

1 A bill to be entitled

2 An act relating to funeral, cemetery, and consumer
3 services; amending s. 497.005, F.S.; providing
4 definitions; amending s. 497.141, F.S.; revising
5 required information for licensure to include e-mail
6 addresses; requiring the Department of Financial
7 Services to include e-mail notification as a means to
8 administer the licensing process for specified
9 purposes; amending s. 497.152, F.S.; conforming
10 provisions; requiring the board to provide certain
11 criteria; prohibiting the board from requiring a fine
12 when certain deficiencies are fully corrected within a
13 specified period; amending s. 497.161, F.S.; requiring
14 the Division of Funeral, Cemetery, and Consumer
15 Services to authorize specified rules for preneed
16 contracts; amending s. 497.266, F.S.; revising the
17 prohibition against withdrawal or transfer of assets
18 within the care and maintenance trust fund to include
19 an exception; amending s. 497.267, F.S.; revising
20 provisions relating to the disposition of withdrawals
21 from the care and maintenance trust fund; creating s.
22 497.2675, F.S.; requiring the board to establish rules
23 to regulate the reporting requirements of a licensed
24 cemetery; requiring a licensed cemetery to request a
25 method for withdrawal from the cemetery company's care
26 and maintenance trust fund; providing methods of

27 withdrawal from a cemetery company's care and
28 maintenance trust fund; specifying that capital gains
29 taxes may be paid from the trust principal; amending
30 s. 497.268, F.S.; conforming provisions; deleting the
31 requirement that capital gain taxes be paid from the
32 trust corpus; amending s. 497.269, F.S.; requiring a
33 trustee to annually furnish financial reports that
34 record the fair market value of the care and
35 maintenance trust fund; amending ss. 497.273 and
36 497.274, F.S.; conforming provisions; amending s.
37 497.277, F.S.; deleting a limitation on the fee for
38 transfer of burial rights from one purchaser to
39 another; authorizing the board to determine such fee;
40 amending s. 497.283, F.S.; conforming a cross-
41 reference; amending s. 497.286, F.S.; conforming
42 provisions; amending s. 497.371, F.S.; providing that
43 an applicant for the embalmer apprentice program may
44 not be licensed without a determination of character
45 by the licensing authority; amending ss. 497.372,
46 497.381, 497.454, and 497.456, F.S.; conforming
47 provisions; conforming cross-reference; amending s.
48 497.452, F.S.; deleting an exception that prohibits a
49 person from receiving specified funds without holding
50 a valid preneed license; amending s. 497.458, F.S.;
51 revising requirements relating to the disposition of
52 proceeds on a preneed contract; requiring the trustee

53 to furnish the department with an annual report
54 regarding preneed licensee trust accounts beginning on
55 a specified date; revising which investments a trustee
56 of a trust has the power to invest; deleting
57 provisions related to the preneed licensee; amending
58 s. 497.459, F.S.; providing that certain preneed
59 contracts may not be cancelled during the life or
60 after the death of the contract purchaser; amending s.
61 497.460, F.S.; conforming provisions; repealing s.
62 497.461, F.S., relating to the authorization for a
63 preneed licensee to elect surety bonding as an
64 alternative to depositing funds into a trust; amending
65 s. 497.462, F.S.; deleting provisions made obsolete by
66 the repeal of s. 497.461, F.S.; amending s. 497.464,
67 F.S.; conforming a cross-reference; amending s.
68 497.465, F.S.; requiring an inactive preneed licensee
69 to deposit a specified amount of funds into the trust
70 received on preneed contracts at a specified time;
71 creating s. 497.469, F.S.; providing requirements for
72 preneed contracts entered into on or after a specified
73 date; amending ss. 497.601 and 497.607, F.S.;;
74 conforming provisions; providing an effective date.

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. Section 497.005, Florida Statutes, is amended

79 to read:

80 497.005 Definitions.—As used in this chapter, the term:

81 (1) "Alternative container" means an unfinished wood box
 82 or other nonmetal receptacle or enclosure, without ornamentation
 83 or a fixed interior lining, that is designed for the encasement
 84 of human remains and that is made of fiberboard, pressed wood,
 85 composition materials (with or without an outside covering), or
 86 like materials.

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

91 (3) "Average fair market value" means, in relation to a
 92 trust, the average of the fair market value of each asset held
 93 by the trust at the beginning of the current year and in each of
 94 the 2 previous years, or for the entire term of the trust if
 95 there are fewer than 2 previous years, and adjusted as follows:

96 (a) If assets are added to the trust during the years used
 97 to determine the average, the amount of each addition is added
 98 to all years in which such addition is not included.

99 (b) If assets are distributed from the trust during the
 100 years used to determine the average, other than in satisfaction
 101 of the unitrust amount, as defined in s. 738.1041, the amount of
 102 each distribution is subtracted from all other years in which
 103 such distribution is not included.

104 (4)~~(3)~~ "Bank of belowground crypts" means any construction

105 unit of belowground crypts that is acceptable to the department
106 and that a cemetery uses to initiate its belowground crypt
107 program or to add to existing belowground crypt structures.

108 (5)~~(4)~~ "Belowground crypts" consist of interment space in
109 preplaced chambers, either side by side or multiple depth,
110 covered by earth and sod and known also as "lawn crypts,"
111 "westminsters," or "turf-top crypts."

112 (6) "Beneficiary" means an individual expressly identified
113 in a preneed contract as the person for whom funeral merchandise
114 or services are intended.

115 (7)~~(5)~~ "Board" means the Board of Funeral, Cemetery, and
116 Consumer Services.

117 (8)~~(6)~~ "Burial merchandise," "funeral merchandise," or
118 "merchandise" means any personal property offered or sold by any
119 person for use in connection with the final disposition,
120 memorialization, interment, entombment, or inurnment of human
121 remains or cremated remains, including, but not limited to,
122 caskets, outer burial containers, alternative containers,
123 cremation containers, cremation interment containers, urns,
124 monuments, private mausoleums, flowers, benches, vases,
125 acknowledgment cards, register books, memory folders, prayer
126 cards, and clothing.

127 (9)~~(7)~~ "Burial right" means the right to use a grave
128 space, mausoleum, columbarium, ossuary, or scattering garden for
129 the interment, entombment, inurnment, or other disposition of
130 human remains or cremated remains.

131 ~~(10)-(8)~~ "Burial service" or "service" means any service
132 offered or provided in connection with the final disposition,
133 memorialization, interment, entombment, or inurnment of human
134 remains or cremated remains.

135 (11) "Capital gain" or "capital loss" means a change in
136 the value of a capital asset, such as investment or real estate,
137 that gives it a different worth than the purchase price. The
138 gain or loss is not realized until the asset is sold.

139 ~~(12)-(9)~~ "Care and maintenance" means the perpetual process
140 of keeping a cemetery and its lots, graves, grounds,
141 landscaping, roads, paths, parking lots, fences, mausoleums,
142 columbaria, vaults, crypts, utilities, and other improvements,
143 structures, and embellishments in a well-cared-for and dignified
144 condition, so that the cemetery does not become a nuisance or
145 place of reproach and desolation in the community. As specified
146 in the rules of the licensing authority, "care and maintenance"
147 may include, but is not limited to, any or all of the following
148 activities: mowing the grass at reasonable intervals; raking and
149 cleaning the grave spaces and adjacent areas; pruning of shrubs
150 and trees; suppression of weeds and exotic flora; and
151 maintenance, upkeep, and repair of drains, water lines, roads,
152 buildings, and other improvements. "Care and maintenance" may
153 include, but is not limited to, reasonable overhead expenses
154 necessary for such purposes, including maintenance of machinery,
155 tools, and equipment used for such purposes. "Care and
156 maintenance" may also include repair or restoration of

157 improvements necessary or desirable as a result of wear,
158 deterioration, accident, damage, or destruction. "Care and
159 maintenance" does not include expenses for the construction and
160 development of new grave spaces or interment structures to be
161 sold to the public.

162 (13)~~(10)~~ "Casket" means a rigid container that is designed
163 for the encasement of human remains and that is usually
164 constructed of wood or metal, ornamented, and lined with fabric.

165 (14)~~(11)~~ "Cemetery" means a place dedicated to and used or
166 intended to be used for the permanent interment of human remains
167 or cremated remains. A cemetery may contain land or earth
168 interment; mausoleum, vault, or crypt interment; a columbarium,
169 ossuary, scattering garden, or other structure or place used or
170 intended to be used for the interment or disposition of cremated
171 remains; or any combination of one or more of such structures or
172 places.

173 (15)~~(12)~~ "Cemetery company" means any legal entity that
174 owns or controls cemetery lands or property.

175 (16)~~(13)~~ "Centralized embalming facility" means a facility
176 in which embalming takes place that operates independently of a
177 funeral establishment licensee and that offers embalming
178 services to funeral directors for a fee.

179 (17)~~(14)~~ "Cinerator" means a facility where dead human
180 bodies are subjected to cremation.

181 (18)~~(15)~~ "Closed container" means any container in which
182 cremated remains can be placed and closed in a manner so as to

183 prevent leakage or spillage of the remains.

184 (19)~~(16)~~ "Columbarium" means a structure or building that
185 is substantially exposed above the ground and that is intended
186 to be used for the inurnment of cremated remains.

187 (20)~~(17)~~ "Common business enterprise" means a group of two
188 or more business entities that share common ownership in excess
189 of 50 percent.

190 (21)~~(18)~~ "Control" means the possession, directly or
191 indirectly, through the ownership of voting shares, by contract,
192 arrangement, understanding, relationship, or otherwise, of the
193 power to direct or cause the direction of the management and
194 policies of a person or entity. However, a person or entity
195 shall not be deemed to have control if the person or entity
196 holds voting shares, in good faith and not for the purpose of
197 circumventing this definition, as an agent, bank, broker,
198 nominee, custodian, or trustee for one or more beneficial owners
199 who do not individually or as a group have control.

200 (22)~~(19)~~ "Cremated remains" means all the remains of the
201 human body recovered after the completion of the cremation
202 process, including processing or pulverization that leaves only
203 bone fragments reduced to unidentifiable dimensions and may
204 include the residue of any foreign matter, including casket
205 material, bridgework, or eyeglasses that were cremated with the
206 human remains.

207 (23)~~(20)~~ "Cremation" means any mechanical or thermal
208 process whereby a dead human body is reduced to ashes and bone

209 fragments. Cremation also includes any other mechanical or
210 thermal process whereby human remains are pulverized, burned,
211 cremated, or otherwise further reduced in size or quantity.

212 (24)~~(21)~~ "Cremation chamber" means the enclosed space
213 within which the cremation process takes place. Cremation
214 chambers covered by these procedures shall be used exclusively
215 for the cremation of human remains.

216 (25)~~(22)~~ "Cremation container" means the casket or
217 alternative container in which the human remains are transported
218 to and placed in the cremation chamber for a cremation. A
219 cremation container should meet substantially all of the
220 following standards:

221 (a) Be composed of readily combustible or consumable
222 materials suitable for cremation.

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

225 (c) Be resistant to leakage or spillage.

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

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

229 (26)~~(23)~~ "Cremation interment container" means a rigid
230 outer container that, subject to a cemetery's rules and
231 regulations, is composed of concrete, steel, fiberglass, or some
232 similar material in which an urn is placed prior to being
233 interred in the ground and that is designed to support the earth
234 above the urn.

235 (27)~~(24)~~ "Department" means the Department of Financial
 236 Services.

237 (28)~~(25)~~ "Direct disposal establishment" means a facility
 238 licensed under this chapter where a direct disposer practices
 239 direct disposition.

240 (29)~~(26)~~ "Direct disposer" means any person licensed under
 241 this chapter to practice direct disposition in this state.

242 (30)~~(27)~~ "Direct supervision" means supervision by a
 243 licensed:

244 (a) Funeral director who provides initial direction and
 245 periodic inspection of the arrangements and who is physically
 246 present or on the premises of the funeral establishment at all
 247 times when the tasks, functions, and duties relating to funeral
 248 directing are performed; or

249 (b) Embalmer who provides initial direction and
 250 instruction regarding the preservation of a dead human body in
 251 its entirety or in part and who is physically present or on the
 252 premises of the funeral establishment or embalming facility at
 253 all times when the tasks, functions, and duties relating to
 254 embalming are performed.

255 (31)~~(28)~~ "Director" means the director of the Division of
 256 Funeral, Cemetery, and Consumer Services.

257 (32)~~(29)~~ "Disinterment" means removal of a dead human body
 258 from earth interment or aboveground interment.

259 (33)~~(30)~~ "Division" means the Division of Funeral,
 260 Cemetery, and Consumer Services within the Department of

261 Financial Services.

262 (34)~~(31)~~ "Embalmer" means any person licensed under this
 263 chapter to practice embalming in this state.

264 (35) "Fair market value" means the fair market value of
 265 assets held by the trust in cash as of a specific date, assuming
 266 all assets of the trust were sold on that specific date.

267 (36)~~(32)~~ "Final disposition" means the final disposal of a
 268 dead human body by earth interment, aboveground interment,
 269 cremation, burial at sea, anatomical donation, or delivery to a
 270 medical institution for lawful dissection if the medical
 271 institution or entity receiving the anatomical donation assumes
 272 responsibility for disposition after use pursuant to s. 406.60.
 273 The term does not include the disposal or distribution of
 274 cremated remains and residue of cremated remains.

275 (37)~~(33)~~ "Funeral" or "funeral service" means the
 276 observances, services, or ceremonies held to commemorate the
 277 life of a specific deceased human being and at which the human
 278 remains are present.

279 (38)~~(34)~~ "Funeral director" means any person licensed
 280 under this chapter to practice funeral directing in this state.

281 (39)~~(35)~~ "Funeral establishment" means a facility licensed
 282 under this chapter where a funeral director or embalmer
 283 practices funeral directing or embalming.

284 (40)~~(36)~~ "General supervision" means supervision by a
 285 licensed:

286 (a) Funeral director who is reasonably available and in a

287 position to provide direction and guidance by being physically
 288 present, being on the premises of the funeral establishment, or
 289 being in proximity to the funeral establishment and available
 290 telephonically or by electronic communication at all times when
 291 the tasks, functions, and duties relating to funeral directing
 292 are performed; or

293 (b) Embalmer who is reasonably available and in a position
 294 to provide direction and guidance by being physically present,
 295 being on the premises of the funeral establishment or embalming
 296 facility, or being in proximity to the funeral establishment or
 297 embalming facility and available telephonically or by electronic
 298 communication at all times when the tasks, functions, and duties
 299 relating to embalming are performed.

300 (41)~~(37)~~ "Grave space" means a space of ground in a
 301 cemetery intended to be used for the interment in the ground of
 302 human remains.

303 (42)~~(38)~~ "Human remains" or "remains," or "dead human
 304 body" or "dead human bodies," means the body of a deceased human
 305 person for which a death certificate or fetal death certificate
 306 is required under chapter 382 and includes the body in any stage
 307 of decomposition.

308 (43) "Income" means earnings on trust assets, including
 309 interest, dividends, and other income earned on the principal.

310 (44)~~(39)~~ "Legally authorized person" means, in the
 311 priority listed:

312 (a) The decedent, when written inter vivos authorizations

313 and directions are provided by the decedent;

314 (b) The person designated by the decedent as authorized to
 315 direct disposition pursuant to Pub. L. No. 109-163, s. 564, as
 316 listed on the decedent's United States Department of Defense
 317 Record of Emergency Data, DD Form 93, or its successor form, if
 318 the decedent died while in military service as described in 10
 319 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States
 320 Armed Forces, United States Reserve Forces, or National Guard;

321 (c) The surviving spouse, unless the spouse has been
 322 arrested for committing against the deceased an act of domestic
 323 violence as defined in s. 741.28 that resulted in or contributed
 324 to the death of the deceased;

325 (d) A son or daughter who is 18 years of age or older;

326 (e) A parent;

327 (f) A brother or sister who is 18 years of age or older;

328 (g) A grandchild who is 18 years of age or older;

329 (h) A grandparent; or

330 (i) Any person in the next degree of kinship.

331

332 In addition, the term may include, if no family member exists or
 333 is available, the guardian of the dead person at the time of
 334 death; the personal representative of the deceased; the attorney
 335 in fact of the dead person at the time of death; the health
 336 surrogate of the dead person at the time of death; a public
 337 health officer; the medical examiner, county commission, or
 338 administrator acting under part II of chapter 406 or other

339 public administrator; a representative of a nursing home or
 340 other health care institution in charge of final disposition; or
 341 a friend or other person not listed in this subsection who is
 342 willing to assume the responsibility as the legally authorized
 343 person. Where there is a person in any priority class listed in
 344 this subsection, the funeral establishment shall rely upon the
 345 authorization of any one legally authorized person of that class
 346 if that person represents that she or he is not aware of any
 347 objection to the cremation of the deceased's human remains by
 348 others in the same class of the person making the representation
 349 or of any person in a higher priority class.

350 (45)~~(40)~~ "License" includes all authorizations required or
 351 issued under this chapter, except where expressly indicated
 352 otherwise, and shall be understood to include authorizations
 353 previously referred to as registrations or certificates of
 354 authority in chapters 470 and 497 as those chapters appeared in
 355 the 2004 edition of the Florida Statutes.

356 (46)~~(41)~~ "Licensee" means the person or entity holding any
 357 license or other authorization issued under this chapter, except
 358 where expressly indicated otherwise.

359 (47)~~(42)~~ "Mausoleum" means a structure or building that is
 360 substantially exposed above the ground and that is intended to
 361 be used for the entombment of human remains.

362 (48)~~(43)~~ "Mausoleum section" means any construction unit
 363 of a mausoleum that is acceptable to the department and that a
 364 cemetery uses to initiate its mausoleum program or to add to its

365 existing mausoleum structures.

366 (49)~~(44)~~ "Monument" means any product used for identifying
367 a grave site and cemetery memorials of all types, including
368 monuments, markers, and vases.

369 (50)~~(45)~~ "Monument establishment" means a facility that
370 operates independently of a cemetery or funeral establishment
371 and that offers to sell monuments or monument services to the
372 public for placement in a cemetery.

373 (51)~~(46)~~ "Net assets" means the amount by which the total
374 assets of a licensee, excluding goodwill, franchises, customer
375 lists, patents, trademarks, and receivables from or advances to
376 officers, directors, employees, salespersons, and affiliated
377 companies, exceed total liabilities of the licensee. For
378 purposes of this definition, the term "total liabilities" does
379 not include the capital stock, paid-in capital, or retained
380 earnings of the licensee.

381 (52) "Net income" means, in relation to a trust, ordinary
382 income less any income distributions for items such as trust
383 expenses.

384 (53)~~(47)~~ "Net worth" means total assets minus total
385 liabilities pursuant to generally accepted accounting
386 principles.

387 (54)~~(48)~~ "Niche" means a compartment or cubicle for the
388 memorialization or permanent placement of a container or urn
389 containing cremated remains.

390 (55) "Ordinary income" means, in relation to a trust, any

391 earnings on trust assets, including interest and dividends
392 received on property derived from the use of the trust
393 principal, but does not include capital gains or losses.

394 (56)-(49) "Ossuary" means a receptacle used for the
395 communal placement of cremated remains without benefit of an urn
396 or any other container in which cremated remains may be
397 commingled with other cremated remains and are nonrecoverable.
398 It may or may not include memorialization.

399 (57)-(50) "Outer burial container" means an enclosure into
400 which a casket is placed and includes, but is not limited to,
401 vaults made of concrete, steel, fiberglass, or copper; sectional
402 concrete enclosures; crypts; and wooden enclosures.

403 (58)-(51) "Person," when used without qualification such as
404 "natural" or "individual," includes both natural persons and
405 legal entities.

406 (59)-(52) "Personal residence" means any residential
407 building in which one temporarily or permanently maintains her
408 or his abode, including, but not limited to, an apartment or a
409 hotel, motel, nursing home, convalescent home, home for the
410 aged, or a public or private institution.

411 (60)-(53) "Practice of direct disposition" means the
412 cremation of human remains without preparation of the human
413 remains by embalming and without any attendant services or rites
414 such as funeral or graveside services or the making of
415 arrangements for such final disposition.

416 (61)-(54) "Practice of embalming" means disinfecting or

417 preserving or attempting to disinfect or preserve dead human
 418 bodies by replacing certain body fluids with preserving and
 419 disinfecting chemicals.

420 (62)~~(55)~~ "Practice of funeral directing" means the
 421 performance by a licensed funeral director of any of those
 422 functions authorized by s. 497.372.

423 (63)~~(56)~~ "Preneed contract" means any arrangement or
 424 method, of which the provider of funeral merchandise or services
 425 has actual knowledge, whereby any person agrees to furnish
 426 funeral merchandise or service in the future.

427 (64)~~(57)~~ "Preneed sales agent" means any person who is
 428 licensed under this chapter to sell preneed burial or funeral
 429 service and merchandise contracts or direct disposition
 430 contracts in this state.

431 (65)~~(58)~~ "Principal" means and includes the sole
 432 proprietor of a sole proprietorship; all partners of a
 433 partnership; all members of a limited liability company;
 434 regarding a corporation, all directors and officers, and all
 435 stockholders controlling more than 10 percent of the voting
 436 stock; and all other persons who can exercise control over the
 437 person or entity.

438 (66)~~(59)~~ "Processing" means the reduction of identifiable
 439 bone fragments after the completion of the cremation process to
 440 unidentifiable bone fragments by manual means.

441 (67)~~(60)~~ "Profession" and "occupation" are used
 442 interchangeably in this chapter. The use of the word

443 "profession" in this chapter with respect to any activities
 444 regulated under this chapter shall not be deemed to mean that
 445 such activities are not occupations for other purposes in state
 446 or federal law.

447 ~~(68)-(61)~~ "Pulverization" means the reduction of
 448 identifiable bone fragments after the completion of the
 449 cremation and processing to granulated particles by manual or
 450 mechanical means.

451 (69) "Purchaser" means an individual who has executed an
 452 at-need or preneed contract with a licensee. In the absence of
 453 the purchaser, the legally authorized person may be afforded the
 454 same rights as the purchaser.

455 ~~(70)-(62)~~ "Refrigeration facility" means a facility that is
 456 operated independently of a funeral establishment, crematory, or
 457 direct disposal establishment, that maintains space and
 458 equipment for the storage and refrigeration of dead human
 459 bodies, and that offers its service to funeral directors,
 460 funeral establishments, direct disposers, direct disposal
 461 establishments, or crematories for a fee.

462 ~~(71)-(63)~~ "Religious institution" means an organization
 463 formed primarily for religious purposes that has qualified for
 464 exemption from federal income tax as an exempt organization
 465 under the provisions of s. 501(c)(3) of the Internal Revenue
 466 Code of 1986, as amended.

467 ~~(72)-(64)~~ "Removal service" means any service that operates
 468 independently of a funeral establishment or a direct disposal

469 establishment, that handles the initial removal of dead human
 470 bodies, and that offers its service to funeral establishments
 471 and direct disposal establishments for a fee.

472 (73)~~(65)~~ "Rules" refers to rules adopted under this
 473 chapter unless expressly indicated to the contrary.

474 (74)~~(66)~~ "Scattering garden" means a location set aside,
 475 within a cemetery, that is used for the spreading or
 476 broadcasting of cremated remains that have been removed from
 477 their container and can be mixed with or placed on top of the
 478 soil or ground cover or buried in an underground receptacle on a
 479 commingled basis and that are nonrecoverable. It may or may not
 480 include memorialization.

481 (75)~~(67)~~ "Servicing agent" means any person acting as an
 482 independent contractor whose fiduciary responsibility is to
 483 assist both the trustee and licensee in administrating their
 484 responsibilities pursuant to this chapter.

485 (76)~~(68)~~ "Solicitation" means any communication that
 486 directly or implicitly requests an immediate oral response from
 487 the recipient.

488 (77)~~(69)~~ "Statutory accounting" means generally accepted
 489 accounting principles, except as modified by this chapter.

490 (78)~~(70)~~ "Temporary container" means a receptacle for
 491 cremated remains usually made of cardboard, plastic, or similar
 492 material designated to hold the cremated remains until an urn or
 493 other permanent container is acquired.

494 (79) "Total return withdrawal percentage" means a

495 percentage, not to exceed 5 percent, of the fair market value of
 496 a trust.

497 ~~(80)(71)~~ "Urn" means a receptacle designed to permanently
 498 encase cremated remains.

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

501 497.141 Licensing; general application procedures.—

502 (2) Any person desiring to be licensed shall apply to the
 503 licensing authority in writing using such forms and procedures
 504 as may be prescribed by rule. The application for licensure
 505 shall include the applicant's social security number if the
 506 applicant is a natural person; otherwise, the applicant's
 507 federal tax identification number shall be included.

508 Notwithstanding any other provision of law, the department is
 509 the sole authority for determining the forms and form contents
 510 to be submitted for initial licensure and licensure renewal
 511 application. Such forms and the information and materials
 512 required by such forms may include, as appropriate,
 513 demographics, education, work history, personal background,
 514 criminal history, finances, business information, signature
 515 notarization, performance periods, reciprocity, local government
 516 approvals, supporting documentation, periodic reporting
 517 requirements, fingerprint requirements, continuing education
 518 requirements, business plans, character references, e-mail
 519 addresses, and ongoing education monitoring. Such forms and the
 520 information and materials required by such forms may also

521 include, to the extent such information or materials are not
522 already in the possession of the department or the board,
523 records or information as to complaints, inspections,
524 investigations, discipline, and bonding. The application shall
525 be supplemented as needed to reflect any material change in any
526 circumstance or condition stated in the application that takes
527 place between the initial filing of the application and the
528 final grant or denial of the license and that might affect the
529 decision of the department or the board. After an application by
530 a natural person for licensure under this chapter is approved,
531 the licensing authority may require the successful applicant to
532 provide a photograph of himself or herself for permanent
533 lamination onto the license card to be issued to the applicant,
534 pursuant to rules and fees adopted by the licensing authority.

535 (11) The department shall implement a system for
536 administration of the overall licensing process, including e-
537 mail notification for the processing and tracking of
538 applications for licensure, the issuance of licenses approved by
539 the board, the tracking of licenses issued, the administration
540 of the license renewal process, and the collection and
541 processing of fees related to those activities. The system may
542 use staff and facilities of the department or the department may
543 enter into a contract for all or any part of such system, upon
544 such terms and conditions as the department deems advisable, and
545 such contract may be with another government agency or a private
546 business.

547 Section 3. Paragraphs (b) and (e) of subsection (8),
 548 paragraph (d) of subsection (12), paragraphs (b) and (c) of
 549 subsection (14), and paragraph (b) of subsection (15) of section
 550 497.152, Florida Statutes, are amended to read:

551 497.152 Disciplinary grounds.—This section sets forth
 552 conduct that is prohibited and that shall constitute grounds for
 553 denial of any application, imposition of discipline, or other
 554 enforcement action against the licensee or other person
 555 committing such conduct. For purposes of this section, the
 556 requirements of this chapter include the requirements of rules
 557 adopted under authority of this chapter. No subsection heading
 558 in this section shall be interpreted as limiting the
 559 applicability of any paragraph within the subsection.

560 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF
 561 HUMAN REMAINS.—

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

567 (e) Failing to obtain written authorization from a legally
 568 authorized person before ~~the family or next of kin of the~~
 569 ~~deceased prior to~~ entombment, interment, disinterment,
 570 disentombment, or disinurnment of the remains of any human
 571 being.

572 (12) DISCLOSURE REQUIREMENTS.—

573 (d) Failure by a funeral director to make full disclosure
 574 in the case of a funeral or direct disposition with regard to
 575 the use of funeral merchandise that is not to be disposed of
 576 with the body or failure to obtain written permission from a
 577 legally authorized person ~~the purchaser~~ regarding disposition of
 578 such merchandise.

579 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
 580 CUSTOMERS.—

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

583 1. Failing to acknowledge and act promptly upon
 584 communications from a licensee's customers and their
 585 representatives with respect to claims or complaints relating to
 586 the licensee's activities regulated by this chapter.

587 2. Denying claims or rejecting complaints received by a
 588 licensee from a customer or customer's representative, relating
 589 to the licensee's activities regulated by this chapter, without
 590 first conducting reasonable investigation based upon available
 591 information.

592 3. Attempting to settle a claim or complaint on the basis
 593 of a material document that was altered without notice to, or
 594 without the knowledge or consent of, the contract purchaser or a
 595 legally authorized person ~~her or his representative or legal~~
 596 ~~guardian~~.

597 4. Failing within a reasonable time to affirm or deny
 598 coverage of specified services or merchandise under a contract

599 entered into by a licensee upon written request of the contract
 600 purchaser or the decedent's legally authorized person ~~her or his~~
 601 ~~representative or legal guardian.~~

602 5. Failing to promptly provide, in relation to a contract
 603 for funeral or burial merchandise or services entered into by
 604 the licensee or under the licensee's license, a reasonable
 605 explanation to the contract purchaser or the decedent's legally
 606 authorized person ~~her or his representative or legal guardian~~ of
 607 the licensee's basis for denying or rejecting all or any part of
 608 a claim or complaint submitted.

609 (c) Making a material misrepresentation to a contract
 610 purchaser or the decedent's legally authorized person ~~her or his~~
 611 ~~representative or legal guardian~~ for the purpose and with the
 612 intent of effecting settlement of a claim or complaint or loss
 613 under a prepaid contract on less favorable terms than those
 614 provided in, and contemplated by, the prepaid contract.

615
 616 For purposes of this subsection, the response of a customer
 617 recorded by the customer on a customer satisfaction
 618 questionnaire or survey form sent to the customer by the
 619 licensee, and returned by the customer to the licensee, shall
 620 not be deemed to be a complaint.

621 (15) MISCELLANEOUS FINANCIAL MATTERS.—

622 (b) Failing to timely remit as required by this chapter
 623 the required amounts to any trust fund required by this chapter.
 624 The board shall ~~may~~ by rule provide criteria for identifying

625 minor, nonwillful trust remittance deficiencies; and remittance
 626 deficiencies falling within such criteria, if fully corrected
 627 within 30 days after notice to the licensee by the department,
 628 shall not constitute grounds for disciplinary action or a fine.

629 Section 4. Paragraph (g) is added to subsection (1) of
 630 section 497.161, Florida Statutes, to read:

631 497.161 Other rulemaking provisions.—

632 (1) In addition to such other rules as are authorized or
 633 required under this chapter, the following additional rules, not
 634 inconsistent with this chapter, shall be authorized by the
 635 licensing authority.

636 (g) Rules, not inconsistent with part IV of this chapter
 637 and the Florida Insurance Code, establishing conditions of use
 638 for insurance as a funding mechanism for preneed contracts.

639 Section 5. Subsections (3) and (4) of section 497.266,
 640 Florida Statutes, are amended to read:

641 497.266 Care and maintenance trust fund; remedy of
 642 department for noncompliance.—

643 (3) A ~~No~~ person may not withdraw or transfer any portion
 644 of assets within ~~the corpus of~~ the care and maintenance trust
 645 fund, except as authorized by s. 497.268, without first
 646 obtaining written consent from the licensing authority.

647 (4) The trustee of the trust established pursuant to this
 648 section may only invest in investments and loan trust funds, as
 649 prescribed in s. 497.458. The trustee shall take title to the
 650 property conveyed to the trust for the purposes of investing,

651 protecting, and conserving it for the cemetery company;
 652 collecting income; and distributing withdrawals from trust ~~the~~
 653 ~~principal and income~~ as prescribed in this chapter. The cemetery
 654 company is prohibited from sharing in the discharge of the
 655 trustee's responsibilities under this subsection, except that
 656 the cemetery company may request the trustee to invest in tax-
 657 free investments.

658 Section 6. Section 497.267, Florida Statutes, is amended
 659 to read:

660 497.267 Disposition of withdrawals from the ~~income of~~ care
 661 and maintenance trust fund; notice to purchasers and
 662 depositors. Withdrawals from the ~~net income of the~~ care and
 663 maintenance trust fund shall be used solely for the care and
 664 maintenance of the cemetery, including maintenance of monuments,
 665 which maintenance shall not be deemed to include the cleaning,
 666 refinishing, repairing, or replacement of monuments; for
 667 reasonable costs of administering the care and maintenance; and
 668 for reasonable costs of administering the trust fund. At the
 669 time of making a sale or receiving an initial deposit, the
 670 cemetery company shall deliver to the person to whom the sale is
 671 made, or who makes a deposit, a written instrument which shall
 672 specifically state the purposes for which withdrawals from the
 673 ~~income of the~~ trust fund shall be used.

674 Section 7. Section 497.2675, Florida Statutes, is created
 675 to read:

676 497.2675 Withdrawal methods from the care and maintenance

677 trust fund.—

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

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

684 (b) Rules to address a cemetery licensed under this
685 chapter whose pro rata share of the fair market value of the
686 trust has not grown annually, including limiting withdrawals
687 from the care and maintenance trust fund, and any exceptions
688 approved by the board.

689 (2) Each cemetery company licensed under this chapter
690 shall request one of two withdrawal methods, as specified in
691 paragraphs (a) and (b), for withdrawals from the cemetery
692 company's care and maintenance trust fund. The board shall
693 approve or deny the request. If the board denies the request,
694 the board shall specify the reason for denial and shall require
695 the cemetery company to use the withdrawal method not requested
696 in the initial request. The board shall adopt rules, with the
697 approval of the department, to administer this subsection.

698 (a) Net ordinary income withdrawal method.—Net ordinary
699 income may be withdrawn from the trust, as earned, on a monthly
700 basis.

701 (b) Total return withdrawal method.—The licensee shall
702 multiply the average fair market value of its pro rata share of

703 the trust by the board-approved total return withdrawal
704 percentage and may withdraw one-fourth of that amount at least
705 quarterly beginning the first quarter of the new trust year. The
706 board shall approve the initial total return withdrawal
707 percentage and the licensee may not increase the total return
708 withdrawal percentage for that quarter without the approval of
709 the board.

710 (3) Without regard to the withdrawal method selected,
711 capital gains taxes, if any, shall be paid from the trust
712 principal.

713 Section 8. Paragraph (a) of subsection (1) and subsection
714 (2) of section 497.268, Florida Statutes, are amended to read:

715 497.268 Care and maintenance trust fund, percentage of
716 payments for burial rights to be deposited.-

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

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

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

729 installments, the percentage of the installment payment placed
 730 in trust must be identical to the percentage which the payment
 731 received bears to the total cost for the burial rights. Trust
 732 income may be used to pay for all usual and customary services
 733 for the operation of a trust account, including, but not limited
 734 to: reasonable trustee and custodian fees, investment adviser
 735 fees, allocation fees, and taxes. If the net income is not
 736 sufficient to pay the fees and other expenses, the fees and
 737 other expenses shall be paid by the cemetery company. ~~Capital~~
 738 ~~gains taxes shall be paid from the corpus.~~

739 Section 9. Section 497.269, Florida Statutes, is amended
 740 to read:

741 497.269 Care and maintenance trust fund; financial
 742 reports.—On or before April 1 of each year, the trustee shall
 743 furnish adequate financial reports, recording the fair market
 744 value, with respect to the care and maintenance trust fund
 745 utilizing forms and procedures specified by rule. However, the
 746 department may require the trustee to make such additional
 747 financial reports as it deems necessary. In order to ensure that
 748 the proper deposits to the trust fund have been made, the
 749 department shall examine the status of the trust fund of the
 750 company on a semiannual basis for the first 2 years of the trust
 751 fund's existence.

752 Section 10. Paragraph (b) of subsection (4) of section
 753 497.273, Florida Statutes, is amended to read:

754 497.273 Cemetery companies; authorized functions.—

755 (4) This chapter does not prohibit the interment or
 756 entombment of the inurned cremated animal remains of the
 757 decedent's pet or pets with the decedent's human remains or
 758 cremated human remains if:

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

762 Section 11. Subsection (1) of section 497.274, Florida
 763 Statutes, is amended to read:

764 497.274 Standards for grave spaces.—

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

773 Section 12. Subsection (2) of section 497.277, Florida
 774 Statutes, is amended to read:

775 497.277 Other charges.—Other than the fees for the sale of
 776 burial rights, burial merchandise, and burial services, no other
 777 fee may be directly or indirectly charged, contracted for, or
 778 received by a cemetery company as a condition for a customer to
 779 use any burial right, burial merchandise, or burial service,
 780 except for:

HB 473

2016

781 (2) Charges paid for transferring burial rights from one
782 purchaser to another, as determined by rule of the board,
783 ~~however, no such fee may exceed \$50.~~

784 Section 13. Paragraph (c) of subsection (2) of section
785 497.283, Florida Statutes, is amended to read:

786 497.283 Prohibition on sale of personal property or
787 services.—

788 (2)

789 (c) In lieu of delivery as required by paragraph (b), for
790 sales to cemetery companies and funeral establishments, and only
791 for such sales, the manufacturer of a permanent outer burial
792 receptacle which meets standards adopted by rule may elect, at
793 its discretion, to comply with the delivery requirements of this
794 section by annually submitting for approval pursuant to
795 procedures and forms as specified by rule, in writing, evidence
796 of the manufacturer's financial responsibility with the
797 licensing authority for its review and approval. ~~The standards
798 and procedures to establish evidence of financial responsibility
799 shall be those in s. 497.461, with the manufacturer of permanent
800 outer burial receptacles which meet national industry standards
801 assuming the same rights and responsibilities as those of a
802 preneed licensee under s. 497.461.~~

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

805 497.286 Owners to provide addresses; presumption of
806 abandonment; abandonment procedures; sale of abandoned unused

807 burial rights.—

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

812 (a) Describe the burial rights certified to have been
 813 abandoned;

814 (b) Set forth the name of the owner or owners of the
 815 burial rights, or if the owner is known to the cemetery to be
 816 deceased, then the names, if known to the cemetery, of such
 817 claimants as are heirs at law, next of kin, or specific devisees
 818 under the will of the owner or the decedent's legally authorized
 819 person;

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

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

827 Section 15. Section 497.371, Florida Statutes, is amended
 828 to read:

829 497.371 Embalmers; establishment of embalmer apprentice
 830 program.—The licensing authority adopts rules establishing an
 831 embalmer apprentice program. An embalmer apprentice may perform
 832 only those tasks, functions, and duties relating to embalming

833 which are performed under the direct supervision of an embalmer
 834 who has an active, valid license under s. 497.368 or s. 497.369.
 835 An embalmer apprentice is ~~shall be~~ eligible to serve in an
 836 apprentice capacity for a period not to exceed 3 years as may be
 837 determined by licensing authority rule or for a period not to
 838 exceed 5 years if the apprentice is enrolled in and attending a
 839 course in mortuary science or funeral service education at any
 840 mortuary college or funeral service education college or school.
 841 An embalmer apprentice shall be issued a license ~~licensed~~ upon
 842 payment of a licensure fee as determined by licensing authority
 843 rule but not to exceed \$200. An applicant for the embalmer
 844 apprentice program may not be issued a license unless the
 845 licensing authority determines that the applicant is of good
 846 character and has no demonstrated history of lack of
 847 trustworthiness or integrity in business or professional
 848 matters.

849 Section 16. Paragraph (b) of subsection (1) of section
 850 497.372, Florida Statutes, is amended to read:

851 497.372 Funeral directing; conduct constituting practice
 852 of funeral directing.—

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

856 (b) Planning or arranging, on an at-need basis, the
 857 details of funeral services, embalming, cremation, or other
 858 services relating to the final disposition of human remains,

859 including the removal of such remains from the state, ~~with the~~
 860 ~~family or friends of the decedent or any other person~~
 861 ~~responsible for such services~~; setting the time of the services;
 862 establishing the type of services to be rendered; acquiring the
 863 services of the clergy; and obtaining vital information for the
 864 filing of death certificates and obtaining of burial transit
 865 permits.

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

868 497.381 Solicitation of goods or services.—

869 (4) At-need solicitation of funeral merchandise or
 870 services is prohibited. No funeral director or direct disposer
 871 or her or his agent or representative may contact the decedent's
 872 legally authorized person or family ~~or next of kin of a deceased~~
 873 ~~person~~ to sell services or merchandise unless the funeral
 874 director or direct disposer or her or his agent or
 875 representative has been initially called or contacted by the
 876 decedent's legally authorized person or family ~~or next of kin of~~
 877 ~~such person~~ and requested to provide her or his services or
 878 merchandise.

879 Section 18. Paragraph (c) of subsection (2) of section
 880 497.452, Florida Statutes, is amended to read:

881 497.452 Preneed license required.—

882 (2)

883 ~~(c) The provisions of paragraph (a) do not apply to any~~
 884 ~~Florida corporation existing under chapter 607 acting as a~~

885 ~~servicing agent hereunder in which the stock of such corporation~~
886 ~~is held by 100 or more persons licensed pursuant to part III of~~
887 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
888 ~~has proxies for more than 5 percent of the issued stock of such~~
889 ~~corporation; provided the corporation has a blanket fidelity~~
890 ~~bond, covering all employees handling the funds, in the amount~~
891 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
892 ~~this state; and provided the corporation processes the funds~~
893 ~~directly to and from the trustee within the applicable time~~
894 ~~limits set forth in this chapter. The department may require any~~
895 ~~person claiming that the provisions of this paragraph exempt it~~
896 ~~from the provisions of paragraph (a) to demonstrate to the~~
897 ~~satisfaction of the department that it meets the requirements of~~
898 ~~this paragraph.~~

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

901 497.454 Approval of preneed contract and related forms.—

902 (1) Preneed contract forms and related forms shall be
903 filed with and approved by the licensing authority prior to use,
904 pursuant to procedures specified by rule. The licensing
905 authority may not approve any electronic or paper preneed
906 contract ~~form~~ that does not provide for sequential prenumbering
907 thereon.

908 ~~(3) Specific disclosure regarding the preneed licensee's~~
909 ~~ability to select either trust funding or the financial~~
910 ~~responsibility alternative as set forth in s. 497.461 in~~

911 ~~connection with the receipt of preneed contract proceeds is~~
 912 ~~required in the preneed contract.~~

913 Section 20. Subsections (2), (7), and (8) of section
 914 497.456, Florida Statutes, are amended to read:

915 497.456 Preneed Funeral Contract Consumer Protection Trust
 916 Fund.—

917 (2) Within 60 days after the end of each calendar quarter,
 918 for each preneed contract written during the quarter and not
 919 canceled within 30 days after the date of the execution of the
 920 contract, each preneed licensee, whether funding preneed
 921 contracts by the sale of insurance or by establishing a trust
 922 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
 923 \$2.50 for each preneed contract having a purchase price of
 924 \$1,500 or less, and the sum of \$5 for each preneed contract
 925 having a purchase price in excess of \$1,500; and each preneed
 926 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
 927 of \$5 for each preneed contract having a purchase price of
 928 \$1,500 or less, and the sum of \$10 for each preneed contract
 929 having a purchase price in excess of \$1,500.

930 (7) In any situation in which a delinquency proceeding has
 931 not commenced, the licensing authority may, in its discretion,
 932 use the trust fund for the purpose of providing restitution to
 933 any consumer, owner, or beneficiary of a preneed contract or
 934 similar regulated arrangement under this chapter entered into
 935 after June 30, 1977. If, after investigation, the licensing
 936 authority determines that a preneed licensee has breached a

937 | preneed contract by failing to provide benefits or an
938 | appropriate refund, or that a provider, who is a former preneed
939 | licensee or an establishment which has been regulated under this
940 | chapter, has sold a preneed contract and has failed to fulfill
941 | the arrangement or provide the appropriate refund, and such
942 | preneed licensee or provider does not provide or does not
943 | possess adequate funds to provide appropriate refunds, payments
944 | from the trust fund may be authorized by the licensing
945 | authority. In considering whether payments shall be made or when
946 | considering who will be responsible for such payments, the
947 | licensing authority shall consider whether the preneed licensee
948 | or previous provider has been acquired by a successor who is or
949 | should be responsible for the liabilities of the defaulting
950 | entity. With respect to preneed contracts funded by life
951 | insurance, payments from the fund shall be made: if the insurer
952 | is insolvent, but only to the extent that funds are not
953 | available through the liquidation proceeding of the insurer; or
954 | if the preneed licensee is unable to perform under the contract
955 | and the insurance proceeds are not sufficient to cover the cost
956 | of the merchandise and services contracted for. In no event
957 | shall the licensing authority approve payments in excess of the
958 | insurance policy limits unless it determines that at the time of
959 | sale of the preneed contract, the insurance policy would have
960 | paid for the services and merchandise contracted for. Such
961 | monetary relief shall be in an amount as the licensing authority
962 | may determine and shall be payable in such manner and upon such

963 conditions and terms as the licensing authority may prescribe.
964 However, with respect to preneed contracts to be funded pursuant
965 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
966 restitution made pursuant to this subsection shall not exceed,
967 as to any single contract or arrangement, the lesser of the
968 gross amount paid under the contract or 4 percent of the
969 uncommitted assets of the trust fund. With respect to preneed
970 contracts funded by life insurance policies, any restitution
971 shall not exceed, as to any single contract or arrangement, the
972 lesser of the face amount of the policy, the actual cost of the
973 arrangement contracted for, or 4 percent of the uncommitted
974 assets of the trust fund. The total of all restitutions made to
975 all applicants under this subsection in a single fiscal year
976 shall not exceed the greater of 30 percent of the uncommitted
977 assets of the trust fund as of the end of the most recent fiscal
978 year or \$120,000. The department may use moneys in the trust
979 fund to contract with independent vendors pursuant to chapter
980 287 to administer the requirements of this subsection.

981 (8) All moneys deposited in the Preneed Funeral Contract
982 Consumer Protection Trust Fund together with all accumulated
983 appreciation ~~income~~ shall be used only for the purposes
984 expressly authorized by this chapter and shall not be subject to
985 any liens, charges, judgments, garnishments, or other creditor's
986 claims against the preneed licensee, any trustee utilized by the
987 preneed licensee, any company providing a surety bond as
988 specified in this chapter, or any purchaser of a preneed

989 contract. No preneed contract purchaser shall have any vested
 990 rights in the trust fund.

991 Section 21. Paragraphs (a), (b), (d), and (f) of
 992 subsection (1), paragraph (a) of subsection (3), paragraphs (a)
 993 and (c) of subsection (5), and subsections (6), (7), (8) and (9)
 994 of section 497.458, Florida Statutes, are amended, and paragraph
 995 (k) is added to subsection (1) of that section, to read:

996 497.458 Disposition of proceeds received on contracts.—

997 (1)

998 (a) Any person who is paid, collects, or receives funds
 999 under a preneed contract for funeral services or merchandise or
 1000 burial services or merchandise shall deposit an amount at least
 1001 equal to the sum of 70 percent of the purchase price collected
 1002 for all services sold and facilities rented; 100 percent of the
 1003 purchase price collected for all cash advance items sold; and 30
 1004 percent of the purchase price collected ~~or 110 percent of the~~
 1005 ~~wholesale cost, whichever is greater, for each item of~~
 1006 ~~merchandise sold.~~

1007 (b) The licensee shall certify to the licensing authority
 1008 on the annual application for renewal of a preneed license that
 1009 merchandise required to be held in trust under this section was
 1010 not held below the preneed licensee's stated wholesale cost
 1011 during the previous calendar year ~~The method of determining~~
 1012 ~~wholesale cost shall be established by rule of the licensing~~
 1013 ~~authority and shall be based upon the preneed licensee's stated~~
 1014 ~~wholesale cost for the 12-month period beginning July 1 during~~

1015 ~~which the initial deposit to the preneed trust fund for the~~
1016 ~~preneed contract is made.~~

1017 (d) The trustee shall take title to the property conveyed
1018 to the trust for the purpose of investing, protecting, and
1019 conserving it for the preneed licensee; collecting income; and
1020 distributing the fair market value ~~principal and income~~ as
1021 prescribed in this chapter. The preneed licensee is prohibited
1022 from sharing in the discharge of these responsibilities, except
1023 that the preneed licensee may request the trustee to invest in
1024 tax-free investments and may appoint an adviser to the trustee.
1025 The licensing authority may adopt rules limiting or otherwise
1026 specifying the degree to which the trustee may rely on the
1027 investment advice of an investment adviser appointed by the
1028 preneed licensee. The licensing authority may adopt rules
1029 limiting or prohibiting payment of fees by the trust to
1030 investment advisors that are employees or principals of the
1031 licensee to whom the trust fund relates.

1032 (f) The deposited funds shall be held in trust, both as to
1033 principal and any change in fair market value ~~income earned~~
1034 thereon, and shall remain intact, except that the cost of the
1035 operation of the trust or trust account authorized by this
1036 section may be deducted from the income earned thereon.

1037 (k) Beginning April 1, 2018, and on or before each April 1
1038 thereafter, the trustee shall furnish the department with an
1039 annual report regarding each preneed licensee trust account held
1040 by the trustee at any time during the previous calendar year.

1041 The report shall state the name and address of the trustee; the
 1042 name, address, and license number of the licensee to whom the
 1043 report relates; the trust account number; the beginning and
 1044 ending trust balance; and as may be specified by department
 1045 rule, a list of receipts showing the date and amount of any
 1046 disbursement. The report must be signed by the trustee's account
 1047 manager for the trust account. The trustee shall submit the
 1048 report in a format and pursuant to procedures specified the
 1049 department by rule.

1050 (3) (a) The trustee shall make regular valuations of assets
 1051 it holds in trust and provide a fair market value report of such
 1052 valuations to the preneed licensee at least quarterly.

1053 (5) The trustee of the trust established pursuant to this
 1054 section shall only have the power to:

1055 (a) Invest in investments as prescribed in s. 518.11
 1056 ~~215.47~~ and exercise the powers set forth in part VIII of chapter
 1057 736, provided that the licensing authority may by order require
 1058 the trustee to liquidate or dispose of any investment within 30
 1059 days after such order, or within such other times as the order
 1060 may direct. The licensing authority may issue such order if it
 1061 determines that the investment violates any provision of this
 1062 chapter or is not in the best interests of the preneed contract
 1063 holders whose contracts are secured by the trust funds.

1064 (c) Commingle the property of the trust with the property
 1065 of any other trust established pursuant to this chapter and make
 1066 corresponding allocations and divisions of assets, liabilities,

1067 income, and expenses, and capital gains and losses.

1068 ~~(6) The preneed licensee, at her or his election, shall~~
 1069 ~~have the right and power, at any time, to revest in it title to~~
 1070 ~~the trust assets, or its pro rata share thereof, provided it has~~
 1071 ~~complied with s. 497.461.~~

1072 ~~(7) Notwithstanding anything contained in this chapter to~~
 1073 ~~the contrary, the preneed licensee, via its election to sell or~~
 1074 ~~offer for sale preneed contracts subject to this section, shall~~
 1075 ~~represent and warrant, and is hereby deemed to have done such,~~
 1076 ~~to all federal and Florida taxing authorities, as well as to all~~
 1077 ~~potential and actual preneed contract purchasers, that:~~

1078 ~~(a) Section 497.461 is a viable option available to it at~~
 1079 ~~any and all relevant times;~~

1080 ~~(b) Section 497.462 is a viable option available to it at~~
 1081 ~~any and all relevant times for contracts written prior to July~~
 1082 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

1083 ~~(c) For any preneed licensee authorized to do business in~~
 1084 ~~this state that has total bonded liability exceeding \$100~~
 1085 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
 1086 ~~at any and all relevant times for contracts written prior to~~
 1087 ~~December 31, 2004, for funds not held in trust as of July 1,~~
 1088 ~~2001.~~

1089 ~~(8) If in the preneed licensee's opinion it does not have~~
 1090 ~~the ability to select the financial responsibility alternative~~
 1091 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
 1092 ~~have the right to sell or solicit preneed contracts.~~

1093 ~~(6)(9)~~ The amounts required to be placed in a trust by
 1094 this section for contracts previously entered into shall be as
 1095 follows:

1096 (a) For contracts entered into before October 1, 1993, the
 1097 trust amounts as amended by s. 6, chapter 83-316, Laws of
 1098 Florida, shall apply.

1099 (b) For contracts entered into on or after October 1,
 1100 1993, the trust amounts as amended by s. 98, chapter 93-399,
 1101 Laws of Florida, shall apply.

1102 Section 22. Paragraph (a) of subsection (6) of section
 1103 497.459, Florida Statutes, is amended to read:

1104 497.459 Cancellation of, or default on, preneed
 1105 contracts.—

1106 (6) OTHER PROVISIONS.—

1107 (a) All preneed contracts are cancelable and revocable as
 1108 provided in this section, provided that a preneed contract does
 1109 not restrict any contract purchaser who is the beneficiary of
 1110 the preneed contract and a qualified applicant for, or a
 1111 recipient of, supplemental security income, temporary cash
 1112 assistance, or Medicaid from making her or his contract
 1113 irrevocable. A preneed contract that is made irrevocable
 1114 pursuant to this section may not be cancelled during the life or
 1115 after the death of the contract purchaser as described in this
 1116 section.

1117 Section 23. Section 497.460, Florida Statutes, is amended
 1118 to read:

1119 497.460 Payment of funds upon death of named beneficiary.—
 1120 Disbursements of funds discharging any preneed contract
 1121 fulfilled after September 30, 1993, shall be made by the trustee
 1122 to the preneed licensee upon receipt of a certified copy of the
 1123 death certificate of the contract beneficiary or satisfactory
 1124 evidence as established by rule of the licensing authority that
 1125 the preneed contract has been performed in whole or in part.
 1126 However, if the contract is only partially performed, the
 1127 disbursement shall only cover the fair market value of that
 1128 portion of the contract performed. In the event of any contract
 1129 default by the contract purchaser, or in the event that the
 1130 funeral merchandise or service or burial merchandise or service
 1131 contracted for is not provided or is not desired by the legally
 1132 authorized person ~~heirs or personal representative of the~~
 1133 ~~contract beneficiary~~, the trustee shall return, within 30 days
 1134 after its receipt of a written request therefor, funds paid on
 1135 the contract to the preneed licensee or to its assigns, subject
 1136 to the provisions of s. 497.459.

1137 Section 24. Section 497.461, Florida Statutes, is
 1138 repealed.

1139 Section 25. Subsections (3) through (11) of section
 1140 497.462, Florida Statutes, are renumbered as subsections (2)
 1141 through (10), respectively, and present subsection (2),
 1142 paragraph (a) of subsection (3), and subsections (7) and (10) of
 1143 that section are amended, to read:

1144 497.462 Other alternatives to deposits under s. 497.458.—

1145 ~~(2) Upon prior approval by the licensing authority, the~~
1146 ~~preneed licensee may file a letter of credit with the licensing~~
1147 ~~authority in lieu of a surety bond. Such letter of credit must~~
1148 ~~be in a form, and is subject to terms and conditions, prescribed~~
1149 ~~by the board. It may be revoked only with the express approval~~
1150 ~~of the licensing authority.~~

1151 (2)~~(3)~~ (a) A buyer of preneed merchandise or services who
1152 does not receive such services or merchandise due to the
1153 economic failure, closing, or bankruptcy of the preneed licensee
1154 must file a claim with the surety as a prerequisite to payment
1155 of the claim and, if the claim is not paid, may bring an action
1156 based on the bond and recover against the surety. ~~In the case of~~
1157 ~~a letter of credit or cash deposit that has been filed with the~~
1158 ~~licensing authority, the buyer may file a claim with the~~
1159 ~~licensing authority.~~

1160 (6)~~(7)~~ Any preneed contract which promises future delivery
1161 of merchandise at no cost constitutes a paid-up contract.
1162 Merchandise which has been delivered is not covered by the
1163 required performance bond ~~or letter of credit~~ even though the
1164 contract is not completely paid. The preneed licensee may not
1165 cancel a contract unless the purchaser is in default according
1166 to the terms of the contract and subject to the requirements of
1167 s. 497.459. A contract sold, discounted, and transferred to a
1168 third party constitutes a paid-up contract for the purposes of
1169 the performance bond ~~or letter of credit~~.

1170 (9)~~(10)~~ The licensing authority may adopt forms and rules

1171 necessary to implement this section, including, but not limited
 1172 to, rules which ensure that the surety bond ~~and line of credit~~
 1173 provide liability coverage for preneed merchandise and services.

1174 Section 26. Paragraphs (c) through (g) of subsection (1)
 1175 of section 497.464, Florida Statutes, are amended to read:

1176 497.464 Alternative preneed contracts.—

1177 (1) Nothing in this chapter shall prevent the purchaser
 1178 and the preneed licensee from executing a preneed contract upon
 1179 the terms stated in this section. Such contracts shall be
 1180 subject to all provisions of this chapter except:

1181 ~~(c) Section 497.458(1), (3), and (6).~~

1182 (c)~~(d)~~ Section 497.459(1), (2), and (4).

1183 (d)~~(e)~~ Section 497.460.

1184 ~~(f) Section 497.461.~~

1185 (e)~~(g)~~ Section 497.462.

1186 Section 27. Subsections (2) and (6) and paragraph (c) of
 1187 subsection (9) of section 497.465, Florida Statutes, are amended
 1188 to read:

1189 497.465 Inactive, surrendered, and revoked preneed
 1190 licensees.—

1191 (2) A preneed licensee shall cease all preneed sales to
 1192 the public upon becoming inactive. Upon becoming inactive, the
 1193 preneed licensee shall ~~collect and deposit into the trust~~ 100
 1194 percent of any funds received on ~~into trust all of the funds~~
 1195 ~~paid toward~~ preneed contracts sold before ~~prior to~~ becoming
 1196 inactive.

1197 (6) The trust fund of the preneed licensee shall be held
 1198 intact and in trust after the preneed licensee has become
 1199 inactive, and the fair market value of funds in that trust shall
 1200 be disbursed in accordance with the requirements of the written
 1201 contracts and this chapter until the funds have been exhausted.

1202 (9) The licensing authority may adopt rules for the
 1203 implementation of this section, for the purpose of ensuring a
 1204 thorough review and investigation of the status and condition of
 1205 the preneed licensee's business affairs for the protection of
 1206 the licensee's preneed customers. Such rules may include:

1207 (c) Requirements for submission of ~~unaudited or audited~~
 1208 financial statements, as the licensing authority deems
 1209 advisable.

1210 Section 28. Section 497.469, Florida Statutes, is created
 1211 to read:

1212 497.469 Escheat of certain preneed trust funds of
 1213 contracts.—

1214 (1) Any preneed contract entered into on or after January
 1215 1, 2017, is subject to this section.

1216 (2) As used in this section, the term "beneficiary" means
 1217 the person whose death and final disposition are the subject
 1218 matter of the preneed contract.

1219 (3) (a) The preneed licensee selling a preneed contract
 1220 shall, at the time the contract is entered into, include on the
 1221 face of the contract the date of birth of the beneficiary, as
 1222 stated to the preneed licensee by the purchaser. The preneed

1223 licensee shall record and preserve the beneficiary's date of
1224 birth in the preneed licensee's business records related to the
1225 contract.

1226 (b) If, on or before December 31 of the calendar year in
1227 which the 105th anniversary of the beneficiary's date of birth
1228 occurs, a preneed licensee has not received a written request to
1229 cancel or fulfill a preneed contract and has no record of having
1230 received any written communication from or on behalf of the
1231 purchaser or beneficiary of the preneed contract in the 730 days
1232 immediately preceding December 31, the preneed contract is
1233 deemed cancelled by operation of law as of December 31. Upon
1234 such cancellation, the preneed contract shall be released from
1235 all obligations and liability except for the remittance of trust
1236 funds to the unclaimed property division in the amount required
1237 by this section.

1238 (c) By December 31 of the calendar year following such
1239 cancellation and subject to paragraph (d), the preneed licensee
1240 and the trustee of the preneed trust shall remit trust funds,
1241 including all trust principal, accrued income, and capital gains
1242 allocable to the cancelled preneed contract, calculated as of
1243 the cancellation date, to the Bureau of Unclaimed Property
1244 pursuant to chapter 717 and in accordance with procedures and
1245 forms determined by the department by rule. In remitting trust
1246 funds under this section, the trustee may rely upon the
1247 representations of the preneed licensee as to the status of the
1248 preneed contract and the beneficiary's date of birth.

1249 (d) As compensation to the preneed licensee and the
 1250 trustee for administration costs to comply with the requirements
 1251 of this section, the preneed license and the trustee may each
 1252 deduct and retain, from the amount otherwise required to be
 1253 remitted to Bureau of Unclaimed Property, the amount of \$250.

1254 (e) A preneed contract under this section must contain the
 1255 following statement clearly printed on its face in boldfaced
 1256 type:

1257
 1258 "Pursuant to s. 497.469, Florida Statutes, this preneed
 1259 contract is deemed cancelled on December 31 of the year in
 1260 which the 105th anniversary of the beneficiary's date of
 1261 birth occurs if not cancelled or fulfilled on or before
 1262 that date. After such cancellation, any trust funds
 1263 relating to this preneed contract will be remitted to the
 1264 Bureau of Unclaimed Property in an amount as required by s.
 1265 497.469, Florida Statutes."

1266
 1267 (f) A preneed licensee shall retain records sufficient to
 1268 prove compliance with this section for 5 years after each
 1269 remittance to the Bureau of Unclaimed Property.

1270 Section 29. Paragraph (b) of subsection (1) of section
 1271 497.601, Florida Statutes, is amended to read:

1272 497.601 Direct disposition; duties.—

1273 (1) Those individuals licensed as direct disposers may
 1274 perform only those functions set forth below:

HB 473

2016

1275 (b) Secure pertinent information from a legally authorized
1276 person ~~the decedent's next of kin~~ in order to complete the death
1277 certificate and to file for the necessary permits for ~~direct~~
1278 disposition.

1279 Section 30. Subsection (1) of section 497.607, Florida
1280 Statutes, is amended to read:

1281 497.607 Cremation; procedure required.—

1282 (1) At the time of the arrangement for a cremation
1283 performed by any person licensed pursuant to this chapter, the
1284 legally authorized person contracting for cremation services
1285 shall be required to designate her or his intentions with
1286 respect to ~~the~~ disposition of the cremated remains of the
1287 deceased in a signed declaration of intent which shall be
1288 provided by and retained by the funeral or direct disposal
1289 establishment. A cremation may not be performed until a legally
1290 authorized person gives written authorization for such
1291 cremation. The cremation must be performed within 48 hours after
1292 a specified time which has been agreed to in writing by the
1293 person authorizing the cremation.

1294 Section 31. This act shall take effect July 1, 2016.