

4 (a) Failing to furnish, for retention, to each  
5 purchaser of burial rights, burial or funeral merchandise, or  
6 burial or funeral services a written agreement, the form of  
7 which has been previously approved if and as required by this  
8 chapter, which lists in detail the items and services  
9 purchased together with the prices for the items and services  
10 purchased; the name, address, and telephone number of the  
11 licensee; the signatures of the customer and the licensee or  
12 her or his representative; and the date signed.

13 (b) Using any name or title in any contract regulated  
14 under this chapter which misrepresents the true nature of the  
15 contract.

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

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

22 (e) Requiring that a casket be purchased for cremation  
23 or claiming directly or by implication that a casket is  
24 required for cremation.

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

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

1       (h) Failure by a cemetery licensed under this chapter  
2 to provide to any person, upon request, a copy of the cemetery  
3 bylaws.

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

7       (12) DISCLOSURE REQUIREMENTS.--

8       (a) Failure to disclose, when such disclosure is  
9 desired, the components of the prices for alternatives offered  
10 by the licensee from whom disclosure is requested, such as  
11 graveside service, direct disposition, and body donation  
12 without any rites or ceremonies prior to the delivery of the  
13 body and prices of service if there are to be such after the  
14 residue has been removed following the use thereof.

15       (b) Failing to furnish, for retention, to anyone who  
16 inquires in person about burial rights, burial or funeral  
17 merchandise, or burial or funeral services, before any  
18 discussion of selection, a printed or typewritten list  
19 specifying the range of retail prices for such rights,  
20 merchandise, or services. At a minimum, the list shall itemize  
21 the highest and lowest priced product and service regularly  
22 offered and shall include the name, address, and telephone  
23 number of the licensee and statements that the customer may  
24 choose only the items the customer desires, that the customer  
25 will be charged for only those items selected, and that there  
26 may be other charges for other items or other services.

27       (c) Failing to reasonably provide by telephone, upon  
28 request, accurate information regarding the retail prices of  
29 funeral merchandise and services offered for sale by that  
30 licensee.

31

1       (d) Failure by a funeral director to make full  
2 disclosure in the case of a funeral or direct disposition with  
3 regard to the use of funeral merchandise which is not to be  
4 disposed of with the body or failure to obtain written  
5 permission from the purchaser regarding disposition of such  
6 merchandise.

7       (e) Failure by any funeral director to fully disclose  
8 all of her or his available services and merchandise prior to  
9 the selection of a casket offered by a licensee. The full  
10 disclosure required shall identify what is included in the  
11 funeral or direct disposition and the prices of all services  
12 and merchandise provided by the licensee or registrant.

13       (f) Failing to have the price of any casket offered  
14 for sale clearly marked on or in the casket, whether the  
15 casket is displayed at a funeral establishment or at any other  
16 location, regardless of whether the licensee is in control of  
17 such location. If a licensee uses books, catalogs, brochures,  
18 or other printed display aids, the price of each casket shall  
19 be clearly marked.

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

23       (13) CONTRACT OBLIGATIONS.--

24       (a) Failing without reasonable justification to timely  
25 honor contracts entered into by the licensee or under the  
26 licensee's license for funeral or burial merchandise or  
27 services.

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

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



1           (a) Failing to adopt and implement standards for the  
2 proper investigation and resolution of claims and complaints  
3 received by a licensee relating to the licensee's activities  
4 regulated by this chapter.

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

7                 1. Failing to acknowledge and act promptly upon  
8 communications from a licensee's customers and their  
9 representatives with respect to claims or complaints relating  
10 to the licensee's activities regulated by this chapter.

11                 2. Denying claims or rejecting complaints received by  
12 a licensee from a customer or customer's representative,  
13 relating to the licensee's activities regulated by this  
14 chapter, without first conducting reasonable investigation  
15 based upon available information.

16                 3. Attempting to settle a claim or complaint on the  
17 basis of a material document which was altered without notice  
18 to, or without the knowledge or consent of, the contract  
19 purchaser or her or his representative or legal guardian.

20                 4. Failing within a reasonable time to affirm or deny  
21 coverage of specified services or merchandise under a contract  
22 entered into by a licensee upon written request of the  
23 contract purchaser or her or his representative or legal  
24 guardian.

25                 5. Failing to promptly provide, in relation to a  
26 contract for funeral or burial merchandise or services entered  
27 into by the licensee or under the licensee's license, a  
28 reasonable explanation to the contract purchaser or her or his  
29 representative or legal guardian of the licensee's basis for  
30 denying or rejecting all or any part of a claim or complaint  
31 submitted.

1       (c) Making a material misrepresentation to a contract  
2 purchaser or her or his representative or legal guardian for  
3 the purpose and with the intent of effecting settlement of a  
4 claim or complaint or loss under a prepaid contract on less  
5 favorable terms than those provided in, and contemplated by,  
6 the prepaid contract.

7       (d) Failing to maintain a complete copy of every  
8 complaint received by the licensee since the date of the last  
9 examination of the licensee by the department. For purposes of  
10 this subsection, the term "complaint" means any written  
11 communication primarily expressing a grievance and which  
12 communication is from:

13           1. A representative or family member of a deceased  
14 person interred at the licensee's facilities or using the  
15 licensee's services, or which deceased's remains were the  
16 subject of any service provided by the licensee or licensee's  
17 business; or

18           2. A person, or such person's family member or  
19 representative, who inquired of the licensee or licensee's  
20 business concerning the purchase of, or who purchased or  
21 contracted to purchase, any funeral or burial merchandise or  
22 services from the licensee or licensee's business.

23       (15) MISCELLANEOUS FINANCIAL MATTERS.--

24       (a) Failing to timely pay any fee required by this  
25 chapter.

26       (b) Failing to timely remit as required by this  
27 chapter the required amounts to any trust fund required by  
28 this chapter.

29       (c) Paying to or receiving from any organization,  
30 agency, or person, either directly or indirectly, any  
31 commission, bonus, kickback, or rebate in any form whatsoever

1 for any business regulated under this chapter, whether such  
2 payments are made or received by the licensee, or her or his  
3 agent, assistant, or employee; however, this provision shall  
4 not prohibit the payment of commissions by a funeral director,  
5 funeral establishment, cemetery, or monument establishment to  
6 its preneed agents licensed pursuant to this chapter or to  
7 licensees under this chapter.

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

10 497.153 Disciplinary procedures and penalties.--

11 (1) JURISDICTION OF LICENSING AUTHORITY TO INVESTIGATE  
12 AND PROSECUTE.--The expiration, nonrenewal, or surrender of  
13 licensure under this chapter shall not eliminate jurisdiction  
14 in the licensing authority to investigate and prosecute for  
15 violations committed while licensed under this chapter. The  
16 prosecution of any matter may be initiated or continued  
17 notwithstanding the withdrawal of any complaint.

18 (2) DETERMINATION OF PROBABLE CAUSE.--

19 (a) If the department shall determine that there is  
20 reasonable cause to believe that any licensee under this  
21 chapter is subject to disciplinary action under this chapter  
22 and is not eligible for a citation or notice of noncompliance  
23 pursuant to criteria established by the board, the department  
24 shall present the matter to a probable cause panel of the  
25 board.

26 (b) Prior to submitting a matter to the probable cause  
27 panel, the licensee who is the subject of the matter shall be  
28 provided by the department with a copy of any written  
29 complaint received by the department in the matter and shall  
30 be advised that she or he may, within 20 days after receipt of  
31 a copy of such complaint from the department, submit to the

1 department a written response. Any response timely received by  
2 the department shall be provided by the department to the  
3 probable cause panel. Licensees may not appear in person or  
4 through a representative at any probable cause panel  
5 proceeding. This paragraph shall not apply to emergency  
6 action.

7 (3) PROBABLE CAUSE PROCEEDINGS.--

8 (a) The board may provide, by rule, for multiple  
9 probable cause panels composed of at least two members. The  
10 board may provide, by rule, that one or more members of the  
11 panel or panels may be a former board member. The length of  
12 term or repetition of service of any such former board member  
13 on a probable cause panel may vary according to the direction  
14 of the board when authorized by board rule. Any probable cause  
15 panel must include one of the board's former or present  
16 consumer members, if one is available and willing to serve.  
17 Any probable cause panel must include a present board member.  
18 The board shall enact rules consistent with this section  
19 specifying, according to what categories of licensure are  
20 represented on a probable cause panel, what categories of  
21 licensee cases may be presented to that panel. Former board  
22 members may be from the former Board of Funeral and Cemetery  
23 Services or the former Board of Funeral Directors and  
24 Embalmers. However, any former professional board member  
25 serving on the probable cause panel must hold an active valid  
26 license for that profession.

27 (b) The probable cause panel may make a reasonable  
28 request to the department for additional investigative  
29 information, and upon such request the department shall  
30 provide such additional investigative information as is  
31 necessary to the determination of probable cause. A request

1 for additional investigative information shall be made within  
2 15 days after the date of receipt by the probable cause panel  
3 of the investigative report of the department. The probable  
4 cause panel shall make its determination as to the existence  
5 of probable cause within 30 days after referral of the matter  
6 to the probable cause panel by the department. The Chief  
7 Financial Officer may grant extensions of the 15-day and the  
8 30-day time limits. If the probable cause panel does not find  
9 probable cause within the 30-day time limit, as may be  
10 extended, or if the probable cause panel finds no probable  
11 cause, the department may determine, within 10 days after the  
12 panel fails to determine probable cause or 10 days after the  
13 time limit has elapsed, that probable cause exists.

14 (c) The probable cause panel may not resolve or direct  
15 resolution of a matter presented to it, by issuance of a  
16 citation or a letter of guidance or noncompliance or other  
17 informal resolution, without the concurrence of the  
18 department.

19 (d) The determination as to whether probable cause  
20 exists shall be made by majority vote of the probable cause  
21 panel of the board.

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

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

26 (a) Service of an administrative complaint may be in  
27 person by department staff or any person authorized to make  
28 service of process under the Florida rules of civil procedure.  
29 Service upon a licensee may in the alternative be made by  
30 certified mail, return receipt requested, to the last known  
31 address of record provided by the licensee to the department.

1           (b) If after service of the administrative complaint  
2 on a licensee the licensee does not dispute the facts alleged,  
3 the department shall present the matter to the board for final  
4 action.

5           (c) The department may at any time present to the  
6 board a proposed settlement of any matter as to which probable  
7 cause has been found. If the board accepts the proposed  
8 settlement, it shall issue its final order adopting the  
9 settlement. If the board does not accept such settlement, the  
10 prosecution of the matter shall be resumed. No settlement of  
11 any disciplinary matter as to which probable cause has been  
12 found may be entered into by the board prior to receipt of a  
13 recommended order of an administrative law judge without the  
14 department's concurrence.

15           (d) Hearings concerning disputes as to any fact  
16 alleged in a disciplinary action shall be held before an  
17 administrative law judge of the Division of Administrative  
18 Hearings in accordance with chapter 120. The department shall  
19 present the recommended order of the administrative law judge  
20 to the board for final action.

21           (e) If at any time after probable cause has been found  
22 in a matter the department shall conclude that the matter  
23 should not be further prosecuted, the department may present  
24 the matter to any probable cause panel of the board. If that  
25 probable cause panel concurs with the department, the  
26 prosecution may be terminated, without prejudice to subsequent  
27 prosecution of the same matter. If the probable cause panel  
28 does not concur with the department, the matter shall be  
29 returned to the department for continued prosecution. Upon  
30 commencement of taking of evidence in a matter before an  
31 administrative law judge, the jurisdiction of the

1 administrative law judge may not be terminated except by order  
2 of the administrative law judge or a court of competent  
3 jurisdiction.

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

8 (5) PENALTIES.--

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

12 1. Denial of an application for a license.

13 2. Issuance of a written reprimand.

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

17 4. Restrictions on the authorized scope of practice of  
18 the licensee.

19 5. Requirements that the licensee complete additional  
20 education or training as specified by the board.

21 6. Imposition of an administrative fine not to exceed  
22 \$5,000 for each count or separate offense; provided, a  
23 licensee may by settlement agree to a fine in excess of such  
24 \$5,000 limitation.

25 7. Suspension of a license. A suspension may be for  
26 such period and subject to such terms as the board shall  
27 specify in its order imposing discipline. Unless ordered  
28 otherwise by the board, during the period of suspension, the  
29 person whose license has been suspended shall continue to file  
30 all such reports, complete all continuing education, and pay  
31 all fees as required under this chapter as if the license had

1 continued in full force. Upon expiration of the suspension  
2 period, if within such period the license has not otherwise  
3 terminated, the suspended license shall automatically be  
4 reinstated unless the board has ordered that the licensee  
5 apply for reinstatement, and the board may deny such  
6 application if the board finds that the causes of the  
7 suspension have not been resolved or that such person is  
8 otherwise not in compliance with the requirements of the order  
9 or this chapter.

10 8. Revocation of licensure. The board may specify by  
11 final order on a case-by-case basis the period of time that  
12 must elapse before a revoked licensee may apply or reapply for  
13 any licensure under this chapter. The board may by order on a  
14 case-by-case basis specify that a revocation is permanent and  
15 that no future application for licensure under this chapter by  
16 the revoked person or entity shall be accepted, processed or  
17 approved. In no event shall any person or entity who has been  
18 revoked under this section subsequently be issued the same or  
19 other licensure under this chapter unless such person shall  
20 show by clear and convincing evidence that the person or  
21 entity has been rehabilitated and otherwise qualifies for the  
22 licensure applied for.

23 (b) In addition to any fine and other sanction  
24 imposed, the board may order the payment by the licensee of  
25 the reasonable costs of the department and the board  
26 associated with investigation and prosecution the matter, and  
27 may order the licensee to make restitution as directed by  
28 board order to persons harmed by the violation.

29 (c) The failure of a licensee to timely comply with a  
30 final order of the board imposing discipline shall be grounds  
31 for emergency suspension of all licensure held by the licensee



1 under this chapter; provided, the department shall give  
2 written notice to such licensee, at least 7 days before such  
3 emergency suspension, of the department's intent to enter an  
4 emergency order of suspension and the ground therefore, and  
5 such emergency suspension shall not occur if during the 7-day  
6 period the licensee shall provide the department with evidence  
7 satisfactory to the department that the licensee was in  
8 compliance or has come into compliance with the disciplinary  
9 order. Any emergency suspension imposed shall be effective  
10 when served, and shall terminate upon notice to the licensee  
11 by the department that the department has received evidence  
12 satisfactory to the department that the licensee has come into  
13 compliance with the board's order, which notice the department  
14 shall promptly provide to the licensee upon receipt of such  
15 evidence. Notwithstanding the licensee's correction of any  
16 noncompliance with a board order, such licensee shall be  
17 liable for additional disciplinary action for failure to  
18 timely comply with an order of the board.

19 (d) Any order imposing any penalty pursuant to this  
20 section shall recite the grounds upon which the penalty is  
21 based.

22 (6) PROTECTION OF CUSTOMERS OF DISCIPLINED  
23 LICENSEES.--In imposing any discipline under this section the  
24 board may also impose by its order such restrictions,  
25 conditions and requirements on the licensee and the licensee's  
26 assets and the assets of any trust under this chapter utilized  
27 by the licensee, as are reasonably necessary for the  
28 protection of persons to whom the disciplined licensee is  
29 obligated for the future performance or delivery of funeral or  
30 burial merchandise or services. The board shall have  
31 continuing jurisdiction over revoked persons and entities and

1 their assets and related trusts under this chapter, for the  
2 purpose of and to the extent necessary for the protection of  
3 persons to whom the disciplined licensee is obligated for the  
4 future performance or delivery of funeral or burial  
5 merchandise or services, and may issue such subsequent and  
6 additional orders as from time to time the board deems  
7 necessary or advisable for such purposes. The courts of this  
8 state shall have jurisdiction to enforce the reasonable orders  
9 of the board issued for such purposes.

10 (7) LIABILITY FOR AGENTS AND EMPLOYEES.--For purposes  
11 of this section, the acts or omissions of any person employed  
12 by or under contract to the licensee shall be treated as acts  
13 or omissions of the licensee. However, the board may determine  
14 that disciplinary action may be more appropriately taken  
15 against an individual licensed preneed agent or licensed  
16 branch rather than taking action against the sponsoring  
17 preneed licensee.

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

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

25 (a) A determination by the department to exercise its  
26 authority under this chapter to investigate, financially  
27 examine, or inspect any person or entity; or a determination  
28 by the department concerning how to conduct such  
29 investigation, financial examination, or inspection; or a  
30 determination by the department concerning the content of any  
31 report of investigation, financial examination, or inspection.

1           (b) A determination by the department that there is  
2 reasonable cause to believe that a licensee under this chapter  
3 is subject to disciplinary action under this chapter and that  
4 the matter should be presented to a probable cause panel of  
5 the board, or that the licensee is not eligible for a citation  
6 pursuant to criteria established by the board.

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

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

12           Section 24. Section 497.133, Florida Statutes, is  
13 renumbered as section 497.154, Florida Statutes, to read:

14           497.154 ~~497.133~~ Disciplinary guidelines.--

15           (1) The board shall adopt, by rule, and periodically  
16 review the disciplinary guidelines applicable to each ground  
17 for disciplinary action which may be imposed by the board  
18 pursuant to this chapter, and any rule of the board or  
19 department.

20           (2) The disciplinary guidelines shall specify a  
21 meaningful range of designated penalties based upon the  
22 severity and repetition of specific offenses, it being the  
23 legislative intent that minor violations be distinguished from  
24 those which endanger the public health, safety, or welfare;  
25 that such guidelines provide reasonable and meaningful notice  
26 to the public of likely penalties which may be imposed for  
27 proscribed conduct; and that such penalties be consistently  
28 applied by the board.

29           (3) A specific finding of mitigating or aggravating  
30 circumstances shall allow the board to impose a penalty other  
31 than that provided for in such guidelines. If applicable, the

1 board shall adopt by rule disciplinary guidelines to designate  
2 possible mitigating and aggravating circumstances and the  
3 variation and range of penalties permitted for such  
4 circumstances.

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

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

13 (6) The administrative law judge, in recommending  
14 penalties in any recommended order, must follow the penalty  
15 guidelines established by the board and must state in writing  
16 the mitigating or aggravating circumstances upon which the  
17 recommended penalty is based.

18 Section 25. Section 497.121, Florida Statutes, is  
19 renumbered as section 497.155, Florida Statutes, and amended  
20 to read:

21 497.155 ~~497.121~~ Disciplinary citations and minor  
22 violations ~~Authority to issue citations.--~~

23 (1) CITATIONS.--

24 (a) Notwithstanding the provisions of s. 497.153  
25 ~~497.131~~, the board shall adopt rules to permit the issuance of  
26 citations. The citation shall be issued to the subject and  
27 shall contain the subject's name and address, the subject's  
28 license number if applicable, a brief factual statement, the  
29 sections of the law allegedly violated, and the penalty  
30 imposed. The citation must clearly state that the subject may  
31 choose, in lieu of accepting the citation, to follow the

1 | procedures under s. 497.153 ~~497.131~~. If the subject disputes  
2 | the matter in the citation, the procedures set forth in s.  
3 | 497.153 ~~497.131~~ must be followed. However, if the subject does  
4 | not dispute the matter in the citation with the department  
5 | within 30 days after the citation is served, the citation  
6 | shall become a final order of the board and shall constitute  
7 | discipline. The penalty shall be a fine or other conditions as  
8 | established by rule.

9 |       ~~(b)(2)~~ The board shall adopt rules designating  
10 | violations for which a citation may be issued. Such rules  
11 | shall designate as citation violations those violations for  
12 | which there is no substantial threat to the public health,  
13 | safety, and welfare. Citations shall not be utilized if there  
14 | was any significant consumer harm resulting from the  
15 | violation.

16 |       ~~(c)(3)~~ The department shall be entitled to recover the  
17 | costs of investigation, in addition to any penalty provided  
18 | according to board rule, as part of the penalty levied  
19 | pursuant to the citation.

20 |       ~~(d)(4)~~ A citation must be issued within 6 months after  
21 | the filing of the complaint that is the basis for the  
22 | citation.

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

26 |       (2) MINOR VIOLATIONS.--

27 |       (a) The board may by rule specify violations of this  
28 | chapter, and criteria for use by the department in identifying  
29 | violations of this chapter, which are minor violations and  
30 | which, if promptly corrected by the licensee upon notice by  
31 | the department during investigation, may, with the concurrence

1 of the department, result in closure of the investigation in  
2 the matter without further action by the department or the  
3 board.

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

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

11 (d) There may by rule be specified notices of  
12 noncompliance and other forms and procedures for use in  
13 implementation of this subsection.

14 Section 26. Section 497.156, Florida Statutes, is  
15 created to read:

16 497.156 Emergency action against licensees.--In  
17 addition to or in lieu of other actions authorized under this  
18 chapter for the enforcement of this chapter, the department  
19 may issue emergency orders under s. 120.60(6) suspending or  
20 restricting a license or ordering a licensee to cease or  
21 desist from specified conduct, or taking other action deemed  
22 necessary in the circumstances, but shall thereafter promptly  
23 present the matter to a probable cause panel of the board.  
24 Emergency orders shall be effective when issued, shall be  
25 appealable as provided by law, and shall be enforceable in the  
26 courts of this state.

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

29 497.157 Unlicensed practice; remedies concerning  
30 violations by unlicensed persons.--

31

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

4           (2)(a) When the department has reasonable cause to  
5 believe that any person or entity not licensed under this  
6 chapter has violated any provision of this chapter or any rule  
7 adopted under this chapter, the department may issue an  
8 administrative complaint to such person or entity, alleging  
9 violation of this chapter and providing notice therein of  
10 intent by the department to order such person to cease and  
11 desist from the alleged violation of this chapter, to take  
12 corrective action including payment of restitution to persons  
13 adversely affected by the violation, to pay the department's  
14 reasonable costs of investigation and prosecution, or to  
15 impose a fine of up to \$10,000 upon such person for each  
16 violation of this chapter alleged in the administrative  
17 complaint.

18           (b) The issuance of the administrative complaint shall  
19 be a decision affecting substantial interests and shall  
20 entitle the respondent therein to proceedings pursuant to s.  
21 120.569, if such proceedings are requested by the respondent  
22 in a writing received by the department within 21 days after  
23 service of the administrative complaint. If such proceedings  
24 are timely requested and the respondent shall contest any  
25 material fact alleged in the administrative complaint, the  
26 matter shall be heard before an administrative law judge of  
27 the Division of Administrative Hearings, who shall issue her  
28 or his recommended order to the department; otherwise, the  
29 proceedings shall be before the Chief Financial Officer or her  
30 or his designee. Upon conclusion of proceedings under s.  
31 120.57 if the subject timely requested a hearing, or after the

1 expiration of 21 days after service of the administrative  
2 complaint if no request for hearing is received within those  
3 21 days, the department may take final agency action and issue  
4 its final order concerning the matter, which final order  
5 shall be enforceable as set forth in s. 120.69.

6 (3) Where the department determines that an emergency  
7 exists regarding any violation of this chapter by any  
8 unlicensed person or entity, the department may issue and  
9 serve an immediate final order upon such unlicensed person or  
10 entity, in accordance with s. 120.569(2)(n). Such an immediate  
11 final order may impose such prohibitions and requirements as  
12 are reasonably necessary to protect the public health, safety,  
13 and welfare, and shall be effective when served.

14 (a) For the purpose of enforcing such an immediate  
15 final order, the department may file an emergency or other  
16 proceeding in the circuit courts of the state seeking  
17 enforcement of the immediate final order by injunctive or  
18 other order of the court. The court shall issue its injunction  
19 or other order enforcing the immediate final order pending  
20 administrative resolution of the matter under subsection (2),  
21 unless the court determines that such action would work a  
22 manifest injustice under the circumstances. Venue for judicial  
23 actions under this paragraph shall be, at the election of the  
24 department, in the courts of Leon County, or in a county where  
25 the respondent resides or has a place of business.

26 (b) After serving an immediate final order to cease  
27 and desist upon any person or entity, the department shall  
28 within 10 days issue and serve upon the same person or entity  
29 an administrative complaint as set forth in subsection (2),  
30 except that, absent order of a court to the contrary, the  
31



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

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

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

13 Section 28. Section 497.229, Florida Statutes, is  
14 renumbered as section 497.158, Florida Statutes, and amended  
15 to read:

16 497.158 ~~497.229~~ Court enforcement actions; Courts;  
17 powers; abatement of nuisances.--

18 (1) In addition to or in lieu of other actions  
19 authorized by this chapter, the department may petition the  
20 courts of this state for injunctive or other relief against  
21 any licensed or unlicensed person, for the enforcement of this  
22 chapter and orders issued under this chapter. The court shall  
23 be authorized to impose a fine of up to \$5,000 per violation,  
24 payable to the department, upon any person determined by the  
25 court to have violated this chapter, and may order payment to  
26 the department of the department's attorney's fees and  
27 litigation costs, by any person found to have violated this  
28 chapter.

29 ~~(2)(1)~~ In addition to all other means provided by law  
30 for the enforcement by a court of a temporary restraining  
31 order or an injunction, the circuit court may impound the

1 property of a licensee ~~cemetery company~~, including books,  
2 papers, documents, and records pertaining thereto, and may  
3 appoint a receiver or administrator to prevent further  
4 violation of this chapter.

5 ~~(3)(2)~~ A court-appointed receiver or administrator may  
6 take any action to implement the provisions of the court  
7 order, to ensure the performance of the order, and to remedy  
8 any breach thereof.

9 ~~(4)(3)~~ Any nonconforming physical condition in a  
10 cemetery or component thereof which is the result of a  
11 violation of this chapter or of the rules adopted under this  
12 chapter ~~of the board~~ relating to construction, physical  
13 operations, or care and maintenance at the cemetery shall be  
14 deemed a public nuisance, and the nonconforming physical  
15 conditions caused by such violation may be abated as provided  
16 in s. 60.05.

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

19 497.159 Crimes.--

20 (1) The theft of an examination in whole or in part or  
21 the act of unauthorized reproducing or copying any examination  
22 administered by the department or the board, whether such  
23 examination is reproduced or copied in part or in whole and by  
24 any means, constitutes a felony of the third degree,  
25 punishable as provided in s. 775.082, s. 775.083, or s.  
26 775.084.

27 (2) The act of knowingly giving false information in  
28 the course of applying for or obtaining a license under this  
29 chapter, with intent to mislead the board or a public employee  
30 in the performance of her or his official duties, or the act  
31 of attempting to obtain or obtaining a license under this

1 chapter by knowingly misleading statements or knowing  
2 misrepresentations, constitutes a felony of the third degree,  
3 punishable as provided in s. 775.082, s. 775.083, or s.  
4 775.084.

5 (3) Any individual who willfully obstructs the  
6 department or its examiner in any examination or investigation  
7 authorized by this chapter is guilty of a misdemeanor of the  
8 second degree and is, in addition to any disciplinary action  
9 under this chapter, punishable as provided in s. 775.082 or s.  
10 775.083.

11 (4) Any officer or director, or person occupying  
12 similar status or performing similar functions, of a licensee  
13 under this chapter who knowingly directs or causes the failure  
14 to make required deposits to any trust fund required by this  
15 chapter, or with knowledge that such required deposits are not  
16 being made as required by law fails to report such failure to  
17 the department, or who knowingly directs or causes the  
18 unlawful withdrawal of funds from any trust fund required by  
19 this chapter, commits a felony of the third degree, punishable  
20 as provided in s. 775.082, s. 775.083, or s. 775.084.

21 (5)(a) No cemetery company or other legal entity  
22 conducting or maintaining any public or private cemetery may  
23 deny burial space to any person because of race or color. A  
24 cemetery company or other entity operating any cemetery may  
25 designate parts of cemeteries or burial grounds for the  
26 specific use of persons whose religious code requires  
27 isolation. Religious institution cemeteries may limit burials  
28 to members of the religious institution and their families.

29 (b) Any cemetery company or other legal entity which  
30 violates the provisions of this subsection commits a  
31 misdemeanor of the second degree, punishable as provided in s.

1 775.083, and each violation of this section constitutes a  
2 separate offense.

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

7 Section 30. Section 497.437, Florida Statutes, is  
8 renumbered as section 497.160, Florida Statutes, and amended  
9 to read:

10 (Substantial rewording of section. See  
11 s. 497.437, F.S., for present text)  
12 497.160 Receivership proceedings.--

13 (1) The department with the approval of the board may  
14 petition the circuit courts of this state for appointment of a  
15 receiver of any licensee or revoked or suspended licensee  
16 under this chapter, or person who has without license  
17 conducted activities requiring licensure under this chapter.  
18 The court shall appoint a receiver if the court shall  
19 determine that a receivership is necessary or advisable:

20 (a) To ensure the orderly and proper conduct of a  
21 licensee's professional business and affairs during or in the  
22 aftermath of the administrative proceeding to revoke or  
23 suspend the licensee.

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

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

30  
31

1        (d) Upon a showing of serious and repeated violations  
2 of this chapter demonstrating and inability or unwillingness  
3 of a licensee to comply with the requirements of this chapter.

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

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

10        (2) A receivership under this section may be  
11 temporary, or for the winding up and dissolution of the  
12 business, as the department may request and the court  
13 determines to be necessary or advisable in the circumstances.  
14 Venue of receivership proceedings may, at the department's  
15 election, in Leon County, or the county where the subject of  
16 the receivership is located. The appointed receiver shall be  
17 the department or such person as the department may nominate  
18 and the court shall approve. The provisions of part I of  
19 chapter 631 shall be applicable to receiverships under this  
20 section except to the extent the court shall determine the  
21 application of particular of such provisions to be  
22 impracticable or would produce unfair results in the  
23 circumstances. Expenditures by the department from its  
24 budgeted funds, the Preneed Funeral Contract Consumer  
25 Protection Trust Fund, and other regulatory trust funds  
26 derived from this chapter, for implementation and effectuation  
27 of such a receivership, shall be authorized; any such funds  
28 expended shall be a claim against the estate in the  
29 receivership proceedings.

30        (3) The department may adopt rules for the  
31 implementation of this section.

1           Section 31. Section 497.161, Florida Statutes, is  
2 created to read:

3           497.161 Other rulemaking provisions.--

4           (1) In addition to such other rules as are authorized  
5 or required under this chapter, the following additional  
6 rules, not inconsistent with this chapter, shall be authorized  
7 by the licensing authority.

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

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

14           (c) Rules by the board governing the operation of  
15 cemeteries in this state.

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

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

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

24           (g) Rules establishing procedures by which the  
25 department may use the expert or technical advice of the board  
26 or members of the board for the purposes of any investigation,  
27 inspection, or financial examination, without thereby  
28 disqualifying the board member from voting on final action in  
29 the matter.

30           (h) In connection with the statutory revisions by the  
31 2005 Regular Session of the Legislature merging chapters 470

1 and 497 as those chapters appeared in the 2004 edition of the  
2 Florida Statutes and the elimination of the former boards  
3 under those chapters and the movement of regulation out of the  
4 Department of Business and Professional Regulation, the  
5 licensing authority shall through July 1, 2006, be deemed to  
6 have extraordinary rulemaking authority to adopt any and all  
7 rules jointly agreed by the board and the department to be  
8 necessary for the protection of the public concerning the  
9 regulation of the professions and occupations regulated under  
10 this chapter, or for the relief of licensees regulated under  
11 this chapter concerning any impacts which the department and  
12 the board jointly agree were unintended or not contemplated in  
13 the enactment of the 2005 legislative changes. The authority  
14 under this paragraph and any rules adopted under authority of  
15 this paragraph shall expire July 1, 2006.

16 (2) In addition to challenges for any invalid exercise  
17 of delegated legislative authority, no rule shall be adopted  
18 under this chapter, and the administrative law judge upon such  
19 a challenge by the department or the board, may declare all or  
20 part of a rule or proposed rule invalid, if the rule or  
21 proposed rule:

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

24 (b) Unreasonably restricts competition or the  
25 availability of professional services in the state or in a  
26 significant part of the state; or

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

29 However, there shall not be created a presumption of  
30 the existence of any of the conditions cited in this  
31

1 subsection in the event that the rule or proposed rule is  
2 challenged.

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

6 Section 32. Section 470.0201, Florida Statutes, is  
7 renumbered as section 497.162, Florida Statutes, and amended  
8 to read:

9 497.162 ~~470.0201~~ Health and safety education.--All  
10 individuals not licensed under this chapter ~~by the department~~  
11 who intend to be employed as operational personnel affiliated  
12 with a direct disposal establishment, cinerator facility,  
13 removal service, refrigeration facility, or centralized  
14 embalming facility, as well as all nonlicensed individuals who  
15 intend to be involved in the removal or transportation of  
16 human remains on behalf of a funeral establishment, direct  
17 disposal establishment, or cinerator facility shall complete  
18 one course approved by the licensing authority ~~board~~ on  
19 communicable diseases, within 10 days after the date that they  
20 begin functioning as operational personnel on behalf of any  
21 entity that is regulated by this chapter. The course shall not  
22 exceed 3 hours and shall be offered at approved locations  
23 throughout the state. Such locations may include  
24 establishments that are licensed ~~or registered~~ under this  
25 chapter. The licensing authority ~~board~~ shall adopt rules to  
26 implement and enforce this provision, which rules shall  
27 include provisions that provide for the use of approved  
28 videocassette courses and other types of audio, video, or home  
29 study courses to fulfill the continuing education requirements  
30 of this section.

31



1           Section 33. Section 497.163, Florida Statutes, is  
2 created to read:

3           497.163 Restriction on requirement of citizenship.--No  
4 person shall be disqualified from practicing an occupation or  
5 profession regulated by this chapter solely because she or he  
6 is not a United States citizen.

7           Section 34. Section 497.321, Florida Statutes, is  
8 renumbered as section 497.164, Florida Statutes, and amended  
9 to read:

10           497.164 ~~497.321~~ Solicitation of goods or services.--

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

14           (2) The board shall regulate such solicitation to  
15 protect the public from solicitation which is intimidating,  
16 overreaching, ~~vexatious~~, fraudulent, or misleading; which  
17 utilizes undue influence; or which takes undue advantage of a  
18 person's ignorance or emotional vulnerability.

19           (3) The board shall regulate any solicitation which  
20 comprises an uninvited invasion of personal privacy. It is the  
21 express finding of the Legislature that the public have a high  
22 expectation of privacy in their personal residences, and the  
23 department by rule shall restrict the hours or otherwise  
24 regulate such solicitation in the personal residence of a  
25 person unless the solicitation has been previously and  
26 expressly requested by the person solicited.

27           (4) Nothing in this section ~~act~~ shall be construed to  
28 restrict the right of a person to lawfully advertise, use  
29 direct mail, or otherwise communicate in a manner not within  
30 the definition of solicitation or to solicit the business of  
31

1 anyone responding to such communication or otherwise  
2 initiating discussion of goods and services being offered.

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

12 Section 35. Section 497.025, Florida Statutes, is  
13 renumbered as section 497.165, Florida Statutes, and amended  
14 to read:

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

17 497.165 Liability of owners, directors, and officers  
18 regarding trust funds.--The owners, officers, and directors of  
19 any licensee under this chapter may be held jointly and  
20 severally liable for any deficiency in any trust fund required  
21 by this chapter, to the extent the deficiency arose during the  
22 period they were owners, officers or directors of the  
23 licensee, if their conduct, or their negligence in the  
24 performance of their duties, caused the deficiency or  
25 substantially contributed to conditions that allowed the  
26 deficiency to arise or increase.

27 Section 36. Section 497.166, Florida Statutes, is  
28 created to read:

29 497.166 Preneed sales.--

30 (1) Regulation of preneed sales shall be as set forth  
31 in part IV of this chapter. No person may act as an agent for

1 a funeral establishment or direct disposal establishment with  
2 respect to preneed contracts unless such person is licensed as  
3 a preneed sales agent pursuant to part IV of this chapter.

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

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

12 (b) The direct disposer in charge or a funeral  
13 director acting as a direct disposer in charge of a direct  
14 disposal establishment shall be responsible for the control  
15 and activities of the establishment's preneed sales agents.

16 Section 37. Section 497.167, Florida Statutes, is  
17 created to read:

18 497.167 Administrative matters.--

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

22 (2) The director of the division shall serve as  
23 executive director of the board. The director is the agency  
24 head of the division. The director shall be appointed by and  
25 serve at the pleasure of the Chief Financial Officer. The  
26 director shall be responsible for preparation of the agenda  
27 for each board meeting, and may make presentation to the board  
28 of department recommendations and reports, and shall perform  
29 such other duties as may be assigned by the Chief Financial  
30 Officer.

31

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

4       (4) There shall be developed and implemented a  
5 training program for persons newly appointed to membership on  
6 the board. The program shall familiarize such persons with the  
7 substantive and procedural laws and rules which relate to the  
8 regulation under this chapter and with the structure of the  
9 department.

10       (5) There may be informational newsletters, bulletins,  
11 and brochures produced and provided to licensees and consumers  
12 concerning regulation under this chapter.

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

28       (7) Any person retained by the department under  
29 contract to review materials, make site visits, or provide  
30 expert testimony regarding any complaint or application filed  
31 with the department, relating to regulation under this

1 chapter, shall be considered an agent of the department in  
2 determining the state insurance coverage and sovereign  
3 immunity protection applicability of ss. 284.31 and 768.28.

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

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

23 (10) The board may establish by rule procedures and  
24 requirements for the appearance before the board of any  
25 applicant or principal of an applicant, to stand for oral  
26 interview by the board at a public meeting board, before an  
27 application shall be deemed complete. Such rule may require  
28 such appearance for all or specified categories of applicants  
29 and may provide criteria for determining when such appearance  
30 shall be required.

31

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

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

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

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

23       (15) The Department of Legal Affairs shall provide  
24 legal services to the board within the Department of Financial  
25 Services, but the primary responsibility of the Department of  
26 Legal Affairs shall be to represent the interests of the  
27 citizens of the state by vigorously counseling the board with  
28 respect to its obligations under the laws of the state.  
29 Subject to the prior approval of the Attorney General, the  
30 board may retain independent legal counsel to provide legal  
31

1 advice to the board on a specific matter. Fees and costs of  
2 such counsel shall be paid from the Regulatory Trust Fund.

3 Section 38. Section 497.168, Florida Statutes, is  
4 created to read:

5 497.168 Members of Armed Forces in good standing with  
6 administrative boards.--

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

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

22 Section 39. Section 497.527, Florida Statutes, is  
23 renumbered as section 497.169, Florida Statutes, and amended  
24 to read:

25 497.169 ~~497.527~~ Private actions; actions on behalf of  
26 consumers; attorneys fee ~~Civil remedies~~.--

27 (1) The Attorney General, or the department on behalf  
28 of Florida residents, or any person may bring a civil action  
29 against a person or company violating the provisions of this  
30 chapter in the appropriate court of the county in which the  
31 alleged violator resides or has ~~his or her~~ or his or its

1 principal place of business or in the county wherein the  
2 alleged violation occurred. Upon adverse adjudication, the  
3 defendant shall be liable for actual damages caused by such  
4 violation. The court may, as provided by common law, award  
5 punitive damages and may provide such equitable relief as it  
6 deems proper or necessary, including enjoining the defendant  
7 from further violations of this chapter.

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

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

20 Section 40. Section 497.531, Florida Statutes, is  
21 renumbered as section 497.170, Florida Statutes, to read:

22 497.170 ~~497.531~~ Unauthorized arrangements.--

23 (1) Any arrangement to provide merchandise or services  
24 as defined in this chapter, by which payment for such  
25 merchandise or services is to be paid for through a financial  
26 arrangement, other than as authorized pursuant to this  
27 chapter, in which the provider of the merchandise or services  
28 is a beneficiary, party, agent, or owner is in violation of  
29 this chapter.

30 (2) Any person who provides merchandise or services  
31 and who knowingly becomes a beneficiary, agent, party, or



1 coowner as described in subsection (1) is in violation of this  
2 chapter.

3 Section 41. Part II of chapter 497, consisting of  
4 sections 497.260, 497.261, 497.262, 497.263, 497.264, 497.265,  
5 497.266, 497.267, 497.268, 497.269, 497.270, 497.271, 497.272,  
6 497.273, 497.274, 497.275, 497.276, 497.277, 497.278, 497.280,  
7 497.281, 497.282, 497.283, 497.284, 497.285, 497.286, and  
8 497.287, is created to read:

9 PART II

10 CEMETERY REGULATION

11 Section 42. Section 497.003, Florida Statutes, is  
12 renumbered as section 497.260, Florida Statutes, and amended  
13 to read:

14 497.260 ~~497.003~~ Cemeteries; exemption; investigation  
15 and mediation.--

16 (1) The provisions of this chapter relating to  
17 cemeteries and all rules adopted pursuant thereto shall apply  
18 to all cemeteries except for:

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

21 (b) County and municipal cemeteries.

22 (c) Community and nonprofit association cemeteries  
23 which provide only single-level ground burial and do not sell  
24 burial spaces or burial merchandise.

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

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

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

1 existing religious institution facility and is subject to  
2 local government zoning. The religious institution  
3 establishing such a columbarium shall ensure that the  
4 columbarium is perpetually kept and maintained in a manner  
5 consistent with the intent of this chapter. If the religious  
6 institution relocates, the religious institution shall  
7 relocate all of the urns and remains placed in the columbarium  
8 which were placed therein during its use by the religious  
9 institution.

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

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

23 (2) Section 497.276(1) ~~497.309(1)~~ as to burial  
24 records, and ss. 497.164, 497.152(1)(d), 497.280, and 497.284  
25 ~~497.321, 497.325, 497.341, and 497.345~~ apply to all cemeteries  
26 in this state.

27 (3) All cemeteries exempted under this chapter which  
28 are in excess of 5 acres must submit to the following  
29 investigation and mediation procedure by the department in the  
30 event of a consumer complaint:

31

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

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

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

9 (d) If the complaint still is not resolved, the  
10 department shall conduct an investigation and mediate the  
11 complaint;

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

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

28 (4) Any religious-institution-owned cemetery that is  
29 exempt under paragraph (1)(d), is located in a county with a  
30 population of at least 1.3 million persons on July 1, 1996,  
31 and was selling merchandise and services to the religious

1 institution's members prior to October 1, 1993, may establish  
2 one additional exempt cemetery in such county after December  
3 31, 2020.

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

8 (6)(a) This subsection applies to all cemeteries in  
9 this state.

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

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

23 Section 43. Section 497.004, Florida Statutes, is  
24 renumbered as section 497.261, Florida Statutes, to read:  
25 497.261 ~~497.004~~ Existing companies, effect of this  
26 chapter.--Cemetery companies existing on October 1, 1993,  
27 shall continue in full force and effect but shall be operated  
28 in accordance with the provisions of this chapter.

29 Section 44. Section 497.0255, Florida Statutes, is  
30 renumbered as section 497.262, Florida Statutes, and amended  
31 to read:

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

25           Section 45. Section 497.201, Florida Statutes, is  
26 renumbered as section 497.263, Florida Statutes, and amended  
27 to read:

28           (Substantial rewording of section. See  
29           s. 497.201, F.S., for present text.)  
30           497.263 Cemetery companies; license required;  
31 licensure requirements and procedures.--

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

- 1       (i) The application shall be accompanied by such  
2 description of the proposed financial structure of the  
3 cemetery, as the licensing authority may require by rule.
- 4       (j) The application shall be accompanied by a legal  
5 description of the cemetery.
- 6       (k) The application shall be accompanied by such maps  
7 or surveys of the proposed cemetery, and maps showing the  
8 location of the proposed cemetery in the local area, as the  
9 licensing authority may require by rule, and the licensing  
10 authority may by rule require such maps or surveys of the  
11 cemetery to be prepared by a licensed Florida professional  
12 surveyor.
- 13       (l) The application shall include such description of  
14 the development plans for the proposed cemetery, as the  
15 licensing authority may require by rule.
- 16       (m) The application shall require the applicant to  
17 disclose whether the applicant or any principal of applicant  
18 has ever been convicted or found guilty of, or entered a plea  
19 of no contest to, regardless of adjudication, any crime in any  
20 jurisdiction. The licensing authority may require by rule  
21 additional information to be provided concerning any  
22 affirmative answers.
- 23       (n) The application shall require the applicant to  
24 disclose whether the applicant or any principal of applicant  
25 has ever had a license or the authority to practice a  
26 profession or occupation refused, suspended, fined, denied, or  
27 otherwise acted against or disciplined, by the licensing  
28 authority of any jurisdiction. The licensing authority may  
29 require by rule additional information to be provided  
30 concerning any affirmative answers. A licensing authority's  
31 acceptance of a relinquishment of licensure, stipulation,

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

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

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

13 (q) The application shall be signed by the president  
14 of the applicant.

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

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

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

28 (a) The establishment of a care and maintenance trust  
29 fund containing not less than \$50,000 has been certified by a  
30 trust company operating pursuant to chapter 660, a state or  
31 national bank holding trust powers, or a savings and loan



1 association holding trust powers as provided in s. 497.458,  
2 pursuant to a trust agreement approved by the licensing  
3 authority. The \$50,000 required for the care and maintenance  
4 trust fund shall be over and above the \$50,000 net worth  
5 required by subsection (2).

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

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

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

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

27 (f) Regarding the cemetery land identified in the  
28 application, the applicant has recorded, and provides the  
29 licensing authority with a written attestation of such  
30 recording signed by a licensed Florida attorney, in the public  
31 records of real estate in the county in which the cemetery

1 land is located, a notice which contains the following  
2 language:

3 NOTICE

4 The property described herein shall not be  
5 sold, conveyed, leased, mortgaged, or  
6 encumbered without the prior written approval  
7 of the Department of Financial Services, as  
8 provided in Chapter 497, Florida Statutes.

9  
10 Such notice shall be clearly printed in boldfaced type of not  
11 less than 10 points and may be included on the face of the  
12 deed of conveyance to the licensee or may be contained in a  
13 separate recorded instrument which contains a description of  
14 the property.

15 (4) ISSUANCE OF LICENSE.--There shall be issued a  
16 license to operate a cemetery company to any applicant who,  
17 within 12 months after notice that a license may be issued,  
18 meets the criteria of subsection (3). The licensing authority  
19 may, for good cause shown, grant up to two extensions of the  
20 12-month period within which the applicant must meet the  
21 criteria of subsection (3).

22 Section 46. Section 497.205, Florida Statutes, is  
23 renumbered as section 497.264, Florida Statutes, and amended  
24 to read:

25 497.264 ~~497.205~~ License not assignable or  
26 transferable.--

27 (1) A license issued to operate a cemetery pursuant to  
28 this chapter is not transferable or assignable, and a licensee  
29 may not develop or operate any cemetery authorized by this  
30 chapter at any location other than that contained in the  
31 application for the license.

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

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

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

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

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

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

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

28           (g) The application shall include such description of  
29 the development plans the applicant has for the proposed  
30 cemetery, as the licensing authority may require by rule.

31

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

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

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

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

30  
31

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

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

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

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

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

1 | ~~\$5,000. Upon consummation of the purchase or acquisition of~~  
2 | ~~control and upon receipt of all documents required by the~~  
3 | ~~board, the department shall issue the new license for that~~  
4 | ~~cemetery effective on the date of that purchase or acquisition~~  
5 | ~~of control.~~

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

9 |       497.265 ~~497.213~~ Annual license fees.--

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

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

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

18 |       (c) For a cemetery with annual gross sales of at least  
19 | \$100,000 but less than  
20 | \$250,000.....\$600.

21 |       (d) For a cemetery with annual gross sales of at least  
22 | \$250,000 but less than  
23 | \$500,000.....\$900.

24 |       (e) For a cemetery with annual gross sales of at least  
25 | \$500,000 but less than  
26 | \$750,000.....\$1,350.

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

30 |  
31 |

1 (g) For a cemetery with annual gross sales of at least  
2 \$1 million but less than \$5  
3 million.....\$3,250.

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

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

19 Section 48. Section 497.237, Florida Statutes, is  
20 renumbered as section 497.266, Florida Statutes, and amended  
21 to read:

22 497.266 ~~497.237~~ Care and maintenance trust fund;  
23 remedy of department for noncompliance.--

24 (1) No cemetery company may establish a cemetery, or  
25 operate a cemetery if already established, without providing  
26 for the future care and maintenance of the cemetery, for which  
27 a care and maintenance trust fund shall be established, to be  
28 known as "the care and maintenance trust fund of \_\_\_\_." The  
29 trust fund shall be established with a trust company operating  
30 pursuant to chapter 660, with a state or national bank holding  
31 trust powers, or with a federal or state savings and loan

1 association holding trust powers. Trust funds which are with a  
2 state or national bank or savings and loan association  
3 licensed in this state on October 1, 1993, shall remain in  
4 force; however, when the amount of any such trust fund exceeds  
5 the amount that is insured by an agency of the Federal  
6 Government, the cemetery company shall transfer that trust  
7 fund to a trust company operating pursuant to chapter 660, to  
8 a state or national bank holding trust powers, or to a federal  
9 or state savings and loan association holding trust powers.

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

31



1           (3) No person may withdraw or transfer any portion of  
2 the corpus of the care and maintenance trust fund without  
3 first obtaining written consent from the licensing authority  
4 ~~board. Funds deposited pursuant to this chapter may not be~~  
5 ~~loaned to any cemetery company or person who is directly or~~  
6 ~~indirectly engaged in the burial, funeral home, or cemetery~~  
7 ~~business.~~

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

19           Section 49. Section 497.241, Florida Statutes, is  
20 renumbered as section 497.267, Florida Statutes, to read:

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

1 is made, or who makes a deposit, a written instrument which  
2 shall specifically state the purposes for which the income of  
3 the trust fund shall be used.

4 Section 50. Section 497.245, Florida Statutes, is  
5 renumbered as section 497.268, Florida Statutes, to read:

6 497.268 ~~497.245~~ Care and maintenance trust fund,  
7 percentage of payments for burial rights to be deposited.--

8 (1) Each cemetery company shall set aside and deposit  
9 in its care and maintenance trust fund the following

10 percentages or amounts for all sums received from sales of  
11 burial rights:

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

17 (b) For mausoleums or columbaria, 10 percent of  
18 payments received.

19 (c) For general endowments for the care and  
20 maintenance of the cemetery, the full amount of sums received  
21 when received.

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

1           (2) Deposits to the care and maintenance trust fund  
2 shall be made by the cemetery company not later than 30 days  
3 following the close of the calendar month in which any payment  
4 was received; however, when such payments are received in  
5 installments, the percentage of the installment payment placed  
6 in trust must be identical to the percentage which the payment  
7 received bears to the total cost for the burial rights. Trust  
8 income may be used to pay for all usual and customary services  
9 for the operation of a trust account, including, but not  
10 limited to: reasonable trustee and custodian fees, investment  
11 adviser fees, allocation fees, and taxes. If the net income is  
12 not sufficient to pay the fees and other expenses, the fees  
13 and other expenses shall be paid by the cemetery company.  
14 Capital gains taxes shall be paid from the corpus.

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

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

27           (5) In each sales contract, reservation, or agreement  
28 wherein burial rights are priced separately, the purchase  
29 price of the burial rights shall be the only item subject to  
30 care and maintenance trust fund deposits; but if the burial  
31 rights are not priced separately, the full amount of the

1 contract, reservation, or agreement shall be subject to care  
2 and maintenance trust fund deposits as provided in this  
3 section, unless the purchase price of the burial rights can be  
4 determined from the accounting records of the cemetery  
5 company.

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

12 Section 51. Section 497.249, Florida Statutes, is  
13 renumbered as section 497.269, Florida Statutes, and amended  
14 to read:

15 497.269 ~~497.249~~ Care and maintenance trust fund;  
16 financial reports.--On or before April 1 of each year, the  
17 trustee shall furnish adequate financial reports with respect  
18 to the care and maintenance trust fund utilizing forms and  
19 procedures specified by rule ~~on forms provided by the~~  
20 ~~department~~. However, the department may require the trustee to  
21 make such additional financial reports as it deems necessary.  
22 In order to ensure that the proper deposits to the trust fund  
23 have been made, the department shall examine the status of the  
24 trust fund of the company on a semiannual basis for the first  
25 2 years of the trust fund's existence.

26 Section 52. Section 497.253, Florida Statutes, is  
27 renumbered as section 497.270, Florida Statutes, and amended  
28 to read:

29 497.270 ~~497.253~~ Minimum acreage; sale or disposition  
30 of cemetery lands.--

31

1           (1) No land in a licensed cemetery may be sold,  
2 mortgaged, leased, or encumbered without prior approval of the  
3 licensing authority pursuant to procedures specified by rule.  
4 Such approval shall not be given unless it be shown that such  
5 approval would be in the public interest. The licensing  
6 authority may adopt rules establishing criteria for approval  
7 of the sale, mortgaging, leasing, or encumbering of cemetery  
8 land. Each licensee shall set aside a minimum of 30 contiguous  
9 acres of land for use by the licensee as a cemetery and shall  
10 not sell, mortgage, lease, or encumber that property without  
11 prior written approval of the department.

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

30           (3)(a) If the property to be sold, conveyed, or  
31 disposed of under subsection (2) has been or is being used for

1 the permanent interment of human remains, the applicant for  
2 approval of such sale, conveyance, or disposition shall cause  
3 to be published, at least once a week for 4 consecutive weeks,  
4 a notice meeting the standards of publication set forth in s.  
5 125.66(4)(b)2. The notice shall describe the property in  
6 question and the proposed noncemetery use and shall advise  
7 substantially affected persons that they may file a written  
8 request for a hearing pursuant to chapter 120, within 14 days  
9 after the date of last publication of the notice, with the  
10 department if they object to granting the applicant's request  
11 to sell, convey, or dispose of the subject property for  
12 noncemetery uses.

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

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

22 1. The historical significance of the subject  
23 property, if any.

24 2. The archaeological significance of the subject  
25 property, if any.

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

28 4. The impact of the proposed change in use of the  
29 subject property upon the reasonable expectations of the  
30 families of the deceased regarding whether the cemetery  
31 property was to remain as a cemetery in perpetuity.

1           5. Whether any living relatives of the deceased  
2 actively oppose the relocation of their deceased's remains and  
3 the conversion of the subject property to noncemetery uses.

4           6. The elapsed time since the last interment in the  
5 subject property.

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

8           (d) Any deed, mortgage, or other conveyance by a  
9 cemetery company or other owner pursuant to subsections (a)  
10 and (c) above must contain a disclosure in the following or  
11 substantially similar form:

12  
13 NOTICE: The property described herein was formerly used and  
14 dedicated as a cemetery. Conveyance of this property and its  
15 use for noncemetery purposes was authorized by the Florida  
16 Department of Financial Services by Order No. \_\_\_\_\_, dated  
17 \_\_\_\_\_.

18  
19           (e) The department shall adopt such rules as are  
20 necessary to carry out the provisions of this section.

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

27           (5) The provisions of subsections (1) and (2) relating  
28 to a requirement for minimum acreage shall not apply to any  
29 cemetery company licensed by the department on or before July  
30 1, 2001, which owns a total of less than 30 acres of land;

31

1 | however, no cemetery company shall dispose of any land without  
2 | the prior written consent of the department.

3 |       Section 53. Section 497.255, Florida Statutes, is  
4 | renumbered as section 497.271, Florida Statutes, and amended  
5 | to read:

6 |       497.271 ~~497.255~~ Standards for construction and  
7 | significant alteration or renovation of mausoleums and  
8 | columbaria.--

9 |       (1) All newly constructed and significantly altered or  
10 | renovated mausoleums and columbaria must, in addition to  
11 | complying with applicable building codes, conform to the  
12 | standards adopted under this section.

13 |       (2) The licensing authority ~~board~~ shall adopt, by no  
14 | later than July 1, 1999, rules establishing minimum standards  
15 | for all newly constructed and significantly altered or  
16 | renovated mausoleums and columbaria; however, in the case of  
17 | significant alterations or renovations to existing structures,  
18 | the rules shall apply only, when physically feasible, to the  
19 | newly altered or renovated portion of such structures, except  
20 | as specified in subsection (4). In developing and adopting  
21 | such ~~promulgating said~~ rules, the licensing authority ~~board~~  
22 | may define different classes of structures or construction  
23 | standards, and may provide for different rules to apply to  
24 | each of said classes, if the designation of classes and the  
25 | application of different rules is in the public interest and  
26 | is supported by findings by the licensing authority ~~board~~  
27 | based on evidence of industry practices, economic and physical  
28 | feasibility, location, or intended uses; provided, that the  
29 | rules shall provide minimum standards applicable to all  
30 | construction. For example, and without limiting the generality  
31 | of the foregoing, the licensing authority ~~board~~ may determine



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

30 (a) No structure may be built or significantly altered  
31 for use for interment, entombment, or inurnment purposes

1 unless constructed of such material and workmanship as will  
2 ensure its durability and permanence, as well as the safety,  
3 convenience, comfort, and health of the community in which it  
4 is located, as dictated and determined at the time by modern  
5 mausoleum construction and engineering science.

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

9 (c) Such structure must contain adequate provision for  
10 drainage and ventilation.

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

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

19 (f) Suitable provisions must be made for securely and  
20 permanently sealing each crypt with durable materials after  
21 the interment or entombment of human remains, so that no  
22 effluvia or odors may escape therefrom except as provided by  
23 design and sanitary engineering standards. Panels for  
24 permanent seals must be solid and constructed of materials of  
25 sufficient weight, permanence, density, imperviousness, and  
26 strength as to ensure their durability and continued  
27 functioning. Permanent crypt sealing panels must be securely  
28 installed and set in with high quality fire-resistant,  
29 resilient, and durable materials after the interment or  
30 entombment of human remains. The outer or exposed covering of  
31 each crypt must be of a durable, permanent, fire-resistant

1 material; however, plastic, fiberglass, and wood are not  
2 acceptable materials for such outer or exposed coverings.

3 (g) Interior and exterior fastenings for hangers,  
4 clips, doors, and other objects must be of copper, copper-base  
5 alloy, aluminum, or stainless steel of adequate gauges, or  
6 other materials established by rule which provide equivalent  
7 or better strength and durability, and must be properly  
8 installed.

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

1 to time amended, shall be a part of the State Minimum Building  
2 Codes under s. 553.73 until the adoption and effective date of  
3 a new statewide uniform minimum building code, which may  
4 supersede the mausoleum standards as provided by the law  
5 enacting the new statewide uniform minimum building code.

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

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

18 Section 54. Section 497.257, Florida Statutes, is  
19 renumbered as section 497.272, Florida Statutes, and amended  
20 to read:

21 497.272 ~~497.257~~ Construction of mausoleums,  
22 columbaria, and belowground crypts; preconstruction trust  
23 fund; compliance requirement.--

24 (1) A cemetery company shall start construction of  
25 that section of a mausoleum, columbarium, or bank of  
26 belowground crypts in which sales, contracts for sales,  
27 reservations for sales, or agreements for sales are being made  
28 within 4 years after the date of the first such sale or 50  
29 percent of the mausoleum, columbarium, or belowground crypts  
30 have been sold and the purchase price has been received,  
31 whichever occurs first. The construction shall be completed

1 within 5 years after the date of the first sale made. However,  
2 extensions for completion, not to exceed 1 year, may be  
3 granted by the department for good cause shown. If the units  
4 have not been completely constructed at the time of need or  
5 the time specified herein, all moneys paid shall be refunded  
6 upon request, plus interest earned thereon for that portion of  
7 the moneys deposited in the trust fund and an amount equal to  
8 the interest that would have been earned on that portion of  
9 the moneys that were not in trust.

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

23 (3) Before a sale, contract for sale, reservation for  
24 sale, or agreement for sale in a mausoleum section,  
25 columbarium, or bank of belowground crypts may be made, the  
26 cemetery company shall compute the amount to be deposited to  
27 the preconstruction trust fund. The total amount to be  
28 deposited in the fund for each unit of the project shall be  
29 computed by dividing the cost of the project plus 10 percent  
30 of the cost, as computed by a licensed contractor, engineer,  
31 or architect, by the number of crypts in the section or bank

1 of belowground crypts or the number of niches in the  
2 columbarium. When payments are received in installments, the  
3 percentage of the installment payment placed in trust must be  
4 identical to the percentage which the payment received bears  
5 to the total cost of the contract, including other merchandise  
6 and services purchased. Preconstruction trust fund payments  
7 shall be made within 30 days after the end of the month in  
8 which payment is received.

9 (4) When the cemetery company delivers a completed  
10 crypt or niche acceptable to the purchaser in lieu of the  
11 crypt or niche purchased prior to construction, all sums  
12 deposited to the preconstruction trust fund for that purchaser  
13 shall be paid to the cemetery company.

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

24 (6) If the mausoleum section, columbarium, or bank of  
25 belowground crypts is not completed within the time limits set  
26 out in this section, the trustee shall contract for and cause  
27 the project to be completed and pay therefor from the trust  
28 funds deposited to the project's account paying any balance,  
29 less cost and expenses, to the cemetery company. The refund  
30 provisions of subsection (1) apply only to the extent there  
31

1 are funds remaining in excess of the costs to complete the  
2 facilities, prior to any payments to the cemetery company.

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

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

12 Section 55. Section 497.305, Florida Statutes, is  
13 renumbered as section 497.273, Florida Statutes, and amended  
14 to read:

15 497.273 ~~497.305~~ Cemetery companies; authorized  
16 functions.--

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

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

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

31

1           (c) The exclusive initial preneed and at-need sale of  
2 interment or burial rights in earth, mausoleum, crypt, niche,  
3 or columbarium interment; however, nothing herein shall limit  
4 the right of a person owning interment or burial rights to  
5 sell those rights to third parties subject to the transfer of  
6 title by the cemetery company.

7           (d) The adoption of bylaws regulating the activities  
8 conducted within its boundaries, provided that no funeral  
9 director licensed pursuant to this chapter ~~470~~ shall be denied  
10 access to any cemetery to conduct a funeral for or supervise a  
11 disinterment of human remains. All bylaws provided for herein  
12 shall be subject to the approval of the licensing authority  
13 ~~board~~ under the provisions of chapter 120 prior to becoming  
14 effective. The licensing authority ~~board~~ shall not approve any  
15 bylaw which unreasonably restricts the use of interment or  
16 burial rights, which unreasonably restricts competition, or  
17 which unreasonably increases the cost to the owner of  
18 interment or burial rights in utilizing these rights.

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

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

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

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



1           (3) A cemetery company may adopt bylaws establishing  
2 minimum standards for burial merchandise or the installation  
3 thereof. Such bylaws shall include minimum standards for  
4 access to install burial merchandise. A cemetery company must  
5 comply with its adopted bylaws.

6           Section 56. Section 497.274, Florida Statutes, is  
7 created to read:

8           497.274 Standards for grave spaces.--

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

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

30           (b) The map of the area proposed to be developed shall  
31 show:

- 1       1. The number of grave spaces available for sale.
- 2       2. The location of each grave space.
- 3       3. The number designation assigned to each grave
- 4 space.
- 5       4. The dimensions of a standard adult grave space.
- 6       (3) Adult grave spaces established prior to October 1,
- 7 2005, are not required to meet the standards established under
- 8 this section for the dimensions or separation of grave spaces.
- 9       Section 57. Section 497.275, Florida Statutes, is
- 10 created to read:
- 11       497.275 Identification of human remains in licensed
- 12 cemeteries.--On and after October 1, 2005, human remains
- 13 interred, entombed, or otherwise placed for final rest at
- 14 licensed cemeteries shall be identified as follows:
- 15       (1) Each licensed cemetery shall place on the outer
- 16 burial container, cremation interment container, or other
- 17 container, or on the inside of a crypt or niche, a tag or a
- 18 permanent identifying marker containing the name of the
- 19 decedent and the date of death, if available. The materials
- 20 and location of the tag or marker shall be more specifically
- 21 described by rule.
- 22       (2) Each licensed cemetery may rely entirely on the
- 23 identity stated on the burial transit permit or on the
- 24 identification supplied by a person licensed under part III of
- 25 this chapter to establish the identity of the dead human
- 26 remains delivered by such person for burial and shall not be
- 27 liable for any differences between the identity shown on the
- 28 burial transit permit or other identification and the actual
- 29 identity of the dead human remains delivered by such person
- 30 and buried in the cemetery.
- 31

1 Section 58. Section 497.309, Florida Statutes, is  
2 renumbered as section 497.276, Florida Statutes, and amended  
3 to read:

4 497.276 ~~497.309~~ Records.--

5 (1) A record shall be kept of every burial in the  
6 cemetery of a cemetery company, showing the date of burial and  
7 the name of the person buried, together with lot, plot, and  
8 space in which the burial was made. All financial records of  
9 the cemetery company shall be available at its principal place  
10 of business in this state and shall be readily available at  
11 all reasonable times for examination by the department.

12 (2) Notwithstanding the provisions of subsection (1),  
13 the licensing authority ~~board~~ may, upon request, authorize a  
14 cemetery company to maintain its financial records at a  
15 location other than its principal place of business and may,  
16 if necessary, require the company to make its books, accounts,  
17 records, and documents available at a reasonable and  
18 convenient location in this state.

19 (3) The licensing authority ~~board~~ may prescribe by  
20 rule the minimum information to be shown in the books,  
21 accounts, records, and documents of a cemetery company to  
22 enable the department to determine the company's compliance  
23 with this chapter, and may prescribe financial statements that  
24 shall be prepared annually by licensed cemetery companies.

25 Section 59. Section 497.313, Florida Statutes, is  
26 renumbered as section 497.277, Florida Statutes, to read:

27 497.277 ~~497.313~~ Other charges.--Other than the fees  
28 for the sale of burial rights, burial merchandise, and burial  
29 services, no other fee may be directly or indirectly charged,  
30 contracted for, or received by a cemetery company as a  
31

1 condition for a customer to use any burial right, burial  
2 merchandise, or burial service, except for:

3 (1) Charges paid for opening and closing a grave and  
4 vault installation.

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

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

10 (4) Charges for credit life and credit disability  
11 insurance, as requested by the purchaser, the premiums for  
12 which may not exceed the applicable premiums chargeable in  
13 accordance with the rates filed with the Office of Insurance  
14 Regulation of the Financial Services Commission.

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

17 Section 60. Section 497.317, Florida Statutes, is  
18 renumbered as section 497.278, Florida Statutes, to read:

19 497.278 ~~497.317~~ Monuments; installation fees.--

20 (1) No cemetery company may charge a fee for the  
21 installation of a monument purchased or obtained from and to  
22 be installed by a person or firm other than the cemetery  
23 company or its agents.

24 (2) To verify that a monument is installed on the  
25 proper grave in accordance with cemetery bylaws, rules, or  
26 regulations, the cemetery company shall mark the place on the  
27 grave where the marker or monument is to be installed and  
28 shall inspect the installation when completed. Nothing in this  
29 subsection is intended to imply or require that a cemetery  
30 company shall have to lay out or engineer a grave site or  
31 grave sites for the installation of a marker or monument.

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

6           Section 61. Section 497.325, Florida Statutes, is  
7 renumbered as section 497.280, Florida Statutes, and amended  
8 to read:

9           497.280 ~~497.325~~ Illegal tying arrangements.--

10          (1) No person authorized to sell grave space may tie  
11 the purchase of any grave space to the purchase of a monument  
12 from or through the seller of any other designated person or  
13 corporation.

14          (2)(a) Noncemetery licensed persons and firms shall  
15 have the right to sell monuments and to perform or provide on  
16 cemetery property foundation, preparation, and installation  
17 services for monuments. However, a cemetery company or any  
18 other entity owning and operating a cemetery may establish  
19 reasonable rules regarding the style and size of a monument or  
20 its foundation, provided such rules are applicable to all  
21 monuments from whatever source obtained and are enforced  
22 uniformly as to all monuments. Such rules shall be  
23 conspicuously posted and readily accessible to inspection and  
24 copy by interested persons.

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

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

31

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

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

6  
7 where the monument or installation service is not purchased  
8 from the person authorized to sell grave space or the cemetery  
9 company providing grave space or from or through any other  
10 person or corporation designated by the person authorized to  
11 sell grave space or the cemetery company providing grave  
12 space. No cemetery company may be held liable for the improper  
13 installation of a monument where the monument is not installed  
14 by the cemetery company or its agents.

15           (3) No program offering free burial rights may be  
16 conditioned by any requirement to purchase additional burial  
17 rights, funeral merchandise, or services. Any program offering  
18 free burial rights shall comply with s. 817.415.

19           Section 62. Section 497.329, Florida Statutes, is  
20 renumbered as section 497.281, Florida Statutes, and amended  
21 to read:

22           497.281 ~~497.329~~ Licensure Registration of brokers of  
23 burial rights.--

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

31

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

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

7           (4) The licensing authority may by rule specify  
8 records of brokerage transactions which shall be required to  
9 be maintained by burial rights brokers licensed under this  
10 subsection, and which shall be subject to inspection by the  
11 department.

12           Section 63. Section 497.333, Florida Statutes, is  
13 renumbered as section 497.282, Florida Statutes, and amended  
14 to read:

15           497.282 ~~497.333~~ Disclosure of information to  
16 public.--A licensee offering to provide burial rights,  
17 merchandise, or services to the public shall:

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

21           (2) Fully disclose all regularly offered services and  
22 merchandise prior to the selection of burial services or  
23 merchandise. The full disclosure required shall identify the  
24 prices of all burial rights, services, and merchandise  
25 provided by the licensee.

26           (3) Not make any false or misleading statements of the  
27 legal requirement as to the necessity of a casket or outer  
28 burial container.

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

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

3           (6) Provide to the customer, upon the purchase of any  
4 burial right, merchandise, or service, a written contract, the  
5 form of which has been approved by the licensing authority  
6 pursuant to procedures specified by rule ~~board~~.

7           (a) The written contract shall be completed as to all  
8 essential provisions prior to the signing of the contract by  
9 the customer.

10           (b) The written contract shall provide an itemization  
11 of the amounts charged for all services, merchandise, and  
12 fees, which itemization shall be clearly and conspicuously  
13 segregated from everything else on the written contract.

14           (c) A description of the merchandise covered by the  
15 contract to include, when applicable, model, manufacturer, and  
16 other relevant specifications.

17           (7) Provide the licensee's policy on cancellation and  
18 refunds to each customer.

19           (8) In a manner established by rule of the licensing  
20 authority ~~board~~, provide on the signature page, clearly and  
21 conspicuously in boldfaced 10-point type or larger, the  
22 following:

23           (a) The words "purchase price."

24           (b) The amount to be trusted.

25           (c) The amount to be refunded upon contract  
26 cancellation.

27           (d) The amounts allocated to merchandise, services,  
28 and cash advances.

29           (e) The toll-free number of the department which is  
30 available for questions or complaints.

31



1 (f) A statement that the purchaser shall have 30 days  
2 from the date of execution of contract to cancel the contract  
3 and receive a total refund of all moneys paid for items not  
4 used.

5 (9) Effective October 1, 2006, display in its offices  
6 for free distribution to all potential customers, and provide  
7 to all customers at the time of sale, a brochure explaining  
8 how and by whom cemeteries and preneed sales are regulated,  
9 summarizing consumer rights under the law, and providing the  
10 name, address, and phone number of the department's consumer  
11 affairs division. The format and content of the brochure shall  
12 be as prescribed by the rule. The licensing authority may  
13 cause the publication of such brochures and by rule  
14 establishing requirements that cemetery and preneed licensees  
15 purchase and make available such brochures as so published, in  
16 the licensee's offices, to all potential customers.

17 (10) Provide to each customer a complete description  
18 of any monument, marker, or memorialization to be placed at  
19 the gravesite.

20 Section 64. Section 497.337, Florida Statutes, is  
21 renumbered as section 497.283, Florida Statutes, and amended  
22 to read:

23 497.283 ~~497.337~~ Prohibition on sale of personal  
24 property or services.--

25 (1) This section applies to all cemetery companies  
26 licensed pursuant to this chapter that offer for sale or sell  
27 personal property or services which may be used in a cemetery  
28 in connection with the burial of human remains or the  
29 commemoration of the memory of a deceased human being and also  
30 to any person in direct written contractual relationship with  
31 licensed cemetery companies.

1           (2)(a) Except as otherwise provided in this chapter,  
2 no cemetery company shall directly or indirectly enter into a  
3 contract for the sale of personal property or services,  
4 excluding burial or interment rights, which may be used in a  
5 cemetery in connection with disposing of human remains, or  
6 commemorating the memory of a deceased human being, if  
7 delivery of the personal property or performance of the  
8 service is to be made more than 120 days after receipt of  
9 final payment under the contract of sale, except as provided  
10 in s. 497.458 ~~497.417~~. This shall include, but not be limited  
11 to, the sale for future delivery of burial vaults, grave  
12 liners, urns, memorials, vases, foundations, memorial bases,  
13 and similar merchandise and related services commonly sold or  
14 used in cemeteries and interment fees but excluding burial or  
15 interment rights.

16           (b) For the purposes of this section, the term  
17 "delivery" means actual delivery and installation at the time  
18 of need or at the request of the owner or the owner's agent.  
19 Merchandise is not considered delivered under paragraph (a) if  
20 it is stored on the grounds of the cemetery or at a storage  
21 facility except for monuments, markers, and permanent outer  
22 burial receptacles that are stored in a protected environment  
23 and are comprised of materials designed to withstand  
24 prolonged, protected storage without adversely affecting the  
25 structural integrity or aesthetic characteristics of such  
26 permanent outer burial receptacles.

27           (c) In lieu of delivery as required by paragraph (b),  
28 for sales to cemetery companies and funeral establishments,  
29 and only for such sales, the manufacturer of a permanent outer  
30 burial receptacle which meets standards adopted by rule the  
31 ~~board~~ may elect, at its discretion, to comply with the

1 delivery requirements of this section by annually submitting  
2 for approval pursuant to procedures and forms as specified by  
3 rule, in writing, evidence of the manufacturer's financial  
4 responsibility with the licensing authority ~~board~~ for its  
5 review and approval. The standards and procedures to establish  
6 evidence of financial responsibility shall be those in s.  
7 497.461 ~~497.423 or s. 497.425~~, with the manufacturer of  
8 permanent outer burial receptacles which meet national  
9 industry standards assuming the same rights and  
10 responsibilities as those of a preneed licensee  
11 ~~certificateholder~~ under s. 497.461 ~~497.423 or s. 497.425~~.

12 (3) No nonprofit cemetery corporation which has been  
13 incorporated and engaged in the cemetery business prior to and  
14 continuously since 1915 and which has current trust assets  
15 exceeding \$2 million shall be required to designate a  
16 corporate trustee.

17 Section 65. Section 497.345, Florida Statutes, is  
18 renumbered as section 497.284, Florida Statutes, to read:

19 497.284 ~~497.345~~ Abandoned cemeteries; immunity;  
20 actions.--

21 (1) Notwithstanding any provision of law to the  
22 contrary, a county or municipality which has within its  
23 jurisdiction an abandoned cemetery or a cemetery that has not  
24 been reasonably maintained for a period in excess of 6 months  
25 may, upon notice to the department, take such action as is  
26 necessary and appropriate to provide for maintenance and  
27 security of the cemetery. The solicitation of private funds  
28 and the expenditure of public funds for the purposes  
29 enumerated in this subsection are hereby authorized, provided  
30 that no action taken by a county or municipality under this  
31

1 subsection shall establish an ongoing obligation or duty to  
2 provide continuous security or maintenance for any cemetery.

3 (2) No county or municipality nor any person under the  
4 supervision or direction of the county or municipality,  
5 providing good faith assistance in securing or maintaining a  
6 cemetery under subsection (1), may be subject to civil  
7 liabilities or penalties of any type for damages to property  
8 at the cemetery.

9 (3) A county or municipality that has maintained or  
10 secured a cemetery pursuant to the provisions of subsection  
11 (1) may maintain an action at law against the owner of the  
12 cemetery to recover an amount equal to the value of such  
13 maintenance or security.

14 Section 66. Section 497.349, Florida Statutes, is  
15 renumbered as section 497.285, Florida Statutes, and amended  
16 to read:

17 497.285 ~~497.349~~ Inactive cemeteries.--

18 (1) A licensee shall be considered inactive upon the  
19 acceptance of the surrender of its license by the department  
20 or upon the nonreceipt by the department of the license  
21 renewal fees required by s. 497.265 ~~497.213(2)~~.

22 (2) A cemetery licensee licensed to engage in preneed  
23 sales shall cease all preneed sales to the public upon  
24 becoming inactive in regards to its cemetery license. At-need  
25 sales to the public shall cease within 30 days after becoming  
26 inactive.

27 (3) Any licensee desiring to surrender its license to  
28 the department shall first:

29 (a) File notice with the department.

30 (b) Submit copies of its existing trust agreements.

31

1           (c) Resolve to the department's satisfaction all  
2 findings and violations resulting from the last examination  
3 conducted.  
4           (d) Pay all outstanding fines and invoices due the  
5 department.  
6           (e) Submit its current license.  
7           (4) Upon receipt of the notice, the department shall  
8 review the licensee's:  
9           (a) Trust funds.  
10           (b) Trust agreements.  
11           (c) Care and maintenance of the cemetery grounds.  
12           (5) After a review to the department's satisfaction,  
13 the department shall terminate the license.  
14           (6)(a) The care and maintenance trust fund of a  
15 licensee shall be held intact and in trust after the licensee  
16 has become inactive, and funds in that trust fund shall be  
17 disbursed to the cemetery on a regular basis for the upkeep of  
18 the grounds.  
19           (b) The merchandise trust fund of a licensee shall be  
20 held intact and in trust after the licensee has become  
21 inactive, and the funds in that trust fund shall be disbursed  
22 in accordance with the requirements of the written contracts  
23 until the fund has been exhausted.  
24           Section 67. Section 497.353, Florida Statutes, is  
25 renumbered as section 497.286, Florida Statutes, and amended  
26 to read:  
27           497.286 ~~497.353~~ Owners to provide addresses;  
28 presumption of abandonment; abandonment procedures; sale of  
29 abandoned unused burial rights.--  
30           (1) For purposes of this section, all owners of burial  
31 rights in any cemetery licensed under the provisions of this

1 | ~~chapter the Florida Funeral and Cemetery Services Act~~ shall  
2 | have the legal duty to keep the cemetery companies informed in  
3 | writing of their residence addresses. Cemetery companies shall  
4 | notify their present burial rights owners by letter at the  
5 | owner's last known address and notify all future burial rights  
6 | owners, in the contract for sale and the certificate of  
7 | ownership, of the requirement to keep the cemetery company  
8 | informed in writing of their current residence address.

9 |         (2) There is hereby created a presumption that burial  
10 | rights in any cemetery licensed under this chapter have been  
11 | abandoned when an owner of unused burial rights has failed to  
12 | provide the cemetery with a current residence address for a  
13 | period of 50 consecutive years and the cemetery is unable to  
14 | communicate by certified letter with said owner of unused  
15 | burial rights for lack of address. No such presumption of  
16 | abandonment shall exist for burial rights held in common  
17 | ownership which are adjoining, whether in a grave space, plot,  
18 | mausoleum, columbarium, or other place of interment, if any  
19 | such burial rights have been used within such common  
20 | ownership.

21 |         (3) Upon the occurrence of a presumption of  
22 | abandonment as set forth in subsection (2), a cemetery may  
23 | file with the department a certified notice attesting to the  
24 | abandonment of the burial rights. The notice shall do the  
25 | following:

26 |             (a) Describe the burial rights certified to have been  
27 | abandoned;

28 |             (b) Set forth the name of the owner or owners of the  
29 | burial rights, or if the owner is known to the cemetery to be  
30 | deceased, then the names, if known to the cemetery, of such  
31 |

1 claimants as are heirs at law, next of kin, or specific  
2 devisees under the will of the owner;

3 (c) Detail the facts with respect to the failure of  
4 the owner or survivors as outlined in this section to keep the  
5 cemetery informed of the owner's address for a period of 50  
6 consecutive years or more; and

7 (d) Certify that no burial right has been exercised  
8 which is held in common ownership with any abandoned burial  
9 rights as set forth in subsection (2).

10 (4) Irrespective of diversity of ownership of the  
11 burial rights, a cemetery may include in its certification  
12 burial rights in as many owners as are certified to have been  
13 abandoned.

14 (5) The department shall notice and publish the  
15 approved abandoned burial rights in the manner provided by s.  
16 717.118.

17 (6) Within 120 days from the final notice and  
18 publication as provided in subsection (5), the department  
19 shall notify the cemetery if there has been no claim filed for  
20 the burial rights, and the cemetery shall have the right to  
21 sell such burial rights at a public sale subject to the  
22 approval of the sale price by the department.

23 (7) Notice of the time and place of any sale held  
24 pursuant to the provisions of this section shall be published  
25 by the cemetery once in a newspaper of general circulation in  
26 the county in which the cemetery is located, such publication  
27 to be not less than 30 days prior to the date of sale.

28 (8) The proceeds derived from any sale shall be  
29 disbursed in the following manner: an amount specified in s.  
30 497.268 ~~497.245~~ shall be deposited to the cemetery care and  
31 maintenance trust fund; an amount equal to the cemetery

1 company's actual and necessary costs incurred pursuant to this  
2 section but not to exceed 10 percent of the selling price of  
3 the abandoned burial right shall be deposited to the cemetery  
4 company's operating account; and the balance of the proceeds  
5 shall be deposited with the department within 20 days after  
6 receipt of said funds. The department shall deposit all funds  
7 received pursuant to this subsection in accordance with the  
8 provisions of s. 717.123.

9 (9) Persons or their heirs who were owners of burial  
10 rights which were sold under this section shall have the right  
11 at any time to obtain equivalent burial rights in the cemetery  
12 without further charge. If no burial rights are desired, such  
13 persons or their heirs may obtain the amount paid to the  
14 department in accordance with the provisions of s. 717.124.

15 (10) The cemetery shall set aside equivalent burial  
16 rights equal to 10 percent of the abandoned burial rights sold  
17 under this section for the exclusive use of persons or their  
18 heirs who were owners of burial rights which were sold under  
19 this section, who have the right at any time to obtain  
20 equivalent burial rights in the cemetery under this section.

21 (11) Persons who purchase burial rights at a sale  
22 pursuant to this section shall have the right to sell,  
23 alienate, or otherwise transfer said burial rights subject to  
24 and in accordance with the rules and regulations of the  
25 cemetery and payment of a reasonable transfer fee.

26 Section 68. Section 497.357, Florida Statutes, is  
27 renumbered as section 497.287, Florida Statutes, and amended  
28 to read:

29 497.287 ~~497.357~~ Report of identification of exempt  
30 cemeteries.--

31



1 (1) All cemeteries in excess of 5 acres located in  
2 this state that are exempt from the provisions of this chapter  
3 shall be required to file a report of identification with the  
4 department and pay a \$25 fee. The department shall maintain  
5 such reports as public records. Such report of identification  
6 shall be refiled every 5 years pursuant to a schedule set by  
7 board rule. Solely for purposes of chapter 120, such report of  
8 identification shall be considered a license registration with  
9 the department.

10 (2) The report shall be submitted on a form and  
11 pursuant to procedures specified by rule ~~approved by the~~  
12 ~~board~~, and shall list the name and address of the authorized  
13 agent who is responsible for conducting the business of the  
14 cemetery and to whom inquiries about the cemetery can be  
15 directed.

16 (3) The department ~~board~~ may institute proceedings in  
17 any appropriate court for injunctive relief to enforce this  
18 section. Upon issuance of an injunctive order, the court shall  
19 award the department its costs and attorney fees in the  
20 action.

21 Section 69. Part III of chapter 497, Florida Statutes,  
22 consisting of sections 497.365, 497.366, 497.367, 497.368,  
23 497.369, 497.370, 497.371, 497.372, 497.373, 497.374, 497.375,  
24 497.376, 497.377, 497.378, 497.379, 497.380, 497.381, 497.382,  
25 497.383, 497.384, 497.385, 497.386, 497.387, 497.388, 497.389,  
26 497.390, 497.391, and 497.392, is created to read:

27 PART III

28 FUNERAL DIRECTING, EMBALMING, AND RELATED SERVICES

29 Section 70. Section 497.365, Florida Statutes, is  
30 created to read:

31 497.365 Licensure; inactive and delinquent status.--

1       (1) This section shall apply only to licenses issued  
2 under this part. A licensee may practice a profession or  
3 occupation regulated under this part only if the licensee has  
4 an active status license. A licensee who practices a  
5 profession without an active status license is in violation of  
6 this chapter and the licensing authority may impose discipline  
7 on the licensee.

8       (2) Pursuant to procedures specified by rule, a  
9 licensee shall be permitted to choose, at the time of  
10 licensure renewal, an active or inactive status. However, a  
11 licensee who changes from inactive to active status is not  
12 eligible to return to inactive status until the licensee  
13 thereafter completes a licensure cycle on active status.

14       (3) There shall be imposed pursuant to rule a fee for  
15 an inactive status license which is no greater than the fee  
16 for an active status license.

17       (4) An inactive status licensee may change to active  
18 status at any time, provided the licensee meets all  
19 requirements for active status, pays any additional licensure  
20 fees necessary to equal those imposed on an active status  
21 licensee, pays any applicable reactivation fees as set by the  
22 licensing authority, and meets all continuing education  
23 requirements as specified in this section.

24       (5) A licensee shall apply with a complete  
25 application, as defined by rule of the licensing authority, to  
26 renew an active or inactive status license, before the license  
27 expires. Failure of a licensee to renew before the license  
28 expires shall cause the license to become delinquent in the  
29 license cycle following expiration.

30       (6) A delinquent status licensee must affirmatively  
31 apply with a complete application, as defined by rule of the

1 licensing authority, for active or inactive status during the  
2 licensure cycle in which a licensee becomes delinquent.  
3 Failure by a delinquent status licensee to become active or  
4 inactive before the expiration of the current licensure cycle  
5 shall render the license null without any further action by  
6 the board or the licensing authority. Any subsequent licensure  
7 shall be as a result of applying for and meeting all  
8 requirements imposed on an applicant for new licensure.

9 (7) There shall be imposed pursuant to rule an  
10 additional delinquency fee, not to exceed the biennial renewal  
11 fee for an active status license, on a delinquent status  
12 licensee when such licensee applies for active or inactive  
13 status.

14 (8) There shall be imposed pursuant to rule an  
15 additional fee, not to exceed the biennial renewal fee for an  
16 active status license, for processing a licensee's request to  
17 change licensure status at any time other than at the  
18 beginning of a licensure cycle.

19 (9) There may be imposed pursuant to rule reasonable  
20 conditions, excluding full reexamination but including part of  
21 a national examination or a special purpose examination, to  
22 assess current competency necessary to ensure that a licensee  
23 who has been on inactive status for more than 4 consecutive  
24 years and who applies for active status can practice with the  
25 care and skill sufficient to protect the health, safety, and  
26 welfare of the public. Reactivation requirements may differ  
27 depending on the length of time licensees are inactive. The  
28 costs to meet reactivation requirements shall be borne by  
29 licensees requesting reactivation.

30 (10) Before reactivation, an inactive or delinquent  
31 licensee shall meet the same continuing education

1 requirements, if any, imposed on an active status licensee for  
2 all licensure periods in which the licensee was inactive or  
3 delinquent.

4 (11) The status or a change in status of a licensee  
5 shall not alter in any way the right to impose discipline or  
6 to enforce discipline previously imposed on a licensee for  
7 acts or omissions committed by the licensee while holding a  
8 license, whether active, inactive, or delinquent.

9 Section 71. Section 497.366, Florida Statutes, is  
10 created to read:

11 497.366 Licensure; renewal and cancellation notices.--

12 (1) At least 90 days before the end of a licensure  
13 cycle, the licensing authority shall:

14 (a) Forward a licensure renewal notification to an  
15 active or inactive licensee at the licensee's last known  
16 address of record with the licensing authority.

17 (b) Forward a notice of pending cancellation of  
18 licensure to a delinquent status licensee at the licensee's  
19 last known address of record with the licensing authority.

20 (2) Each licensure renewal notification and each  
21 notice of pending cancellation of licensure must state  
22 conspicuously that a licensee who remains on inactive status  
23 for more than 4 years and who wishes to reactivate the license  
24 may be required to demonstrate the competency to resume active  
25 practice by sitting for a special purpose examination or by  
26 completing other reactivation requirements, as defined by rule  
27 of the licensing authority.

28 (3) This section shall apply only to licensees  
29 licensed under this part.

30 Section 72. Section 497.367, Florida Statutes, is  
31 created to read:

1           497.367 Instruction on HIV and AIDS, funeral directors  
2 and embalmers.--

3           (1) Each person licensed as a funeral director or  
4 embalmer under this chapter shall be required to complete an  
5 approved continuing educational course on human  
6 immunodeficiency virus and acquired immune deficiency  
7 syndrome, at least every 2 years. The course shall consist of  
8 education on the modes of transmission, infection control  
9 procedures, clinical management, and prevention of human  
10 immunodeficiency virus and acquired immune deficiency  
11 syndrome. Such course shall include information on current  
12 Florida law on acquired immune deficiency syndrome and its  
13 impact on testing, confidentiality of test results, and  
14 treatment of patients.

15           (2) Confirmation of completed continuing education  
16 concerning each funeral director or embalmer licensee shall be  
17 submitted according to procedures, forms, and methods as  
18 specified by rule of the licensing authority.

19           (3) There may be approved by the licensing authority  
20 by rule or order additional equivalent courses that may be  
21 used to satisfy the requirements in subsection (1). There may  
22 be counted the hours required for completion of the course  
23 included in the total continuing educational requirements as  
24 required by law.

25           (4) Any person holding two or more licenses subject to  
26 the provisions of this section shall only be required to take  
27 the course once every 2 years notwithstanding the number of  
28 licenses held by that person.

29           (5) Failure to timely comply with the above  
30 requirements shall constitute grounds for disciplinary action  
31 against the licensee.

1           (6) It shall be required as a condition of granting a  
2 license as a funeral director and embalmer under this chapter  
3 that an applicant making initial application for licensure  
4 complete an educational course approved by the licensing  
5 authority on human immunodeficiency virus and acquired immune  
6 deficiency syndrome. An applicant who has not taken a course  
7 at the time of licensure shall, upon an affidavit showing good  
8 cause, be allowed 6 months to complete this requirement.

9           Section 73. Section 470.006, Florida Statutes, is  
10 renumbered as section 497.368, Florida Statutes, and amended  
11 to read:

12           497.368 ~~470.006~~ Embalmers; licensure as an embalmer by  
13 examination; provisional license.--

14           (1) Any person desiring to be licensed as an embalmer  
15 shall apply to the licensing authority ~~department~~ to take the  
16 licensure examination. The licensing authority ~~department~~  
17 shall examine each applicant who has remitted an examination  
18 fee set by rule of the licensing authority ~~the board~~ not to  
19 exceed \$200 plus the actual per applicant cost to the  
20 licensing authority ~~department~~ for portions of the examination  
21 and who ~~the board certifies~~ has:

22           (a) Completed the application form and remitted a  
23 nonrefundable application fee set by the licensing authority  
24 ~~board~~ not to exceed ~~\$200~~ \$50.

25           (b) Submitted proof satisfactory to the licensing  
26 authority ~~board~~ that the applicant is at least 18 years of age  
27 and is a recipient of a high school degree or equivalent.

28           (c) Had no conviction or finding of guilt, regardless  
29 of adjudication, for a crime which directly relates to the  
30 ability to practice embalming or the practice of embalming.

31

1 (d) Completed a course in mortuary science approved by  
2 the licensing authority board, which course embraces, at  
3 least, the following subjects: theory and practice of  
4 embalming, restorative art, pathology, anatomy, microbiology,  
5 chemistry, hygiene, and public health and sanitation.

6 (e) Submitted proof of completion of a ~~board approved~~  
7 course on communicable diseases approved by the licensing  
8 authority.

9 (2) The licensing authority department shall license  
10 the applicant as an embalmer if the applicant:

11 (a) Passes an examination on the subjects of the  
12 theory and practice of embalming, restorative art, pathology,  
13 anatomy, microbiology, chemistry, hygiene, public health and  
14 sanitation, and local, state, and federal laws and rules  
15 relating to the disposition of dead human bodies; however,  
16 there may ~~the board~~ by rule be approved by the licensing  
17 authority ~~may adopt~~ the use of a national examination, such as  
18 the embalming examination prepared by the Conference of  
19 Funeral Service Examining Boards, in lieu of part of this  
20 examination requirement; and

21 (b) Completes a 1-year internship under a licensed  
22 embalmer.

23 (3) Any applicant who has completed the required  
24 1-year internship and has been approved for examination as an  
25 embalmer may qualify for a provisional license to work in a  
26 licensed funeral establishment, under the direct supervision  
27 of a licensed embalmer for a limited period of 6 months as  
28 provided by rule of the licensing authority board. The fee for  
29 provisional licensure shall be set by rule of the licensing  
30 authority ~~the board~~, but may not exceed ~~\$200~~\$125, and shall  
31 be nonrefundable and in addition to the fee required in

1 subsection (1). This provisional license may be renewed no  
2 more than one time.

3 Section 74. Section 470.007, Florida Statutes, is  
4 renumbered as section 497.369, Florida Statutes, and amended  
5 to read:

6 497.369 ~~470.007~~ Embalmers; licensure as an embalmer by  
7 endorsement; licensure ~~registration~~ of a temporary embalmer.--

8 (1) The licensing authority ~~department~~ shall issue a  
9 license by endorsement to practice embalming to an applicant  
10 who has remitted an examination fee set by rule of the  
11 licensing authority ~~the board~~ not to exceed \$200 and who the  
12 licensing authority ~~board~~ certifies:

13 (a) Has completed the application form and remitted a  
14 nonrefundable application fee set by rule of the licensing  
15 authority ~~the board~~ not to exceed ~~\$200~~\$50.

16 (b)1. Holds a valid license to practice embalming in  
17 another state of the United States, provided that, when the  
18 applicant secured ~~his or her~~ or his original license, the  
19 requirements for licensure were substantially equivalent to or  
20 more stringent than those existing in this state; or

21 2. Meets the qualifications for licensure in s.  
22 497.368 ~~470.006~~, except that the internship requirement shall  
23 be deemed to have been satisfied by 1 year's practice as a  
24 licensed embalmer in another state, and has, within 10 years  
25 prior to the date of application, successfully completed a  
26 state, regional, or national examination in mortuary science,  
27 which, as determined by rule of the licensing authority ~~board~~,  
28 is substantially equivalent to or more stringent than the  
29 examination given by the licensing authority ~~department~~.

30

31



1           (c) Has submitted proof of completion of a licensing  
2 authority approved ~~board approved~~ course on communicable  
3 diseases.

4           (2) State, regional, or national examinations and  
5 requirements for licensure in another state shall be presumed  
6 to be substantially equivalent to or more stringent than the  
7 examination and requirements in this state unless found  
8 otherwise by rule of the licensing authority ~~board~~.

9           (3) The licensing authority ~~department~~ shall not issue  
10 a license by endorsement or a temporary license ~~registration~~  
11 to any applicant who is under investigation or prosecution in  
12 any jurisdiction for an act which would constitute a violation  
13 of this chapter until such time as the investigation or  
14 prosecution is complete.

15           (4) Each applicant for licensure by endorsement must  
16 pass the examination on local, state, and federal laws and  
17 rules relating to the disposition of dead human bodies which  
18 is required under s. 497.368 ~~470.006~~ and which shall be given  
19 by the licensing authority ~~department~~.

20           (5) There may be adopted by the licensing authority  
21 ~~The board may adopt~~ rules authorizing an applicant who has met  
22 the requirements of paragraphs (1)(b) and (c) and who is  
23 awaiting an opportunity to take the examination required by  
24 subsection (4) to be licensed ~~register~~ as a temporary licensed  
25 embalmer. A temporary licensed ~~registered~~ temporary embalmer  
26 may work as an embalmer in a licensed funeral establishment  
27 under the general supervision of a licensed embalmer. Such  
28 temporary license ~~registration~~ shall expire 60 days after the  
29 date of the next available examination required under  
30 subsection (4); however, the temporary license ~~registration~~  
31 may be renewed one time under the same conditions as initial

1 issuance. The fee for issuance ~~registration~~ or renewal of an  
2 embalmer temporary license ~~registration as a temporary~~  
3 ~~embalmer~~ shall be set by rule of the licensing authority ~~the~~  
4 ~~board~~ but may not exceed \$200 ~~\$125~~. The fee required in this  
5 subsection shall be nonrefundable and in addition to the fee  
6 required in subsection (1).

7 Section 75. Section 470.008, Florida Statutes, is  
8 renumbered as section 497.370, Florida Statutes, and amended  
9 to read:

10 497.370 ~~470.008~~ Embalmers; licensure ~~Registration~~ of  
11 an embalmer intern.--

12 (1) Any person desiring to become an embalmer intern  
13 shall make application to the licensing authority ~~department~~  
14 on forms specified by rule ~~provided by the department~~,  
15 together with a nonrefundable fee determined by rule of the  
16 licensing authority ~~but~~ not to exceed \$200 ~~\$100~~. The  
17 application shall indicate the name and address of the  
18 licensed embalmer under whose supervision the intern will  
19 receive training and the name of the licensed funeral  
20 establishment or centralized embalming facility where such  
21 training is to be conducted. The embalmer intern shall intern  
22 under the direct supervision of a licensed embalmer who has an  
23 active, valid license under s. 497.368 or s. 497.369.

24 (2) An applicant for internship under this section  
25 shall meet the requirements of s. 497.368(1)(b)-(e)  
26 ~~470.006(1)(b)-(e)~~ prior to being licensed ~~registered by the~~  
27 ~~board~~ as an embalmer intern.

28 (3) There shall be adopted ~~The board shall adopt~~ rules  
29 establishing an embalmer internship program and criteria for  
30 embalmer intern training agencies and supervisors. Any funeral  
31 establishment or centralized embalming facility where

1 embalming is conducted must apply to the licensing authority  
2 ~~board~~ for approval as an embalmer intern training agency.

3 (4) A funeral establishment or centralized embalming  
4 facility designated as an embalmer intern training agency may  
5 not exact a fee from any person obtaining intern training at  
6 such funeral establishment or centralized embalming facility.

7 Section 76. Section 470.0085, Florida Statutes, is  
8 renumbered as section 497.371, Florida Statutes, and amended  
9 to read:

10 497.371 ~~470.0085~~ Embalmers; establishment of embalmer  
11 apprentice program.--The licensing authority adopts ~~board may~~  
12 ~~adopt~~ rules establishing an embalmer apprentice program. An  
13 embalmer apprentice may perform only those tasks, functions,  
14 and duties relating to embalming which are performed under the  
15 direct supervision of an a licensed ~~an~~ embalmer who has an  
16 active, valid license under s. 497.368 or s. 497.369. An  
17 embalmer apprentice shall be eligible to serve in an  
18 apprentice capacity for a period not to exceed 3 years ~~1 year~~  
19 as may be determined by licensing authority ~~board~~ rule or for  
20 a period not to exceed 5 ~~3~~ years if the apprentice is enrolled  
21 in and attending a course in mortuary science or funeral  
22 service education at any mortuary college or funeral service  
23 education college or school. An embalmer apprentice shall be  
24 licensed ~~registered with the board~~ upon payment of a licensure  
25 ~~registration~~ fee as determined by licensing authority rule but  
26 not to exceed \$200 ~~\$50~~.

27 Section 77. Section 470.0087, Florida Statutes, is  
28 renumbered as section 497.372, Florida Statutes, and amended  
29 to read:

30 497.372 ~~470.0087~~ Funeral directing; conduct  
31 constituting ~~Practice of~~ funeral directing.--

1           (1) The practice of funeral directing shall be  
2 construed to consist of the following functions, which may be  
3 performed only by a licensed funeral director:

4           (a) Selling or offering to sell funeral services on an  
5 at-need basis.

6           (b) Planning or arranging, on an at-need basis, the  
7 details of a funeral service with the family or friends of the  
8 decedent or any other person responsible for such service;  
9 setting the time of the service; establishing the type of  
10 service to be rendered; acquiring the services of the clergy;  
11 and obtaining vital information for the filing of death  
12 certificates and obtaining of burial transit permits.

13           (c) Making, negotiating, or completing the financial  
14 arrangements for a funeral service on an at-need basis,  
15 provided that nonlicensed personnel may assist the funeral  
16 director in performing such tasks.

17           (d) Directing, being in charge or apparent charge of,  
18 or supervising, directly or indirectly, a visitation or  
19 viewing. Such functions shall not require that a licensed  
20 funeral director be physically present throughout the  
21 visitation or viewing, provided that the funeral director is  
22 readily available by telephone for consultation.

23           (e) Directing, being in charge or apparent charge of,  
24 or supervising, directly or indirectly, any funeral service  
25 held in a funeral establishment, cemetery, or elsewhere.

26           (f) Directing, being in charge or apparent charge of,  
27 or supervising, directly or indirectly, any memorial service  
28 held prior to or within 72 hours of the burial or cremation,  
29 if such memorial service is sold or arranged by a licensee  
30 ~~certificateholder or registrant~~.

31

1           (g) Using in connection with one's name or employment  
2 the words or terms "funeral director," "funeral  
3 establishment," "undertaker," "mortician," or any other word,  
4 term, title, or picture, or combination of any of the above,  
5 that when considered in the context in which used would imply  
6 that such person is engaged in the practice of funeral  
7 directing or that such person is holding ~~himself or herself~~ or  
8 himself out to the public as being engaged in the practice of  
9 funeral directing; provided, however, that nothing in this  
10 paragraph shall prevent using the name of any owner, officer,  
11 or corporate director of a funeral establishment, who is not a  
12 licensee, in connection with the name of the funeral  
13 establishment with which such individual is affiliated, so  
14 long as such individual's affiliation is properly specified.

15           (h) Managing or supervising the operation of a funeral  
16 establishment, except for administrative matters such as  
17 budgeting, accounting and personnel, maintenance of buildings,  
18 equipment and grounds, and routine clerical and recordkeeping  
19 functions.

20           (2) The practice of funeral directing shall not be  
21 construed to consist of the following functions:

22           (a) The phoning-in or faxing of obituary notices;  
23 ordering of flowers or merchandise; delivery of death  
24 certificates to attending physicians; or clerical preparation  
25 of death certificates, insurance forms, and any clerical tasks  
26 that record the information compiled by the funeral director  
27 or that are incidental to any of the functions specified  
28 above.

29           (b) Furnishing standard printed price lists and other  
30 disclosure information to the public by telephone or by  
31 providing such lists to persons making inquiry.

1 (c) Removing or transporting human remains from the  
2 place of death, or removing or transporting human remains from  
3 or to a funeral establishment, centralized embalming facility,  
4 refrigeration facility, cemetery, crematory, medical  
5 examiner's office, common carrier, or other locations as  
6 authorized and provided by law.

7 (d) Arranging, coordinating, or employing licensed  
8 ~~registered~~ removal services, licensed ~~registered~~ refrigeration  
9 facilities, or licensed ~~registered~~ centralized embalming  
10 facilities.

11 (e) Any aspect of making preneed funeral arrangements  
12 or entering into preneed contracts.

13 (f) Any functions normally performed by cemetery or  
14 crematory personnel.

15 Section 78. Section 470.009, Florida Statutes, is  
16 renumbered as section 497.373, Florida Statutes, and amended  
17 to read:

18 497.373 ~~470.009~~ Funeral directing; licensure as a  
19 funeral director by examination; provisional license.--

20 (1) Any person desiring to be licensed as a funeral  
21 director shall apply to the licensing authority ~~department~~ to  
22 take the licensure examination. The licensing authority  
23 ~~department~~ shall examine each applicant who has remitted an  
24 examination fee set by rule of the licensing authority ~~the~~  
25 ~~board~~ not to exceed \$200 plus the actual per applicant cost to  
26 the licensing authority ~~department~~ for portions of the  
27 examination and who the licensing authority ~~board~~ certifies  
28 has:

29 (a) Completed the application form and remitted a  
30 nonrefundable application fee set by rule of the licensing  
31 authority ~~the board~~ not to exceed ~~\$200~~ \$50.

1           (b) Submitted proof satisfactory to the licensing  
2 authority board that the applicant is at least 18 years of age  
3 and is a recipient of a high school degree or equivalent.

4           (c) Had no conviction or finding of guilt, regardless  
5 of adjudication, for a crime which directly relates to the  
6 ability to practice funeral directing or the practice of  
7 funeral directing.

8           (d)1. Received an associate in arts degree, associate  
9 in science degree, or an associate in applied science degree  
10 in mortuary science approved by the licensing authority board;  
11 or

12           2. Holds an associate degree or higher from a college  
13 or university accredited by a regional association of colleges  
14 and schools recognized by the United States Department of  
15 Education and is a graduate of at least an approved a 1-year  
16 course in mortuary science approved by the licensing authority  
17 board.

18           (e) Submitted proof of completion of a ~~board approved~~  
19 course on communicable diseases approved by the licensing  
20 authority.

21           (2) The licensing authority department shall license  
22 the applicant as a funeral director if ~~he or she~~ or he:

23           (a) Passes an examination on the subjects of the  
24 theory and practice of funeral directing, public health and  
25 sanitation, and local, state, and federal laws and rules  
26 relating to the disposition of dead human bodies; however,  
27 there may be approved by rule the board by rule may adopt the  
28 use of a national examination, such as the funeral service  
29 arts examination prepared by the Conference of Funeral Service  
30 Examining Boards, in lieu of part of this examination  
31 requirement.

1 (b) Completes a 1-year internship under a licensed  
2 funeral director.

3 (3) Any applicant who has completed the required  
4 1-year internship and has been approved for examination as a  
5 funeral director may qualify for a provisional license to work  
6 in a licensed funeral establishment, under the direct  
7 supervision of a licensed funeral director for a limited  
8 period of 6 months as provided by rule of the licensing  
9 authority ~~board~~. The fee for provisional licensure shall be  
10 set by rule of the licensing authority ~~the board~~ but may not  
11 exceed ~~\$200~~ \$125. The fee required in this subsection shall be  
12 nonrefundable and in addition to the fee required by  
13 subsection (1). This provisional license may be renewed no  
14 more than one time.

15 Section 79. Section 470.011, Florida Statutes, is  
16 renumbered as section 497.374, Florida Statutes, and amended  
17 to read:

18 497.374 ~~470.011~~ Funeral directing; licensure as a  
19 funeral director by endorsement; licensure ~~registration~~ of a  
20 temporary funeral director.--

21 (1) The licensing authority ~~department~~ shall issue a  
22 license by endorsement to practice funeral directing to an  
23 applicant who has remitted a fee set by rule of the licensing  
24 authority ~~the board~~ not to exceed \$200 and who ~~the board~~  
25 ~~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 funeral  
30 directing in another state of the United States, provided  
31 that, when the applicant secured ~~his or her~~ or his original



1 license, the requirements for licensure were substantially  
2 equivalent to or more stringent than those existing in this  
3 state; or

4         2. Meets the qualifications for licensure in s.  
5 497.373 ~~470.009~~ and has, within 10 years prior to the date of  
6 application, successfully completed a state, regional, or  
7 national examination in mortuary science, which, as determined  
8 by rule of the licensing authority ~~board~~, is substantially  
9 equivalent to or more stringent than the examination given by  
10 the licensing authority ~~department~~.

11         (c) Has submitted proof of completion of a licensing  
12 authority approved ~~board approved~~ course on communicable  
13 diseases.

14         (2) The licensing authority ~~department~~ shall not issue  
15 a license by endorsement or a temporary license ~~registration~~  
16 to any applicant who is under investigation or prosecution in  
17 any jurisdiction for acts which would constitute a violation  
18 of this chapter until such time as the investigation or  
19 prosecution is complete.

20         (3) State, regional, or national examinations and  
21 requirements for licensure in another state shall be presumed  
22 to be substantially equivalent to or more stringent than the  
23 examination and requirements in this state unless found  
24 otherwise by rule of the licensing authority ~~board~~.

25         (4) Each applicant for licensure by endorsement must  
26 pass the examination on local, state, and federal laws and  
27 rules relating to the disposition of dead human bodies which  
28 is required under s. 497.373 ~~470.009~~ and which shall be given  
29 by the licensing authority ~~department~~.

30         (5) There may be adopted ~~The board may adopt~~ rules  
31 authorizing an applicant who has met the requirements of

1 paragraphs (1)(b) and (c) and who is awaiting an opportunity  
 2 to take the examination required by subsection (4) to obtain a  
 3 license ~~register~~ as a temporary funeral director. A licensed  
 4 ~~registered~~ temporary funeral director may work as a funeral  
 5 director in a licensed funeral establishment under the general  
 6 supervision of a ~~licensed~~ funeral director licensed under  
 7 subsection (1) or s. 497.373. Such license ~~registration~~ shall  
 8 expire 60 days after the date of the next available  
 9 examination required under subsection (4); however, the  
 10 temporary license ~~registration~~ may be renewed one time under  
 11 the same conditions as initial issuance. The fee for initial  
 12 issuance or renewal of a temporary license under this  
 13 subsection ~~registration or renewal of registration as a~~  
 14 ~~temporary funeral director~~ shall be set by rule of the  
 15 licensing authority ~~the board~~ but may not exceed ~~\$200~~ \$125.  
 16 The fee required in this subsection shall be nonrefundable and  
 17 in addition to the fee required in subsection (1).

18 Section 80. Section 470.012, Florida Statutes, is  
 19 renumbered as section 497.375, Florida Statutes, and amended  
 20 to read:

21 497.375 470.012 Funeral directing; licensure  
 22 ~~Registration~~ of a funeral director intern.--

23 (1) Any person desiring to become a funeral director  
 24 intern shall make application ~~to the department~~ on forms as  
 25 required by rule ~~provided by the department~~, together with a  
 26 nonrefundable fee as determined by rule of the licensing  
 27 authority but not to exceed ~~\$200~~ \$100. The application shall  
 28 indicate the name and address of the licensed funeral director  
 29 licensed under s. 497.373 or s. 497.374(1) under whose  
 30 supervision the intern will receive training and the name of  
 31 the licensed funeral establishment where such training is to

1 be conducted. The funeral director intern shall intern under  
2 the direct supervision of a licensed funeral director who has  
3 an active, valid license under s. 497.373 or s. 497.374(1).

4 (2) Rules shall be adopted ~~The board shall adopt rules~~  
5 establishing a funeral director internship program and  
6 criteria for funeral director intern training agencies and  
7 supervisors. Any funeral establishment where funeral directing  
8 is conducted may apply to the licensing authority ~~board~~ for  
9 approval as a funeral director intern training agency.

10 (3) A funeral establishment designated as a funeral  
11 director intern training agency may not exact a fee from any  
12 person obtaining intern training at such funeral  
13 establishment.

14 Section 81. Section 470.013, Florida Statutes, is  
15 renumbered as section 497.376, Florida Statutes, and amended  
16 to read:

17 497.376 ~~470.013~~ License as funeral director and  
18 embalmer permitted; display of license.--

19 (1) Nothing in this chapter may be construed to  
20 prohibit a person from holding a license as an embalmer and a  
21 license as a funeral director at the same time.

22 (2) There shall be adopted ~~The board shall adopt~~ rules  
23 which require each license issued under this chapter to be  
24 displayed in such a manner as to make it visible to the public  
25 and to facilitate inspection by the licensing authority  
26 ~~department~~. However, each licensee shall permanently affix a  
27 recent photograph of the licensee to each displayed license  
28 issued to that licensee as a funeral director or embalmer.

29 Section 82. Section 470.014, Florida Statutes, is  
30 renumbered as section 497.377, Florida Statutes, and amended  
31 to read:

1           497.377 ~~470.014~~ Concurrent internships.--The  
2 internship requirement for embalmers and funeral directors may  
3 be served concurrently pursuant to rules adopted by the  
4 licensing authority ~~board~~.

5           Section 83. Section 470.015, Florida Statutes, is  
6 renumbered as section 497.378, Florida Statutes, and amended  
7 to read:

8           497.378 ~~470.015~~ Renewal of funeral director and  
9 embalmer licenses.--

10           (1) There shall be renewed ~~The department shall renew~~  
11 a funeral director or embalmer license upon receipt of the  
12 renewal application and fee set by the licensing authority  
13 ~~board~~ not to exceed \$250. The licensing authority ~~board~~ may  
14 prescribe by rule continuing education requirements of up to  
15 12 classroom hours and may by rule establish criteria for  
16 accepting alternative nonclassroom continuing education on an  
17 hour-for-hour basis, in addition to a licensing  
18 authority-approved ~~board-approved~~ course on communicable  
19 diseases that includes the course on human immunodeficiency  
20 virus and acquired immune deficiency syndrome required by s.  
21 497.367 ~~455.2226~~, for the renewal of a funeral director or  
22 embalmer license. The rule ~~board~~ may provide for the waiver of  
23 continuing education requirements in circumstances that would  
24 justify the waiver, such as hardship, disability, or illness.  
25 The continuing education requirement is not required after  
26 July 1, 1996, for a licensee who is over the age of 75 years  
27 if the licensee does not qualify as the sole person in charge  
28 of an establishment or facility.

29           (2) The licensing authority ~~department~~ shall adopt  
30 rules establishing a procedure for the biennial renewal of  
31 licenses.

1           (3) The licensing authority ~~board~~ shall adopt rules to  
2 establish requirements for the advertising of continuing  
3 education courses.

4           Section 84. Section 470.016, Florida Statutes, is  
5 renumbered as section 497.379, Florida Statutes, and amended  
6 to read:

7           497.379 ~~470.016~~ Inactive status.--

8           (1) A funeral director or embalmer license that has  
9 become inactive may be reactivated under s. 497.378 ~~470.015~~  
10 upon application to the licensing authority ~~department~~. The  
11 licensing authority ~~board~~ shall prescribe by rule continuing  
12 education requirements as a condition of reactivating a  
13 license. The continuing education requirements for  
14 reactivating a license may not exceed 12 classroom hours, and  
15 the licensing authority ~~board~~ may by rule establish criteria  
16 for accepting alternative nonclassroom continuing education on  
17 an hour-for-hour basis, in addition to a licensing  
18 authority-approved ~~board-approved~~ course on communicable  
19 diseases, for each year the license was inactive.

20           (2) The licensing authority ~~board~~ shall prescribe by  
21 rule an application fee for inactive status, a renewal fee for  
22 inactive status, a delinquency fee, and a fee for reactivation  
23 of a license. None of these fees may exceed the biennial  
24 renewal fee established by the licensing authority ~~board~~ for  
25 an active license.

26           (3) The licensing authority ~~department~~ may not  
27 reactivate a license unless the inactive or delinquent  
28 licensee has paid any applicable biennial renewal or  
29 delinquency fee, or both, and a reactivation fee.

30  
31

1 Section 85. Section 470.024, Florida Statutes, is  
2 renumbered as section 497.380, Florida Statutes, and amended  
3 to read:

4 497.380 ~~470.024~~ Funeral establishment; licensure.--

5 (1) A funeral establishment shall be a place at a  
6 specific street address or location consisting of at least  
7 1,250 contiguous interior square feet and must maintain or  
8 make arrangements for either ~~suitable~~ capacity for the  
9 refrigeration and storage of dead human bodies handled and  
10 stored by the establishment and ~~or~~ a preparation room equipped  
11 with necessary ventilation and drainage and containing  
12 necessary instruments for embalming dead human bodies or must  
13 make arrangements for a preparation room as established by  
14 rule.

15 (2) Each licensed funeral establishment may operate a  
16 visitation chapel at a separate location within the county in  
17 which the funeral establishment is located. A visitation  
18 chapel must be a facility of not less than 500 square feet and  
19 not more than 700 square feet and may be operated only when a  
20 licensed funeral director is present at the facility. A  
21 visitation chapel may be used only for visitation of a  
22 deceased human body and may not be used for any other activity  
23 permitted by this chapter.

24 (3) No person may conduct, maintain, manage, or  
25 operate a funeral establishment unless a funeral ~~an~~  
26 establishment operating license has been issued under this  
27 chapter ~~by the department~~ for that funeral establishment.

28 (4) Application for a funeral establishment license  
29 shall be made on forms and pursuant to procedures specified by  
30 rule ~~furnished by the department~~, shall be accompanied by a  
31 nonrefundable fee not to exceed \$300 as set by licensing

1 | authority board rule, and shall include the name of the  
2 | licensed funeral director who is in charge of that  
3 | establishment.

4 |         (5) A funeral establishment license shall be renewable  
5 | biennially pursuant to procedures, and upon payment of a  
6 | nonrefundable fee not to exceed \$300, as set by licensing  
7 | authority board rule. The licensing authority board may also  
8 | establish by rule a delinquency fee not to exceed \$50 per day.

9 |         (6) The practice of embalming done at a funeral  
10 | establishment shall only be practiced by an embalmer licensed  
11 | under this chapter.

12 |         (7) Each licensed funeral establishment shall have one  
13 | full-time funeral director in charge and shall have a licensed  
14 | funeral director reasonably available to the public during  
15 | normal business hours for that establishment. The full-time  
16 | funeral director in charge must have an active license and may  
17 | not be the full-time funeral director in charge of any other  
18 | funeral establishment or of any other direct disposal  
19 | establishment.

20 |         (8) The issuance of a license to operate a funeral  
21 | establishment to a person or entity who is not individually  
22 | licensed as a funeral director does not entitle the person to  
23 | practice funeral directing.

24 |         (9) Each funeral establishment located at a specific  
25 | address shall be deemed to be a separate entity and shall  
26 | require separate licensing and compliance with the  
27 | requirements of this chapter. A funeral establishment may not  
28 | be operated at the same location as any other funeral  
29 | establishment or direct disposal establishment unless such  
30 | establishments were licensed as colocated establishments on  
31 | October 1, 1993.

1           (10) Every funeral establishment licensed under this  
2 chapter shall at all times be subject to the inspection of all  
3 its buildings, grounds, and vehicles used in the conduct of  
4 its business, by the department or any of its designated  
5 representatives or agents, or local or Department of Health  
6 inspectors. The licensing authority board shall by rule  
7 establish requirements for inspection of funeral  
8 establishments.

9           (11) The licensing authority board shall set by rule  
10 an annual inspection fee not to exceed ~~\$300~~\$100, payable upon  
11 application for licensure and upon each renewal of such  
12 license.

13           (12) A change in ownership of a funeral establishment  
14 shall be promptly reported pursuant to procedures established  
15 by rule ~~to the department~~ and shall require the relicensure of  
16 the funeral establishment, including reinspection and payment  
17 of applicable fees.

18           (13) Each application for a funeral establishment  
19 license shall identify every person with the ability to direct  
20 the management or policies of the establishment and must  
21 identify every person having more than a 10-percent ownership  
22 interest in the establishment or the business or corporation  
23 which owns the establishment. The licensing authority board  
24 may deny, suspend, or revoke the license if any person  
25 identified in the application has been or thereafter is ever  
26 ~~been~~ disciplined by a regulatory agency in any jurisdiction  
27 for any offense that would constitute a violation of this  
28 chapter. The licensing authority board may deny, suspend, or  
29 revoke the license if any person identified in the application  
30 has ever been convicted or found guilty of, or entered a plea  
31 of nolo contendere to, regardless of adjudication, a crime in



1 any jurisdiction that directly relates to the ability to  
2 operate a funeral establishment.

3 (14) Each funeral establishment must display at the  
4 public entrance the name of the establishment and the name of  
5 the full-time funeral director in charge. A funeral  
6 establishment must transact its business under the name by  
7 which it is licensed.

8 Section 86. Section 470.026, Florida Statutes, is  
9 renumbered as section 497.381, Florida Statutes, and amended  
10 to read:

11 497.381 ~~470.026~~ Solicitation of goods or services.--

12 (1) The licensing authority board ~~board~~ shall adopt rules  
13 regulating the solicitation of goods or services by licensees  
14 ~~or registrants~~.

15 (2) The licensing authority board ~~board~~ shall regulate such  
16 solicitation to protect the public from solicitation which is  
17 intimidating, overreaching, ~~vexatious~~, fraudulent, or  
18 misleading; which utilizes undue influence; or which takes  
19 undue advantage of a person's ignorance or emotional  
20 vulnerability.

21 (3) The licensing authority board ~~board~~ shall regulate such  
22 solicitation which comprises an uninvited invasion of personal  
23 privacy. It is the express finding of the Legislature that the  
24 public has a high expectation of privacy in one's personal  
25 residence, and the licensing authority board ~~board~~ by rule may  
26 restrict the hours or otherwise regulate such solicitation in  
27 the personal residence of a person unless the solicitation has  
28 been previously and expressly requested by the person  
29 solicited.

30 (4) Nothing in this chapter may be construed to  
31 restrict the right of a person to lawfully advertise, direct

1 mail, or otherwise communicate in a manner not within the  
2 definition of solicitation or to solicit the business of  
3 anyone responding to such communication or otherwise  
4 initiating discussion of the goods or services being offered.

5 (5) At-need solicitation of funeral merchandise or  
6 services is prohibited. No funeral director or direct disposer  
7 or her or his agent or representative may contact the family  
8 or next of kin of a deceased person to sell services or  
9 merchandise unless the funeral director or direct disposer or  
10 her or his agent or representative has been initially called  
11 or contacted by the family or next of kin of such person and  
12 requested to provide her or his services or merchandise.

13 Section 87. Section 470.029, Florida Statutes, is  
14 renumbered as section 497.382, Florida Statutes, and amended  
15 to read:

16 497.382 ~~470.029~~ Reports of cases embalmed and bodies  
17 handled.--

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

1           (2) Funeral directors performing disinterments shall  
2 report, using a form and procedures specified by rule ~~on a~~  
3 ~~form prescribed and furnished by the department~~, the name of  
4 the deceased and such other information as may be required by  
5 rule with respect to each dead human body disinterred.

6           Section 88. Section 470.0294, Florida Statutes, is  
7 renumbered as section 497.383, Florida Statutes, and amended  
8 to read:

9           497.383 ~~470.0294~~ Additional rights of legally  
10 authorized persons.--

11           (1) In addition to any other common law or statutory  
12 rights a legally authorized person may otherwise have, that  
13 person may authorize a funeral director or direct disposer  
14 licensed under this chapter to lawfully dispose of fetal  
15 remains in circumstances when a fetal death certificate is not  
16 issued under chapter 382. A person licensed under this chapter  
17 or former chapter 470 is not liable for damages as a result of  
18 following the instructions of the legally authorized person in  
19 connection with the final disposition of fetal remains in  
20 circumstances in which a fetal death certificate is not issued  
21 under chapter 382 or in connection with the final disposition  
22 of a dead human body.

23           (2) Any ambiguity or dispute concerning the right of  
24 any legally authorized person to provide authorization under  
25 this chapter or the validity of any documentation purporting  
26 to grant that authorization shall be resolved by a court of  
27 competent jurisdiction.

28           Section 89. Section 470.0295, Florida Statutes, is  
29 renumbered as section 497.384, Florida Statutes, and amended  
30 to read:

31

1           497.384 ~~470.0295~~ Disinterment; transportation;  
2 authorization and notification.--

3           (1) The disinterment and reinterment of human remains  
4 shall require the physical presence of a licensed funeral  
5 director, unless the reinterment is to be made in the same  
6 cemetery.

7           (2) In order to ensure that any disinterment or  
8 transportation of a dead human body is conducted in a manner  
9 that properly protects the public health, safety, and welfare,  
10 the licensing authority ~~board~~ may adopt rules to regulate the  
11 disinterment and transportation of human remains.

12           (3) The funeral director shall obtain written  
13 authorization from a legally authorized person or a court of  
14 competent jurisdiction prior to the disinterment and  
15 reinterment of a dead human body.

16           (4) Notification must be provided licensing authority  
17 ~~to the board and department~~ as provided in s. 497.382 ~~470.029~~.

18           (5) The removal of human remains from a designated  
19 temporary storage area to a place of permanent burial within a  
20 cemetery shall not be considered a disinterment or  
21 reinterment.

22           Section 90. Section 470.0301, Florida Statutes, is  
23 renumbered as section 497.385, Florida Statutes, and amended  
24 to read:

25           497.385 ~~470.0301~~ Removal services; refrigeration  
26 facilities; centralized embalming facilities.--In order to  
27 ensure that the removal, refrigeration, and embalming of all  
28 dead human bodies is conducted in a manner that properly  
29 protects the public's health and safety, the licensing  
30 authority ~~board~~ shall adopt rules to provide for the licensure  
31 ~~registration~~ of removal services, refrigeration facilities,

1 and centralized embalming facilities operated independently of  
2 funeral establishments, direct disposal establishments, and  
3 cinerator facilities.

4 (1) REMOVAL SERVICES AND REFRIGERATION SERVICES.--

5 (a) Application for licensure ~~registration~~ of a  
6 removal service or a refrigeration service shall be made using  
7 forms and procedures as specified by rule ~~on forms furnished~~  
8 ~~by the department~~, shall be accompanied by a nonrefundable fee  
9 not to exceed \$300 as set by licensing authority ~~board~~ rule,  
10 and shall include the name of the business owner, manager in  
11 charge, business address, and copies of occupational and other  
12 local permits.

13 (b) The licensing authority ~~board~~ shall set by rule  
14 requirements for licensure ~~registration~~ of removal services  
15 and refrigeration services.

16 (c) The licensure ~~Registration~~ shall be renewed  
17 biennially pursuant to procedures and upon payment of a  
18 nonrefundable fee not to exceed \$300 as set by licensing  
19 authority ~~board~~ rule. The licensing authority ~~board~~ may also  
20 establish by rule a late renewal penalty fee not to exceed \$50  
21 per day. Any licensure ~~registration~~ not renewed within 30 days  
22 after its renewal date shall expire without further action ~~by~~  
23 ~~the department~~.

24 (d) Each business located at a specific address shall  
25 be deemed to be a separate entity and shall require separate  
26 licensure ~~registration~~ and compliance with the requirements of  
27 this chapter.

28 (e) Every licensee ~~registrant~~ under this section shall  
29 at all times be subject to the inspection of all its  
30 buildings, grounds, and vehicles used in the conduct of its  
31 business, by the department or any of its designated

1 representatives or agents, or local or Department of Health  
2 inspectors. The licensing authority ~~board~~ shall by rule  
3 establish requirements for inspection of removal services and  
4 refrigeration services.

5 (f) The licensing authority ~~board~~ shall set by rule an  
6 annual inspection fee not to exceed ~~\$300~~\$100, payable upon  
7 application for licensure ~~registration~~ and upon each renewal  
8 of such licensure ~~registration~~.

9 (g) A change in ownership shall be promptly reported  
10 using forms and procedures specified by rule ~~to the department~~  
11 and may require the relicensure of the licensee ~~registrant~~,  
12 including reinspection and payment of applicable fees, as  
13 required by rule.

14 (h) The licensing authority ~~board~~ may deny, suspend,  
15 or revoke the licensure ~~registration~~ if any person identified  
16 in the application has ever been disciplined by a regulatory  
17 agency in any jurisdiction for any offense that would  
18 constitute a violation of this chapter. The licensing  
19 authority ~~board~~ may deny, suspend, or revoke the license of  
20 registration ~~if~~ any person identified in the application who  
21 has been convicted or found guilty of, or entered a plea of  
22 nolo contendere to, regardless of adjudication, a crime in any  
23 jurisdiction that directly relates to the ability to operate a  
24 removal service or refrigeration service.

25 (i) Each business must display at the public entrance  
26 the name of the establishment and the name of the full-time  
27 manager in charge. Each licensee ~~registrant~~ must transact its  
28 business under the name by which it is licensed ~~registered~~  
29 with the licensing authority ~~department~~.

30 (j) No person may conduct, maintain, manage, or  
31 operate a removal service or refrigeration service unless

1 licensed registration for such service under this chapter ~~has~~  
2 ~~been issued by the department.~~

3 (k) Such removal services and refrigeration services  
4 may not enter into removal or refrigeration contracts with the  
5 general public.

6 (2) CENTRALIZED EMBALMING FACILITIES.--In order to  
7 ensure that all funeral establishments have access to  
8 embalming facilities that comply with all applicable health  
9 and safety requirements, the licensing authority ~~board~~ shall  
10 adopt rules to provide for the licensure ~~registration~~ and  
11 operation of centralized embalming facilities and shall  
12 require, at a minimum, the following:

13 (a) All centralized embalming facilities shall contain  
14 all of the equipment and meet all of the requirements that a  
15 preparation room located in a funeral establishment is  
16 required to meet, but such facilities shall not be required to  
17 comply with any of the other requirements for funeral  
18 establishments, as set forth in s. 497.380 ~~470.024~~.

19 (b) Each licensed centralized embalming facility shall  
20 have at least one full-time embalmer in charge. The full-time  
21 embalmer in charge must have an active license and may not be  
22 the full-time embalmer in charge, full-time funeral director  
23 in charge, or full-time direct disposer in charge of any other  
24 establishment licensed under this chapter.

25 (c) Any person, regardless of whether such person is  
26 otherwise regulated by this chapter, may own such a facility,  
27 provided that such facility is operated in accordance with the  
28 rules established by the licensing authority ~~board~~.

29 (d) A centralized embalming facility may only provide  
30 services to funeral establishments.

31

1           (e) The practice of embalming done at a centralized  
2 embalming facility shall only be practiced by an embalmer  
3 licensed under this chapter and shall be provided only to  
4 licensed funeral establishments.

5           (f) Application for licensure ~~registration~~ of a  
6 centralized embalming facility shall be made utilizing forms  
7 and procedures prescribed by rule ~~on forms furnished by the~~  
8 ~~department~~ and shall be accompanied by a nonrefundable fee not  
9 to exceed \$300 as set by licensing authority board rule, and  
10 licensure registration shall be renewed biennially pursuant to  
11 procedures and upon payment of a nonrefundable fee not to  
12 exceed \$300 as set by licensing authority board rule. The  
13 licensing authority board may also establish by rule a late  
14 fee not to exceed \$50 per day. Any licensure registration not  
15 renewed within 30 days after the renewal date shall expire  
16 without further action by the department.

17           (g) The licensing authority board shall set by rule an  
18 annual inspection fee not to exceed ~~\$300~~\$100, payable upon  
19 application for licensure registration and upon renewal of  
20 such licensure registration.

21           (h) The licensing authority board shall, by rule,  
22 establish operating procedures which shall require, at a  
23 minimum, that centralized embalming facilities maintain a  
24 system of identification of human remains received for  
25 embalming.

26           Section 91. Section 470.0315, Florida Statutes, is  
27 renumbered as section 497.386, Florida Statutes, and amended  
28 to read:

29           497.386 ~~470.0315~~ Storage, preservation, and  
30 transportation of human remains.--

31



1           (1) A person may not store or maintain human remains  
2 at any establishment or facility except an establishment or  
3 facility licensed ~~or registered~~ under this chapter or a health  
4 care facility, medical examiner's facility, morgue, or  
5 cemetery holding facility.

6           (2) A dead human body may not be held in any place or  
7 in transit over 24 hours after death or pending final  
8 disposition unless the body is maintained under refrigeration  
9 at a temperature of 40 degrees Fahrenheit or below or is  
10 embalmed or otherwise preserved in a manner approved by the  
11 licensing authority board ~~board~~ in accordance with the provisions of  
12 this chapter.

13           (3) A dead human body transported by common carrier or  
14 any agency or individual authorized to carry dead human bodies  
15 must be placed in a carrying container adequate to prevent the  
16 seepage of fluids and escape of offensive odors. A dead human  
17 body may be transported only when accompanied by a properly  
18 completed burial-transit permit issued in accordance with the  
19 provisions of chapter 382.

20           (4) The licensing authority board ~~board~~ shall establish by  
21 rule the minimal standards of acceptable and prevailing  
22 practices for the handling and storing of dead human bodies,  
23 provided that all human remains transported or stored must be  
24 completely covered and at all times treated with dignity and  
25 respect.

26           (5) A person who violates any provision of this  
27 section commits a misdemeanor of the first degree, punishable  
28 as provided in s. 775.082 or s. 775.083.

29           Section 92. Section 470.032, Florida Statutes, is  
30 renumbered as section 497.387, Florida Statutes, and amended  
31 to read:

1           497.387 ~~470.032~~ Unlawful to remove or embalm body  
2 without consent of proper official when crime is  
3 suspected.--It is unlawful for a licensee under this chapter  
4 ~~or registrant~~ to remove or embalm a dead human body when she  
5 or he has information indicating crime or violence of any sort  
6 in connection with the cause of death until permission of the  
7 medical examiner or other lawfully authorized official has  
8 first been obtained.

9           Section 93. Section 470.0355, Florida Statutes, is  
10 renumbered as section 497.388, Florida Statutes, and amended  
11 to read:

12           497.388 ~~470.0355~~ Identification of human remains.--

13           (1) PRIOR TO FINAL DISPOSITION.--

14           (a) The licensee ~~or registrant~~ in charge of the final  
15 disposition of dead human remains shall, prior to final  
16 disposition of such dead human remains, affix on the ankle or  
17 wrist of the deceased, and ~~or~~ in the casket or alternative  
18 container or cremation container, proper identification of the  
19 dead human remains. The identification or tag shall be encased  
20 in or consist of durable and long-lasting material containing  
21 the name, date of birth, and date of death, ~~and social~~  
22 ~~security number~~ of the deceased, if available. If the dead  
23 human remains are cremated, proper identification shall be  
24 placed in the container or urn containing the remains.

25           (b)(2) Any licensee ~~or registrant~~ responsible for  
26 removal of dead human remains to any establishment, facility,  
27 or location shall ensure that the remains are identified by a  
28 tag or other means of identification that is affixed to the  
29 ankle or wrist of the deceased at the time the remains are  
30 removed from the place of death or other location.

31

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

4           (2) IN UNLICENSED CEMETERIES.--The identification of  
5 human remains interred in an unlicensed cemetery shall be the  
6 responsibility of the licensed funeral establishment in charge  
7 of the funeral arrangements for the deceased person. The  
8 licensed funeral establishment in charge of the funeral  
9 arrangements for the interment in an unlicensed cemetery of  
10 human remains shall place on the outer burial container,  
11 cremation interment container, or other container or on the  
12 inside of a crypt or niche a tag or permanent identifying mark  
13 containing the name of the decedent and the date of death, if  
14 available. The materials and locations of the tag or mark  
15 shall be more specifically described by rule of the licensing  
16 authority.

17           (3) IN LICENSED CEMETERIES.--Human remains at licensed  
18 cemeteries shall be identified as follows:

19           (a) Each licensed cemetery shall place on the outer  
20 burial container, cremation interment container, or other  
21 container or on the inside of a crypt or niche a tag or  
22 permanent identifying marker containing the name of the  
23 decedent and the date of death, if available. The materials  
24 and the location of the tag or marker shall be more  
25 specifically described by rule of the board.

26           (b) Each licensed cemetery may rely entirely on the  
27 identity stated on the burial transit permit or on the  
28 identification supplied by a person licensed under this  
29 chapter to establish the identity of the dead human remains  
30 delivered by such person for burial and shall not be liable  
31 for any differences between the identity shown on the burial

1 transit permit or identification and the actual identity of  
2 the dead human remains delivered by such person and buried in  
3 the cemetery.

4 (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal  
5 establishments shall establish a system of identification of  
6 human remains received which shall be designed to track the  
7 identity of the remains from the time of receipt until  
8 delivery of the remains to the authorized persons. This is in  
9 addition to the requirements for identification of human  
10 remains set forth in subsection (1). A copy of the  
11 identification procedures shall be available, upon request, to  
12 the department and legally authorized persons.

13 Section 94. Section 470.0375, Florida Statutes, is  
14 renumbered as section 497.389, Florida Statutes, and amended  
15 to read:

16 497.389 ~~470.0375~~ Funeral establishments; cash advance  
17 accounts; escrow refund accounts.--

18 (1) Funeral establishments may elect to maintain  
19 special, segregated bank accounts to be used in conjunction  
20 with making cash advances to vendors. The money in such  
21 accounts may be used by the funeral establishments to pay  
22 third-party vendors when such amounts must be paid before the  
23 funeral establishment has been paid by the purchaser.

24 (2) Funeral establishments may elect to maintain  
25 special, segregated escrow accounts to be used in conjunction  
26 with making cash refunds to their purchasers. A funeral  
27 establishment may deposit in such accounts any amounts paid by  
28 its purchasers that were in excess of the actual funeral costs  
29 incurred and cash advances made by the funeral establishment.

30  
31

1 Section 95. Section 470.038, Florida Statutes, is  
2 renumbered as section 497.390, Florida Statutes, and amended  
3 to read:

4 497.390 ~~470.038~~ Reciprocity.--In order to ensure that  
5 funeral directors, embalmers, and direct disposers who are  
6 licensed ~~or registered~~ in this state may be considered for  
7 licensure or registration in other jurisdictions, the  
8 licensing authority board ~~board~~ may enter into reciprocity  
9 agreements with other jurisdictions.

10 Section 96. Section 470.039, Florida Statutes, is  
11 renumbered as section 497.391, Florida Statutes, and amended  
12 to read:

13 497.391 ~~470.039~~ Exceptions.--

14 (1) Nothing in this chapter may be construed to limit  
15 the sale of caskets, alternative containers, outer burial  
16 containers, or funeral merchandise by any person on an at-need  
17 basis.

18 (2) Nothing in this chapter may be construed to  
19 override the written instructions or wishes of the deceased as  
20 to how ~~his or her~~ or his body is to be disposed of, if such  
21 instructions are reasonably available at the time of death.

22 Section 97. Section 470.0395, Florida Statutes, is  
23 renumbered as section 497.392, Florida Statutes, and amended  
24 to read:

25 497.392 ~~470.0395~~ Branch chapels.--Notwithstanding the  
26 provisions of s. 497.380 ~~470.024~~, any licensed establishment  
27 operating a branch chapel on June 30, 1979, in accordance with  
28 the law then in effect, as determined by the licensing  
29 authority board ~~board~~, may continue to operate such branch chapel  
30 for the sole and exclusive purpose of providing and holding  
31 funeral services.



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

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



1           Section 102. Section 497.407, Florida Statutes, is  
2 renumbered as section 497.453, Florida Statutes, and amended  
3 to read:

4           (Substantial rewording of section. See

5           s. 497.407, F.S., for present text.)

6           497.453 Application for preneed license, procedures  
7 and criteria; renewal; reports.--

8           (1) PRENEED LICENSE APPLICATION PROCEDURES.--

9           (a) A person seeking a license to enter into preneed  
10 contracts shall apply for such licensure using forms  
11 prescribed by rule.

12           (b) The application shall require the name, business  
13 address, residence address, date and place of birth or  
14 incorporation, and business phone number, of applicant and all  
15 principals of applicant. The application shall require the  
16 applicant's social security number, or if the applicant is an  
17 entity, its federal tax identification number.

18           (c) The application may require information as to the  
19 applicant's financial resources.

20           (d) The application may require information as to the  
21 educational and employment history of an individual applicant;  
22 and as to applicants that are not natural persons, the  
23 business and employment history of the applicant and  
24 principals of applicant.

25           (e) The application shall require the applicant to  
26 disclose whether the applicant or any of applicant's  
27 principals has ever been convicted or found guilty of, or  
28 entered a plea of no contest to, regardless of adjudication,  
29 any crime in any jurisdiction.

30           (f) The application shall require the applicant to  
31 disclose whether the applicant or any of applicant's

1 principals has ever had a license or the authority to practice  
2 a profession or occupation refused, suspended, fined, denied,  
3 or otherwise acted against or disciplined, by the licensing  
4 authority of any jurisdiction. A licensing authority's  
5 acceptance of a relinquishment of licensure, stipulation,  
6 consent order, or other settlement, offered in response to or  
7 in anticipation of the filing of charges against the license,  
8 shall be construed as action against the license.

9 (g) The application shall require the applicant and  
10 its principals to provide fingerprints in accordance with part  
11 I of this chapter.

12 (h) The application shall state the name and license  
13 number of the funeral establishment, cemetery company, direct  
14 disposal establishment, or monument establishment, under whose  
15 license the preneed application is made.

16 (i) The application shall state the types of preneed  
17 contracts proposed to be written.

18 (j) The application shall disclose the existence of  
19 all preneed contracts for service or merchandise entered into  
20 by the applicant, or by any other entity under common control  
21 with the applicant, without or prior to authorization under  
22 this section or predecessors to this section. As to each such  
23 contract the applicant shall disclose the name and address of  
24 the contract purchaser, the status of the contract, and what  
25 steps or measures the applicant has taken to ensure  
26 performance of unfulfilled contracts, setting forth the  
27 treatment and status of funds received from the customer in  
28 regard to the contract, and stating the name and address of  
29 any institution where such funds are deposited and the number  
30 used by the institution to identify the account. With respect  
31 to contracts entered into before January 1, 1983, an

1 application to issue or renew a preneed license may not be  
2 denied solely on the basis of such disclosure. The purchaser  
3 of any such contract may not be required to liquidate the  
4 account if such account was established before July 1, 1965.  
5 Information disclosed may be used by the licensing authority  
6 to notify the contract purchaser and the institution in which  
7 such funds are deposited should the holder of a preneed be  
8 unable to fulfill the requirements of the contract.

9 (k) The application shall require the applicant to  
10 demonstrate that applicant complies and will comply with all  
11 requirements for preneed contract licensure under this  
12 chapter.

13 (l) The application may require any other information  
14 considered necessary by the department or board to meet its  
15 responsibilities under this chapter.

16 (m) The application shall be sworn to and signed by  
17 the applicant if a natural person, or by the president of an  
18 applicant that is not a natural person.

19 (n) The application shall be accompanied by a  
20 nonrefundable fee as determined by licensing authority rule  
21 but not to exceed \$500.

22 (2) ACTION CONCERNING APPLICATIONS.--A duly completed  
23 application for licensure under this section, accompanied by  
24 the required fees, shall be approved and license issued, if  
25 the licensing authority determines that the following  
26 conditions are met:

27 (a) The application is made by a funeral  
28 establishment, cemetery company, direct disposal  
29 establishment, or monument establishment, or on behalf of one  
30 of the preceding licensees by its agent in the case of a  
31

1 corporate entity, licensed and in good standing under this  
2 chapter.

3 (b) Applicant meets net worth requirements specified  
4 by rule of the licensing authority.

5 (c) Applicant has and will have the ability to  
6 discharge her or his liabilities as they become due in the  
7 normal course of business, and has and will have sufficient  
8 funds available during the calendar year to perform her or his  
9 obligations under her or his contracts.

10 (d) If the applicant or any entity under common  
11 control with the applicant has entered into preneed contracts  
12 prior to being authorized to do so under the laws of this  
13 state:

14 1. The licensing authority determines that adequate  
15 provision has been made to ensure the performance of such  
16 contracts.

17 2. The licensing authority determines that the  
18 improper sale of such preneed contracts prior to authorization  
19 under this chapter does not indicate, under the facts of the  
20 particular application in issue, that applicant has a  
21 disregard of the laws of this state such as would expose the  
22 public to unreasonable risk if the applicant were issued a  
23 preneed license.

24 3. Nothing in this section shall imply any  
25 authorization to enter into preneed contracts without  
26 authorization under this chapter.

27 (e) Neither applicant nor applicant's principals have  
28 a demonstrated history of conducting their business affairs to  
29 the detriment of the public.

30 (f) Applicant and applicant's principals are of good  
31 character and have no demonstrated history of lack of

1 trustworthiness or integrity in business or professional  
2 matters.

3 (g) The applicant does and will comply with all other  
4 requirements of this chapter relating to preneed licensure.

5 (3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.--It  
6 is the policy of this state to encourage competition for the  
7 public benefit in the preneed contract business by, among  
8 other means, the entry of new licensees into that business. To  
9 facilitate issuance of licenses concerning applications judged  
10 by the licensing authority to be borderline as to  
11 qualification for licensure, the licensing authority may issue  
12 a new license under this section on a probationary basis,  
13 subject to conditions specified by the licensing authority on  
14 a case-by-case basis, which conditions may impose special  
15 monitoring, reporting, and restrictions on operations for up  
16 to the first 12 months of licensure, to ensure the licensee's  
17 responsibleness, competency, financial stability, and  
18 compliance with this chapter. Provided, no such probationary  
19 license shall be issued unless the licensing authority  
20 determines that issuance would not pose an unreasonable risk  
21 to the public, and the licensing authority must within 12  
22 months after issuance of the license either remove the  
23 probationary status or determine that the licensee is not  
24 qualified for licensure under this chapter and institute  
25 proceedings for revocation of licensure.

26 (4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.--

27 (a) Each licensee under this section must provide  
28 notice as required by rule prior to any change in control of  
29 the licensee. Any such change is subject to disapproval or to  
30 reasonable conditions imposed by the licensing authority, for  
31 the protection of the public to ensure compliance with this

1 chapter, based upon criteria established by rule, which  
2 criteria shall promote the purposes of this part in protecting  
3 the consumer.

4 (b) The licensing authority may authorize the transfer  
5 of a preneed license and establish by rule a fee for the  
6 transfer in an amount not to exceed \$500. Upon receipt of an  
7 application for transfer, the executive director may grant a  
8 temporary preneed license to the proposed transferee, based  
9 upon criteria established by the licensing authority by rule,  
10 which criteria shall promote the purposes of this chapter in  
11 protecting the consumer. Such a temporary preneed license  
12 shall expire at the conclusion of the next regular meeting of  
13 the board unless renewed by the board. The licensing authority  
14 may by rule establish forms and procedures for the  
15 implementation of this paragraph.

16 (5) RENEWAL OF LICENSES.--

17 (a) A preneed license shall expire annually on June 1,  
18 unless renewed, or at such other time or times as may be  
19 provided by rule. The application for renewal of the license  
20 shall be on forms prescribed by rule and shall be accompanied  
21 a renewal fee as specified in paragraph (c).

22 (b) Within 3 months after the end of its fiscal  
23 period, or within an extension of time therefore, as the  
24 department for good cause may grant, the licensee shall file  
25 with the department a full and true statement of her or his  
26 financial condition, transactions, and affairs, prepared on a  
27 basis as adopted by rule, as of the end of the preceding  
28 fiscal period or at such other time or times as may be  
29 required by rule, together with such other information and  
30 data which may be required by rule. To facilitate uniformity  
31

1 in financial statements and to facilitate department analysis,  
2 there may be adopted by rule a form for financial statements.

3 (c) Each annual application for renewal of a preneed  
4 license shall be accompanied by the appropriate fee as  
5 follows:

6 1. For a preneed licensee with no preneed contract  
7 sales during the immediately preceding year.....\$ 300.

8 2. For a preneed licensee with at least 1 but fewer  
9 than 50 preneed contract sales during the immediately  
10 preceding year.....\$400.

11 3. For a preneed licensee with at least 50 but fewer  
12 than 250 preneed contract sales during the immediately  
13 preceding year.....\$500.

14 4. For a preneed licensee with at least 250 but fewer  
15 than 1,000 preneed contract sales during the immediately  
16 preceding year.....\$850.

17 5. For a preneed licensee with at least 1,000 but  
18 fewer than 2,500 preneed contract sales during the immediately  
19 preceding ear.....\$1,500.

20 6. For a preneed licensee with at least 2,500 but  
21 fewer than 5,000 preneed contract sales during the immediately  
22 preceding year.....\$2,500.

23 7. For a preneed licensee with at least 5,000 but  
24 fewer than 15,000 preneed contract sales during the  
25 immediately preceding year.....\$6,000.

26 8. For a preneed licensee with at least 15,000 but  
27 fewer than 30,000 preneed contract sales during the  
28 immediately preceding year.....\$12,500.

29 9. For a preneed licensee with 30,000 preneed contract  
30 sales or more during the immediately preceding year...\$18,500.

31

1       (d) An application for renewal shall disclose the  
2 existence of all preneed contracts for service or merchandise  
3 funded by any method other than a method permitted by this  
4 chapter, which contracts are known to the applicant and were  
5 entered into by the applicant, or any other entity under  
6 common control with the applicant, during the annual license  
7 period then ending. Such disclosure shall include the name and  
8 address of the contract purchaser, the name and address of the  
9 institution where such funds are deposited, and the number  
10 used by the institution to identify the account.

11       (e) In addition to any other penalty that may be  
12 provided for under this chapter, there may be levied a late  
13 fee as determined by licensing authority rule but not to  
14 exceed \$50 a day for each day the preneed licensee fails to  
15 file its annual statement, and there may be levied a late fee  
16 as determined by licensing authority rule but not to exceed  
17 \$50 a day for each day the preneed licensee fails to file the  
18 statement of activities of the trust. Upon notice to the  
19 preneed licensee by the department that the preneed licensee  
20 has failed to file the annual statement or the statement of  
21 activities of the trust, the preneed licensee's authority to  
22 sell preneed contracts shall cease while such default  
23 continues.

24       (6) QUARTERLY PAYMENTS.--In addition to other amounts  
25 required to be paid by this section, each preneed licensee  
26 shall pay to the Regulatory Trust Fund an amount established  
27 by rule not to exceed \$10 for each preneed contract entered  
28 into. This amount must be paid within 60 days after the end of  
29 each quarter. These funds must be used to defray the cost of  
30 in administering the provisions of this part.

31       (7) BRANCH OPERATIONS AND LICENSURE.--



1       (a) Any person or entity that is part of a common  
2 business enterprise that has a preneed license issued pursuant  
3 to this section and desires to operate under a name other than  
4 that of the common business enterprise, may submit an  
5 application on a form adopted by rule to become a branch  
6 licensee. The application shall be accompanied by an  
7 application fee as determined by licensing authority rule but  
8 not to exceed \$300.

9       (b) Upon a determination that such applicant qualifies  
10 to sell preneed contracts under this part except for the  
11 requirements of paragraph (2)(c), and if the preneed licensee  
12 meets the requirements of such paragraph and is in compliance  
13 with all requirements of this part regarding its preneed  
14 license and operations thereunder, a branch license shall be  
15 issued.

16       (c) Branch licenses shall be renewed annually by  
17 payment of a renewal fee set by licensing authority rule and  
18 not to exceed \$300. Branch licenses may be renewed only so  
19 long as the preneed license of the sponsoring preneed licensee  
20 remains in good standing.

21       (d) Violations of this part by the branch shall be  
22 deemed to be violations of this part by its sponsoring preneed  
23 licensee, unless the licensing authority determines that  
24 extenuating circumstances indicate that it would be unjust to  
25 attribute the branch's misconduct to the sponsoring preneed  
26 licensee. Preneed sales of the branch shall be deemed to be  
27 sales of the sponsoring licensee for purposes of renewal fees  
28 and trust requirements under this chapter.

29       (e) The sponsoring preneed licensee shall be  
30 responsible for performance of preneed contracts entered into  
31

1 by its branches if the branch does not timely fulfill any such  
2 contract.

3 (8) ANNUAL TRUST REPORTS.--On or before April 1 of  
4 each year, the preneed licensee shall file in the form  
5 prescribed by rule a full and true statement as to the  
6 activities of any trust established by it pursuant to this  
7 part for the preceding calendar year.

8 (9) DEPOSIT OF FUNDS.--All sums collected under this  
9 section shall be deposited to the credit of the Regulatory  
10 Trust Fund.

11 Section 103. Section 497.409, Florida Statutes, is  
12 renumbered as section 497.454, Florida Statutes, and amended  
13 to read:

14 497.454 ~~497.409~~ Approval of preneed contract and  
15 related forms.--

16 (1) Preneed contract forms and related forms shall be  
17 filed with and approved by the licensing authority prior to  
18 use, pursuant to procedures specified by rule ~~board~~. The  
19 licensing authority ~~board~~ may not approve any preneed contract  
20 form that does not provide for sequential prenumbering  
21 thereon.

22 (2) A form filed for approval under this section shall  
23 be approved unless it is determined that it:

24 (a) Is in any respect in violation of, or does not  
25 comply with, this chapter.

26 (b) Contains, or incorporates by reference any  
27 inconsistent, ambiguous, or misleading clauses, or exceptions  
28 and conditions which deceptively affect the benefits  
29 purportedly provided to the customer in the general terms of  
30 the contract.

31

1        (c) Has any title, heading, or other indication of its  
2 contents which is misleading.

3        (d) Is printed or otherwise reproduced in such manner  
4 as to render any material provision substantially illegible,  
5 or contains variations in print size which de-emphasize  
6 provisions which limit or restrict the customers rights under  
7 the contract.

8        (e) Contains provisions that are unfair or inequitable  
9 or contrary to the public policy of this state or that  
10 encourage misrepresentation.

11        (f) Does not provide for the specification in  
12 reasonable detail of the type, size, and design of merchandise  
13 and the description of service to be delivered or performed.

14        (3)(2) Specific disclosure regarding the preneed  
15 licensee's certificateholder's ability to select either trust  
16 funding or the financial responsibility alternative as set  
17 forth in s. 497.461 ~~497.423~~ or s. ~~497.425~~ in connection with  
18 the receipt of preneed contract proceeds is required in the  
19 preneed contract.

20        Section 104. Section 497.411, Florida Statutes, is  
21 renumbered as section 497.455, Florida Statutes, and amended  
22 to read:

23        497.455 ~~497.411~~ Nonconforming contracts.--Any preneed  
24 contract that requires the moneys paid to the seller or  
25 trustee to be placed in trust and fails to comply with s.  
26 497.458 ~~497.417~~ shall comply with and be construed under s.  
27 497.464 ~~497.429~~.

28        Section 105. Section 497.413, Florida Statutes, is  
29 renumbered as section 497.456, Florida Statutes, and amended  
30 to read:

31

1           497.456 ~~497.413~~ Preneed Funeral Contract Consumer  
2 Protection Trust Fund.--

3           (1) There is hereby created in the department the  
4 Preneed Funeral Contract Consumer Protection Trust Fund to be  
5 administered and regulated by the licensing authority ~~board~~.

6           (2) Within 60 days after the end of each calendar  
7 quarter, for each preneed contract written during the quarter  
8 and not canceled within 30 days after the date of the  
9 execution of the contract, each preneed licensee  
10 ~~certificateholder~~, whether funding preneed contracts by the  
11 sale of insurance or by establishing a trust pursuant to s.  
12 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~, shall remit the  
13 sum of \$2.50 for each preneed contract having a purchase price  
14 of \$1,500 or less, and the sum of \$5 for each preneed contract  
15 having a purchase price in excess of \$1,500; and each preneed  
16 licensee ~~certificateholder~~ utilizing s. 497.461 or s. 497.462  
17 ~~497.423~~ or s. ~~497.425~~ shall remit the sum of \$5 for each  
18 preneed contract having a purchase price of \$1,500 or less,  
19 and the sum of \$10 for each preneed contract having a purchase  
20 price in excess of \$1,500.

21           (3) In addition to the amounts specified in subsection  
22 (2), each remittance shall contain such other additional  
23 information as needed by the licensing authority ~~board~~ to  
24 carry out its responsibilities under this chapter and as  
25 prescribed by rule ~~of the board~~.

26           (4) All funds received by the licensing authority  
27 ~~board or the department~~ pursuant to this section shall be  
28 deposited into the Preneed Funeral Contract Consumer  
29 Protection Trust Fund.

30           (5) The amounts remitted for deposit into the Preneed  
31 Funeral Contract Consumer Protection Trust Fund shall not be

1 | deemed proceeds from the sale of a preneed contract within the  
2 | meaning of this chapter.

3 |         (6) Upon the commencement of a delinquency proceeding  
4 | pursuant to this chapter against a preneed licensee  
5 | ~~certificateholder~~, the licensing authority board may use up to  
6 | 50 percent of the balance of the trust fund not already  
7 | committed to a prior delinquency proceeding solely for the  
8 | purpose of providing restitution to preneed contract  
9 | purchasers and their estates due to a preneed licensee's  
10 | ~~certificateholder's~~ failure to provide the benefits of a  
11 | preneed contract or failure to refund the appropriate  
12 | principal amount by reason of cancellation thereof. The  
13 | balance of the trust fund shall be determined as of the date  
14 | of the delinquency proceeding.

15 |         (7) In any situation in which a delinquency proceeding  
16 | has not commenced, the licensing authority board may, in its  
17 | discretion, use the trust fund for the purpose of providing  
18 | restitution to any consumer, owner, or beneficiary of a  
19 | preneed contract or similar regulated arrangement under this  
20 | chapter entered into after June 30, 1977. If, after  
21 | investigation, the licensing authority board determines that a  
22 | preneed licensee certificateholder has breached a preneed  
23 | contract by failing to provide benefits or an appropriate  
24 | refund, or that a provider, who is a former preneed licensee  
25 | ~~certificateholder~~ or an establishment which has been regulated  
26 | under this chapter ~~or chapter 470~~, has sold a preneed contract  
27 | and has failed to fulfill the arrangement or provide the  
28 | appropriate refund, and such preneed licensee  
29 | ~~certificateholder~~ or provider does not provide or does not  
30 | possess adequate funds to provide appropriate refunds,  
31 | payments from the trust fund may be authorized by the

1 licensing authority board. In considering whether payments  
2 shall be made or when considering who will be responsible for  
3 such payments, the licensing authority board shall consider  
4 whether the preneed licensee certificateholder or previous  
5 provider has been acquired by a successor who is or should be  
6 responsible for the liabilities of the defaulting entity. With  
7 respect to preneed contracts funded by life insurance,  
8 payments from the fund shall be made: if the insurer is  
9 insolvent, but only to the extent that funds are not available  
10 through the liquidation proceeding of the insurer; or if the  
11 preneed licensee certificateholder is unable to perform under  
12 the contract and the insurance proceeds are not sufficient to  
13 cover the cost of the merchandise and services contracted for.  
14 In no event shall the licensing authority board approve  
15 payments in excess of the insurance policy limits unless it  
16 determines that at the time of sale of the preneed contract,  
17 the insurance policy would have paid for the services and  
18 merchandise contracted for. Such monetary relief shall be in  
19 an amount as the licensing authority board may determine and  
20 shall be payable in such manner and upon such conditions and  
21 terms as the licensing authority board may prescribe. However,  
22 with respect to preneed contracts to be funded pursuant to s.  
23 497.458, s. 497.459, s. 497.461, or s. 497.462 ~~s. 497.417, s.~~  
24 ~~497.419, s. 497.423, or s. 497.425,~~ any restitution made  
25 pursuant to this subsection shall not exceed, as to any single  
26 contract or arrangement, the lesser of the gross amount paid  
27 under the contract or 4 percent of the uncommitted assets of  
28 the trust fund. With respect to preneed contracts funded by  
29 life insurance policies, any restitution shall not exceed, as  
30 to any single contract or arrangement, the lesser of the face  
31 amount of the policy, the actual cost of the arrangement

1 | contracted for, or 4 percent of the uncommitted assets of the  
2 | trust fund. The total of all restitutions made to all  
3 | applicants under this subsection in a single fiscal year shall  
4 | not exceed the greater of 30 percent of the uncommitted assets  
5 | of the trust fund as of the end of the most recent fiscal year  
6 | or \$120,000. The department may use moneys in the trust fund  
7 | to contract with independent vendors pursuant to chapter 287  
8 | to administer the requirements of this subsection.

9 |         (8) All moneys deposited in the Preneed Funeral  
10 | Contract Consumer Protection Trust Fund together with all  
11 | accumulated income shall be used only for the purposes  
12 | expressed authorized by this chapter ~~in this section~~ and shall  
13 | not be subject to any liens, charges, judgments, garnishments,  
14 | or other creditor's claims against the preneed licensee  
15 | ~~certificateholder~~, any trustee utilized by the preneed  
16 | licensee ~~certificateholder~~, any company providing a surety  
17 | bond as specified in this chapter, or any purchaser of a  
18 | preneed contract. No preneed contract purchaser shall have any  
19 | vested rights in the trust fund.

20 |         (9) If restitution is paid to a preneed contract  
21 | purchaser or her or his estate in accordance with this  
22 | section, the amount of restitution paid shall not exceed the  
23 | gross amount of the principal payments made by the purchaser  
24 | on its contract.

25 |         (10) Whenever the licensing authority ~~board~~ makes  
26 | payments from the trust fund to a purchaser or its estate, the  
27 | licensing authority ~~board~~ shall be subrogated to the  
28 | purchaser's rights under the contract, and any amounts so  
29 | collected by the licensing authority ~~board~~ shall be deposited  
30 | in the Preneed Funeral Contract Consumer Protection Trust  
31 | Fund.

1           (11) No person shall make, publish, disseminate,  
2 circulate, or place before the public, or cause, directly or  
3 indirectly, to be made, published, disseminated, circulated,  
4 or placed before the public, in a newspaper, magazine, or  
5 other publication, or in the form of a notice, circular,  
6 pamphlet, letter, or poster, or over any radio station or  
7 television station, or in any other way, any advertisement,  
8 announcement, or statement which uses the existence of the  
9 Preneed Funeral Contract Consumer Protection Trust Fund for  
10 the purpose of sales, solicitation, or inducement to purchase  
11 any form of preneed contract covered under this chapter.

12           (12) Notwithstanding the fee structure in subsection  
13 (2), the department shall review the status of the trust fund  
14 annually, and if it determines that the uncommitted trust fund  
15 balance exceeds \$1 million, the licensing authority ~~board~~ may  
16 by rule lower the required payments to the trust fund to an  
17 amount not less than \$1 per preneed contract.

18           (13) Regarding the Preneed Funeral Contract Consumer  
19 Protection Trust Fund, the licensing authority shall have  
20 authority to adopt rules for the implementation of this  
21 section, including:

22           (a) Forms to be used in filing claims against the  
23 trust fund.

24           (b) Procedures to be used for filing claims against  
25 the trust fund.

26           (c) Information and supporting documentation that must  
27 be provided by claimants to support claims against the trust  
28 fund.

29           (d) Procedures for the investigation of claims against  
30 the trust fund.

31



1           (e) Criteria to be used in determining whether a claim  
2 is allowable and in what amount.

3           (f) Forms and procedures to be used by preneed  
4 licensees in making remittances to the trust fund required by  
5 this chapter.

6           Section 106. Section 497.415, Florida Statutes, is  
7 renumbered as section 497.457, Florida Statutes, and amended  
8 to read:

9           497.457 ~~497.415~~ Ownership of proceeds received on  
10 contracts.--

11           (1) Subject to the provisions of this chapter, all  
12 funds paid pursuant to a preneed contract by a purchaser to a  
13 preneed licensee ~~certificateholder~~ shall be the sole property  
14 of, and within the full dominion and control of, said preneed  
15 licensee ~~certificateholder~~.

16           (2) Subject to the provisions of this chapter, the  
17 relationship between the purchaser of a preneed contract and a  
18 preneed licensee ~~certificateholder~~ shall be deemed for all  
19 purposes as a debtor-creditor relationship.

20           Section 107. Section 497.417, Florida Statutes, is  
21 renumbered as section 497.458, Florida Statutes, and amended  
22 to read:

23           497.458 ~~497.417~~ Disposition of proceeds received on  
24 contracts.--

25           (1)(a) Any person who is paid, collects, or receives  
26 funds under a preneed contract for funeral services or  
27 merchandise or burial services or merchandise shall deposit an  
28 amount at least equal to the sum of 70 percent of the purchase  
29 price collected for all services sold and facilities rented;  
30 100 percent of the purchase price collected for all cash  
31 advance items sold; and 30 percent of the purchase price

1 collected or 110 percent of the wholesale cost, whichever is  
2 greater, for each item of merchandise sold.

3 (b) The method of determining wholesale cost shall be  
4 established by rule of the licensing authority board and shall  
5 be based upon the preneed licensee's certificateholder's  
6 stated wholesale cost for the 12-month period beginning July 1  
7 during which the initial deposit to the preneed trust fund for  
8 the preneed contract is made.

9 (c) Such deposits shall be made within 30 days after  
10 the end of the calendar month in which payment is received,  
11 under the terms of a revocable trust instrument entered into  
12 with a trust company operating pursuant to chapter 660, with a  
13 national or state bank holding trust powers, or with a federal  
14 or state savings and loan association holding trust powers.

15 (d) The trustee shall take title to the property  
16 conveyed to the trust for the purpose of investing,  
17 protecting, and conserving it for the preneed licensee  
18 ~~certificateholder~~; collecting income; and distributing the  
19 principal and income as prescribed in this chapter. The  
20 preneed licensee certificateholder is prohibited from sharing  
21 in the discharge of these responsibilities, except that the  
22 preneed licensee certificateholder may request the trustee to  
23 invest in tax-free investments and may appoint an adviser to  
24 the trustee. The licensing authority may adopt rules limiting  
25 or otherwise specifying the degree to which the trustee may  
26 rely on the investment advice of an investment adviser  
27 appointed by the preneed licensee. The licensing authority may  
28 adopt rules limiting or prohibiting payment of fees by the  
29 trust to investment advisors that are employees or principals  
30 of the licensee to whom the trust fund relates.

31

1           (e) The trust agreement shall be submitted to the  
2 licensing authority ~~board~~ for approval and filing prior to  
3 use. The licensing authority may adopt rules specifying  
4 procedures and establishing criteria and requirements not  
5 inconsistent with this chapter for approval of trusts  
6 submitted under this paragraph.

7           (f) The deposited funds shall be held in trust, both  
8 as to principal and income earned thereon, and shall remain  
9 intact, except that the cost of the operation of the trust or  
10 trust account authorized by this section may be deducted from  
11 the income earned thereon.

12           (g) The preneed contract purchaser shall have no  
13 interest whatsoever in, or power whatsoever over, funds  
14 deposited in trust pursuant to this section.

15           (h) In no event may said funds be loaned to a preneed  
16 licensee ~~certificateholder~~, an affiliate of a preneed licensee  
17 ~~certificateholder~~, or any person directly or indirectly  
18 engaged in the burial, funeral home, or cemetery business.

19           (i) ~~Furthermore,~~ The preneed licensee's  
20 ~~certificateholder's~~ interest in said trust shall not be  
21 pledged as collateral for any loans, debts, or liabilities of  
22 the preneed licensee ~~certificateholder~~ and shall not be  
23 transferred to any person without the prior written approval  
24 from the department and the trustee which shall not be  
25 unreasonably withheld.

26           (j) Even though the preneed licensee ~~certificateholder~~  
27 shall be deemed and treated as the settlor and beneficiary of  
28 said trust for all purposes, all of said trust funds are  
29 exempt from all claims of creditors of the preneed licensee  
30 ~~certificateholder~~ except as to the claims of the preneed  
31

1 contract purchaser, her or his representative, the board, or  
2 the department.

3 (2) Except as provided in s. 497.283 ~~497.337~~, the  
4 delivery of funeral merchandise before the death of the person  
5 for whom it is purchased does not constitute performance or  
6 fulfillment, either wholly or in part, of any preneed contract  
7 entered into after July 1, 1977.

8 (3)(a) The trustee shall make regular valuations of  
9 assets it holds in trust and provide a report of such  
10 valuations to the preneed licensee ~~certificateholder~~ at least  
11 quarterly.

12 (b) Any person who withdraws appreciation in the value  
13 of trust, other than the pro rata portion of such appreciation  
14 which may be withdrawn upon the death of a contract  
15 beneficiary or upon cancellation of a preneed contract, shall  
16 be required to make additional deposits from her or his own  
17 funds to restore the aggregate value of assets to the value of  
18 funds deposited in trust, but excluding from the funds  
19 deposited those funds paid out upon preneed contracts which  
20 such person has fully performed or which have been otherwise  
21 withdrawn, as provided for in this chapter.

22 (c) The preneed licensee ~~certificateholder~~ shall be  
23 liable to third parties to the extent that income from the  
24 trust is not sufficient to pay the expenses of the trust.

25 (4)(a) Trust funds shall not be invested in or loaned  
26 to or for the benefit of any business venture in which the  
27 preneed licensee, its principals, or persons related by blood  
28 or marriage to the licensee or its principals, have a direct  
29 or indirect interest, without the prior approval of the  
30 licensing authority.

31

1           (b) Trust funds shall not be loaned to or for the  
2 benefit of the preneed licensee, its principals, or persons  
3 related by blood or marriage to the licensee or its  
4 principals, without the prior approval of the licensing  
5 authority.

6           (c) No approval of such loans or investments shall be  
7 given unless it be shown by clear and convincing evidence that  
8 such loan or investment would be in the interest of the  
9 preneed contract holders whose contracts are secured by the  
10 trust funds.

11           (d) The licensing authority may adopt rules exempting  
12 from the prohibition of this subsection, pursuant to criteria  
13 established in such rule, the investment of trust funds in  
14 investments, such as widely and publicly traded stocks and  
15 bonds, notwithstanding that the licensee, its principals, or  
16 persons related by blood or marriage to the licensee or its  
17 principals have an interest by investment in the same entity,  
18 where neither the licensee, its principals, or persons related  
19 by blood or marriage to the licensee or its principals, have  
20 the ability to control the entity invested in, and it would be  
21 in the interest of the preneed contract holders whose  
22 contracts are secured by the trust funds, to allow the  
23 investment.

24           ~~(5)(4)~~ The trustee of the trust established pursuant  
25 to this section shall only have the power to:

26           (a) Invest in investments as prescribed in s. 215.47  
27 and exercise the powers set forth in part IV of chapter 737,  
28 provided that the licensing authority ~~board~~ may by order  
29 require the trustee to liquidate or dispose of any investment  
30 within 30 days after such order, or within such other times as  
31 the order may direct. The licensing authority may issue such

1 order if it determines that the investment violates any  
2 provision of this chapter or is not in the best interests of  
3 the preneed contract holders whose contracts are secured by  
4 the trust funds.

5 (b) Borrow money up to an aggregate amount of 10  
6 percent of trust assets, at interest rates then prevailing  
7 from any individual, bank, insurance company, or other source,  
8 irrespective of whether any such person is then acting as  
9 trustee, and to create security interests in no more than 10  
10 percent of trust assets by mortgage, pledge, or otherwise,  
11 upon the terms and conditions and for such purposes as the  
12 trustee may deem advisable.

13 (c) Commingle the property of the trust with the  
14 property of any other trust established pursuant to this  
15 chapter and make corresponding allocations and divisions of  
16 assets, liabilities, income, and expenses.

17 ~~(6)(5)~~ The preneed licensee ~~certificateholder~~, at her  
18 or his election, shall have the right and power, at any time,  
19 to revest in it title to the trust assets, or its pro rata  
20 share thereof, provided it has complied with s. 497.461.~~+~~

21 ~~(a) Section 497.423;~~

22 ~~(b) Contracts written prior to July 1, 2001, under s.~~  
23 ~~497.425; or~~

24 ~~(c) Contracts written prior to December 31, 2004,~~  
25 ~~under s. 497.425 for any certificateholder authorized to do~~  
26 ~~business in this state that has total bonded liability~~  
27 ~~exceeding \$100 million as of July 1, 2001.~~

28 ~~(7)(6)~~ Notwithstanding anything contained in this  
29 chapter to the contrary, the preneed licensee  
30 ~~certificateholder~~, via its election to sell or offer for sale  
31 preneed contracts subject to this section, shall represent and

1 warrant, and is hereby deemed to have done such, to all  
2 federal and Florida taxing authorities, as well as to all  
3 potential and actual preneed contract purchasers, that:

4 (a) Section 497.461 ~~497.423~~ is a viable option  
5 available to it at any and all relevant times;

6 (b) Section 497.462 ~~497.425~~ is a viable option  
7 available to it at any and all relevant times for contracts  
8 written prior to July 1, 2001, for funds not held in trust as  
9 of July 1, 2001; or

10 (c) For any preneed licensee ~~certificateholder~~  
11 authorized to do business in this state that has total bonded  
12 liability exceeding \$100 million as of July 1, 2001, s.  
13 497.462 ~~497.425~~ is a viable option to it at any and all  
14 relevant times for contracts written prior to December 31,  
15 2004, for funds not held in trust as of July 1, 2001.

16 ~~(8)(7)~~ If in the preneed licensee's  
17 ~~certificateholder's~~ opinion it does not have the ability to  
18 select the financial responsibility alternative of s. 497.461  
19 ~~or s. 497.462~~ ~~497.423~~ ~~or s. 497.425~~, then the preneed license  
20 ~~it~~ shall not have the right to sell or solicit preneed  
21 ~~contracts pursuant to this section.~~

22 (9) The amounts required to be placed in trust by this  
23 section for contracts previously entered into shall be as  
24 follows:

25 (a) For contracts entered into before October 1, 1993,  
26 the trust amounts as amended by s. 6, chapter 83-816, Laws of  
27 Florida, shall apply.

28 (b) For contracts entered into on or after October 1,  
29 1993, the trust amounts as amended by s. 98, chapter 93-399,  
30 Laws of Florida shall apply.

31

1           ~~(8) This section, as amended by s. 6, chapter 83-316,~~  
2 ~~Laws of Florida, applies to preneed contracts entered into~~  
3 ~~before October 1, 1993, and as amended by s. 98, chapter~~  
4 ~~93-399, Laws of Florida, applies to preneed contracts entered~~  
5 ~~into on or after October 1, 1993.~~

6           Section 108. Section 497.419, Florida Statutes, is  
7 renumbered as section 497.459, Florida Statutes, and amended  
8 to read:

9           497.459 ~~497.419~~ Cancellation of, or default on,  
10 preneed contracts.--

11           (1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.-- A  
12 purchaser, by providing written notice to the preneed licensee  
13 ~~certificateholder~~, may cancel a preneed contract within 30  
14 days of the date that the contract was executed provided that  
15 the burial rights, merchandise and services have not yet been  
16 used. Upon providing such notice, the purchaser shall be  
17 entitled to a complete refund of the amount paid, except for  
18 the amount allocable to any burial rights, merchandise or  
19 services that have been used, and shall be released from all  
20 obligations under the contract. This subsection shall apply to  
21 all items that are purchased as part of a preneed contract,  
22 including burial rights, regardless of whether such burial  
23 rights are purchased as part of a preneed contract or  
24 purchased separately.

25           (2) CANCELLATION BY PURCHASER AFTER 30 DAYS.--

26           (a) A purchaser, by providing written notice to the  
27 preneed licensee ~~certificateholder~~, may cancel the services,  
28 facilities, and cash advance items portions of a preneed  
29 contract at any time, and shall be entitled to a full refund  
30 of the purchase price allocable to such items. Any accumulated  
31



1 earnings allocable to such preneed contract shall be paid to  
2 the preneed licensee ~~certificateholder~~ upon such cancellation.

3 ~~(b)(3)~~ Subject to subparagraphs 1. and 2., ~~paragraphs~~  
4 ~~(a) and (b)~~ a purchaser may cancel the merchandise portion of  
5 a preneed contract by providing written notice to the preneed  
6 licensee ~~certificateholder~~, and shall be entitled to a full  
7 refund of the purchase price allocable to the specific item or  
8 items of merchandise that the preneed licensee  
9 ~~certificateholder~~ cannot or does not deliver in accordance  
10 with this subsection.

11 1.(a) Such refund shall be provided only if at the  
12 time that the preneed licensee ~~certificateholder~~ is required  
13 to fulfill its obligations under the preneed contract the  
14 preneed licensee ~~certificateholder~~ does not or cannot comply  
15 with the terms of the contract by actually delivering the  
16 merchandise, within a reasonable time, depending upon the  
17 nature of the merchandise purchased, after having been  
18 requested to do so.

19 2.(b) In order to fulfill its obligations under the  
20 preneed contract, a preneed licensee ~~certificateholder~~ may  
21 elect either or both of the following options:

22 a.1. Subcontract with a person located outside the  
23 preneed licensee's ~~certificateholder's~~ market area to provide  
24 the merchandise; or

25 b.2. Provide other items of equal or greater quality.

26 (3)(4) REQUIRED DISCLOSURE.--Each preneed licensee  
27 ~~certificateholder~~ shall provide in conspicuous type in its  
28 contract that the contract purchaser may cancel the contract  
29 and receive a full refund within 30 days of the date of  
30 execution of the contract. The failure to make such provision  
31

1 shall not impair the contract purchaser's right to  
2 cancellation and refund as provided in this section.

3 ~~(4)(5)~~ BREACH OF CONTRACT BY SELLER.--Upon breach of  
4 contract or failure of the preneed licensee ~~certificateholder~~  
5 to provide funeral merchandise or services under a preneed  
6 contract, the contract purchaser shall be entitled to a refund  
7 of all money paid on the contract. Such refund shall be made  
8 within 30 days after receipt by the preneed licensee  
9 ~~certificateholder~~ of the contract purchaser's written request  
10 for refund.

11 ~~(5)(6)~~ DEFAULT BY PURCHASER.--If a purchaser is 90  
12 days past due in making payments on a preneed contract, the  
13 contract shall be considered to be in default, and the preneed  
14 licensee ~~certificateholder~~ shall be entitled to cancel the  
15 contract, withdraw all funds in trust allocable to merchandise  
16 items, and retain such funds as liquidated damages. Upon  
17 making such withdrawal, the preneed licensee ~~certificateholder~~  
18 shall return all funds in trust allocable to services,  
19 facilities, or cash advance items to the purchaser, provided  
20 that the preneed licensee ~~certificateholder~~ has provided the  
21 purchaser with 30 days' written notice of its intention to  
22 exercise any of its rights under this provision. The board may  
23 by rule specify the required format and content of the notice  
24 required under this subsection and the manner in which the  
25 notice shall be sent.

26 ~~(6)(7)~~ OTHER PROVISIONS.--

27 (a) All preneed contracts are cancelable and revocable  
28 as provided in this section, provided that a preneed contract  
29 does not restrict any contract purchaser who is a qualified  
30 applicant for, or a recipient of, supplemental security  
31

1 income, temporary cash assistance, or Medicaid from making her  
2 or his contract irrevocable.

3 (b) The amounts required to be refunded by this  
4 section for contracts previously entered into shall be as  
5 follows:

6 1. For contracts entered into before October 1, 1993,  
7 the refund amounts as amended by s. 7, chapter 83-816, Laws of  
8 Florida, shall apply.

9 2. For contracts entered into on or after October 1,  
10 1993, the refund amounts as amended by s. 99, chapter 93-399,  
11 Laws of Florida, shall apply.

12 ~~(8) This section, as amended by s. 7, chapter 83-316,~~  
13 ~~Laws of Florida, applies to preneed contracts entered into~~  
14 ~~before October 1, 1993, and as amended by s. 98, chapter~~  
15 ~~93-399, Laws of Florida, applies to preneed contracts entered~~  
16 ~~into on or after October 1, 1993.~~

17 ~~(c)(9)~~ Persons who purchase merchandise or burial  
18 rights pursuant to this chapter shall have the right to sell,  
19 alienate, or otherwise transfer the merchandise or burial  
20 rights subject to and in accordance with rules adopted by the  
21 licensing authority board.

22 ~~(d)(10)~~ All refunds required to be made under this  
23 section to a purchaser who has canceled a contract must be  
24 made within 30 days after the date written notice of  
25 cancellation is received by the preneed licensee  
26 certificateholder.

27 Section 109. Section 497.421, Florida Statutes, is  
28 renumbered as section 497.460, Florida Statutes, and amended  
29 to read:

30 497.460 ~~497.421~~ Payment of funds upon death of named  
31 beneficiary.--Disbursements of funds discharging any preneed

1 contract fulfilled after September 30, 1993, shall be made by  
2 the trustee to the preneed licensee ~~certificateholder~~ upon  
3 receipt of a certified copy of the death certificate of the  
4 contract beneficiary or satisfactory evidence as established  
5 by rule of the licensing authority ~~the board~~ that the preneed  
6 contract has been performed in whole or in part. However, if  
7 the contract is only partially performed, the disbursement  
8 shall only cover that portion of the contract performed. In  
9 the event of any contract default by the contract purchaser,  
10 or in the event that the funeral merchandise or service or  
11 burial merchandise or service contracted for is not provided  
12 or is not desired by the heirs or personal representative of  
13 the contract beneficiary, the trustee shall return, within 30  
14 days after its receipt of a written request therefor, funds  
15 paid on the contract to the preneed licensee ~~certificateholder~~  
16 or to its assigns, subject to the provisions of s. 497.459  
17 ~~497.419~~.

18 Section 110. Section 497.423, Florida Statutes, is  
19 renumbered as section 497.461, Florida Statutes, and amended  
20 to read:

21 497.461 ~~497.423~~ Surety bonding ~~Evidence of financial~~  
22 ~~responsibility~~ as alternative to trust deposit.--

23 (1) In lieu of depositing funds into a trust as  
24 required by s. 497.548(1) or s. 497.464 ~~497.417(1)~~ or s.  
25 ~~497.429~~, a preneed licensee ~~certificateholder~~ may elect  
26 annually, at its discretion, to comply with this section by  
27 filing annually a written request with, and receiving annual  
28 approval from, the licensing authority ~~board~~.

29 (2) No preneed licensee ~~certificateholder~~ shall  
30 utilize this section unless it has filed annually a written  
31

1 request with, and received approval by, the licensing  
2 authority board.

3 (3) The preneed licensee ~~certificateholder~~ receiving  
4 approval from the licensing authority board to comply with  
5 this section shall maintain compliance with this section at  
6 all times during the period this election is in effect.

7 (4) The preneed licensee's ~~certificateholder's~~ request  
8 to be governed by this section shall be in the form prescribed  
9 by rule by the licensing authority board and shall be  
10 accompanied by, in addition to other information that the  
11 licensing authority board may require by rule, the surety  
12 bond, the audited financial statements, and proof of the other  
13 requirements specified in this section, all as described in  
14 this section.

15 (5) For each 12-month period, or any part thereof, in  
16 which this section is applicable, the electing preneed  
17 licensee ~~certificateholder~~ shall maintain a bond, issued by a  
18 surety company admitted to do business in this state, in an  
19 amount at least equal to the sum of:

20 (a) All amounts not currently in trust.<sup>7</sup>

21 (b) An amount equal to the total purchase price for  
22 all installed preneed contracts where the total purchase price  
23 has not been collected, excluding those amounts already in  
24 trust.<sup>7</sup>

25 (c) All amounts the preneed licensee ~~certificateholder~~  
26 intends to remove from trust if the licensing authority board  
27 approves the preneed licensee's ~~certificateholder's~~ request to  
28 comply with this section.<sup>7</sup> ~~and~~

29 (d) An amount equal to 70 percent of the total  
30 purchase price for each preneed contract the preneed licensee  
31 ~~certificateholder~~ expects to sell in the year for which the

1 ~~preneed licensee certificateholder~~ is electing to comply with  
2 this section.

3       (6) The surety bond shall be conditioned in such a  
4 manner to secure the faithful performance of all conditions of  
5 any preneed contracts for which the preneed licensee  
6 ~~certificateholder~~ was required to have covered by the amount  
7 of the bond, including refunds requested pursuant to ss.

8 497.459 and 497.460 ~~497.419 and 497.421~~. The surety bond shall

9 also guarantee the financial responsibility of such preneed  
10 licensee ~~certificateholder~~ against its default arising out of  
11 any of its preneed contracts. The terms of the surety bond  
12 shall cover liabilities arising from all moneys received by  
13 the electing preneed licensee ~~certificateholder~~ from preneed  
14 contracts for which the preneed licensee ~~certificateholder~~ was  
15 required to have covered by the amount of the bond during the  
16 time the bond is in effect, and the liability of the surety  
17 shall continue until the contracts thereunder are fulfilled.  
18 The bond shall be in favor of the state for the benefit of any  
19 person damaged as a result of purchasing a preneed contract  
20 from the preneed licensee ~~certificateholder~~. The aggregate  
21 liability of the surety to all persons for all breaches of the  
22 conditions of the bonds shall in no event exceed the amount of  
23 the bond. The per preneed contract liability shall not exceed  
24 the amount of the funds received by the preneed licensee  
25 ~~certificateholder~~ per preneed contract during the effective  
26 period in which the bond is issued. The bond shall be filed  
27 and maintained with the licensing authority ~~board~~.

28       (7)(6) The amount of the surety bond shall, upon order  
29 of the licensing authority ~~board~~, be increased if, in the  
30 licensing authority's ~~board's~~ discretion, it finds such  
31 increase to be warranted by the volume of preneed contracts

1 handled, or expected to be handled, by the preneed licensee  
2 ~~certificateholder~~.

3 (8) The surety bond shall be in a form to be approved  
4 by the licensing authority board, and the licensing authority  
5 ~~board~~ shall have the right to disapprove any bond which does  
6 not provide assurance as provided in, and required by, this  
7 section.

8 (9)(7) The bond shall be maintained unimpaired for as  
9 long as the preneed licensee ~~certificateholder~~ continues in  
10 business in this state and continues to utilize this section.  
11 Whenever the preneed licensee ~~certificateholder~~ notifies the  
12 licensing authority board that it no longer desires to be  
13 governed by this section and furnishes to the licensing  
14 authority board satisfactory proof that it has discharged or  
15 otherwise adequately provided for all of its obligations to  
16 its preneed contract purchasers covered by the bond, such as  
17 by evidence satisfactory to the licensing authority board  
18 demonstrating that s. 497.458 or s. 497.464 ~~497.417~~ or s.  
19 ~~497.429~~ has been complied with, the licensing authority board  
20 shall release the bond to the entitled parties, provided said  
21 parties acknowledge receipt of same.

22 (10)(8) No surety bond used to comply with this  
23 section shall be canceled or subject to cancellation unless at  
24 least 60 days' advance notice thereof, in writing, is filed  
25 with the licensing authority board, by the surety company. The  
26 cancellation of the bond shall not relieve the obligation of  
27 the surety company for claims arising out of contracts issued  
28 or otherwise covered before cancellation of the bond.

29 (11) In the event that notice of cancellation  
30 ~~termination~~ of the bond is filed with the licensing authority  
31 ~~board~~, the preneed licensee ~~certificateholder~~ insured

1 thereunder shall, within 30 days of the filing of the notice  
2 of termination with the licensing authority board, provide the  
3 licensing authority board with a replacement bond or with  
4 evidence which is satisfactory to the licensing authority  
5 ~~board~~ demonstrating that s. 497.458 or s. 497.464 ~~497.417 or~~  
6 ~~s. 497.429~~ has been fully complied with. If within 30 days of  
7 filing of the notice of termination with the licensing  
8 authority board no replacement bond acceptable to the  
9 licensing authority board or no evidence satisfactory to the  
10 licensing authority board demonstrating that s. 497.458 or s.  
11 497.464 ~~497.417 or s. 497.429~~ has been complied with is filed  
12 with the licensing authority board, the licensing authority  
13 ~~board~~ shall suspend the license of the preneed licensee  
14 ~~certificateholder~~ until the preneed licensee certificateholder  
15 files a replacement bond acceptable to the board or  
16 demonstrates to the satisfaction of the licensing authority  
17 ~~board~~ that it has complied with s. 497.458 or s. 497.464  
18 ~~497.417 or s. 497.429~~.

19 ~~(12)(9)~~ In lieu of the surety bond, the licensing  
20 authority board may provide by rule for other forms of  
21 security or insurance.

22 ~~(13)(10)~~ Every preneed licensee certificateholder  
23 electing to be governed by this section shall have its  
24 financial statements, submitted to the department pursuant to  
25 s. 497.453 ~~497.407~~, audited by an independent public  
26 accountant certified pursuant to chapter 473. The financial  
27 statements shall contain, in accordance with generally  
28 accepted accounting principles, for two or more consecutive  
29 annual periods, the following:

30  
31



1 (a) The certified public accountant's unqualified  
2 opinion or, in the case of a qualified opinion, a qualified  
3 opinion acceptable to the licensing authority board, and:

- 4 1. A balance sheet;
- 5 2. A statement of income and expenses; and
- 6 3. A statement of changes in financial position.

7 (b) Notes to the financial statements considered  
8 customary or necessary for full disclosure and adequate  
9 understanding of the financial statements, financial  
10 condition, and operation of the preneed licensee  
11 ~~certificateholder~~. The notes shall include a schedule, based  
12 upon statutory accounting principles, indicating that the  
13 preneed licensee ~~certificateholder~~ which has held a license  
14 ~~certificate~~ pursuant to this chapter for less than 10 years  
15 has a current ratio of no less than 3 to 1 of current assets  
16 to current liabilities and net assets of at least \$600,000 or  
17 that the preneed licensee ~~certificateholder~~ which has held a  
18 license ~~certificate~~ pursuant to this chapter for 10 years or  
19 more has a current ratio of no less than 2 to 1 of current  
20 assets to current liabilities and net assets of at least  
21 \$400,000.

22 (c) An indication that the preneed licensee  
23 ~~certificateholder~~ has sufficient funds available to perform  
24 the obligations under all its preneed contracts.

25 ~~(14)(11)~~ The licensing authority board may require  
26 that the audited financial statements be prepared on a  
27 calendar-year basis.

28 ~~(15)(12)~~ The electing preneed licensee  
29 ~~certificateholder~~ shall provide the licensing authority board  
30 interim unaudited financial statements on a quarterly basis  
31 demonstrating financial compliance with this section.

1           ~~(16)(13)~~ In lieu of subsections~~(4)-(14)(4)-(11)~~, a  
2 preneed licensee ~~certificateholder~~ with net assets of at least  
3 \$25,000 may request to comply with this section by providing a  
4 written guarantee from a qualified guaranteeing organization.  
5 If the preneed licensee ~~certificateholder~~ so elects, the  
6 preneed licensee's ~~certificateholder's~~ requests to be governed  
7 by this section shall be in the form prescribed by rule ~~the~~  
8 ~~board~~ and shall be accompanied by, in addition to other  
9 information the licensing authority ~~board~~ may require by rule,  
10 a written guarantee approved by the licensing authority ~~board~~  
11 as meeting the requirements of this section from a qualified  
12 guaranteeing organization, acceptable to the licensing  
13 authority ~~board~~, which:

14           (a) Is either a preneed licensee ~~certificateholder~~ or  
15 servicing agent.

16           (b) Is a corporation formed under the laws of this  
17 state or of another state, district, territory, or possession  
18 of the United States.

19           (c) Has been in operation for 10 or more years.

20           (d) Submits to the licensing authority ~~board~~ its  
21 annual financial statements audited by an independent public  
22 accountant certified pursuant to chapter 473. The financial  
23 statements shall contain, in accordance with generally  
24 accepted accounting principles, for two or more consecutive  
25 annual periods, the following:

26           1. The certified public accountant's unqualified  
27 opinion or, in the case of a qualified opinion, a qualified  
28 opinion acceptable to the licensing authority ~~board~~, and:

29           a. A balance sheet;  
30           b. A statement of income and expenses; and  
31           c. A statement of changes in financial position.

1           2. Notes to the financial statements considered  
2 customary or necessary for full disclosure and adequate  
3 understanding of the financial statements, financial  
4 condition, and operation of the preneed licensee  
5 ~~certificateholder~~. The notes shall include a schedule, based  
6 upon statutory accounting principles, indicating that the  
7 guaranteeing organization has a current ratio of no less than  
8 2 to 1 of current assets to current liabilities and net assets  
9 of at least \$250,000.

10           (e) Has sufficient funds available to perform the  
11 obligations under its guarantees.

12           (f) Has complied with subsections ~~(5)-(11)(5), (6),~~  
13 ~~(7), and (8)~~, except that the bond shall be maintained by the  
14 guaranteeing organization in the minimum aggregate principal  
15 amount of \$1 million.

16           (g) Has principals, including directors, officers,  
17 stockholders, employees, and agents that are of good moral  
18 character and have reputations for fair dealing in business  
19 matters, both as determined by the licensing authority ~~board~~.

20           Section 111. Section 497.425, Florida Statutes, is  
21 renumbered as section 497.462, Florida Statutes, and amended  
22 to read:

23           497.462 ~~497.425~~ Other alternatives to deposits under  
24 s. 497.458 ~~497.417~~.--

25           (1)(a) As an alternative to the requirements of s.  
26 497.458 ~~497.417~~ that relate to trust funds for contracts  
27 written prior to July 1, 2001, or that relate to trust funds  
28 for contracts written prior to December 31, 2004, by any  
29 preneed licensee ~~certificateholder~~ authorized to do business  
30 in this state that has total bonded liability exceeding \$100  
31 million as of July 1, 2001, and subject to the other

1 restrictions of this section, a preneed licensee  
2 ~~certificateholder~~ may purchase a surety bond for funds not  
3 held in trust as of July 1, 2001, in an amount not less than  
4 the aggregate value of outstanding liabilities on undelivered  
5 preneed contracts for merchandise and services. For the  
6 purpose of this section, the term "outstanding liabilities"  
7 means the gross replacement or wholesale value of the preneed  
8 merchandise and services. The bond shall be made payable to  
9 the State of Florida for the benefit of the licensing  
10 authority board and all purchasers of preneed cemetery  
11 merchandise or services. The bond must be approved by the  
12 licensing authority board.

13 (b) The amount of the bond shall be based on a report  
14 documenting the outstanding liabilities of the preneed  
15 licensee certificateholder and shall be prepared by the  
16 preneed licensee certificateholder using generally accepted  
17 accounting principles and signed by the preneed licensee's  
18 ~~certificateholder's~~ chief financial officer.

19 (c) The report shall be compiled as of the end of the  
20 preneed licensee's certificateholder's fiscal year and updated  
21 annually. The amount of the bond shall be increased or  
22 decreased as necessary to correlate with changes in the  
23 outstanding liabilities.

24 (d) If a preneed licensee certificateholder fails to  
25 maintain a bond pursuant to this section, the preneed licensee  
26 ~~certificateholder~~ shall cease the sale of preneed merchandise  
27 and services.

28 (2) Upon prior approval by the licensing authority  
29 ~~board~~, the preneed licensee certificateholder may file a  
30 letter of credit with the licensing authority board in lieu of  
31 a surety bond. Such letter of credit must be in a form, and is

1 subject to terms and conditions, prescribed by the board. It  
2 may be revoked only with the express approval of the licensing  
3 authority board.

4 (3)(a) A buyer of preneed merchandise or services who  
5 does not receive such services or merchandise due to the  
6 economic failure, closing, or bankruptcy of the preneed  
7 licensee certificateholder must file a claim with the surety  
8 as a prerequisite to payment of the claim and, if the claim is  
9 not paid, may bring an action based on the bond and recover  
10 against the surety. In the case of a letter of credit or cash  
11 deposit that has been filed with the licensing authority  
12 board, the buyer may file a claim with the licensing authority  
13 board.

14 (b) In order to qualify for recovery on any claim  
15 under paragraph (a), the buyer must file the claim no later  
16 than 1 year after the date on which the preneed licensee  
17 certificateholder closed or bankruptcy was filed.

18 (c) The licensing authority board may file a claim  
19 with the surety on behalf of any buyer under paragraph (a).  
20 The surety shall pay the amount of the claims to the licensing  
21 authority board for distribution to claimants entitled to  
22 restitution and shall be relieved of liability to that extent.

23 (d) The liability of the surety under any bond may not  
24 exceed the aggregate amount of the bond, regardless of the  
25 number or amount of claims filed.

26 (e) If the total value of the claims filed exceeds the  
27 amount of the bond, the surety shall pay the amount of the  
28 bond to the licensing authority board for distribution to  
29 claimants entitled to restitution and shall be relieved of all  
30 liability under the bond.

31

1           (4) The preneed licensee ~~certificateholder~~ shall  
2 maintain accurate records of the bond and premium payments on  
3 it, which records shall be open to inspection by the licensing  
4 authority ~~board~~.

5           ~~(5) For purposes of this section, a preneed contract~~  
6 ~~is a contract calling for the delivery of merchandise and~~  
7 ~~services in the future and entered into before the death of~~  
8 ~~the prospective recipient.~~

9           ~~(5)(6)~~ This act does not relieve the preneed licensee  
10 ~~certificateholder~~ or other entity from liability for  
11 nonperformance of contractual terms unless the preneed  
12 licensee ~~certificateholder~~ cannot deliver the merchandise or  
13 services because of a national emergency, strike, or act of  
14 God.

15           ~~(6)(7)~~ The licensing authority ~~board~~ may require the  
16 holder of any assets of the preneed licensee ~~certificateholder~~  
17 to furnish written verification of the financial report  
18 required to be submitted by the preneed licensee  
19 ~~certificateholder~~ or other entity.

20           ~~(7)(8)~~ Any preneed contract which promises future  
21 delivery of merchandise at no cost constitutes a paid-up  
22 contract. Merchandise which has been delivered is not covered  
23 by the required performance bond or letter of credit even  
24 though the contract is not completely paid. The preneed  
25 licensee ~~certificateholder~~ may not cancel a contract unless  
26 the purchaser is in default according to the terms of the  
27 contract and subject to the requirements of s. 497.459. A  
28 contract sold, discounted, and transferred to a third party  
29 constitutes a paid-up contract for the purposes of the  
30 performance bond or letter of credit.

31

1           ~~(8)(9)~~ Each contract must state the type, size, and  
2 design of merchandise and the description of service to be  
3 delivered or performed.

4           ~~(9)(10)~~ A purchaser and a preneed licensee  
5 ~~certificateholder~~ who are parties to a preneed contract  
6 executed prior to July 2, 1988, may enter into an amended  
7 preneed contract which is made subject to this section. On and  
8 after January 1, 2006, this subsection may no longer be used  
9 to make any additional contracts subject to a bond under this  
10 section, provided that contracts already amended and made  
11 subject to a bond as of December 31, 2005, may remain under  
12 such bond.

13           ~~(10)(11)~~ The licensing authority ~~board~~ may adopt forms  
14 and rules necessary to implement this section, including, but  
15 not limited to, rules which ensure that the surety bond and  
16 line of credit provide liability coverage for preneed  
17 merchandise and services.

18           ~~(11)(12)~~ Preneed licensees ~~Certificateholders~~ may  
19 utilize the bonding alternatives to s. 497.458 ~~497.417~~  
20 provided in this section only for contracts written prior to  
21 July 1, 2001, for funds not held in trust as of July 1, 2001,  
22 or for contracts written prior to December 31, 2004, by any  
23 preneed licensee ~~certificateholder~~ authorized to do business  
24 in this state that has total bonded liability exceeding \$100  
25 million as of July 1, 2001, for funds not held in trust as of  
26 July 1, 2001.

27           Section 112. Section 497.427, Florida Statutes, is  
28 renumbered as section 497.463, Florida Statutes, and amended  
29 to read:

30           497.463 ~~497.427~~ Existing merchandise trust funds;  
31 proof of compliance with law.--The preneed licensee

1 ~~certificateholder~~ shall present to the licensing authority  
2 ~~board~~ prior to the implementation of the alternatives provided  
3 in s. 497.462 ~~497.425~~ documentation which demonstrates that  
4 the existing merchandise trust fund complies with the law and  
5 that the elected alternative plan conforms to the requirements  
6 of this chapter.

7 Section 113. Section 497.429, Florida Statutes, is  
8 renumbered as section 497.464, Florida Statutes, and amended  
9 to read:

10 497.464 ~~497.429~~ Alternative preneed contracts.--

11 (1) Nothing in this chapter shall prevent the  
12 purchaser and the preneed licensee ~~certificateholder~~ from  
13 executing a preneed contract upon the terms stated in this  
14 section. Such contracts shall be subject to all provisions of  
15 this chapter except:

16 (a) Section 497.454(2) ~~497.409(2)~~.

17 (b) Section 497.457 ~~497.415~~.

18 (c) Section 497.458(1), (3), and (6) ~~497.417(1), (3),~~  
19 ~~and (5)~~.

20 (d) Section 497.459(1), (2), and (4) ~~497.419(1), (2),~~  
21 ~~and (5)~~.

22 (e) Section 497.460 ~~497.421~~.

23 (f) Section 497.461 ~~497.423~~.

24 (g) Section 497.462 ~~497.425~~.

25 (2) The contract must require that a trust be  
26 established by the preneed licensee ~~certificateholder~~ on  
27 behalf of, and for the use, benefit, and protection of, the  
28 purchaser and that the trustee must be a trust company  
29 operating pursuant to chapter 660, a national or state bank  
30 holding trust powers, or a federal or state savings and loan  
31 association holding trust powers.



1           (3) The contract must require that the purchaser make  
2 all payments required by the contract directly to the trustee  
3 or its qualified servicing agent and that the funds shall be  
4 deposited in this state, subject to the terms of a trust  
5 instrument approved by the licensing authority board. The  
6 licensing authority may adopt rules establishing procedures  
7 and forms for the submission of trust instruments for approval  
8 by the licensing authority, establishing criteria for the  
9 approval of such trust instruments, and specifying information  
10 required to be provided by the applicant in connection with  
11 submission of a trust instrument for approval. A copy of the  
12 trust instrument shall be made available to the purchaser, at  
13 any reasonable time, upon request.

14           (4) The contract or trust instrument shall expressly  
15 state that the preneed licensee ~~certificateholder~~ does not  
16 have any dominion or control over the trust or its assets,  
17 except to the extent that subsection (6) applies, until such  
18 time as the preneed contract is entirely completed or  
19 performed.

20           (5) The trust instrument shall prohibit the trustee  
21 from distributing any appreciation on the trust to any person  
22 and shall require that the trustee accumulate the entire net  
23 income of the trust, or its pro rata share thereof. The  
24 accumulated net income shall be distributed to the preneed  
25 licensee ~~certificateholder~~ upon cancellation or performance of  
26 the contract.

27           (6) The contract and trust instrument may provide that  
28 the preneed licensee ~~certificateholder~~ may receive a current  
29 distribution of not more than 10 percent of all funds paid or  
30 collected by the trustee and may further provide for  
31 liquidated damages during the first 3 years after the

1 execution of the contract of not more than 10 percent of all  
2 the funds paid on the preneed contract, except that no  
3 liquidated damages shall apply for cancellation within 30 days  
4 of the date of execution of the contract.

5 (7) Disbursement of funds discharging any preneed  
6 contract shall be made by the trustee to the person issuing or  
7 writing such contract upon receipt of a certified copy of the  
8 death certificate of the contract beneficiary and evidence  
9 satisfactory to the trustee that the preneed contract has been  
10 fully performed. In the event of any contract default by the  
11 contract purchaser, or in the event that the funeral  
12 merchandise or service contracted for is not provided or is  
13 not desired by the purchaser or the heirs or personal  
14 representative of the contract beneficiary, the trustee shall  
15 return, within 30 days after its receipt of a written request  
16 therefor, funds paid on the contract to the contract purchaser  
17 or to her or his assigns, heirs, or personal representative,  
18 subject to the lawful liquidation damage provision in the  
19 contract.

20 (8) The contract shall provide, in conspicuous type,  
21 that the purchaser may receive a federal income tax  
22 informational statement, pursuant to the grantor trust rules  
23 of ss. 671 et seq. of the Internal Revenue Code of 1986, as  
24 amended, from the trustee reflecting all of the income earned  
25 by the trust; and, accordingly, the purchaser should seek the  
26 advice of an independent tax professional for the tax impact  
27 upon the purchaser as a result of executing the preneed  
28 contract.

29 (9) The contract may provide that the preneed licensee  
30 ~~certificateholder~~ may cancel the contract, but only in the  
31 event that the purchaser is more than 90 days in default of

1 the terms of the contract; and, unless subject to the  
2 provisions of s. 497.459(5) ~~497.419(6)~~, must provide that the  
3 purchaser, or her or his representative, has the right, at any  
4 time prior to the performance of the contract, to cancel the  
5 preneed contract and revest title to all the funds paid on the  
6 preneed contract, except for applicable liquidated damages,  
7 and the preneed licensee's ~~certificateholder's~~ rights in the  
8 net income of the trust.

9 (10) The contract or trust agreement may require the  
10 trustee to invest in solely tax-free investments.

11 (11) In the event the parties execute a contract  
12 pursuant to this section, the purchaser shall be deemed, and  
13 treated for all purposes, as the settlor of the trust  
14 established thereunder.

15 Section 114. Section 497.436, Florida Statutes, is  
16 renumbered as section 497.465, Florida Statutes, and amended  
17 to read:

18 497.465 ~~497.436~~ Inactive, surrendered, and revoked  
19 preneed licensees ~~certificateholders~~.--

20 (1) A preneed licensee ~~certificateholder~~ shall be  
21 considered inactive upon the acceptance of the surrender of  
22 its license by the licensing authority ~~board~~ or upon the  
23 nonreceipt by the licensing authority ~~board~~ of the preneed  
24 license ~~certificate of authority~~ renewal application and fees  
25 required by s. 497.265 ~~497.213(2)~~.

26 (2) A preneed licensee ~~certificateholder~~ shall cease  
27 all preneed sales to the public upon becoming inactive. The  
28 preneed licensee ~~certificateholder~~ shall collect and deposit  
29 into trust all of the funds paid toward preneed contracts sold  
30 prior to becoming inactive.

31

1           (3) Any preneed licensee ~~certificateholder~~ desiring to  
2 surrender its license to the licensing authority ~~board~~ shall  
3 first:

4           (a) File notice with the licensing authority ~~board~~.

5           (b) Submit copies of its existing trust agreements.

6           (c) Submit a sample copy of each type of preneed  
7 contract sold.

8           (d) Resolve to the licensing authority's ~~board's~~  
9 satisfaction all unresolved findings and violations resulting  
10 from prior examinations ~~the last examination~~ conducted.

11           (e) Pay all outstanding fines and invoices due the  
12 licensing authority ~~board~~.

13           (f) Submit its current preneed license ~~certificate of~~  
14 ~~authority~~.

15           (4) Upon receipt of the notice, the licensing  
16 authority ~~board~~ shall review the preneed licensee's  
17 ~~certificateholder's~~:

18           (a) Trust funds.

19           (b) Trust agreements.

20           (c) Evidence of all outstanding preneed contracts.

21           (5) After a review to the licensing authority's  
22 ~~board's~~ satisfaction, the licensing authority ~~board~~ shall  
23 terminate the preneed license ~~certificate of authority~~ by an  
24 order which shall set forth the conditions of termination  
25 established by the licensing authority ~~board~~ to ensure that  
26 the preneed funds will be available for their intended  
27 purpose.

28           (6) The trust fund of the preneed licensee  
29 ~~certificateholder~~ shall be held intact and in trust after the  
30 preneed licensee ~~certificateholder~~ has become inactive, and  
31 the funds in that trust shall be disbursed in accordance with

1 the requirements of the written contracts and this chapter  
2 until the funds have been exhausted.

3 (7) The licensing authority board shall continue to  
4 have jurisdiction over the inactive preneed licensee and the  
5 trust funds certificateholder as if the preneed license  
6 certificate were active and to require such reports and  
7 inspect such records as the licensing authority board deems  
8 appropriate so long as there are funds in trust or preneed  
9 contracts that are not fulfilled.

10 (8) In addition to any other terms of revocation or  
11 suspension ordered pursuant to this chapter, s. 497.233, the  
12 provisions of this section shall also apply in the event of  
13 revocation or suspension of a preneed license, unless the  
14 provisions of the suspension or revocation order specifically  
15 provide otherwise.

16 (9) The licensing authority may adopt rules for the  
17 implementation of this section, for the purpose of ensuring a  
18 thorough review and investigation of the status and condition  
19 of the preneed licensee's business affairs for the protection  
20 of the licensee's preneed customers. Such rules may include:

21 (a) The form of notice required by paragraph (3)(a),  
22 and the information or materials to be contained in or  
23 accompany the notice or otherwise to be provided, which may  
24 include any information or materials the licensing authority  
25 deems needed for the discharge of its responsibilities under  
26 this section.

27 (b) Requirements for the submission of sworn  
28 affidavits by or the taking of sworn testimony from the  
29 licensee and its principals and employees and sales agents.

30  
31

1           (c) Requirements for submission of unaudited or  
2 audited financial statements, as the licensing authority deems  
3 advisable.

4           Section 115. Section 497.439, Florida Statutes, is  
5 renumbered as section 497.466, Florida Statutes, and amended  
6 to read:

7           497.466 ~~497.439~~ Preneed sales agents, license  
8 required; application procedures and criteria; responsibility  
9 of preneed licensee.--

10           (1) GENERAL PROVISIONS APPLICABLE TO PRENEED SALES  
11 AGENTS.--

12           (a) All individuals who offer preneed contracts to the  
13 public, or who execute preneed contracts on behalf of a  
14 preneed licensee ~~certificateholder~~, including all individuals  
15 who offer, sell, or sign contracts for the preneed sale of  
16 burial rights, shall be licensed ~~registered with the board~~ as  
17 preneed sales agents, pursuant to this section, unless such  
18 individuals are licensed as funeral directors pursuant to this  
19 chapter.

20           (b)(2) All preneed sales agents and funeral directors  
21 acting as preneed sales agents must be employed by or under  
22 written contract with ~~affiliated with the~~ preneed licensee  
23 ~~certificateholder~~ that they are representing.

24           (c)(3) A preneed licensee ~~certificateholder~~ shall be  
25 responsible for the activities of all preneed sales agents and  
26 all funeral directors acting as preneed sales agents, who are  
27 affiliated with the preneed licensee ~~certificateholder~~ and who  
28 perform any type of preneed-related activity on behalf of the  
29 preneed licensee ~~certificateholder~~. In addition to the preneed  
30 sales agents and funeral directors acting as preneed sales  
31 agents, each preneed licensee ~~certificateholder~~ shall also be

1 subject to discipline if its preneed sales agents or funeral  
2 directors acting as preneed sales agents violate any provision  
3 of this chapter.

4 ~~(d)(4)~~ A preneed sales agent and a funeral director  
5 acting as a preneed sales agent shall be authorized to sell,  
6 offer, and execute preneed contracts on behalf of all entities  
7 owned or operated by its sponsoring preneed licensee  
8 ~~certificateholder~~.

9 (e) An individual may be licensed as a preneed sales  
10 agent on behalf of more than one preneed licensee, provided  
11 that the individual has received the written consent of all  
12 such preneed licensees and makes separate application under  
13 this section for each such agency.

14 (f) A sponsoring preneed licensee shall notify the  
15 department in writing within 30 days after the sponsored  
16 preneed sales agent's authority to represent that preneed  
17 licensee has terminated.

18 (2) APPLICATION PROCEDURES.--

19 (a) A person seeking licensure as a preneed sales  
20 agent shall apply for such licensure using forms prescribed by  
21 rule of the licensing authority.

22 (b) The application shall require the name, residence  
23 address, residence phone number if any, and date and place of  
24 birth, of the preneed sales agent applicant. Applicants shall  
25 be at least 18 years of age. The application shall require  
26 identification of the name, address, and license number of the  
27 sponsoring preneed licensee. The application shall require the  
28 preneed sales agent applicant's social security number and the  
29 federal tax identification number of the sponsoring preneed  
30 licensee.

31

1       (c) The application shall require information as to  
2 the educational and employment history of the preneed sales  
3 agent applicant.

4       (d) The application shall require the preneed sales  
5 agent applicant to disclose whether the preneed sales agent  
6 applicant has ever been convicted or found guilty of, or  
7 entered a plea of no contest to, regardless of adjudication,  
8 any crime in any jurisdiction.

9       (e) The application shall require the preneed sales  
10 agent applicant to disclose whether the preneed sales agent  
11 applicant has ever had a license or the authority to practice  
12 a profession or occupation refused, suspended, fined, denied,  
13 or otherwise acted against or disciplined, by the licensing  
14 authority of any jurisdiction. A licensing authority's  
15 acceptance of a relinquishment of licensure, stipulation,  
16 consent order, or other settlement, offered in response to or  
17 in anticipation of the filing of charges against the license,  
18 shall be construed as action against the license.

19       (f) The application shall require a representation by  
20 the sponsoring preneed licensee, that:

21           1. The sponsoring preneed licensee's license is in  
22 good standing.

23           2. Upon licensure as a preneed sales agent the  
24 sponsored preneed sales agent applicant will be authorized to  
25 offer, sell, and sign preneed contracts on behalf of the  
26 preneed licensee.

27           3. The preneed licensee has trained the applicant in  
28 the provisions of this chapter relating to preneed sales, the  
29 provisions of the preneed licensee's preneed contracts, and  
30 the nature of the merchandise, services, or burial rights sold  
31 by the preneed licensee.



1       (g) The application shall require the preneed sales  
2 agent applicant to indicate whether the applicant has any type  
3 of working relationship with any other preneed licensee or  
4 insurance company, and if yes, to identify such other preneed  
5 licensee or insurance company, as the case may be.

6       (h) The applicant shall be required to submit her or  
7 his fingerprints in accordance with part I of this chapter.

8       (i) The application shall be signed by the applicant  
9 and by an officer or manager of the sponsoring preneed  
10 licensee.

11       (j) The application shall be accompanied by a  
12 nonrefundable fee of \$100. The licensing authority may from  
13 time to time increase such fee but not to exceed \$200.

14       (3) ACTION CONCERNING APPLICATIONS; TEMPORARY AND  
15 REGULAR LICENSURE.--

16       (a) An applicant shall be deemed to have been issued a  
17 temporary preneed sales agent license and may begin  
18 functioning as a preneed sales agent, immediately upon receipt  
19 by the department of a duly completed application for  
20 licensure under this section, if the application shows an  
21 applicant of at least 18 years of age who has answered in the  
22 negative regarding paragraphs (2)(d) and (e) relating to prior  
23 criminal and disciplinary actions, and which application is  
24 accompanied by the required application fee. The temporary  
25 preneed sales agent license shall be valid for 90 days unless  
26 earlier suspended by the licensing authority for cause. If the  
27 application is approved by the board within the 90-day period,  
28 the temporary license shall be deemed converted to a regular  
29 biennial license which shall expire in accordance with the  
30 schedule established by the licensing authority by rule.

31

1           (b)1. A person who cannot truthfully answer in the  
2 negative regarding paragraphs (2)(d) and (e) relating to prior  
3 criminal and disciplinary actions, may apply to the licensing  
4 authority for issuance of a preneed sales agent license  
5 notwithstanding such criminal or disciplinary record. The  
6 licensing authority may by rule specify forms and procedures  
7 for use by such persons in applying for preneed sales agent  
8 licensure, to be used by such persons in lieu of the forms and  
9 procedures specified under paragraph (a). Licensure shall be  
10 granted unless the licensing authority reasonably determines  
11 that the prior criminal or disciplinary record indicates that  
12 the granting of licensure would pose unreasonable risk to the  
13 public.

14           2. To facilitate issuance of licenses concerning  
15 applicants with criminal or disciplinary records which the  
16 licensing authority judges to make the applicant borderline as  
17 to qualification for licensure, the licensing authority may  
18 issue a new license under this section on a probationary  
19 basis, subject to conditions specified by the licensing  
20 authority on a case-by-case basis, which conditions may impose  
21 special monitoring, reporting, and restrictions on operations  
22 for up to the first 24 months of licensure, to ensure the  
23 preneed sales agent licensee's integrity, trustworthiness, and  
24 compliance with this chapter. Provided, no such probationary  
25 license shall be issued unless the licensing authority  
26 determines that issuance would not pose an unreasonable risk  
27 to the public, and the licensing authority must within 24  
28 months after issuance of the license either remove the  
29 probationary status or determine that the licensee is not  
30 qualified for licensure under this chapter and institute  
31 proceedings for revocation of licensure. The licensing

1 authority may adopt rules prescribing criteria and procedures  
2 for issuance of such probationary licenses.

3 (4) RENEWAL OF LICENSES.--Nontemporary preneed sales  
4 agent licenses under this section shall be renewed biennially  
5 in accordance with a schedule, forms, and procedures  
6 established by rule. The nonrefundable biennial renewal fee  
7 shall be as determined by licensing authority rule but not to  
8 exceed \$200.

9 (5) SIMPLIFIED PROCEDURES FOR SUBSEQUENT CHANGE OF  
10 SPONSORING LICENSEE.--The board may by rule establish  
11 simplified requirements and procedures under which any preneed  
12 sales agent who, within the 12 months preceding application  
13 under this subsection held in good standing a preneed sales  
14 agent license under this section, may obtain a preneed sales  
15 agent's license under this section to represent a different  
16 sponsoring preneed licensee. The simplified requirements shall  
17 dispense with the requirement for submission of fingerprints.  
18 The licensing authority may by rule prescribe forms to be used  
19 by applicants under this subsection, which forms may dispense  
20 with the requirement for any information not deemed by the  
21 licensing authority to be necessary to tracking the identify  
22 of the preneed licensee responsible for the activities of the  
23 preneed sales agent. No preneed sales agent licensee whose  
24 sales agent license issued by the board was revoked or  
25 suspended or otherwise terminated while in other than good  
26 standing, shall be eligible to use the simplified requirements  
27 and procedures. The issuance of a preneed sales agent license  
28 under this subsection shall not operate as a bar to any  
29 subsequent disciplinary action relating to grounds arising  
30 prior to obtaining the license under this subsection. There  
31 shall be a fee payable to the department under such simplified

1 procedures, which fee shall be the same as the fee paid upon  
2 initial application for preneed sales agent license, except  
3 that no fingerprint fee shall be required if such fingerprint  
4 fee is required for initial applications.

5 ~~(5) An individual may begin functioning as a preneed~~  
6 ~~sales agent as soon as a completed application for~~  
7 ~~registration, as set forth in subsection (7), is sent to the~~  
8 ~~department.~~

9 ~~(6) The qualifications for a preneed sales agent are~~  
10 ~~as follows:~~

11 ~~(a) The applicant must be at least 18 years of age.~~

12 ~~(b) The applicant must be in good standing with the~~  
13 ~~board.~~

14 ~~(c) The applicant must not have any felony or~~  
15 ~~misdemeanor convictions that relate to any activity regulated~~  
16 ~~by this chapter.~~

17 ~~(7) An application for registration as a preneed sales~~  
18 ~~agent shall be submitted to the department with an application~~  
19 ~~fee of \$100 by the certificateholder in a form that has been~~  
20 ~~prescribed by department rule and approved by the board. Such~~  
21 ~~application shall contain, at a minimum, the following:~~

22 ~~(a) The name, address, social security number, and~~  
23 ~~date of birth of the applicant and such other information as~~  
24 ~~the board may reasonably require of the applicant.~~

25 ~~(b) The name, address, and license number of the~~  
26 ~~sponsoring certificateholder.~~

27 ~~(c) A representation, signed by the applicant, that~~  
28 ~~the applicant meets the requirements set forth in subsection~~  
29 ~~(6).~~

30 ~~(d) A representation, signed by the certificateholder,~~  
31 ~~that the applicant is authorized to offer, sell, and sign~~

1 ~~preneed contracts on behalf of the certificateholder, and that~~  
2 ~~the certificateholder has trained the applicant in the~~  
3 ~~provisions of this chapter relating to preneed sales as~~  
4 ~~determined by the board, the provisions of the~~  
5 ~~certificateholder's preneed contract, and the nature of the~~  
6 ~~merchandise, services, or burial rights sold by the~~  
7 ~~certificateholder.~~

8 ~~(c) A statement indicating whether the applicant has~~  
9 ~~any type of working relationship with any other~~  
10 ~~certificateholder or insurance company.~~

11 ~~(8) An individual may be registered as a preneed sales~~  
12 ~~agent on behalf of more than one certificateholder, provided~~  
13 ~~that the individual has received the written consent of all~~  
14 ~~such certificateholders.~~

15 ~~(9) A certificateholder who has registered a preneed~~  
16 ~~sales agent shall notify the department within 30 days after~~  
17 ~~such individual's status as a preneed sales agent has been~~  
18 ~~terminated.~~

19 ~~(10) Upon receipt of an application that complies with~~  
20 ~~all of the requirements of subsection (7), the department~~  
21 ~~shall register the applicant. The department shall by rule~~  
22 ~~provide for biennial renewal of registration and a renewal fee~~  
23 ~~of \$150.~~

24 Section 116. Section 497.441, Florida Statutes, is  
25 renumbered as section 497.467, Florida Statutes, and amended  
26 to read:

27 497.467 ~~497.441~~ Acceptability of funeral and burial  
28 merchandise.--Each person who engages in preneed sales of  
29 funeral or burial merchandise shall determine, and notify the  
30 purchaser in writing prior to the completion of the contract,  
31 that the merchandise being considered for purchase will be

1 | accepted in the cemetery of the purchaser's choice. The  
2 | failure to comply with this chapter shall nullify the  
3 | agreement, and all moneys paid in shall be returned,  
4 | notwithstanding the existence of any liquidated damages  
5 | provision otherwise applicable by contract or statute pursuant  
6 | to s. 497.419(2).

7 | Section 117. Part V of chapter 497, Florida Statutes,  
8 | consisting of sections 497.550, 497.551, 497.552, 497.553,  
9 | 497.554, 497.555, and 497.556, is created to read:

10 | PART V

11 | MONUMENT ESTABLISHMENTS

12 | Section 118. Section 497.361, Florida Statutes, is  
13 | renumbered as section 497.550, Florida Statutes, and  
14 | amended to read:

15 | (Substantial rewording of section. See  
16 | s. 497.361, F.S., for present text.)

17 | 497.550 Licensure of monument establishments required;  
18 | procedures and criteria.--

19 | (1) LICENSE REQUIRED.--No person shall conduct,  
20 | maintain, manage, or operate a monument establishment in this  
21 | state unless the monument establishment is licensed pursuant  
22 | to this part.

23 | (2) APPLICATION PROCEDURES.--A person seeking  
24 | licensure as a monument establishment shall apply for such  
25 | licensure using forms prescribed by rule.

26 | (a) The application shall require the applicant's name  
27 | and address, and the name and address of all principals of the  
28 | applicant. The application shall require the applicant's  
29 | social security number, or if the applicant is an entity, its  
30 | federal tax identification number.

31 |

1       (b) The application may require information as to the  
2 applicant's financial resources, and may require information  
3 as to the experience of the applicant and its principals in  
4 the monument establishment business or death care industry.

5       (c) The application shall require the applicant to  
6 disclose whether the applicant or any of its principals has  
7 ever been convicted or found guilty of, or entered a plea of  
8 no contest to, regardless of adjudication, any crime in any  
9 jurisdiction.

10       (d) The application shall require the applicant to  
11 disclose whether the applicant or any of its principals has  
12 ever had a license or the authority to practice a profession  
13 or occupation revoked, suspended, fined, denied, or otherwise  
14 acted against or disciplined, by the licensing authority of  
15 any jurisdiction.

16       (e) The application shall require the applicant's  
17 principals to provide fingerprints in accordance with part I  
18 of this chapter.

19       (f) The applicant shall be a natural person at least  
20 18 years of age, a corporation, a partnership, or a limited  
21 liability company formed prior to January 1, 2005 which  
22 limited liability company already holds a license under this  
23 chapter.

24       (g) The applications shall require the applicant to  
25 demonstrate that the applicant has, or will have before  
26 commencing operations, the facilities required under this  
27 part.

28       (h) The application shall be signed by the applicant  
29 if a natural person, or by the president of an applicant that  
30 is a corporation.

31

1           (i) The application shall be accompanied by an  
2 application fee as determined by licensing authority rule but  
3 not to exceed \$500.

4           (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
5 application for licensure as a monument establishment,  
6 accompanied by the required application fee, shall be approved  
7 unless there is shown by clear and convincing evidence that  
8 the applicant will not, before commencing operations, have the  
9 facilities required by this part or that issuance of the  
10 license would pose an unreasonable risk to the public because  
11 one or more of the following factors:

12           (a) The applicant's lack of experience.

13           (b) The applicant's lack of financial resources.

14           (c) The criminal or disciplinary record of applicant  
15 or its principals.

16           (d) A demonstrated history of violations of the laws  
17 of this state by applicant or its principals regarding the  
18 funeral or cemetery business or other business activities.

19           (e) A demonstrated history of lack of trustworthiness  
20 or integrity on the part of the applicant or its principals.

21           (4) PROBATIONARY STATUS.--It is the policy of this  
22 state to encourage competition for the public benefit in the  
23 monument establishment business by, among other means, the  
24 entry of new licensees into the monument establishment  
25 business. To facilitate issuance of licenses concerning  
26 applications judged by the licensing authority to be  
27 borderline as to qualification for licensure, the licensing  
28 authority may issue new monument establishment licenses on a  
29 probationary basis, subject to conditions specified by the  
30 licensing authority on a case-by-case basis, which conditions  
31 may impose special monitoring, reporting, and restrictions on



1 operations for up to the first 24 months of licensure, to  
2 ensure the licensee's responsibility, competency, and  
3 financial stability. However, no such probationary license  
4 shall be issued unless the licensing authority determines that  
5 issuance would not pose an unreasonable risk to the public,  
6 and the licensing authority must within 24 months after  
7 issuance of the license either remove the probationary status  
8 or determine that the licensee is not qualified for licensure  
9 and institute proceedings for revocation of licensure.

10 (5) LICENSE NOT TRANSFERABLE OR ASSIGNABLE.--A  
11 monument establishment license shall not be transferable or  
12 assignable.

13 Section 119. Section 497.551, Florida Statutes, is  
14 created to read:

15 497.551 Renewal of monument establishment licensure.--

16 (1) A monument establishment license must be renewed  
17 biennially by the licensee.

18 (2) A monument establishment licensee that does not  
19 hold a preneed sales license as of 90 days prior to the date  
20 its monument establishment license renewal is due, shall renew  
21 its monument establishment license by payment of a renewal fee  
22 established by rule not to exceed \$250.

23 (3) A monument establishment licensee which as of 90  
24 days prior to its monument establishment license renewal date  
25 also holds a preneed sales license issued under this chapter,  
26 shall renew its monument establishment license by payment of a  
27 renewal fee determined by its total gross aggregate at-need  
28 and preneed retail sales for the 12-month period ending 2 full  
29 calendar months prior to the month in which the renewal is  
30 required, as follow:

31 (a) Total sales of \$1 to \$50,000, renewal fee \$1,000.

1           (b) Total sales \$50,001 to \$250,000, renewal fee  
2 \$1,500.

3           (c) Total sales of \$250,001 to \$500,000, renewal fee  
4 \$2,000.

5           (d) Total sales over \$500,000, renewal fee \$2,500.

6           (4) Rules may be adopted providing procedures, forms,  
7 and uniform timeframes for monument establishment license  
8 renewals.

9           Section 120. Section 497.552, Florida Statutes, is  
10 created to read:

11           497.552 Required facilities.--Effective January 1,  
12 2006, a monument establishment shall at all times have and  
13 maintain a full-service place of business at a specific street  
14 address or location in Florida complying with the following  
15 requirements:

16           (1) It shall include an office for the conduct of its  
17 business including the reception of customers.

18           (2) It shall include a display area in which is  
19 displayed a selection of monuments, markers, and related  
20 products for inspection by customers prior to sale.

21           (3) Its office and display area shall normally be open  
22 to the public weekdays during normal business hours.

23           (4) It shall have facilities for inscribing monuments,  
24 and equipment to deliver and install markers and monuments.

25           (5) It shall comply with any local government zoning  
26 regulations and may not be located on tax-exempt property.

27           Section 121. Section 497.553, Florida Statutes, is  
28 created to read:

29           497.553 Regulation of monument establishments.--

30           (1) The Department of Financial Services shall  
31 establish and implement an inspection program for all monument

1 establishments in accordance with the requirements of this  
2 act.

3 (2) Commencing January 1, 2006, all retail sales by  
4 monument establishments shall be on a sales agreement form  
5 filed by the monument establishment with and approved by the  
6 licensing authority. Sales agreement forms must provide a  
7 complete description of any monument, marker, or related  
8 product to be delivered, and shall prominently and clearly  
9 specify the agreed date for delivery and installation.  
10 Procedures for submission and approval of such forms shall be  
11 established by rule.

12 (3) Commencing January 1, 2006, all monument  
13 establishments shall have written procedures for the receipt,  
14 investigation, and disposition of customer complaints, and  
15 shall ensure that their staff who receive or process such  
16 complaints are familiar with and follow such procedures.

17 (4) Commencing January 1, 2006, all monument  
18 establishments shall maintain for inspection by the department  
19 records of written complaints received by the monument  
20 establishment. Such complaint records shall include a  
21 chronological log of written complaints received, in which the  
22 name and address of each complainant and date of complaint is  
23 entered consecutively within 10 business days of receipt of  
24 each complaint. The licensing authority may by rule establish  
25 requirements regarding the format of complaint logs, including  
26 whether they may be maintained electronically, or shall be  
27 maintained by pen and ink on paper; the licensing authority  
28 may by order direct a licensee to maintain complaint logs by  
29 pen and ink in writing. The original or complete copy of each  
30 written complaint received by a monument establishment, and  
31 all subsequent correspondence related to such complaint, shall

1 be maintained by the monument establishment, for inspection by  
2 the department, for the longer of 24 months or 12 months after  
3 the most recent department inspection during which the  
4 complaint was in the monument establishment's complaint  
5 records and available for the department's review.

6 (5) Commencing January 1, 2006, the failure of a  
7 monument establishment to deliver and install a purchased  
8 monument or marker by the date agreed in the sales agreement  
9 shall entitle the customer to a full refund of all amounts  
10 paid by the customer for the monument and its delivery and  
11 installation, unless the monument establishment has obtained a  
12 written agreement from the customer extending the delivery  
13 date. Such refund shall be made within 30 days after receipt  
14 by the monument establishment of the customer's written  
15 request for a refund. This subsection does not preclude the  
16 purchase and installation of a new monument from any other  
17 registered monument establishment or preneed sales licensee.

18 Section 122. Section 497.554, Florida Statutes, is  
19 created to read:

20 497.554 Monument establishment sales  
21 representatives.--

22 (1) LICENSE REQUIRED.--Each person selling monuments,  
23 markers, or related products for a monument establishment must  
24 be licensed as a monument establishment sales agent. This  
25 requirement shall apply notwithstanding that such person is  
26 already registered or licensed in another capacity pursuant to  
27 this chapter.

28 (2) APPLICATION PROCEDURES.--Licensure as an monument  
29 establishment sale agent shall be by submission of an  
30 application for licensure to the department on a form  
31 prescribed by rule.

1       (a) The application shall require the applicant to  
2 state her or his name, residence and business address,  
3 business phone number, social security number, and the name  
4 and address of the monument establishment for which the  
5 applicant will be selling.

6       (b) The application shall require the applicant to  
7 disclose whether the applicant has ever been convicted or  
8 found guilty of, or entered a plea of no contest to,  
9 regardless of adjudication, any crime in any jurisdiction.

10       (c) The application shall require the applicant to  
11 disclose whether the applicant has ever had a license or the  
12 authority to practice a profession or occupation revoked,  
13 suspended, fined, denied, or otherwise acted against or  
14 disciplined, by the licensing authority of any jurisdiction.

15       (d) The application shall be signed by the applicant  
16 and the owner or an officer of the sponsoring monument  
17 establishment.

18       (e) The monument establishment sales agent application  
19 shall be accompanied by a fee of \$50. The licensing authority  
20 may from time to time increase the application fee by rule but  
21 not to exceed \$200.

22       (3) APPROVAL OR DENIAL OF APPLICATION.--

23       (a) If a properly completed application accompanied by  
24 the required application fee indicates the applicant has no  
25 criminal or disciplinary record, the requested licensure shall  
26 be deemed granted upon receipt of the duly completed  
27 application by the department.

28       (b) If the application indicates the applicant has any  
29 criminal or disciplinary history, licensure shall be granted  
30 unless the licensing authority determines that the licensure  
31 of the applicant would pose a substantial threat to the

1 welfare of the public with which the applicant might be  
2 dealing as a monument establishment sales agent. Rules may be  
3 adopted providing criteria for evaluating criminal and  
4 disciplinary records as they may affect applications for  
5 licensure under this section.

6 (4) TERMINATION OF AUTHORITY.--

7 (a) Once issued, a monument establishment sales agent  
8 license of an agent not licensed to make preneed sales shall  
9 remain in effect without renewal until surrendered, or the  
10 sponsoring monument establishment terminates the agent's  
11 authority to sell on behalf of that monument establishment, or  
12 the license is revoked or suspended by the licensing authority  
13 for cause.

14 (b) The monument establishment whose officer signed  
15 the sales agent application shall terminate that agent's  
16 authority to sell on behalf of that monument establishment,  
17 and the monument establishment in writing shall advise the  
18 licensing authority of such termination within 30 days after  
19 the termination.

20 (5) RESPONSIBILITY FOR AGENTS.--The sponsoring  
21 monument establishment shall be responsible for the activities  
22 of its sales agents concerning their sales activities and  
23 shall reasonably supervise such activities.

24 (6) AGENT LICENSE REQUIRED.--A person selling  
25 monuments, markers, and related products on a preneed basis  
26 for a monument establishment that has been issued a preneed  
27 sales license must also obtain authorization as a preneed  
28 sales agent under part IV of this chapter.

29 Section 123. Section 497.555, Florida Statutes, is  
30 created to read:

31

1           497.555 Required rules.--Rules shall be adopted  
2 establishing minimum standards for access to all cemeteries by  
3 licensed monument establishments, for the purpose of  
4 delivering and installing markers and monuments. In all cases,  
5 cemeteries must comply with these minimum standards.

6           Section 124. Section 497.556, Florida Statutes, is  
7 created to read:

8           497.556 Requirements relating to monument  
9 establishments.--

10           (1) INITIAL LICENSURE.--No monument establishment  
11 shall be issued a license to engage in preneed sales under  
12 this chapter unless the monument establishment shall, in  
13 addition to the other requirements of this part for issuance  
14 of a preneed license, meet the following requirements:

15           (a) The monument establishment or its principals shall  
16 demonstrate at least 3 years of experience in the operation of  
17 a monument establishment.

18           (b) The monument establishment shall demonstrate that  
19 it has a net worth of at least \$10,000 pursuant to generally  
20 accepted accounting principles. If the monument establishment  
21 applying for preneed licensure cannot demonstrate a net worth  
22 of at least \$10,000, the licensing authority may in accordance  
23 with subsection (3) accept alternative factors or arrangements  
24 as substituting for the \$10,000 net worth requirement, and  
25 issue the license on that basis. A monument establishment  
26 which is issued a preneed sales license based upon subsection  
27 (3) shall be subject to subsection (2) regarding subsequent  
28 renewals of its preneed sales license.

29           (2) RENEWAL LICENSURE.--Each monument establishment  
30 seeking to renew its preneed sales license shall demonstrate,  
31 in addition to the other requirements of part IV of this

1 chapter relating to renewal of preneed licenses, a net worth  
2 of \$10,000 as of the year end for its fiscal year most  
3 recently concluded prior to the renewal date. Such net worth  
4 shall be demonstrated in financial statements prepared in  
5 accordance with generally accepted accounting principles and  
6 filed with the licensing authority. If the monument  
7 establishment seeking renewal of its preneed licensure cannot  
8 demonstrate the required net worth the licensing authority may  
9 in accordance with subsection (3) accept alternative factors  
10 or arrangements as substituting for the \$10,000 net worth  
11 requirement and renew the license for that renewal cycle on  
12 that basis.

13 (3) ALTERNATIVES TO \$10,000 NET WORTH REQUIREMENT.--

14 (a) A monument establishment that cannot demonstrate  
15 the required \$10,000 net worth may voluntarily submit to the  
16 licensing authority and request acceptance of alternative  
17 evidence of financial stability and resources or agree to  
18 additional oversight in lieu of the required net worth. Such  
19 additional evidence or oversight may include, as appropriate,  
20 one or more of the following:

21 1. An agreement to submit monthly financial statements  
22 of the entity.

23 2. An agreement to submit quarterly financial  
24 statements of the entity.

25 3. An appraisal of the entity's property or broker's  
26 opinion of the entity's assets.

27 4. A credit report of the entity or its principals.

28 5. A subordination-of-debt agreement from the entity's  
29 principals.

30 6. An indemnification or subrogation agreement binding  
31 the entity and its principals.



- 1           7. A guarantee agreement for the entity from its  
2 principals.
- 3           8. A written explanation of past financial activity.
- 4           9. Submission of a 12-month projected business plan  
5 that includes:
- 6           a. A statement of cash flows.
- 7           b. Pro forma income statements, with sources of  
8 revenues identified.
- 9           c. Marketing initiatives.
- 10          10. Submission of previous department examination  
11 reports.
- 12          11. An agreement of 100 percent voluntary trust by the  
13 entity.
- 14          (b) The licensing authority may accept such  
15 alternative evidence or arrangements in lieu of the required  
16 net worth only if the licensing authority determines such  
17 alternative evidence or arrangements are an adequate  
18 substitute for \$10,000 of net worth and that acceptance would  
19 not substantially increase the risk to existing or future  
20 customers of nonperformance by the monument establishment on  
21 its retail sales agreements.
- 22          (4) BRANCH OPERATIONS.--A licensed monument  
23 establishment under common control with another monument  
24 establishment, funeral establishment, or licensed cemetery,  
25 which other monument establishment, funeral establishment, or  
26 licensed cemetery holds a preneed sales license in good  
27 standing, may engage in preneed sales under and as a branch of  
28 that other entity's preneed sales license, if there is  
29 compliance with the usual requirements of this part for branch  
30 operation, and the entity holding the preneed sales license  
31 executes and files with the licensing authority a written

1 agreement in a form acceptable to the licensing authority,  
2 guaranteeing performance of the preneed sales of the branch.

3 Section 125. Part VI of chapter 497, Florida Statutes,  
4 consisting of sections 497.601, 497.602, 497.603, 497.604,  
5 497.605, 497.606, 497.607, and 497.608, is created to read:

6 PART VI

7 CREMATION, CREMATORIES, AND DIRECT DISPOSITION

8 Section 126. Section 470.0165, Florida Statutes, is  
9 renumbered as section 497.601, Florida Statutes, and amended  
10 to read:

11 497.601 ~~470.0165~~ Direct disposition; duties.--

12 (1) Those individuals licensed ~~registered~~ as direct  
13 disposers may perform only those functions set forth below:

14 (a) Remove human remains from the place of death and  
15 store human remains in registered direct disposal  
16 establishments.

17 (b) Secure pertinent information from the decedent's  
18 next of kin in order to complete the death certificate and to  
19 file for the necessary permits for direct disposition.

20 (c) Obtain the necessary permits for direct  
21 disposition and arrange for obituaries and death notices to be  
22 placed in newspapers; provided, however, that the name of the  
23 direct disposal establishment may not appear in any death  
24 notice or obituary if any funeral service, memorial service,  
25 or graveside service is to take place and such service is  
26 mentioned in the death notice or obituary.

27 (d) Refrigerate human remains prior to direct  
28 disposition and transport human remains to a direct disposal  
29 establishment for direct disposition.

30

31

1           (e) Contract with a removal service or refrigeration  
2 facility to provide such services or facilities to a direct  
3 disposal establishment.

4           (2) Direct disposers or funeral directors functioning  
5 as direct disposers may not, in their capacity as direct  
6 disposers, sell, conduct, or arrange for burials, funeral  
7 services, memorial services, visitations, or viewings; hold  
8 themselves out to the public as funeral directors; or use any  
9 name, title, or advertisement that may tend to connote that  
10 they are funeral directors. These prohibitions shall apply  
11 regardless of the fact that such individuals may be licensed  
12 as funeral directors.

13           (3) Provided that direct disposers limit their  
14 activities to those functions set forth in subsection (1),  
15 those activities shall not be deemed to constitute funeral  
16 directing or embalming or the functions performed by a funeral  
17 director or embalmer as otherwise set forth in this chapter.

18           Section 127. Section 470.017, Florida Statutes, is  
19 renumbered as section 497.602, Florida Statutes, and amended  
20 to read:

21           (Substantial rewording of section. See  
22           s. 470.017, F.S., for present text.)

23           497.602 Direct disposers, license required; licensing  
24 procedures and criteria; regulation.--

25           (1) LICENSE REQUIRED.--Any person who is not a  
26 licensed funeral director and who engages in the practice of  
27 direct disposition must be licensed pursuant to this section  
28 as a direct disposer.

29           (2) APPLICATION PROCEDURES.--

30           (a) A person seeking licensure as a direct disposer  
31 shall apply for such licensure using forms prescribed by rule.

1       (b) The application shall require the name, residence  
2 address, date and place of birth, and social security number,  
3 of the applicant.

4       (c) The application may require information as to the  
5 educational and employment history of the applicant.

6       (d) The application shall require the applicant to  
7 disclose whether the applicant has ever been convicted or  
8 found guilty of, or entered a plea of no contest to,  
9 regardless of adjudication, any crime in any jurisdiction.

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

20       (f) The application shall require the applicant to  
21 provide fingerprints in accordance with part I of this  
22 chapter.

23       (g) The application shall require the applicant to  
24 demonstrate that the applicant does, or will before commencing  
25 operations under the license, comply with all requirements of  
26 this chapter relating to the licensure applied for.

27       (h) The application shall be signed by the applicant.

28       (i) The application shall be accompanied by a  
29 nonrefundable fee of \$300. The licensing authority may from  
30 time to time increase the fee by rule but not to exceed more  
31 than \$500.

1           (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
2 application for licensure under this section, accompanied by  
3 the required fees, shall be approved if the licensing  
4 authority determines that the following conditions are met:  
5           (a) The applicant is a natural person at least 18  
6 years of age and a high school graduate or equivalent.  
7           (b) Applicant has taken and received a passing grade  
8 in a college credit course in Florida mortuary law.  
9           (c) Applicant has completed a course on communicable  
10 diseases approved by the licensing authority.  
11           (d) Applicant has passed an examination prepared by  
12 the department on the local, state, and federal laws and rules  
13 relating to the disposition of dead human bodies.  
14           (e) The applicant does or will prior to commencing  
15 operations under the license comply with all requirements of  
16 this chapter relating to the license applied for.  
17           (f) Applicant is of good character and has no  
18 demonstrated history of lack of trustworthiness or integrity  
19 in business or professional matters.  
20           (4) ISSUANCE OF LICENSE.--Upon approval of the  
21 application by the licensing authority, the license shall be  
22 issued.  
23           (5) DISPLAY OF LICENSE.--There shall be adopted rules  
24 which require each license issued under this section to be  
25 displayed in such a manner as to make it visible to the public  
26 and to facilitate inspection by the department. Each licensee  
27 shall permanently affix a recent photograph of the licensee to  
28 each displayed license issued to that licensee as a direct  
29 disposer.  
30  
31

1 Section 128. Section 470.018, Florida Statutes, is  
2 renumbered as section 497.603, Florida Statutes, and amended  
3 to read:

4 497.603 470.018 Direct disposers, renewal of license  
5 Renewal of registration of direct disposer.--

6 (1) A direct disposer's renewal of license ~~The~~  
7 ~~department shall renew a registration~~ upon receipt of the  
8 renewal application and fee set by rule of the licensing  
9 authority but ~~the department~~ not to exceed \$250.

10 (2) There shall be adopted ~~The department shall adopt~~  
11 rules establishing a schedule and forms and procedure for the  
12 biennial renewal of licenses as direct disposers registrations  
13 . There shall be adopted ~~The board shall prescribe~~ by rule  
14 continuing education requirements of up to 6 3 classroom hours  
15 and there may by rule be established ~~establish~~ criteria for  
16 accepting alternative nonclassroom continuing education on an  
17 hour-for-hour basis, in addition to an approved a  
18 ~~board approved~~ course on communicable diseases that includes  
19 the course on human immunodeficiency virus and acquired immune  
20 deficiency syndrome required by s. 497.367 455.2226, for the  
21 renewal of a license as a direct disposer registration.

22 Section 129. Section 470.021, Florida Statutes, is  
23 renumbered as section 497.604, Florida Statutes, and amended  
24 to read:

25 (Substantial rewording of section. See  
26 s. 470.021, F.S., for present text.)

27 497.604 Direct disposal establishments, license  
28 required; licensing procedures and criteria; license renewal;  
29 regulation.--

30 (1) LICENSE REQUIRED.--A direct disposer shall  
31 practice at a direct disposal establishment which has been

1 licensed under this section and which may be a cinerator  
2 facility licensed under s. 497.606. No person may open or  
3 maintain an establishment at which to engage in or hold  
4 herself or himself out as engaging in the practice of direct  
5 disposition unless such establishment is licensed pursuant to  
6 this section.

7 (2) APPLICATION PROCEDURES.--

8 (a) A person seeking licensure as a direct disposal  
9 establishment 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 shall name the licensed direct  
18 disposer or licensed funeral director who will acting as a  
19 direct disposer in charge of the direct disposal  
20 establishment.

21 (d) The application may require information as to the  
22 applicant's financial resources.

23 (e) The application may require information as to the  
24 educational and employment history of an individual applicant;  
25 and as to applicants that are not natural persons, the  
26 business and employment history of the applicant and  
27 principals of applicant.

28 (f) The application shall require the applicant to  
29 disclose whether the applicant or any of applicant's  
30 principals including its proposed supervising licensee has  
31 ever been convicted or found guilty of, or entered a plea of

1 no contest to, regardless of adjudication, any crime in any  
2 jurisdiction.

3 (g) The application shall require the applicant to  
4 disclose whether the applicant or any of applicant's  
5 principals including its proposed supervising licensee has  
6 ever had a license or the authority to practice a profession  
7 or occupation refused, suspended, fined, denied, or otherwise  
8 acted against or disciplined, by the licensing authority of  
9 any jurisdiction. A licensing authority's acceptance of a  
10 relinquishment of licensure, stipulation, consent order, or  
11 other settlement, offered in response to or in anticipation of  
12 the filing of charges against the license, shall be construed  
13 as action against the license.

14 (h) The application shall require the applicant and  
15 its principals to provide fingerprints in accordance with part  
16 I of this chapter.

17 (i) The application shall require the applicant to  
18 demonstrate that the applicant does, or will before commencing  
19 operations under the license, comply with all requirements of  
20 this chapter relating to the licensure applied for.

21 (j) The application shall be signed by the applicant  
22 if a natural person, or by the president of an applicant that  
23 is not a natural person.

24 (k) The application shall be accompanied by a  
25 nonrefundable fee of \$300. The licensing authority may from  
26 time to time by rule increase the fee but not to exceed \$500.

27 (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
28 application for licensure under this section, accompanied by  
29 the required fee, shall be approved if the licensing authority  
30 determines that the following conditions are met:

31



1       (a) The applicant is a natural person at least 18  
2 years of age, a corporation, a partnership, or a limited  
3 liability company formed prior to January 1, 2006, which  
4 limited liability company already holds a license under this  
5 chapter.

6       (b) The applicant does or will prior to commencing  
7 operations under the license comply with all requirements of  
8 this chapter relating to the license applied for.

9       (c) Applicant and applicant's principals are of good  
10 character and have no demonstrated history of lack of  
11 trustworthiness or integrity in business or professional  
12 matters.

13       (4) ISSUANCE OF LICENSE.--Upon approval of the  
14 application by the licensing authority, the license shall be  
15 issued.

16       (5) PROBATIONARY STATUS.--It is the policy of this  
17 state to encourage competition for the public benefit in the  
18 direct disposal establishment business by, among other means,  
19 the entry of new licensees into that business. To facilitate  
20 issuance of licenses concerning applications judged by the  
21 licensing authority to be borderline as to qualification for  
22 licensure, the licensing authority may issue a new license  
23 under this section on a probationary basis, subject to  
24 conditions specified by the licensing authority on a  
25 case-by-case basis, which conditions may impose special  
26 monitoring, reporting, and restrictions on operations for up  
27 to the first 24 months of licensure, to ensure the licensee's  
28 responsibleness, competency, financial stability, and  
29 compliance with this chapter. However, no such probationary  
30 license shall be issued unless the licensing authority  
31 determines that issuance would not pose an unreasonable risk

1 to the public, and the licensing authority must within 24  
2 months after issuance of the license either remove the  
3 probationary status or determine that the licensee is not  
4 qualified for licensure under this chapter and institute  
5 proceedings for revocation of licensure.

6 (6) RENEWAL OF LICENSE.--A direct disposal  
7 establishment license shall be renewed biennially pursuant to  
8 schedule, forms, procedures and upon payment of a fee of \$200.  
9 The licensing authority may from time to time increase the fee  
10 by rule but not to exceed \$400.

11 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee  
12 under this section must provide notice as required by rule  
13 prior to any change in location or control of the licensee or  
14 licensed person in charge of the licensee's operations. Any  
15 such change is subject to disapproval or to reasonable  
16 conditions imposed by the licensing authority, for the  
17 protection of the public to ensure compliance with this  
18 chapter.

19 (8) SUPERVISION OF FACILITIES.--Each direct disposal  
20 establishment shall have one full-time licensed direct  
21 disposer or licensed funeral director acting as a direct  
22 disposer in charge and reasonably available to the public  
23 during normal business hours for that establishment. Such  
24 person may be in charge of only one facility. Such licensed  
25 funeral director or licensed direct disposer shall be  
26 responsible for making sure the facility, its operations, and  
27 all persons employed in the facility comply with all  
28 applicable state and federal laws and rules.

29 (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.--

30 (a) There shall be established by rule standards for  
31 direct disposal establishments, including, but not limited to,

1 requirements for refrigeration and storage of dead human  
2 bodies.

3 (b) The practice of direct disposition must be engaged  
4 in at a fixed location of at least 625 interior contiguous  
5 square feet and must maintain or make arrangements for  
6 suitable capacity for the refrigeration and storage of dead  
7 human bodies handled and stored by the establishment.

8 (c) Each direct disposal establishment shall at all  
9 times be subject to the inspection of all its buildings,  
10 grounds, and vehicles used in the conduct of its business, by  
11 the department, the Department of Health, and local government  
12 inspectors and by their agents. There shall be adopted rules  
13 which establish such inspection requirements. There shall be  
14 adopted by rule of the licensing authority an annual  
15 inspection fee not to exceed \$300, payable upon issuance of  
16 license and upon each renewal of such license.

17 (d) Each direct disposal establishment must display at  
18 the public entrance the name of the establishment and the name  
19 of the direct disposer or licensed funeral director acting as  
20 a direct disposer responsible for that establishment. A direct  
21 disposal establishment must transact its business under the  
22 name by which it is licensed.

23 (e) A direct disposal establishment may not be  
24 operated at the same location as any other direct disposal  
25 establishment or funeral establishment unless such  
26 establishments were licensed as colocated establishments on  
27 July 1, 2000.

28 Section 130. Section 470.022, Florida Statutes, is  
29 renumbered as section 497.605, Florida Statutes, and amended  
30 to read:

31

1           497.605 ~~470.022~~ Direct disposition not funeral  
2 directing.--The duties, functions, and services performed by a  
3 direct disposer licensee ~~registrant~~, as provided by this  
4 chapter, shall not be deemed to constitute funeral directing  
5 or embalming or the duties, functions, or services performed  
6 by a funeral director or embalmer as otherwise defined and  
7 provided by this chapter.

8           Section 131. Section 470.025, Florida Statutes, is  
9 renumbered as section 497.606, Florida Statutes, and amended  
10 to read:

11           (Substantial rewording of section. See  
12           s. 470.025, F.S., for present text.)

13           497.606 Cinerator facility, licensure required;  
14 licensing procedures and criteria; license renewal;  
15 regulation.--

16           (1) LICENSE REQUIRED.--No person may conduct,  
17 maintain, manage, or operate a cinerator facility unless a  
18 license for such facility has been issued and is in good  
19 standing under this section.

20           (2) APPLICATION PROCEDURES.--

21           (a) A person seeking licensure as a cinerator facility  
22 shall apply for such licensure using forms prescribed by rule.

23           (b) The application shall require the name, business  
24 address, residence address, date and place of birth or  
25 incorporation, and business phone number, of applicant and all  
26 principals of applicant. The application shall require the  
27 applicant's social security number, or if the applicant is an  
28 entity, its federal tax identification number.

29           (c) The application shall name the licensed funeral  
30 director or licensed direct disposer who will be in charge of  
31 the cinerator facility.

1       (d) The application may require information as to the  
2 applicant's financial resources.

3       (e) The application may require information as to the  
4 educational and employment history of an individual applicant,  
5 and as to applicants that are not natural persons, the  
6 business and employment history of the applicant and  
7 principals of applicant.

8       (f) The application shall require the applicant to  
9 disclose whether the applicant or any of applicant's  
10 principals including its proposed supervising licensee has  
11 ever been convicted or found guilty of, or entered a plea of  
12 no contest to, regardless of adjudication, any crime in any  
13 jurisdiction.

14       (g) The application shall require the applicant to  
15 disclose whether the applicant or any of applicant's  
16 principals including its proposed supervising licensee has  
17 ever had a license or the authority to practice a profession  
18 or occupation refused, suspended, fined, denied, or otherwise  
19 acted against or disciplined, by the licensing authority of  
20 any jurisdiction. A licensing authority's acceptance of a  
21 relinquishment of licensure, stipulation, consent order, or  
22 other settlement, offered in response to or in anticipation of  
23 the filing of charges against the license, shall be construed  
24 as action against the license.

25       (h) The application shall require the applicant and  
26 its principals to provide fingerprints in accordance with part  
27 I of this chapter.

28       (i) The application shall require the applicant to  
29 demonstrate that the applicant does, or will before commencing  
30 operations under the license, comply with all requirements of  
31 this chapter relating to the licensure applied for.

1       (j) The application shall be signed by the applicant  
2 if a natural person, or by the president of an applicant that  
3 is not a natural person.

4       (k) The application shall be accompanied by a  
5 nonrefundable fee of \$300. The licensing authority may from  
6 time to time increase the fee by rule but not to exceed \$500.

7       (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
8 application for licensure under this section, accompanied by  
9 the required fee, shall be approved if the licensing authority  
10 determines that the following conditions are met:

11       (a) No license may be issued unless the cinerator  
12 facility has been inspected and approved as meeting all  
13 requirements as set forth by the department, the Department of  
14 Health, the Department of Environmental Protection, or any  
15 local ordinance regulating the facility.

16       (b) The applicant is a natural person at least 18  
17 years of age, a corporation, a partnership, or a limited  
18 liability company formed prior to January 1, 2006, which  
19 limited liability company already holds a license under this  
20 chapter.

21       (c) The applicant does or will prior to commencing  
22 operations under the license comply with all requirements of  
23 this chapter relating to the license applied for.

24       (d) Applicant and applicant's principals are of good  
25 character and have no demonstrated history of lack of  
26 trustworthiness or integrity in business or professional  
27 matters.

28       (4) PROBATIONARY STATUS.--It is the policy of this  
29 state to encourage competition for the public benefit in the  
30 cinerator facility business by, among other means, the entry  
31 of new licensees into that business. To facilitate issuance of

1 licenses concerning applications judged by the licensing  
2 authority to be borderline as to qualification for licensure,  
3 the licensing authority may issue a new license under this  
4 section on a probationary basis, subject to conditions  
5 specified by the licensing authority on a case-by-case basis,  
6 which conditions may impose special monitoring, reporting, and  
7 restrictions on operations for up to the first 24 months of  
8 licensure, to ensure the licensee's responsibility,  
9 competency, financial stability, and compliance with this  
10 chapter. Provided, no such probationary license shall be  
11 issued unless the licensing authority determines that issuance  
12 would not pose an unreasonable risk to the public, and the  
13 licensing authority must within 24 months after issuance of  
14 the license either remove the probationary status or determine  
15 that the licensee is not qualified for licensure under this  
16 chapter and institute proceedings for revocation of licensure.

17 (5) ISSUANCE OF LICENSE.--Upon approval of the  
18 application by the licensing authority, the license shall be  
19 issued.

20 (6) RENEWAL OF LICENSE.--Licenses under this section  
21 shall be renewed biennially in accordance with a schedule,  
22 forms, and procedures established by rule. The nonrefundable  
23 and nonproratable biennial renewal fee shall be as determined  
24 by licensing authority rule but not to exceed \$500.

25 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee  
26 under this section must provide notice as required by rule  
27 prior to any change in location, control, or licensed person  
28 in charge. Any such change is subject to disapproval or to  
29 reasonable conditions imposed by the licensing authority, for  
30 the protection of the public to ensure compliance with this  
31 chapter.

1           (8) SUPERVISION OF FACILITIES.--Each cinerator  
2 facility shall have one full-time licensed direct disposer or  
3 licensed funeral director in charge for that facility. Such  
4 person may be in charge of only one facility. Such licensed  
5 funeral director or licensed direct disposer shall be  
6 responsible for making sure the facility, its operations, and  
7 all persons employed in the facility comply with all  
8 applicable state and federal laws and rules.

9           (9) REGULATION OF CINERATOR FACILITIES.--

10           (a) There shall be established by rule standards for  
11 cinerator facilities, including, but not limited to,  
12 requirements for refrigeration and storage of dead human  
13 bodies, use of forms and contracts, and record retention.

14           (b) No more than one dead human body may be placed in  
15 a retort at one time, unless written permission has been  
16 received from a legally authorized person for each body. The  
17 operator of a cinerator facility shall be entitled to rely on  
18 the permission of a legally authorized person to cremate more  
19 than one human body at a time.

20           (c) Each cinerator facility shall at all times be  
21 subject to the inspection of all its buildings, grounds,  
22 records, equipment, and vehicles used in the conduct of its  
23 business, by the department, the Department of Environmental  
24 Protection, the Department of Health, and local government  
25 inspectors and by their agents. Rules shall be adopted which  
26 establish such inspection requirements. There shall by rule of  
27 the licensing authority be adopted an annual inspection fee  
28 not to exceed \$300, payable prior to issuance of license and  
29 upon each renewal of such license.

30           (d) A cinerator facility licensed under this section  
31 shall only receive dead human bodies for cremation. A



1 cinerator facility may not receive other materials, or  
2 medical, hazardous, and biohazardous waste, for the purpose of  
3 disposal in a retort.

4 (e) Each cinerator facility must display at its public  
5 entrance the name of the facility and the name of the funeral  
6 director or direct disposer responsible for that facility. A  
7 cinerator facility must transact its business under the name  
8 by which it is licensed.

9 (f) A cinerator facility located at the same address  
10 as a funeral establishment may not have a direct disposer as  
11 its individual in charge.

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

25 (h) Each cinerator facility shall ensure that all  
26 alternative containers, cremation containers, or caskets used  
27 for cremation contain no amount of chlorinated plastics not  
28 authorized by the Department of Environmental Protection, that  
29 they also are composed of readily combustible materials  
30 suitable for cremation, able to be closed to provide a  
31 complete covering for the human remains, resistant to leakage

1 or spillage, rigid enough for handling with ease, and able to  
2 provide for the health, safety, and personal integrity of the  
3 public and crematory personnel.

4 (i) There shall be adopted by rule criteria for  
5 acceptable cremation and alternative containers.

6 (j) There shall be rules adopted requiring each  
7 facility to submit periodic reports to the department which  
8 include the names of persons cremated, the date and county of  
9 death, the name of each person supervising each cremation, the  
10 name and license number of the establishment requesting  
11 cremation, and the types of containers used to hold the body  
12 during cremation.

13 (k) Each cinerator facility must be inspected prior to  
14 the issuance and renewal of its license and shall:

15 1. Maintain one or more retorts for the reduction of  
16 dead human bodies.

17 2. Maintain refrigeration that satisfies the standards  
18 set by the Department of Health and contains a sufficient  
19 number of shelves for the average daily number of bodies  
20 stored, if unembalmed bodies are kept at the site.

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

24 4. Either have on site or immediately available  
25 sufficient sealed containers of a type required for the  
26 transportation of bodies as specified in applicable state  
27 rules.

28 5. Maintain the premises in a clean and sanitary  
29 condition.

30 6. Have appropriate Department of Environmental  
31 Protection permits.

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

3           Section 132. Section 470.0255, Florida Statutes, is  
4 renumbered as section 497.607, Florida Statutes, and amended  
5 to read:

6           497.607 ~~470.0255~~ Cremation; procedure required.--

7           (1) At the time of the arrangement for a cremation  
8 performed by any person licensed pursuant to this chapter, the  
9 person contracting for cremation services shall be required to  
10 designate ~~his or her~~ or his intentions with respect to the  
11 disposition of the cremated remains of the deceased in a  
12 signed declaration of intent which shall be provided by and  
13 retained by the funeral or direct disposal establishment. A  
14 cremation may not be performed until a legally authorized  
15 person gives written authorization for such cremation. The  
16 cremation must be performed within 48 hours after a specified  
17 time which has been agreed to in writing by the person  
18 authorizing the cremation.

19           (2) With respect to any person who intends to provide  
20 for the cremation of the deceased, if, after a period of 120  
21 days from the time of cremation the cremated remains have not  
22 been claimed, the funeral or direct disposal establishment may  
23 dispose of the cremated remains. Such disposal shall include  
24 scattering them at sea or placing them in a licensed cemetery  
25 scatter garden or pond or in a church columbarium or otherwise  
26 disposing of the remains as provided by rule ~~of the department~~  
27 ~~or board.~~

28           (3) Pursuant to the request of a legally authorized  
29 person and incidental to final disposition, cremation may be  
30 performed on parts of human remains. This subsection does not  
31

1 authorize the cremation of body parts as defined in s.  
2 497.005.

3 Section 133. Section 497.608, Florida Statutes, is  
4 created to read:

5 497.608 Liability for unintentional commingling of the  
6 residue of the cremation process.--

7 (1) The Legislature recognizes that the unintentional  
8 or incidental commingling of the residue of the cremation of  
9 human remains is an inevitable byproduct of the cremation  
10 process in a cinerator retort or cremation chamber.

11 (2) The operator of a cinerator facility shall  
12 establish written procedures for the removal of cremated  
13 remains, to the extent possible, resulting from the cremation  
14 of a human body and the postcremation processing, shipping,  
15 packing or identifying of those remains. The operator of a  
16 cinerator facility shall file its written procedures, and any  
17 revisions to those written procedures, with the licensing  
18 authority for its approval, and effective January 1, 2006, the  
19 cremation facility shall not be operated unless it has and  
20 follows such written procedures approved by the licensing  
21 authority; provided, the licensing authority may adopt by rule  
22 standard uniform procedures for the removal of such cremated  
23 remains, which may be adopted by any cinerator facility in  
24 lieu of promulgating, filing, and obtaining approval of  
25 procedures. A cinerator facility choosing to the utilize  
26 standard uniform procedures specified by rule shall file  
27 notice of its choice with the licensing authority pursuant to  
28 procedures and forms specified by rule.

29 (3) If an operator follows the procedures set forth in  
30 written procedures filed and approved by the licensing  
31 authority, or adopts and follows the standard uniform

1 procedures adopted by the licensing authority, the operator  
2 shall not liable for the unintentional or the incidental  
3 commingling of cremated remains resulting from more than one  
4 cremation cycle or from postcremation processing, shipping,  
5 packing, or identifying those remains.

6 (4) A copy of the procedures being utilized by a  
7 cinerator facility shall be provided by the cinerator facility  
8 upon request, to customers and their representatives, the  
9 department, and other legally authorized persons.

10 Section 134. Section 20.121, Florida Statutes, is  
11 amended to read:

12 20.121 Department of Financial Services.--There is  
13 created a Department of Financial Services.

14 (1) DEPARTMENT HEAD.--The head of the Department of  
15 Financial Services is the Chief Financial Officer.

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

18 (a) The Division of Accounting and Auditing, which  
19 shall include the following bureau and office:

20 1. The Bureau of Unclaimed Property.

21 2. The Office of Fiscal Integrity which shall function  
22 as a criminal justice agency for purposes of ss.

23 943.045-943.08 and shall have a separate budget. The office  
24 may conduct investigations within or outside this state as the  
25 bureau deems necessary to aid in the enforcement of this  
26 section. If during an investigation the office has reason to  
27 believe that any criminal law of this state has or may have  
28 been violated, the office shall refer any records tending to  
29 show such violation to state or federal law enforcement or  
30 prosecutorial agencies and shall provide investigative  
31 assistance to those agencies as required.

- 1 (b) The Division of State Fire Marshal.
- 2 (c) The Division of Risk Management.
- 3 (d) The Division of Treasury, which shall include a
- 4 Bureau of Deferred Compensation responsible for administering
- 5 the Government Employees Deferred Compensation Plan
- 6 established under s. 112.215 for state employees.
- 7 (e) The Division of Insurance Fraud.
- 8 (f) The Division of Rehabilitation and Liquidation.
- 9 (g) The Division of Insurance Agents and Agency
- 10 Services.
- 11 (h) The Division of Consumer Services, ~~which shall~~
- 12 ~~include a Bureau of Funeral and Cemetery Services.~~
- 13 1. The Division of Consumer Services shall perform the
- 14 following functions concerning products or services regulated
- 15 by the Department of Financial Services or by either office of
- 16 the Financial Services Commission:
- 17 a. Receive inquiries and complaints from consumers. +
- 18 b. Prepare and disseminate such information as the
- 19 department deems appropriate to inform or assist consumers. +
- 20 c. Provide direct assistance and advocacy for
- 21 consumers who request such assistance or advocacy. +
- 22 d. With respect to apparent or potential violations of
- 23 law or applicable rules by a person or entity licensed by the
- 24 department or by either office of the commission, report such
- 25 apparent or potential violation to the appropriate division of
- 26 the department or office of the commission, which may take
- 27 such further action as it deems appropriate.
- 28 2. Any person licensed or issued a certificate of
- 29 authority by the department or by the Office of Insurance
- 30 Regulation shall respond, in writing, to the Division of
- 31 Consumer Services within 20 days after receipt of a written

1 request for information from the division concerning a  
2 consumer complaint. The response must address the issues and  
3 allegations raised in this complaint. The division may, in its  
4 discretion, impose an administrative penalty for failure to  
5 comply with this subparagraph in an amount up to \$2,500 per  
6 violation upon any entity licensed by the department or the  
7 Office of Insurance Regulation and \$250 for the first  
8 violation, \$500 for the second violation and up to \$1,000 per  
9 violation thereafter upon any individual licensed by the  
10 department or the Office of Insurance Regulation.

11           3. The department may adopt rules to implement the  
12 provisions of this paragraph.

13           4. The powers, duties, and responsibilities expressed  
14 or granted in this paragraph shall not limit the powers,  
15 duties, and responsibilities of the Department of Financial  
16 Services, the Financial Services Commission, the Office of  
17 Insurance Regulation, or the Office of Financial Regulation  
18 set forth elsewhere in the Florida Statutes.

19           (i) The Division of Workers' Compensation.

20           (j) The Division of Administration.

21           (k) The Division of Legal Services.

22           (l) The Division of Information Systems.

23           (m) The Office of Insurance Consumer Advocate.

24           (n) The Division of Funeral, Cemetery, and Consumer  
25 Services.

26           (3) FINANCIAL SERVICES COMMISSION.--Effective January  
27 7, 2003, there is created within the Department of Financial  
28 Services the Financial Services Commission, composed of the  
29 Governor, the Attorney General, the Chief Financial Officer,  
30 and the Commissioner of Agriculture, which shall for purposes  
31 of this section be referred to as the commission. Commission

1 members shall serve as agency head of the Financial Services  
2 Commission. The commission shall be a separate budget entity  
3 and shall be exempt from the provisions of s. 20.052.  
4 Commission action shall be by majority vote consisting of at  
5 least three affirmative votes. The commission shall not be  
6 subject to control, supervision, or direction by the  
7 Department of Financial Services in any manner, including  
8 purchasing, transactions involving real or personal property,  
9 personnel, or budgetary matters.

10 (a) Structure.--The major structural unit of the  
11 commission is the office. Each office shall be headed by a  
12 director. The following offices are established:

13 1. The Office of Insurance Regulation, which shall be  
14 responsible for all activities concerning insurers and other  
15 risk bearing entities, including licensing, rates, policy  
16 forms, market conduct, claims, adjusters, issuance of  
17 certificates of authority, solvency, viatical settlements,  
18 premium financing, and administrative supervision, as provided  
19 under the insurance code or chapter 636. The head of the  
20 Office of Insurance Regulation is the Director of the Office  
21 of Insurance Regulation.

22 2. The Office of Financial Regulation, which shall be  
23 responsible for all activities of the Financial Services  
24 Commission relating to the regulation of banks, credit unions,  
25 other financial institutions, finance companies, and the  
26 securities industry. The head of the office is the Director of  
27 the Office of Financial Regulation. The Office of Financial  
28 Regulation shall include a Bureau of Financial Investigations,  
29 which shall function as a criminal justice agency for purposes  
30 of ss. 943.045-943.08 and shall have a separate budget. The  
31 bureau may conduct investigations within or outside this state



1 as the bureau deems necessary to aid in the enforcement of  
2 this section. If, during an investigation, the office has  
3 reason to believe that any criminal law of this state has or  
4 may have been violated, the office shall refer any records  
5 tending to show such violation to state or federal law  
6 enforcement or prosecutorial agencies and shall provide  
7 investigative assistance to those agencies as required.

8 (b) Organization.--The commission shall establish by  
9 rule any additional organizational structure of the offices.  
10 It is the intent of the Legislature to provide the commission  
11 with the flexibility to organize the offices in any manner  
12 they determine appropriate to promote both efficiency and  
13 accountability.

14 (c) Powers.--Commission members shall serve as the  
15 agency head for purposes of rulemaking under ss.  
16 120.536-120.565 by the commission and all subunits of the  
17 commission. Each director is agency head for purposes of final  
18 agency action under chapter 120 for all areas within the  
19 regulatory authority delegated to the director's office.

20 (d) Appointment and qualifications of directors.--The  
21 commission shall appoint or remove each director by a majority  
22 vote consisting of at least three affirmative votes, with both  
23 the Governor and the Chief Financial Officer on the prevailing  
24 side. The minimum qualifications of the directors are as  
25 follows:

26 1. Prior to appointment as director, the Director of  
27 the Office of Insurance Regulation must have had, within the  
28 previous 10 years, at least 5 years of responsible private  
29 sector experience working full time in areas within the scope  
30 of the subject matter jurisdiction of the Office of Insurance  
31 Regulation or at least 5 years of experience as a senior

1 | examiner or other senior employee of a state or federal agency  
2 | having regulatory responsibility over insurers or insurance  
3 | agencies.

4 |         2. Prior to appointment as director, the Director of  
5 | the Office of Financial Regulation must have had, within the  
6 | previous 10 years, at least 5 years of responsible private  
7 | sector experience working full time in areas within the  
8 | subject matter jurisdiction of the Office of Financial  
9 | Regulation or at least 5 years of experience as a senior  
10 | examiner or other senior employee of a state or federal agency  
11 | having regulatory responsibility over financial institutions,  
12 | finance companies, or securities companies.

13 |         (e) Administrative support.--The offices shall have a  
14 | sufficient number of attorneys, examiners, investigators,  
15 | other professional personnel to carry out their  
16 | responsibilities and administrative personnel as determined  
17 | annually in the appropriations process. The Department of  
18 | Financial Services shall provide administrative and  
19 | information systems support to the offices.

20 |         (f) Records retention schedules.--The commission and  
21 | the offices may destroy general correspondence files and also  
22 | any other records that they deem no longer necessary to  
23 | preserve in accordance with retention schedules and  
24 | destruction notices established under rules of the Division of  
25 | Library and Information Services, records and information  
26 | management program, of the Department of State. Such schedules  
27 | and notices relating to financial records of the commission  
28 | and offices shall be subject to the approval of the Auditor  
29 | General.

30 |         (g) Records storage.--The commission and offices may  
31 | photograph, microphotograph, or reproduce on film such

1 documents and records as they may select, in such manner that  
2 each page will be exposed in exact conformity with the  
3 original. After reproduction and filing, original documents  
4 and records may be destroyed in accordance with the provisions  
5 of paragraph (f).

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

10 (5)(4) TRANSITIONAL RULES.--Effective January 7, 2003,  
11 the rules of the Department of Banking and Finance and of the  
12 Department of Insurance that were in effect on January 6,  
13 2003, shall become rules of the Department of Financial  
14 Services or the Financial Services Commission as is  
15 appropriate to the corresponding regulatory or constitutional  
16 function and shall remain in effect until specifically amended  
17 or repealed in the manner provided by law.

18 Section 135. Paragraph (a) of subsection (4) of  
19 section 20.165, Florida Statutes, is amended to read:

20 20.165 Department of Business and Professional  
21 Regulation.--There is created a Department of Business and  
22 Professional Regulation.

23 (4)(a) The following boards are established within the  
24 Division of Professions:

- 25 1. Board of Architecture and Interior Design, created  
26 under part I of chapter 481.
- 27 2. Florida Board of Auctioneers, created under part VI  
28 of chapter 468.
- 29 3. Barbers' Board, created under chapter 476.
- 30 4. Florida Building Code Administrators and Inspectors  
31 Board, created under part XII of chapter 468.

- 1           5. Construction Industry Licensing Board, created  
2 under part I of chapter 489.
- 3           6. Board of Cosmetology, created under chapter 477.
- 4           7. Electrical Contractors' Licensing Board, created  
5 under part II of chapter 489.
- 6           8. Board of Employee Leasing Companies, created under  
7 part XI of chapter 468.
- 8           ~~9. Board of Funeral Directors and Embalmers, created~~  
9 ~~under chapter 470.~~
- 10          9.10. Board of Landscape Architecture, created under  
11 part II of chapter 481.
- 12          10.11. Board of Pilot Commissioners, created under  
13 chapter 310.
- 14          11.12. Board of Professional Engineers, created under  
15 chapter 471.
- 16          12.13. Board of Professional Geologists, created under  
17 chapter 492.
- 18          13.14. Board of Professional Surveyors and Mappers,  
19 created under chapter 472.
- 20          14.15. Board of Veterinary Medicine, created under  
21 chapter 474.
- 22          Section 136. Paragraph (a) of subsection (1) of  
23 section 316.1974, Florida Statutes, is amended to read:  
24          316.1974 Funeral procession right-of-way and  
25 liability.--
- 26          (1) DEFINITIONS.--
- 27          (a) "Funeral director" and "funeral establishment"  
28 shall have the same meaning as set forth in s. 497.005  
29 ~~470.002~~.
- 30          Section 137. Paragraph (a) of subsection (2) of  
31 section 381.0098, Florida Statutes, is amended to read:

1 | 381.0098 Biomedical waste.--  
2 | (2) DEFINITIONS.--As used in this section, the term:  
3 | (a) "Biomedical waste" means any solid or liquid waste  
4 | which may present a threat of infection to humans. The term  
5 | includes, but is not limited to, nonliquid human tissue and  
6 | body parts; laboratory and veterinary waste which contains  
7 | human-disease-causing agents; discarded disposable sharps;  
8 | human blood, blood products, and body fluids; and other  
9 | materials which in the opinion of the department represent a  
10 | significant risk of infection to persons outside the  
11 | generating facility. The term does not include human remains  
12 | that are disposed of by persons licensed under chapter 497  
13 | ~~470~~.

14 | Section 138. Subsection (7) of section 382.002,  
15 | Florida Statutes, is amended to read:

16 | 382.002 Definitions.--As used in this chapter, the  
17 | term:

18 | (7) "Funeral director" means a licensed funeral  
19 | director or direct disposer licensed pursuant to chapter 497  
20 | ~~470~~ or other person who first assumes custody of or effects  
21 | the final disposition of a dead body or a fetus as described  
22 | in subsection (5).

23 | Section 139. Subsections (21), (37), and (39) of  
24 | section 403.703, Florida Statutes, are amended to read:

25 | 403.703 Definitions.--As used in this act, unless the  
26 | context clearly indicates otherwise, the term:

27 | (21) "Hazardous waste" means solid waste, or a  
28 | combination of solid wastes, which, because of its quantity,  
29 | concentration, or physical, chemical, or infectious  
30 | characteristics, may cause, or significantly contribute to, an  
31 | increase in mortality or an increase in serious irreversible

1 or incapacitating reversible illness or may pose a substantial  
2 present or potential hazard to human health or the environment  
3 when improperly transported, disposed of, stored, treated, or  
4 otherwise managed. The term does not include human remains  
5 that are disposed of by persons licensed under chapter 497  
6 ~~470~~.

7 (37) "Biomedical waste" means any solid waste or  
8 liquid waste which may present a threat of infection to  
9 humans. The term includes, but is not limited to, nonliquid  
10 human tissue and body parts; laboratory and veterinary waste  
11 which contain human-disease-causing agents; discarded  
12 disposable sharps; human blood, and human blood products and  
13 body fluids; and other materials which in the opinion of the  
14 Department of Health represent a significant risk of infection  
15 to persons outside the generating facility. The term does not  
16 include human remains that are disposed of by persons licensed  
17 under chapter 497 ~~470~~.

18 (39) "Biological waste" means solid waste that causes  
19 or has the capability of causing disease or infection and  
20 includes, but is not limited to, biomedical waste, diseased or  
21 dead animals, and other wastes capable of transmitting  
22 pathogens to humans or animals. The term does not include  
23 human remains that are disposed of by persons licensed under  
24 chapter 497 ~~470~~.

25 Section 140. Paragraph (a) of subsection (1) of  
26 section 406.02, Florida Statutes, is amended to read:

27 406.02 Medical Examiners Commission; membership;  
28 terms; duties; staff.--

29 (1) There is created the Medical Examiners Commission  
30 within the Department of Law Enforcement. The commission shall  
31 consist of nine persons appointed or selected as follows:

- 1           (a) The Governor shall appoint:
- 2           1. Two members who are physicians licensed pursuant to
- 3 chapter 458 or chapter 459 and who are active district medical
- 4 examiners;
- 5           2. One member who is a funeral director licensed
- 6 pursuant to chapter 497 ~~470~~;
- 7           3. One member who is a state attorney;
- 8           4. One member who is a public defender;
- 9           5. One member who is a sheriff; and
- 10          6. One member who is a county commissioner.

11          Section 141. Section 406.50, Florida Statutes, is

12 amended to read:

13          406.50 Unclaimed dead bodies or human remains;

14 disposition, procedure.--All public officers, agents, or

15 employees of every county, city, village, town, or

16 municipality and every person in charge of any prison, morgue,

17 hospital, funeral parlor, or mortuary and all other persons

18 coming into possession, charge, or control of any dead human

19 body or remains which are unclaimed or which are required to

20 be buried or cremated at public expense are hereby required to

21 notify, immediately, the anatomical board, whenever any such

22 body, bodies, or remains come into its possession, charge, or

23 control. Notification of the anatomical board is not required

24 if the death was caused by crushing injury, the deceased had a

25 contagious disease, an autopsy was required to determine cause

26 of death, the body was in a state of severe decomposition, or

27 a family member objects to use of the body for medical

28 education and research.

- 29          (1) The person or entity in charge or control of the
- 30 dead body or human remains shall make a reasonable effort to
- 31 determine:

1 (a) The identity of the deceased person and shall  
2 further make a reasonable effort to contact any relatives of  
3 such deceased person.

4 (b) Whether or not the deceased person is entitled to  
5 burial in a national cemetery as a veteran of the armed forces  
6 and, if so, shall make arrangements for such burial services  
7 in accordance with the provisions of 38 C.F.R. For purposes of  
8 this subsection, "a reasonable effort" includes contacting the  
9 county veterans service office or regional office of the  
10 United States Department of Veterans Affairs.

11 (2) Such dead human bodies as described in this  
12 chapter shall be delivered to the anatomical board as soon as  
13 possible after death.

14 (3) Nothing herein shall affect the right of a medical  
15 examiner to hold such dead body or remains for the purpose of  
16 investigating the cause of death, nor shall this chapter  
17 affect the right of any court of competent jurisdiction to  
18 enter an order affecting the disposition of such body or  
19 remains.

20 (4) In the event more than one legally authorized  
21 person claims a body for interment, the requests shall be  
22 prioritized in accordance with s. 732.103.

23  
24 For purposes of this chapter, the term "anatomical board"  
25 means the anatomical board of this state located at the  
26 University of Florida Health Science Center, and the term  
27 "unclaimed" means a dead body or human remains that is not  
28 claimed by a legally authorized person, as defined in s.  
29 497.005, for interment at that person's expense.

30 Section 142. Section 406.52, Florida Statutes, is  
31 amended to read:



1           406.52 Retention of bodies before use; unfit or excess  
2 number of bodies, disposition procedure.--All bodies received  
3 by the anatomical board shall be retained in receiving vaults  
4 for a period of not less than 48 hours before allowing their  
5 use for medical science; if at any time more bodies are made  
6 available to the anatomical board than can be used for medical  
7 science under its jurisdiction, or if a body shall be deemed  
8 by the anatomical board to be unfit for anatomical purposes,  
9 the anatomical board may notify, in writing, the county  
10 commissioners or other legally authorized person, as defined  
11 in s. 497.005 ~~470.002~~, in the county where such person died,  
12 to cause it to be buried or cremated in accordance with the  
13 rules, laws and practices for disposing of such unclaimed  
14 bodies. However, prior to having any body buried or cremated,  
15 the county shall make a reasonable effort to determine the  
16 identity of the body and shall further make a reasonable  
17 effort to contact any relatives of the deceased person. If a  
18 relative of the deceased person is contacted and expresses a  
19 preference for either burial or cremation, the county shall  
20 make a reasonable effort to accommodate the request of the  
21 relative. For purposes of this section, the county  
22 commissioners of the county where such person died shall be  
23 considered a legally authorized person as defined in s.  
24 497.005 ~~470.002~~. A person licensed under ~~chapter 470 or~~  
25 chapter 497 shall not be liable for any damages resulting from  
26 cremating or burying such body at the direction of the  
27 county's legally authorized person.

28           Section 143. Section 406.53, Florida Statutes, is  
29 amended to read:

30  
31

1           406.53 Death of indigents; notice; delivery to the  
2 anatomical board when unclaimed; exceptions; assessment of  
3 fees.--

4           (1) Notice of death to the anatomical board in cases  
5 of indigent persons is not required if:

6           (a) Death was caused by crushing injury.

7           (b) The deceased had a contagious disease.

8           (c) An autopsy was required to determine cause of  
9 death.

10          (d) The body was in a state of severe decomposition.

11          (e) Any relative, by blood or marriage, claims the  
12 body for burial at the expense of such relative, but the body  
13 shall be surrendered to the claimant for interment, but if  
14 such relative is indigent, in a manner consistent with the  
15 policy of the agency in possession or control of the body.

16          (f) Any friend or any representative of a fraternal  
17 society of which the deceased was a member, or a  
18 representative of any charitable or religious organization, or  
19 a governmental agency which was providing residential care to  
20 the indigent person at the time of his or her death claims the  
21 body for burial at his or her, its, or their expense.

22          (g) The deceased person was an honorably discharged  
23 member of the Armed Forces of the United States or the state  
24 who served during a period of wartime service as defined in s.  
25 1.01(14); but such body shall be buried in accordance with the  
26 provisions of the existing laws.

27          (2) When the Department of Health claims the body of a  
28 client according to this section, the department shall assess  
29 fees for burial pursuant to s. 402.33.

30          (3) For purposes of this chapter, the term indigent  
31 shall be 100 percent of the federal poverty level recognized

1 by the Federal Income Guidelines produced by the United States  
2 Department of Health and Human Services.

3 Section 144. Subsection (1) of section 455.2226,  
4 Florida Statutes, is amended to read:

5 455.2226 Funeral directors and embalmers; instruction  
6 on HIV and AIDS.--

7 (1) The Board of Funeral Directors and Embalmers shall  
8 require each person licensed or certified under chapter 497  
9 ~~470~~ to complete a continuing educational course, approved by  
10 the board, on human immunodeficiency virus and acquired immune  
11 deficiency syndrome as part of biennial relicensure or  
12 recertification. The course shall consist of education on the  
13 modes of transmission, infection control procedures, clinical  
14 management, and prevention of human immunodeficiency virus and  
15 acquired immune deficiency syndrome. Such course shall include  
16 information on current Florida law on acquired immune  
17 deficiency syndrome and its impact on testing, confidentiality  
18 of test results, and treatment of patients.

19 Section 145. Paragraph (b) of subsection (1) of  
20 section 501.022, Florida Statutes, is amended to read:

21 501.022 Home solicitation sale; permit required.--

22 (1)

23 (b) The following are excluded from the operation of  
24 this section:

25 1. Bona fide agents, business representatives, or  
26 salespersons making calls or soliciting orders at the usual  
27 place of business of a customer regarding products or services  
28 for use in connection with the customer's business.

29 2. Solicitors, salespersons, or agents making a call  
30 or business visit upon the express invitation, oral or  
31 written, of an inhabitant of the premises or her or his agent.

1           3. Telephone solicitors, salespersons, or agents  
2 making calls which involve transactions that are unsolicited  
3 by the consumer and consummated by telephone and without any  
4 other contact between the buyer and the seller or its  
5 representative prior to delivery of the goods or performance  
6 of the services.

7           4. Solicitors, salespersons, or agents conducting a  
8 sale, lease, or rental of consumer goods or services by  
9 sample, catalog, or brochure for future delivery.

10           5. Minors, as defined in s. 1.01(13), conducting home  
11 solicitation sales under the supervision of an adult  
12 supervisor who holds a valid home solicitation sale permit.  
13 Minors excluded from operation of this section must, however,  
14 carry personal identification which includes their full name,  
15 date of birth, residence address, and employer and the name  
16 and permit number of their adult supervisor.

17           6. Those sellers or their representatives that are  
18 currently regulated as to the sale of goods and services by  
19 ~~chapter 470~~, chapter 475, or chapter 497.

20           7. Solicitors, salespersons, or agents making calls or  
21 soliciting orders on behalf of a religious, charitable,  
22 scientific, educational, or veterans' institution or  
23 organization holding a sales tax exemption certificate under  
24 s. 212.08(7)(a).

25           Section 146. Subsection (15) of section 501.604,  
26 Florida Statutes, is amended to read:

27           501.604 Exemptions.--The provisions of this part,  
28 except ss. 501.608 and 501.616(6) and (7), do not apply to:

29           (15) A person who is licensed pursuant to ~~chapter 470~~  
30 ~~or~~ chapter 497 and who is soliciting within the scope of the  
31 license.

1           Section 147. Paragraph (d) of subsection (1) of  
2 section 626.785, Florida Statutes, is amended to read:

3           626.785 Qualifications for license.--

4           (1) The department shall not grant or issue a license  
5 as life agent to any individual found by it to be  
6 untrustworthy or incompetent, or who does not meet the  
7 following qualifications:

8           (d) Must not be a funeral director or direct disposer,  
9 or an employee or representative thereof, or have an office  
10 in, or in connection with, a funeral establishment, except  
11 that a funeral establishment may contract with a life  
12 insurance agent to sell a preneed contract as defined in s.  
13 497.005 ~~chapter 497~~. Notwithstanding other provisions of this  
14 chapter, such insurance agent may sell limited policies of  
15 insurance covering the expense of final disposition or burial  
16 of an insured in the amount of \$12,500, plus an annual  
17 percentage increase based on the Annual Consumer Price Index  
18 compiled by the United States Department of Labor, beginning  
19 with the Annual Consumer Price Index announced by the United  
20 States Department of Labor for the year 2003.

21           Section 148. Section 765.519, Florida Statutes, is  
22 amended to read:

23           765.519 Enucleation of eyes by licensed funeral  
24 directors.--With respect to a gift of an eye as provided for  
25 in this part, a licensed funeral director as defined in  
26 chapter 497 ~~470~~ who has completed a course in eye enucleation  
27 and has received a certificate of competence from the  
28 Department of Ophthalmology of the University of Florida  
29 School of Medicine, the University of South Florida School of  
30 Medicine, or the University of Miami School of Medicine may  
31 enucleate eyes for gift after proper certification of death by

1 a physician and in compliance with the intent of the gift as  
2 defined in this chapter. No properly certified funeral  
3 director acting in accordance with the terms of this part  
4 shall have any civil or criminal liability for eye  
5 enucleation.

6       Section 149. (1) All of the statutory powers, duties  
7 and functions, records, personnel, property, and unexpended  
8 balances of appropriations, allocations, or other funds for  
9 the administration of chapter 470, Florida Statutes, related  
10 to the Board of Funeral Directors and Embalmers, shall be  
11 transferred by a type two transfer, as defined in section  
12 20.06(2), Florida Statutes, from the Department of Business  
13 and Professional Regulation to the Department of Financial  
14 Services.

15       (2) All of the statutory powers, duties and functions,  
16 records, personnel, property, and unexpended balances of  
17 appropriations, allocations, or other funds for the  
18 administration of chapter 497, Florida Statutes, related to  
19 the Board of Funeral and Cemetery Services, shall be  
20 transferred by a type two transfer, as defined in section  
21 20.06(2), Florida Statutes, to the Board of Funeral, Cemetery,  
22 and Consumer Services and the Department of Financial  
23 Services, as appropriate.

24       Section 150. (1) The transfer of regulatory authority  
25 under chapter 470, Florida Statutes, provided by this act  
26 shall not affect the validity of any judicial or  
27 administrative action pending as of 11:59 p.m. on the day  
28 before the effective date of this act, to which action the  
29 Board of Funeral Directors and Embalmers, or the Department of  
30 Business and Professional Regulation in relation to the Board  
31 of Funeral Directors and Embalmers, are at that time parties,

1 and the Board of Funeral, Cemetery, and Consumer Services or  
2 the Department of Financial Services, as appropriate, shall be  
3 substituted as a party in interest in any such action.

4 (2) The transfer of regulatory authority under chapter  
5 497, Florida Statutes, provided by this act shall not affect  
6 the validity of any judicial or administrative action pending  
7 as of 11:59 p.m. on the day prior to this act taking effect,  
8 to which action the Board of Funeral and Cemetery Services, or  
9 the Department of Financial Services in relation to the Board  
10 of Funeral and Cemetery Services, is at that time a party, and  
11 the Board of Funeral, Cemetery, and Consumer Services, or the  
12 Department of Financial Services, as appropriate, shall be  
13 substituted as a party in interest in any such action.

14 Section 151. (1) All lawful orders issued by the  
15 Board of Funeral Directors and Embalmers, or by the Department  
16 of Business and Professional Regulation, implementing or  
17 enforcing or otherwise in regard to any provision of chapter  
18 470, Florida Statutes, issued prior to the effective date of  
19 this act, shall remain in effect and be enforceable after the  
20 effective date of this act, unless thereafter modified in  
21 accordance with law.

22 (2) All lawful orders issued by the Board of Funeral  
23 and Cemetery Services, or the Department of Financial Services  
24 in regard to the Board of Funeral and Cemetery Services,  
25 implementing or enforcing or otherwise in regard to any  
26 provision of chapter 497, Florida Statutes, issued prior to  
27 the effective date of this act, shall remain in effect and be  
28 enforceable after the effective date of this act.

29 Section 152. (1) The rules of the Board of Funeral  
30 Directors and Embalmers and of the Department of Business and  
31 Professional Regulation relating to the Board of Funeral

1 Directors and Embalmers or implementation of chapter 470,  
2 Florida Statutes, which were in effect at 11:59 p.m. on the  
3 day prior to this act taking effect shall become the rules of  
4 the Department of Financial Services and the Board of Funeral,  
5 Cemetery, and Consumer Services and shall remain in effect  
6 until amended or repealed in the manner provided by law.

7       (2) The rules of the Board of Funeral and Cemetery  
8 Services which were in effect at 11:59 p.m. on the day prior  
9 to this act taking effect shall become the rules of the  
10 Department of Financial Services and the Board of Funeral,  
11 Cemetery, and Consumer Services and shall remain in effect  
12 until specifically amended or repealed in the manner provided  
13 by law.

14       (3) The rules of the Department of Financial Services  
15 relating to chapter 497, Florida Statutes, which were in  
16 effect at 11:59 P.M. on the day prior to this act taking  
17 effect shall continue in force until thereafter repealed or  
18 amended pursuant to chapter 120, Florida Statutes, and this  
19 act.

20       Section 153. (1) Notwithstanding the transfer of  
21 regulatory authority over chapters 470 and 497, Florida  
22 Statutes, provided by this act, persons and entities holding  
23 in good standing any license under chapters 470 or 497,  
24 Florida Statutes, as of 11:59 p.m. on the day prior to the  
25 effective date of this act, shall be deemed to hold in good  
26 standing a license in the same capacity under chapter 497,  
27 Florida Statutes, as of the effective date of this act.

28       (2) Notwithstanding the transfer of regulatory  
29 authority over chapters 470 and 497, Florida Statutes,  
30 provided by this act, persons and entities holding in good  
31 standing a preneed certificate of authority under chapter 497,



1 Florida Statutes, as of 11:59 p.m. on the day prior to the  
2 effective date of this act, shall be deemed to hold in good  
3 standing a preneed license under part IV of chapter 497,  
4 Florida Statutes, as of the effective date of this act, and  
5 their certificate of authority shall be deemed a preneed  
6 license for purposes of chapter 497, Florida Statutes.

7 (3) Notwithstanding the transfer of regulatory  
8 authority over chapters 470 and 497, Florida Statutes,  
9 provided by this act, persons and entities holding in good  
10 standing any registration under chapters 470 or 497, Florida  
11 Statutes, as of 11:59 p.m. on the day prior to the effective  
12 date of this act, shall as of the effective date of this act  
13 be deemed to be licensed in the same capacity in which they  
14 were formerly registered, and their registration shall  
15 thereafter be deemed a license for purposes of chapter 497,  
16 Florida Statutes.

17 Section 154. (1) The Department of Financial Services  
18 shall, no later than November 1, 2004, notify the Department  
19 of Business and Professional Regulation of its intention to  
20 contract with the Department of Business and Professional  
21 Regulation, another governmental agency, or a private business  
22 for the implementation of a system for the administration of  
23 the overall licensing process, including the processing and  
24 tracking of applications for licensure, the issuance of  
25 licenses approved by the board, the tracking of licenses  
26 issued, the administration of the license renewal process, and  
27 the collection and processing of fees relating to those  
28 activities. If the Department of Financial Services elects to  
29 contract with the Department of Business and Professional  
30 Regulation for the services described in this subsection, they  
31 shall enter into a contract no later than February 1, 2005, to

1 become effective upon the effective date of this act. If the  
2 Department of Financial Services elects not to contract with  
3 the Department of Business and Professional Regulation for  
4 those services, the Department of Financial Services shall  
5 begin working with the Department of Business and Professional  
6 Regulation no later than February 1, 2005, for the conversion  
7 of those services, which conversion is to be completed before  
8 September 1, 2005.

9       (2) The Department of Financial Services shall, no  
10 later than November 1, 2004, notify the Department of Business  
11 and Professional Regulation of its intention to contract with  
12 the Department of Business and Professional Regulation for the  
13 development, preparation, administration, scoring, score  
14 reporting, and evaluation of all examinations. If the  
15 Department of Financial Services elects to contract with the  
16 Department of Business and Professional Regulation for the  
17 services described in this subsection, they shall enter into a  
18 contract no later than February 1, 2005, to become effective  
19 upon the effective date of this act. If the Department of  
20 Financial Services elects not to contract with the Department  
21 of Business and Professional Regulation for those services,  
22 the Department of Financial Services shall begin working with  
23 the Department of Business and Professional Regulation no  
24 later than February 1, 2005, for the conversion of those  
25 services, which conversion is to be completed before September  
26 1, 2005.

27       (3) The Department of Financial Services shall, no  
28 later than November 1, 2004, notify the Department of Business  
29 and Professional Regulation of its intention to contract with  
30 the Department of Business and Professional Regulation,  
31 another governmental agency, or a private business for the

1 continuing education compliance monitoring systems and  
2 services. If the Department of Financial Services elects to  
3 contract with the Department of Business and Professional  
4 Regulation for the services described in this subsection, they  
5 shall enter into a contract no later than February 1, 2005, to  
6 become effective upon the effective date of this act. If the  
7 Department of Financial Services elects not to contract with  
8 the Department of Business and Professional Regulation for  
9 those services, the Department of Financial Services shall  
10 begin working with the Department of Business and Professional  
11 Regulation no later than February 1, 2005, for the conversion  
12 of those services, which conversion is to be completed before  
13 September 1, 2005.

14 (4) No later than July 1, 2005, the Department of  
15 Financial Services shall begin to consult at least biweekly  
16 with prosecuting attorneys and investigators of the Department  
17 of Business and Professional Regulation to ensure the  
18 transition of pending disciplinary matters.

19 Section 155. The Legislature recognizes that there is  
20 a need to conform the Florida Statutes to the policy decisions  
21 reflected in the provisions of this act. The Division of  
22 Statutory Revision is directed to provide the relevant  
23 substantive committees of the Senate and the House of  
24 Representatives with assistance, upon request, to enable such  
25 committees to prepare draft legislation to conform the Florida  
26 Statutes to the provisions of this act.

27 Section 156. Effective at 11:59 p.m. on September 30,  
28 2005, the Board of Funeral and Cemetery Services and the Board  
29 of Funeral Directors and Embalmers are abolished.

30 Section 157. Sections 470.001, 470.002, 470.003,  
31 470.005, 470.019, 470.023, 470.027, 470.028, 470.031, 470.033,

ENROLLED

2004 Legislature

CS for CS for SB 528, 1st Engrossed

1 470.034, 470.035, 470.036, 497.105, 497.109, 497.111, 497.113,  
2 497.115, 497.117, 497.119, 497.123, 497.125, 497.127, 497.129,  
3 497.131, 497.135, 497.137, 497.209, 497.217, 497.221, 497.225,  
4 497.233, 497.301, 497.341, 497.431, 497.435, 497.443, 497.445,  
5 497.447, 497.515, 497.517, 497.519, and 497.529, Florida  
6 Statutes, are repealed.

7           Section 158. Except as otherwise provided herein, this  
8 act shall take effect October 1, 2005.

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