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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
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The Committee on Banking and Insurance (Hukill) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 112 - 861

and insert:

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

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

Section 2. Subsections (2) and (11) of section 497.141,



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11 Florida Statutes, are amended to read:

12 497.141 Licensing; general application procedures.—

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

19 Notwithstanding any other provision of law, the department is  
20 the sole authority for determining the forms and form contents  
21 to be submitted for initial licensure and licensure renewal  
22 application. Such forms and the information and materials  
23 required by such forms may include, as appropriate,  
24 demographics, education, work history, personal background,  
25 criminal history, finances, business information, signature  
26 notarization, performance periods, reciprocity, local government  
27 approvals, supporting documentation, periodic reporting  
28 requirements, fingerprint requirements, continuing education  
29 requirements, business plans, character references, e-mail  
30 addresses, and ongoing education monitoring. Such forms and the  
31 information and materials required by such forms may also  
32 include, to the extent such information or materials are not  
33 already in the possession of the department or the board,  
34 records or information as to complaints, inspections,  
35 investigations, discipline, and bonding. The application shall  
36 be supplemented as needed to reflect any material change in any  
37 circumstance or condition stated in the application that takes  
38 place between the initial filing of the application and the  
39 final grant or denial of the license and that might affect the



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40 decision of the department or the board. After an application by  
41 a natural person for licensure under this chapter is approved,  
42 the licensing authority may require the successful applicant to  
43 provide a photograph of himself or herself for permanent  
44 lamination onto the license card to be issued to the applicant,  
45 pursuant to rules and fees adopted by the licensing authority.

46 (11) The department shall implement a system for  
47 administration of the overall licensing process, including e-  
48 mail notification for the processing and tracking of  
49 applications for licensure, the issuance of licenses approved by  
50 the board, the tracking of licenses issued, the administration  
51 of the license renewal process, and the collection and  
52 processing of fees related to those activities. The system may  
53 use staff and facilities of the department or the department may  
54 enter into a contract for all or any part of such system, upon  
55 such terms and conditions as the department deems advisable, and  
56 such contract may be with another government agency or a private  
57 business.

58 Section 3. Section 497.146, Florida Statutes, is amended to  
59 read:

60 497.146 Licensing; address of record; changes; licensee  
61 responsibility.—Each licensee under this chapter is responsible  
62 for notifying the department in writing of the licensee's  
63 current e-mail address, business and residence mailing address,  
64 and the street address of the licensee's primary place of  
65 practice and shall notify the department ~~in writing~~ within 30  
66 days after any change in such information, in accordance with  
67 procedures and forms prescribed by rule. Notwithstanding any  
68 other provision of law, electronic notification ~~service by~~



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69 ~~regular mail~~ to a licensee's last known e-mail address of record  
70 or preferred street address of record with the department  
71 constitutes adequate and sufficient notice to the licensee for  
72 any official communication to the licensee by the board or the  
73 department, except when other service is expressly required by  
74 this chapter. The department may adopt rules, forms, and  
75 procedures, including a procedure for electronic reporting of  
76 the data provided pursuant to this section. ~~Rules may be adopted~~  
77 ~~establishing forms and procedures for licensees to provide the~~  
78 ~~notice required by this section.~~

79 Section 4. Paragraphs (b) and (e) of subsection (8),  
80 paragraph (d) of subsection (12), paragraphs (b) and (c) of  
81 subsection (14), and paragraph (b) of subsection (15) of section  
82 497.152, Florida Statutes, are amended to read:

83 497.152 Disciplinary grounds.—This section sets forth  
84 conduct that is prohibited and that shall constitute grounds for  
85 denial of any application, imposition of discipline, or other  
86 enforcement action against the licensee or other person  
87 committing such conduct. For purposes of this section, the  
88 requirements of this chapter include the requirements of rules  
89 adopted under authority of this chapter. No subsection heading  
90 in this section shall be interpreted as limiting the  
91 applicability of any paragraph within the subsection.

92 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN  
93 REMAINS.—

94 (b) Refusing to surrender promptly the custody of a dead  
95 human body upon the express order of the ~~person~~ legally  
96 authorized person to such person's ~~its~~ custody; however, this  
97 provision shall be subject to any state or local laws or rules



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98 governing custody or transportation of dead human bodies.

99 (e) Failing to obtain written authorization from a legally  
100 authorized person before ~~the family or next of kin of the~~  
101 ~~deceased prior to~~ entombment, interment, disinterment,  
102 disentombment, or disinurnment of the remains of any human  
103 being.

104 (12) DISCLOSURE REQUIREMENTS.—

105 (d) Failure by a funeral director to make full disclosure  
106 in the case of a funeral or direct disposition with regard to  
107 the use of funeral merchandise that is not to be disposed of  
108 with the body or failure to obtain written permission from a  
109 legally authorized person ~~the purchaser~~ regarding disposition of  
110 such merchandise.

111 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY  
112 CUSTOMERS.—

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

115 1. Failing to acknowledge and act promptly upon  
116 communications from a licensee's customers and their  
117 representatives with respect to claims or complaints relating to  
118 the licensee's activities regulated by this chapter.

119 2. Denying claims or rejecting complaints received by a  
120 licensee from a customer or customer's representative, relating  
121 to the licensee's activities regulated by this chapter, without  
122 first conducting reasonable investigation based upon available  
123 information.

124 3. Attempting to settle a claim or complaint on the basis  
125 of a material document that was altered without notice to, or  
126 without the knowledge or consent of, the contract purchaser or a



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127 legally authorized person ~~her or his representative or legal~~  
128 ~~guardian.~~

129 4. Failing within a reasonable time to affirm or deny  
130 coverage of specified services or merchandise under a contract  
131 entered into by a licensee upon written request of the contract  
132 purchaser or a legally authorized person ~~her or his~~  
133 ~~representative or legal guardian.~~

134 5. Failing to promptly provide, in relation to a contract  
135 for funeral or burial merchandise or services entered into by  
136 the licensee or under the licensee's license, a reasonable  
137 explanation to the contract purchaser or a legally authorized  
138 person ~~her or his representative or legal guardian~~ of the  
139 licensee's basis for denying or rejecting all or any part of a  
140 claim or complaint submitted.

141 (c) Making a material misrepresentation to a contract  
142 purchaser or a legally authorized person ~~her or his~~  
143 ~~representative or legal guardian~~ for the purpose and with the  
144 intent of effecting settlement of a claim or complaint or loss  
145 under a prepaid contract on less favorable terms than those  
146 provided in, and contemplated by, the prepaid contract.

147  
148 For purposes of this subsection, the response of a customer  
149 recorded by the customer on a customer satisfaction  
150 questionnaire or survey form sent to the customer by the  
151 licensee, and returned by the customer to the licensee, shall  
152 not be deemed to be a complaint.

153 (15) MISCELLANEOUS FINANCIAL MATTERS.—

154 (b) Failing to timely remit as required by this chapter the  
155 required amounts to any trust fund required by this chapter. The



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156 board shall ~~may~~ by rule provide criteria for identifying minor,  
157 nonwillful trust remittance deficiencies; and remittance  
158 deficiencies falling within such criteria, if fully corrected  
159 within 30 days after notice to the licensee by the department,  
160 ~~do shall~~ not constitute grounds for disciplinary action or a  
161 fine.

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

164 497.161 Other rulemaking provisions.—

165 (1) In addition to such other rules as are authorized or  
166 required under this chapter, the following additional rules, not  
167 inconsistent with this chapter, shall be authorized by the  
168 licensing authority.

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

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

174 497.266 Care and maintenance trust fund; remedy of  
175 department for noncompliance.—

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

180 (4) The trustee of the trust established pursuant to this  
181 section may only invest in investments and loan trust funds, as  
182 prescribed in s. 497.458. The trustee shall take title to the  
183 property conveyed to the trust for the purposes of investing,  
184 protecting, and conserving it for the cemetery company;



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185 collecting income; and distributing withdrawals from the trust  
186 ~~the principal and income~~ as prescribed in this chapter. The  
187 cemetery company is prohibited from sharing in the discharge of  
188 the trustee's responsibilities under this subsection, except  
189 that the cemetery company may request the trustee to invest in  
190 tax-free investments.

191 Section 7. Section 497.267, Florida Statutes, is amended to  
192 read:

193 497.267 Disposition of withdrawals from the ~~income of~~ care  
194 and maintenance trust fund; notice to purchasers and  
195 depositors.—Withdrawals from the ~~net income of the~~ care and  
196 maintenance trust fund shall be used solely for the care and  
197 maintenance of the cemetery, including maintenance of monuments,  
198 which maintenance may ~~shall~~ not be deemed to include the  
199 cleaning, refinishing, repairing, or replacement of monuments;  
200 for reasonable costs of administering the care and maintenance;  
201 and for reasonable costs of administering the trust fund. At the  
202 time of making a sale or receiving an initial deposit, the  
203 cemetery company shall deliver to the person to whom the sale is  
204 made, or who makes a deposit, a written instrument which shall  
205 specifically state the purposes for which withdrawals from the  
206 ~~income of the~~ trust fund shall be used.

207 Section 8. Section 497.2675, Florida Statutes, is created  
208 to read:

209 497.2675 Withdrawal methods from the care and maintenance  
210 trust fund.—

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





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

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

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

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

229 (b) Total return withdrawal method.—The licensee shall  
230 multiply the average fair market value of its pro rata share of  
231 the trust by the total return withdrawal percentage and may  
232 withdraw one-fourth of that amount at least quarterly beginning  
233 the first quarter of the new trust year. The initial total  
234 return withdrawal percentage elected by the licensee may not  
235 increase the total return withdrawal percentage for that  
236 quarter. For purposes of this paragraph, "average fair market  
237 value" means, in relation to a trust, the average of the fair  
238 market value of each asset held by the trust at the beginning of  
239 the current year and in each of the 2 previous years, or for the  
240 entire term of the trust if there are less than 2 previous  
241 years, and adjusted as follows:

242 1. If assets are added to the trust during the years used



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243 to determine the average, the amount of each addition is added  
244 to all years in which such addition is not included.

245 2. If assets are distributed from the trust during the  
246 years used to determine the average, other than in satisfaction  
247 of the unitrust amount, as defined in s. 738.1041, the amount of  
248 each distribution is subtracted from all other years in which  
249 such distribution is not included.

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

252 Section 9. Paragraphs (a) and (b) of subsection (1) and  
253 subsection (2) of section 497.268, Florida Statutes, are amended  
254 to read:

255 497.268 Care and maintenance trust fund, percentage of  
256 payments for burial rights to be deposited.—

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

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

265 ~~(b) For mausoleums or columbaria, 10 percent of payments~~  
266 ~~received.~~

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



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272 in trust must be identical to the percentage which the payment  
273 received bears to the total cost for the burial rights. Trust  
274 income may be used to pay for all usual and customary services  
275 for the operation of a trust account, including, but not limited  
276 to: reasonable trustee and custodian fees, investment adviser  
277 fees, allocation fees, and taxes. If the net income is not  
278 sufficient to pay the fees and other expenses, the fees and  
279 other expenses shall be paid by the cemetery company. ~~Capital~~  
280 ~~gains taxes shall be paid from the corpus.~~

281 Section 10. Section 497.269, Florida Statutes, is amended  
282 to read:

283 497.269 Care and maintenance trust fund; financial  
284 reports.—On or before April 1 of each year, the trustee shall  
285 furnish adequate financial reports that record the fair market  
286 value with respect to the care and maintenance trust fund  
287 utilizing forms and procedures specified by rule. However, the  
288 department may require the trustee to make such additional  
289 financial reports as it deems necessary. In order to ensure that  
290 the proper deposits to the trust fund have been made, the  
291 department shall examine the status of the trust fund of the  
292 company on a semiannual basis for the first 2 years of the trust  
293 fund's existence.

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

296 497.273 Cemetery companies; authorized functions.—

297 (4) This chapter does not prohibit the interment or  
298 entombment of the inurned cremated animal remains of the  
299 decedent's pet or pets with the decedent's human remains or  
300 cremated human remains if:



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

303 (b) The interment or entombment with the inurned cremated  
304 animal remains is with the authorization of a ~~the decedent or~~  
305 ~~either~~ legally authorized person.

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

308 497.274 Standards for grave spaces.—

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

317 Section 13. Subsection (2) of section 497.277, Florida  
318 Statutes, is amended to read:

319 497.277 Other charges.—Other than the fees for the sale of  
320 burial rights, burial merchandise, and burial services, no other  
321 fee may be directly or indirectly charged, contracted for, or  
322 received by a cemetery company as a condition for a customer to  
323 use any burial right, burial merchandise, or burial service,  
324 except for:

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

328 Section 14. Paragraph (c) of subsection (2) of section  
329 497.283, Florida Statutes, is amended to read:



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330 497.283 Prohibition on sale of personal property or  
331 services.—

332 (2)

333 (c) In lieu of delivery as required by paragraph (b), for  
334 sales to cemetery companies and funeral establishments, and only  
335 for such sales, the manufacturer of a permanent outer burial  
336 receptacle which meets standards adopted by rule may elect, at  
337 its discretion, to comply with the delivery requirements of this  
338 section by annually submitting for approval pursuant to  
339 procedures and forms as specified by rule, in writing, evidence  
340 of the manufacturer's financial responsibility with the  
341 licensing authority for its review and approval. ~~The standards  
342 and procedures to establish evidence of financial responsibility  
343 shall be those in s. 497.461, with the manufacturer of permanent  
344 outer burial receptacles which meet national industry standards  
345 assuming the same rights and responsibilities as those of a  
346 preneed licensee under s. 497.461.~~

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

349 497.286 Owners to provide addresses; presumption of  
350 abandonment; abandonment procedures; sale of abandoned unused  
351 burial rights.—

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

356 (a) Describe the burial rights certified to have been  
357 abandoned;

358 (b) Set forth the name of the owner or owners of the burial



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359 rights, or if the owner is known to the cemetery to be deceased,  
360 then the names, if known to the cemetery, of such claimants as  
361 are heirs at law, next of kin, or specific devisees under the  
362 will of the owner or the legally authorized person;

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

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

370 Section 16. Section 497.371, Florida Statutes, is amended  
371 to read:

372 497.371 Embalmers; establishment of embalmer apprentice  
373 program.—The licensing authority adopts rules establishing an  
374 embalmer apprentice program. An embalmer apprentice may perform  
375 only those tasks, functions, and duties relating to embalming  
376 which are performed under the direct supervision of an embalmer  
377 who has an active, valid license under s. 497.368 or s. 497.369.  
378 An embalmer apprentice is ~~shall be~~ eligible to serve in an  
379 apprentice capacity for a period not to exceed 3 years as may be  
380 determined by licensing authority rule or for a period not to  
381 exceed 5 years if the apprentice is enrolled in and attending a  
382 course in mortuary science or funeral service education at any  
383 mortuary college or funeral service education college or school.  
384 An embalmer apprentice shall be issued a license ~~licensed~~ upon  
385 payment of a licensure fee as determined by licensing authority  
386 rule but not to exceed \$200. An applicant for the embalmer  
387 apprentice program may not be issued a license unless the



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388 licensing authority determines that the applicant is of good  
389 character and has not demonstrated a history of lack of  
390 trustworthiness or integrity in business or professional  
391 matters.

392 Section 17. Paragraph (b) of subsection (1) of section  
393 497.372, Florida Statutes, is amended to read:

394 497.372 Funeral directing; conduct constituting practice of  
395 funeral directing.—

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

399 (b) Planning or arranging, on an at-need basis, the details  
400 of funeral services, embalming, cremation, or other services  
401 relating to the final disposition of human remains, including  
402 the removal of such remains from the state, ~~with the family or~~  
403 ~~friends of the decedent or any other person responsible for such~~  
404 ~~services~~; setting the time of the services; establishing the  
405 type of services to be rendered; acquiring the services of the  
406 clergy; and obtaining vital information for the filing of death  
407 certificates and obtaining of burial transit permits.

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

410 497.381 Solicitation of goods or services.—

411 (4) At-need solicitation of funeral merchandise or services  
412 is prohibited. A ~~No~~ funeral director or direct disposer or her  
413 or his agent or representative may not contact the legally  
414 authorized person or family ~~or next of kin of a deceased person~~  
415 to sell services or merchandise unless the funeral director or  
416 direct disposer or her or his agent or representative has been



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417 initially called or contacted by the legally authorized person  
418 or family ~~or next of kin of such person~~ and requested to provide  
419 her or his services or merchandise.

420 Section 19. Paragraph (c) of subsection (2) of section  
421 497.452, Florida Statutes, is amended to read:

422 497.452 Preneed license required.—

423 (2)

424 ~~(c) The provisions of paragraph (a) do not apply to any~~  
425 ~~Florida corporation existing under chapter 607 acting as a~~  
426 ~~servicing agent hereunder in which the stock of such corporation~~  
427 ~~is held by 100 or more persons licensed pursuant to part III of~~  
428 ~~this chapter, provided no one stockholder holds, owns, votes, or~~  
429 ~~has proxies for more than 5 percent of the issued stock of such~~  
430 ~~corporation; provided the corporation has a blanket fidelity~~  
431 ~~bond, covering all employees handling the funds, in the amount~~  
432 ~~of \$50,000 or more issued by a licensed insurance carrier in~~  
433 ~~this state; and provided the corporation processes the funds~~  
434 ~~directly to and from the trustee within the applicable time~~  
435 ~~limits set forth in this chapter. The department may require any~~  
436 ~~person claiming that the provisions of this paragraph exempt it~~  
437 ~~from the provisions of paragraph (a) to demonstrate to the~~  
438 ~~satisfaction of the department that it meets the requirements of~~  
439 ~~this paragraph.~~

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

442 497.454 Approval of preneed contract and related forms.—

443 (1) Preneed contract forms and related forms shall be filed  
444 with and approved by the licensing authority before ~~prior to~~  
445 use, pursuant to procedures specified by rule. The licensing





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446 authority may not approve any electronic or paper preneed  
447 contract ~~form~~ that does not provide for sequential prenumbering  
448 thereon.

449 ~~(3) Specific disclosure regarding the preneed licensee's~~  
450 ~~ability to select either trust funding or the financial~~  
451 ~~responsibility alternative as set forth in s. 497.461 in~~  
452 ~~connection with the receipt of preneed contract proceeds is~~  
453 ~~required in the preneed contract.~~

454 Section 21. Subsections (2), (7), and (8) of section  
455 497.456, Florida Statutes, are amended to read:

456 497.456 Preneed Funeral Contract Consumer Protection Trust  
457 Fund.—

458 (2) Within 60 days after the end of each calendar quarter,  
459 for each preneed contract written during the quarter and not  
460 canceled within 30 days after the date of the execution of the  
461 contract, each preneed licensee, whether funding preneed  
462 contracts by the sale of insurance or by establishing a trust  
463 pursuant to s. 497.458 or s. 497.464, shall remit the sum of  
464 \$2.50 for each preneed contract having a purchase price of  
465 \$1,500 or less, and the sum of \$5 for each preneed contract  
466 having a purchase price in excess of \$1,500; and each preneed  
467 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum  
468 of \$5 for each preneed contract having a purchase price of  
469 \$1,500 or less, and the sum of \$10 for each preneed contract  
470 having a purchase price in excess of \$1,500.

471 (7) In any situation in which a delinquency proceeding has  
472 not commenced, the licensing authority may, in its discretion,  
473 use the trust fund for the purpose of providing restitution to  
474 any consumer, owner, or beneficiary of a preneed contract or



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475 similar regulated arrangement under this chapter entered into  
476 after June 30, 1977. If, after investigation, the licensing  
477 authority determines that a preneed licensee has breached a  
478 preneed contract by failing to provide benefits or an  
479 appropriate refund, or that a provider, who is a former preneed  
480 licensee or an establishment which has been regulated under this  
481 chapter, has sold a preneed contract and has failed to fulfill  
482 the arrangement or provide the appropriate refund, and such  
483 preneed licensee or provider does not provide or does not  
484 possess adequate funds to provide appropriate refunds, payments  
485 from the trust fund may be authorized by the licensing  
486 authority. In considering whether payments shall be made or when  
487 considering who will be responsible for such payments, the  
488 licensing authority shall consider whether the preneed licensee  
489 or previous provider has been acquired by a successor who is or  
490 should be responsible for the liabilities of the defaulting  
491 entity. With respect to preneed contracts funded by life  
492 insurance, payments from the fund shall be made: if the insurer  
493 is insolvent, but only to the extent that funds are not  
494 available through the liquidation proceeding of the insurer; or  
495 if the preneed licensee is unable to perform under the contract  
496 and the insurance proceeds are not sufficient to cover the cost  
497 of the merchandise and services contracted for. In no event  
498 shall the licensing authority approve payments in excess of the  
499 insurance policy limits unless it determines that at the time of  
500 sale of the preneed contract, the insurance policy would have  
501 paid for the services and merchandise contracted for. Such  
502 monetary relief shall be in an amount as the licensing authority  
503 may determine and shall be payable in such manner and upon such



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504 conditions and terms as the licensing authority may prescribe.  
505 However, with respect to preneed contracts to be funded pursuant  
506 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any  
507 restitution made pursuant to this subsection may ~~shall~~ not  
508 exceed, as to any single contract or arrangement, the lesser of  
509 the gross amount paid under the contract or 4 percent of the  
510 uncommitted assets of the trust fund. With respect to preneed  
511 contracts funded by life insurance policies, any restitution may  
512 ~~shall~~ not exceed, as to any single contract or arrangement, the  
513 lesser of the face amount of the policy, the actual cost of the  
514 arrangement contracted for, or 4 percent of the uncommitted  
515 assets of the trust fund. The total of all restitutions made to  
516 all applicants under this subsection in a single fiscal year may  
517 ~~shall~~ not exceed the greater of 30 percent of the uncommitted  
518 assets of the trust fund as of the end of the most recent fiscal  
519 year or \$120,000. The department may use moneys in the trust  
520 fund to contract with independent vendors pursuant to chapter  
521 287 to administer the requirements of this subsection.

522 (8) All moneys deposited in the Preneed Funeral Contract  
523 Consumer Protection Trust Fund together with all accumulated  
524 appreciation ~~income~~ shall be used only for the purposes  
525 expressly authorized by this chapter and may ~~shall~~ not be  
526 subject to any liens, charges, judgments, garnishments, or other  
527 creditor's claims against the preneed licensee, any trustee  
528 utilized by the preneed licensee, any company providing a surety  
529 bond as specified in this chapter, or any purchaser of a preneed  
530 contract. No preneed contract purchaser shall have any vested  
531 rights in the trust fund.

532 Section 22. Paragraphs (a), (b), (d), and (f) of subsection



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533 (1) of section 497.458, Florida Statutes, are amended, a new  
534 paragraph (j) is added to that subsection, and paragraph (a) of  
535 subsection (3), subsection (4), paragraphs (a) and (c) of  
536 subsection (5), and subsections (6) through (9) of that section  
537 are amended, to read:

538 497.458 Disposition of proceeds received on contracts.—

539 (1) (a) Any person who is paid, collects, or receives funds  
540 under a preneed contract for funeral services or merchandise or  
541 burial services or merchandise shall deposit an amount at least  
542 equal to the sum of 70 percent of the purchase price collected  
543 for all services sold and facilities rented; 100 percent of the  
544 purchase price collected for all cash advance items sold; and 30  
545 percent of the purchase price collected ~~or 110 percent of the~~  
546 ~~wholesale cost, whichever is greater,~~ for each item of  
547 merchandise sold. The board may, by rule, specify criteria for  
548 the classification of items sold in a preneed contract as  
549 services, cash advances, or merchandise.

550 ~~(b) The method of determining wholesale cost shall be~~  
551 ~~established by rule of the licensing authority and shall be~~  
552 ~~based upon the preneed licensee's stated wholesale cost for the~~  
553 ~~12-month period beginning July 1 during which the initial~~  
554 ~~deposit to the preneed trust fund for the preneed contract is~~  
555 ~~made.~~

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



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562 that the preneed licensee may request the trustee to invest in  
563 tax-free investments and may appoint an adviser to the trustee.  
564 The licensing authority may adopt rules limiting or otherwise  
565 specifying the degree to which the trustee may rely on the  
566 investment advice of an investment adviser appointed by the  
567 preneed licensee. The licensing authority may adopt rules  
568 limiting or prohibiting payment of fees by the trust to  
569 investment advisors that are employees or principals of the  
570 licensee to whom the trust fund relates.

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

576 (j) Beginning April 1, 2018, and on or before each April 1  
577 thereafter, the trustee shall furnish the department with an  
578 annual report regarding each preneed licensee trust account held  
579 by the trustee at any time during the previous calendar year.  
580 The report shall state the name and address of the trustee; the  
581 name, address, and license number of the licensee to whom the  
582 report relates; the trust account number; the beginning and  
583 ending trust balance; and, as may be specified by department  
584 rule, a list of receipts showing the date and amount of any  
585 disbursement. The report must be signed by the trustee's account  
586 manager for the trust account. The trustee shall submit the  
587 report in a format and pursuant to procedures specified by  
588 department rule.

589 (3) (a) The trustee shall make regular valuations of assets  
590 it holds in trust and provide a fair market value report of such



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591 valuations to the preneed licensee at least quarterly.

592 (4) The licensing authority may adopt rules exempting from  
593 the prohibition of paragraph (1)(g) ~~(1)(h)~~, pursuant to criteria  
594 established in such rule, the investment of trust funds in  
595 investments, such as widely and publicly traded stocks and  
596 bonds, notwithstanding that the licensee, its principals, or  
597 persons related by blood or marriage to the licensee or its  
598 principals have an interest by investment in the same entity,  
599 where neither the licensee, its principals, or persons related  
600 by blood or marriage to the licensee or its principals have the  
601 ability to control the entity invested in, and it would be in  
602 the interest of the preneed contract holders whose contracts are  
603 secured by the trust funds to allow the investment.

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

606 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~  
607 and exercise the powers set forth in part VIII of chapter 736.  
608 However, the trustee may not invest in, or count as assets, life  
609 insurance policies or annuity contracts; real estate may not  
610 compose more than 25 percent of the trust's assets; and,  
611 ~~provided that~~ the licensing authority may by order require the  
612 trustee to liquidate or dispose of any investment within 30 days  
613 after such order, or within such other times as the order may  
614 direct. The licensing authority may issue such order if it  
615 determines that the investment violates any provision of this  
616 chapter or is not in the best interests of the preneed contract  
617 holders whose contracts are secured by the trust funds.

618 (c) Commingle the property of the trust with the property  
619 of any other trust established pursuant to this chapter and make



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620 corresponding allocations and divisions of assets, liabilities,  
621 income, ~~and expenses, and capital gains and losses.~~

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

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

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

634 ~~(b) Section 497.462 is a viable option available to it at~~  
635 ~~any and all relevant times for contracts written prior to July~~  
636 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

637 ~~(c) For any preneed licensee authorized to do business in~~  
638 ~~this state that has total bonded liability exceeding \$100~~  
639 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~  
640 ~~at any and all relevant times for contracts written prior to~~  
641 ~~December 31, 2004, for funds not held in trust as of July 1,~~  
642 ~~2001.~~

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

647 ~~(6)(9)~~ The amounts required to be placed in a trust by this  
648 section for contracts previously entered into shall be as



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649 follows:

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

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

656 Section 23. Paragraph (a) of subsection (6) of section  
657 497.459, Florida Statutes, is amended to read:

658 497.459 Cancellation of, or default on, preneed contracts.-

659 (6) OTHER PROVISIONS.-

660 (a) All preneed contracts are cancelable and revocable as  
661 provided in this section, provided that a preneed contract does  
662 not restrict any contract purchaser who is the beneficiary of  
663 the preneed contract and who is a qualified applicant for, or a  
664 recipient of, supplemental security income, temporary cash  
665 assistance, or Medicaid from making her or his contract  
666 irrevocable. A preneed contract that is made irrevocable  
667 pursuant to this section may not be canceled during the life or  
668 after the death of the contract purchaser or beneficiary as  
669 described in this section. Any unexpended moneys paid on an  
670 irrevocable contract shall be remitted to the Agency for Health  
671 Care Administration for deposit into the Medical Care Trust Fund  
672 after final disposition of the beneficiary.

673 Section 24. Section 497.460, Florida Statutes, is amended  
674 to read:

675 497.460 Payment of funds upon death of named beneficiary.-  
676 Disbursements of funds discharging any preneed contract  
677 fulfilled after September 30, 1993, shall be made by the trustee





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678 to the preneed licensee upon receipt of a certified copy of the  
679 death certificate of the contract beneficiary or satisfactory  
680 evidence as established by rule of the licensing authority that  
681 the preneed contract has been performed in whole or in part.  
682 However, if the contract is only partially performed, the  
683 disbursement shall only cover the fair market value of that  
684 portion of the contract performed. In the event of any contract  
685 default by the contract purchaser, or in the event that the  
686 funeral merchandise or service or burial merchandise or service  
687 contracted for is not provided or is not desired by the legally  
688 authorized person ~~heirs or personal representative of the~~  
689 ~~contract beneficiary,~~ the trustee shall return, within 30 days  
690 after its receipt of a written request therefor, funds paid on  
691 the contract to the preneed licensee or to its assigns, subject  
692 to ~~the provisions of s. 497.459.~~

693 Section 25. Section 497.461, Florida Statutes, is repealed.

694 Section 26. The repeal of s. 497.461, Florida Statutes, by  
695 this act does not apply to a preneed licensee who has elected to  
696 maintain a surety bond in lieu of depositing funds into a trust  
697 as of July 1, 2016.

698 Section 27. Subsection (2), paragraph (a) of subsection  
699 (3), and subsections (7) and (10) of section 497.462, Florida  
700 Statutes, are amended to read:

701 497.462 Other alternatives to deposits under s. 497.458.—

702 ~~(2) Upon prior approval by the licensing authority, the~~  
703 ~~preneed licensee may file a letter of credit with the licensing~~  
704 ~~authority in lieu of a surety bond. Such letter of credit must~~  
705 ~~be in a form, and is subject to terms and conditions, prescribed~~  
706 ~~by the board. It may be revoked only with the express approval~~



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707 ~~of the licensing authority.~~

708       (2)~~(3)~~(a) A buyer of preneed merchandise or services who  
709 does not receive such services or merchandise due to the  
710 economic failure, closing, or bankruptcy of the preneed licensee  
711 must file a claim with the surety as a prerequisite to payment  
712 of the claim and, if the claim is not paid, may bring an action  
713 based on the bond and recover against the surety. ~~In the case of~~  
714 ~~a letter of credit or cash deposit that has been filed with the~~  
715 ~~licensing authority, the buyer may file a claim with the~~  
716 ~~licensing authority.~~

717       (6)~~(7)~~ Any preneed contract which promises future delivery  
718 of merchandise at no cost constitutes a paid-up contract.  
719 Merchandise which has been delivered is not covered by the  
720 required performance bond ~~or letter of credit~~ even though the  
721 contract is not completely paid. The preneed licensee may not  
722 cancel a contract unless the purchaser is in default according  
723 to the terms of the contract and subject to the requirements of  
724 s. 497.459. A contract sold, discounted, and transferred to a  
725 third party constitutes a paid-up contract for the purposes of  
726 the performance bond ~~or letter of credit.~~

727       (9)~~(10)~~ The licensing authority may adopt forms and rules  
728 necessary to implement this section, including, but not limited  
729 to, rules which ensure that the surety bond provides ~~and line of~~  
730 ~~credit provide~~ liability coverage for preneed merchandise and  
731 services.

732       Section 28. Paragraphs (c) and (f) of subsection (1) of  
733 section 497.464, Florida Statutes, are amended to read:

734       497.464 Alternative preneed contracts.-

735       (1) Nothing in this chapter shall prevent the purchaser and



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736 the preneed licensee from executing a preneed contract upon the  
737 terms stated in this section. Such contracts shall be subject to  
738 ~~all provisions of~~ this chapter except:

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

740 ~~(f) Section 497.461.~~

741 Section 29. Subsection (2) and paragraph (c) of subsection  
742 (9) of section 497.465, Florida Statutes, are amended to read:

743 497.465 Inactive, surrendered, and revoked preneed  
744 licensees.—

745 (2) Upon becoming inactive, a preneed licensee shall cease  
746 all preneed sales to the public and upon becoming inactive. ~~the~~  
747 ~~preneed licensee shall collect and deposit into the trust all~~  
748 funds it receives on or after the date on which it becomes  
749 inactive from sales of into trust all of the funds paid toward  
750 preneed contracts sold before ~~prior to~~ becoming inactive.

751 (9) The licensing authority may adopt rules for the  
752 implementation of this section, for the purpose of ensuring a  
753 thorough review and investigation of the status and condition of  
754 the preneed licensee's business affairs for the protection of  
755 the licensee's preneed customers. Such rules may include:

756 (c) Requirements for submission of ~~unaudited or audited~~  
757 financial statements, as the licensing authority deems  
758 advisable.

759 Section 30. Paragraph (b) of subsection (1) of section  
760 497.601, Florida Statutes, is amended to read:

761 497.601 Direct disposition; duties.—

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

764 (b) Secure pertinent information from a legally authorized



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765 person ~~the decedent's next of kin~~ in order to complete the death  
766 certificate and to file for the necessary permits for ~~direct~~  
767 disposition.

768 Section 31. Subsection (1) of section 497.607, Florida  
769 Statutes, is amended, present subsections (2), (3), and (4) of  
770 that section are redesignated as subsections (3), (4), and (5),  
771 respectively, and a new subsection (2) is added to that section,  
772 to read:

773 497.607 Cremation; procedure required.—

774 (1) At the time of the arrangement for a cremation  
775 performed by any person licensed pursuant to this chapter, the  
776 legally authorized person contracting for cremation services  
777 shall be required to designate her or his intentions with  
778 respect to ~~the~~ disposition of the cremated remains of the  
779 deceased in a signed declaration of intent which shall be  
780 provided by and retained by the funeral or direct disposal  
781 establishment. A cremation may not be performed until a legally  
782 authorized person gives written authorization, which may include  
783 the declaration of intent to dispose of the cremated remains,  
784 for such cremation. The cremation must be performed within 48  
785 hours after a specified time which has been agreed to in writing  
786 by the person authorizing the cremation.

787 (2) Cremated remains are not property, as defined in s.  
788 731.201(32), and are not subject to ownership or court-ordered  
789 partition. A division of cremated remains requires the consent  
790 of the legally authorized person who approved the cremation or,  
791 if the legally authorized person is the decedent, the next  
792 legally authorized person pursuant to s. 497.005(43). A dispute  
793 regarding the division of cremated remains



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 8 - 63

and insert:

the licensing process; amending s. 497.146, F.S.;  
revising required information for current licensees to  
include an address for e-mail notification; providing  
for rulemaking relating to electronic reporting;  
amending s. 497.152, F.S.; conforming provisions to  
changes made by the act; requiring, rather than  
authorizing, the Board of Funeral, Cemetery, and  
Consumer Services to provide certain criteria;  
prohibiting the board from requiring a fine when  
certain deficiencies are fully corrected within a  
specified period; amending s. 497.161, F.S.; revising  
requirements for rules of the licensing authority;  
amending s. 497.266, F.S.; revising the prohibition  
against withdrawal or transfer of assets within the  
care and maintenance trust fund to include an  
exception; amending s. 497.267, F.S.; revising  
provisions relating to the disposition of withdrawals  
from the care and maintenance trust fund; creating s.  
497.2675, F.S.; requiring the board to adopt certain  
rules; requiring a licensed cemetery company to  
request a method for withdrawal from the cemetery  
company's care and maintenance trust fund; providing  
requirements for such methods; requiring that taxes on  
capital gains be paid from the trust principal;



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823 amending s. 497.268, F.S.; conforming provisions to  
824 changes made by the act; deleting a required deposit  
825 in a cemetery company's care and maintenance trust  
826 fund for mausoleums or columbaria; deleting the  
827 requirement that taxes on capital gain be paid from  
828 the trust corpus; amending s. 497.269, F.S.; requiring  
829 a trustee to annually furnish financial reports that  
830 record the fair market value of the care and  
831 maintenance trust fund; amending ss. 497.273 and  
832 497.274, F.S.; conforming provisions to changes made  
833 by the act; amending s. 497.277, F.S.; deleting a  
834 limitation on the fee for transfer of burial rights  
835 from one purchaser to another; authorizing the board  
836 to determine the transfer fee; amending ss. 497.283  
837 and 497.286, F.S.; conforming provisions to changes  
838 made by the act; amending s. 497.371, F.S.; providing  
839 that an applicant for the embalmer apprentice program  
840 may not be licensed without a determination of  
841 character by the licensing authority; amending ss.  
842 497.372 and 497.381, F.S.; conforming provisions to  
843 changes made by the act; amending s. 497.452, F.S.;  
844 deleting an exception that prohibits a person from  
845 receiving specified funds without holding a valid  
846 preneed license; amending ss. 497.454 and 497.456,  
847 F.S.; conforming provisions to changes made by the  
848 act; amending s. 497.458, F.S.; revising requirements  
849 relating to the disposition of proceeds on a preneed  
850 contract; authorizing the board to specify criteria  
851 for the classification of items sold in a preneed



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852 contract; requiring the trustee to furnish the  
853 department with an annual report regarding preneed  
854 licensee trust accounts beginning on a specified date;  
855 providing requirements for the annual report; revising  
856 which investments a trustee of a trust has the power  
857 to invest in; deleting provisions relating to the  
858 preneed licensee; amending s. 497.459, F.S.;  
859 prohibiting certain preneed contracts from being  
860 canceled during the life or after the death of the  
861 contract purchaser or beneficiary; requiring  
862 unexpended moneys on an irrevocable contract to be  
863 deposited into the Medical Care Trust Fund under  
864 certain circumstances; amending s. 497.460, F.S.;

865