

1                   A bill to be entitled  
2           An act relating to funeral, cemetery, and consumer  
3           services; amending s. 497.005, F.S.; defining terms;  
4           amending s. 497.141, F.S.; revising required  
5           information for licensure to include e-mail addresses;  
6           requiring the Department of Financial Services to  
7           include e-mail notification as a means to administer  
8           the licensing process; amending s. 497.146, F.S.;  
9           revising required information for current licensees to  
10          include current addresses for e-mail notification;  
11          providing for rulemaking relating to electronic  
12          reporting; amending s. 497.152, F.S.; conforming  
13          provisions to changes made by the act; requiring,  
14          rather than authorizing, the Board of Funeral,  
15          Cemetery, and Consumer Services to provide certain  
16          criteria to identify certain deficiencies; prohibiting  
17          the board from imposing a fine when certain  
18          deficiencies are fully corrected within a specified  
19          period; amending s. 497.161, F.S.; revising  
20          requirements for rules of the licensing authority;  
21          amending s. 497.266, F.S.; revising the prohibition  
22          against withdrawal or transfer of assets within the  
23          care and maintenance trust fund to include an  
24          exception; revising authority of a trustee; amending  
25          s. 497.267, F.S.; revising provisions relating to the  
26          disposition of withdrawals from the care and

27 maintenance trust fund; creating s. 497.2675, F.S.;

28 requiring the board to adopt certain rules; requiring

29 a licensed cemetery company to request a method for

30 withdrawal from the cemetery company's care and

31 maintenance trust fund; providing requirements for

32 such methods; requiring that taxes on capital gains be

33 paid from the trust principal; amending s. 497.268,

34 F.S.; deleting a required deposit in a cemetery

35 company's care and maintenance trust fund for

36 mausoleums or columbaria; deleting the requirement

37 that taxes on capital gain be paid from the trust

38 corpus; amending s. 497.269, F.S.; requiring a trustee

39 to annually furnish financial reports that record the

40 fair market value of the care and maintenance trust

41 fund; amending ss. 497.273 and 497.274, F.S.;

42 conforming provisions to changes made by the act;

43 amending s. 497.283, F.S.; deleting a provision

44 relating to evidence of financial responsibility;

45 amending s. 497.286, F.S.; conforming provisions to

46 changes made by the act; amending s. 497.371, F.S.;

47 providing that an applicant for the embalmer

48 apprentice program may not be licensed without a

49 determination of character by the licensing authority;

50 amending ss. 497.372 and 497.381, F.S.; conforming

51 provisions to changes made by the act; amending s.

52 497.452, F.S.; deleting an exception that prohibits a

53 person from receiving specified funds without holding  
54 a valid preneed license; amending s. 497.454, F.S.;  
55 revising requirements of a preneed contract form;  
56 deleting a disclosure requirement in such contract;  
57 amending s. 497.456, F.S.; conforming provisions to  
58 changes made by the act; amending s. 497.458, F.S.;  
59 authorizing the board to specify criteria for the  
60 classification of items sold in a preneed contract;  
61 revising authority of a trustee; requiring the trustee  
62 to furnish the department with an annual report  
63 regarding preneed licensee trust accounts beginning on  
64 a specified date; providing requirements for the  
65 annual report; revising the power and limitation of a  
66 trustee; deleting provisions relating to the preneed  
67 licensee; amending s. 497.459, F.S.; prohibiting  
68 certain preneed contracts from being canceled during  
69 the life or after the death of the contract purchaser  
70 or beneficiary; requiring unexpended moneys on an  
71 irrevocable contract to be deposited into the Medical  
72 Care Trust Fund under certain circumstances; amending  
73 s. 497.460, F.S.; conforming provisions to changes  
74 made by the act; repealing s. 497.461, F.S., relating  
75 to the authorization for a preneed licensee to elect  
76 surety bonding as an alternative to depositing funds  
77 into a trust; providing applicability of the repeal of  
78 s. 497.461, F.S.; amending s. 497.462, F.S.; deleting

79 provisions relating to a letter of credit; amending s.  
80 497.464, F.S.; revising applicability of certain  
81 provisions of chapter 497, F.S., to certain preneed  
82 contracts; amending s. 497.465, F.S.; requiring an  
83 inactive preneed licensee to deposit a specified  
84 amount of funds received on certain preneed contracts  
85 into the trust upon a specified time; amending s.  
86 497.601, F.S.; conforming a provision to changes made  
87 by the act; amending s. 497.607, F.S.; specifying that  
88 cremated remains are not property; requiring a  
89 division of cremated remains to be consented to by  
90 certain persons; providing that a dispute shall be  
91 resolved by a court of competent jurisdiction;  
92 conforming provisions to changes made by the act;  
93 providing an effective date.

94  
95 Be It Enacted by the Legislature of the State of Florida:

96  
97 Section 1. Subsections (5) through (7) of section 497.005,  
98 Florida Statutes, are renumbered as subsections (6) through (8),  
99 respectively, subsections (8) through (31) are renumbered as  
100 subsections (10) through (33), respectively, subsections (32)  
101 through (38) are renumbered as subsections (35) through (41)  
102 respectively, subsections (39) through (46) are renumbered as  
103 subsections (43) through (50), respectively, subsections (47)  
104 through (61) are renumbered as subsections (52) through (66),

105 respectively, subsections (62) through (70) are renumbered as  
106 subsections (68) through (76), and subsection (71) is renumbered  
107 as subsection (78), and new subsections (5), (9), (34), (42),  
108 (51), (67), and (77) are added that section, to read:

109 497.005 Definitions.—As used in this chapter, the term:

110 (5) "Beneficiary" means a natural person expressly  
111 identified in a preneed contract as the person for whom funeral  
112 merchandise or services are intended.

113 (9) "Capital gain" or "capital loss" means a change in the  
114 value of a capital asset, such as an investment or real estate,  
115 which gives the asset a different worth than the purchase price.  
116 The gain or loss is not realized until the asset is sold.

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

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

122 (51) "Net income" means, in relation to a trust, ordinary  
123 income minus any income distributions for items such as trust  
124 expenses. For purposes of this subsection, the term "ordinary  
125 income" means, in relation to a trust, any earnings on trust  
126 assets, including interest and dividends received on property  
127 derived from the use of the trust principal, but does not  
128 include capital gains or capital losses.

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

131        (77) "Total return withdrawal percentage" means a  
132 percentage, not to exceed 5 percent, of the fair market value of  
133 a trust.

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

136        497.141 Licensing; general application procedures.—

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

143 Notwithstanding any other provision of law, the department is  
144 the sole authority for determining the forms and form contents  
145 to be submitted for initial licensure and licensure renewal  
146 application. Such forms and the information and materials  
147 required by such forms may include, as appropriate,  
148 demographics, education, work history, personal background,  
149 criminal history, finances, business information, signature  
150 notarization, performance periods, reciprocity, local government  
151 approvals, supporting documentation, periodic reporting  
152 requirements, fingerprint requirements, continuing education  
153 requirements, business plans, character references, e-mail  
154 addresses, and ongoing education monitoring. Such forms and the  
155 information and materials required by such forms may also  
156 include, to the extent such information or materials are not

157 already in the possession of the department or the board,  
158 records or information as to complaints, inspections,  
159 investigations, discipline, and bonding. The application shall  
160 be supplemented as needed to reflect any material change in any  
161 circumstance or condition stated in the application that takes  
162 place between the initial filing of the application and the  
163 final grant or denial of the license and that might affect the  
164 decision of the department or the board. After an application by  
165 a natural person for licensure under this chapter is approved,  
166 the licensing authority may require the successful applicant to  
167 provide a photograph of himself or herself for permanent  
168 lamination onto the license card to be issued to the applicant,  
169 pursuant to rules and fees adopted by the licensing authority.

170 (11) The department shall implement a system for  
171 administration of the overall licensing process, including e-  
172 mail notification for the processing and tracking of  
173 applications for licensure, the issuance of licenses approved by  
174 the board, the tracking of licenses issued, the administration  
175 of the license renewal process, and the collection and  
176 processing of fees related to those activities. The system may  
177 use staff and facilities of the department or the department may  
178 enter into a contract for all or any part of such system, upon  
179 such terms and conditions as the department deems advisable, and  
180 such contract may be with another government agency or a private  
181 business.

182 Section 3. Section 497.146, Florida Statutes, is amended

183 to read:

184           497.146 Licensing; address of record; changes; licensee  
 185 responsibility.—Each licensee under this chapter is responsible  
 186 for notifying the department in writing of the licensee's  
 187 current e-mail address, business and residence mailing address,  
 188 and the street address of the licensee's primary place of  
 189 practice and shall notify the department ~~in writing~~ within 30  
 190 days after any change in such information, in accordance with  
 191 procedures and forms prescribed by rule. Notwithstanding any  
 192 other provision of law, electronic notification service by  
 193 ~~regular mail~~ to a licensee's last known e-mail address of record  
 194 or preferred street address of record with the department  
 195 constitutes adequate and sufficient notice to the licensee for  
 196 any official communication to the licensee by the board or the  
 197 department, except when other service is expressly required by  
 198 this chapter. The department may adopt rules, forms, and  
 199 procedures, including a procedure for electronic reporting of  
 200 the data provided pursuant to this section. ~~Rules may be adopted~~  
 201 ~~establishing forms and procedures for licensees to provide the~~  
 202 ~~notice required by this section.~~

203           Section 4. Paragraphs (b) and (e) of subsection (8),  
 204 paragraph (d) of subsection (12), paragraphs (b) and (c) of  
 205 subsection (14), and paragraph (b) of subsection (15) of section  
 206 497.152, Florida Statutes, are amended to read:

207           497.152 Disciplinary grounds.—This section sets forth  
 208 conduct that is prohibited and that shall constitute grounds for



209 denial of any application, imposition of discipline, or other  
 210 enforcement action against the licensee or other person  
 211 committing such conduct. For purposes of this section, the  
 212 requirements of this chapter include the requirements of rules  
 213 adopted under authority of this chapter. No subsection heading  
 214 in this section shall be interpreted as limiting the  
 215 applicability of any paragraph within the subsection.

216 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF  
 217 HUMAN REMAINS.—

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

223 (e) Failing to obtain written authorization from a legally  
 224 authorized person before ~~the family or next of kin of the~~  
 225 ~~deceased prior to~~ entombment, interment, disinterment,  
 226 disentombment, or disinurnment of the remains of any human  
 227 being.

228 (12) DISCLOSURE REQUIREMENTS.—

229 (d) Failure by a funeral director to make full disclosure  
 230 in the case of a funeral or direct disposition with regard to  
 231 the use of funeral merchandise that is not to be disposed of  
 232 with the body or failure to obtain written permission from a  
 233 legally authorized person ~~the purchaser~~ regarding disposition of  
 234 such merchandise.

235 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY  
 236 CUSTOMERS.—

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

239 1. Failing to acknowledge and act promptly upon  
 240 communications from a licensee's customers and their  
 241 representatives with respect to claims or complaints relating to  
 242 the licensee's activities regulated by this chapter.

243 2. Denying claims or rejecting complaints received by a  
 244 licensee from a customer or customer's representative, relating  
 245 to the licensee's activities regulated by this chapter, without  
 246 first conducting reasonable investigation based upon available  
 247 information.

248 3. Attempting to settle a claim or complaint on the basis  
 249 of a material document that was altered without notice to, or  
 250 without the knowledge or consent of, the contract purchaser or a  
 251 legally authorized person ~~her or his representative or legal~~  
 252 ~~guardian~~.

253 4. Failing within a reasonable time to affirm or deny  
 254 coverage of specified services or merchandise under a contract  
 255 entered into by a licensee upon written request of the contract  
 256 purchaser or a legally authorized person ~~her or his~~  
 257 ~~representative or legal guardian~~.

258 5. Failing to promptly provide, in relation to a contract  
 259 for funeral or burial merchandise or services entered into by  
 260 the licensee or under the licensee's license, a reasonable

261 explanation to the contract purchaser or a legally authorized  
262 person ~~her or his representative or legal guardian~~ of the  
263 licensee's basis for denying or rejecting all or any part of a  
264 claim or complaint submitted.

265 (c) Making a material misrepresentation to a contract  
266 purchaser or a legally authorized person ~~her or his~~  
267 ~~representative or legal guardian~~ for the purpose and with the  
268 intent of effecting settlement of a claim or complaint or loss  
269 under a prepaid contract on less favorable terms than those  
270 provided in, and contemplated by, the prepaid contract.

271  
272 For purposes of this subsection, the response of a customer  
273 recorded by the customer on a customer satisfaction  
274 questionnaire or survey form sent to the customer by the  
275 licensee, and returned by the customer to the licensee, shall  
276 not be deemed to be a complaint.

277 (15) MISCELLANEOUS FINANCIAL MATTERS.—

278 (b) Failing to timely remit as required by this chapter  
279 the required amounts to any trust fund required by this chapter.  
280 The board shall ~~may~~ by rule provide criteria for identifying  
281 minor, nonwillful trust remittance deficiencies; and remittance  
282 deficiencies falling within such criteria, if fully corrected  
283 within 30 days after notice to the licensee by the department,  
284 do ~~shall~~ not constitute grounds for disciplinary action or a  
285 fine.

286 Section 5. Paragraph (g) is added to subsection (1) of

287 section 497.161, Florida Statutes, to read:

288 497.161 Other rulemaking provisions.—

289 (1) In addition to such other rules as are authorized or  
 290 required under this chapter, the following additional rules, not  
 291 inconsistent with this chapter, shall be authorized by the  
 292 licensing authority.

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

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

298 497.266 Care and maintenance trust fund; remedy of  
 299 department for noncompliance.—

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

304 (4) The trustee of the trust established pursuant to this  
 305 section may only invest in investments and loan trust funds, as  
 306 prescribed in s. 497.458. The trustee shall take title to the  
 307 property conveyed to the trust for the purposes of investing,  
 308 protecting, and conserving it for the cemetery company;  
 309 collecting income; and distributing withdrawals from the trust  
 310 ~~the principal and income~~ as prescribed in this chapter. The  
 311 cemetery company is prohibited from sharing in the discharge of  
 312 the trustee's responsibilities under this subsection, except

313 that the cemetery company may request the trustee to invest in  
 314 tax-free investments.

315 Section 7. Section 497.267, Florida Statutes, is amended  
 316 to read:

317 497.267 Disposition of withdrawals from the ~~income of~~ care  
 318 and maintenance trust fund; notice to purchasers and  
 319 depositors. ~~Withdrawals from the net income of the~~ care and  
 320 maintenance trust fund shall be used solely for the care and  
 321 maintenance of the cemetery, including maintenance of monuments,  
 322 which maintenance may ~~shall~~ not be deemed to include the  
 323 cleaning, refinishing, repairing, or replacement of monuments;  
 324 for reasonable costs of administering the care and maintenance;  
 325 and for reasonable costs of administering the trust fund. At the  
 326 time of making a sale or receiving an initial deposit, the  
 327 cemetery company shall deliver to the person to whom the sale is  
 328 made, or who makes a deposit, a written instrument which shall  
 329 specifically state the purposes for which withdrawals from the  
 330 ~~income of the~~ trust fund shall be used.

331 Section 8. Section 497.2675, Florida Statutes, is created  
 332 to read:

333 497.2675 Withdrawal methods from the care and maintenance  
 334 trust fund.

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

338 (a) Reporting requirements for a cemetery licensed under

339 this chapter, including the requirement that specific reports be  
340 made on forms designed and approved by the board by rule.

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

346 (2) Each cemetery company licensed under this chapter  
347 shall elect one of two withdrawal methods, as specified in  
348 paragraphs (a) and (b), for withdrawals from the cemetery  
349 company's care and maintenance trust fund. The board shall adopt  
350 rules, with the approval of the department, to administer this  
351 subsection.

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

354 (b) Total return withdrawal method.—The licensee shall  
355 multiply the average fair market value of its pro rata share of  
356 the trust by the total return withdrawal percentage and may  
357 withdraw one-fourth of that amount at least quarterly beginning  
358 the first quarter of the new trust year. The initial total  
359 return withdrawal percentage elected by the licensee may not  
360 increase the total return withdrawal percentage for that  
361 quarter. For purposes of this paragraph, the term "average fair  
362 market value" means, in relation to a trust, the average of the  
363 fair market value of each asset held by the trust at the  
364 beginning of the current year and in each of the 2 previous

365 years, or for the entire term of the trust if there are less  
366 than 2 previous years, and adjusted as follows:

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

370 2. If assets are distributed from the trust during the  
371 years used to determine the average, other than in satisfaction  
372 of the unitrust amount, as defined in s. 738.1041, the amount of  
373 each distribution is subtracted from all other years in which  
374 such distribution is not included.

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

378 Section 9. Paragraphs (a) and (b) of subsection (1) and  
379 subsection (2) of section 497.268, Florida Statutes, are amended  
380 to read:

381 497.268 Care and maintenance trust fund, percentage of  
382 payments for burial rights to be deposited.—

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

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

391 ~~(b) For mausoleums or columbaria, 10 percent of payments~~  
392 ~~received.~~

393 (2) Deposits to the care and maintenance trust fund shall  
394 be made by the cemetery company not later than 30 days following  
395 the close of the calendar month in which any payment was  
396 received; however, when such payments are received in  
397 installments, the percentage of the installment payment placed  
398 in trust must be identical to the percentage which the payment  
399 received bears to the total cost for the burial rights. Trust  
400 income may be used to pay for all usual and customary services  
401 for the operation of a trust account, including, but not limited  
402 to: reasonable trustee and custodian fees, investment adviser  
403 fees, allocation fees, and taxes. If the net income is not  
404 sufficient to pay the fees and other expenses, the fees and  
405 other expenses shall be paid by the cemetery company. ~~Capital~~  
406 ~~gains taxes shall be paid from the corpus.~~

407 Section 10. Section 497.269, Florida Statutes, is amended  
408 to read:

409 497.269 Care and maintenance trust fund; financial  
410 reports.—On or before April 1 of each year, the trustee shall  
411 furnish adequate financial reports that record the fair market  
412 value with respect to the care and maintenance trust fund  
413 utilizing forms and procedures specified by rule. However, the  
414 department may require the trustee to make such additional  
415 financial reports as it deems necessary. In order to ensure that  
416 the proper deposits to the trust fund have been made, the



417 department shall examine the status of the trust fund of the  
 418 company on a semiannual basis for the first 2 years of the trust  
 419 fund's existence.

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

422 497.273 Cemetery companies; authorized functions.—

423 (4) This chapter does not prohibit the interment or  
 424 entombment of the inurned cremated animal remains of the  
 425 decedent's pet or pets with the decedent's human remains or  
 426 cremated human remains if:

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

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

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

434 497.274 Standards for grave spaces.—

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

443 Section 13. Paragraph (c) of subsection (2) of section  
 444 497.283, Florida Statutes, is amended to read:

445 497.283 Prohibition on sale of personal property or  
 446 services.—

447 (2)

448 (c) In lieu of delivery as required by paragraph (b), for  
 449 sales to cemetery companies and funeral establishments, and only  
 450 for such sales, the manufacturer of a permanent outer burial  
 451 receptacle which meets standards adopted by rule may elect, at  
 452 its discretion, to comply with the delivery requirements of this  
 453 section by annually submitting for approval pursuant to  
 454 procedures and forms as specified by rule, in writing, evidence  
 455 of the manufacturer's financial responsibility with the  
 456 licensing authority for its review and approval. ~~The standards~~  
 457 ~~and procedures to establish evidence of financial responsibility~~  
 458 ~~shall be those in s. 497.461, with the manufacturer of permanent~~  
 459 ~~outer burial receptacles which meet national industry standards~~  
 460 ~~assuming the same rights and responsibilities as those of a~~  
 461 ~~preneed licensee under s. 497.461.~~

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

464 497.286 Owners to provide addresses; presumption of  
 465 abandonment; abandonment procedures; sale of abandoned unused  
 466 burial rights.—

467 (3) Upon the occurrence of a presumption of abandonment as  
 468 set forth in subsection (2), a cemetery may file with the

469 department a certified notice attesting to the abandonment of  
 470 the burial rights. The notice shall do the following:

471 (a) Describe the burial rights certified to have been  
 472 abandoned;

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

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

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

485 Section 15. Section 497.371, Florida Statutes, is amended  
 486 to read:

487 497.371 Embalmers; establishment of embalmer apprentice  
 488 program.—The licensing authority adopts rules establishing an  
 489 embalmer apprentice program. An embalmer apprentice may perform  
 490 only those tasks, functions, and duties relating to embalming  
 491 which are performed under the direct supervision of an embalmer  
 492 who has an active, valid license under s. 497.368 or s. 497.369.  
 493 An embalmer apprentice is ~~shall be~~ eligible to serve in an  
 494 apprentice capacity for a period not to exceed 3 years as may be

495 determined by licensing authority rule or for a period not to  
 496 exceed 5 years if the apprentice is enrolled in and attending a  
 497 course in mortuary science or funeral service education at any  
 498 mortuary college or funeral service education college or school.  
 499 An embalmer apprentice shall be issued a license ~~licensed~~ upon  
 500 payment of a licensure fee as determined by licensing authority  
 501 rule but not to exceed \$200. An applicant for the embalmer  
 502 apprentice program may not be issued a license unless the  
 503 licensing authority determines that the applicant is of good  
 504 character and has not demonstrated a history of lack of  
 505 trustworthiness or integrity in business or professional  
 506 matters.

507 Section 16. Paragraph (b) of subsection (1) of section  
 508 497.372, Florida Statutes, is amended to read:

509 497.372 Funeral directing; conduct constituting practice  
 510 of funeral directing.—

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

514 (b) Planning or arranging, on an at-need basis, the  
 515 details of funeral services, embalming, cremation, or other  
 516 services relating to the final disposition of human remains,  
 517 including the removal of such remains from the state, ~~with the~~  
 518 ~~family or friends of the decedent or any other person~~  
 519 ~~responsible for such services~~; setting the time of the services;  
 520 establishing the type of services to be rendered; acquiring the

521 services of the clergy; and obtaining vital information for the  
 522 filing of death certificates and obtaining of burial transit  
 523 permits.

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

526 497.381 Solicitation of goods or services.—

527 (4) At-need solicitation of funeral merchandise or  
 528 services is prohibited. A ~~No~~ funeral director or direct disposer  
 529 or her or his agent or representative may not contact the  
 530 legally authorized person or family ~~or next of kin of a deceased~~  
 531 ~~person~~ to sell services or merchandise unless the funeral  
 532 director or direct disposer or her or his agent or  
 533 representative has been initially called or contacted by the  
 534 legally authorized person or family ~~or next of kin of such~~  
 535 ~~person~~ and requested to provide her or his services or  
 536 merchandise.

537 Section 18. Paragraph (c) of subsection (2) of section  
 538 497.452, Florida Statutes, is amended to read:

539 497.452 Preneed license required.—

540 (2)

541 ~~(c) The provisions of paragraph (a) do not apply to any~~  
 542 ~~Florida corporation existing under chapter 607 acting as a~~  
 543 ~~servicing agent hereunder in which the stock of such corporation~~  
 544 ~~is held by 100 or more persons licensed pursuant to part III of~~  
 545 ~~this chapter, provided no one stockholder holds, owns, votes, or~~  
 546 ~~has proxies for more than 5 percent of the issued stock of such~~

547 ~~corporation; provided the corporation has a blanket fidelity~~  
548 ~~bond, covering all employees handling the funds, in the amount~~  
549 ~~of \$50,000 or more issued by a licensed insurance carrier in~~  
550 ~~this state; and provided the corporation processes the funds~~  
551 ~~directly to and from the trustee within the applicable time~~  
552 ~~limits set forth in this chapter. The department may require any~~  
553 ~~person claiming that the provisions of this paragraph exempt it~~  
554 ~~from the provisions of paragraph (a) to demonstrate to the~~  
555 ~~satisfaction of the department that it meets the requirements of~~  
556 ~~this paragraph.~~

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

559 497.454 Approval of preneed contract and related forms.—

560 (1) Preneed contract forms and related forms shall be  
561 filed with and approved by the licensing authority before ~~prior~~  
562 ~~to~~ use, pursuant to procedures specified by rule. The licensing  
563 authority may not approve any electronic or paper preneed  
564 contract ~~form~~ that does not provide for sequential prenumbering  
565 thereon.

566 ~~(3) Specific disclosure regarding the preneed licensee's~~  
567 ~~ability to select either trust funding or the financial~~  
568 ~~responsibility alternative as set forth in s. 497.461 in~~  
569 ~~connection with the receipt of preneed contract proceeds is~~  
570 ~~required in the preneed contract.~~

571 Section 20. Subsections (2), (7), and (8) of section  
572 497.456, Florida Statutes, are amended to read:

573           497.456   Preneed Funeral Contract Consumer Protection Trust  
574 Fund.—

575           (2)   Within 60 days after the end of each calendar quarter,  
576 for each preneed contract written during the quarter and not  
577 canceled within 30 days after the date of the execution of the  
578 contract, each preneed licensee, whether funding preneed  
579 contracts by the sale of insurance or by establishing a trust  
580 pursuant to s. 497.458 or s. 497.464, shall remit the sum of  
581 \$2.50 for each preneed contract having a purchase price of  
582 \$1,500 or less, and the sum of \$5 for each preneed contract  
583 having a purchase price in excess of \$1,500; and each preneed  
584 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum  
585 of \$5 for each preneed contract having a purchase price of  
586 \$1,500 or less, and the sum of \$10 for each preneed contract  
587 having a purchase price in excess of \$1,500.

588           (7)   In any situation in which a delinquency proceeding has  
589 not commenced, the licensing authority may, in its discretion,  
590 use the trust fund for the purpose of providing restitution to  
591 any consumer, owner, or beneficiary of a preneed contract or  
592 similar regulated arrangement under this chapter entered into  
593 after June 30, 1977. If, after investigation, the licensing  
594 authority determines that a preneed licensee has breached a  
595 preneed contract by failing to provide benefits or an  
596 appropriate refund, or that a provider, who is a former preneed  
597 licensee or an establishment which has been regulated under this  
598 chapter, has sold a preneed contract and has failed to fulfill

599 the arrangement or provide the appropriate refund, and such  
600 preneed licensee or provider does not provide or does not  
601 possess adequate funds to provide appropriate refunds, payments  
602 from the trust fund may be authorized by the licensing  
603 authority. In considering whether payments shall be made or when  
604 considering who will be responsible for such payments, the  
605 licensing authority shall consider whether the preneed licensee  
606 or previous provider has been acquired by a successor who is or  
607 should be responsible for the liabilities of the defaulting  
608 entity. With respect to preneed contracts funded by life  
609 insurance, payments from the fund shall be made: if the insurer  
610 is insolvent, but only to the extent that funds are not  
611 available through the liquidation proceeding of the insurer; or  
612 if the preneed licensee is unable to perform under the contract  
613 and the insurance proceeds are not sufficient to cover the cost  
614 of the merchandise and services contracted for. In no event  
615 shall the licensing authority approve payments in excess of the  
616 insurance policy limits unless it determines that at the time of  
617 sale of the preneed contract, the insurance policy would have  
618 paid for the services and merchandise contracted for. Such  
619 monetary relief shall be in an amount as the licensing authority  
620 may determine and shall be payable in such manner and upon such  
621 conditions and terms as the licensing authority may prescribe.  
622 However, with respect to preneed contracts to be funded pursuant  
623 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any  
624 restitution made pursuant to this subsection may ~~shall~~ not



625 exceed, as to any single contract or arrangement, the lesser of  
 626 the gross amount paid under the contract or 4 percent of the  
 627 uncommitted assets of the trust fund. With respect to preneed  
 628 contracts funded by life insurance policies, any restitution may  
 629 ~~shall~~ not exceed, as to any single contract or arrangement, the  
 630 lesser of the face amount of the policy, the actual cost of the  
 631 arrangement contracted for, or 4 percent of the uncommitted  
 632 assets of the trust fund. The total of all restitutions made to  
 633 all applicants under this subsection in a single fiscal year may  
 634 ~~shall~~ not exceed the greater of 30 percent of the uncommitted  
 635 assets of the trust fund as of the end of the most recent fiscal  
 636 year or \$120,000. The department may use moneys in the trust  
 637 fund to contract with independent vendors pursuant to chapter  
 638 287 to administer the requirements of this subsection.

639 (8) All moneys deposited in the Preneed Funeral Contract  
 640 Consumer Protection Trust Fund together with all accumulated  
 641 appreciation ~~income~~ shall be used only for the purposes  
 642 expressly authorized by this chapter and may ~~shall~~ not be  
 643 subject to any liens, charges, judgments, garnishments, or other  
 644 creditor's claims against the preneed licensee, any trustee  
 645 utilized by the preneed licensee, any company providing a surety  
 646 bond as specified in this chapter, or any purchaser of a preneed  
 647 contract. No preneed contract purchaser shall have any vested  
 648 rights in the trust fund.

649 Section 21. Paragraphs (a), (d), and (f) of subsection  
 650 (1), paragraph (a) of subsection (3), paragraphs (a) and (c) of

651 subsection (5), and subsections (6) through (9) of section  
 652 497.458, Florida Statutes, are amended, and a new paragraph (k)  
 653 is added to subsection (1) of that section, to read:

654 497.458 Disposition of proceeds received on contracts.—

655 (1)

656 (a) Any person who is paid, collects, or receives funds  
 657 under a preneed contract for funeral services or merchandise or  
 658 burial services or merchandise shall deposit an amount at least  
 659 equal to the sum of 70 percent of the purchase price collected  
 660 for all services sold and facilities rented; 100 percent of the  
 661 purchase price collected for all cash advance items sold; and 30  
 662 percent of the purchase price collected or 110 percent of the  
 663 wholesale cost, whichever is greater, for each item of  
 664 merchandise sold. The board may, by rule, specify criteria for  
 665 the classification of items sold in a preneed contract as  
 666 services, cash advances, or merchandise.

667 (d) The trustee shall take title to the property conveyed  
 668 to the trust for the purpose of investing, protecting, and  
 669 conserving it for the preneed licensee; collecting income; and  
 670 distributing the fair market value ~~the principal and income~~ as  
 671 prescribed in this chapter. The preneed licensee is prohibited  
 672 from sharing in the discharge of these responsibilities, except  
 673 that the preneed licensee may request the trustee to invest in  
 674 tax-free investments and may appoint an adviser to the trustee.  
 675 The licensing authority may adopt rules limiting or otherwise  
 676 specifying the degree to which the trustee may rely on the

677 investment advice of an investment adviser appointed by the  
678 preneed licensee. The licensing authority may adopt rules  
679 limiting or prohibiting payment of fees by the trust to  
680 investment advisors that are employees or principals of the  
681 licensee to whom the trust fund relates.

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

687 (k) Beginning April 1, 2018, and on or before each April  
688 thereafter, the trustee shall furnish the department with an  
689 annual report regarding each preneed licensee trust account held  
690 by the trustee at any time during the previous calendar year.  
691 The report shall state the name and address of the trustee; the  
692 name, address, and license number of the licensee to whom the  
693 report relates; the trust account number; the beginning and  
694 ending trust balance; and, as may be specified by department  
695 rule, a list of receipts showing the date and amount of any  
696 disbursement. The report must be signed by the trustee's account  
697 manager for the trust account. The trustee shall submit the  
698 report in a format and pursuant to procedures specified by  
699 department rule.

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

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

705 (a) Invest in investments as prescribed in s. 518.11  
 706 ~~215.47~~ and exercise the powers set forth in part VIII of chapter  
 707 736. However, the trustee may not invest in, or count as assets,  
 708 life insurance policies or annuity contracts; real estate may  
 709 not compose more than 25 percent of the trust's assets; and ~~r~~  
 710 ~~provided that~~ the licensing authority may by order require the  
 711 trustee to liquidate or dispose of any investment within 30 days  
 712 after such order, or within such other times as the order may  
 713 direct. The licensing authority may issue such order if it  
 714 determines that the investment violates any provision of this  
 715 chapter or is not in the best interests of the preneed contract  
 716 holders whose contracts are secured by the trust funds.

717 (c) Commingle the property of the trust with the property  
 718 of any other trust established pursuant to this chapter and make  
 719 corresponding allocations and divisions of assets, liabilities,  
 720 income, ~~and expenses,~~ and capital gains and losses.

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

725 ~~(7) Notwithstanding anything contained in this chapter to~~  
 726 ~~the contrary, the preneed licensee, via its election to sell or~~  
 727 ~~offer for sale preneed contracts subject to this section, shall~~  
 728 ~~represent and warrant, and is hereby deemed to have done such,~~

729 ~~to all federal and Florida taxing authorities, as well as to all~~  
730 ~~potential and actual preneed contract purchasers, that:~~

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

733 ~~(b) Section 497.462 is a viable option available to it at~~  
734 ~~any and all relevant times for contracts written prior to July~~  
735 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

736 ~~(c) For any preneed licensee authorized to do business in~~  
737 ~~this state that has total bonded liability exceeding \$100~~  
738 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~  
739 ~~at any and all relevant times for contracts written prior to~~  
740 ~~December 31, 2004, for funds not held in trust as of July 1,~~  
741 ~~2001.~~

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

746 (6)-(9) The amounts required to be placed in a trust by  
747 this section for contracts previously entered into shall be as  
748 follows:

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

752 (b) For contracts entered into on or after October 1,  
753 1993, the trust amounts as amended by s. 98, chapter 93-399,  
754 Laws of Florida, shall apply.

755 Section 22. Paragraph (a) of subsection (6) of section  
756 497.459, Florida Statutes, is amended to read:

757 497.459 Cancellation of, or default on, preneed  
758 contracts.—

759 (6) OTHER PROVISIONS.—

760 (a) All preneed contracts are cancelable and revocable as  
761 provided in this section, provided that a preneed contract does  
762 not restrict any contract purchaser who is the beneficiary of  
763 the preneed contract and who is a qualified applicant for, or a  
764 recipient of, supplemental security income, temporary cash  
765 assistance, or Medicaid from making her or his contract  
766 irrevocable. A preneed contract that is made irrevocable  
767 pursuant to this section may not be canceled during the life or  
768 after the death of the contract purchaser or beneficiary as  
769 described in this section. Any unexpended moneys paid on an  
770 irrevocable contract shall be remitted to the Agency for Health  
771 Care Administration for deposit into the Medical Care Trust Fund  
772 after final disposition of the beneficiary.

773 Section 23. Section 497.460, Florida Statutes, is amended  
774 to read:

775 497.460 Payment of funds upon death of named beneficiary.—  
776 Disbursements of funds discharging any preneed contract  
777 fulfilled after September 30, 1993, shall be made by the trustee  
778 to the preneed licensee upon receipt of a certified copy of the  
779 death certificate of the contract beneficiary or satisfactory  
780 evidence as established by rule of the licensing authority that

781 the preneed contract has been performed in whole or in part.  
782 However, if the contract is only partially performed, the  
783 disbursement shall only cover the fair market value of that  
784 portion of the contract performed. In the event of any contract  
785 default by the contract purchaser, or in the event that the  
786 funeral merchandise or service or burial merchandise or service  
787 contracted for is not provided or is not desired by the legally  
788 authorized person ~~heirs or personal representative of the~~  
789 ~~contract beneficiary~~, the trustee shall return, within 30 days  
790 after its receipt of a written request therefor, funds paid on  
791 the contract to the preneed licensee or to its assigns, subject  
792 to ~~the provisions of~~ s. 497.459.

793 Section 24. Section 497.461, Florida Statutes, is  
794 repealed.

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

799 Section 26. Subsections (3) through (11) of section  
800 497.462, Florida Statutes, are renumbered as subsections (2)  
801 through (10), respectively, and present subsection (2),  
802 paragraph (a) of present subsection (3), and present subsections  
803 (7) and (10) of that section are amended, to read:

804 497.462 Other alternatives to deposits under s. 497.458.—

805 ~~(2) Upon prior approval by the licensing authority, the~~  
806 ~~preneed licensee may file a letter of credit with the licensing~~

807 ~~authority in lieu of a surety bond. Such letter of credit must~~  
808 ~~be in a form, and is subject to terms and conditions, prescribed~~  
809 ~~by the board. It may be revoked only with the express approval~~  
810 ~~of the licensing authority.~~

811 (2)~~(3)~~ (a) A buyer of preneed merchandise or services who  
812 does not receive such services or merchandise due to the  
813 economic failure, closing, or bankruptcy of the preneed licensee  
814 must file a claim with the surety as a prerequisite to payment  
815 of the claim and, if the claim is not paid, may bring an action  
816 based on the bond and recover against the surety. ~~In the case of~~  
817 ~~a letter of credit or cash deposit that has been filed with the~~  
818 ~~licensing authority, the buyer may file a claim with the~~  
819 ~~licensing authority.~~

820 (6)~~(7)~~ Any preneed contract which promises future delivery  
821 of merchandise at no cost constitutes a paid-up contract.  
822 Merchandise which has been delivered is not covered by the  
823 required performance bond ~~or letter of credit~~ even though the  
824 contract is not completely paid. The preneed licensee may not  
825 cancel a contract unless the purchaser is in default according  
826 to the terms of the contract and subject to the requirements of  
827 s. 497.459. A contract sold, discounted, and transferred to a  
828 third party constitutes a paid-up contract for the purposes of  
829 the performance bond ~~or letter of credit~~.

830 (9)~~(10)~~ The licensing authority may adopt forms and rules  
831 necessary to implement this section, including, but not limited  
832 to, rules which ensure that the surety bond provides ~~and line of~~



833 ~~credit provide~~ liability coverage for preneed merchandise and  
834 services.

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

837 497.464 Alternative preneed contracts.—

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

842 ~~(e) Section 497.458(1), (3), and (6).~~

843 ~~(f) Section 497.461.~~

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

846 497.465 Inactive, surrendered, and revoked preneed  
847 licensees.—

848 (2) Upon becoming inactive, a preneed licensee shall cease  
849 all preneed sales to the public and ~~upon becoming inactive.~~ The  
850 ~~preneed licensee~~ shall ~~collect and~~ deposit into the trust all ~~of~~  
851 ~~the funds~~ it receives on or after the date on which it becomes  
852 inactive from sales of paid toward preneed contracts sold before  
853 ~~prior to~~ becoming inactive.

854 (9) The licensing authority may adopt rules for the  
855 implementation of this section, for the purpose of ensuring a  
856 thorough review and investigation of the status and condition of  
857 the preneed licensee's business affairs for the protection of  
858 the licensee's preneed customers. Such rules may include:

859 (c) Requirements for submission of ~~unaudited or audited~~  
 860 financial statements, as the licensing authority deems  
 861 advisable.

862 Section 29. Paragraph (b) of subsection (1) of section  
 863 497.601, Florida Statutes, is amended to read:

864 497.601 Direct disposition; duties.—

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

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

871 Section 30. Subsections (2), (3), and (4) of section  
 872 497.607, Florida Statutes, are renumbered as subsections (3),  
 873 (4), and (5), respectively, subsection (1) is amended, and a new  
 874 subsection (2) is added to that section, to read:

875 497.607 Cremation; procedure required.—

876 (1) At the time of the arrangement for a cremation  
 877 performed by any person licensed pursuant to this chapter, the  
 878 legally authorized person contracting for cremation services  
 879 shall be required to designate her or his intentions with  
 880 respect to ~~the~~ disposition of the cremated remains of the  
 881 deceased in a signed declaration of intent which shall be  
 882 provided by and retained by the funeral or direct disposal  
 883 establishment. A cremation may not be performed until a legally  
 884 authorized person gives written authorization, which may include

885 the declaration of intent to dispose of the cremated remains,  
886 for such cremation. The cremation must be performed within 48  
887 hours after a specified time which has been agreed to in writing  
888 by the person authorizing the cremation.

889 (2) Cremated remains are not property, as defined in s.  
890 731.201, and are not subject to partition for purposes of  
891 distribution under s. 733.814. A division of cremated remains  
892 requires the consent of the legally authorized person who  
893 approved the cremation or, if the legally authorized person is  
894 the decedent, the next legally authorized person, as defined in  
895 s. 497.005. A dispute regarding the division of cremated remains  
896 shall be resolved by a court of competent jurisdiction.

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