

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Roberson, K. offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present subsections (5) through (8), (9)
 8 through (31), (32) through (38), (39) through (46), (47) through
 9 (61), (62) through (70), and (71) of section 497.005, Florida
 10 Statutes, are redesignated as subsections (6) through (9), (11)
 11 through (33), (35) through (41), (43) through (50), (52) through
 12 (66), (68) through (76), and (78), respectively, and new
 13 subsections (5), (10), (34), (42), (51), (67), and (77) are
 14 added to that section, to read:

15 497.005 Definitions.—As used in this chapter, the term:

16 (5) "Beneficiary" means a natural person expressly
 17 identified in a preneed contract as the person for whom funeral

Amendment No. 1

18 merchandise or services are intended.

19 (10) "Capital gain" or "capital loss" means a change in
20 the value of a capital asset, such as investment or real estate,
21 which gives the asset a different worth than the purchase price.
22 The gain or loss is not realized until the asset is sold.

23 (34) "Fair market value" means the fair market value of
24 assets held by a trust as of a specific date, assuming all
25 assets of the trust are sold on that specific date.

26 (42) "Income" means earnings on trust assets, including
27 interest, dividends, and other income earned on the principal.

28 (51) "Net income" means, in relation to a trust, ordinary
29 income minus any income distributions for items such as trust
30 expenses. For purposes of this subsection, "ordinary income"
31 means, in relation to a trust, any earnings on trust assets,
32 including interest and dividends received on property derived
33 from the use of the trust principal, but does not include
34 capital gains or capital losses.

35 (67) "Purchaser" means a person who executes a preneed or
36 an at-need contract with a licensee for merchandise or services.

37 (77) "Total return withdrawal percentage" means a
38 percentage, not to exceed 5 percent, of the fair market value of
39 a trust.

40 Section 2. Subsections (2) and (11) of section 497.141,
41 Florida Statutes, are amended to read:

42 497.141 Licensing; general application procedures.—

43 (2) Any person desiring to be licensed shall apply to the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 473 (2016)

Amendment No. 1

44 licensing authority in writing using such forms and procedures
45 as may be prescribed by rule. The application for licensure
46 shall include the applicant's social security number if the
47 applicant is a natural person; otherwise, the applicant's
48 federal tax identification number shall be included.
49 Notwithstanding any other provision of law, the department is
50 the sole authority for determining the forms and form contents
51 to be submitted for initial licensure and licensure renewal
52 application. Such forms and the information and materials
53 required by such forms may include, as appropriate,
54 demographics, education, work history, personal background,
55 criminal history, finances, business information, signature
56 notarization, performance periods, reciprocity, local government
57 approvals, supporting documentation, periodic reporting
58 requirements, fingerprint requirements, continuing education
59 requirements, business plans, character references, e-mail
60 addresses, and ongoing education monitoring. Such forms and the
61 information and materials required by such forms may also
62 include, to the extent such information or materials are not
63 already in the possession of the department or the board,
64 records or information as to complaints, inspections,
65 investigations, discipline, and bonding. The application shall
66 be supplemented as needed to reflect any material change in any
67 circumstance or condition stated in the application that takes
68 place between the initial filing of the application and the
69 final grant or denial of the license and that might affect the

130589 - h473-strike.docx

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Amendment No. 1

70 decision of the department or the board. After an application by
71 a natural person for licensure under this chapter is approved,
72 the licensing authority may require the successful applicant to
73 provide a photograph of himself or herself for permanent
74 lamination onto the license card to be issued to the applicant,
75 pursuant to rules and fees adopted by the licensing authority.

76 (11) The department shall implement a system for
77 administration of the overall licensing process, including e-
78 mail notification for the processing and tracking of
79 applications for licensure, the issuance of licenses approved by
80 the board, the tracking of licenses issued, the administration
81 of the license renewal process, and the collection and
82 processing of fees related to those activities. The system may
83 use staff and facilities of the department or the department may
84 enter into a contract for all or any part of such system, upon
85 such terms and conditions as the department deems advisable, and
86 such contract may be with another government agency or a private
87 business.

88 Section 3. Section 497.146, Florida Statutes, is amended
89 to read:

90 497.146 Licensing; address of record; changes; licensee
91 responsibility.—Each licensee under this chapter is responsible
92 for notifying the department in writing of the licensee's
93 current e-mail address, business and residence mailing address,
94 and the street address of the licensee's primary place of
95 practice and shall notify the department ~~in writing~~ within 30

Amendment No. 1

96 days after any change in such information, in accordance with
97 procedures and forms prescribed by rule. Notwithstanding any
98 other provision of law, electronic notification ~~service by~~
99 ~~regular mail~~ to a licensee's last known e-mail address of record
100 or preferred street address of record with the department
101 constitutes adequate and sufficient notice to the licensee for
102 any official communication to the licensee by the board or the
103 department, except when other service is expressly required by
104 this chapter. The department may adopt rules, forms, and
105 procedures, including a procedure for electronic reporting of
106 the data provided pursuant to this section. ~~Rules may be adopted~~
107 ~~establishing forms and procedures for licensees to provide the~~
108 ~~notice required by this section.~~

109 Section 4. Paragraphs (b) and (e) of subsection (8),
110 paragraph (d) of subsection (12), paragraphs (b) and (c) of
111 subsection (14), and paragraph (b) of subsection (15) of section
112 497.152, Florida Statutes, are amended to read:

113 497.152 Disciplinary grounds.—This section sets forth
114 conduct that is prohibited and that shall constitute grounds for
115 denial of any application, imposition of discipline, or other
116 enforcement action against the licensee or other person
117 committing such conduct. For purposes of this section, the
118 requirements of this chapter include the requirements of rules
119 adopted under authority of this chapter. No subsection heading
120 in this section shall be interpreted as limiting the
121 applicability of any paragraph within the subsection.

Amendment No. 1

122 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF
123 HUMAN REMAINS.—

124 (b) Refusing to surrender promptly the custody of a dead
125 human body upon the express order of the ~~person~~ legally
126 authorized person to such person's ~~its~~ custody; however, this
127 provision shall be subject to any state or local laws or rules
128 governing custody or transportation of dead human bodies.

129 (e) Failing to obtain written authorization from a legally
130 authorized person before ~~the family or next of kin of the~~
131 ~~deceased prior to~~ entombment, interment, disinterment,
132 disentombment, or disinurnment of the remains of any human
133 being.

134 (12) DISCLOSURE REQUIREMENTS.—

135 (d) Failure by a funeral director to make full disclosure
136 in the case of a funeral or direct disposition with regard to
137 the use of funeral merchandise that is not to be disposed of
138 with the body or failure to obtain written permission from a
139 legally authorized person ~~the purchaser~~ regarding disposition of
140 such merchandise.

141 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
142 CUSTOMERS.—

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

145 1. Failing to acknowledge and act promptly upon
146 communications from a licensee's customers and their
147 representatives with respect to claims or complaints relating to

Amendment No. 1

148 the licensee's activities regulated by this chapter.

149 2. Denying claims or rejecting complaints received by a
150 licensee from a customer or customer's representative, relating
151 to the licensee's activities regulated by this chapter, without
152 first conducting reasonable investigation based upon available
153 information.

154 3. Attempting to settle a claim or complaint on the basis
155 of a material document that was altered without notice to, or
156 without the knowledge or consent of, the contract purchaser or a
157 legally authorized person ~~her or his representative or legal~~
158 ~~guardian~~.

159 4. Failing within a reasonable time to affirm or deny
160 coverage of specified services or merchandise under a contract
161 entered into by a licensee upon written request of the contract
162 purchaser or a legally authorized person ~~her or his~~
163 ~~representative or legal guardian~~.

164 5. Failing to promptly provide, in relation to a contract
165 for funeral or burial merchandise or services entered into by
166 the licensee or under the licensee's license, a reasonable
167 explanation to the contract purchaser or a legally authorized
168 person ~~her or his representative or legal guardian~~ of the
169 licensee's basis for denying or rejecting all or any part of a
170 claim or complaint submitted.

171 (c) Making a material misrepresentation to a contract
172 purchaser or a legally authorized person ~~her or his~~
173 ~~representative or legal guardian~~ for the purpose and with the

Amendment No. 1

174 intent of effecting settlement of a claim or complaint or loss
175 under a prepaid contract on less favorable terms than those
176 provided in, and contemplated by, the prepaid contract.
177

178 For purposes of this subsection, the response of a customer
179 recorded by the customer on a customer satisfaction
180 questionnaire or survey form sent to the customer by the
181 licensee, and returned by the customer to the licensee, shall
182 not be deemed to be a complaint.

183 (15) MISCELLANEOUS FINANCIAL MATTERS.—

184 (b) Failing to timely remit as required by this chapter
185 the required amounts to any trust fund required by this chapter.
186 The board shall ~~may~~ by rule provide criteria for identifying
187 minor, nonwillful trust remittance deficiencies; and remittance
188 deficiencies falling within such criteria, if fully corrected
189 within 30 days after notice to the licensee by the department,
190 do shall not constitute grounds for disciplinary action or a
191 fine.

192 Section 5. Paragraph (g) is added to subsection (1) of
193 section 497.161, Florida Statutes, to read:

194 497.161 Other rulemaking provisions.—

195 (1) In addition to such other rules as are authorized or
196 required under this chapter, the following additional rules, not
197 inconsistent with this chapter, shall be authorized by the
198 licensing authority.

199 (g) Rules, not inconsistent with part IV of this chapter

Amendment No. 1

200 and the Florida Insurance Code, establishing conditions of use
201 for insurance as a funding mechanism for preneed contracts.

202 Section 6. Subsections (3) and (4) of section 497.266,
203 Florida Statutes, are amended to read:

204 497.266 Care and maintenance trust fund; remedy of
205 department for noncompliance.—

206 (3) A ~~No~~ person may not withdraw or transfer any portion
207 of assets within ~~the corpus of~~ the care and maintenance trust
208 fund, except as authorized by s. 497.2675, without first
209 obtaining written consent from the licensing authority.

210 (4) The trustee of the trust established pursuant to this
211 section may only invest in investments and loan trust funds, as
212 prescribed in s. 497.458. The trustee shall take title to the
213 property conveyed to the trust for the purposes of investing,
214 protecting, and conserving it for the cemetery company;
215 collecting income; and distributing withdrawals from the trust
216 ~~the principal and income~~ as prescribed in this chapter. The
217 cemetery company is prohibited from sharing in the discharge of
218 the trustee's responsibilities under this subsection, except
219 that the cemetery company may request the trustee to invest in
220 tax-free investments.

221 Section 7. Section 497.267, Florida Statutes, is amended
222 to read:

223 497.267 Disposition of withdrawals from the ~~income of~~ care
224 and maintenance trust fund; notice to purchasers and
225 depositors.—Withdrawals from ~~the net income of the~~ care and

Amendment No. 1

226 maintenance trust fund shall be used solely for the care and
227 maintenance of the cemetery, including maintenance of monuments,
228 which maintenance may ~~shall~~ not be deemed to include the
229 cleaning, refinishing, repairing, or replacement of monuments;
230 for reasonable costs of administering the care and maintenance;
231 and for reasonable costs of administering the trust fund. At the
232 time of making a sale or receiving an initial deposit, the
233 cemetery company shall deliver to the person to whom the sale is
234 made, or who makes a deposit, a written instrument which shall
235 specifically state the purposes for which withdrawals from the
236 ~~income of the~~ trust fund shall be used.

237 Section 8. Section 497.2675, Florida Statutes, is created
238 to read:

239 497.2675 Withdrawal methods from the care and maintenance
240 trust fund.-

241 (1) The board shall adopt rules, with the approval of the
242 department, to administer ss. 497.267 and 497.268, including,
243 but not limited to:

244 (a) Reporting requirements for a cemetery licensed under
245 this chapter, including the requirement that specific reports be
246 made on forms designed and approved by the board by rule.

247 (b) Rules to address a cemetery licensed under this
248 chapter whose pro rata share of the fair market value of the
249 trust has not grown over a 3-year average, including limiting
250 withdrawals from the care and maintenance trust fund, and any
251 exceptions approved by the board.

Amendment No. 1

252 (2) Each cemetery company licensed under this chapter
253 shall elect one of two withdrawal methods, as specified in
254 paragraphs (a) and (b), for withdrawals from the cemetery
255 company's care and maintenance trust fund. The board shall adopt
256 rules, with the approval of the department, to administer this
257 subsection.

258 (a) Net income withdrawal method.—Net income may be
259 withdrawn from the trust, as earned, on a monthly basis.

260 (b) Total return withdrawal method.—The licensee shall
261 multiply the average fair market value of its pro rata share of
262 the trust by the total return withdrawal percentage and may
263 withdraw one-fourth of that amount at least quarterly beginning
264 the first quarter of the new trust year. The initial total
265 return withdrawal percentage elected by the licensee may not
266 increase the total return withdrawal percentage for that
267 quarter. For purposes of this paragraph, "average fair market
268 value" means, in relation to a trust, the average of the fair
269 market value of each asset held by the trust at the beginning of
270 the current year and in each of the 2 previous years, or for the
271 entire term of the trust if there are less than 2 previous
272 years, and adjusted as follows:

273 1. If assets are added to the trust during the years used
274 to determine the average, the amount of each addition is added
275 to all years in which such addition is not included.

276 2. If assets are distributed from the trust during the
277 years used to determine the average, other than in satisfaction

Amendment No. 1

278 of the unitrust amount, as defined in s. 738.1041, the amount of
279 each distribution is subtracted from all other years in which
280 such distribution is not included.

281 (3) Without regard to the withdrawal method selected,
282 taxes on capital gains, if any, must be paid from the trust
283 principal.

284 Section 9. Paragraphs (a) and (b) of subsection (1) and
285 subsection (2) of section 497.268, Florida Statutes, are amended
286 to read:

287 497.268 Care and maintenance trust fund, percentage of
288 payments for burial rights to be deposited.—

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

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

297 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
298 ~~received.~~

299 (2) Deposits to the care and maintenance trust fund shall
300 be made by the cemetery company not later than 30 days following
301 the close of the calendar month in which any payment was
302 received; however, when such payments are received in
303 installments, the percentage of the installment payment placed

Amendment No. 1

304 in trust must be identical to the percentage which the payment
305 received bears to the total cost for the burial rights. Trust
306 income may be used to pay for all usual and customary services
307 for the operation of a trust account, including, but not limited
308 to: reasonable trustee and custodian fees, investment adviser
309 fees, allocation fees, and taxes. If the net income is not
310 sufficient to pay the fees and other expenses, the fees and
311 other expenses shall be paid by the cemetery company. ~~Capital~~
312 ~~gains taxes shall be paid from the corpus.~~

313 Section 10. Section 497.269, Florida Statutes, is amended
314 to read:

315 497.269 Care and maintenance trust fund; financial
316 reports.—On or before April 1 of each year, the trustee shall
317 furnish adequate financial reports that record the fair market
318 value with respect to the care and maintenance trust fund
319 utilizing forms and procedures specified by rule. However, the
320 department may require the trustee to make such additional
321 financial reports as it deems necessary. In order to ensure that
322 the proper deposits to the trust fund have been made, the
323 department shall examine the status of the trust fund of the
324 company on a semiannual basis for the first 2 years of the trust
325 fund's existence.

326 Section 11. Subsection (4) of section 497.273, Florida
327 Statutes, is amended to read:

328 497.273 Cemetery companies; authorized functions.—

329 (4) This chapter does not prohibit the interment or

Amendment No. 1

330 entombment of the inurned cremated animal remains of the
331 decedent's pet or pets with the decedent's human remains or
332 cremated human remains if:

333 (a) The human remains or cremated human remains are not
334 commingled with the inurned cremated animal remains; and

335 (b) The interment or entombment with the inurned cremated
336 animal remains is with the authorization of a ~~the decedent or~~
337 ~~other~~ legally authorized person.

338 Section 12. Subsection (1) of section 497.274, Florida
339 Statutes, is amended to read:

340 497.274 Standards for grave spaces.—

341 (1) A standard adult grave space shall measure at least 42
342 inches in width and 96 inches in length, except for preinstalled
343 vaults in designated areas. For interments, except cremated
344 remains, the covering soil shall measure no less than 12 inches
345 from the top of the outer burial container at time of interment,
346 unless such level of soil is not physically possible. In any
347 interment, a legally authorized person ~~the family or next of kin~~
348 may waive the 12-inch coverage minimum.

349 Section 13. Paragraph (c) of subsection (2) of section
350 497.283, Florida Statutes, is amended to read:

351 497.283 Prohibition on sale of personal property or
352 services.—

353 (2)

354 (c) In lieu of delivery as required by paragraph (b), for
355 sales to cemetery companies and funeral establishments, and only

Amendment No. 1

356 for such sales, the manufacturer of a permanent outer burial
357 receptacle which meets standards adopted by rule may elect, at
358 its discretion, to comply with the delivery requirements of this
359 section by annually submitting for approval pursuant to
360 procedures and forms as specified by rule, in writing, evidence
361 of the manufacturer's financial responsibility with the
362 licensing authority for its review and approval. ~~The standards
363 and procedures to establish evidence of financial responsibility
364 shall be those in s. 497.461, with the manufacturer of permanent
365 outer burial receptacles which meet national industry standards
366 assuming the same rights and responsibilities as those of a
367 preneed licensee under s. 497.461.~~

368 Section 14. Subsection (3) of section 497.286, Florida
369 Statutes, is amended to read:

370 497.286 Owners to provide addresses; presumption of
371 abandonment; abandonment procedures; sale of abandoned unused
372 burial rights.—

373 (3) Upon the occurrence of a presumption of abandonment as
374 set forth in subsection (2), a cemetery may file with the
375 department a certified notice attesting to the abandonment of
376 the burial rights. The notice shall do the following:

377 (a) Describe the burial rights certified to have been
378 abandoned;

379 (b) Set forth the name of the owner or owners of the
380 burial rights, or if the owner is known to the cemetery to be
381 deceased, then the names, if known to the cemetery, of such

Amendment No. 1

382 claimants as are heirs at law, next of kin, or specific devisees
383 under the will of the owner or the legally authorized person;

384 (c) Detail the facts with respect to the failure of the
385 owner or survivors as outlined in this section to keep the
386 cemetery informed of the owner's address for a period of 50
387 consecutive years or more; and

388 (d) Certify that no burial right has been exercised which
389 is held in common ownership with any abandoned burial rights as
390 set forth in subsection (2).

391 Section 15. Section 497.371, Florida Statutes, is amended
392 to read:

393 497.371 Embalmers; establishment of embalmer apprentice
394 program.—The licensing authority adopts rules establishing an
395 embalmer apprentice program. An embalmer apprentice may perform
396 only those tasks, functions, and duties relating to embalming
397 which are performed under the direct supervision of an embalmer
398 who has an active, valid license under s. 497.368 or s. 497.369.
399 An embalmer apprentice is ~~shall be~~ eligible to serve in an
400 apprentice capacity for a period not to exceed 3 years as may be
401 determined by licensing authority rule or for a period not to
402 exceed 5 years if the apprentice is enrolled in and attending a
403 course in mortuary science or funeral service education at any
404 mortuary college or funeral service education college or school.
405 An embalmer apprentice shall be issued a license ~~licensed~~ upon
406 payment of a licensure fee as determined by licensing authority
407 rule but not to exceed \$200. An applicant for the embalmer

Amendment No. 1

408 apprentice program may not be issued a license unless the
409 licensing authority determines that the applicant is of good
410 character and has not demonstrated a history of lack of
411 trustworthiness or integrity in business or professional
412 matters.

413 Section 16. Paragraph (b) of subsection (1) of section
414 497.372, Florida Statutes, is amended to read:

415 497.372 Funeral directing; conduct constituting practice
416 of funeral directing.—

417 (1) The practice of funeral directing shall be construed
418 to consist of the following functions, which may be performed
419 only by a licensed funeral director:

420 (b) Planning or arranging, on an at-need basis, the
421 details of funeral services, embalming, cremation, or other
422 services relating to the final disposition of human remains,
423 including the removal of such remains from the state, ~~with the~~
424 ~~family or friends of the decedent or any other person~~
425 ~~responsible for such services~~; setting the time of the services;
426 establishing the type of services to be rendered; acquiring the
427 services of the clergy; and obtaining vital information for the
428 filing of death certificates and obtaining of burial transit
429 permits.

430 Section 17. Subsection (4) of section 497.381, Florida
431 Statutes, is amended to read:

432 497.381 Solicitation of goods or services.—

433 (4) At-need solicitation of funeral merchandise or

Amendment No. 1

434 services is prohibited. A ~~No~~ funeral director or direct disposer
435 or her or his agent or representative may not contact the
436 legally authorized person or family ~~or next of kin of a deceased~~
437 ~~person~~ to sell services or merchandise unless the funeral
438 director or direct disposer or her or his agent or
439 representative has been initially called or contacted by the
440 legally authorized person or family ~~or next of kin of such~~
441 ~~person~~ and requested to provide her or his services or
442 merchandise.

443 Section 18. Paragraph (c) of subsection (2) of section
444 497.452, Florida Statutes, is amended to read:

445 497.452 Preneed license required.—

446 (2)

447 ~~(c) The provisions of paragraph (a) do not apply to any~~
448 ~~Florida corporation existing under chapter 607 acting as a~~
449 ~~servicing agent hereunder in which the stock of such corporation~~
450 ~~is held by 100 or more persons licensed pursuant to part III of~~
451 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
452 ~~has proxies for more than 5 percent of the issued stock of such~~
453 ~~corporation; provided the corporation has a blanket fidelity~~
454 ~~bond, covering all employees handling the funds, in the amount~~
455 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
456 ~~this state; and provided the corporation processes the funds~~
457 ~~directly to and from the trustee within the applicable time~~
458 ~~limits set forth in this chapter. The department may require any~~
459 ~~person claiming that the provisions of this paragraph exempt it~~

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Amendment No. 1

460 ~~from the provisions of paragraph (a) to demonstrate to the~~
461 ~~satisfaction of the department that it meets the requirements of~~
462 ~~this paragraph.~~

463 Section 19. Subsections (1) and (3) of section 497.454,
464 Florida Statutes, are amended to read:

465 497.454 Approval of preneed contract and related forms.—

466 (1) Preneed contract forms and related forms shall be
467 filed with and approved by the licensing authority before ~~prior~~
468 ~~to~~ use, pursuant to procedures specified by rule. The licensing
469 authority may not approve any electronic or paper preneed
470 contract ~~form~~ that does not provide for sequential prenumbering
471 thereon.

472 ~~(3) Specific disclosure regarding the preneed licensee's~~
473 ~~ability to select either trust funding or the financial~~
474 ~~responsibility alternative as set forth in s. 497.461 in~~
475 ~~connection with the receipt of preneed contract proceeds is~~
476 ~~required in the preneed contract.~~

477 Section 20. Subsections (2), (7), and (8) of section
478 497.456, Florida Statutes, are amended to read:

479 497.456 Preneed Funeral Contract Consumer Protection Trust
480 Fund.—

481 (2) Within 60 days after the end of each calendar quarter,
482 for each preneed contract written during the quarter and not
483 canceled within 30 days after the date of the execution of the
484 contract, each preneed licensee, whether funding preneed
485 contracts by the sale of insurance or by establishing a trust

Amendment No. 1

486 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
487 \$2.50 for each preneed contract having a purchase price of
488 \$1,500 or less, and the sum of \$5 for each preneed contract
489 having a purchase price in excess of \$1,500; and each preneed
490 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
491 of \$5 for each preneed contract having a purchase price of
492 \$1,500 or less, and the sum of \$10 for each preneed contract
493 having a purchase price in excess of \$1,500.

494 (7) In any situation in which a delinquency proceeding has
495 not commenced, the licensing authority may, in its discretion,
496 use the trust fund for the purpose of providing restitution to
497 any consumer, owner, or beneficiary of a preneed contract or
498 similar regulated arrangement under this chapter entered into
499 after June 30, 1977. If, after investigation, the licensing
500 authority determines that a preneed licensee has breached a
501 preneed contract by failing to provide benefits or an
502 appropriate refund, or that a provider, who is a former preneed
503 licensee or an establishment which has been regulated under this
504 chapter, has sold a preneed contract and has failed to fulfill
505 the arrangement or provide the appropriate refund, and such
506 preneed licensee or provider does not provide or does not
507 possess adequate funds to provide appropriate refunds, payments
508 from the trust fund may be authorized by the licensing
509 authority. In considering whether payments shall be made or when
510 considering who will be responsible for such payments, the
511 licensing authority shall consider whether the preneed licensee

Amendment No. 1

512 or previous provider has been acquired by a successor who is or
513 should be responsible for the liabilities of the defaulting
514 entity. With respect to preneed contracts funded by life
515 insurance, payments from the fund shall be made: if the insurer
516 is insolvent, but only to the extent that funds are not
517 available through the liquidation proceeding of the insurer; or
518 if the preneed licensee is unable to perform under the contract
519 and the insurance proceeds are not sufficient to cover the cost
520 of the merchandise and services contracted for. In no event
521 shall the licensing authority approve payments in excess of the
522 insurance policy limits unless it determines that at the time of
523 sale of the preneed contract, the insurance policy would have
524 paid for the services and merchandise contracted for. Such
525 monetary relief shall be in an amount as the licensing authority
526 may determine and shall be payable in such manner and upon such
527 conditions and terms as the licensing authority may prescribe.
528 However, with respect to preneed contracts to be funded pursuant
529 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
530 restitution made pursuant to this subsection may ~~shall~~ not
531 exceed, as to any single contract or arrangement, the lesser of
532 the gross amount paid under the contract or 4 percent of the
533 uncommitted assets of the trust fund. With respect to preneed
534 contracts funded by life insurance policies, any restitution may
535 ~~shall~~ not exceed, as to any single contract or arrangement, the
536 lesser of the face amount of the policy, the actual cost of the
537 arrangement contracted for, or 4 percent of the uncommitted

Amendment No. 1

538 assets of the trust fund. The total of all restitutions made to
539 all applicants under this subsection in a single fiscal year may
540 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
541 assets of the trust fund as of the end of the most recent fiscal
542 year or \$120,000. The department may use moneys in the trust
543 fund to contract with independent vendors pursuant to chapter
544 287 to administer the requirements of this subsection.

545 (8) All moneys deposited in the Preneed Funeral Contract
546 Consumer Protection Trust Fund together with all accumulated
547 appreciation ~~income~~ shall be used only for the purposes
548 expressly authorized by this chapter and may ~~shall~~ not be
549 subject to any liens, charges, judgments, garnishments, or other
550 creditor's claims against the preneed licensee, any trustee
551 utilized by the preneed licensee, any company providing a surety
552 bond as specified in this chapter, or any purchaser of a preneed
553 contract. No preneed contract purchaser shall have any vested
554 rights in the trust fund.

555 Section 21. Paragraphs (a), (d), and (f) of subsection (1)
556 of section 497.458, Florida Statutes, are amended, a new
557 paragraph (k) is added to that subsection, and paragraph (a) of
558 subsection (3), subsection (4), paragraphs (a) and (c) of
559 subsection (5), and subsections (6) through (9) of that section
560 are amended, to read:

561 497.458 Disposition of proceeds received on contracts.—

562 (1) (a) Any person who is paid, collects, or receives funds
563 under a preneed contract for funeral services or merchandise or

Amendment No. 1

564 burial services or merchandise shall deposit an amount at least
565 equal to the sum of 70 percent of the purchase price collected
566 for all services sold and facilities rented; 100 percent of the
567 purchase price collected for all cash advance items sold; and 30
568 percent of the purchase price collected or 110 percent of the
569 wholesale cost, whichever is greater, for each item of
570 merchandise sold. The board may, by rule, specify criteria for
571 the classification of items sold in a preneed contract as
572 services, cash advances, or merchandise.

573 (d) The trustee shall take title to the property conveyed
574 to the trust for the purpose of investing, protecting, and
575 conserving it for the preneed licensee; collecting income; and
576 distributing the fair market value ~~principal and income~~ as
577 prescribed in this chapter. The preneed licensee is prohibited
578 from sharing in the discharge of these responsibilities, except
579 that the preneed licensee may request the trustee to invest in
580 tax-free investments and may appoint an adviser to the trustee.
581 The licensing authority may adopt rules limiting or otherwise
582 specifying the degree to which the trustee may rely on the
583 investment advice of an investment adviser appointed by the
584 preneed licensee. The licensing authority may adopt rules
585 limiting or prohibiting payment of fees by the trust to
586 investment advisors that are employees or principals of the
587 licensee to whom the trust fund relates.

588 (f) The deposited funds shall be held in trust, both as to
589 principal and any change in fair market value ~~income earned~~

Amendment No. 1

590 thereon, and shall remain intact, except that the cost of the
591 operation of the trust or trust account authorized by this
592 section may be deducted from the income earned thereon.

593 (k) Beginning April 1, 2018, and on or before each April 1
594 thereafter, the trustee shall furnish the department with an
595 annual report regarding each preneed licensee trust account held
596 by the trustee at any time during the previous calendar year.
597 The report shall state the name and address of the trustee; the
598 name, address, and license number of the licensee to whom the
599 report relates; the trust account number; the beginning and
600 ending trust balance; and, as may be specified by department
601 rule, a list of receipts showing the date and amount of any
602 disbursement. The report must be signed by the trustee's account
603 manager for the trust account. The trustee shall submit the
604 report in a format and pursuant to procedures specified by
605 department rule.

606 (3) (a) The trustee shall make regular valuations of assets
607 it holds in trust and provide a fair market value report of such
608 valuations to the preneed licensee at least quarterly.

609 (4) The licensing authority may adopt rules exempting from
610 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
611 established in such rule, the investment of trust funds in
612 investments, such as widely and publicly traded stocks and
613 bonds, notwithstanding that the licensee, its principals, or
614 persons related by blood or marriage to the licensee or its
615 principals have an interest by investment in the same entity,

Amendment No. 1

616 where neither the licensee, its principals, or persons related
617 by blood or marriage to the licensee or its principals have the
618 ability to control the entity invested in, and it would be in
619 the interest of the preneed contract holders whose contracts are
620 secured by the trust funds to allow the investment.

621 (5) The trustee of the trust established pursuant to this
622 section shall only have the power to:

623 (a) Invest in investments as prescribed in s. 518.11
624 ~~215.47~~ and exercise the powers set forth in part VIII of chapter
625 736. However, the trustee may not invest in, or count as assets,
626 life insurance policies or annuity contracts; real estate may
627 not compose more than 25 percent of the trust's assets; and,
628 ~~provided that~~ the licensing authority may by order require the
629 trustee to liquidate or dispose of any investment within 30 days
630 after such order, or within such other times as the order may
631 direct. The licensing authority may issue such order if it
632 determines that the investment violates any provision of this
633 chapter or is not in the best interests of the preneed contract
634 holders whose contracts are secured by the trust funds.

635 (c) Commingle the property of the trust with the property
636 of any other trust established pursuant to this chapter and make
637 corresponding allocations and divisions of assets, liabilities,
638 income, ~~and~~ expenses, and capital gains and losses.

639 ~~(6) The preneed licensee, at her or his election, shall~~
640 ~~have the right and power, at any time, to revest in it title to~~
641 ~~the trust assets, or its pro rata share thereof, provided it has~~

Amendment No. 1

642 ~~complied with s. 497.461.~~

643 ~~(7) Notwithstanding anything contained in this chapter to~~
644 ~~the contrary, the preneed licensee, via its election to sell or~~
645 ~~offer for sale preneed contracts subject to this section, shall~~
646 ~~represent and warrant, and is hereby deemed to have done such,~~
647 ~~to all federal and Florida taxing authorities, as well as to all~~
648 ~~potential and actual preneed contract purchasers, that:~~

649 ~~(a) Section 497.461 is a viable option available to it at~~
650 ~~any and all relevant times;~~

651 ~~(b) Section 497.462 is a viable option available to it at~~
652 ~~any and all relevant times for contracts written prior to July~~
653 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

654 ~~(c) For any preneed licensee authorized to do business in~~
655 ~~this state that has total bonded liability exceeding \$100~~
656 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
657 ~~at any and all relevant times for contracts written prior to~~
658 ~~December 31, 2004, for funds not held in trust as of July 1,~~
659 ~~2001.~~

660 ~~(8) If in the preneed licensee's opinion it does not have~~
661 ~~the ability to select the financial responsibility alternative~~
662 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
663 ~~have the right to sell or solicit preneed contracts.~~

664 ~~(6)-(9)~~ The amounts required to be placed in a trust by
665 this section for contracts previously entered into shall be as
666 follows:

667 (a) For contracts entered into before October 1, 1993, the

Amendment No. 1

668 trust amounts as amended by s. 6, chapter 83-316, Laws of
669 Florida, shall apply.

670 (b) For contracts entered into on or after October 1,
671 1993, the trust amounts as amended by s. 98, chapter 93-399,
672 Laws of Florida, shall apply.

673 Section 22. Paragraph (a) of subsection (6) of section
674 497.459, Florida Statutes, is amended to read:

675 497.459 Cancellation of, or default on, preneed
676 contracts.—

677 (6) OTHER PROVISIONS.—

678 (a) All preneed contracts are cancelable and revocable as
679 provided in this section, provided that a preneed contract does
680 not restrict any contract purchaser who is the beneficiary of
681 the preneed contract and who is a qualified applicant for, or a
682 recipient of, supplemental security income, temporary cash
683 assistance, or Medicaid from making her or his contract
684 irrevocable. A preneed contract that is made irrevocable
685 pursuant to this section may not be canceled during the life or
686 after the death of the contract purchaser or beneficiary as
687 described in this section. Any unexpended moneys paid on an
688 irrevocable contract shall be remitted to the Agency for Health
689 Care Administration for deposit into the Medical Care Trust Fund
690 after final disposition of the beneficiary.

691 Section 23. Section 497.460, Florida Statutes, is amended
692 to read:

693 497.460 Payment of funds upon death of named beneficiary.—

Amendment No. 1

694 Disbursements of funds discharging any preneed contract
695 fulfilled after September 30, 1993, shall be made by the trustee
696 to the preneed licensee upon receipt of a certified copy of the
697 death certificate of the contract beneficiary or satisfactory
698 evidence as established by rule of the licensing authority that
699 the preneed contract has been performed in whole or in part.
700 However, if the contract is only partially performed, the
701 disbursement shall only cover the fair market value of that
702 portion of the contract performed. In the event of any contract
703 default by the contract purchaser, or in the event that the
704 funeral merchandise or service or burial merchandise or service
705 contracted for is not provided or is not desired by the legally
706 authorized person ~~heirs or personal representative of the~~
707 ~~contract beneficiary~~, the trustee shall return, within 30 days
708 after its receipt of a written request therefor, funds paid on
709 the contract to the preneed licensee or to its assigns, subject
710 to ~~the provisions of~~ s. 497.459.

711 Section 24. Section 497.461, Florida Statutes, is
712 repealed.

713 Section 25. The repeal of s. 497.461, Florida Statutes, by
714 this act does not apply to a preneed licensee who has elected to
715 maintain a surety bond in lieu of depositing funds into a trust
716 as of July 1, 2016.

717 Section 26. Subsection (2), paragraph (a) of subsection
718 (3), and subsections (7) and (10) of section 497.462, Florida
719 Statutes, are amended to read:

Amendment No. 1

720 497.462 Other alternatives to deposits under s. 497.458.—

721 ~~(2) Upon prior approval by the licensing authority, the~~
722 ~~preneed licensee may file a letter of credit with the licensing~~
723 ~~authority in lieu of a surety bond. Such letter of credit must~~
724 ~~be in a form, and is subject to terms and conditions, prescribed~~
725 ~~by the board. It may be revoked only with the express approval~~
726 ~~of the licensing authority.~~

727 (2)~~(3)~~(a) A buyer of preneed merchandise or services who
728 does not receive such services or merchandise due to the
729 economic failure, closing, or bankruptcy of the preneed licensee
730 must file a claim with the surety as a prerequisite to payment
731 of the claim and, if the claim is not paid, may bring an action
732 based on the bond and recover against the surety. ~~In the case of~~
733 ~~a letter of credit or cash deposit that has been filed with the~~
734 ~~licensing authority, the buyer may file a claim with the~~
735 ~~licensing authority.~~

736 (6)~~(7)~~ Any preneed contract which promises future delivery
737 of merchandise at no cost constitutes a paid-up contract.
738 Merchandise which has been delivered is not covered by the
739 required performance bond ~~or letter of credit~~ even though the
740 contract is not completely paid. The preneed licensee may not
741 cancel a contract unless the purchaser is in default according
742 to the terms of the contract and subject to the requirements of
743 s. 497.459. A contract sold, discounted, and transferred to a
744 third party constitutes a paid-up contract for the purposes of
745 the performance bond ~~or letter of credit~~.

130589 - h473-strike.docx

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Amendment No. 1

746 ~~(9)(10)~~ The licensing authority may adopt forms and rules
747 necessary to implement this section, including, but not limited
748 to, rules which ensure that the surety bond provides ~~and line of~~
749 ~~credit provide~~ liability coverage for preneed merchandise and
750 services.

751 Section 27. Paragraphs (c) and (f) of subsection (1) of
752 section 497.464, Florida Statutes, are amended to read:

753 497.464 Alternative preneed contracts.—

754 (1) Nothing in this chapter shall prevent the purchaser
755 and the preneed licensee from executing a preneed contract upon
756 the terms stated in this section. Such contracts shall be
757 subject to ~~all provisions of~~ this chapter except:

758 ~~(c) Section 497.458(1), (3), and (6).~~

759 ~~(f) Section 497.461.~~

760 Section 28. Subsection (2) and paragraph (c) of subsection
761 (9) of section 497.465, Florida Statutes, are amended to read:

762 497.465 Inactive, surrendered, and revoked preneed
763 licensees.—

764 (2) Upon becoming inactive, a preneed licensee shall cease
765 all preneed sales to the public and upon becoming inactive, the
766 ~~preneed licensee shall collect and deposit into the trust all~~
767 funds it receives on or after the date on which it becomes
768 inactive from sales of into trust all of the funds paid toward
769 preneed contracts sold before ~~prior to~~ becoming inactive.

770 (9) The licensing authority may adopt rules for the
771 implementation of this section, for the purpose of ensuring a

Amendment No. 1

772 thorough review and investigation of the status and condition of
773 the preneed licensee's business affairs for the protection of
774 the licensee's preneed customers. Such rules may include:

775 (c) Requirements for submission of ~~unaudited or audited~~
776 financial statements, as the licensing authority deems
777 advisable.

778 Section 29. Paragraph (b) of subsection (1) of section
779 497.601, Florida Statutes, is amended to read:

780 497.601 Direct disposition; duties.—

781 (1) Those individuals licensed as direct disposers may
782 perform only those functions set forth below:

783 (b) Secure pertinent information from a legally authorized
784 person ~~the decedent's next of kin~~ in order to complete the death
785 certificate and to file for the necessary permits for ~~direct~~
786 disposition.

787 Section 30. Subsection (1) of section 497.607, Florida
788 Statutes, is amended, present subsections (2), (3), and (4) of
789 that section are redesignated as subsections (3), (4), and (5),
790 respectively, and a new subsection (2) is added to that section,
791 to read:

792 497.607 Cremation; procedure required.—

793 (1) At the time of the arrangement for a cremation
794 performed by any person licensed pursuant to this chapter, the
795 legally authorized person contracting for cremation services
796 shall be required to designate her or his intentions with
797 respect to ~~the~~ disposition of the cremated remains of the

Amendment No. 1

798 deceased in a signed declaration of intent which shall be
799 provided by and retained by the funeral or direct disposal
800 establishment. A cremation may not be performed until a legally
801 authorized person gives written authorization, which may include
802 the declaration of intent to dispose of the cremated remains,
803 for such cremation. The cremation must be performed within 48
804 hours after a specified time which has been agreed to in writing
805 by the person authorizing the cremation.

806 (2) Cremated remains are not property, as defined in s.
807 731.201(32), and are not subject to partition for purposes of
808 distribution under s. 733.814. A division of cremated remains
809 requires the consent of the legally authorized person who
810 approved the cremation or, if the legally authorized person is
811 the decedent, the next legally authorized person pursuant to s.
812 497.005(43). A dispute regarding the division of cremated
813 remains shall be resolved by a court of competent jurisdiction.

814 Section 31. This act shall take effect July 1, 2016.

816 -----
817 **T I T L E A M E N D M E N T**

818 Remove everything before the enacting clause and insert:

819 A bill to be entitled

820 An act relating to funeral, cemetery, and consumer
821 services; amending s. 497.005, F.S.; defining terms;
822 amending s. 497.141, F.S.; revising required
823 information for licensure to include e-mail addresses;

Amendment No. 1

824 requiring the Department of Financial Services to
825 include e-mail notification as a means to administer
826 the licensing process; amending s. 497.146, F.S.;
827 revising required information for current licensees to
828 include an address for e-mail notification; providing
829 for rulemaking relating to electronic reporting;
830 amending s. 497.152, F.S.; conforming provisions to
831 changes made by the act; requiring, rather than
832 authorizing, the Board of Funeral, Cemetery, and
833 Consumer Services to provide certain criteria;
834 prohibiting the board from requiring a fine when
835 certain deficiencies are fully corrected within a
836 specified period; amending s. 497.161, F.S.; revising
837 requirements for rules of the licensing authority;
838 amending s. 497.266, F.S.; revising the prohibition
839 against withdrawal or transfer of assets within the
840 care and maintenance trust fund to include an
841 exception; amending s. 497.267, F.S.; revising
842 provisions relating to the disposition of withdrawals
843 from the care and maintenance trust fund; creating s.
844 497.2675, F.S.; requiring the board to adopt certain
845 rules; requiring a licensed cemetery company to
846 request a method for withdrawal from the cemetery
847 company's care and maintenance trust fund; providing
848 requirements for such methods; requiring that taxes on
849 capital gains be paid from the trust principal;

130589 - h473-strike.docx

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 473 (2016)

Amendment No. 1

850 amending s. 497.268, F.S.; conforming provisions to
851 changes made by the act; deleting a required deposit
852 in a cemetery company's care and maintenance trust
853 fund for mausoleums or columbaria; deleting the
854 requirement that taxes on capital gain be paid from
855 the trust corpus; amending s. 497.269, F.S.; requiring
856 a trustee to annually furnish financial reports that
857 record the fair market value of the care and
858 maintenance trust fund; amending ss. 497.273 and
859 497.274, F.S.; conforming provisions to changes made
860 by the act; amending ss. 497.283 and 497.286, F.S.;
861 conforming provisions to changes made by the act;
862 amending s. 497.371, F.S.; providing that an applicant
863 for the embalmer apprentice program may not be
864 licensed without a determination of character by the
865 licensing authority; amending ss. 497.372 and 497.381,
866 F.S.; conforming provisions to changes made by the
867 act; amending s. 497.452, F.S.; deleting an exception
868 that prohibits a person from receiving specified funds
869 without holding a valid preneed license; amending ss.
870 497.454 and 497.456, F.S.; conforming provisions to
871 changes made by the act; amending s. 497.458, F.S.;
872 revising requirements relating to the disposition of
873 proceeds on a preneed contract; authorizing the board
874 to specify criteria for the classification of items
875 sold in a preneed contract; requiring the trustee to

130589 - h473-strike.docx

Published On: 2/3/2016 6:21:14 PM

Amendment No. 1

876 furnish the department with an annual report regarding
877 preneed licensee trust accounts beginning on a
878 specified date; providing requirements for the annual
879 report; revising which investments a trustee of a
880 trust has the power to invest in; deleting provisions
881 relating to the preneed licensee; amending s. 497.459,
882 F.S.; prohibiting certain preneed contracts from being
883 canceled during the life or after the death of the
884 contract purchaser or beneficiary; requiring
885 unexpended moneys on an irrevocable contract to be
886 deposited into the Medical Care Trust Fund under
887 certain circumstances; amending s. 497.460, F.S.;
888 conforming provisions to changes made by the act;
889 repealing s. 497.461, F.S., relating to the
890 authorization for a preneed licensee to elect surety
891 bonding as an alternative to depositing funds into a
892 trust; amending s. 497.462, F.S.; deleting obsolete
893 references to surety bonds; amending s. 497.464, F.S.;
894 conforming provisions to changes made by the act;
895 amending s. 497.465, F.S.; requiring an inactive
896 preneed licensee to deposit a specified amount of
897 funds received on certain preneed contracts into the
898 trust upon a specified time; amending ss. 497.601 and
899 497.607, F.S.; specifying that cremated remains are
900 not property; requiring a division of cremated remains
901 to be consented to by certain persons; providing that

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 473 (2016)

Amendment No. 1

902 | a dispute shall be resolved by a court of competent
903 | jurisdiction; conforming provisions to changes made by
904 | the act; providing an effective date.