

By the Committee on Regulated Industries; and Senator Haridopolos

580-1993-05

1                                   A bill to be entitled  
2           An act relating to funeral and cemetery  
3           industry regulation; amending s. 316.1974,  
4           F.S.; providing for lighting equipment on  
5           certain non-law enforcement vehicles in a  
6           funeral procession; amending s. 497.005, F.S.;  
7           revising definitions; amending s. 497.101,  
8           F.S.; providing for eligibility for membership  
9           on the Board of Funeral, Cemetery, and Consumer  
10          Services; providing rulemaking authority  
11          regarding application for board membership;  
12          amending s. 497.103, F.S.; revising authority  
13          of the Department of Financial Services to take  
14          emergency action; limiting the authority of the  
15          Chief Financial Officer; amending s. 497.140,  
16          F.S.; revising the time period for board  
17          reaction to department revenue projections;  
18          providing for future termination of certain  
19          assessments; providing for a late-renewal fee;  
20          amending s. 497.141, F.S.; revising licensure  
21          application procedures to provide for persons  
22          other than natural persons; clarifying when  
23          licenses may be issued to entities and to  
24          natural persons; clarifying the types of  
25          entities to which licenses may be issued;  
26          providing signature requirements; authorizing  
27          the licensing authority to adopt rules;  
28          restricting assignment or transfer of license;  
29          amending s. 497.142, F.S.; revising  
30          fingerprinting requirements; eliminating  
31          obsolete references; clarifying requirements as

1 to disclosure of previous criminal records;  
2 revising which members of an entity applying  
3 for licensure are required to disclose their  
4 criminal records; providing for waiver of the  
5 fingerprint requirements in certain  
6 circumstances; amending s. 497.143, F.S.;  
7 prohibiting preneed sales under a limited  
8 license; amending s. 497.144, F.S.; requiring a  
9 challenger to pay the costs for failure to  
10 appear at a challenge hearing; amending s.  
11 497.149, F.S.; revising terminology; amending  
12 s. 497.151, F.S.; revising applicability;  
13 specifying what is deemed to be a complaint;  
14 amending s. 497.152, F.S.; revising  
15 disciplinary provisions; revising applicability  
16 in other jurisdictions; revising certain  
17 grounds for disciplinary action; specifying  
18 what is deemed to be a complaint; providing  
19 exceptions to remittance deficiency  
20 disciplinary infractions; amending s. 497.153,  
21 F.S.; providing for the use of consent orders  
22 in certain circumstances; amending s. 497.158,  
23 F.S.; revising fine amounts; amending s.  
24 497.159, F.S.; revising criminal provisions  
25 relating to prelicensure examinations, willful  
26 obstruction, trust funds, and specified  
27 violations; providing penalties; revising what  
28 constitutes improper discrimination; amending  
29 s. 497.161, F.S.; removing a provision allowing  
30 board members to serve as experts in  
31 investigations; specifying standing of

1 licensees to challenge rules; amending s.  
2 497.165, F.S.; revising a standard for  
3 determining liability for a trust fund  
4 deficiency; amending s. 497.166, F.S.;  
5 specifying who may act as a preneed sales  
6 agent; providing responsibility of certain  
7 licensees; amending s. 497.169, F.S.; revising  
8 a provision for award of attorney's fees and  
9 costs in certain actions; creating s. 497.171,  
10 F.S.; providing requirements for the  
11 identification of human remains; amending s.  
12 497.260, F.S.; revising what constitutes  
13 improper discrimination by cemeteries; amending  
14 s. 497.263, F.S.; revising the applicability of  
15 certain application procedures for licensure of  
16 cemetery companies; amending s. 497.264, F.S.;  
17 revising requirements relating to applicants  
18 seeking to acquire control of a licensed  
19 cemetery; amending s. 497.281, F.S.; revising  
20 requirements for licensure of burial rights  
21 brokers; amending s. 497.365, F.S.; requiring  
22 that certain fees be paid before an inactive  
23 license is renewed; amending s. 497.368, F.S.;  
24 revising grounds for issuance of licensure as  
25 an embalmer by examination; amending s.  
26 497.369, F.S.; revising grounds for issuance of  
27 licensure as an embalmer by endorsement;  
28 amending s. 497.373, F.S.; revising grounds for  
29 issuance of licensure as a funeral director by  
30 examination; amending s. 497.374, F.S.;  
31 revising grounds for issuance of licensure as a

1 funeral director by endorsement; amending s.  
2 497.376, F.S.; revising authority to issue a  
3 combination license as a funeral director and  
4 embalmer; authorizes the licensing authority to  
5 establish certain rules; amending s. 497.378,  
6 F.S.; revising a license renewal fee; amending  
7 s. 497.380, F.S.; revising certain requirements  
8 for funeral establishments; providing  
9 requirements for reporting a change in location  
10 of the establishment; revising a license  
11 renewal fee; amending s. 497.385, F.S.;  
12 revising application requirements for licensure  
13 of a removal service or a refrigeration  
14 service; providing requirements for change in  
15 location of removal services and refrigeration  
16 services; authorizing the licensing authority  
17 to adopt certain rules for centralized  
18 embalming facility operations; revising  
19 application requirements for licensure of a  
20 centralized embalming facility; providing for  
21 inspection of centralized embalming facilities;  
22 providing for change in ownership and change in  
23 location of centralized embalming facilities;  
24 amending s. 497.453, F.S.; revising net worth  
25 requirements for preneed licensure; specifying  
26 authority to accept alternative evidence of  
27 financial responsibility in lieu of net worth  
28 regarding preneed licensure applicants;  
29 providing preneed license renewal fees for  
30 monument establishments; increasing the renewal  
31 fee for a branch license which is set by the

1 Board of Funeral, Cemetery, and Consumer  
2 Services; revising grounds for issuance of a  
3 preneed branch license; amending s. 497.456,  
4 F.S.; revising use of the Preneed Funeral  
5 Contract Consumer Protection Trust Fund by the  
6 licensing authority; amending s. 497.458, F.S.;  
7 revising requirements to loan or invest trust  
8 funds; amending s. 497.466, F.S., relating to  
9 preneed sales agents; substantially revising  
10 provisions relating to licensure requirements;  
11 revising application procedures, fees, the  
12 issuance of a temporary preneed sales agent  
13 license, the conversion of such a license to a  
14 permanent preneed sales agent license,  
15 restrictions upon an applicant who has a  
16 criminal or disciplinary record, termination of  
17 a permanent license due to lack of  
18 appointments, procedures for appointing preneed  
19 sales agents and for renewing such an  
20 appointment, termination of appointments, fees,  
21 and administrative matters; providing  
22 responsibilities of preneed licensees for  
23 preneed sales agents; creating s. 497.468,  
24 F.S.; providing for disclosure of information  
25 to the public; amending s. 497.550, F.S.;  
26 revising application requirements and  
27 procedures for licensure as a monument  
28 establishment; requiring that a monument  
29 establishment be licensed as a monument builder  
30 or as a monument dealer; exempting a monument  
31 dealer from a requirement to maintain certain

1 facilities and from certain inspection  
2 requirements; requiring that a monument  
3 establishment obtain licensure as a monument  
4 builder in order to be eligible for a preneed  
5 sales license; amending s. 497.551, F.S.;  
6 revising requirements for renewal of monument  
7 establishment licensure; amending s. 497.552,  
8 F.S.; revising facility requirements for  
9 monument establishments; amending s. 497.553,  
10 F.S.; providing requirements for change of  
11 ownership and location of monument  
12 establishments; providing for an annual  
13 inspection fee; amending s. 497.554, F.S.;  
14 revising application procedure and renewal  
15 requirements for monument establishment sales  
16 representatives; deferring application of  
17 section; amending s. 497.555, F.S.; revising  
18 requirements for rules establishing minimum  
19 standards for access to cemeteries; amending s.  
20 497.602, F.S.; revising application procedures  
21 for direct disposer licensure; amending s.  
22 497.603, F.S.; revising the license renewal fee  
23 for a direct disposer; amending s. 497.604,  
24 F.S.; revising provisions concerning direct  
25 disposal establishment licensure and  
26 application for licensure and regulation of  
27 direct disposal establishments; amending s.  
28 497.606, F.S.; revising provisions concerning  
29 cinerator facility licensure and application  
30 for licensure and regulation of cinerator  
31 facilities; amending s. 497.607, F.S.;

1 providing for publication of rules regarding  
2 cremation by chemical means; amending s. 152,  
3 ch. 2004-301, Laws of Florida; specifying  
4 applicability of rules; amending s. 626.785,  
5 F.S.; revising a policy coverage limit;  
6 repealing s. 497.275, F.S., relating to  
7 identification of human remains in licensed  
8 cemeteries; repealing s. 497.388, F.S.,  
9 relating to identification of human remains;  
10 repealing s. 497.556, F.S., relating to  
11 requirements relating to monument  
12 establishments; providing an effective date.  
13

14 Be It Enacted by the Legislature of the State of Florida:  
15

16 Section 1. Paragraph (a) of subsection (2) of section  
17 316.1974, Florida Statutes, is amended to read:

18 316.1974 Funeral procession right-of-way and  
19 liability.--

20 (2) EQUIPMENT.--

21 (a) All non-law enforcement funeral escort vehicles  
22 and funeral lead vehicles shall be equipped with at least one  
23 lighted circulation lamp exhibiting an amber or purple light  
24 or lens visible under normal atmospheric conditions for a  
25 distance of 500 feet from the front of the vehicle. Flashing  
26 amber or purple lights may be used only when such vehicles are  
27 used in a funeral procession.

28 Section 2. Section 497.005, as amended by chapter  
29 2004-301, Laws of Florida, is amended to read:

30 497.005 Definitions.--As used in this chapter, the  
31 term:

1           (1) "Alternative container" means an unfinished wood  
2 box or other nonmetal receptacle or enclosure, without  
3 ornamentation or a fixed interior lining, which is designed  
4 for the encasement of human remains and which is made of  
5 fiberboard, pressed wood, composition materials (with or  
6 without an outside covering), or like materials ~~a nonmetal~~  
7 ~~receptacle or enclosure which is less expensive than a casket~~  
8 ~~and of sufficient strength to be used to hold and transport a~~  
9 ~~dead human body.~~

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

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

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

23           (5) "Board" means the Board of Funeral, Cemetery, and  
24 Consumer Services.

25           ~~(6) "Body parts" means:~~

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

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



1           ~~(6)(7)~~ "Burial merchandise," "funeral merchandise," or  
2 "merchandise" means any personal property offered or sold by  
3 any person for use in connection with the final disposition,  
4 memorialization, interment, entombment, or inurnment of human  
5 remains or cremated remains, including, but not limited to,  
6 caskets, outer burial containers, alternative containers,  
7 cremation containers, cremation interment containers, urns,  
8 monuments, private mausoleums, flowers, benches, vases,  
9 acknowledgment cards, register books, memory folders, prayer  
10 cards, and clothing .

11           ~~(7)(8)~~ "Burial right" means the right to use a grave  
12 space, mausoleum, columbarium, ossuary, or scattering garden  
13 for the interment, entombment, inurnment, or other disposition  
14 of human or cremated remains.

15           ~~(8)(9)~~ "Burial service," "funeral service," "funeral,"  
16 or "service" means any service offered or provided ~~by any~~  
17 ~~person~~ in connection with the final disposition,  
18 memorialization, interment, entombment, or inurnment of human  
19 or cremated remains.

20           ~~(9)(10)~~ "Care and maintenance" means the perpetual  
21 process of keeping a cemetery and its lots, graves, grounds,  
22 landscaping, roads, paths, parking lots, fences, mausoleums,  
23 columbaria, vaults, crypts, utilities, and other improvements,  
24 structures, and embellishments in a well-cared-for and  
25 dignified condition, so that the cemetery does not become a  
26 nuisance or place of reproach and desolation in the community.  
27 As specified in the rules of the licensing authority, "care  
28 and maintenance" may include, but is not limited to, any or  
29 all of the following activities: mowing the grass at  
30 reasonable intervals; raking and cleaning the grave spaces and  
31 adjacent areas; pruning of shrubs and trees; suppression of

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

12 ~~(10)(11)~~ "Casket" means a rigid container which is  
13 designed for the encasement of human remains and which is  
14 usually constructed of wood or metal, ornamented, and lined  
15 with fabric.

16 ~~(11)(12)~~ "Cemetery" means a place dedicated to and  
17 used or intended to be used for the permanent interment of  
18 human or cremated remains. A cemetery may contain land or  
19 earth interment; mausoleum, vault, or crypt interment; a  
20 columbarium, ossuary, scattering garden, or other structure or  
21 place used or intended to be used for the interment or  
22 disposition of cremated remains; or any combination of one or  
23 more of such structures or places.

24 ~~(12)(13)~~ "Cemetery company" means any legal entity  
25 that owns or controls cemetery lands or property.

26 ~~(13)(14)~~ "Centralized embalming facility" means a  
27 facility, ~~not physically connected with a funeral~~  
28 ~~establishment,~~ in which embalming takes place which operates  
29 independently of a funeral establishment licensee and which  
30 offers embalming services to funeral directors for a fee.

31

1           ~~(14)(15)~~ "Cinerator" means a facility where dead human  
2 bodies are subjected to cremation. ~~reduced to a residue,~~  
3 ~~including bone fragments, by direct flame, also known as~~  
4 ~~"cremation," or by intense heat, also known as "calcination."~~  
5           ~~(15)(16)~~ "Closed container" means any container in  
6 which cremated remains can be placed and closed in a manner so  
7 as to prevent leakage or spillage of the remains.  
8           ~~(16)(17)~~ "Columbarium" means a structure or building  
9 which is substantially exposed above the ground and which is  
10 intended to be used for the inurnment of cremated remains.  
11           ~~(17)(18)~~ "Common business enterprise" means a group of  
12 two or more business entities that share common ownership in  
13 excess of 50 percent.  
14           ~~(18)(19)~~ "Control" means the possession, directly or  
15 indirectly, through the ownership of voting shares, by  
16 contract, arrangement, understanding, relationship, or  
17 otherwise, of the power to direct or cause the direction of  
18 the management and policies of a person or entity. However, a  
19 person or entity shall not be deemed to have control if the  
20 person or entity holds voting shares, in good faith and not  
21 for the purpose of circumventing this definition, as an agent,  
22 bank, broker, nominee, custodian, or trustee for one or more  
23 beneficial owners who do not individually or as a group have  
24 control.  
25           ~~(19)(20)~~ "Cremated remains" means all the remains of  
26 the human body recovered after the completion of the cremation  
27 process, including processing or pulverization which leaves  
28 only bone fragments reduced to unidentifiable dimensions and  
29 may include the residue of any foreign matter, including  
30 casket material, bridgework, or eyeglasses that were cremated  
31 with the human remains.

1           ~~(20)(21)~~ "Cremation" means any mechanical or thermal  
2 process whereby a dead human body is reduced to ashes and bone  
3 fragments. Cremation also includes any other mechanical or  
4 thermal process whereby human remains are pulverized, burned,  
5 recremated, or otherwise further reduced in size or quantity  
6 ~~the technical process, using direct flame and heat or chemical~~  
7 ~~means, which reduces human remains to bone fragments through~~  
8 ~~heat and evaporation. Cremation includes the processing and~~  
9 ~~usually includes the pulverization of the bone fragments.~~

10           ~~(21)(22)~~ "Cremation chamber" means the enclosed space  
11 within which the cremation process takes place. Cremation  
12 chambers covered by these procedures must be used exclusively  
13 for the cremation of human remains.

14           ~~(22)(23)~~ "Cremation container" means the casket or  
15 alternative container in which the human remains are  
16 transported to and placed in the cremation chamber for a  
17 cremation. A cremation container should meet substantially all  
18 of the following standards:

19           (a) Be composed of readily combustible materials  
20 suitable for cremation.

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

23           (c) Be resistant to leakage or spillage.

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

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

27           ~~(23)(24)~~ "Cremation interment container" means a rigid  
28 outer container that, subject to a cemetery's rules and  
29 regulations, is composed of concrete, steel, fiberglass, or  
30 some similar material in which an urn is placed prior to being  
31

1 interred in the ground and that is designed to support the  
2 earth above the urn.

3 ~~(24)(25)~~ "Department" means the Department of  
4 Financial Services.

5 ~~(25)(26)~~ "Direct disposal establishment" means a  
6 facility licensed under this chapter where a direct disposer  
7 practices direct disposition.

8 ~~(26)(27)~~ "Direct disposer" means any person licensed  
9 under this chapter to practice direct disposition in this  
10 state.

11 ~~(27)(28)~~ "Director" means the director of the Division  
12 of Funeral, Cemetery, and Consumer Services.

13 ~~(28)(29)~~ "Disinterment" means removal of a dead human  
14 body from earth interment or aboveground interment.

15 ~~(29)(30)~~ "Division" means the Division of Funeral,  
16 Cemetery, and Consumer Services within the Department of  
17 Financial Services.

18 ~~(30)(31)~~ "Embalmer" means any person licensed under  
19 this chapter to practice embalming in this state.

20 ~~(31)(32)~~ "Final disposition" means the final disposal  
21 of a dead human body by earth interment, aboveground  
22 interment, cremation, burial at sea, or delivery to a medical  
23 institution for lawful dissection if the medical institution  
24 assumes responsibility for disposal. "Final disposition" does  
25 not include the disposal or distribution of cremated remains  
26 ~~ashes~~ and residue of cremated remains.

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           (32)~~(34)~~ "Funeral director" means any person licensed  
2 under this chapter to practice funeral directing in this  
3 state.

4           (33)~~(35)~~ "Funeral establishment" means a facility  
5 licensed under this chapter where a funeral director or  
6 embalmer 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           (34)~~(37)~~ "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           (35)~~(38)~~ "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.~~

24           (36)~~(39)~~ "Legally authorized person" means, in the  
25 priority listed, the decedent, when written inter vivos  
26 authorizations and directions are provided by the decedent;  
27 the surviving spouse, unless the spouse has been arrested for  
28 committing against the deceased an act of domestic violence as  
29 defined in s. 741.28 which resulted in or contributed to the  
30 death of the deceased; a son or daughter who is 18 years of  
31 age or older; a parent; a brother or sister who is 18 years of

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

22 |        ~~(37)~~(40) "License" includes all authorizations  
23 | required or issued under this chapter, except where expressly  
24 | indicated otherwise, and shall be understood to include  
25 | authorizations previously referred to as registrations or  
26 | certificates of authority in chapters 470 and 497 as those  
27 | chapters appeared in the 2004 edition of the Florida Statutes.

28 |        ~~(38)~~(41) "Licensee" means the person or entity holding  
29 | any license or other authorization issued under this chapter,  
30 | except where expressly indicated otherwise.

31 |

1           ~~(39)~~(42) "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           ~~(40)~~(43) "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           ~~(41)~~(44) "Monument" means any product used for  
9 identifying a grave site and cemetery memorials of all types,  
10 including monuments, markers, and vases.

11           ~~(42)~~(45) "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           ~~(43)~~(46) "Net assets" means the amount by which the  
16 total assets of a licensee, excluding goodwill, franchises,  
17 customer lists, patents, trademarks, and receivables from or  
18 advances to officers, directors, employees, salespersons, and  
19 affiliated companies, exceed total liabilities of the  
20 licensee. For purposes of this definition, the term "total  
21 liabilities" does not include the capital stock, paid-in  
22 capital, or retained earnings of the licensee.

23           ~~(44)~~(47) "Net worth" means total assets minus total  
24 liabilities pursuant to generally accepted accounting  
25 principles.

26           ~~(45)~~(48) "Niche" means a compartment or cubicle for  
27 the memorialization or permanent placement of a container or  
28 urn containing cremated remains.

29           ~~(46)~~(49) "Ossuary" means a receptacle used for the  
30 communal placement of cremated remains without benefit of an  
31 urn or any other container in which cremated remains may be



1 commingled with other cremated remains and are nonrecoverable.

2 It may or may not include memorialization.

3 ~~(47)~~~~(50)~~ "Outer burial container" means an enclosure  
4 into which a casket is placed and includes, but is not limited  
5 to, vaults made of concrete, steel, fiberglass, or copper;  
6 sectional concrete enclosures; crypts; and wooden enclosures.

7 ~~(48)~~~~(51)~~ "Person," when used without qualification  
8 such as "natural" or "individual," includes both natural  
9 persons and legal entities.

10 ~~(49)~~~~(52)~~ "Personal residence" means any residential  
11 building in which one temporarily or permanently maintains her  
12 or his abode, including, but not limited to, an apartment or a  
13 hotel, motel, nursing home, convalescent home, home for the  
14 aged, or a public or private institution.

15 ~~(50)~~~~(53)~~ "Practice of direct disposition" means the  
16 cremation of human remains without preparation of the human  
17 remains by embalming and without any attendant services or  
18 rites such as funeral or graveside services or the making of  
19 arrangements for such final disposition.

20 ~~(51)~~~~(54)~~ "Practice of embalming" means disinfecting or  
21 preserving or attempting to disinfect or preserve dead human  
22 bodies by replacing certain body fluids with preserving and  
23 disinfecting chemicals.

24 ~~(52)~~~~(55)~~ "Practice of funeral directing" means the  
25 performance by a licensed funeral director of any of those  
26 functions authorized by s. 497.372.

27 ~~(53)~~~~(56)~~ "Preneed contract" means any arrangement or  
28 method, of which the provider of funeral merchandise or  
29 services has actual knowledge, whereby any person agrees to  
30 furnish funeral merchandise or service in the future.

31

1           ~~(54)(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           ~~(55)(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           ~~(56)(59)~~ "Processing" means the reduction of  
13 identifiable bone fragments after the completion of the  
14 cremation process to unidentifiable bone fragments by manual  
15 means.

16           ~~(57)(60)~~ "Profession" and "occupation" are used  
17 interchangeably in this chapter. The use of the word  
18 "profession" in this chapter with respect to any activities  
19 regulated under this chapter shall not be deemed to mean that  
20 such activities are not occupations for other purposes in  
21 state or federal law.

22           ~~(58)(61)~~ "Pulverization" means the reduction of  
23 identifiable bone fragments after the completion of the  
24 cremation and processing to granulated particles by manual or  
25 mechanical means.

26           ~~(59)(62)~~ "Refrigeration facility" means a facility  
27 that is operated independently of ~~not physically connected~~  
28 ~~with~~ a funeral establishment, crematory, or direct disposal  
29 establishment, that maintains space and equipment for the  
30 storage and refrigeration of dead human bodies, and that  
31 offers its service to funeral directors, ~~and~~ funeral

1 establishments, direct disposers, direct disposal  
2 establishments, or crematories for a fee.

3 ~~(60)(63)~~ "Religious institution" means an organization  
4 formed primarily for religious purposes which has qualified  
5 for exemption from federal income tax as an exempt  
6 organization under the provisions of s. 501(c)(3) of the  
7 Internal Revenue Code of 1986, as amended.

8 ~~(61)(64)~~ "Removal service" means any service that  
9 operates independently of a funeral establishment or a direct  
10 disposal establishment, that handles the initial removal of  
11 dead human bodies, and that offers its service to funeral  
12 establishments and direct disposal establishments for a fee.

13 ~~(62)(65)~~ "Rules" refers to rules adopted under this  
14 chapter unless expressly indicated to the contrary.

15 ~~(63)(66)~~ "Scattering garden" means a location set  
16 aside, within a cemetery, which is used for the spreading or  
17 broadcasting of cremated remains that have been removed from  
18 their container and can be mixed with or placed on top of the  
19 soil or ground cover or buried in an underground receptacle on  
20 a commingled basis and that are nonrecoverable. It may or may  
21 not include memorialization.

22 ~~(64)(67)~~ "Servicing agent" means any person acting as  
23 an independent contractor whose fiduciary responsibility is to  
24 assist both the trustee and licensee in administrating their  
25 responsibilities pursuant to this chapter.

26 ~~(65)(68)~~ "Solicitation" means any communication which  
27 directly or implicitly requests an immediate oral response  
28 from the recipient.

29 ~~(66)(69)~~ "Statutory accounting" means generally  
30 accepted accounting principles, except as modified by this  
31 chapter.

1           ~~(67)~~~~(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           ~~(68)~~~~(71)~~ "Urn" means a receptacle designed to  
6 permanently encase cremated remains.

7           Section 3. Subsection (2) of section 497.101, Florida  
8 Statutes, as amended by chapter 2004-301, Laws of Florida, is  
9 amended, and subsection (8) is added to that section, to read:

10           497.101 Board of Funeral, Cemetery, and Consumer  
11 Services; membership; appointment; terms.--

12           (2) Two members of the board must be funeral directors  
13 licensed under part III of this chapter who are associated  
14 with a funeral establishment. One member of the board must be  
15 a funeral director licensed under part III of this chapter who  
16 is associated with a funeral establishment licensed under part  
17 III of this chapter which has a valid preneed license issued  
18 pursuant to this chapter and who owns or operates a cinerator  
19 facility approved under chapter 403 and licensed under part VI  
20 of this chapter. Two members of the board must be persons  
21 whose primary occupation is associated with a cemetery company  
22 licensed pursuant to this chapter. Three members of the board  
23 must be consumers who are residents of the state, have never  
24 been licensed as funeral directors or embalmers, are not  
25 connected with a cemetery or cemetery company licensed  
26 pursuant to this chapter, and are not connected with the death  
27 care industry or the practice of embalming, funeral directing,  
28 or direct disposition. One of the consumer members must be at  
29 least 60 years of age, and one must be licensed as a certified  
30 public accountant under chapter 473. One member of the board  
31 must be a monument establishment dealer licensed under this

1 chapter as a monument builder or, for board appointments made  
2 before June 1, 2006, a licensed monument establishment  
3 certified by the department to be eligible for licensure as a  
4 monument builder. One member must be the State Health Officer  
5 or her or his designee. There shall not be two or more board  
6 members who are principals or directors, ~~employees, partners,~~  
7 ~~shareholders, or members~~ of the same company or partnership or  
8 group of companies or partnerships under common control.

9       (8) The department shall adopt rules establishing  
10 forms by which persons may apply for membership on the board  
11 and procedures for applying for such membership. Such forms  
12 must require disclosure of the existence and nature of all  
13 current and past employments by or contracts with, and direct  
14 or indirect affiliations with or interests in, any entity or  
15 business that at any time was licensed by the board or by the  
16 former Board of Funeral and Cemetery Services or the former  
17 Board of Funeral Directors and Embalmers or that is or was  
18 otherwise involved in the death care industry, as specified by  
19 department rule.

20       Section 4. Paragraph (m) of subsection (2) of section  
21 497.103, Florida Statutes, as amended by chapter 2004-301,  
22 Laws of Florida, is amended, and paragraph (e) is added to  
23 subsection (4) of that section, to read:

24       497.103 Rulemaking authority of board and  
25 department.--

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

1 by this chapter which is vested solely in the department  
2 includes:

3 (m) Authority to take emergency action against any  
4 licensee under this chapter, without prior consultation with  
5 the board, when the department determines that there is an  
6 imminent danger to the health, safety, or welfare of the  
7 residents of the state.

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

9 (e) The Chief Financial Officer shall have no  
10 authority by recommendation or otherwise to set fees, rates,  
11 or prices to be used by any licensee under this chapter, and  
12 notwithstanding this subsection, a licensee under this chapter  
13 may not be required to set fees, rates, or prices in  
14 accordance with any recommendation of the Chief Financial  
15 Officer.

16 Section 5. Paragraphs (b) and (c) of subsection (1) of  
17 section 497.140, Florida Statutes, as renumbered and amended  
18 by section 10 of chapter 2004-301, Laws of Florida, are  
19 amended, and subsection (8) is added to that section, to read:

20 497.140 Fees.--

21 (1)

22 (b) It is the legislative intent that the costs of  
23 regulation under this chapter be provided for by fees  
24 collected under this chapter. The board shall ensure that fees  
25 are adequate to cover all anticipated costs of implementation  
26 of this chapter. The department shall at least every other  
27 year provide the board with estimates as to projected costs in  
28 implementing this chapter and projected fee collections under  
29 this chapter for the following 2 years, information as to  
30 balances of regulatory trusts from fees collected, other  
31 information which the department deems material to the setting

1 of fees by the board at proper levels, and a department  
2 recommendation as to action, if any, regarding changing fee  
3 levels. The board shall review such information provided by  
4 the department and make such changes in fees, up or down, as  
5 the board determines appropriate. If sufficient action is not  
6 taken by the board within 6 months ~~1 year~~ after notification  
7 by the department that fees are projected to be inadequate,  
8 the department shall set fees on behalf of the board to cover  
9 anticipated costs.

10 (c) The board may from time to time by rule assess and  
11 collect a one-time fee from each active and each voluntary  
12 inactive licensee under this chapter in an amount necessary to  
13 correct an inadequacy of fees received to implement regulation  
14 required by this chapter, provided that no such assessments  
15 may be made after October 1, 2007 ~~more than one such~~  
16 ~~assessment may be made in any 4 year period without specific~~  
17 ~~legislative authorization.~~

18 (8) A delinquency fee shall be charged and collected  
19 from a licensee for the failure to timely renew a license  
20 issued under this chapter. The amount of such a delinquency  
21 fee shall be \$50 unless a different amount is specified for a  
22 particular category of licensure under this chapter.

23 Section 6. Subsection (2) of section 497.141, Florida  
24 Statutes, as created by chapter 2004-301, Laws of Florida, is  
25 amended, and subsection (12) is added to that section, to  
26 read:

27 497.141 Licensing; general application procedures.--

28 (2) Any person desiring to be licensed shall apply to  
29 the licensing authority in writing using such forms and  
30 procedures as may be prescribed by rule. The application for  
31 licensure shall include the applicant's social security number

1 if the applicant is a natural person; otherwise, the  
2 applicant's federal tax identification number. Notwithstanding  
3 any other provision of law, the department is the sole  
4 authority for determining the forms and form contents to be  
5 submitted for initial licensure and licensure renewal  
6 application. Such forms and the information and materials  
7 required by such forms may include, as appropriate,  
8 demographics, education, work history, personal background,  
9 criminal history, finances, business information, signature  
10 notarization, performance periods, reciprocity, local  
11 government approvals, supporting documentation, periodic  
12 reporting requirements, fingerprint requirements, continuing  
13 education requirements, business plans, character references,  
14 and ongoing education monitoring. Such forms and the  
15 information and materials required by such forms may also  
16 include, to the extent such information or materials are not  
17 already in the possession of the department or the board,  
18 records or information as to complaints, inspections,  
19 investigations, discipline, and bonding,~~and photographs~~. The  
20 application shall be supplemented as needed to reflect any  
21 material change in any circumstance or condition stated in the  
22 application which takes place between the initial filing of  
23 the application and the final grant or denial of the license  
24 and which might affect the decision of the department or the  
25 board. After an application by an individual for licensure  
26 under this chapter is approved, the licensing authority may  
27 require the successful applicant to provide a photograph of  
28 the applicant for permanent lamination onto the license card  
29 to be issued to the applicant, pursuant to rules and fees  
30 adopted by the licensing authority.  
31



1           (12)(a) The following licenses may be applied for and  
2 issued only to a natural person:

- 3           1. Embalmer apprentice.
- 4           2. Embalmer intern.
- 5           3. Funeral director intern.
- 6           4. Funeral director.
- 7           5. Funeral director and embalmer.
- 8           6. Direct disposer.
- 9           7. Monument establishment sales agent.
- 10          8. Preneed sales agent.

11           (b) The following licenses may be applied for and  
12 issued to a natural person, a corporation, a limited liability  
13 company, or a partnership:

- 14          1. Funeral establishment.
- 15          2. Centralized embalming facility.
- 16          3. Refrigeration facility.
- 17          4. Direct disposal establishment.
- 18          5. Monument establishment.
- 19          6. Cinerator facility.
- 20          7. Removal service.
- 21          8. Preneed sales business under s. 497.453.

22           (c) A cemetery license may be applied for and issued  
23 only to a corporation, partnership, or limited liability  
24 company.

25           (d) A license may not be issued to any applicant that  
26 is a corporation, limited liability company, or partnership  
27 unless the applicant is organized and in good standing under  
28 the laws of this state or another state of the United States  
29 and provides written proof of same issued by the applicable  
30 state office or official in the state concerned. Each  
31 applicant that is a corporation, limited liability company, or

1 partnership shall file with its application a written  
2 statement, signed by the same person who signs the  
3 application, identifying by name and business functional title  
4 the following persons, as applicable to the type of entity  
5 applying: officers, managers, managing members, partners,  
6 general partners, limited partners, managing partners,  
7 directors, all stockholders controlling more than 10 percent  
8 of the voting stock, and all other persons who can exercise  
9 control over the applicant. The licensing authority may  
10 require the filing of the applicant's articles of  
11 incorporation or other organizational documents and a resume  
12 concerning any person identified pursuant to this paragraph.

13 (e) All applications shall be signed by the applicant.  
14 Signatures of the applicant shall be as follows:

15 1. If the applicant is a natural person, the  
16 application shall be signed by the applicant.

17 2. If the applicant is a corporation, the application  
18 shall be signed by the corporation's president.

19 3. If the applicant is a partnership, the application  
20 shall be signed by a partner, who shall provide proof  
21 satisfactory to the licensing authority of that partner's  
22 authority to sign on behalf of the partnership.

23 4. If the applicant is a limited liability company,  
24 the application shall be signed by a member of the company,  
25 who shall provide proof satisfactory to the licensing  
26 authority of that member's authority to sign on behalf of the  
27 company.

28 (f) The licensing authority may adopt rules for the  
29 administration of this section, including required procedures  
30 and forms.

31

1           (g) A license regulated under this chapter is not  
2 assignable or transferable except as provided in this chapter.

3           Section 7. Section 497.142, Florida Statutes, as  
4 created by chapter 2004-301, Laws of Florida, is amended to  
5 read:

6           497.142 Licensing; fingerprinting and criminal  
7 background checks.--

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

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

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

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

27           (5) The Department of Law Enforcement may, to the  
28 extent provided for by federal law, exchange state,  
29 multistate, and federal criminal history records with the  
30 department and the board for the purpose of the issuance,  
31

1 denial, suspension, or revocation of any license or other  
2 application under this chapter.

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

10 (6)(7) The Department of Law Enforcement shall, upon  
11 receipt of fingerprints from the department, submit the  
12 fingerprints to the Federal Bureau of Investigation to check  
13 federal criminal history records.

14 (7)(8) Statewide criminal records obtained through the  
15 Department of Law Enforcement, federal criminal records  
16 obtained through the Federal Bureau of Investigation, and  
17 local criminal records obtained through local law enforcement  
18 agencies shall be used by the department and board for the  
19 purpose of issuance, denial, suspension, or revocation of  
20 ~~certificates of authority, certifications, or licenses issued~~  
21 to operate in this state.

22 (8)(9) For the purposes of criminal background checks,  
23 applicants and principals of applicants for any approval or  
24 license under this chapter may be required to disclose whether  
25 they have ever had their name legally changed and any prior  
26 name or names they have used.

27 (9)(10) If any applicant under this chapter has been,  
28 within the 10 years preceding the application under this  
29 chapter, convicted or found guilty of, or entered a plea of  
30 nolo contendere to, regardless of adjudication, any crime in  
31 any jurisdiction, the application shall not be deemed complete

1 until such time as the applicant provides such certified true  
2 copies of the court records evidencing the conviction,  
3 finding, or plea, as the licensing authority may by rule  
4 require.

5 (10)(a) When applying for any license under this  
6 chapter, every applicant shall be required to disclose the  
7 applicant's criminal records in accordance with this  
8 subsection.

9 (b) The criminal record required to be disclosed shall  
10 be any crime listed in paragraph (c) of which the person or  
11 entity required to make disclosure has been convicted or to  
12 which that person or entity entered a plea in the nature of no  
13 contest. Disclosure shall be required pursuant to this  
14 subsection regardless of whether adjudication was entered or  
15 withheld by the court in which the case was prosecuted.

16 (c) Crimes to be disclosed are:

17 1. Any felony or misdemeanor, no matter when  
18 committed, which was directly or indirectly related to or  
19 involving any aspect of the practice or business of funeral  
20 directing, embalming, direct disposition, cremation, funeral  
21 or cemetery preneed sales, funeral establishment operations,  
22 cemetery operations, or cemetery monument or marker sales or  
23 installation.

24 2. Any other felony not already disclosed under  
25 subparagraph 1. which was committed within the 20 years  
26 immediately preceding the application under this chapter.

27 3. Any other misdemeanor not already disclosed under  
28 subparagraph 1. which was committed within the 5 years  
29 immediately preceding the application under this chapter.

30 (d) Criminal records falling within paragraphs (b) and  
31 (c) shall be disclosed regardless of whether the criminal

1 conduct occurred inside or outside the state and regardless of  
2 whether the criminal prosecution occurred in state court or  
3 the court of another state, the United States, or a foreign  
4 country. As to crimes prosecuted in courts other than the  
5 courts of this state, the designation of the crime as a felony  
6 or misdemeanor by the law of the jurisdiction prosecuting the  
7 crime shall control. If the prosecuting jurisdiction does not  
8 use the term "felony" or "misdemeanor" in classifying the  
9 crime, the crime shall be deemed a felony for purposes of this  
10 subsection if punishable under the law of the prosecuting  
11 jurisdiction by a term of imprisonment in excess of 1 year;  
12 otherwise, the crime shall be classified as a misdemeanor for  
13 purposes of this subsection. Excessive speed in the operation  
14 of a motor vehicle and other noncriminal traffic infractions  
15 are not required to be reported under this section.

16 (e) For purposes of this subsection, the persons  
17 required to make disclosure of their criminal records in  
18 relation to an application shall be as follows:

19 1. If the applicant is a natural person, only the  
20 natural person making application has the duty to disclose.

21 2. If the applicant is a corporation, all officers and  
22 directors of that corporation have the duty to disclose.

23 3. If the applicant is a limited liability company,  
24 all managers and members of the limited liability company have  
25 the duty to disclose.

26 4. If the applicant is a partnership, all partners  
27 have the duty to disclose.

28 5. If the applicant is required by this chapter to  
29 identify in the application the individual licensee under this  
30 chapter who will be in charge of the applicant, the identified  
31 individual licensee in charge must make disclosure of criminal

1 records as part of the application, in addition to the  
2 applicant.

3 (f) In addition to persons identified in paragraph (e)  
4 as being required to provide a criminal history in relation to  
5 an application for license, the department may during its  
6 prelicensing investigation of the applicant pursuant to  
7 subsection (3), on a case-by-case basis, require disclosure of  
8 criminal records from any other employee or principal of the  
9 applicant, if the department has grounds to believe that the  
10 employee or principal has committed any crime and that the  
11 person's relationship to the applicant may render the  
12 applicant a danger to the public if the license applied for is  
13 issued.

14 (g) The licensing authority may adopt rules specifying  
15 forms and procedures to be used by persons required to  
16 disclose criminal records under this subsection. The licensing  
17 authority may conduct investigation and further inquiry of any  
18 person regarding any criminal record disclosed pursuant to  
19 this section.

20 (11)(a) Whenever in this chapter an applicant is  
21 required to submit fingerprints in applying for a license, the  
22 persons whose fingerprints must be submitted shall be as  
23 follows:

24 1. If the applicant is a natural person, the  
25 fingerprints of the natural person making application.

26 2. If the applicant is a corporation, the fingerprints  
27 of the persons serving in the following capacities: chief  
28 executive officer and president, or both persons if the  
29 positions are filled by different persons; chief financial  
30 officer; chief of operations; general counsel if a corporation  
31 employee; and members of the board.

1           3. If the applicant is a limited liability company,  
2 the fingerprints of all managers and members of the limited  
3 liability company.

4           4. If the applicant is a partnership, the fingerprints  
5 of all partners.

6           (b) In addition to persons identified in paragraph (a)  
7 as being required to provide fingerprints, the department may  
8 during its prelicensing investigation of the applicant  
9 pursuant to subsection (3), on a case-by-case basis, require  
10 fingerprints from any other employee of the applicant, if the  
11 department has grounds to believe that any such person may  
12 have committed any crime and that the person's relationship to  
13 the applicant may render the applicant a danger to the public  
14 if the license applied for is issued.

15           (12) The licensing authority may by rule establish  
16 forms, procedures, and fees for the submission and processing  
17 of fingerprints required to be submitted in accordance with  
18 this chapter. The licensing authority may by rule waive the  
19 requirement for submission of fingerprints otherwise required  
20 by this chapter if the person has within the preceding 24  
21 months submitted fingerprints to the licensing authority and  
22 the licensing authority has obtained a criminal history report  
23 utilizing those prior fingerprints. The cost for the  
24 fingerprint processing must be paid to the Department of Law  
25 Enforcement and may be borne by the department, the employer,  
26 or the person subject to the background check.

27           Section 8. Subsection (2) of section 497.143, Florida  
28 Statutes, as created by chapter 2004-301, Laws of Florida, is  
29 amended to read:

30           497.143 Licensing; limited licenses for retired  
31 professionals.--



1           (2) Any person desiring to obtain a limited license,  
2 when permitted by rule, shall submit to the department an  
3 application and fee, not to exceed \$300, and an affidavit  
4 stating that the applicant has been licensed to practice in  
5 any jurisdiction in the United States for at least 10 years in  
6 the profession for which the applicant seeks a limited  
7 license. The affidavit shall also state that the applicant has  
8 retired or intends to retire from the practice of that  
9 profession and intends to practice only pursuant to the  
10 restrictions of the limited license granted pursuant to this  
11 section. If the applicant for a limited license submits a  
12 notarized statement from the employer stating that the  
13 applicant will not receive monetary compensation for any  
14 service involving the practice of her or his profession, the  
15 application and all licensure fees shall be waived. A person  
16 holding a limited license under this section may not engage in  
17 preneed sales under such a limited license.

18           Section 9. Subsection (13) of section 497.144, Florida  
19 Statutes, as created by chapter 2004-301, Laws of Florida, is  
20 amended to read:

21           497.144 Licensing; examinations, general provisions.--

22           (13) When any licensed applicant under this chapter  
23 requests a hearing to challenge a decision that the  
24 applicant's answer to any licensure test question was not a  
25 correct answer, or to seek a determination that a challenged  
26 question should be struck, unless the ~~an~~ applicant notifies  
27 the department at least 5 days prior to the ~~an~~ examination  
28 hearing of the applicant's inability to attend or unless the  
29 ~~an~~ applicant can demonstrate an extreme emergency for failing  
30 to attend, the department may require the ~~an~~ applicant who

31

1 fails to attend to pay reasonable attorney's fees, costs, and  
2 court costs of the department for the examination hearing.

3 Section 10. Paragraph (c) of subsection (1) of section  
4 497.149, Florida Statutes, as created by chapter 2004-301,  
5 Laws of Florida, is amended to read:

6 497.149 Investigations, hearings, and inspections.--

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

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

19 Section 11. Subsection (1) of section 497.151, Florida  
20 Statutes, as created by chapter 2004-301, Laws of Florida, is  
21 amended, and subsection (4) is added to that section, to read:

22 497.151 Complaints; logs; procedures.--

23 (1) This section shall be applicable to all licensed  
24 entities under this chapter ~~licensees under this chapter~~  
25 ~~except preneed sales agent licensees~~.

26 (4) For purposes of this section, the response of a  
27 customer recorded by the customer on a customer satisfaction  
28 questionnaire or survey form sent to the customer by the  
29 licensee, and returned by the customer to the licensee, shall  
30 not be deemed to be a complaint.

31

1           Section 12. Section 497.152, Florida Statutes, as  
2 created by chapter 2004-301, Laws of Florida, is amended to  
3 read:

4           497.152 Disciplinary grounds.--This section sets forth  
5 conduct which is prohibited and which shall constitute grounds  
6 for denial of any application, imposition of discipline, or  
7 ~~and~~ other enforcement action against the licensee or other  
8 person committing such conduct. For purposes of this section,  
9 the requirements of this chapter include the requirements of  
10 rules adopted under authority of this chapter. No subsection  
11 heading in this section shall be interpreted as limiting the  
12 applicability of any paragraph within the subsection.

13           (1) GENERAL PROVISIONS.--The generality of the  
14 provisions of this subsection shall not be deemed to be  
15 limited by the provisions of any other subsection.

16           (a) Violating any provision of this chapter or any  
17 lawful order of the board or department or of the statutory  
18 predecessors to the board or department.

19           (b) Committing fraud, deceit, negligence,  
20 incompetency, or misconduct in the practice of any of the  
21 activities regulated under this chapter.

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

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

28           (2) CRIMINAL ACTIVITY.--Being convicted or found  
29 guilty of, or entering a plea of nolo contendere to,  
30 regardless of adjudication, a crime in any jurisdiction which  
31

1 relates to the practice of, or the ability to practice, a  
2 licensee's profession or occupation under this chapter.

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

16 (4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT  
17 AGENCIES.--

18 (a) Improperly interfering with an investigation or  
19 inspection authorized by statute or with any disciplinary  
20 proceeding.

21 (b) Failure to comply with a lawfully issued subpoena  
22 of the department.

23 (c) Refusal to produce records to the department or  
24 board in connection with any activity regulated pursuant to  
25 this chapter.

26 (d) Failing to report to the department any violation  
27 of this chapter by another person or entity which violation is  
28 known to the licensee to have created or be creating a serious  
29 and immediate danger to the public health, safety, or welfare  
30 ~~person who the licensee knows is in violation of this chapter.~~  
31

1           (e) Knowingly concealing information relative to  
2 violations of this chapter.

3           (f) Attempting to obtain, obtaining, or renewing a  
4 license under this chapter by bribery, false or forged  
5 evidence, or misrepresentation, or through an error of the  
6 department or board known to the applicant.

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

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

16           (5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED  
17 PRACTICE.--

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

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

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

28           (d) Aiding, assisting, procuring, employing, or  
29 advising any person or entity to practice a profession or  
30 occupation regulated by this chapter without required  
31 licensure under this chapter.

1           (e) Aiding, assisting, procuring, employing, or  
2 advising any person or entity to operate or in operating an  
3 establishment regulated by this chapter without the required  
4 licensure under this chapter.

5           (f) Delegating to any person the performance of  
6 professional activities, or contracting with any person for  
7 the performance of professional activities by such person,  
8 when the licensee knows or has reason to know the person is  
9 not qualified by training, experience, and authorization to  
10 perform such responsibilities.

11           (g) Using the name or title "funeral director,"  
12 "embalmer," "direct disposer," or other title suggesting  
13 licensure which the person using such name or title does not  
14 hold.

15           (h) Engaging by a direct disposer in the practice of  
16 direct burial or offering the at-need or preneed service of  
17 direct burial.

18           (6) EDUCATIONAL REQUIREMENTS.--

19           (a) Failing to comply with applicable educational  
20 course requirements pursuant to this chapter or rules adopted  
21 under this chapter regarding human immunodeficiency virus and  
22 acquired immune deficiency syndrome.

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

25           (7) RELATIONS WITH OTHER LICENSEES.--

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

29           (b) Making any misleading statements or  
30 misrepresentations as to the financial condition of any  
31 person, or which are falsely and maliciously critical of any

1 person for the purpose of damaging that person's business  
2 regulated under this chapter.

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

5 (a) Violation of any state law or rule or any  
6 municipal or county ordinance or regulation affecting the  
7 handling, custody, care, or transportation of dead human  
8 bodies.

9 (b) Refusing to surrender promptly the custody of a  
10 dead human body upon the express order of the person legally  
11 authorized to its custody; however, this provision shall be  
12 subject to any state or local laws or rules governing custody  
13 or transportation of dead human bodies.

14 (c) Taking possession of a dead human body without  
15 first having obtained written or oral permission from a  
16 legally authorized person. If oral permission is granted, the  
17 licensee must obtain written permission within a reasonable  
18 time as established by rule.

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

27 (e) Failing to obtain written authorization from the  
28 family or next of kin of the deceased prior to entombment,  
29 interment, disinterment, disentombment, or disinurnment of the  
30 remains of any human being.

31 (9) SALES PRACTICES IN GENERAL.--

1           (a) Soliciting by the licensee, or by her or his  
2 agent, assistant, or employee, through the use of fraud, undue  
3 influence, intimidation, overreaching, or other means which  
4 takes advantage of a customer's ignorance or emotional  
5 vulnerability.

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

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

22           (d) Misrepresenting the benefits, advantages,  
23 conditions, or terms of any contract to provide any services  
24 or merchandise regulated under this chapter.

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

27           (f) Directly or indirectly making any deceptive,  
28 misleading, or untrue representations, whether oral or  
29 written, or employing any trick, scheme, or artifice, in or  
30 related to the practice of a profession or occupation  
31 regulated under this chapter, including in the advertising or



1 | sale of any merchandise or services related to the practice of  
2 | the profession or occupation.

3 |       (10) SPECIFIC MISREPRESENTATIONS.--

4 |       (a) Making any false or misleading statement of the  
5 | legal requirement as to the necessity of any particular burial  
6 | or funeral merchandise or services.

7 |       (b) Making any oral, written, or visual  
8 | representations, directly or indirectly, that any funeral  
9 | merchandise or service is offered for sale when such is not a  
10 | bona fide offer to sell such merchandise or service.

11 |       (c) Making any misrepresentation for the purpose of  
12 | inducing, or tending to induce, the lapse, forfeiture,  
13 | exchange, conversion, or surrender of any preneed contract or  
14 | any life insurance policy pledged or assigned to secure  
15 | payment for funeral or burial goods or services.

16 |       (d) Misrepresenting pertinent facts or prepaid  
17 | contract provisions relating to funeral or burial merchandise  
18 | or services.

19 |       (e) Misrepresenting the amount advanced on behalf of a  
20 | customer for any item of service or merchandise, including,  
21 | but not limited to, cemetery or crematory services,  
22 | pallbearers, public transportation, clergy honoraria, flowers,  
23 | musicians or singers, nurses, obituary notices, gratuities,  
24 | and death certificates, described as cash advances,  
25 | accommodations, or words of similar import on the contract,  
26 | final bill, or other written evidence of agreement or  
27 | obligation furnished to customers; however, nothing in this  
28 | paragraph shall require disclosure of a discount or rebate  
29 | which may accrue to a licensee subsequent to making a cash  
30 | advance.

31 |

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

6 (g) Making any false or misleading statement, oral or  
7 written, directly or indirectly, regarding any law or rule  
8 pertaining to the preparation for disposition, transportation  
9 for disposition, or disposition of dead human bodies.

10 (h) Making any false or misleading statements of the  
11 legal requirement as to the conditions under which  
12 preservation of a dead human body is required or as to the  
13 necessity of a casket or outer burial container.

14 (11) SPECIFIC SALES PRACTICES.--

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

24 (b) Filling in any contract form for use with a  
25 particular customer, using language that ~~Using any name or~~  
26 ~~title in any contract regulated under this chapter which~~  
27 misrepresents the true nature of the contract.

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

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

3           (e) Requiring that a casket be purchased for cremation  
4 or claiming directly or by implication that a casket is  
5 required for cremation.

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

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

13           (h) Failure by a cemetery licensed under this chapter  
14 to provide to any person, upon request, a copy of the cemetery  
15 bylaws.

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

19           (12) DISCLOSURE REQUIREMENTS.--

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

27           (b) Failing to furnish, for retention, to anyone who  
28 inquires in person about burial rights, burial or funeral  
29 merchandise, or burial or funeral services, before any  
30 discussion of selection, a printed or typewritten list  
31 specifying the range of retail prices for such rights,

1 merchandise, or services. At a minimum, the list shall itemize  
2 the highest and lowest priced product and service regularly  
3 offered and shall include the name, address, and telephone  
4 number of the licensee and statements that the customer may  
5 choose only the items the customer desires, that the customer  
6 will be charged for only those items selected, and that there  
7 may be other charges for other items or other services.

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

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

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

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

31

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

4 (13) CONTRACT OBLIGATIONS.--

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

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

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

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

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

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

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

28 3. Attempting to settle a claim or complaint on the  
29 basis of a material document which was altered without notice  
30 to, or without the knowledge or consent of, the contract  
31 purchaser or her or his representative or legal guardian.

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

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

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

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

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

30           2. A person, or such person's family member or  
31 representative, who inquired of the licensee or licensee's

1 business concerning the purchase of, or who purchased or  
2 contracted to purchase, any funeral or burial merchandise or  
3 services from the licensee or licensee's business.

4  
5 For purposes of this subsection, the response of a customer  
6 recorded by the customer on a customer satisfaction  
7 questionnaire or survey form sent to the customer by the  
8 licensee, and returned by the customer to the licensee, shall  
9 not be deemed to be a complaint.

10 (15) MISCELLANEOUS FINANCIAL MATTERS.--

11 (a) Failing to timely pay any fee required by this  
12 chapter.

13 (b) Failing to timely remit as required by this  
14 chapter the required amounts to any trust fund required by  
15 this chapter. The board may, by rule, provide criteria for  
16 identifying minor, nonwillful trust remittance deficiencies;  
17 remittance deficiencies falling within such criteria, if fully  
18 corrected within 30 days after notice to the licensee by the  
19 department, do not constitute a disciplinary violation.

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

30 Section 13. Subsection (1), paragraph (b) of  
31 subsection (2), and paragraph (c) of subsection (4) of section

1 497.153, Florida Statutes, as created by chapter 2004-301,  
2 Laws of Florida, are amended to read:

3 497.153 Disciplinary procedures and penalties.--

4 (1) JURISDICTION OF LICENSING AUTHORITY TO INVESTIGATE  
5 AND PROSECUTE.--The expiration, nonrenewal, or surrender of  
6 licensure under this chapter shall not eliminate jurisdiction  
7 in the licensing authority to investigate and prosecute for  
8 violations committed by a licensee while licensed under this  
9 chapter. The prosecution of any matter may be initiated or  
10 continued notwithstanding the withdrawal of any complaint.

11 (2) DETERMINATION OF PROBABLE CAUSE.--

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

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

25 (c) The department may at any time present to the  
26 board a proposed settlement by consent order or otherwise of  
27 any matter as to which probable cause has been found. If the  
28 board accepts the proposed settlement, it may execute and file  
29 the consent order as its final order in the matter or may  
30 otherwise issue its final order in the matter ~~shall issue its~~  
31 ~~final order adopting the settlement~~. If the board does not



1 | accept such settlement, the prosecution of the matter shall be  
2 | resumed. No settlement of any disciplinary matter as to which  
3 | probable cause has been found may be entered into by the board  
4 | prior to receipt of a recommended order of an administrative  
5 | law judge without the department's concurrence.

6 |         Section 14. Subsection (1) of section 497.158, Florida  
7 | Statutes, as renumbered and amended by section 28 of chapter  
8 | 2004-301, Laws of Florida, is amended to read:

9 |             497.158 Court enforcement actions; powers; abatement  
10 | of nuisances.--

11 |             (1) In addition to or in lieu of other actions  
12 | authorized by this chapter, the department may petition the  
13 | courts of this state for injunctive or other relief against  
14 | any licensed or unlicensed person for the enforcement of this  
15 | chapter and orders issued under this chapter. The court shall  
16 | be authorized to impose a fine of up to \$5,000 per violation  
17 | on any licensee under this chapter and up to \$10,000 on any  
18 | person not licensed under this chapter, payable to the  
19 | department, upon any person determined by the court to have  
20 | violated this chapter, and may order payment to the department  
21 | of the department's attorney's fees and litigation costs, by  
22 | any person found to have violated this chapter.

23 |         Section 15. Subsections (1), (3), and (4) and  
24 | paragraph (a) of subsection (5) of section 497.159, Florida  
25 | Statutes, as created by chapter 2004-301, Laws of Florida, are  
26 | amended to read:

27 |             497.159 Crimes.--

28 |             (1) The theft ~~of an examination~~ in whole or in part or  
29 | the act of unauthorized reproducing, circulating, or copying  
30 | of any questions or answers on, from, or for any prelicensure  
31 | examination administered by the department or the board,

1 | whether such examination is reproduced or copied in part or in  
2 | whole and by any means, constitutes a felony of the third  
3 | degree, punishable as provided in s. 775.082, s. 775.083, or  
4 | s. 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. The initiation of action in any court by or on behalf  
11 | of any licensee to terminate or limit any examination or  
12 | investigation under this chapter shall not constitute a  
13 | violation under this subsection.

14 |         (4) Any officer or director, or person occupying  
15 | similar status or performing similar functions, of a preneed  
16 | licensee who fails ~~licensee under this chapter who knowingly~~  
17 | ~~directs or causes the failure~~ to make required deposits to any  
18 | trust fund required by this chapter; any director, officer,  
19 | agent, or employee of a preneed licensee who makes any  
20 | unlawful withdrawal of funds from any such account or who  
21 | knowingly discloses to the department or an employee thereof  
22 | any false report made pursuant to this chapter; or any person  
23 | who willfully violates any of the provisions of part II, part  
24 | IV or part V, or with knowledge that such required deposits  
25 | ~~are not being made as required by law fails to report such~~  
26 | ~~failure to the department, or who knowingly directs or causes~~  
27 | ~~the unlawful withdrawal of funds from any trust fund required~~  
28 | ~~by this chapter,~~ commits a felony of the third degree,  
29 | punishable as provided in s. 775.082, s. 775.083, or s.  
30 | 775.084.

31 |

1           (5)(a) ~~A~~ ~~no~~ cemetery company or other legal entity  
2 conducting or maintaining any public or private cemetery may  
3 not deny burial space to any person because of race, creed,  
4 marital status, sex, national origin, or color. A cemetery  
5 company or other entity operating any cemetery may designate  
6 parts of cemeteries or burial grounds for the specific use of  
7 persons whose religious code requires isolation. Religious  
8 institution cemeteries may limit burials to members of the  
9 religious institution and their families.

10           Section 16. Paragraphs (g) and (h) of subsection (1)  
11 and subsection (3) of section 497.161, Florida Statutes, as  
12 created by chapter 2004-301, Laws of Florida, are amended to  
13 read:

14           497.161 Other rulemaking provisions.--

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

19           ~~(g) Rules establishing procedures by which the~~  
20 ~~department may use the expert or technical advice of the board~~  
21 ~~or members of the board for the purposes of any investigation,~~  
22 ~~inspection, or financial examination, without thereby~~  
23 ~~disqualifying the board member from voting on final action in~~  
24 ~~the matter.~~

25           ~~(g)(h)~~ In connection with the statutory revisions by  
26 the 2004 ~~2005~~ Regular Session of the Legislature merging  
27 chapters 470 and 497 as those chapters appeared in the 2003  
28 ~~2004~~ edition of the Florida Statutes and the elimination of  
29 the former boards under those chapters and the movement of  
30 regulation out of the Department of Business and Professional  
31 Regulation, the licensing authority shall through July 1,

1 | 2006, be deemed to have extraordinary rulemaking authority to  
2 | adopt any and all rules jointly agreed by the board and the  
3 | department to be necessary for the protection of the public  
4 | concerning the regulation of the professions and occupations  
5 | regulated under this chapter, or for the relief of licensees  
6 | regulated under this chapter concerning any impacts which the  
7 | department and the board jointly agree were unintended or not  
8 | contemplated in the enactment of the 2004 ~~2005~~ legislative  
9 | changes. The authority under this paragraph and any rules  
10 | adopted under authority of this paragraph shall expire July 1,  
11 | 2006.

12 |           (3) The department and the board shall each have  
13 | standing under chapter 120 for the purposes of challenging  
14 | rules or proposed rules under this chapter. This subsection  
15 | shall not be interpreted to deny standing to a licensee to  
16 | challenge any rule under this chapter if the licensee would  
17 | otherwise have standing.

18 |           Section 17. Section 497.165, Florida Statutes, as  
19 | renumbered and amended by chapter 2004-30, Florida Statutes,  
20 | is amended to read:

21 |           497.165 Liability of owners, directors, and officers  
22 | regarding trust funds.--The owners, officers, and directors of  
23 | any licensee under this chapter may be held jointly and  
24 | severally liable for any deficiency in any trust fund required  
25 | by this chapter, to the extent the deficiency arose during the  
26 | period they were owners, officers or directors of the  
27 | licensee, if they intentionally or through gross ~~their~~  
28 | ~~conduct, or their~~ negligence in the performance of their  
29 | duties, caused the deficiency or substantially contributed to  
30 | conditions that allowed the deficiency to arise or increase.  
31 |

1           Section 18. Subsections (1) and (3) of section  
2 497.166, Florida Statutes, as created by chapter 2004-301,  
3 Laws of Florida, are amended to read:

4           497.166 Preneed sales.--

5           (1) Regulation of preneed sales shall be as set forth  
6 in part IV of this chapter. ~~A No~~ person may not act as an  
7 agent for a preneed licensee funeral establishment or direct  
8 ~~disposal establishment~~ with respect to preneed contracts  
9 unless the ~~such~~ person is licensed as a preneed sales agent  
10 pursuant to part IV of this chapter or is a licensed funeral  
11 director acting as a preneed sales agent.

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

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

19           (c) The responsibility imposed by this subsection on  
20 the funeral director and direct disposer in charge is a duty  
21 of reasonable supervision and not absolute liability. The  
22 responsibility of the funeral director or direct disposer in  
23 charge shall be in addition to the responsibility of the  
24 preneed licensee for the conduct of the preneed sales agents  
25 it employs.

26           Section 19. Subsection (2) of section 497.169, Florida  
27 Statutes, as renumbered and amended by section 39 of chapter  
28 2004-301, Laws of Florida, is amended to read:

29           497.169 Private actions; actions on behalf of  
30 consumers; attorney's fee.--  
31

1           (2) In any civil litigation resulting from a  
2 transaction involving a violation of this chapter by a  
3 cemetery company or burial rights broker licensed under part  
4 II, a monument establishment licensed under part V, or a  
5 preneed entity or preneed sales agent licensed under part IV,  
6 the court may award to the prevailing party and against the  
7 cemetery company, burial rights broker, monument  
8 establishment, or preneed entity or sales agent, after  
9 judgment in the trial court and exhaustion of any appeal,  
10 reasonable attorney's fees and costs from the nonprevailing  
11 party in an amount to be determined by the trial court. Any  
12 award of attorney's fees or costs shall become a part of the  
13 judgment and shall be subject to execution as the law allows.  
14 This subsection does not apply to licensees licensed under  
15 part III or part VI.

16           Section 20. Section 497.171, Florida Statutes, is  
17 created to read:

18           497.171 Identification of human remains.--

19           (1) PRIOR TO FINAL DISPOSITION.--

20           (a) This subsection applies to licensees under parts  
21 III and VI.

22           (b) The licensee in charge of the final disposition of  
23 dead human remains shall, prior to final disposition of such  
24 dead human remains, affix on the ankle or wrist of the  
25 deceased, and on the casket or alternative container or  
26 cremation container, proper identification of the dead human  
27 remains. The identification or tag shall be encased in or  
28 consist of durable and long-lasting material containing the  
29 name, date of birth, and date of death of the deceased, if  
30 available. The board may adopt rules specifying acceptable  
31 materials for such identification tags, acceptable locations

1 for the tags on the casket or alternative container or  
2 cremation container, and acceptable methods of affixing the  
3 tags.

4 (c) If the dead human remains are cremated, proper  
5 identification shall be placed in the container or urn  
6 containing the remains.

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

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

26 (3) INTERMENT IN LICENSED CEMETERIES.--

27 (a) This subsection applies to cemetery licensees  
28 under part II.

29 (b) As to interments in a licensed cemetery, each  
30 licensed cemetery shall place on the outer burial container,  
31 cremation interment container, or other container or on the

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

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

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

24 (5) RELIANCE ON LEGALLY AUTHORIZED PERSON.--Any  
25 licensee charged with responsibility under this section may  
26 rely on the representation of a legally authorized person to  
27 establish the identity of dead human remains.

28 Section 21. Paragraph (b) of subsection (6) of section  
29 497.260, Florida Statutes, as renumbered and amended by  
30 section 42 of chapter 2004-301, Laws of Florida, is amended to  
31 read:



1           497.260 Cemeteries; exemption; investigation and  
2 mediation.--

3           (6)(b) ~~A No~~ cemetery company or other legal entity  
4 conducting or maintaining any public or private cemetery may  
5 not deny burial space to any person because of race, creed,  
6 marital status, sex, national origin, or color. A cemetery  
7 company or other entity operating any cemetery may designate  
8 parts of cemeteries or burial grounds for the specific use of  
9 persons whose religious code requires isolation. Religious  
10 institution cemeteries may limit burials to members of the  
11 religious institution and their families.

12           Section 22. Paragraphs (b), (m), (o), and (q) of  
13 subsection (2) of section 497.263, Florida Statutes, as  
14 renumbered and amended by section 45 of chapter 2004-301, Laws  
15 of Florida, are amended to read:

16           497.263 Cemetery companies; license required;  
17 licensure requirements and procedures.--

18           (2) APPLICATION PROCEDURES.--

19           (b) The applicant shall be a corporation, ~~or~~ a  
20 partnership, or a limited liability company ~~formed prior to~~  
21 ~~January 1, 2005, which limited liability company already holds~~  
22 ~~a license under this chapter.~~

23           (m) The applicant shall be required to make disclosure  
24 of the applicant's criminal records, if any, as required by s.  
25 497.142. ~~The application shall require the applicant to~~  
26 ~~disclose whether the applicant or any principal of the~~  
27 ~~applicant 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. The licensing authority may~~  
30 ~~require by rule additional information to be provided~~  
31 ~~concerning any affirmative answers.~~

1           (o) The applicant shall submit fingerprints in  
2 accordance with s. 497.142. The application shall require the  
3 applicant and applicant's principals to provide fingerprints  
4 in accordance with part I of this chapter.

5           (q) The application shall be signed in accordance with  
6 s. 497.141(12) by the president of the applicant.

7           Section 23. Paragraphs (h), (j), and (l) of subsection  
8 (2) of section 497.264, Florida Statutes, as renumbered and  
9 amended by chapter 2004-301, Laws of Florida, are amended to  
10 read:

11           497.264 License not assignable or transferable.--

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

16           (h) The applicant shall be required to make disclosure  
17 of applicant's criminal records, if any, as required by s.  
18 497.142. The application shall require the applicant to  
19 disclose whether the applicant or any principal of the  
20 applicant has ever been convicted or found guilty of, or  
21 entered a plea of no contest to, regardless of adjudication,  
22 any crime in any jurisdiction. The licensing authority may  
23 require by rule additional information to be provided  
24 concerning any affirmative answers.

25           (j) The applicant shall submit fingerprints in  
26 accordance with s. 497.142. The application shall require the  
27 applicant and the applicant's principals to provide  
28 fingerprints in accordance with part I of this chapter.

29           (l) The application shall be signed in accordance with  
30 s. 497.141(12) by the applicant if a natural person, otherwise  
31 by the president of the applicant.

1           Section 24. Section 497.281, Florida Statutes, as  
2 renumbered and amended by section 62 of chapter 2004-301, Laws  
3 of Florida, is amended to read:

4           497.281 Licensure of brokers of burial rights.--

5           (1) No person shall receive compensation to act as a  
6 third party to the sale or transfer of three or more burial  
7 rights in a 12-month period unless the person pays a license  
8 fee as determined by licensing authority rule but not to  
9 exceed \$250 and is licensed with the department as a burial  
10 rights broker in accordance with this section.

11           (2)(a) The applicant shall be required to make  
12 disclosure of the applicant's criminal records, if any, as  
13 required by s. 497.142.

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

28           (c) The applicant shall submit fingerprints in  
29 accordance with s. 497.142. The application shall be signed in  
30 accordance with s. 497.141(12).

31

1           (d) The applicant shall demonstrate by clear and  
2 convincing evidence that the applicant has the ability,  
3 experience, and integrity to act as a burial broker and, if  
4 the applicant is an entity, that the applicant's principals  
5 are of good character.

6           (3) The licensing authority shall by rule establish  
7 requirements for minimum records to be maintained by licensees  
8 under this section, for the purpose of preventing confusion  
9 and error by the licensee or by the cemeteries in which the  
10 burial rights are located as to the status as sold or unsold,  
11 and the identity of the owner, of the burial rights and  
12 related interment spaces in the cemetery.

13           (4) The licensing authority may, by rule, require  
14 inspections of the records of licensees under this section.

15           ~~(5)(2)~~ The department, by rule, shall provide for the  
16 biennial renewal of licenses under this section and a renewal  
17 fee as determined by licensing authority rule but not to  
18 exceed \$250.

19           ~~(6)(3)~~ The licensure requirements of this section do  
20 ~~shall~~ not apply to persons otherwise licensed pursuant to this  
21 chapter, but such persons, if they engage in activity as a  
22 burial rights broker, are subject to rules relating to  
23 required records and inspections.

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

29           Section 25. Subsection (12) is added to section  
30 497.365, Florida Statutes, to read:

31           497.365 Licensure; inactive and delinquent status.--

1           (12) The board shall prescribe, by rule, an  
2 application fee for inactive status, a renewal fee for  
3 inactive status, a delinquency fee, and a fee for reactivation  
4 of a license. The amount of any such fee may not exceed the  
5 amount of the biennial renewal fee established by the board  
6 for an active license. The department may not reactivate a  
7 license unless the inactive or delinquent licensee has paid  
8 any applicable biennial renewal or delinquency fee, or both,  
9 and a reactivation fee.

10           Section 26. Paragraph (c) of subsection (1) of section  
11 497.368, Florida Statutes, as renumbered and amended by  
12 section 73 of chapter 2004-301, Laws of Florida, is amended to  
13 read:

14           497.368   Embalmers; licensure as an embalmer by  
15 examination; provisional license.--

16           (1) Any person desiring to be licensed as an embalmer  
17 shall apply to the licensing authority to take the licensure  
18 examination. The licensing authority shall examine each  
19 applicant who has remitted an examination fee set by rule of  
20 the licensing authority not to exceed \$200 plus the actual per  
21 applicant cost to the licensing authority for portions of the  
22 examination and who has:

23           (c) Made disclosure of applicant's criminal records,  
24 if any, as required by s. 497.142. The applicant shall submit  
25 fingerprints in accordance with s. 497.142. The applicant may  
26 not be licensed under this section unless the licensing  
27 authority determines that the applicant is of good character  
28 and has no demonstrated history of lack of trustworthiness or  
29 integrity in business or professional matters. ~~Had no~~  
30 conviction or finding of guilt, regardless of adjudication,  
31

1 ~~for a crime which directly relates to the ability to practice~~  
2 ~~embalming or the practice of embalming.~~

3           Section 27. Paragraph (d) is added to subsection (1)  
4 of section 497.369, Florida Statutes, as renumbered and  
5 amended by section 74 of chapter 2004-301, Laws of Florida, to  
6 read:

7           497.369   Embalmers; licensure as an embalmer by  
8 endorsement; licensure of a temporary embalmer.--

9           (1) The licensing authority shall issue a license by  
10 endorsement to practice embalming to an applicant who has  
11 remitted an examination fee set by rule of the licensing  
12 authority not to exceed \$200 and who the licensing authority  
13 certifies:

14           (d) Has made disclosure of the applicant's criminal  
15 records, if any, as required by s. 497.142. The applicant  
16 shall submit fingerprints in accordance with s. 497.142. The  
17 applicant may not be licensed under this section unless the  
18 licensing authority determines that the applicant is of good  
19 character and has no demonstrated history of lack of  
20 trustworthiness or integrity in business or professional  
21 matters.

22           Section 28. Paragraph (c) of subsection (1) of section  
23 497.373, Florida Statutes, as renumbered and amended by  
24 section 78 of chapter 2004-301, Laws of Florida, is amended to  
25 read:

26           497.373   Funeral directing; licensure as a funeral  
27 director by examination; provisional license.--

28           (1) Any person desiring to be licensed as a funeral  
29 director shall apply to the licensing authority to take the  
30 licensure examination. The licensing authority shall examine  
31 each applicant who has remitted an examination fee set by rule

1 of the licensing authority not to exceed \$200 plus the actual  
2 per applicant cost to the licensing authority for portions of  
3 the examination and who the licensing authority certifies has:

4       (c) Made disclosure of the applicant's criminal  
5 records, if any, as required by s. 497.142. The applicant  
6 shall submit fingerprints in accordance with s. 497.142. The  
7 applicant may not be licensed under this section unless the  
8 licensing authority determines that the applicant is of good  
9 character and has no demonstrated history of lack of  
10 trustworthiness or integrity in business or professional  
11 matters. ~~Had no conviction or finding of guilt, regardless of~~  
12 ~~adjudication, for a crime which directly relates to the~~  
13 ~~ability to practice funeral directing or the practice of~~  
14 ~~funeral directing.~~

15       Section 29. Paragraph (d) is added to subsection (1)  
16 of section 497.374, Florida Statutes, as renumbered and  
17 amended by section 79 of chapter 2004-301, Laws of Florida, to  
18 read:

19       497.374 Funeral directing; licensure as a funeral  
20 director by endorsement; licensure of a temporary funeral  
21 director.--

22       (1) The licensing authority shall issue a license by  
23 endorsement to practice funeral directing to an applicant who  
24 has remitted a fee set by rule of the licensing authority not  
25 to exceed \$200 and who:

26       (d) Has made disclosure of the applicant's criminal  
27 records, if any, as required by s. 497.142. The applicant  
28 shall submit fingerprints in accordance with s. 497.142. The  
29 applicant may not be licensed under this section unless the  
30 licensing authority determines that the applicant is of good  
31 character and has no demonstrated history of lack of

1 trustworthiness or integrity in business or professional  
2 matters.

3           Section 30. Subsection (1) of section 497.376, Florida  
4 Statutes, as renumbered and amended by section 81 of chapter  
5 2004-301, Laws of Florida, is amended to read:

6           497.376 License as funeral director and embalmer  
7 permitted; display of license.--

8           (1) Nothing in this chapter may be construed to  
9 prohibit a person from holding a license as an embalmer and a  
10 license as a funeral director at the same time. There may be  
11 issued and renewed by the licensing authority a combination  
12 license as both funeral director and embalmer to persons  
13 meeting the separate requirements for both licenses as set  
14 forth in this chapter. The licensing authority may adopt rules  
15 providing procedures for applying for and renewing such a  
16 combination license. The licensing authority may, by rule,  
17 establish application, renewal, and other fees for such a  
18 combination license, which fees may not exceed the sum of the  
19 maximum fees for the separate funeral director and embalmer  
20 license categories as provided in this chapter. A person who  
21 holds a combination license as a funeral director and embalmer  
22 is subject to regulation under this chapter both as a funeral  
23 director and an embalmer.

24           Section 31. Subsection (1) of section 497.378, Florida  
25 Statutes, as renumbered and amended by chapter 2004-301, Laws  
26 of Florida, is amended to read:

27           497.378 Renewal of funeral director and embalmer  
28 licenses.--

29           (1) There shall be renewed a funeral director or  
30 embalmer license upon receipt of the renewal application and  
31 fee set by the licensing authority not to exceed ~~\$500~~\$250.



1 The licensing authority may prescribe by rule continuing  
2 education requirements of up to 12 classroom hours and may by  
3 rule establish criteria for accepting alternative nonclassroom  
4 continuing education on an hour-for-hour basis, in addition to  
5 a licensing authority-approved course on communicable diseases  
6 that includes the course on human immunodeficiency virus and  
7 acquired immune deficiency syndrome required by s. 497.367,  
8 for the renewal of a funeral director or embalmer license. The  
9 rule may provide for the waiver of continuing education  
10 requirements in circumstances that would justify the waiver,  
11 such as hardship, disability, or illness. The continuing  
12 education requirement is not required after July 1, 1996, for  
13 a licensee who is over the age of 75 years if the licensee  
14 does not qualify as the sole person in charge of an  
15 establishment or facility.

16 Section 32. Subsections (1), (4), (5), and (12) of  
17 section 497.380, Florida Statutes, as renumbered and amended  
18 by section 85 of chapter 2004-301, Laws of Florida, are  
19 amended to read:

20 497.380 Funeral establishment; licensure.--

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

30 (4) Application for a funeral establishment license  
31 shall be made on forms and pursuant to procedures specified by

1 rule, shall be accompanied by a nonrefundable fee not to  
2 exceed \$300 as set by licensing authority rule, and shall  
3 include the name of the licensed funeral director who is in  
4 charge of that establishment. The applicant shall be required  
5 to make disclosure of the applicant's criminal records, if  
6 any, as required by s. 497.142. The applicant shall submit  
7 fingerprints in accordance with s. 497.142. A duly completed  
8 application accompanied by the required fees shall be approved  
9 and the license issued if the proposed funeral establishment  
10 has passed an inspection pursuant to rule of the licensing  
11 authority, the licensing authority determines the applicant is  
12 of good character and has no demonstrated history of lack of  
13 trustworthiness or integrity in business or professional  
14 matters, and the applicant otherwise is in compliance with all  
15 applicable requirements of this chapter.

16 (5) A funeral establishment license shall be renewable  
17 biennially pursuant to procedures, and upon payment of a  
18 nonrefundable fee not to exceed ~~\$500~~\$300, as set by licensing  
19 authority rule. The licensing authority may also establish by  
20 rule a delinquency fee not to exceed \$50 per day.

21 (12)(a) A change in ownership of a funeral  
22 establishment shall be promptly reported pursuant to  
23 procedures established by rule and shall require the  
24 relicensure of the funeral establishment, including  
25 reinspection and payment of applicable fees.

26 (b) A change in location of a funeral establishment  
27 shall be promptly reported to the licensing authority pursuant  
28 to procedures established by rule. Operations by the licensee  
29 at a new location may not commence until an inspection by the  
30 licensing authority of the facilities, pursuant to rules of

31

1 the licensing authority, has been conducted and passed at the  
2 new location.

3           Section 33. Paragraphs (a) and (g) of subsection (1)  
4 and paragraphs (a), (f), and (g) of subsection (2) of section  
5 497.385, Florida Statutes, as renumbered and amended by  
6 section 90 of chapter 2004-301, Laws of Florida, are amended,  
7 and paragraph (i) is added to subsection (2) of that section,  
8 to read:

9           497.385 Removal services; refrigeration facilities;  
10 centralized embalming facilities.--In order to ensure that the  
11 removal, refrigeration, and embalming of all dead human bodies  
12 is conducted in a manner that properly protects the public's  
13 health and safety, the licensing authority shall adopt rules  
14 to provide for the licensure of removal services,  
15 refrigeration facilities, and centralized embalming facilities  
16 operated independently of funeral establishments, direct  
17 disposal establishments, and cinerator facilities.

18           (1) REMOVAL SERVICES AND REFRIGERATION SERVICES.--

19           (a) Application for licensure of a removal service or  
20 a refrigeration service shall be made using forms and  
21 procedures as specified by rule, shall be accompanied by a  
22 nonrefundable fee not to exceed \$300 as set by licensing  
23 authority rule, and shall include the name of the business  
24 owner, manager in charge, business address, and copies of  
25 occupational and other local permits. The applicant shall be  
26 required to make disclosure of the applicant's criminal  
27 records, if any, as required by s. 497.142. The applicant  
28 shall submit fingerprints in accordance with s. 497.142. A  
29 duly completed application accompanied by the required fees  
30 shall be approved and the license issued if the applicant has  
31 passed an inspection pursuant to rule of the licensing

1 authority, the licensing authority determines that the  
2 applicant is of good character and has no demonstrated history  
3 of lack of trustworthiness or integrity in business or  
4 professional matters, and the applicant otherwise is in  
5 compliance with all applicable requirements of this chapter.

6 (g)1. A change in ownership shall be promptly reported  
7 using forms and procedures specified by rule and may require  
8 the relicensure of the licensee, including reinspection and  
9 payment of applicable fees, as required by rule.

10 2. A change in location shall be promptly reported to  
11 the licensing authority pursuant to procedures established by  
12 rule. Operations by the licensee at a new location may not  
13 commence until an inspection by the licensing authority of the  
14 facilities, pursuant to rules of the licensing authority, has  
15 been conducted and passed at the new location.

16 (2) CENTRALIZED EMBALMING FACILITIES.--In order to  
17 ensure that all funeral establishments have access to  
18 embalming facilities that comply with all applicable health  
19 and safety requirements, the licensing authority shall adopt  
20 rules to provide for the licensure and operation of  
21 centralized embalming facilities and shall require, at a  
22 minimum, the following:

23 (a) All centralized embalming facilities shall contain  
24 all of the equipment and meet all of the requirements that a  
25 preparation room located in a funeral establishment is  
26 ~~required to meet, but such facilities shall not be required to~~  
27 ~~comply with any of the other requirements for funeral~~  
28 ~~establishments, as set forth in s. 497.380. The licensing~~  
29 authority may adopt rules establishing the equipment and other  
30 requirements for operation of a centralized embalming facility  
31 consistent with this paragraph.

1           (f) Application for licensure of a centralized  
2 embalming facility shall be made utilizing forms and  
3 procedures prescribed by rule and shall be accompanied by a  
4 nonrefundable fee not to exceed \$300 as set by licensing  
5 authority rule, and licensure shall be renewed biennially  
6 pursuant to procedures and upon payment of a nonrefundable fee  
7 not to exceed \$300 as set by licensing authority rule. The  
8 licensing authority may also establish by rule a late fee not  
9 to exceed \$50 per day. Any licensure not renewed within 30  
10 days after the renewal date shall expire without further  
11 action by the department. The applicant shall be required to  
12 make disclosure of the applicant's criminal records, if any,  
13 as required by s. 497.142. The applicant shall submit  
14 fingerprints in accordance with s. 497.142. A duly completed  
15 application accompanied by the required fees shall be approved  
16 and the license issued if the applicant has passed an  
17 inspection pursuant to rule of the licensing authority, the  
18 licensing authority determines that the applicant is of good  
19 character and has no demonstrated history of lack of  
20 trustworthiness or integrity in business or professional  
21 matters, and the applicant otherwise is in compliance with all  
22 applicable requirements of this chapter.

23           (g) The licensing authority shall set by rule an  
24 annual inspection fee not to exceed \$300, payable upon  
25 application for licensure and upon renewal of such licensure.  
26 Centralized embalming facilities shall be subject to  
27 inspection before issuance of a license and annually  
28 thereafter.

29           (i)1. A change in ownership shall be promptly reported  
30 using forms and procedures specified by rule and may require  
31

1 the relicensure of the licensee, including reinspection and  
2 payment of applicable fees, as required by rule.

3       2. A change in location shall be promptly reported to  
4 the licensing authority pursuant to procedures established by  
5 rule. Operations by the licensee at a new location may not  
6 commence until an inspection by the licensing authority of the  
7 facilities, pursuant to rules of the licensing authority, has  
8 been conducted and passed at the new location.

9       Section 34. Section 497.453, Florida Statutes, as  
10 renumbered and amended by section 102 of chapter 2004-301,  
11 Laws of Florida, is amended to read:

12       497.453 Application for preneed license, procedures  
13 and criteria; renewal; reports.--

14       (1) PRENEED LICENSE APPLICATION PROCEDURES.--

15       (a) A person seeking a license to enter into preneed  
16 contracts shall apply for such licensure using forms  
17 prescribed by rule.

18       (b) The application shall require the name, business  
19 address, residence address, date and place of birth or  
20 incorporation, and business phone number of the applicant and  
21 all principals of the applicant. The application shall require  
22 the applicant's social security number, or, if the applicant  
23 is an entity, its federal tax identification number.

24       (c) The application may require information as to the  
25 applicant's financial resources.

26       (d) The application may require information as to the  
27 educational and employment history of an individual applicant;  
28 and as to applicants that are not natural persons, the  
29 business and employment history of the applicant and  
30 principals of the applicant.

31

1           (e) The applicant shall be required to make disclosure  
2 of the applicant's criminal records, if any, as required by s.  
3 497.142. The application shall require the applicant to  
4 disclose whether the applicant or any of the applicant's  
5 principals have ever been convicted or found guilty of, or  
6 entered a plea of no contest to, regardless of adjudication,  
7 any crime in any jurisdiction.

8           (f) The application shall require the applicant to  
9 disclose whether the applicant or any of the applicant's  
10 principals have ever had a license or the authority to  
11 practice a profession or occupation refused, suspended, fined,  
12 denied, or otherwise acted against or disciplined by the  
13 licensing authority of any jurisdiction. A licensing  
14 authority's acceptance of a relinquishment of licensure,  
15 stipulation, consent order, or other settlement, offered in  
16 response to or in anticipation of the filing of charges  
17 against the license, shall be construed as action against the  
18 license.

19           (g) The applicant shall submit fingerprints in  
20 accordance with s. 497.142. The application shall require the  
21 applicant and its principals to provide fingerprints in  
22 accordance with part I of this chapter.

23           (h) The application shall state the name and license  
24 number of the funeral establishment, cemetery company, direct  
25 disposal establishment, or monument establishment, under whose  
26 license the preneed application is made.

27           (i) The application shall state the types of preneed  
28 contracts proposed to be written.

29           (j) The application shall disclose the existence of  
30 all preneed contracts for service or merchandise entered into  
31 by the applicant, or by any other entity under common control

1 with the applicant, without or prior to authorization under  
2 this section or predecessors to this section. As to each such  
3 contract, the applicant shall disclose the name and address of  
4 the contract purchaser, the status of the contract, and what  
5 steps or measures the applicant has taken to ensure  
6 performance of unfulfilled contracts, setting forth the  
7 treatment and status of funds received from the customer in  
8 regard to the contract, and stating the name and address of  
9 any institution where such funds are deposited and the number  
10 used by the institution to identify the account. With respect  
11 to contracts entered into before January 1, 1983, an  
12 application to issue or renew a preneed license may not be  
13 denied solely on the basis of such disclosure. The purchaser  
14 of any such contract may not be required to liquidate the  
15 account if such account was established before July 1, 1965.  
16 Information disclosed may be used by the licensing authority  
17 to notify the contract purchaser and the institution in which  
18 such funds are deposited should the holder of a preneed  
19 license be unable to fulfill the requirements of the contract.

20 (k) The application shall require the applicant to  
21 demonstrate that the applicant complies and will comply with  
22 all requirements for preneed contract licensure under this  
23 chapter.

24 (l) The application may require any other information  
25 considered necessary by the department or board to meet its  
26 responsibilities under this chapter.

27 (m) The application shall be sworn to and signed in  
28 accordance with s. 497.141(12) ~~by the applicant if a natural~~  
29 ~~person, or by the president of an applicant that is not a~~  
30 ~~natural person.~~

31



1           (n) The application shall be accompanied by a  
2 nonrefundable fee as determined by licensing authority rule  
3 but not to exceed \$500.

4           (2) ACTION CONCERNING APPLICATIONS.--A duly completed  
5 application for licensure under this section, accompanied by  
6 the required fees, shall be approved and a license issued, if  
7 the licensing authority determines that the following  
8 conditions are met:

9           (a) The application is made by a funeral  
10 establishment, cemetery company, direct disposal  
11 establishment, or monument establishment, or on behalf of one  
12 of the preceding licensees by its agent in the case of a  
13 corporate entity, licensed and in good standing under this  
14 chapter.

15           (b) The applicant meets net worth requirements  
16 specified by rule of the licensing authority.

17           1. The net worth required by rule to obtain or renew a  
18 preneed license and write and carry up to \$100,000 in total  
19 retail value of outstanding preneed contracts shall not exceed  
20 \$20,000. The board may specify higher net worth requirements  
21 by increments, for total retail value of outstanding preneed  
22 contracts carried in excess of \$100,000, as the board  
23 determines necessary for the protection of the public.

24           2. An applicant to obtain or renew a preneed licensee  
25 that cannot demonstrate the required initial minimum net worth  
26 may voluntarily submit to the licensing authority and request  
27 acceptance of alternative evidence of financial stability and  
28 resources or agree to additional oversight in lieu of the  
29 required net worth. Such additional evidence or oversight may  
30 include, as appropriate, one or more of the following:  
31

- 1           a. An agreement to submit monthly financial statements  
2 of the entity.
- 3           b. An agreement to submit quarterly financial  
4 statements of the entity.
- 5           c. An appraisal of the entity's property or broker's  
6 opinion of the entity's assets.
- 7           d. A credit report of the entity or its principals.
- 8           e. A subordination-of-debt agreement from the entity's  
9 principals.
- 10          f. An indemnification or subrogation agreement binding  
11 the entity and its principals.
- 12          g. A guarantee agreement for the entity from its  
13 principals.
- 14          h. A written explanation of past financial activity.
- 15          i. Submission of a 12-month projected business plan  
16 that includes:
- 17            (I) A statement of cash flows.
- 18            (II) Pro forma income statements, with sources of  
19 revenues identified.
- 20            (III) Marketing initiatives.
- 21          j. Submission of previous department examination  
22 reports.
- 23          k. An agreement of 100 percent voluntary trust by the  
24 entity.
- 25          3. The licensing authority may accept such alternative  
26 evidence or arrangements in lieu of the required net worth  
27 only if the licensing authority determines that such  
28 alternative evidence or arrangements are an adequate  
29 substitute for required net worth and that acceptance would  
30 not substantially increase the risk to existing or future  
31

1 customers of nonperformance by the applicant or licensee on  
2 its retail sales agreements.

3 (c) The applicant has and will have the ability to  
4 discharge her or his liabilities as they become due in the  
5 normal course of business, and has and will have sufficient  
6 funds available during the calendar year to perform her or his  
7 obligations under her or his contracts.

8 (d) If the applicant or any entity under common  
9 control with the applicant has entered into preneed contracts  
10 prior to being authorized to do so under the laws of this  
11 state:

12 1. The licensing authority determines that adequate  
13 provision has been made to ensure the performance of such  
14 contracts.

15 2. The licensing authority determines that the  
16 improper sale of such preneed contracts prior to authorization  
17 under this chapter does not indicate, under the facts of the  
18 particular application in issue, that the applicant has a  
19 disregard of the laws of this state such as would expose the  
20 public to unreasonable risk if the applicant were issued a  
21 preneed license.

22 3. Nothing in this section shall imply any  
23 authorization to enter into preneed contracts without  
24 authorization under this chapter.

25 (e) Neither the applicant nor the applicant's  
26 principals have a demonstrated history of conducting their  
27 business affairs to the detriment of the public.

28 (f) The applicant and the applicant's principals are  
29 of good character and have no demonstrated history of lack of  
30 trustworthiness or integrity in business or professional  
31 matters.

1 (g) The applicant does and will comply with all other  
2 requirements of this chapter relating to preneed licensure.

3 (3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.--It  
4 is the policy of this state to encourage competition for the  
5 public benefit in the preneed contract business by, among  
6 other means, the entry of new licensees into that business. To  
7 facilitate issuance of licenses concerning applications judged  
8 by the licensing authority to be borderline as to  
9 qualification for licensure, the licensing authority may issue  
10 a new license under this section on a probationary basis,  
11 subject to conditions specified by the licensing authority on  
12 a case-by-case basis, which conditions may impose special  
13 monitoring, reporting, and restrictions on operations for up  
14 to the first 12 months of licensure, to ensure the licensee's  
15 responsibility, competency, financial stability, and  
16 compliance with this chapter. Provided, no such probationary  
17 license shall be issued unless the licensing authority  
18 determines that issuance would not pose an unreasonable risk  
19 to the public, and the licensing authority must within 12  
20 months after issuance of the license either remove the  
21 probationary status or determine that the licensee is not  
22 qualified for licensure under this chapter and institute  
23 proceedings for revocation of licensure.

24 (4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.--

25 (a) Each licensee under this section must provide  
26 notice as required by rule prior to any change in control of  
27 the licensee. Any such change is subject to disapproval or to  
28 reasonable conditions imposed by the licensing authority, for  
29 the protection of the public to ensure compliance with this  
30 chapter, based upon criteria established by rule, which  
31

1 criteria shall promote the purposes of this part in protecting  
2 the consumer.

3 (b) The licensing authority may authorize the transfer  
4 of a preneed license and establish by rule a fee for the  
5 transfer in an amount not to exceed \$500. Upon receipt of an  
6 application for transfer, the executive director may grant a  
7 temporary preneed license to the proposed transferee, based  
8 upon criteria established by the licensing authority by rule,  
9 which criteria shall promote the purposes of this chapter in  
10 protecting the consumer. Such a temporary preneed license  
11 shall expire at the conclusion of the next regular meeting of  
12 the board unless renewed by the board. The licensing authority  
13 may by rule establish forms and procedures for the  
14 implementation of this paragraph.

15 (5) RENEWAL OF LICENSES.--

16 (a) A preneed license shall expire annually on June 1,  
17 unless renewed, or at such other time or times as may be  
18 provided by rule. The application for renewal of the license  
19 shall be on forms prescribed by rule and shall be accompanied  
20 by a renewal fee as specified in paragraph (c).

21 (b) Within 3 months after the end of its fiscal  
22 period, or within an extension of time therefor, as the  
23 department for good cause may grant, the licensee shall file  
24 with the department a full and true statement of her or his  
25 financial condition, transactions, and affairs, prepared on a  
26 basis as adopted by rule, as of the end of the preceding  
27 fiscal period or at such other time or times as may be  
28 required by rule, together with such other information and  
29 data which may be required by rule. To facilitate uniformity  
30 in financial statements and to facilitate department analysis,  
31 there may be adopted by rule a form for financial statements.

1 The rules regarding net worth, authorized by paragraph (2)(b),  
2 shall be applicable to the renewal of preneed licenses.

3 (c)1. Each annual application for renewal of a preneed  
4 license that is not held by a monument establishment shall be  
5 accompanied by the appropriate fee as follows:

6 a.1. For a preneed licensee with no preneed contract  
7 sales during the immediately preceding year.....\$300.

8 b.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 c.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 d.4. For a preneed licensee with at least 250 but  
15 fewer than 1,000 preneed contract sales during the immediately  
16 preceding year.....\$850.

17 e.5. For a preneed licensee with at least 1,000 but  
18 fewer than 2,500 preneed contract sales during the immediately  
19 preceding year.....\$1,500.

20 f.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 g.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 h.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 i.9. For a preneed licensee with 30,000 preneed  
30 contract sales or more during the immediately preceding year  
31 .....\$18,500.

1           2. Each annual application for renewal of a preneed  
2 license that is held by a monument establishment shall be  
3 accompanied by the appropriate fee determined by its total  
4 gross aggregate at-need and preneed retail sales for the  
5 12-month period ending 2 full calendar months prior to the  
6 month in which the renewal is required, as follows:

7           a. Total sales of \$1 to \$50,000, renewal fee \$1,000.

8           b. Total sales of \$50,001 to \$250,000, renewal fee  
9 \$1,500.

10           c. Total sales of \$250,001 to \$500,000, renewal fee  
11 \$2,000.

12           d. Total sales over \$500,000, renewal fee \$2,500.

13           (d) An application for renewal shall disclose the  
14 existence of all preneed contracts for service or merchandise  
15 funded by any method other than a method permitted by this  
16 chapter, which contracts are known to the applicant and were  
17 entered into by the applicant, or any other entity under  
18 common control with the applicant, during the annual license  
19 period then ending. Such disclosure shall include the name and  
20 address of the contract purchaser, the name and address of the  
21 institution where such funds are deposited, and the number  
22 used by the institution to identify the account.

23           (e) In addition to any other penalty that may be  
24 provided for under this chapter, there may be levied a late  
25 fee as determined by licensing authority rule but not to  
26 exceed \$50 a day for each day the preneed licensee fails to  
27 file its annual statement, and there may be levied a late fee  
28 as determined by licensing authority rule but not to exceed  
29 \$50 a day for each day the preneed licensee fails to file the  
30 statement of activities of the trust. Upon notice to the  
31 preneed licensee by the department that the preneed licensee

1 has failed to file the annual statement or the statement of  
2 activities of the trust, the preneed licensee's authority to  
3 sell preneed contracts shall cease while such default  
4 continues.

5 (6) QUARTERLY PAYMENTS.--In addition to other amounts  
6 required to be paid by this section, each preneed licensee  
7 shall pay to the Regulatory Trust Fund an amount established  
8 by rule not to exceed \$10 for each preneed contract entered  
9 into. This amount must be paid within 60 days after the end of  
10 each quarter. These funds must be used to defray the cost of  
11 administering the provisions of this chapter ~~part~~.

12 (7) BRANCH OPERATIONS AND LICENSURE.--

13 (a) Any person or entity that is part of a common  
14 business enterprise that has a preneed license issued pursuant  
15 to this section and desires to operate under a name other than  
16 that of the common business enterprise, may submit an  
17 application on a form adopted by rule to become a branch  
18 licensee. The application shall be accompanied by an  
19 application fee as determined by licensing authority rule but  
20 not to exceed \$300.

21 (b) Upon a determination that such branch applicant  
22 qualifies to sell preneed contracts under this part except for  
23 the requirements of paragraph (2)(c), and if the sponsoring  
24 preneur licensee under whose preneed license the branch  
25 applicant seeks branch status meets the requirements of such  
26 paragraph and is in compliance with all requirements of this  
27 part regarding its preneed license and operations thereunder,  
28 a branch license shall be issued.

29 (c) Branch licenses shall be renewed annually by  
30 payment of a renewal fee set by licensing authority rule and  
31 not to exceed ~~\$500~~ \$300. Branch licenses may be renewed only



1 so long as the preneed license of the sponsoring preneed  
2 licensee remains in good standing.

3 ~~(d) Violations of this part by the branch shall be~~  
4 ~~deemed to be violations of this part by its sponsoring preneed~~  
5 ~~licensee, unless the licensing authority determines that~~  
6 ~~extenuating circumstances indicate that it would be unjust to~~  
7 ~~attribute the branch's misconduct to the sponsoring preneed~~  
8 ~~licensee.~~ Preneed sales of the branch shall be deemed to be  
9 sales of the sponsoring licensee for purposes of renewal fees  
10 and trust requirements under this chapter.

11 (e) The sponsoring preneed licensee shall be  
12 responsible for performance of preneed contracts entered into  
13 by its branch if the branch does not timely fulfill any such  
14 contract.

15 (8) ANNUAL TRUST REPORTS.--On or before April 1 of  
16 each year, the preneed licensee shall file in the form  
17 prescribed by rule a full and true statement as to the  
18 activities of any trust established by it pursuant to this  
19 part for the preceding calendar year.

20 (9) DEPOSIT OF FUNDS.--All sums collected under this  
21 section shall be deposited to the credit of the Regulatory  
22 Trust Fund.

23 Section 35. Subsection (6) of section 497.456, Florida  
24 Statutes, as renumbered and amended by section 105 of chapter  
25 2004-301, Laws of Florida, is amended to read:

26 497.456 Preneed Funeral Contract Consumer Protection  
27 Trust Fund.--

28 (6) Upon the commencement of a delinquency proceeding  
29 pursuant to this chapter against a preneed licensee, the  
30 licensing authority may use up to 50 percent of the balance of  
31 the trust fund not already committed to a prior delinquency

1 proceeding ~~solely~~ for the purpose of establishing a  
2 receivership and providing restitution to preneed contract  
3 purchasers and their estates due to a preneed licensee's  
4 failure to provide the benefits of a preneed contract or  
5 failure to refund the appropriate principal amount by reason  
6 of cancellation thereof. The balance of the trust fund shall  
7 be determined as of the date of the delinquency proceeding.

8 Section 36. Paragraph (h) of subsection (1) and  
9 subsection (4) of section 497.458, Florida Statutes, as  
10 renumbered and amended by section 107 of chapter 2004-301,  
11 Laws of Florida, are amended to read:

12 497.458 Disposition of proceeds received on  
13 contracts.--

14 (1)

15 (h) In no event may trust funds be loaned, directly or  
16 indirectly, to any of the following persons: the preneed  
17 licensee; any entity under any degree of common control with  
18 the preneed licensee; any employee, director, full or partial  
19 owner, or principal of the preneed licensee; or any person  
20 related by blood or marriage to any of those persons. In no  
21 event may trust funds, directly or indirectly, be invested in  
22 or with, or loaned to, any business or business venture in  
23 which any of the following persons have an interest: the  
24 preneed licensee, any entity under any degree of common  
25 control with the preneed licensee, any employee, director,  
26 full or partial owner, or principal of the preneed licensee,  
27 or any person related by blood or marriage to any of those  
28 persons. In no event may said funds be loaned to a preneed  
29 licensee, an affiliate of a preneed licensee, or any person  
30 directly or indirectly engaged in the burial, funeral home, or  
31 cemetery business.

1           ~~(4)(a) Trust funds shall not be invested in or loaned~~  
2 ~~to or for the benefit of any business venture in which the~~  
3 ~~preneed licensee, its principals, or persons related by blood~~  
4 ~~or marriage to the licensee or its principals, have a direct~~  
5 ~~or indirect interest, without the prior approval of the~~  
6 ~~licensing authority.~~

7           ~~(b) Trust funds shall not be loaned to or for the~~  
8 ~~benefit of the preneed licensee, its principals, or persons~~  
9 ~~related by blood or marriage to the licensee or its~~  
10 ~~principals, without the prior approval of the licensing~~  
11 ~~authority.~~

12           ~~(c) No approval of such loans or investments shall be~~  
13 ~~given unless it be shown by clear and convincing evidence that~~  
14 ~~such loan or investment would be in the interest of the~~  
15 ~~preneed contract holders whose contracts are secured by the~~  
16 ~~trust funds.~~

17           ~~(d)~~ The licensing authority may adopt rules exempting  
18 from the prohibition of paragraph (1)(h) ~~this subsection~~,  
19 pursuant to criteria established in such rule, the investment  
20 of trust funds in investments, such as widely and publicly  
21 traded stocks and bonds, notwithstanding that the licensee,  
22 its principals, or persons related by blood or marriage to the  
23 licensee or its principals have an interest by investment in  
24 the same entity, where neither the licensee, its principals,  
25 or persons related by blood or marriage to the licensee or its  
26 principals have the ability to control the entity invested in,  
27 and it would be in the interest of the preneed contract  
28 holders whose contracts are secured by the trust funds to  
29 allow the investment.

30  
31

1           Section 37. Section 497.466, Florida Statutes, as  
2           renumbered and amended by section 115 of chapter 2004-301,  
3           Florida Statutes, is amended to read:

4           (Substantial rewording of section. See  
5           s. 497.466, F.S., for present text.)

6           497.466 Preneed sales agents, license required;  
7           application procedures and criteria; appointment of agents;  
8           responsibility of preneed licensee.--

9           (1) GENERAL PROVISIONS.--Each individual who offers  
10          preneed contracts to the public, or who executes preneed  
11          contracts on behalf of a preneed licensee, including any  
12          individual who offers, sells, or signs contracts for the  
13          preneed sale of burial rights, shall be licensed as a preneed  
14          sales agent and shall be appointed by each preneed licensee  
15          whom he or she represents regarding preneed sales, pursuant to  
16          this section; however, an individual licensed in good standing  
17          under this chapter as a funeral director may engage in preneed  
18          sales for the preneed licensee with whom the funeral director  
19          is affiliated, without preneed sales agent licensure or  
20          appointment under this section.

21          (2) PRENEED SALES AGENT LICENSE; APPLICATION  
22          PROCEDURES.--

23          (a) An individual may hold only one preneed sales  
24          agent license at a time.

25          (b) A preneed sales agent license may not be issued to  
26          a person under the age of 18 years.

27          (c) A person desiring a preneed sales agent license  
28          shall apply to the department for such a license. The  
29          application must require the name, social security number,  
30          residence address, residence phone number if any, and date and  
31          place of birth of the applicant.

1           (d) The application must require the preneed sales  
2 agent applicant to disclose any criminal record, as required  
3 by s. 497.142.

4           (e) The application must require the preneed sales  
5 agent applicant to disclose whether the applicant has ever had  
6 a license or the authority to practice a profession or  
7 occupation refused, suspended, fined, denied, or otherwise  
8 acted against or disciplined by the licensing authority of any  
9 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, constitutes action  
13 against the license.

14           (f) The application must require identification by the  
15 preneed sales agent applicant of the preneed licensee whom the  
16 preneed sales agent applicant believes will initially appoint  
17 the preneed sales agent if a preneed sales agent license is  
18 issued.

19           (g) The application must be signed by the applicant.  
20 The licensing authority may accept electronic signatures.

21           (h) The application must be accompanied by a  
22 nonrefundable fee of \$150 if made through the department's  
23 online licensing system, or \$175 if made using paper forms.  
24 Payment of either fee as specified in this paragraph entitles  
25 the applicant to one initial appointment without payment of  
26 further fees by the preneed sales agent or the appointing  
27 preneed licensee if a preneed sales agent license is issued.  
28 The licensing authority may from time to time increase the  
29 fees specified in this paragraph, but not to exceed \$300.

30           (3) ISSUANCE OF A TEMPORARY PRENEED SALES AGENT  
31 LICENSE.--

1           (a) Upon receipt of a duly completed application and  
2 the required fee, a temporary preneed sales agent license  
3 shall be issued to the applicant if:

4           1. The applicant is at least 18 years of age;

5           2. The application indicates that the applicant has no  
6 disciplinary or criminal record, and the department has no  
7 record indicating that the applicant has a disciplinary or  
8 criminal record; and

9           3. The applicant has never previously held a temporary  
10 preneed sales agent license that lapsed for failure to submit  
11 fingerprints as required by this section.

12           (b) A temporary preneed sales agent license is valid  
13 for only 120 days after the date issued and may not be  
14 renewed.

15           (c) An applicant for a preneed sales agent license who  
16 has previously been issued a preneed sales agent temporary  
17 license that for any reason expired without becoming permanent  
18 is thereafter ineligible for another temporary preneed sales  
19 agent license. Such a person may apply again for a preneed  
20 sales agent license, but the license may not be issued until  
21 fingerprints are provided as required by s. 497.142, a report  
22 is received from the Department of Law Enforcement advising  
23 that the applicant has no criminal record, and the applicant  
24 is otherwise determined by the department and board to qualify  
25 for preneed sales agent licensure.

26           (4) CONVERSION OF TEMPORARY PRENEED SALES AGENT  
27 LICENSE TO PERMANENT PRENEED SALES AGENT LICENSE.--

28           (a) A temporary preneed sales agent licensee who  
29 desires to obtain a permanent preneed sales agent license  
30 shall, within 90 days after the issuance of the temporary  
31 preneed sales agent license, submit his or her fingerprints to

1 the licensing authority for a criminal background check, in  
2 accordance with s. 497.142. Unless the department determines  
3 before the expiration of the temporary preneed sales agent  
4 license that the temporary licensee has a criminal or  
5 disciplinary record, the preneed sales agent temporary license  
6 shall automatically be converted to a permanent preneed sales  
7 agent license.

8 (b) The department shall promptly give written notice  
9 to the temporary preneed sales agent licensee, and to all  
10 preneed licensees who have the temporary preneed sales agent  
11 under appointment, that the preneed sales agent's temporary  
12 license has been converted to a permanent license, or has  
13 lapsed, as the case may be.

14 (5) APPLICANTS HAVING A CRIMINAL OR DISCIPLINARY  
15 RECORD.--

16 (a) A preneed sales agent applicant having a criminal  
17 or disciplinary record is ineligible for a temporary preneed  
18 sales agent license. A permanent preneed sales agent license  
19 may not be issued to any person who has a criminal or  
20 disciplinary record, except upon approval of the board.

21 (b) If, while a temporary preneed sales agent license  
22 is in force, the department determines that the temporary  
23 licensee has a criminal or disciplinary record, the temporary  
24 license shall be immediately suspended and shall not  
25 automatically convert to a permanent preneed sales agent  
26 license. The department shall promptly give written notice of  
27 the suspension to the suspended licensee and to all preneed  
28 licensees who have the suspended preneed sales agent under  
29 appointment. The suspended preneed sales agent licensee may  
30 thereafter, within 21 days after the date of suspension,  
31 petition the board under paragraph (c) for issuance of a

1 permanent preneed sales agent notwithstanding the criminal or  
2 disciplinary record. If a petition for board review is not  
3 timely received by the department or board, the temporary  
4 preneed sales agent license shall be revoked.

5 (c) An applicant having a criminal or disciplinary  
6 record who desires a permanent preneed sales agent license  
7 shall petition the board for issuance of such a license, using  
8 forms and procedures as specified by rule. The board shall  
9 issue a permanent preneed sales agent license to an applicant  
10 having a criminal or disciplinary record if the board  
11 determines that:

12 1. There was no inaccuracy in the application for  
13 license which indicates that the applicant is untrustworthy;  
14 and

15 2. The applicant, if issued a preneed sales agent  
16 license, would not pose an unreasonable risk to members of the  
17 public who deal with the applicant in preneed transactions.

18 (d) The board may issue a preneed sales agent license  
19 to an applicant who has a criminal or disciplinary record, on  
20 a probationary status and subject to reasonable terms of  
21 probation not to exceed 24 months in duration.

22 (6) TERMINATION OF A PERMANENT PRENEED SALES AGENT  
23 LICENSE DUE TO LACK OF APPOINTMENTS.--A permanent preneed  
24 sales agent license shall remain in force without a  
25 requirement for renewal until there have been no appointments  
26 of the preneed sales agent under the license for 48  
27 consecutive months, at which time the permanent preneed sales  
28 agent license will terminate. The former preneed sales agent  
29 licensee may thereafter apply for issuance of a new preneed  
30 sales agent license under this section.

31 (7) APPOINTMENT OF PRENEED SALES AGENTS.--



1           (a) A preneed sales agent licensee may be appointed by  
2 as many preneed licensees as desire to appoint the preneed  
3 sales agent licensee. When a preneed sales agent licensee is  
4 appointed by a preneed licensee, the department shall promptly  
5 give written notice to all other preneed licensees who then  
6 have that same preneed sales agent under appointment.

7           (b) A preneed licensee may appoint a preneed sales  
8 agent licensee by identifying to the department the preneed  
9 sales agent licensee to be appointed, requesting appointment,  
10 and paying the required appointment fee. The appointment  
11 request shall be signed by the preneed licensee. The  
12 department may accept electronic signatures.

13           (c) Appointments shall be effective when made and  
14 shall expire 24 months after the last day of the month in  
15 which the appointment was made, unless earlier terminated by  
16 the preneed licensee or the preneed sales agent. However, the  
17 initial appointment of a preneed sales agent licensee may not  
18 be made until 24 hours after a temporary preneed sales agent  
19 license is issued to that preneed sales agent. Furthermore, an  
20 appointment is effective only as long as the preneed sales  
21 agent licensee's license is in good standing.

22           (d) A preneed licensee shall take reasonable steps to  
23 assure that the preneed sales agent licensees whom it appoints  
24 have adequate training regarding preneed sales.

25           (e) An appointment may be renewed for additional  
26 24-month periods by notification by the preneed licensee to  
27 the department that the preneed licensee desires to renew the  
28 appointment, accompanied by payment by the preneed licensee of  
29 the appointment renewal fee.

30           (f) Initial and renewal appointment fees shall be  
31 nonrefundable and shall be in the amount of \$150 if made

1 through the department's online licensing system, and \$175 if  
2 made using paper forms requiring manual processing by the  
3 department. The board may, by rule, increase the appointment  
4 fees but not to exceed \$300.

5 (g)1. An appointment may be terminated at any time by  
6 the appointing preneed licensee or by the appointed preneed  
7 sales agent licensee.

8 2. Termination of appointment shall be accomplished by  
9 notice of termination conveyed to the department and signed by  
10 the person or entity requesting the termination. The  
11 department may accept electronic signatures. There shall be  
12 no fee for termination of appointment accomplished through the  
13 department's online licensing system. There shall be a fee of  
14 \$25 for terminations made using paper forms requiring manual  
15 processing by the department.

16 3. When an appointment is terminated, whether by the  
17 preneed licensee or the preneed sales agent licensee, the  
18 department shall promptly provide written confirmation of the  
19 termination to both the preneed sales agent licensee and the  
20 preneed licensee at their respective addresses of record with  
21 the department.

22 4. If a preneed licensee terminates the authority of a  
23 preneed sales agent license to sell for the preneed licensee,  
24 the preneed licensee shall, within 30 days after the  
25 termination, terminate the appointment as provided under  
26 subparagraph 2.

27 5. If a preneed sales agent licensee terminates his or  
28 her preneed sales relationship with a preneed licensee, the  
29 preneed sales agent licensee shall, within 30 days after the  
30 termination, terminate the appointment as provided under  
31 subparagraph 2.

1           6. If the license of a preneed sales agent is  
2 suspended or revoked pursuant to disciplinary action by the  
3 licensing authority against the preneed sales agent, the  
4 department shall promptly give written notice of such action  
5 to all preneed licensees who then have that preneed sales  
6 agent under appointment.

7           (8) ADMINISTRATIVE MATTERS.--

8           (a) The licensing authority may, by rule, prescribe  
9 forms and procedures for administering this section.

10          (b)1. Each person who holds one or more preneed sales  
11 agent licenses in good standing under s. 497.439 as of 11:59  
12 p.m. on September 30, 2005, shall be deemed as of October 1,  
13 2005, to hold a permanent preneed sales agent license under  
14 this section, effective October 1, 2005.

15          2. Each person who holds one or more preneed sales  
16 agent licenses in good standing under s. 497.439 as of 11:59  
17 p.m. on September 30, 2005, shall be deemed as of October 1,  
18 2005, to be appointed by each preneed licensee in regard to  
19 whom he or she holds a preneed sales agent license as of 11:59  
20 p.m. on September 30, 2005. Such appointments shall expire on  
21 the same date as the preneed sales agent license would have  
22 expired under the law in effect at 11:59 p.m. on September 30,  
23 2005.

24          (c) The reference to a criminal record in this section  
25 refers to and includes only crimes required to be disclosed  
26 under s. 497.142.

27          (d) The reference to a disciplinary record as used in  
28 this section refers to and includes any instance in which the  
29 applicant has ever had a license or the authority to practice  
30 a profession or occupation refused, suspended, fined, denied,  
31 or otherwise acted against or disciplined by the licensing

1 authority of any jurisdiction. A licensing authority's  
2 acceptance of a relinquishment of licensure, stipulation,  
3 consent order, or other settlement, offered in response to or  
4 in anticipation of the filing of charges against the license,  
5 constitutes action against the license.

6 (e) A preneed licensee shall be responsible for the  
7 activities of all preneed sales agents, and all funeral  
8 directors acting as preneed sales agents, who are affiliated  
9 with the preneed licensee and who perform any type of  
10 preneed-related activity on behalf of the preneed licensee. In  
11 addition to the preneed sales agents and funeral directors  
12 acting as preneed sales agents, each preneed licensee is also  
13 subject to discipline if its preneed sales agents or funeral  
14 directors acting as preneed sales agents violate any provision  
15 of this chapter.

16 Section 38. Section 497.468, Florida Statutes, is  
17 created to read:

18 497.468 Disclosure of information to the public.--A  
19 preneed licensee offering to provide burial rights,  
20 merchandise, or services to the public shall:

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

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

29 (3) Not make any false or misleading statements of the  
30 legal requirement as to the necessity of a casket or outer  
31 burial container.

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

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

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

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

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

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

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

24           (a) The words "purchase price."

25           (b) The amount to be trusted.

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

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

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

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           (8) 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 preneed sales are regulated, summarizing  
9 consumer rights under the law, and providing the name,  
10 address, and phone number of the department's consumer affairs  
11 division. The format and content of the brochure shall be as  
12 prescribed by rule. The licensing authority may cause the  
13 publication of such brochures and, by rule, establish  
14 requirements that preneed licensees purchase and make  
15 available such brochures as so published, in the licensee's  
16 offices, to all potential customers.

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

20           Section 39. Paragraphs (a), (b), (c), (d), and (e) are  
21 added to subsection (1) of section 947.550, Florida Statutes,  
22 as renumbered and amended by section 118 of chapter 2004-301,  
23 Laws of Florida, paragraphs (c), (e), (f), and (h) of  
24 subsection (2) of that section are amended, and paragraph (j)  
25 is added to subsection (2) of that section, to read:

26           497.550 Licensure of monument establishments required;  
27 procedures and criteria.--

28           (1) LICENSE REQUIRED.--No person shall conduct,  
29 maintain, manage, or operate a monument establishment in this  
30 state unless the monument establishment is licensed pursuant  
31 to this part.

1           (a) The two categories of monument establishment  
2 licensure available in this state are:

- 3           1. Monument builder; and  
4           2. Monument dealer.

5           (b) An applicant for licensure as a monument  
6 establishment shall designate, on the application form, the  
7 category of monument establishment licensure for which he or  
8 she is applying.

9           (c) Each monument establishment that is licensed under  
10 this chapter at 11:59 p.m. on September 30, 2005, is, on and  
11 after October 1, 2005, licensed as a monument dealer subject  
12 to the requirements of this chapter. A person who becomes  
13 licensed as a monument dealer by operation of this paragraph  
14 may apply to the board for licensure as a monument builder  
15 and, upon payment of applicable application fees and the  
16 granting of such application and licensure as a monument  
17 builder, such person's licensure as a monument dealer will  
18 expire.

19           (d) The requirements of this part apply to both  
20 monument dealers and monument builders, except as provided in  
21 this paragraph. Each monument establishment must be a  
22 physical structure that is located at a specific street  
23 address, in compliance with zoning regulations of the  
24 appropriate local government, and not located on property that  
25 is exempt from taxation, but a monument dealer may not  
26 otherwise be required to comply with s. 497.552 or be subject  
27 to inspection under this part.

28           (e) A monument establishment that is not licensed  
29 under the monument-builder category is not eligible for a  
30 preneed sales license.

31

1           (2) APPLICATION PROCEDURES.--A person seeking  
2 licensure as a monument establishment shall apply for such  
3 licensure using forms prescribed by rule.

4           (c) The applicant shall be required to make disclosure  
5 of the applicant's criminal records, if any, as required by s.  
6 497.142. The application shall require the applicant to  
7 disclose whether the applicant or any of its principals have  
8 ever been convicted or found guilty of, or entered a plea of  
9 no contest to, regardless of adjudication, any crime in any  
10 jurisdiction.

11           (e) The applicant shall submit fingerprints in  
12 accordance with s. 497.142. The application shall require the  
13 applicant's principals to provide fingerprints in accordance  
14 with part I of this chapter.

15           (f) The applicant shall be a natural person at least  
16 18 years of age, a corporation, a partnership, or a limited  
17 liability company ~~formed prior to January 1, 2005, which~~  
18 ~~limited liability company already holds a license under this~~  
19 ~~chapter.~~

20           (h) The application shall be signed in accordance with  
21 s. 497.141(12) by the applicant if a natural person, or by the  
22 ~~president of an applicant that is a corporation.~~

23           (j) Upon receipt of the application and application  
24 fee, the licensing authority shall inspect the proposed  
25 monument establishment facilities in accordance with rules of  
26 the licensing authority.

27           Section 40. Section 497.551, Florida Statutes, as  
28 created by chapter 2004-301, Laws of Florida, is amended to  
29 read:

30           497.551 Renewal of monument establishment licensure.--  
31



1           (1) A monument establishment license must be renewed  
2 biennially by the licensee.

3           (2) A monument establishment licensee ~~that does not~~  
4 ~~hold a preneed sales license as of 90 days prior to the date~~  
5 ~~its monument establishment license renewal is due,~~ shall renew  
6 its monument establishment license by payment of a renewal fee  
7 established by rule not to exceed \$250.

8           ~~(3) A monument establishment licensee which as of 90~~  
9 ~~days prior to its monument establishment license renewal date~~  
10 ~~also holds a preneed sales license issued under this chapter,~~  
11 ~~shall renew its monument establishment license by payment of a~~  
12 ~~renewal fee determined by its total gross aggregate at need~~  
13 ~~and preneed retail sales for the 12 month period ending 2 full~~  
14 ~~calendar months prior to the month in which the renewal is~~  
15 ~~required, as follows:~~

16           ~~(a) Total sales of \$1 to \$50,000, renewal fee \$1,000.~~

17           ~~(b) Total sales of \$50,001 to \$250,000, renewal fee~~  
18 ~~\$1,500.~~

19           ~~(c) Total sales of \$250,001 to \$500,000, renewal fee~~  
20 ~~\$2,000.~~

21           ~~(d) Total sales over \$500,000, renewal fee \$2,500.~~

22           (3)(4) Rules may be adopted providing procedures,  
23 forms, and uniform timeframes for monument establishment  
24 license renewals.

25           Section 41. Subsection (4) of section 497.552, Florida  
26 Statutes, as created by chapter 2004-301, Laws of Florida, is  
27 amended to read:

28           497.552 Required facilities.--Effective January 1,  
29 2006, a monument establishment shall at all times have and  
30 maintain a full-service place of business at a specific street  
31

1 address or location in Florida complying with the following  
2 requirements:

3 (4) It shall have facilities on site for inscribing  
4 monuments and equipment to deliver and install markers and  
5 monuments.

6 Section 42. Subsections (1) and (5) of section  
7 497.553, Florida Statutes, as created by chapter 2004-301,  
8 Laws of Florida, are amended, and subsection (6) is added to  
9 that section, to read:

10 497.553 Regulation of monument establishments.--

11 (1) The Department of Financial Services shall  
12 establish and implement an inspection program for all monument  
13 establishments in accordance with the requirements of this  
14 act. The board shall set by rule an annual inspection fee not  
15 to exceed \$300, payable upon application for licensure and  
16 upon each renewal of such a license.

17 (5) Commencing January 1, 2006, the failure of a  
18 monument establishment to deliver and install a purchased  
19 monument or marker by the date agreed in the sales agreement  
20 shall entitle the customer to a full refund of all amounts  
21 paid by the customer for the monument and its delivery and  
22 installation, unless the monument establishment has obtained a  
23 written agreement from the customer extending the delivery  
24 date. Such refund shall be made within 30 days after receipt  
25 by the monument establishment of the customer's written  
26 request for a refund. This subsection does not preclude the  
27 purchase and installation of a new monument from any other  
28 registered monument establishment or ~~preneed sales~~ licensee.

29 (6)(a) A change in ownership shall be promptly  
30 reported using forms and procedures specified by rule and may  
31 require the relicensure of the licensee, including

1 reinspection and payment of applicable fees, as required by  
2 rule.

3 (b) A change in location shall be promptly reported to  
4 the licensing authority pursuant to procedures established by  
5 rule. Operations by the licensee at a new location may not  
6 commence until an inspection by the licensing authority of the  
7 facilities, pursuant to rules of the licensing authority, has  
8 been conducted and passed at the new location.

9 Section 43. Paragraph (b) of subsection (2) and  
10 subsection (4) of section 497.554, Florida Statutes, as  
11 created by chapter 2004-301, Laws of Florida, are amended, and  
12 subsection (7) is added to that section, to read:

13 497.554 Monument establishment sales  
14 representatives.--

15 (2) APPLICATION PROCEDURES.--Licensure as a monument  
16 establishment sales agent shall be by submission of an  
17 application for licensure to the department on a form  
18 prescribed by rule.

19 (b) The applicant shall be required to make disclosure  
20 of the applicant's criminal records, if any, as required by s.  
21 497.142. The applicant shall submit fingerprints in accordance  
22 with s. 497.142. ~~The application shall require the applicant~~  
23 ~~to disclose whether the applicant has ever been convicted or~~  
24 ~~found guilty of, or entered a plea of no contest to,~~  
25 ~~regardless of adjudication, any crime in any jurisdiction.~~

26 (4) RENEWAL; TERMINATION OF AUTHORITY.--

27 (a) A monument establishment sales agent license under  
28 this section shall be renewed upon payment of a fee determined  
29 by rule of the licensing authority but not to exceed \$250.  
30 ~~Once issued, a monument establishment sales agent license of~~  
31 ~~an agent not licensed to make preneed sales shall remain in~~

1 ~~effect without renewal until surrendered, or the sponsoring~~  
2 ~~monument establishment terminates the agent's authority to~~  
3 ~~sell on behalf of that monument establishment, or the license~~  
4 ~~is revoked or suspended by the licensing authority for cause.~~

5 (b) The monument establishment whose officer signed  
6 the sales agent application shall terminate that agent's  
7 authority to sell on behalf of that monument establishment,  
8 and the monument establishment in writing shall advise the  
9 licensing authority of such termination within 30 days after  
10 the termination.

11 (7) EFFECTIVE DATE.--The provisions of this section  
12 shall be effective October 1, 2006.

13 Section 44. Section 497.555, Florida Statutes, as  
14 created by chapter 2004-301, Laws of Florida, is amended to  
15 read:

16 497.555 Required rules.--Rules shall be adopted  
17 establishing minimum standards for access to all cemeteries by  
18 licensed monument establishments for the purpose of delivering  
19 and installing markers and monuments. In all cases, cemeteries  
20 and monument establishments must comply with these minimum  
21 standards.

22 Section 45. Paragraphs (d) and (f) of subsection (2)  
23 of section 497.602, Florida Statutes, as renumbered and  
24 amended by section 127 of chapter 2004-301, Laws of Florida,  
25 are amended to read:

26 497.602 Direct disposers, license required; licensing  
27 procedures and criteria; regulation.--

28 (2) APPLICATION PROCEDURES.--

29 (d) The applicant shall be required to make disclosure  
30 of the applicant's criminal records, if any, as required by s.  
31 497.142. ~~The application shall require the applicant to~~

1 ~~disclose whether the applicant has ever been convicted or~~  
2 ~~found guilty of, or entered a plea of no contest to,~~  
3 ~~regardless of adjudication, any crime in any jurisdiction.~~

4       (f) The applicant shall submit fingerprints in  
5 accordance with s. 497.142. ~~The application shall require the~~  
6 ~~applicant to provide fingerprints in accordance with part I of~~  
7 ~~this chapter.~~

8       Section 46. Subsection (1) of section 497.603, Florida  
9 Statutes, as renumbered and amended by chapter 2004-301, Laws  
10 of Florida, is amended to read:

11       497.603 Direct disposers, renewal of license.--

12       (1) A direct disposer's renewal of license upon  
13 receipt of the renewal application and fee set by rule of the  
14 licensing authority but not to exceed ~~\$500~~\$250.

15       Section 47. Paragraphs (f), (h), and (j) of subsection  
16 (2), paragraphs (a) and (b) of subsection (3), and subsection  
17 (7) of section 497.604, Florida Statutes, as renumbered and  
18 amended by section 129 of chapter 2004-301, Laws of Florida,  
19 are amended, and paragraph (f) is added to subsection (9) of  
20 that section, to read:

21       497.604 Direct disposal establishments, license  
22 required; licensing procedures and criteria; license renewal;  
23 regulation.--

24       (2) APPLICATION PROCEDURES.--

25       (f) The applicant shall be required to make disclosure  
26 of the applicant's criminal records, if any, as required by s.  
27 497.142. ~~The application shall require the applicant to~~  
28 ~~disclose whether the applicant or any of the applicant's~~  
29 ~~principals including its proposed supervising licensee has~~  
30 ~~ever been convicted or found guilty of, or entered a plea of~~

31

1 ~~no contest to, regardless of adjudication, any crime in any~~  
2 ~~jurisdiction.~~

3 (h) The applicant shall submit fingerprints in  
4 accordance with s. 497.142. ~~The application shall require the~~  
5 ~~applicant and its principals to provide fingerprints in~~  
6 ~~accordance with part I of this chapter.~~

7 (j) The application shall be signed in accordance with  
8 s. 497.141(12) ~~by the applicant if a natural person or by the~~  
9 ~~president of an applicant that is not a natural person.~~

10 (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
11 application for licensure under this section, accompanied by  
12 the required fee, shall be approved if the licensing authority  
13 determines that the following conditions are met:

14 (a) The applicant is a natural person at least 18  
15 years of age, a corporation, a partnership, or a limited  
16 liability company ~~formed prior to January 1, 2006, which~~  
17 ~~limited liability company already holds a license under this~~  
18 ~~chapter.~~

19 (b) The applicant does or will prior to commencing  
20 operations under the license comply with all requirements of  
21 this chapter relating to the license applied for. The  
22 applicant shall have passed an inspection prior to issuance of  
23 a license under this section, in accordance with rules of the  
24 licensing authority.

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 or control of the licensee or  
28 licensed person in charge of the licensee's operations. A  
29 change in control is subject to approval by the licensing  
30 authority and to reasonable conditions imposed by the  
31 licensing authority, for the protection of the public to

1 ensure compliance with this chapter. Operations by the  
2 licensee at a new location may not commence until an  
3 inspection by the licensing authority of the facilities at the  
4 new location, pursuant to rules of the licensing authority,  
5 has been conducted and passed. Each licensee under this  
6 ~~section must provide notice as required by rule prior to any~~  
7 ~~change in location or control of the licensee or licensed~~  
8 ~~person in charge of the licensee's operations. Any such change~~  
9 ~~is subject to disapproval or to reasonable conditions imposed~~  
10 ~~by the licensing authority, for the protection of the public~~  
11 ~~to ensure compliance with this chapter.~~

12 (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.--

13 (f) A direct disposal establishment shall retain all  
14 signed contracts for a period of at least 2 years.

15 Section 48. Paragraphs (f), (h), and (j) of subsection  
16 (2), paragraph (b) of subsection (3), subsection (7), and  
17 paragraphs (i), (j), and (k) of subsection (9) of section  
18 497.606, Florida Statutes, as renumbered and amended by  
19 section 131 of chapter 2004-301, Laws of Florida, are amended  
20 to read:

21 497.606 Cinerator facility, licensure required;  
22 licensing procedures and criteria; license renewal;  
23 regulation.--

24 (2) APPLICATION PROCEDURES.--

25 (f) The applicant shall be required to make disclosure  
26 of the applicant's criminal records, if any, as required by s.  
27 497.142. The application shall require the applicant to  
28 ~~disclose whether the applicant or any of the applicant's~~  
29 ~~principals including its proposed supervising licensee has~~  
30 ~~ever been convicted or found guilty of, or entered a plea of~~  
31

1 ~~no contest to, regardless of adjudication, any crime in any~~  
2 ~~jurisdiction.~~

3 (h) The applicant shall submit fingerprints in  
4 accordance with s. 497.142. ~~The application shall require the~~  
5 ~~applicant and its principals to provide fingerprints in~~  
6 ~~accordance with part I of this chapter.~~

7 (j) The application shall be signed in accordance with  
8 s. 497.141(12) ~~by the applicant if a natural person or by the~~  
9 ~~president of an applicant that is not a natural person.~~

10 (3) ACTION CONCERNING APPLICATIONS.--A duly completed  
11 application for licensure under this section, accompanied by  
12 the required fee, shall be approved if the licensing authority  
13 determines that the following conditions are met:

14 (b) The applicant is a natural person at least 18  
15 years of age, a corporation, a partnership, or a limited  
16 liability company ~~formed prior to January 1, 2006, which~~  
17 ~~limited liability company already holds a license under this~~  
18 ~~chapter.~~

19 (7) CHANGES SUBSEQUENT TO LICENSURE.--Each licensee  
20 under this section must provide notice as required by rule  
21 prior to any change in location or control of the licensee,  
22 or licensed person in charge of the licensee's operations. A  
23 change in control is subject to approval by the licensing  
24 authority and to reasonable conditions ~~Any such change is~~  
25 ~~subject to disapproval or to reasonable conditions~~ imposed by  
26 the licensing authority, for the protection of the public to  
27 ensure compliance with this chapter. Operations by the  
28 licensee at a new location may not commence until an  
29 inspection by the licensing authority of the facilities,  
30 pursuant to rules of the licensing authority, has been  
31 conducted and passed at the new location.



1           (9) REGULATION OF CINERATOR FACILITIES.--

2           ~~(i) There shall be adopted by rule criteria for~~  
3 ~~acceptable cremation and alternative containers.~~

4           (i)(j) There shall be rules adopted requiring each  
5 facility to submit periodic reports to the department which  
6 include the names of persons cremated, the date and county of  
7 death, the name of each person supervising each cremation, the  
8 name and license number of the establishment requesting  
9 cremation, and the types of containers used to hold the body  
10 during cremation.

11           ~~(j)(k)~~ Each cinerator facility must be inspected prior  
12 to the initial issuance of its license and annually thereafter  
13 ~~issuance and renewal of its license~~ and shall:

14           1. Maintain one or more retorts for the reduction of  
15 dead human bodies.

16           2. Maintain refrigeration that satisfies the standards  
17 set by the Department of Health and contains ~~a~~ sufficient  
18 refrigerated space ~~number of shelves~~ for the average daily  
19 number of bodies stored, if unembalmed bodies are kept at the  
20 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 gasketed ~~sealed~~ containers of a type required for  
26 the 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 49. Subsection (3) of section 497.607, Florida  
4 Statutes, as renumbered and amended by section 132 of chapter  
5 2004-301, Laws of Florida, is amended, and subsection (4) is  
6 added to that section, to read:

7           497.607 Cremation; procedure required.--

8           (3) Pursuant to the request of a legally authorized  
9 person and incidental to final disposition, cremation may be  
10 performed on parts of human remains. ~~This subsection does not~~  
11 ~~authorize the cremation of body parts as defined in s.~~  
12 ~~497.005.~~

13           (4) In regard to unclaimed human remains delivered  
14 pursuant to s. 406.50 to the control of the anatomical board  
15 of this state headquartered at the University of Florida  
16 Health Science Center, the provisions of this subsection and  
17 chapter shall not be construed to prohibit the anatomical  
18 board from causing the final disposition of such unclaimed  
19 human remains through cremation by chemical means or  
20 otherwise, when performed in facilities owned and operated by  
21 the anatomical board or the University of Florida Health  
22 Science Center pursuant to and using such processes,  
23 equipment, and procedures as the anatomical board determines  
24 to be proper and adequate.

25           Section 50. Section 152 of chapter 2004-301, Laws of  
26 Florida, is amended to read:

27           Section 152. (1) The rules of the Board of Funeral  
28 Directors and Embalmers and of the Department of Business and  
29 Professional Regulation relating to the Board of Funeral  
30 Directors and Embalmers or implementation of chapter 470,  
31 Florida Statutes, which were in effect at 11:59 p.m. on the

1 day prior to this act taking effect shall become on the  
2 subjects that they address the rules of the Department of  
3 Financial Services and the Board of Funeral, Cemetery, and  
4 Consumer Services and shall remain in effect until amended or  
5 repealed in the manner provided by law.

6 (2) The rules of the Board of Funeral and Cemetery  
7 Services which were in effect at 11:59 p.m. on the day prior  
8 to this act taking effect shall become on the subjects that  
9 they address the rules of the Department of Financial Services  
10 and the Board of Funeral, Cemetery, and Consumer Services and  
11 shall remain in effect until specifically amended or repealed  
12 in the manner provided by law.

13 (3) The rules of the Department of Financial Services  
14 relating to chapter 497, Florida Statutes, which were in  
15 effect at 11:59 p.m. ~~P.M.~~ on the day prior to this act taking  
16 effect shall continue in force until thereafter repealed or  
17 amended pursuant to chapter 120, Florida Statutes, and this  
18 act.

19 Section 51. Subsection (3) of section 626.785, Florida  
20 Statutes, is amended to read:

21 626.785 Qualifications for license.--

22 (3) Notwithstanding any other provisions of this  
23 chapter, a funeral director, a direct disposer, or an employee  
24 of a funeral establishment which holds a certificate of  
25 authority pursuant to s. 497.452 ~~s. 497.405~~ may obtain an  
26 agent's license to sell only policies of life insurance  
27 covering the expense of a prearrangement for funeral services  
28 or merchandise so as to provide funds at the time the services  
29 and merchandise are needed. The face amount of insurance  
30 covered by any such policy shall not exceed \$12,500 ~~\$7,500~~.

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1           Section 52. Sections 497.275, 497.388, and 497.556,  
2 Florida Statutes, are repealed.

3           Section 53. This act shall take effect October 1,  
4 2005.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   Senate Bill 2346

4 The committee substitute (CS) amends s. 316.1974, F.S., to  
5 allow an opinion for a purple light on certain non-law  
enforcement funeral procession vehicles.

6 The CS amends s. 497.005(7),(8),(11), and (31), F.S., to  
7 reference cremated remains. It does not amend the definition  
8 of "legally authorized person" in s. 497.005(36), F.S. It  
also does not amend the definition of the term "practice of  
9 embalming" in s. 497.005(51), F.S.

10 The CS amends s. 497.101, F.S., to provide for membership on  
11 the Board of Funeral, Cemetery, and Consumer Services (board)  
12 by a licensed monument builder and to delete the board  
13 membership for a licensed monument dealer.

14 The CS amends s. 497.140, F.S., to change from October 1, 2009  
15 to October 1, 2007 the date after which the board may not  
16 assess and collect a one-time fee to correct any regulatory  
17 fee inadequacy. It also provides for the charging and  
18 collection of a \$50 delinquency fee for failure to timely  
19 renew a license.

20 The CS amends s. 497.141, F.S. to provide a photograph  
21 submission requirement for approved applicants.

22 The CS amends s. 497.152(4)(d), F.S., to provide for licensee  
23 discipline for failure to report any violation by a person or  
24 entity which violation is known to the licensee to have  
25 created or be creating a serious and immediate danger to the  
26 public health, safety or welfare.

27 The CS amends s. 497.152(15)(b), F.S., to provide the board  
28 rulemaking authority to establish criteria for identifying  
29 minor, nonwillful trust remittance deficiencies. It also  
30 provides an exception for deficiencies corrected within 30  
31 days after notice to the licensee by the department.

The CS amends s. 497.165, F.S., to provide that owners,  
officers, and directors of any licensee may be held jointly  
and severally liable for any deficiency in any trust fund, if  
intentionally or grossly negligent.

The CS amends s. 497.365, F.S., to grant rulemaking authority  
for the board to prescribe an application fee for inactive  
status, a renewal fee for inactive status, a delinquency fee,  
and a fee for reactivation of a license. It also requires  
payment of such fees before reactivation of an inactive  
license.

The CS amends s. 497.378, F.S., to increase the maximum amount  
of the renewal fee for a funeral director or embalmer license  
from \$250 to \$500.

The CS deletes the exemption for centralized embalming  
facilities from s. 497.380, F.S.

1 The CS amends s. 497.380, F.S., to increase the maximum amount  
2 of the renewal fee for a funeral establishment license from  
3 \$300 to \$500.

3 The CS also amends s. 497.453(7), F.S., to increase the  
4 maximum amount of the annual renewal fee for each branch  
5 licensee from \$300 to \$500. It also deletes the provision  
6 that violations by a branch licensee are deemed violations by  
7 the sponsoring preneed licensee, unless considered unjust  
8 because of extenuating circumstances.

6 The CS amends s. 497.466, F.S., to provide for licensure and  
7 initial temporary licensure and appointments of preneed  
8 licensees and sales agents, including qualifications,  
9 application requirements, and the amount of applicable fees.  
10 It also provides for the termination of appointments, and the  
11 responsibility of preneed licensees for preneed sales agents.

10 The CS amends s. 497.550, F.S., to create the monument builder  
11 and the monument dealer licensure categories, and to provide  
12 that a monument builder is not eligible for a preneed sales  
13 license.

12 The CS amends s. 497.553(1), F.S., to require that the board  
13 set by rule an annual inspection fee not to exceed \$300 that  
14 is payable upon application for licensure and upon each  
15 renewal.

15 The CS amends s. 497.603, F.S., to increase the maximum amount  
16 of the renewal fee for a direct disposer from \$250 to \$500.

16 The CS amends s. 497.607(4), F.S., to provide that the  
17 provisions of ch. 497, F.S., shall not be construed to  
18 prohibit the state's anatomical board to cremate by chemical  
19 means, or otherwise, unclaimed human remains by procedures it  
20 determines are proper and adequate.

19 The CS does not amend s. 163.3187, F.S., pertaining to  
21 cemetery lands and amendments to adopt comprehensive plans.

20 The CS amends s. 626.785, F.S., to correct a cross-reference.  
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