

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. 497.146, F.S.; revising required  
10          information for current licensees to include e-mail  
11          notification; providing for rulemaking relating to  
12          electronic reporting; amending s. 497.152, F.S.;  
13          conforming provisions to changes made by the act;  
14          prohibiting the Board of Funeral, Cemetery, and  
15          Consumer Services from imposing disciplinary actions  
16          when certain minor deficiencies are fully corrected  
17          within a specified period; requiring the board to  
18          provide criteria for identifying such deficiencies;  
19          amending s. 497.161, F.S.; requiring the Division of  
20          Funeral, Cemetery, and Consumer Services to authorize  
21          specified rules for preneed contracts; amending s.  
22          497.264, F.S.; requiring cemetery licensees to provide  
23          e-mail address to the department; amending s. 497.266,  
24          F.S.; conforming provisions to changes made by the  
25          act; amending s. 497.267, F.S.; revising provisions  
26          relating to the disposition of withdrawals from the

27 | care and maintenance trust fund; creating s. 497.2675,  
28 | F.S.; providing definitions; specifying a default  
29 | trust distribution method; specifying circumstances in  
30 | which a cemetery is not eligible to use the unitrust  
31 | distribution method; providing for unitrust  
32 | distribution method options and requirements;  
33 | providing eligibility for distributions; providing for  
34 | board authority to order discontinuance or  
35 | modification of the unitrust method; requiring annual  
36 | reports for the unitrust method; authorizing the board  
37 | to adopt certain rules; amending s. 497.268, F.S.;  
38 | conforming provisions; deleting a required deposit in  
39 | a cemetery company's care and maintenance trust fund  
40 | for mausoleums or columbaria; deleting the requirement  
41 | that capital gains taxes be paid from the trust  
42 | corpus; amending s. 497.269, F.S.; requiring a trustee  
43 | to annually furnish financial reports that record the  
44 | fair market value of the care and maintenance trust  
45 | fund; amending ss. 497.273 and 497.274, F.S.;  
46 | conforming provisions; amending s. 497.277, F.S.;  
47 | revising a limitation on the fee for transfer of  
48 | burial rights from one purchaser to another;  
49 | authorizing the board to determine the transfer fee;  
50 | amending ss. 497.283 and 497.286, F.S.; conforming  
51 | provisions; amending s. 497.371, F.S.; providing that  
52 | an applicant for the embalmer apprentice program may

53 | not be licensed without a determination of character  
54 | by the licensing authority; amending ss. 497.372,  
55 | 497.381, 497.454, and 497.456, F.S.; conforming  
56 | provisions; conforming cross-references; amending s.  
57 | 497.452, F.S.; deleting an exception that prohibits a  
58 | person from receiving specified funds without holding  
59 | a valid preneed license; amending s. 497.458, F.S.;  
60 | revising requirements relating to the disposition of  
61 | proceeds on a preneed contract; authorizing the board  
62 | to adopt rules to classify items sold in preneed  
63 | contracts; requiring the trustee to furnish the  
64 | department with an annual report regarding preneed  
65 | licensee trust accounts beginning on a specified date;  
66 | providing requirements for the annual report; revising  
67 | which investments a trustee of a trust has the power  
68 | to invest; deleting provisions related to the preneed  
69 | licensee; amending s. 497.459, F.S.; providing that  
70 | certain preneed contracts may not be cancelled during  
71 | the life or after the death of the contract purchaser;  
72 | providing for disposition of unexpended moneys paid on  
73 | irrevocable contracts; amending s. 497.460, F.S.;  
74 | conforming provisions; repealing s. 497.461, F.S.,  
75 | relating to the authorization for a preneed licensee  
76 | to elect surety bonding as an alternative to  
77 | depositing funds into a trust; providing for  
78 | applicability of the repeal of s. 497.461, F.S.;

79 amending s. 497.462, F.S.; deleting provisions made  
 80 obsolete by the repeal of s. 497.461, F.S.; amending  
 81 s. 497.464, F.S.; conforming a cross-reference;  
 82 amending s. 497.465, F.S.; requiring an inactive  
 83 preneed licensee to deposit a specified amount of  
 84 funds received on certain preneed contracts into the  
 85 trust upon a specified time; amending ss. 497.601 and  
 86 497.607, F.S.; specifying that cremated remains are  
 87 not property; requiring a division of cremated remains  
 88 to be consented to by certain persons; providing that  
 89 a dispute shall be resolved by a court of competent  
 90 jurisdiction; conforming provisions; providing an  
 91 effective date.

92  
 93 Be It Enacted by the Legislature of the State of Florida:

94  
 95 Section 1. Subsections (5) through (61) and (62) through  
 96 (71) of section 497.005, Florida Statutes, are redesignated as  
 97 subsections (6) through (62) and (64) through (73),  
 98 respectively, and new subsections (5) and (63) are added to that  
 99 section to read:

100 497.005 Definitions.—As used in this chapter, the term:

101 (5) "Beneficiary" means a natural person expressly  
 102 identified in a preneed contract as the individual for whom  
 103 funeral merchandise or services are intended.

104 (63) "Purchaser" means a natural person who has executed

105 | an at-need or preneed contract with a licensee.

106 | Section 2. Subsections (2) and (11) of section 497.141,  
107 | Florida Statutes, are amended to read:

108 | 497.141 Licensing; general application procedures.—

109 | (2) Any person desiring to be licensed shall apply to the  
110 | licensing authority in writing using such forms and procedures  
111 | as may be prescribed by rule. The application for licensure  
112 | shall include the applicant's social security number if the  
113 | applicant is a natural person; otherwise, the applicant's  
114 | federal tax identification number shall be included.

115 | Notwithstanding any other provision of law, the department is  
116 | the sole authority for determining the forms and form contents  
117 | to be submitted for initial licensure and licensure renewal  
118 | application. Such forms and the information and materials  
119 | required by such forms may include, as appropriate,  
120 | demographics, education, work history, personal background,  
121 | criminal history, finances, business information, signature  
122 | notarization, performance periods, reciprocity, local government  
123 | approvals, supporting documentation, periodic reporting  
124 | requirements, fingerprint requirements, continuing education  
125 | requirements, business plans, character references, e-mail  
126 | addresses, and ongoing education monitoring. Such forms and the  
127 | information and materials required by such forms may also  
128 | include, to the extent such information or materials are not  
129 | already in the possession of the department or the board,  
130 | records or information as to complaints, inspections,

131 investigations, discipline, and bonding. The application shall  
132 be supplemented as needed to reflect any material change in any  
133 circumstance or condition stated in the application that takes  
134 place between the initial filing of the application and the  
135 final grant or denial of the license and that might affect the  
136 decision of the department or the board. After an application by  
137 a natural person for licensure under this chapter is approved,  
138 the licensing authority may require the successful applicant to  
139 provide a photograph of himself or herself for permanent  
140 lamination onto the license card to be issued to the applicant,  
141 pursuant to rules and fees adopted by the licensing authority.

142 (11) The department shall implement a system for  
143 administration of the overall licensing process, including e-  
144 mail notification for the processing and tracking of  
145 applications for licensure, the issuance of licenses approved by  
146 the board, the tracking of licenses issued, the administration  
147 of the license renewal process, and the collection and  
148 processing of fees related to those activities. The system may  
149 use staff and facilities of the department or the department may  
150 enter into a contract for all or any part of such system, upon  
151 such terms and conditions as the department deems advisable, and  
152 such contract may be with another government agency or a private  
153 business.

154 Section 3. Section 497.146, Florida Statutes, is amended  
155 to read:

156 497.146 Licensing; address of record; changes; licensee

157 responsibility.—Each licensee under this chapter is responsible  
158 for notifying the department in writing of the licensee's  
159 current e-mail address, business and residence mailing address,  
160 and the street address of the licensee's primary place of  
161 practice and shall notify the department ~~in writing~~ within 30  
162 days after any change in such information, in accordance with  
163 procedures and forms prescribed by rule. Notwithstanding any  
164 other provision of law, electronic notification ~~service by~~  
165 ~~regular mail~~ to a licensee's last known e-mail address of record  
166 or preferred street address of record with the department  
167 constitutes adequate and sufficient notice to the licensee for  
168 any official communication to the licensee by the board or the  
169 department, except when other service is expressly required by  
170 this chapter. The department may adopt rules, forms, and  
171 procedures, including electronic reporting of all data required  
172 to be provided by this section. ~~Rules may be adopted~~  
173 ~~establishing forms and procedures for licensees to provide the~~  
174 ~~notice required by this section.~~

175 Section 4. Paragraphs (b) and (e) of subsection (8),  
176 paragraph (d) of subsection (12), paragraphs (b) and (c) of  
177 subsection (14), and paragraph (b) of subsection (15) of section  
178 497.152, Florida Statutes, are amended to read:

179 497.152 Disciplinary grounds.—This section sets forth  
180 conduct that is prohibited and that shall constitute grounds for  
181 denial of any application, imposition of discipline, or other  
182 enforcement action against the licensee or other person

183 committing such conduct. For purposes of this section, the  
 184 requirements of this chapter include the requirements of rules  
 185 adopted under authority of this chapter. No subsection heading  
 186 in this section shall be interpreted as limiting the  
 187 applicability of any paragraph within the subsection.

188 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF  
 189 HUMAN REMAINS.—

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

195 (e) Failing to obtain written authorization from a legally  
 196 authorized person before ~~the family or next of kin of the~~  
 197 ~~deceased prior to~~ entombment, interment, disinterment,  
 198 disentombment, or disinurnment of the remains of any human  
 199 being.

200 (12) DISCLOSURE REQUIREMENTS.—

201 (d) Failure by a funeral director to make full disclosure  
 202 in the case of a funeral or direct disposition with regard to  
 203 the use of funeral merchandise that is not to be disposed of  
 204 with the body or failure to obtain written permission from a  
 205 legally authorized person ~~the purchaser~~ regarding disposition of  
 206 such merchandise.

207 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY  
 208 CUSTOMERS.—



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

211 1. Failing to acknowledge and act promptly upon  
 212 communications from a licensee's customers and their  
 213 representatives with respect to claims or complaints relating to  
 214 the licensee's activities regulated by this chapter.

215 2. Denying claims or rejecting complaints received by a  
 216 licensee from a customer or customer's representative, relating  
 217 to the licensee's activities regulated by this chapter, without  
 218 first conducting reasonable investigation based upon available  
 219 information.

220 3. Attempting to settle a claim or complaint on the basis  
 221 of a material document that was altered without notice to, or  
 222 without the knowledge or consent of, the contract purchaser or a  
 223 legally authorized person ~~her or his representative or legal~~  
 224 ~~guardian~~.

225 4. Failing within a reasonable time to affirm or deny  
 226 coverage of specified services or merchandise under a contract  
 227 entered into by a licensee upon written request of the contract  
 228 purchaser or a legally authorized person ~~her or his~~  
 229 ~~representative or legal guardian~~.

230 5. Failing to promptly provide, in relation to a contract  
 231 for funeral or burial merchandise or services entered into by  
 232 the licensee or under the licensee's license, a reasonable  
 233 explanation to the contract purchaser or a legally authorized  
 234 person ~~her or his representative or legal guardian~~ of the

235 licensee's basis for denying or rejecting all or any part of a  
 236 claim or complaint submitted.

237 (c) Making a material misrepresentation to a contract  
 238 purchaser or a legally authorized person ~~her or his~~  
 239 ~~representative or legal guardian~~ for the purpose and with the  
 240 intent of effecting settlement of a claim or complaint or loss  
 241 under a prepaid contract on less favorable terms than those  
 242 provided in, and contemplated by, the prepaid contract.

243  
 244 For purposes of this subsection, the response of a customer  
 245 recorded by the customer on a customer satisfaction  
 246 questionnaire or survey form sent to the customer by the  
 247 licensee, and returned by the customer to the licensee, shall  
 248 not be deemed to be a complaint.

249 (15) MISCELLANEOUS FINANCIAL MATTERS.—

250 (b) Failing to timely remit as required by this chapter  
 251 the required amounts to any trust fund required by this chapter.  
 252 The board shall ~~may~~ by rule provide criteria for identifying  
 253 minor, nonwillful trust remittance deficiencies; and remittance  
 254 deficiencies falling within such criteria, if fully corrected  
 255 within 30 days after notice to the licensee by the department,  
 256 do shall ~~shall~~ not constitute grounds for a fine or other disciplinary  
 257 action.

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

260 497.161 Other rulemaking provisions.—

261 (1) In addition to such other rules as are authorized or  
262 required under this chapter, the following additional rules, not  
263 inconsistent with this chapter, shall be authorized by the  
264 licensing authority.

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

268 Section 6. Paragraphs (c) and (d) of subsection (2) of  
269 section 497.264, Florida Statutes, are amended to read:

270 497.264 License not assignable or transferable.—

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

275 (c) For applications by a natural person, the application  
276 shall state the applicant's name, e-mail address, residence  
277 address, address of principal office or place of employment, and  
278 social security number.

279 (d) For applications by an entity, the application shall  
280 state the applicant's name, address of principal place of  
281 business or headquarters offices, the names and titles of all  
282 officers of the applicant, the e-mail address of each officer,  
283 the applicant's state of domicile and date of formation, and the  
284 applicant's federal tax identification number.

285 Section 7. Subsections (3) and (4) of section 497.266,  
286 Florida Statutes, are amended to read:

287 497.266 Care and maintenance trust fund; remedy of  
 288 department for noncompliance.—

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

293 (4) The trustee of the trust established pursuant to this  
 294 section may only invest in investments and loan trust funds, as  
 295 prescribed in s. 497.458. The trustee shall take title to the  
 296 property conveyed to the trust for the purposes of investing,  
 297 protecting, and conserving it for the cemetery company;  
 298 collecting income; and distributing withdrawals from the trust  
 299 ~~the principal and income~~ as prescribed in this chapter. The  
 300 cemetery company is prohibited from sharing in the discharge of  
 301 the trustee's responsibilities under this subsection, except  
 302 that the cemetery company may request the trustee to invest in  
 303 tax-free investments.

304 Section 8. Section 497.267, Florida Statutes, is amended  
 305 to read:

306 497.267 Disposition of withdrawals from the ~~income of~~ care  
 307 and maintenance trust fund; notice to purchasers and  
 308 depositors.—Withdrawals from ~~the net income of the~~ care and  
 309 maintenance trust fund shall be used solely for the care and  
 310 maintenance of the cemetery, including maintenance of monuments,  
 311 which maintenance may ~~shall~~ not be deemed to include the  
 312 cleaning, refinishing, repairing, or replacement of monuments;

313 for reasonable costs of administering the care and maintenance;  
314 and for reasonable costs of administering the trust fund. At the  
315 time of making a sale or receiving an initial deposit, the  
316 cemetery company shall deliver to the person to whom the sale is  
317 made, or who makes a deposit, a written instrument which shall  
318 specifically state the purposes for which withdrawals from the  
319 ~~income of the~~ trust fund shall be used.

320 Section 9. Section 497.2675, Florida Statutes, is created  
321 to read:

322 497.2675 Distributions from the care and maintenance  
323 trusts.—

324 (1) DEFINITIONS.—In addition to definitions provided in s.  
325 497.005, the following definitions shall apply for purposes of  
326 care and maintenance trusts:

327 (a) "Average fair market value" means, as determined by  
328 the trustee of a care and maintenance trust, the average of the  
329 fair market values of assets held by the trust on January 1 of  
330 the current year and January 1 of each of the 2 preceding years,  
331 or for the entire term of the trust if there are less than 2  
332 preceding years, and adjusted as follows:

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

336 2. If assets are distributed from the trust during the  
337 years used to determine the average, other than in satisfaction  
338 of the unitrust amount, the amount of each distribution is

339 subtracted from all years in which such distribution is not  
340 included.

341 (b) "Capital gain" or "capital loss" means a change in the  
342 fair market value of a capital asset, such as investment or real  
343 estate, that gives the asset a different worth than the purchase  
344 price. A capital gain or loss may be realized or unrealized. A  
345 capital gain or loss is realized when the asset is sold.

346 (c) "Ordinary income" means interest, dividends, rents,  
347 and other amounts received by the trust as current returns on  
348 trust investments, but excluding realized or unrealized capital  
349 gains or losses; deposits to the trust required under this  
350 chapter and other contributions of principal to the trust; and  
351 amounts received as full or partial payment for the sale,  
352 transfer, or exchange of a trust asset.

353 (d) "Net ordinary income of the trust" means, as  
354 determined by the trustee of the care and maintenance trust, the  
355 annual ordinary income of the trust reduced by the annual amount  
356 of expenses of operating the trust, including trustee fees,  
357 appraisal fees, investment advisor fees, and accounting fees;  
358 and reduced further by the annual amount of income and other  
359 taxes, excluding capital gains taxes, paid or due in regard to  
360 the trust's ordinary income.

361 (e) "Net ordinary income trust distribution method" is the  
362 method of calculating the annual amount to be distributed to a  
363 cemetery licensee from its care and maintenance trust, in which  
364 method the annual net ordinary income of the trust is determined

365 by the trustee and that amount is distributed to the cemetery  
366 licensee.

367 (f) "Fair market value" means the fair market value of the  
368 assets held by the trust, reduced by all known noncontingent  
369 liabilities. The fair market value of trust assets that are not  
370 publicly traded on a stock or other regulated securities  
371 exchange shall be determined by written appraisal by a qualified  
372 independent public appraiser not affiliated with the cemetery  
373 licensee or its principals. Such an appraisal may not be relied  
374 upon by the trustee if it is not issued or reconfirmed in  
375 writing by the appraiser within 2 years before the date the  
376 appraisal is used by the trustee in the trustees fair market  
377 value determinations.

378 (g) "Income" means interest, dividends, rents, and other  
379 money that the trustee receives as current return from a  
380 principal asset, and which is not received as full or partial  
381 payment for the sale, transfer, or exchange of a trust asset.

382 (h) "Unitrust amount" or "unitrust distribution" means the  
383 amount distributable from the care and maintenance trust to the  
384 cemetery licensee owning the trust, as calculated using the  
385 unitrust distribution method.

386 (i) "Unitrust distribution percentage" is a percentage of  
387 at least 3 but not more than 5 percent, as specifically approved  
388 by the board for a particular cemetery licensee upon application  
389 by the licensee to receive a unitrust distribution from the  
390 licensee's care and maintenance trust. A unitrust distribution

391 percentage in excess of 5 percent shall not be authorized.

392 (j) "Unitrust distribution method" is the method of  
393 calculating the amount to be distributed to a cemetery licensee  
394 from its care and maintenance trust, where the average fair  
395 market value of the care and maintenance trust, or the preneed  
396 licensee's pro rata share of a master trust, is multiplied by a  
397 unitrust distribution percentage, and the resulting unitrust  
398 amount is distributed to the cemetery licensee.

399 (2) DEFAULT TRUST DISTRIBUTION METHOD.—Unless  
400 authorization for a unitrust distribution is approved by the  
401 board in accordance with this section, there may be distributed  
402 from a care and maintenance trust to a cemetery licensee only  
403 the net ordinary income of the trust. Such distribution shall be  
404 at such time as the trustee is able to determine the net  
405 ordinary income of the trust.

406 (3) CEMETERIES NOT ELIGIBLE FOR UNITRUST DISTRIBUTION.—

407 (a) A cemetery is not eligible to apply for or receive a  
408 unitrust distribution from its care and maintenance trust if a  
409 unitrust distribution would be materially inconsistent with the  
410 terms and conditions of the cemetery's bylaws or existing care  
411 and maintenance trust agreement document. A cemetery licensee  
412 operating under cemetery bylaws or a care and maintenance trust  
413 that specifies, or by fair implication indicates, that only the  
414 net ordinary income of the trust shall be distributed, and who  
415 desires to be able to receive a unitrust distribution from the  
416 trust, must apply to the board through the division, for



417 approval to amend or replace such bylaws or trust agreement to  
418 allow the cemetery licensee to seek a unitrust distribution from  
419 the trust. The board shall approve such application to amend the  
420 bylaws or trust agreements if the board finds that there are  
421 reasonable grounds to believe that approval would be in the best  
422 interests of the perpetual care of the cemetery, and under all  
423 the circumstances of the particular case, would be in the best  
424 interest of persons then owning interment spaces in the cemetery  
425 and the families of persons already interred in the cemetery.

426 (b) A cemetery may not be approved to receive or continue  
427 to receive a unitrust distribution from its care and maintenance  
428 trust if there is an uncorrected care and maintenance trust  
429 deficiency as determined by a final or pending examination  
430 report by the division.

431 (4) APPLICATION TO USE UNITRUST DISTRIBUTION METHOD.—

432 (a) Application requirements.—A licensed cemetery that is  
433 eligible for unitrust distribution under subsection (3) may  
434 apply to the board through the division for approval to use that  
435 method. The application must:

- 436 1. Be signed by an officer of the licensed cemetery.
- 437 2. State the cemetery's name, license number, and address.
- 438 3. Provide a copy of the cemetery's existing bylaws and  
439 the care and maintenance trust agreement.
- 440 4. If the applicant seeks approval of an amendment or  
441 replacement of its bylaws or care and maintenance trust  
442 agreement, provide a copy of the proposed amended or replacement

443 bylaws or care and maintenance trust agreement, identifying all  
 444 material changes from the existing bylaws or care and  
 445 maintenance trust agreement.

446 5. Provide a letter from, as applicable, the trustee or  
 447 proposed trustee of the care and maintenance trust, signed and  
 448 dated by a representative of the trustee, in which letter the  
 449 trustee:

450 a. Advises the board that the trustee is able and willing  
 451 to implement the unitrust distribution method as it relates to  
 452 applicant's care and maintenance trust; and

453 b. Sets forth the trustee's average fair market value  
 454 calculations and related and supporting data referenced in  
 455 paragraph (1) (a).

456 6. Specify the unitrust distribution percentage for which  
 457 the applicant seeks approval.

458 7. Provide copies of an annual report of the trustee of  
 459 the cemetery's care and maintenance trust for each of the  
 460 preceding 5 years or for each year the cemetery has been  
 461 licensed, whichever period is shorter.

462 8. Certify to the board that all amounts required by this  
 463 chapter have been deposited into the trust, that there have been  
 464 no withdrawals from the trust in excess of those allowed under  
 465 this chapter, to the best of the knowledge and belief of  
 466 cemetery management, and that there is no unresolved division  
 467 examination report asserting a deficiency in the care and  
 468 maintenance trust.

469 9. Certify to the board that cemetery management has  
470 conducted, or caused to be conducted, and have reviewed an  
471 analysis of the proposed implementation of the unitrust  
472 distribution method as applied to the cemetery's care and  
473 maintenance trust, and, to the best of the knowledge and belief  
474 of the cemetery's management, implementation of the unitrust  
475 distribution method will not result in lower end-of-year care  
476 and maintenance trust principal balances than there would be  
477 under the net ordinary income trust distribution method.

478 (b) Approval criteria.—The board shall approve the  
479 application unless the board determines that the unitrust  
480 distribution method is likely to have a materially less  
481 favorable long term impact on the cemetery's care and  
482 maintenance trust for the perpetual care of the cemetery after  
483 the cemetery ceases active operations as compared to the net  
484 ordinary income trust distribution method.

485 (c) Duration of approval.—An approval to use the unitrust  
486 distribution shall continue indefinitely until the cemetery  
487 licensee applies to the board and is approved to modify its  
488 application of the unitrust distribution method, revert to the  
489 net ordinary income trust distribution method, or until the  
490 cemetery licensee is ordered by the board to modify or  
491 discontinue use of the unitrust distribution method.

492 (d) Temporary initial unitrust distribution percentage.—  
493 Four and one-half percent is the maximum unitrust distribution  
494 percentage that may be approved for the first 12 months of an

495 applicant's use of the unitrust distribution method. If the  
496 board, in the initial application proceeding, approved a  
497 unitrust distribution percentage higher than 4.5 percent, upon  
498 expiration of 12 months, the applicant may, without further  
499 application or proceedings, commence use of the higher approved  
500 unitrust distribution percentage.

501 (5) APPLICATION TO MODIFY UNITRUST DISTRIBUTION METHOD.—

502 (a) A cemetery licensee that is using the unitrust  
503 distribution method and wishes to decrease the unitrust  
504 distribution percentage used may do so without approval by the  
505 board. The licensee shall, within 30 days after the change,  
506 notify the division in a signed and dated written notice  
507 explaining the change, the effective date of the change, and the  
508 revised lower unitrust distribution percentage.

509 (b) A cemetery licensee that is using the unitrust  
510 distribution method and desires to increase the unitrust  
511 distribution percentage or otherwise materially modify its  
512 implementation of the unitrust distribution method must receive  
513 approval from the board before implementing such change. The  
514 board shall approve the application for change unless the board  
515 determines that approval would not be in the long term best  
516 interests of the cemetery's care and maintenance trust as a  
517 resource to provide for the perpetual care of the cemetery after  
518 the cemetery ceases active operations.

519 (6) REVERSION TO NET ORDINARY INCOME DISTRIBUTION METHOD.—

520 A cemetery licensee that is using the unitrust distribution

521 method and wishes to revert to the net ordinary income trust  
 522 distribution method must receive approval from the board before  
 523 implementing such change. The board shall approve such  
 524 application unless it determines that approval would not be in  
 525 the long term best interests of the cemetery's care and  
 526 maintenance trust as a resource to provide for the perpetual  
 527 care of the cemetery after the cemetery ceases active  
 528 operations.

529 (7) APPLICATION TO RESUME THE UNITRUST DISTRIBUTION  
 530 METHOD.—A cemetery licensee that has been approved to revert  
 531 from the unitrust distribution method to the net ordinary income  
 532 trust distribution method and wishes to resume use of the  
 533 unitrust distribution method must receive approval from the  
 534 board before implementing such change. The licensee must apply  
 535 as described in subsection (4) and provide with the application  
 536 a written explanation by the applicant of the history of and  
 537 reasons for the past and proposed changes to the cemetery  
 538 licensee's method of distribution from its care and maintenance  
 539 trust. The board shall approve such change only if it determines  
 540 that approval would clearly be in the long term best interests  
 541 of the cemetery's care and maintenance trust as a resource to  
 542 provide for the perpetual care of the cemetery after the  
 543 cemetery ceases active operations.

544 (8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION  
 545 METHOD.—The unitrust distribution calculated pursuant to the  
 546 unitrust distribution method as approved by the board for a

547 particular licensee shall be distributed to the preneed licensee  
548 in equal monthly or quarterly payments at the end of each month  
549 or quarter.

550 (9) DISTRIBUTION METHOD CHANGES TO COINCIDE WITH CALENDAR  
551 YEARS.—A cemetery licensee may not apply to change its care and  
552 maintenance trust distribution method more than once in any 36-  
553 month period. The board may, by rule, shorten or expand the 36-  
554 month period if it deems it advisable and in the best interests  
555 of care and maintenance trusts. A cemetery licensee may only use  
556 one method of calculating distributions from its care and  
557 maintenance trust in any one calendar year. Any change in care  
558 and maintenance trust distribution method shall take effect  
559 January 1 of the calendar year following approval of such change  
560 by the board.

561 (10) BOARD MAY ORDER DISCONTINUATION OR MODIFICATION OF  
562 UNITRUST DISTRIBUTION.—If, at any time, the board determines the  
563 use or continued use of the unitrust distribution method by the  
564 trust results in or is likely to result in a materially  
565 unfavorable long term impact on the cemetery's care and  
566 maintenance trust as a resource to provide for the perpetual  
567 care of the cemetery after the cemetery ceases active operations  
568 as compared to other available distribution options allowed  
569 under this section, the board may order the prospective  
570 modification of the unitrust distribution method as applied to  
571 the cemetery licensee or may order that the cemetery licensee  
572 revert to the net ordinary income trust distribution method.

573 (11) ANNUAL REPORTS.—A cemetery licensee using the  
 574 unitrust distribution method shall cause the trustee of the care  
 575 and maintenance trust each year to prepare and provide to the  
 576 division a report as required by s. 497.269 and shall cause the  
 577 trustee to provide the following information to the division:

578 (a) The net ordinary income of the trust for the calendar  
 579 year being reported.

580 (b) The average fair market value calculations and related  
 581 and supporting data referenced in paragraph (1)(a), as used in  
 582 the most recent unitrust distribution to the cemetery licensee.

583 (12) RULEMAKING AUTHORITY.—The licensing authority may, by  
 584 rule, prescribe forms and procedures for applications under and  
 585 implementation of this section. Such rules may require the  
 586 filing of additional financial or other information as the  
 587 licensing authority deems needed for an informed decision by the  
 588 board concerning the application.

589 Section 10. Paragraphs (a) and (b) of subsection (1) and  
 590 subsection (2) of section 497.268, Florida Statutes, are amended  
 591 to read:

592 497.268 Care and maintenance trust fund, percentage of  
 593 payments for burial rights to be deposited.—

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

597 (a) For burial rights, 10 percent of all payments  
 598 received; however, for sales made after September 30, 1993, no

599 deposit shall be less than \$25 per burial right ~~grave~~. For each  
 600 burial right which is provided without charge, the deposit to  
 601 the fund shall be \$25.

602 ~~(b) For mausoleums or columbaria, 10 percent of payments~~  
 603 ~~received.~~

604 (2) Deposits to the care and maintenance trust fund shall  
 605 be made by the cemetery company not later than 30 days following  
 606 the close of the calendar month in which any payment was  
 607 received; however, when such payments are received in  
 608 installments, the percentage of the installment payment placed  
 609 in trust must be identical to the percentage which the payment  
 610 received bears to the total cost for the burial rights. Trust  
 611 income may be used to pay for all usual and customary services  
 612 for the operation of a trust account, including, but not limited  
 613 to: reasonable trustee and custodian fees, investment adviser  
 614 fees, allocation fees, and taxes. If the net income is not  
 615 sufficient to pay the fees and other expenses, the fees and  
 616 other expenses shall be paid by the cemetery company. ~~Capital~~  
 617 ~~gains taxes shall be paid from the corpus.~~

618 Section 11. Section 497.269, Florida Statutes, is amended  
 619 to read:

620 497.269 Care and maintenance trust fund; financial  
 621 reports.—On or before April 1 of each year, the trustee shall  
 622 furnish adequate financial reports that record the fair market  
 623 value with respect to the care and maintenance trust fund  
 624 utilizing forms and procedures specified by rule. However, the



625 department may require the trustee to make such additional  
 626 financial reports as it deems necessary. In order to ensure that  
 627 the proper deposits to the trust fund have been made, the  
 628 department shall examine the status of the trust fund of the  
 629 company on a semiannual basis for the first 2 years of the trust  
 630 fund's existence.

631 Section 12. Paragraph (b) of subsection (4) of section  
 632 497.273, Florida Statutes, is amended to read:

633 497.273 Cemetery companies; authorized functions.—

634 (4) This chapter does not prohibit the interment or  
 635 entombment of the inurned cremated animal remains of the  
 636 decedent's pet or pets with the decedent's human remains or  
 637 cremated human remains if:

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

641 Section 13. Subsection (1) of section 497.274, Florida  
 642 Statutes, is amended to read:

643 497.274 Standards for grave spaces.—

644 (1) A standard adult grave space shall measure at least 42  
 645 inches in width and 96 inches in length, except for preinstalled  
 646 vaults in designated areas. For interments, except cremated  
 647 remains, the covering soil shall measure no less than 12 inches  
 648 from the top of the outer burial container at time of interment,  
 649 unless such level of soil is not physically possible. In any  
 650 interment, a legally authorized person ~~the family or next of kin~~

651 may waive the 12-inch coverage minimum.

652 Section 14. Subsection (2) of section 497.277, Florida  
 653 Statutes, is amended to read:

654 497.277 Other charges.—Other than the fees for the sale of  
 655 burial rights, burial merchandise, and burial services, no other  
 656 fee may be directly or indirectly charged, contracted for, or  
 657 received by a cemetery company as a condition for a customer to  
 658 use any burial right, burial merchandise, or burial service,  
 659 except for:

660 (2) Charges paid for transferring burial rights from one  
 661 purchaser to another; however, no such fee may exceed \$50,  
 662 unless a higher fee is approved by rule of the board based on  
 663 the board's findings of average administrative costs for a  
 664 cemetery to transfer such burial rights.

665 Section 15. Paragraph (c) of subsection (2) of section  
 666 497.283, Florida Statutes, is amended to read:

667 497.283 Prohibition on sale of personal property or  
 668 services.—

669 (2)

670 (c) In lieu of delivery as required by paragraph (b), for  
 671 sales to cemetery companies and funeral establishments, and only  
 672 for such sales, the manufacturer of a permanent outer burial  
 673 receptacle which meets standards adopted by rule may elect, at  
 674 its discretion, to comply with the delivery requirements of this  
 675 section by annually submitting for approval pursuant to  
 676 procedures and forms as specified by rule, in writing, evidence

677 of the manufacturer's financial responsibility with the  
678 licensing authority for its review and approval. ~~The standards~~  
679 ~~and procedures to establish evidence of financial responsibility~~  
680 ~~shall be those in s. 497.461, with the manufacturer of permanent~~  
681 ~~outer burial receptacles which meet national industry standards~~  
682 ~~assuming the same rights and responsibilities as those of a~~  
683 ~~preneed licensee under s. 497.461.~~

684 Section 16. Subsection (3) of section 497.286, Florida  
685 Statutes, is amended to read:

686 497.286 Owners to provide addresses; presumption of  
687 abandonment; abandonment procedures; sale of abandoned unused  
688 burial rights.—

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

693 (a) Describe the burial rights certified to have been  
694 abandoned;

695 (b) Set forth the name of the owner or owners of the  
696 burial rights, or if the owner is known to the cemetery to be  
697 deceased, then the names, if known to the cemetery, of such  
698 claimants as are heirs at law, next of kin, or specific devisees  
699 under the will of the owner or the legally authorized person;

700 (c) Detail the facts with respect to the failure of the  
701 owner or survivors as outlined in this section to keep the  
702 cemetery informed of the owner's address for a period of 50

703 consecutive years or more; and

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

707 Section 17. Section 497.371, Florida Statutes, is amended  
 708 to read:

709 497.371 Embalmers; establishment of embalmer apprentice  
 710 program.—The licensing authority adopts rules establishing an  
 711 embalmer apprentice program. An embalmer apprentice may perform  
 712 only those tasks, functions, and duties relating to embalming  
 713 which are performed under the direct supervision of an embalmer  
 714 who has an active, valid license under s. 497.368 or s. 497.369.  
 715 An embalmer apprentice is ~~shall be~~ eligible to serve in an  
 716 apprentice capacity for a period not to exceed 3 years as may be  
 717 determined by licensing authority rule or for a period not to  
 718 exceed 5 years if the apprentice is enrolled in and attending a  
 719 course in mortuary science or funeral service education at any  
 720 mortuary college or funeral service education college or school.  
 721 An embalmer apprentice shall be issued a license ~~licensed~~ upon  
 722 payment of a licensure fee as determined by licensing authority  
 723 rule but not to exceed \$200. An applicant for the embalmer  
 724 apprentice program may not be issued a license unless the  
 725 licensing authority determines that the applicant is of good  
 726 character and does not have a history of lack of trustworthiness  
 727 or integrity in business or professional matters.

728 Section 18. Paragraph (b) of subsection (1) of section

729 497.372, Florida Statutes, is amended to read:

730 497.372 Funeral directing; conduct constituting practice  
731 of funeral directing.—

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

735 (b) Planning or arranging, on an at-need basis, the  
736 details of funeral services, embalming, cremation, or other  
737 services relating to the final disposition of human remains,  
738 including the removal of such remains from the state, ~~with the~~  
739 ~~family or friends of the decedent or any other person~~  
740 ~~responsible for such services~~; setting the time of the services;  
741 establishing the type of services to be rendered; acquiring the  
742 services of the clergy; and obtaining vital information for the  
743 filing of death certificates and obtaining of burial transit  
744 permits.

745 Section 19. Subsection (4) of section 497.381, Florida  
746 Statutes, is amended to read:

747 497.381 Solicitation of goods or services.—

748 (4) At-need solicitation of funeral merchandise or  
749 services is prohibited. A ~~No~~ funeral director or direct disposer  
750 or her or his agent or representative may not contact the  
751 legally authorized person or family ~~or next of kin of a deceased~~  
752 ~~person~~ to sell services or merchandise unless the funeral  
753 director or direct disposer or her or his agent or  
754 representative has been initially called or contacted by the

755 decendent's legally authorized person or family ~~or next of kin of~~  
756 ~~such person~~ and requested to provide her or his services or  
757 merchandise.

758 Section 20. Paragraph (c) of subsection (2) of section  
759 497.452, Florida Statutes, is amended to read:

760 497.452 Preneed license required.—

761 (2)

762 ~~(c) The provisions of paragraph (a) do not apply to any~~  
763 ~~Florida corporation existing under chapter 607 acting as a~~  
764 ~~servicing agent hereunder in which the stock of such corporation~~  
765 ~~is held by 100 or more persons licensed pursuant to part III of~~  
766 ~~this chapter, provided no one stockholder holds, owns, votes, or~~  
767 ~~has proxies for more than 5 percent of the issued stock of such~~  
768 ~~corporation; provided the corporation has a blanket fidelity~~  
769 ~~bond, covering all employees handling the funds, in the amount~~  
770 ~~of \$50,000 or more issued by a licensed insurance carrier in~~  
771 ~~this state; and provided the corporation processes the funds~~  
772 ~~directly to and from the trustee within the applicable time~~  
773 ~~limits set forth in this chapter. The department may require any~~  
774 ~~person claiming that the provisions of this paragraph exempt it~~  
775 ~~from the provisions of paragraph (a) to demonstrate to the~~  
776 ~~satisfaction of the department that it meets the requirements of~~  
777 ~~this paragraph.~~

778 Section 21. Subsections (1) and (3) of section 497.454,  
779 Florida Statutes, are amended to read:

780 497.454 Approval of preneed contract and related forms.—

781 (1) Preneed contract forms and related forms shall be  
782 filed with and approved by the licensing authority before ~~prior~~  
783 ~~to~~ use, pursuant to procedures specified by rule. The licensing  
784 authority may not approve any electronic or paper preneed  
785 contract ~~form~~ that does not provide for sequential prenumbering  
786 thereon.

787 ~~(3) Specific disclosure regarding the preneed licensee's~~  
788 ~~ability to select either trust funding or the financial~~  
789 ~~responsibility alternative as set forth in s. 497.461 in~~  
790 ~~connection with the receipt of preneed contract proceeds is~~  
791 ~~required in the preneed contract.~~

792 Section 22. Subsections (2), (7), and (8) of section  
793 497.456, Florida Statutes, are amended to read:

794 497.456 Preneed Funeral Contract Consumer Protection Trust  
795 Fund.—

796 (2) Within 60 days after the end of each calendar quarter,  
797 for each preneed contract written during the quarter and not  
798 canceled within 30 days after the date of the execution of the  
799 contract, each preneed licensee, whether funding preneed  
800 contracts by the sale of insurance or by establishing a trust  
801 pursuant to s. 497.458 or s. 497.464, shall remit the sum of  
802 \$2.50 for each preneed contract having a purchase price of  
803 \$1,500 or less, and the sum of \$5 for each preneed contract  
804 having a purchase price in excess of \$1,500; and each preneed  
805 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum  
806 of \$5 for each preneed contract having a purchase price of

807 \$1,500 or less, and the sum of \$10 for each preneed contract  
808 having a purchase price in excess of \$1,500.

809 (7) In any situation in which a delinquency proceeding has  
810 not commenced, the licensing authority may, in its discretion,  
811 use the trust fund for the purpose of providing restitution to  
812 any consumer, owner, or beneficiary of a preneed contract or  
813 similar regulated arrangement under this chapter entered into  
814 after June 30, 1977. If, after investigation, the licensing  
815 authority determines that a preneed licensee has breached a  
816 preneed contract by failing to provide benefits or an  
817 appropriate refund, or that a provider, who is a former preneed  
818 licensee or an establishment which has been regulated under this  
819 chapter, has sold a preneed contract and has failed to fulfill  
820 the arrangement or provide the appropriate refund, and such  
821 preneed licensee or provider does not provide or does not  
822 possess adequate funds to provide appropriate refunds, payments  
823 from the trust fund may be authorized by the licensing  
824 authority. In considering whether payments shall be made or when  
825 considering who will be responsible for such payments, the  
826 licensing authority shall consider whether the preneed licensee  
827 or previous provider has been acquired by a successor who is or  
828 should be responsible for the liabilities of the defaulting  
829 entity. With respect to preneed contracts funded by life  
830 insurance, payments from the fund shall be made: if the insurer  
831 is insolvent, but only to the extent that funds are not  
832 available through the liquidation proceeding of the insurer; or



833 if the preneed licensee is unable to perform under the contract  
834 and the insurance proceeds are not sufficient to cover the cost  
835 of the merchandise and services contracted for. In no event  
836 shall the licensing authority approve payments in excess of the  
837 insurance policy limits unless it determines that at the time of  
838 sale of the preneed contract, the insurance policy would have  
839 paid for the services and merchandise contracted for. Such  
840 monetary relief shall be in an amount as the licensing authority  
841 may determine and shall be payable in such manner and upon such  
842 conditions and terms as the licensing authority may prescribe.  
843 However, with respect to preneed contracts to be funded pursuant  
844 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any  
845 restitution made pursuant to this subsection may ~~shall~~ not  
846 exceed, as to any single contract or arrangement, the lesser of  
847 the gross amount paid under the contract or 4 percent of the  
848 uncommitted assets of the trust fund. With respect to preneed  
849 contracts funded by life insurance policies, any restitution may  
850 ~~shall~~ not exceed, as to any single contract or arrangement, the  
851 lesser of the face amount of the policy, the actual cost of the  
852 arrangement contracted for, or 4 percent of the uncommitted  
853 assets of the trust fund. The total of all restitutions made to  
854 all applicants under this subsection in a single fiscal year may  
855 ~~shall~~ not exceed the greater of 30 percent of the uncommitted  
856 assets of the trust fund as of the end of the most recent fiscal  
857 year or \$120,000. The department may use moneys in the trust  
858 fund to contract with independent vendors pursuant to chapter

859 287 to administer the requirements of this subsection.

860 (8) All moneys deposited in the Preneed Funeral Contract  
 861 Consumer Protection Trust Fund together with all accumulated  
 862 appreciation ~~income~~ shall be used only for the purposes  
 863 expressly authorized by this chapter and may ~~shall~~ not be  
 864 subject to any liens, charges, judgments, garnishments, or other  
 865 creditor's claims against the preneed licensee, any trustee  
 866 utilized by the preneed licensee, any company providing a surety  
 867 bond as specified in this chapter, or any purchaser of a preneed  
 868 contract. No preneed contract purchaser shall have any vested  
 869 rights in the trust fund.

870 Section 23. Paragraphs (a), (b), (d), and (f) of  
 871 subsection (1), paragraph (a) of subsection (3), subsection (4),  
 872 paragraphs (a) and (c) of subsection (5), and subsections (6)  
 873 through (9) of section 497.458, Florida Statutes, are amended,  
 874 and a new paragraph (j) is added to subsection (1) of that  
 875 section, to read:

876 497.458 Disposition of proceeds received on contracts.—

877 (1)

878 (a) Any person who is paid, collects, or receives funds  
 879 under a preneed contract for funeral services or merchandise or  
 880 burial services or merchandise shall deposit an amount at least  
 881 equal to the sum of 70 percent of the purchase price collected  
 882 for all services sold and facilities rented; 100 percent of the  
 883 purchase price collected for all cash advance items sold; and 30  
 884 percent of the purchase price collected ~~or 110 percent of the~~

885 ~~wholesale cost, whichever is greater,~~ for each item of  
886 merchandise sold. The board may, by rule, specify criteria for  
887 the classification of items sold in a preneed contract as  
888 services, merchandise, or cash advances.

889 ~~(b) The method of determining wholesale cost shall be~~  
890 ~~established by rule of the licensing authority and shall be~~  
891 ~~based upon the preneed licensee's stated wholesale cost for the~~  
892 ~~12-month period beginning July 1 during which the initial~~  
893 ~~deposit to the preneed trust fund for the preneed contract is~~  
894 ~~made.~~

895 (c) ~~(d)~~ The trustee shall take title to the property  
896 conveyed to the trust for the purpose of investing, protecting,  
897 and conserving it for the preneed licensee; collecting income;  
898 and distributing the fair market value ~~principal and income~~ as  
899 prescribed in this chapter. The preneed licensee is prohibited  
900 from sharing in the discharge of these responsibilities, except  
901 that the preneed licensee may request the trustee to invest in  
902 tax-free investments and may appoint an adviser to the trustee.  
903 The licensing authority may adopt rules limiting or otherwise  
904 specifying the degree to which the trustee may rely on the  
905 investment advice of an investment adviser appointed by the  
906 preneed licensee. The licensing authority may adopt rules  
907 limiting or prohibiting payment of fees by the trust to  
908 investment advisors that are employees or principals of the  
909 licensee to whom the trust fund relates.

910 (d) ~~(f)~~ The deposited funds shall be held in trust, both as

911 to principal and any change in fair market value ~~income earned~~  
912 thereon, and shall remain intact, except that the cost of the  
913 operation of the trust or trust account authorized by this  
914 section may be deducted from the income earned thereon.

915 (j) On or before April 1 of each year, beginning in 2018,  
916 the trustee shall furnish the department with an annual report  
917 regarding each preneed licensee trust account held by the  
918 trustee at any time during the previous calendar year. The  
919 report shall state the name and address of the trustee; the  
920 name, address, and license number of the licensee to whom the  
921 report relates; the trust account number; the beginning and  
922 ending trust balance; and as may be specified by department  
923 rule, a list of receipts showing the date and amount of any  
924 disbursement. The report must be signed by the trustee's account  
925 manager for the trust account. The department, by rule, shall  
926 specify the format in which the trustee shall submit the report  
927 and the procedures for submission.

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

931 (4) The licensing authority may adopt rules exempting from  
932 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria  
933 established in such rule, the investment of trust funds in  
934 investments, such as widely and publicly traded stocks and  
935 bonds, notwithstanding that the licensee, its principals, or  
936 persons related by blood or marriage to the licensee or its

937 principals have an interest by investment in the same entity,  
938 where neither the licensee, its principals, or persons related  
939 by blood or marriage to the licensee or its principals have the  
940 ability to control the entity invested in, and it would be in  
941 the interest of the preneed contract holders whose contracts are  
942 secured by the trust funds to allow the investment.

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

945 (a) Invest in investments as prescribed in s. 518.11  
946 ~~215.47~~ and exercise the powers set forth in part VIII of chapter  
947 736, provided that life insurance policies or annuity contracts  
948 are not allowable investments or assets by or of the trust and  
949 that real estate does not comprise more than 25 percent of the  
950 trust assets; provided further that the licensing authority may  
951 by order require the trustee to liquidate or dispose of any  
952 investment within 30 days after such order, or within such other  
953 times as the order may direct. The licensing authority may issue  
954 such order if it determines that the investment violates any  
955 provision of this chapter or is not in the best interests of the  
956 preneed contract holders whose contracts are secured by the  
957 trust funds.

958 (c) Commingle the property of the trust with the property  
959 of any other trust established pursuant to this chapter and make  
960 corresponding allocations and divisions of assets, liabilities,  
961 income, ~~and expenses,~~ and capital gains and losses.

962 ~~(6) The preneed licensee, at her or his election, shall~~

963 ~~have the right and power, at any time, to revest in it title to~~  
964 ~~the trust assets, or its pro rata share thereof, provided it has~~  
965 ~~complied with s. 497.461.~~

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

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

974 ~~(b) Section 497.462 is a viable option available to it at~~  
975 ~~any and all relevant times for contracts written prior to July~~  
976 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

977 ~~(c) For any preneed licensee authorized to do business in~~  
978 ~~this state that has total bonded liability exceeding \$100~~  
979 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~  
980 ~~at any and all relevant times for contracts written prior to~~  
981 ~~December 31, 2004, for funds not held in trust as of July 1,~~  
982 ~~2001.~~

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

987 ~~(6)~~(9) The amounts required to be placed in a trust by  
988 this section for contracts previously entered into shall be as

989 follows:

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

993 (b) For contracts entered into on or after October 1,  
 994 1993, the trust amounts as amended by s. 98, chapter 93-399,  
 995 Laws of Florida, shall apply.

996 Section 24. Paragraph (a) of subsection (6) of section  
 997 497.459, Florida Statutes, is amended to read:

998 497.459 Cancellation of, or default on, preneed  
 999 contracts.—

1000 (6) OTHER PROVISIONS.—

1001 (a) All preneed contracts are cancelable and revocable as  
 1002 provided in this section, provided that a preneed contract does  
 1003 not restrict any contract purchaser who is the beneficiary of  
 1004 the preneed contract and who is a qualified applicant for, or a  
 1005 recipient of, supplemental security income, temporary cash  
 1006 assistance, or Medicaid from making her or his contract  
 1007 irrevocable. A preneed contract that is made irrevocable  
 1008 pursuant to this section may not be cancelled during the life or  
 1009 after the death of the contract purchaser or beneficiary as  
 1010 described in this section. Any unexpended moneys paid on an  
 1011 irrevocable contract shall be remitted to the Agency for Health  
 1012 Care Administration for deposit into the Medical Care Trust Fund  
 1013 after final disposition of the beneficiary.

1014 Section 25. Section 497.460, Florida Statutes, is amended

1015 to read:

1016 497.460 Payment of funds upon death of named beneficiary.—  
 1017 Disbursements of funds discharging any preneed contract  
 1018 fulfilled after September 30, 1993, shall be made by the trustee  
 1019 to the preneed licensee upon receipt of a certified copy of the  
 1020 death certificate of the contract beneficiary or satisfactory  
 1021 evidence as established by rule of the licensing authority that  
 1022 the preneed contract has been performed in whole or in part.  
 1023 However, if the contract is only partially performed, the  
 1024 disbursement shall only cover the fair market value of that  
 1025 portion of the contract performed. In the event of any contract  
 1026 default by the contract purchaser, or in the event that the  
 1027 funeral merchandise or service or burial merchandise or service  
 1028 contracted for is not provided or is not desired by the legally  
 1029 authorized person ~~heirs or personal representative of the~~  
 1030 ~~contract beneficiary,~~ the trustee shall return, within 30 days  
 1031 after its receipt of a written request therefor, funds paid on  
 1032 the contract to the preneed licensee or to its assigns, subject  
 1033 to ~~the provisions of~~ s. 497.459.

1034 Section 26. Section 497.461, Florida Statutes, is  
 1035 repealed.

1036 Section 27. The repeal of s. 497.461, Florida Statutes, by  
 1037 this act does not apply to any surety bonds in force under s.  
 1038 497.461 as of July 1, 2016, but no additional preneed contracts  
 1039 shall be added under such surety bonds after July 1, 2016.

1040 Section 28. Subsections (3) through (11) of section



1041 497.462, Florida Statutes, are renumbered as subsections (2)  
 1042 through (10), respectively, and present subsection (2),  
 1043 paragraph (a) of subsection (3), and subsections (7) and (10) of  
 1044 that section are amended, to read:

1045 497.462 Other alternatives to deposits under s. 497.458.—

1046 ~~(2) Upon prior approval by the licensing authority, the~~  
 1047 ~~preneed licensee may file a letter of credit with the licensing~~  
 1048 ~~authority in lieu of a surety bond. Such letter of credit must~~  
 1049 ~~be in a form, and is subject to terms and conditions, prescribed~~  
 1050 ~~by the board. It may be revoked only with the express approval~~  
 1051 ~~of the licensing authority.~~

1052 (2)~~(3)~~(a) A buyer of preneed merchandise or services who  
 1053 does not receive such services or merchandise due to the  
 1054 economic failure, closing, or bankruptcy of the preneed licensee  
 1055 must file a claim with the surety as a prerequisite to payment  
 1056 of the claim and, if the claim is not paid, may bring an action  
 1057 based on the bond and recover against the surety. ~~In the case of~~  
 1058 ~~a letter of credit or cash deposit that has been filed with the~~  
 1059 ~~licensing authority, the buyer may file a claim with the~~  
 1060 ~~licensing authority.~~

1061 (6)~~(7)~~ Any preneed contract which promises future delivery  
 1062 of merchandise at no cost constitutes a paid-up contract.  
 1063 Merchandise which has been delivered is not covered by the  
 1064 required performance bond ~~or letter of credit~~ even though the  
 1065 contract is not completely paid. The preneed licensee may not  
 1066 cancel a contract unless the purchaser is in default according

1067 to the terms of the contract and subject to the requirements of  
 1068 s. 497.459. A contract sold, discounted, and transferred to a  
 1069 third party constitutes a paid-up contract for the purposes of  
 1070 the performance bond ~~or letter of credit.~~

1071 (9)~~(10)~~ The licensing authority may adopt forms and rules  
 1072 necessary to implement this section, including, but not limited  
 1073 to, rules which ensure that the surety bond provides ~~and line of~~  
 1074 ~~credit provide~~ liability coverage for preneed merchandise and  
 1075 services.

1076 Section 29. Paragraphs (c) through (g) of subsection (1)  
 1077 of section 497.464, Florida Statutes, are amended to read:

1078 497.464 Alternative preneed contracts.—

1079 (1) Nothing in this chapter shall prevent the purchaser  
 1080 and the preneed licensee from executing a preneed contract upon  
 1081 the terms stated in this section. Such contracts shall be  
 1082 subject to all provisions of this chapter except:

1083 ~~(c) Section 497.458(1), (3), and (6).~~

1084 (c)~~(d)~~ Section 497.459(1), (2), and (4).

1085 (d)~~(e)~~ Section 497.460.

1086 ~~(f) Section 497.461.~~

1087 (e)~~(g)~~ Section 497.462.

1088 Section 30. Subsection (2) and paragraph (c) of subsection  
 1089 (9) of section 497.465, Florida Statutes, is amended to read:

1090 497.465 Inactive, surrendered, and revoked preneed  
 1091 licensees.—

1092 (2) A preneed licensee shall cease all preneed sales to

1093 the public upon becoming inactive. Upon becoming inactive, the  
 1094 preneed licensee shall ~~collect and~~ deposit into the trust all of  
 1095 the funds received from ~~paid toward~~ preneed contracts sold  
 1096 before ~~prior to~~ becoming inactive.

1097 (9) The licensing authority may adopt rules for the  
 1098 implementation of this section, for the purpose of ensuring a  
 1099 thorough review and investigation of the status and condition of  
 1100 the preneed licensee's business affairs for the protection of  
 1101 the licensee's preneed customers. Such rules may include:

1102 (c) Requirements for submission of ~~unaudited or audited~~  
 1103 financial statements, as the licensing authority deems  
 1104 advisable.

1105 Section 31. Paragraph (b) of subsection (1) of section  
 1106 497.601, Florida Statutes, is amended to read:

1107 497.601 Direct disposition; duties.—

1108 (1) Those individuals licensed as direct disposers may  
 1109 perform only those functions set forth below:

1110 (b) Secure pertinent information from a legally authorized  
 1111 person ~~the decedent's next of kin~~ in order to complete the death  
 1112 certificate and to file for the necessary permits for ~~direct~~  
 1113 disposition.

1114 Section 32. Subsection (1) of section 497.607, Florida  
 1115 Statutes, is amended, subsections (2), (3), and (4) are  
 1116 renumbered as subsections (3), (4), and (5), respectively, and a  
 1117 new subsection (2) is added to that section, to read:

1118 497.607 Cremation; procedure required.—

1119 (1) At the time of the arrangement for a cremation  
1120 performed by any person licensed pursuant to this chapter, the  
1121 legally authorized person contracting for cremation services  
1122 shall be required to designate her or his intentions with  
1123 respect to the disposition of the cremated remains of the  
1124 deceased in a signed declaration of intent which shall be  
1125 provided by and retained by the funeral or direct disposal  
1126 establishment. A cremation may not be performed until a legally  
1127 authorized person gives written authorization, which may include  
1128 the declaration of intent to dispose of the cremated remains,  
1129 for such cremation. The cremation must be performed within 48  
1130 hours after a specified time which has been agreed to in writing  
1131 by the person authorizing the cremation.

1132 (2) Cremated remains are not property, as defined in s.  
1133 731.201, and are not subject to ownership or court-ordered  
1134 partition. A division of cremated remains requires the consent  
1135 of the legally authorized person who approved the cremation or,  
1136 if the legally authorized person is the decedent, the next  
1137 legally authorized person pursuant to s. 497.005(40). A dispute  
1138 regarding the division of cremated remains shall be resolved by  
1139 a court of competent jurisdiction.

1140 Section 33. This act shall take effect July 1, 2016.