

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 ss. 497.283 and  
47 | 497.286, F.S.; conforming provisions; amending s.  
48 | 497.371, F.S.; providing that an applicant for the  
49 | embalmer apprentice program may not be licensed  
50 | without a determination of character by the licensing  
51 | authority; amending ss. 497.372, 497.381, 497.454, and  
52 | 497.456, F.S.; conforming provisions; conforming

53 cross-references; amending s. 497.452, F.S.; deleting  
54 an exception that prohibits a person from receiving  
55 specified funds without holding a valid preneed  
56 license; amending s. 497.458, F.S.; revising  
57 requirements relating to the disposition of proceeds  
58 on a preneed contract; authorizing the board to adopt  
59 rules to classify items sold in preneed contracts;  
60 requiring the trustee to furnish the department with  
61 an annual report regarding preneed licensee trust  
62 accounts beginning on a specified date; providing  
63 requirements for the annual report; revising which  
64 investments a trustee of a trust has the power to  
65 invest; deleting provisions related to the preneed  
66 licensee; amending s. 497.459, F.S.; providing that  
67 certain preneed contracts may not be cancelled during  
68 the life or after the death of the contract purchaser;  
69 providing for disposition of unexpended moneys paid on  
70 irrevocable contracts; amending s. 497.460, F.S.;  
71 conforming provisions; repealing s. 497.461, F.S.,  
72 relating to the authorization for a preneed licensee  
73 to elect surety bonding as an alternative to  
74 depositing funds into a trust; providing for  
75 applicability of the repeal of s. 497.461, F.S.;  
76 amending s. 497.462, F.S.; deleting provisions made  
77 obsolete by the repeal of s. 497.461, F.S.; amending  
78 s. 497.464, F.S.; conforming a cross-reference;

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

89 |

90 | Be It Enacted by the Legislature of the State of Florida:

91 |

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

97 | 497.005 Definitions.—As used in this chapter, the term:

98 | (5) "Beneficiary" means a natural person expressly  
 99 | identified in a preneed contract as the individual for whom  
 100 | funeral merchandise or services are intended.

101 | (63) "Purchaser" means a natural person who has executed  
 102 | an at-need or preneed contract with a licensee.

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

105           497.141 Licensing; general application procedures.—  
106           (2) Any person desiring to be licensed shall apply to the  
107 licensing authority in writing using such forms and procedures  
108 as may be prescribed by rule. The application for licensure  
109 shall include the applicant's social security number if the  
110 applicant is a natural person; otherwise, the applicant's  
111 federal tax identification number shall be included.  
112 Notwithstanding any other provision of law, the department is  
113 the sole authority for determining the forms and form contents  
114 to be submitted for initial licensure and licensure renewal  
115 application. Such forms and the information and materials  
116 required by such forms may include, as appropriate,  
117 demographics, education, work history, personal background,  
118 criminal history, finances, business information, signature  
119 notarization, performance periods, reciprocity, local government  
120 approvals, supporting documentation, periodic reporting  
121 requirements, fingerprint requirements, continuing education  
122 requirements, business plans, character references, e-mail  
123 addresses, and ongoing education monitoring. Such forms and the  
124 information and materials required by such forms may also  
125 include, to the extent such information or materials are not  
126 already in the possession of the department or the board,  
127 records or information as to complaints, inspections,  
128 investigations, discipline, and bonding. The application shall  
129 be supplemented as needed to reflect any material change in any  
130 circumstance or condition stated in the application that takes

131 place between the initial filing of the application and the  
132 final grant or denial of the license and that might affect the  
133 decision of the department or the board. After an application by  
134 a natural person for licensure under this chapter is approved,  
135 the licensing authority may require the successful applicant to  
136 provide a photograph of himself or herself for permanent  
137 lamination onto the license card to be issued to the applicant,  
138 pursuant to rules and fees adopted by the licensing authority.

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

151 Section 3. Section 497.146, Florida Statutes, is amended  
152 to read:

153 497.146 Licensing; address of record; changes; licensee  
154 responsibility.—Each licensee under this chapter is responsible  
155 for notifying the department in writing of the licensee's  
156 current e-mail address, business and residence mailing address,

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

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

176 497.152 Disciplinary grounds.—This section sets forth  
177 conduct that is prohibited and that shall constitute grounds for  
178 denial of any application, imposition of discipline, or other  
179 enforcement action against the licensee or other person  
180 committing such conduct. For purposes of this section, the  
181 requirements of this chapter include the requirements of rules  
182 adopted under authority of this chapter. No subsection heading

183 in this section shall be interpreted as limiting the  
 184 applicability of any paragraph within the subsection.

185 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF  
 186 HUMAN REMAINS.—

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

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

197 (12) DISCLOSURE REQUIREMENTS.—

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

204 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY  
 205 CUSTOMERS.—

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

208 1. Failing to acknowledge and act promptly upon



209 | communications from a licensee's customers and their  
210 | representatives with respect to claims or complaints relating to  
211 | the licensee's activities regulated by this chapter.

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

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

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

227 |         5. Failing to promptly provide, in relation to a contract  
228 | for funeral or burial merchandise or services entered into by  
229 | the licensee or under the licensee's license, a reasonable  
230 | explanation to the contract purchaser or a legally authorized  
231 | person ~~her or his representative or legal guardian~~ of the  
232 | licensee's basis for denying or rejecting all or any part of a  
233 | claim or complaint submitted.

234 |         (c) Making a material misrepresentation to a contract

235 purchaser or a legally authorized person ~~her or his~~  
 236 ~~representative or legal guardian~~ for the purpose and with the  
 237 intent of effecting settlement of a claim or complaint or loss  
 238 under a prepaid contract on less favorable terms than those  
 239 provided in, and contemplated by, the prepaid contract.

240  
 241 For purposes of this subsection, the response of a customer  
 242 recorded by the customer on a customer satisfaction  
 243 questionnaire or survey form sent to the customer by the  
 244 licensee, and returned by the customer to the licensee, shall  
 245 not be deemed to be a complaint.

246 (15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

257 497.161 Other rulemaking provisions.—

258 (1) In addition to such other rules as are authorized or  
 259 required under this chapter, the following additional rules, not  
 260 inconsistent with this chapter, shall be authorized by the

261 licensing authority.

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

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

267 497.264 License not assignable or transferable.—

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

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

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

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

284 497.266 Care and maintenance trust fund; remedy of  
 285 department for noncompliance.—

286 (3) A ~~No~~ person may not withdraw or transfer any portion

287 of assets within ~~the corpus of~~ the care and maintenance trust  
 288 fund, except as authorized by s. 497.2675, without first  
 289 obtaining written consent from the licensing authority.

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

301 Section 8. Section 497.267, Florida Statutes, is amended  
 302 to read:

303 497.267 Disposition of withdrawals from the ~~income of~~ care  
 304 and maintenance trust fund; notice to purchasers and  
 305 depositors. ~~Withdrawals from the net income of the~~ care and  
 306 maintenance trust fund shall be used solely for the care and  
 307 maintenance of the cemetery, including maintenance of monuments,  
 308 which maintenance may ~~shall~~ not be deemed to include the  
 309 cleaning, refinishing, repairing, or replacement of monuments;  
 310 for reasonable costs of administering the care and maintenance;  
 311 and for reasonable costs of administering the trust fund. At the  
 312 time of making a sale or receiving an initial deposit, the

313 cemetery company shall deliver to the person to whom the sale is  
314 made, or who makes a deposit, a written instrument which shall  
315 specifically state the purposes for which withdrawals from the  
316 ~~income of the~~ trust fund shall be used.

317 Section 9. Section 497.2675, Florida Statutes, is created  
318 to read:

319 497.2675 Distributions from the care and maintenance  
320 trusts.-

321 (1) DEFINITIONS.-In addition to definitions provided in s.  
322 497.005, the following definitions shall apply for purposes of  
323 care and maintenance trusts:

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

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

333 2. If assets are distributed from the trust during the  
334 years used to determine the average, other than in satisfaction  
335 of the unitrust amount, the amount of each distribution is  
336 subtracted from all years in which such distribution is not  
337 included.

338 (b) "Capital gain" or "capital loss" means a change in the

339 fair market value of a capital asset, such as investment or real  
340 estate, that gives the asset a different worth than the purchase  
341 price. A capital gain or loss may be realized or unrealized. A  
342 capital gain or loss is realized when the asset is sold.

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

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

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

364 (f) "Fair market value" means the fair market value of the

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

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

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

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

389 (j) "Unitrust distribution method" is the method of  
390 calculating the amount to be distributed to a cemetery licensee

391 from its care and maintenance trust, where the average fair  
392 market value of the care and maintenance trust, or the preneed  
393 licensee's pro rata share of a master trust, is multiplied by a  
394 unitrust distribution percentage, and the resulting unitrust  
395 amount is distributed to the cemetery licensee.

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

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

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



417 bylaws or trust agreements if the board finds that there are  
418 reasonable grounds to believe that approval would be in the best  
419 interests of the perpetual care of the cemetery, and under all  
420 the circumstances of the particular case, would be in the best  
421 interest of persons then owning interment spaces in the cemetery  
422 and the families of persons already interred in the cemetery.

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

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

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

433 1. Be signed by an officer of the licensed cemetery.  
434 2. State the cemetery's name, license number, and address.  
435 3. Provide a copy of the cemetery's existing bylaws and  
436 the care and maintenance trust agreement.

437 4. If the applicant seeks approval of an amendment or  
438 replacement of its bylaws or care and maintenance trust  
439 agreement, provide a copy of the proposed amended or replacement  
440 bylaws or care and maintenance trust agreement, identifying all  
441 material changes from the existing bylaws or care and  
442 maintenance trust agreement.

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

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

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

453 6. Specify the unitrust distribution percentage for which  
454 the applicant seeks approval.

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

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

466 9. Certify to the board that cemetery management has  
467 conducted, or caused to be conducted, and have reviewed an  
468 analysis of the proposed implementation of the unitrust

469 distribution method as applied to the cemetery's care and  
470 maintenance trust, and, to the best of the knowledge and belief  
471 of the cemetery's management, implementation of the unitrust  
472 distribution method will not result in lower end-of-year care  
473 and maintenance trust principal balances than there would be  
474 under the net ordinary income trust distribution method.

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

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

489 (d) Temporary initial unitrust distribution percentage.—  
490 Four and one-half percent is the maximum unitrust distribution  
491 percentage that may be approved for the first 12 months of an  
492 applicant's use of the unitrust distribution method. If the  
493 board, in the initial application proceeding, approved a  
494 unitrust distribution percentage higher than 4.5 percent, upon

495 expiration of 12 months, the applicant may, without further  
496 application or proceedings, commence use of the higher approved  
497 unitrust distribution percentage.

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

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

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

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

517 A cemetery licensee that is using the unitrust distribution  
518 method and wishes to revert to the net ordinary income trust  
519 distribution method must receive approval from the board before  
520 implementing such change. The board shall approve such

521 application unless it determines that approval would not be in  
522 the long term best interests of the cemetery's care and  
523 maintenance trust as a resource to provide for the perpetual  
524 care of the cemetery after the cemetery ceases active  
525 operations.

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

541 (8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION  
542 METHOD.—The unitrust distribution calculated pursuant to the  
543 unitrust distribution method as approved by the board for a  
544 particular licensee shall be distributed to the preneed licensee  
545 in equal monthly or quarterly payments at the end of each month  
546 or quarter.

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

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

570 (11) ANNUAL REPORTS.—A cemetery licensee using the  
571 unitrust distribution method shall cause the trustee of the care  
572 and maintenance trust each year to prepare and provide to the

573 division a report as required by s. 497.269 and shall cause the  
 574 trustee to provide the following information to the division:

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

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

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

586 Section 10. Paragraphs (a) and (b) of subsection (1) and  
 587 subsection (2) of section 497.268, Florida Statutes, are amended  
 588 to read:

589 497.268 Care and maintenance trust fund, percentage of  
 590 payments for burial rights to be deposited.—

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

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

599 ~~(b) For mausoleums or columbaria, 10 percent of payments~~  
 600 ~~received.~~

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

615 Section 11. Section 497.269, Florida Statutes, is amended  
 616 to read:

617 497.269 Care and maintenance trust fund; financial  
 618 reports.—On or before April 1 of each year, the trustee shall  
 619 furnish adequate financial reports that record the fair market  
 620 value with respect to the care and maintenance trust fund  
 621 utilizing forms and procedures specified by rule. However, the  
 622 department may require the trustee to make such additional  
 623 financial reports as it deems necessary. In order to ensure that  
 624 the proper deposits to the trust fund have been made, the



625 department shall examine the status of the trust fund of the  
626 company on a semiannual basis for the first 2 years of the trust  
627 fund's existence.

628 Section 12. Paragraph (b) of subsection (4) of section  
629 497.273, Florida Statutes, is amended to read:

630 497.273 Cemetery companies; authorized functions.—

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

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

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

640 497.274 Standards for grave spaces.—

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

649 Section 14. Paragraph (c) of subsection (2) of section  
650 497.283, Florida Statutes, is amended to read:

651 497.283 Prohibition on sale of personal property or  
 652 services.—

653 (2)

654 (c) In lieu of delivery as required by paragraph (b), for  
 655 sales to cemetery companies and funeral establishments, and only  
 656 for such sales, the manufacturer of a permanent outer burial  
 657 receptacle which meets standards adopted by rule may elect, at  
 658 its discretion, to comply with the delivery requirements of this  
 659 section by annually submitting for approval pursuant to  
 660 procedures and forms as specified by rule, in writing, evidence  
 661 of the manufacturer's financial responsibility with the  
 662 licensing authority for its review and approval. ~~The standards  
 663 and procedures to establish evidence of financial responsibility  
 664 shall be those in s. 497.461, with the manufacturer of permanent  
 665 outer burial receptacles which meet national industry standards  
 666 assuming the same rights and responsibilities as those of a  
 667 preneed licensee under s. 497.461.~~

668 Section 15. Subsection (3) of section 497.286, Florida  
 669 Statutes, is amended to read:

670 497.286 Owners to provide addresses; presumption of  
 671 abandonment; abandonment procedures; sale of abandoned unused  
 672 burial rights.—

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

677 (a) Describe the burial rights certified to have been  
678 abandoned;

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

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

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

691 Section 16. Section 497.371, Florida Statutes, is amended  
692 to read:

693 497.371 Embalmers; establishment of embalmer apprentice  
694 program.—The licensing authority adopts rules establishing an  
695 embalmer apprentice program. An embalmer apprentice may perform  
696 only those tasks, functions, and duties relating to embalming  
697 which are performed under the direct supervision of an embalmer  
698 who has an active, valid license under s. 497.368 or s. 497.369.  
699 An embalmer apprentice is ~~shall be~~ eligible to serve in an  
700 apprentice capacity for a period not to exceed 3 years as may be  
701 determined by licensing authority rule or for a period not to  
702 exceed 5 years if the apprentice is enrolled in and attending a

703 course in mortuary science or funeral service education at any  
 704 mortuary college or funeral service education college or school.  
 705 An embalmer apprentice shall be issued a license ~~licensed~~ upon  
 706 payment of a licensure fee as determined by licensing authority  
 707 rule but not to exceed \$200. An applicant for the embalmer  
 708 apprentice program may not be issued a license unless the  
 709 licensing authority determines that the applicant is of good  
 710 character and does not have a history of lack of trustworthiness  
 711 or integrity in business or professional matters.

712 Section 17. Paragraph (b) of subsection (1) of section  
 713 497.372, Florida Statutes, is amended to read:

714 497.372 Funeral directing; conduct constituting practice  
 715 of funeral directing.—

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

719 (b) Planning or arranging, on an at-need basis, the  
 720 details of funeral services, embalming, cremation, or other  
 721 services relating to the final disposition of human remains,  
 722 including the removal of such remains from the state, ~~with the~~  
 723 ~~family or friends of the decedent or any other person~~  
 724 ~~responsible for such services~~; setting the time of the services;  
 725 establishing the type of services to be rendered; acquiring the  
 726 services of the clergy; and obtaining vital information for the  
 727 filing of death certificates and obtaining of burial transit  
 728 permits.

729 Section 18. Subsection (4) of section 497.381, Florida  
 730 Statutes, is amended to read:

731 497.381 Solicitation of goods or services.—

732 (4) At-need solicitation of funeral merchandise or  
 733 services is prohibited. A ~~No~~ funeral director or direct disposer  
 734 or her or his agent or representative may not contact the  
 735 legally authorized person or family ~~or next of kin of a deceased~~  
 736 ~~person~~ to sell services or merchandise unless the funeral  
 737 director or direct disposer or her or his agent or  
 738 representative has been initially called or contacted by the  
 739 decedent's legally authorized person or family ~~or next of kin of~~  
 740 ~~such person~~ and requested to provide her or his services or  
 741 merchandise.

742 Section 19. Paragraph (c) of subsection (2) of section  
 743 497.452, Florida Statutes, is amended to read:

744 497.452 Preneed license required.—

745 (2)

746 ~~(c) The provisions of paragraph (a) do not apply to any~~  
 747 ~~Florida corporation existing under chapter 607 acting as a~~  
 748 ~~servicing agent hereunder in which the stock of such corporation~~  
 749 ~~is held by 100 or more persons licensed pursuant to part III of~~  
 750 ~~this chapter, provided no one stockholder holds, owns, votes, or~~  
 751 ~~has proxies for more than 5 percent of the issued stock of such~~  
 752 ~~corporation; provided the corporation has a blanket fidelity~~  
 753 ~~bond, covering all employees handling the funds, in the amount~~  
 754 ~~of \$50,000 or more issued by a licensed insurance carrier in~~

755 ~~this state; and provided the corporation processes the funds~~  
756 ~~directly to and from the trustee within the applicable time~~  
757 ~~limits set forth in this chapter. The department may require any~~  
758 ~~person claiming that the provisions of this paragraph exempt it~~  
759 ~~from the provisions of paragraph (a) to demonstrate to the~~  
760 ~~satisfaction of the department that it meets the requirements of~~  
761 ~~this paragraph.~~

762 Section 20. Subsections (1) and (3) of section 497.454,  
763 Florida Statutes, are amended to read:

764 497.454 Approval of preneed contract and related forms.—

765 (1) Preneed contract forms and related forms shall be  
766 filed with and approved by the licensing authority before ~~prior~~  
767 ~~to~~ use, pursuant to procedures specified by rule. The licensing  
768 authority may not approve any electronic or paper preneed  
769 contract ~~form~~ that does not provide for sequential prenumbering  
770 thereon.

771 ~~(3) Specific disclosure regarding the preneed licensee's~~  
772 ~~ability to select either trust funding or the financial~~  
773 ~~responsibility alternative as set forth in s. 497.461 in~~  
774 ~~connection with the receipt of preneed contract proceeds is~~  
775 ~~required in the preneed contract.~~

776 Section 21. Subsections (2), (7), and (8) of section  
777 497.456, Florida Statutes, are amended to read:

778 497.456 Preneed Funeral Contract Consumer Protection Trust  
779 Fund.—

780 (2) Within 60 days after the end of each calendar quarter,

781 for each preneed contract written during the quarter and not  
782 canceled within 30 days after the date of the execution of the  
783 contract, each preneed licensee, whether funding preneed  
784 contracts by the sale of insurance or by establishing a trust  
785 pursuant to s. 497.458 or s. 497.464, shall remit the sum of  
786 \$2.50 for each preneed contract having a purchase price of  
787 \$1,500 or less, and the sum of \$5 for each preneed contract  
788 having a purchase price in excess of \$1,500; and each preneed  
789 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum  
790 of \$5 for each preneed contract having a purchase price of  
791 \$1,500 or less, and the sum of \$10 for each preneed contract  
792 having a purchase price in excess of \$1,500.

793 (7) In any situation in which a delinquency proceeding has  
794 not commenced, the licensing authority may, in its discretion,  
795 use the trust fund for the purpose of providing restitution to  
796 any consumer, owner, or beneficiary of a preneed contract or  
797 similar regulated arrangement under this chapter entered into  
798 after June 30, 1977. If, after investigation, the licensing  
799 authority determines that a preneed licensee has breached a  
800 preneed contract by failing to provide benefits or an  
801 appropriate refund, or that a provider, who is a former preneed  
802 licensee or an establishment which has been regulated under this  
803 chapter, has sold a preneed contract and has failed to fulfill  
804 the arrangement or provide the appropriate refund, and such  
805 preneed licensee or provider does not provide or does not  
806 possess adequate funds to provide appropriate refunds, payments

807 from the trust fund may be authorized by the licensing  
808 authority. In considering whether payments shall be made or when  
809 considering who will be responsible for such payments, the  
810 licensing authority shall consider whether the preneed licensee  
811 or previous provider has been acquired by a successor who is or  
812 should be responsible for the liabilities of the defaulting  
813 entity. With respect to preneed contracts funded by life  
814 insurance, payments from the fund shall be made: if the insurer  
815 is insolvent, but only to the extent that funds are not  
816 available through the liquidation proceeding of the insurer; or  
817 if the preneed licensee is unable to perform under the contract  
818 and the insurance proceeds are not sufficient to cover the cost  
819 of the merchandise and services contracted for. In no event  
820 shall the licensing authority approve payments in excess of the  
821 insurance policy limits unless it determines that at the time of  
822 sale of the preneed contract, the insurance policy would have  
823 paid for the services and merchandise contracted for. Such  
824 monetary relief shall be in an amount as the licensing authority  
825 may determine and shall be payable in such manner and upon such  
826 conditions and terms as the licensing authority may prescribe.  
827 However, with respect to preneed contracts to be funded pursuant  
828 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any  
829 restitution made pursuant to this subsection may ~~shall~~ not  
830 exceed, as to any single contract or arrangement, the lesser of  
831 the gross amount paid under the contract or 4 percent of the  
832 uncommitted assets of the trust fund. With respect to preneed



833 contracts funded by life insurance policies, any restitution may  
834 ~~shall~~ not exceed, as to any single contract or arrangement, the  
835 lesser of the face amount of the policy, the actual cost of the  
836 arrangement contracted for, or 4 percent of the uncommitted  
837 assets of the trust fund. The total of all restitutions made to  
838 all applicants under this subsection in a single fiscal year may  
839 ~~shall~~ not exceed the greater of 30 percent of the uncommitted  
840 assets of the trust fund as of the end of the most recent fiscal  
841 year or \$120,000. The department may use moneys in the trust  
842 fund to contract with independent vendors pursuant to chapter  
843 287 to administer the requirements of this subsection.

844 (8) All moneys deposited in the Preneed Funeral Contract  
845 Consumer Protection Trust Fund together with all accumulated  
846 appreciation ~~income~~ shall be used only for the purposes  
847 expressly authorized by this chapter and may ~~shall~~ not be  
848 subject to any liens, charges, judgments, garnishments, or other  
849 creditor's claims against the preneed licensee, any trustee  
850 utilized by the preneed licensee, any company providing a surety  
851 bond as specified in this chapter, or any purchaser of a preneed  
852 contract. No preneed contract purchaser shall have any vested  
853 rights in the trust fund.

854 Section 22. Paragraphs (a), (b), (d), and (f) of  
855 subsection (1), paragraph (a) of subsection (3), subsection (4),  
856 paragraphs (a) and (c) of subsection (5), and subsections (6)  
857 through (9) of section 497.458, Florida Statutes, are amended,  
858 and a new paragraph (j) is added to subsection (1) of that

859 section, to read:

860 497.458 Disposition of proceeds received on contracts.—

861 (1)

862 (a) Any person who is paid, collects, or receives funds  
863 under a preneed contract for funeral services or merchandise or  
864 burial services or merchandise shall deposit an amount at least  
865 equal to the sum of 70 percent of the purchase price collected  
866 for all services sold and facilities rented; 100 percent of the  
867 purchase price collected for all cash advance items sold; and 30  
868 percent of the purchase price collected ~~or 110 percent of the~~  
869 ~~wholesale cost, whichever is greater,~~ for each item of  
870 merchandise sold. The board may, by rule, specify criteria for  
871 the classification of items sold in a preneed contract as  
872 services, merchandise, or cash advances.

873 ~~(b) The method of determining wholesale cost shall be~~  
874 ~~established by rule of the licensing authority and shall be~~  
875 ~~based upon the preneed licensee's stated wholesale cost for the~~  
876 ~~12-month period beginning July 1 during which the initial~~  
877 ~~deposit to the preneed trust fund for the preneed contract is~~  
878 ~~made.~~

879 (c) ~~(d)~~ The trustee shall take title to the property  
880 conveyed to the trust for the purpose of investing, protecting,  
881 and conserving it for the preneed licensee; collecting income;  
882 and distributing the fair market value ~~principal and income~~ as  
883 prescribed in this chapter. The preneed licensee is prohibited  
884 from sharing in the discharge of these responsibilities, except

885 that the preneed licensee may request the trustee to invest in  
886 tax-free investments and may appoint an adviser to the trustee.  
887 The licensing authority may adopt rules limiting or otherwise  
888 specifying the degree to which the trustee may rely on the  
889 investment advice of an investment adviser appointed by the  
890 preneed licensee. The licensing authority may adopt rules  
891 limiting or prohibiting payment of fees by the trust to  
892 investment advisors that are employees or principals of the  
893 licensee to whom the trust fund relates.

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

899 (j) On or before April 1 of each year, beginning in 2018,  
900 the trustee shall furnish the department with an annual report  
901 regarding each preneed licensee trust account held by the  
902 trustee at any time during the previous calendar year. The  
903 report shall state the name and address of the trustee; the  
904 name, address, and license number of the licensee to whom the  
905 report relates; the trust account number; the beginning and  
906 ending trust balance; and as may be specified by department  
907 rule, a list of receipts showing the date and amount of any  
908 disbursement. The report must be signed by the trustee's account  
909 manager for the trust account. The department, by rule, shall  
910 specify the format in which the trustee shall submit the report

911 | and the procedures for submission.

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

915 |         (4) The licensing authority may adopt rules exempting from  
 916 | the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria  
 917 | established in such rule, the investment of trust funds in  
 918 | investments, such as widely and publicly traded stocks and  
 919 | bonds, notwithstanding that the licensee, its principals, or  
 920 | persons related by blood or marriage to the licensee or its  
 921 | principals have an interest by investment in the same entity,  
 922 | where neither the licensee, its principals, or persons related  
 923 | by blood or marriage to the licensee or its principals have the  
 924 | ability to control the entity invested in, and it would be in  
 925 | the interest of the preneed contract holders whose contracts are  
 926 | secured by the trust funds to allow the investment.

927 |         (5) The trustee of the trust established pursuant to this  
 928 | section shall only have the power to:

929 |         (a) Invest in investments as prescribed in s. 518.11  
 930 | ~~215.47~~ and exercise the powers set forth in part VIII of chapter  
 931 | 736, provided that life insurance policies or annuity contracts  
 932 | are not allowable investments or assets by or of the trust and  
 933 | that real estate does not comprise more than 25 percent of the  
 934 | trust assets; provided further that the licensing authority may  
 935 | by order require the trustee to liquidate or dispose of any  
 936 | investment within 30 days after such order, or within such other

937 times as the order may direct. The licensing authority may issue  
938 such order if it determines that the investment violates any  
939 provision of this chapter or is not in the best interests of the  
940 preneed contract holders whose contracts are secured by the  
941 trust funds.

942 (c) Commingle the property of the trust with the property  
943 of any other trust established pursuant to this chapter and make  
944 corresponding allocations and divisions of assets, liabilities,  
945 income, and expenses, and capital gains and losses.

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

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

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

958 ~~(b) Section 497.462 is a viable option available to it at~~  
959 ~~any and all relevant times for contracts written prior to July~~  
960 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

961 ~~(c) For any preneed licensee authorized to do business in~~  
962 ~~this state that has total bonded liability exceeding \$100~~

963 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~  
964 ~~at any and all relevant times for contracts written prior to~~  
965 ~~December 31, 2004, for funds not held in trust as of July 1,~~  
966 ~~2001.~~

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

971 (6)(9) The amounts required to be placed in a trust by  
972 this section for contracts previously entered into shall be as  
973 follows:

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

977 (b) For contracts entered into on or after October 1,  
978 1993, the trust amounts as amended by s. 98, chapter 93-399,  
979 Laws of Florida, shall apply.

980 Section 23. Paragraph (a) of subsection (6) of section  
981 497.459, Florida Statutes, is amended to read:

982 497.459 Cancellation of, or default on, preneed  
983 contracts.—

984 (6) OTHER PROVISIONS.—

985 (a) All preneed contracts are cancelable and revocable as  
986 provided in this section, provided that a preneed contract does  
987 not restrict any contract purchaser who is the beneficiary of  
988 the preneed contract and who is a qualified applicant for, or a

989 recipient of, supplemental security income, temporary cash  
 990 assistance, or Medicaid from making her or his contract  
 991 irrevocable. A preneed contract that is made irrevocable  
 992 pursuant to this section may not be cancelled during the life or  
 993 after the death of the contract purchaser or beneficiary as  
 994 described in this section. Any unexpended moneys paid on an  
 995 irrevocable contract shall be remitted to the Agency for Health  
 996 Care Administration for deposit into the Medical Care Trust Fund  
 997 after final disposition of the beneficiary.

998 Section 24. Section 497.460, Florida Statutes, is amended  
 999 to read:

1000 497.460 Payment of funds upon death of named beneficiary.-  
 1001 Disbursements of funds discharging any preneed contract  
 1002 fulfilled after September 30, 1993, shall be made by the trustee  
 1003 to the preneed licensee upon receipt of a certified copy of the  
 1004 death certificate of the contract beneficiary or satisfactory  
 1005 evidence as established by rule of the licensing authority that  
 1006 the preneed contract has been performed in whole or in part.  
 1007 However, if the contract is only partially performed, the  
 1008 disbursement shall only cover the fair market value of that  
 1009 portion of the contract performed. In the event of any contract  
 1010 default by the contract purchaser, or in the event that the  
 1011 funeral merchandise or service or burial merchandise or service  
 1012 contracted for is not provided or is not desired by the legally  
 1013 authorized person ~~heirs or personal representative of the~~  
 1014 contract beneficiary, the trustee shall return, within 30 days

1015 after its receipt of a written request therefor, funds paid on  
 1016 the contract to the preneed licensee or to its assigns, subject  
 1017 to ~~the provisions of s. 497.459.~~

1018 Section 25. Section 497.461, Florida Statutes, is  
 1019 repealed.

1020 Section 26. The repeal of s. 497.461, Florida Statutes, by  
 1021 this act does not apply to any surety bonds in force under s.  
 1022 497.461 as of July 1, 2016, but no additional preneed contracts  
 1023 shall be added under such surety bonds after July 1, 2016.

1024 Section 27. Subsections (3) through (11) of section  
 1025 497.462, Florida Statutes, are renumbered as subsections (2)  
 1026 through (10), respectively, and present subsection (2),  
 1027 paragraph (a) of subsection (3), and subsections (7) and (10) of  
 1028 that section are amended, to read:

1029 497.462 Other alternatives to deposits under s. 497.458.—

1030 ~~(2) Upon prior approval by the licensing authority, the~~  
 1031 ~~preneed licensee may file a letter of credit with the licensing~~  
 1032 ~~authority in lieu of a surety bond. Such letter of credit must~~  
 1033 ~~be in a form, and is subject to terms and conditions, prescribed~~  
 1034 ~~by the board. It may be revoked only with the express approval~~  
 1035 ~~of the licensing authority.~~

1036 (2)-(3)(a) A buyer of preneed merchandise or services who  
 1037 does not receive such services or merchandise due to the  
 1038 economic failure, closing, or bankruptcy of the preneed licensee  
 1039 must file a claim with the surety as a prerequisite to payment  
 1040 of the claim and, if the claim is not paid, may bring an action



1041 based on the bond and recover against the surety. ~~In the case of~~  
1042 ~~a letter of credit or cash deposit that has been filed with the~~  
1043 ~~licensing authority, the buyer may file a claim with the~~  
1044 ~~licensing authority.~~

1045 (6)~~(7)~~ Any preneed contract which promises future delivery  
1046 of merchandise at no cost constitutes a paid-up contract.  
1047 Merchandise which has been delivered is not covered by the  
1048 required performance bond ~~or letter of credit~~ even though the  
1049 contract is not completely paid. The preneed licensee may not  
1050 cancel a contract unless the purchaser is in default according  
1051 to the terms of the contract and subject to the requirements of  
1052 s. 497.459. A contract sold, discounted, and transferred to a  
1053 third party constitutes a paid-up contract for the purposes of  
1054 the performance bond ~~or letter of credit~~.

1055 (9)~~(10)~~ The licensing authority may adopt forms and rules  
1056 necessary to implement this section, including, but not limited  
1057 to, rules which ensure that the surety bond provides ~~and line of~~  
1058 ~~credit provide~~ liability coverage for preneed merchandise and  
1059 services.

1060 Section 28. Paragraphs (c) through (g) of subsection (1)  
1061 of section 497.464, Florida Statutes, are amended to read:

1062 497.464 Alternative preneed contracts.—

1063 (1) Nothing in this chapter shall prevent the purchaser  
1064 and the preneed licensee from executing a preneed contract upon  
1065 the terms stated in this section. Such contracts shall be  
1066 subject to all provisions of this chapter except:

1067 ~~(c) Section 497.458(1), (3), and (6).~~

1068 (c)~~(d)~~ Section 497.459(1), (2), and (4).

1069 (d)~~(e)~~ Section 497.460.

1070 ~~(f) Section 497.461.~~

1071 (e)~~(g)~~ Section 497.462.

1072 Section 29. Subsection (2) and paragraph (c) of subsection  
1073 (9) of section 497.465, Florida Statutes, is amended to read:

1074 497.465 Inactive, surrendered, and revoked preneed  
1075 licensees.—

1076 (2) A preneed licensee shall cease all preneed sales to  
1077 the public upon becoming inactive. Upon becoming inactive, the  
1078 preneed licensee shall ~~collect and~~ deposit into the trust all of  
1079 the funds received from ~~paid toward~~ preneed contracts sold  
1080 before ~~prior to~~ becoming inactive.

1081 (9) The licensing authority may adopt rules for the  
1082 implementation of this section, for the purpose of ensuring a  
1083 thorough review and investigation of the status and condition of  
1084 the preneed licensee's business affairs for the protection of  
1085 the licensee's preneed customers. Such rules may include:

1086 (c) Requirements for submission of ~~unaudited or audited~~  
1087 financial statements, as the licensing authority deems  
1088 advisable.

1089 Section 30. Paragraph (b) of subsection (1) of section  
1090 497.601, Florida Statutes, is amended to read:

1091 497.601 Direct disposition; duties.—

1092 (1) Those individuals licensed as direct disposers may

1093 perform only those functions set forth below:

1094 (b) Secure pertinent information from a legally authorized  
 1095 person ~~the decedent's next of kin~~ in order to complete the death  
 1096 certificate and to file for the necessary permits for ~~direct~~  
 1097 disposition.

1098 Section 31. Subsection (1) of section 497.607, Florida  
 1099 Statutes, is amended, subsections (2), (3), and (4) are  
 1100 renumbered as subsections (3), (4), and (5), respectively, and a  
 1101 new subsection (2) is added to that section, to read:

1102 497.607 Cremation; procedure required.—

1103 (1) At the time of the arrangement for a cremation  
 1104 performed by any person licensed pursuant to this chapter, the  
 1105 legally authorized person contracting for cremation services  
 1106 shall be required to designate her or his intentions with  
 1107 respect to the disposition of the cremated remains of the  
 1108 deceased in a signed declaration of intent which shall be  
 1109 provided by and retained by the funeral or direct disposal  
 1110 establishment. A cremation may not be performed until a legally  
 1111 authorized person gives written authorization, which may include  
 1112 the declaration of intent to dispose of the cremated remains,  
 1113 for such cremation. The cremation must be performed within 48  
 1114 hours after a specified time which has been agreed to in writing  
 1115 by the person authorizing the cremation.

1116 (2) Cremated remains are not property, as defined in s.  
 1117 731.201, and are not subject to ownership or court-ordered  
 1118 partition. A division of cremated remains requires the consent

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1119 | of the legally authorized person who approved the cremation or,  
1120 | if the legally authorized person is the decedent, the next  
1121 | legally authorized person pursuant to s. 497.005(40). A dispute  
1122 | regarding the division of cremated remains shall be resolved by  
1123 | a court of competent jurisdiction.

1124 |       Section 32. This act shall take effect July 1, 2016.