

By Senator Hukill

8-00997-16

2016854__

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. 497.152, F.S.;
9 conforming provisions to changes made by the act;
10 requiring, rather than authorizing, the Board of
11 Funeral, Cemetery, and Consumer Services to provide
12 certain criteria; prohibiting the board from requiring
13 a fine when certain deficiencies are fully corrected
14 within a specified period; amending s. 497.266, F.S.;
15 revising the prohibition against withdrawal or
16 transfer of assets within the care and maintenance
17 trust fund to include an exception; amending s.
18 497.267, F.S.; revising provisions relating to the
19 disposition of withdrawals from the care and
20 maintenance trust fund; creating s. 497.2675, F.S.;
21 requiring the board to adopt certain rules; requiring
22 a licensed cemetery company to request a method for
23 withdrawal from the cemetery company's care and
24 maintenance trust fund; providing requirements for
25 such methods; requiring that taxes on capital gains be
26 paid from the trust principal; amending s. 497.268,
27 F.S.; conforming provisions to changes made by the
28 act; deleting a required deposit in a cemetery
29 company's care and maintenance trust fund for

8-00997-16

2016854__

30 mausoleums or columbaria; deleting the requirement
31 that taxes on capital gain be paid from the trust
32 corpus; amending s. 497.269, F.S.; requiring a trustee
33 to annually furnish financial reports that record the
34 fair market value of the care and maintenance trust
35 fund; amending ss. 497.273 and 497.274, F.S.;
36 conforming provisions to changes made by the act;
37 amending s. 497.277, F.S.; deleting a limitation on
38 the fee for transfer of burial rights from one
39 purchaser to another; authorizing the board to
40 determine the transfer fee; amending ss. 497.283 and
41 497.286, F.S.; conforming provisions to changes made
42 by the act; amending s. 497.371, F.S.; providing that
43 an applicant for the embalmer apprentice program may
44 not be licensed without a determination of character
45 by the licensing authority; amending ss. 497.372 and
46 497.381, F.S.; conforming provisions to changes made
47 by the act; amending s. 497.452, F.S.; deleting an
48 exception that prohibits a person from receiving
49 specified funds without holding a valid preneed
50 license; amending ss. 497.454 and 497.456, F.S.;
51 conforming provisions to changes made by the act;
52 amending s. 497.458, F.S.; revising requirements
53 relating to the disposition of proceeds on a preneed
54 contract; requiring the trustee to furnish the
55 department with an annual report regarding preneed
56 licensee trust accounts beginning on a specified date;
57 providing requirements for the annual report; revising
58 which investments a trustee of a trust has the power

8-00997-16

2016854__

59 to invest in; deleting provisions relating to the
60 preneed licensee; amending s. 497.459, F.S.;
61 prohibiting certain preneed contracts from being
62 canceled during the life or after the death of the
63 contract purchaser; amending s. 497.460, F.S.;
64 conforming provisions to changes made by the act;
65 repealing s. 497.461, F.S., relating to the
66 authorization for a preneed licensee to elect surety
67 bonding as an alternative to depositing funds into a
68 trust; amending s. 497.462, F.S.; deleting obsolete
69 references to surety bonds; amending s. 497.464, F.S.;
70 conforming provisions to changes made by the act;
71 amending s. 497.465, F.S.; requiring an inactive
72 preneed licensee to deposit a specified amount of
73 funds received on certain preneed contracts into the
74 trust upon a specified time; amending ss. 497.601 and
75 497.607, F.S.; specifying that cremated remains are
76 not property; requiring a division of cremated remains
77 to be consented to by certain persons; providing that
78 a dispute shall be resolved by a court of competent
79 jurisdiction; conforming provisions to changes made by
80 the act; providing an effective date.

81

82 Be It Enacted by the Legislature of the State of Florida:

83

84 Section 1. Present subsections (5) through (8), (9) through
85 (31), (32) through (38), (39) through (46), (47) through (61),
86 (62) through (70), and (71) of section 497.005, Florida
87 Statutes, are redesignated as subsections (6) through (9), (11)

8-00997-16

2016854__

88 through (33), (35) through (41), (43) through (50), (52) through
89 (66), (68) through (76), and (78), respectively, and new
90 subsections (5), (10), (34), (42), (51), (67), and (77) are
91 added to that section, to read:

92 497.005 Definitions.—As used in this chapter, the term:

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

96 (10) "Capital gain" or "capital loss" means a change in the
97 value of a capital asset, such as investment or real estate,
98 which gives the asset a different worth than the purchase price.
99 The gain or loss is not realized until the asset is sold.

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

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

105 (51) "Net income" means, in relation to a trust, ordinary
106 income minus any income distributions for items such as trust
107 expenses. For purposes of this subsection, "ordinary income"
108 means, in relation to a trust, any earnings on trust assets,
109 including interest and dividends received on property derived
110 from the use of the trust principal, but does not include
111 capital gains or capital losses.

112 (67) "Purchaser" means a natural person who has executed a
113 preneed contract with or seeks at-need funeral merchandise or
114 services from a licensee.

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

8-00997-16

2016854__

117 a trust.

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

120 497.141 Licensing; general application procedures.—

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

127 Notwithstanding any other provision of law, the department is
128 the sole authority for determining the forms and form contents
129 to be submitted for initial licensure and licensure renewal
130 application. Such forms and the information and materials
131 required by such forms may include, as appropriate,
132 demographics, education, work history, personal background,
133 criminal history, finances, business information, signature
134 notarization, performance periods, reciprocity, local government
135 approvals, supporting documentation, periodic reporting
136 requirements, fingerprint requirements, continuing education
137 requirements, business plans, character references, e-mail
138 addresses, and ongoing education monitoring. Such forms and the
139 information and materials required by such forms may also
140 include, to the extent such information or materials are not
141 already in the possession of the department or the board,
142 records or information as to complaints, inspections,
143 investigations, discipline, and bonding. The application shall
144 be supplemented as needed to reflect any material change in any
145 circumstance or condition stated in the application that takes

8-00997-16

2016854__

146 place between the initial filing of the application and the
147 final grant or denial of the license and that might affect the
148 decision of the department or the board. After an application by
149 a natural person for licensure under this chapter is approved,
150 the licensing authority may require the successful applicant to
151 provide a photograph of himself or herself for permanent
152 lamination onto the license card to be issued to the applicant,
153 pursuant to rules and fees adopted by the licensing authority.

154 (11) The department shall implement a system for
155 administration of the overall licensing process, including e-
156 mail notification for the processing and tracking of
157 applications for licensure, the issuance of licenses approved by
158 the board, the tracking of licenses issued, the administration
159 of the license renewal process, and the collection and
160 processing of fees related to those activities. The system may
161 use staff and facilities of the department or the department may
162 enter into a contract for all or any part of such system, upon
163 such terms and conditions as the department deems advisable, and
164 such contract may be with another government agency or a private
165 business.

166 Section 3. Paragraphs (b) and (e) of subsection (8),
167 paragraph (d) of subsection (12), paragraphs (b) and (c) of
168 subsection (14), and paragraph (b) of subsection (15) of section
169 497.152, Florida Statutes, are amended to read:

170 497.152 Disciplinary grounds.—This section sets forth
171 conduct that is prohibited and that shall constitute grounds for
172 denial of any application, imposition of discipline, or other
173 enforcement action against the licensee or other person
174 committing such conduct. For purposes of this section, the

8-00997-16

2016854__

175 requirements of this chapter include the requirements of rules
176 adopted under authority of this chapter. No subsection heading
177 in this section shall be interpreted as limiting the
178 applicability of any paragraph within the subsection.

179 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN
180 REMAINS.—

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

186 (e) Failing to obtain written authorization from a legally
187 authorized person before ~~the family or next of kin of the~~
188 ~~deceased prior to~~ entombment, interment, disinterment,
189 disentombment, or disinurnment of the remains of any human
190 being.

191 (12) DISCLOSURE REQUIREMENTS.—

192 (d) Failure by a funeral director to make full disclosure
193 in the case of a funeral or direct disposition with regard to
194 the use of funeral merchandise that is not to be disposed of
195 with the body or failure to obtain written permission from a
196 legally authorized person ~~the purchaser~~ regarding disposition of
197 such merchandise.

198 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
199 CUSTOMERS.—

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

202 1. Failing to acknowledge and act promptly upon
203 communications from a licensee's customers and their

8-00997-16

2016854__

204 representatives with respect to claims or complaints relating to
205 the licensee's activities regulated by this chapter.

206 2. Denying claims or rejecting complaints received by a
207 licensee from a customer or customer's representative, relating
208 to the licensee's activities regulated by this chapter, without
209 first conducting reasonable investigation based upon available
210 information.

211 3. Attempting to settle a claim or complaint on the basis
212 of a material document that was altered without notice to, or
213 without the knowledge or consent of, the contract purchaser or a
214 legally authorized person ~~her or his representative or legal~~
215 ~~guardian~~.

216 4. Failing within a reasonable time to affirm or deny
217 coverage of specified services or merchandise under a contract
218 entered into by a licensee upon written request of the contract
219 purchaser or a legally authorized person ~~her or his~~
220 ~~representative or legal guardian~~.

221 5. Failing to promptly provide, in relation to a contract
222 for funeral or burial merchandise or services entered into by
223 the licensee or under the licensee's license, a reasonable
224 explanation to the contract purchaser or a legally authorized
225 person ~~her or his representative or legal guardian~~ of the
226 licensee's basis for denying or rejecting all or any part of a
227 claim or complaint submitted.

228 (c) Making a material misrepresentation to a contract
229 purchaser or a legally authorized person ~~her or his~~
230 ~~representative or legal guardian~~ for the purpose and with the
231 intent of effecting settlement of a claim or complaint or loss
232 under a prepaid contract on less favorable terms than those

8-00997-16

2016854__

233 provided in, and contemplated by, the prepaid contract.

234

235 For purposes of this subsection, the response of a customer
236 recorded by the customer on a customer satisfaction
237 questionnaire or survey form sent to the customer by the
238 licensee, and returned by the customer to the licensee, shall
239 not be deemed to be a complaint.

240 (15) MISCELLANEOUS FINANCIAL MATTERS.—

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

249 Section 4. Subsections (3) and (4) of section 497.266,
250 Florida Statutes, are amended to read:

251 497.266 Care and maintenance trust fund; remedy of
252 department for noncompliance.—

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

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

8-00997-16

2016854__

262 collecting income; and distributing withdrawals from the trust
263 ~~the principal and income~~ as prescribed in this chapter. The
264 cemetery company is prohibited from sharing in the discharge of
265 the trustee's responsibilities under this subsection, except
266 that the cemetery company may request the trustee to invest in
267 tax-free investments.

268 Section 5. Section 497.267, Florida Statutes, is amended to
269 read:

270 497.267 Disposition of withdrawals from the ~~income of~~ care
271 and maintenance trust fund; notice to purchasers and
272 depositors.—Withdrawals from the net income of the care and
273 maintenance trust fund shall be used solely for the care and
274 maintenance of the cemetery, including maintenance of monuments,
275 which maintenance may ~~shall~~ not be deemed to include the
276 cleaning, refinishing, repairing, or replacement of monuments;
277 for reasonable costs of administering the care and maintenance;
278 and for reasonable costs of administering the trust fund. At the
279 time of making a sale or receiving an initial deposit, the
280 cemetery company shall deliver to the person to whom the sale is
281 made, or who makes a deposit, a written instrument which shall
282 specifically state the purposes for which withdrawals from the
283 ~~income of the~~ trust fund shall be used.

284 Section 6. Section 497.2675, Florida Statutes, is created
285 to read:

286 497.2675 Withdrawal methods from the care and maintenance
287 trust fund.—

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

8-00997-16

2016854__

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

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

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

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

306 (b) Total return withdrawal method.—The licensee shall
307 multiply the average fair market value of its pro rata share of
308 the trust by the total return withdrawal percentage and may
309 withdraw one-fourth of that amount at least quarterly beginning
310 the first quarter of the new trust year. The initial total
311 return withdrawal percentage elected by the licensee may not
312 increase the total return withdrawal percentage for that
313 quarter. For purposes of this paragraph, "average fair market
314 value" means, in relation to a trust, the average of the fair
315 market value of each asset held by the trust at the beginning of
316 the current year and in each of the 2 previous years, or for the
317 entire term of the trust if there are less than 2 previous
318 years, and adjusted as follows:

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

8-00997-16

2016854__

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

322 2. If assets are distributed from the trust during the
323 years used to determine the average, other than in satisfaction
324 of the unitrust amount, as defined in s. 738.1041, the amount of
325 each distribution is subtracted from all other years in which
326 such distribution is not included.

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

329 Section 7. Paragraphs (a) and (b) of subsection (1) and
330 subsection (2) of section 497.268, Florida Statutes, are amended
331 to read:

332 497.268 Care and maintenance trust fund, percentage of
333 payments for burial rights to be deposited.-

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

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

342 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
343 ~~received.~~

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

8-00997-16

2016854__

349 in trust must be identical to the percentage which the payment
350 received bears to the total cost for the burial rights. Trust
351 income may be used to pay for all usual and customary services
352 for the operation of a trust account, including, but not limited
353 to: reasonable trustee and custodian fees, investment adviser
354 fees, allocation fees, and taxes. If the net income is not
355 sufficient to pay the fees and other expenses, the fees and
356 other expenses shall be paid by the cemetery company. ~~Capital~~
357 ~~gains taxes shall be paid from the corpus.~~

358 Section 8. Section 497.269, Florida Statutes, is amended to
359 read:

360 497.269 Care and maintenance trust fund; financial
361 reports.—On or before April 1 of each year, the trustee shall
362 furnish adequate financial reports that record the fair market
363 value with respect to the care and maintenance trust fund
364 utilizing forms and procedures specified by rule. However, the
365 department may require the trustee to make such additional
366 financial reports as it deems necessary. In order to ensure that
367 the proper deposits to the trust fund have been made, the
368 department shall examine the status of the trust fund of the
369 company on a semiannual basis for the first 2 years of the trust
370 fund's existence.

371 Section 9. Subsection (4) of section 497.273, Florida
372 Statutes, is amended to read:

373 497.273 Cemetery companies; authorized functions.—

374 (4) This chapter does not prohibit the interment or
375 entombment of the inurned cremated animal remains of the
376 decedent's pet or pets with the decedent's human remains or
377 cremated human remains if:

8-00997-16

2016854__

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

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

383 Section 10. Subsection (1) of section 497.274, Florida
384 Statutes, is amended to read:

385 497.274 Standards for grave spaces.—

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

394 Section 11. Subsection (2) of section 497.277, Florida
395 Statutes, is amended to read:

396 497.277 Other charges.—Other than the fees for the sale of
397 burial rights, burial merchandise, and burial services, no other
398 fee may be directly or indirectly charged, contracted for, or
399 received by a cemetery company as a condition for a customer to
400 use any burial right, burial merchandise, or burial service,
401 except for:

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

405 Section 12. Paragraph (c) of subsection (2) of section
406 497.283, Florida Statutes, is amended to read:

8-00997-16

2016854__

407 497.283 Prohibition on sale of personal property or
408 services.—

409 (2)

410 (c) In lieu of delivery as required by paragraph (b), for
411 sales to cemetery companies and funeral establishments, and only
412 for such sales, the manufacturer of a permanent outer burial
413 receptacle which meets standards adopted by rule may elect, at
414 its discretion, to comply with the delivery requirements of this
415 section by annually submitting for approval pursuant to
416 procedures and forms as specified by rule, in writing, evidence
417 of the manufacturer's financial responsibility with the
418 licensing authority for its review and approval. ~~The standards
419 and procedures to establish evidence of financial responsibility
420 shall be those in s. 497.461, with the manufacturer of permanent
421 outer burial receptacles which meet national industry standards
422 assuming the same rights and responsibilities as those of a
423 preneed licensee under s. 497.461.~~

424 Section 13. Subsection (3) of section 497.286, Florida
425 Statutes, is amended to read:

426 497.286 Owners to provide addresses; presumption of
427 abandonment; abandonment procedures; sale of abandoned unused
428 burial rights.—

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

433 (a) Describe the burial rights certified to have been
434 abandoned;

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

8-00997-16

2016854__

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

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

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

447 Section 14. Section 497.371, Florida Statutes, is amended
448 to read:

449 497.371 Embalmers; establishment of embalmer apprentice
450 program.—The licensing authority adopts rules establishing an
451 embalmer apprentice program. An embalmer apprentice may perform
452 only those tasks, functions, and duties relating to embalming
453 which are performed under the direct supervision of an embalmer
454 who has an active, valid license under s. 497.368 or s. 497.369.
455 An embalmer apprentice is ~~shall be~~ eligible to serve in an
456 apprentice capacity for a period not to exceed 3 years as may be
457 determined by licensing authority rule or for a period not to
458 exceed 5 years if the apprentice is enrolled in and attending a
459 course in mortuary science or funeral service education at any
460 mortuary college or funeral service education college or school.
461 An embalmer apprentice shall be issued a license ~~licensed~~ upon
462 payment of a licensure fee as determined by licensing authority
463 rule but not to exceed \$200. An applicant for the embalmer
464 apprentice program may not be issued a license unless the

8-00997-16

2016854__

465 licensing authority determines that the applicant is of good
466 character and has not demonstrated a history of lack of
467 trustworthiness or integrity in business or professional
468 matters.

469 Section 15. Paragraph (b) of subsection (1) of section
470 497.372, Florida Statutes, is amended to read:

471 497.372 Funeral directing; conduct constituting practice of
472 funeral directing.—

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

476 (b) Planning or arranging, on an at-need basis, the details
477 of funeral services, embalming, cremation, or other services
478 relating to the final disposition of human remains, including
479 the removal of such remains from the state, ~~with the family or~~
480 ~~friends of the decedent or any other person responsible for such~~
481 ~~services~~; setting the time of the services; establishing the
482 type of services to be rendered; acquiring the services of the
483 clergy; and obtaining vital information for the filing of death
484 certificates and obtaining of burial transit permits.

485 Section 16. Subsection (4) of section 497.381, Florida
486 Statutes, is amended to read:

487 497.381 Solicitation of goods or services.—

488 (4) At-need solicitation of funeral merchandise or services
489 is prohibited. A ~~No~~ funeral director or direct disposer or her
490 or his agent or representative may not contact the legally
491 authorized person or family ~~or next of kin of a deceased person~~
492 to sell services or merchandise unless the funeral director or
493 direct disposer or her or his agent or representative has been

8-00997-16

2016854__

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

497 Section 17. Paragraph (c) of subsection (2) of section
498 497.452, Florida Statutes, is amended to read:

499 497.452 Preneed license required.—

500 (2)

501 ~~(c) The provisions of paragraph (a) do not apply to any~~
502 ~~Florida corporation existing under chapter 607 acting as a~~
503 ~~servicing agent hereunder in which the stock of such corporation~~
504 ~~is held by 100 or more persons licensed pursuant to part III of~~
505 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
506 ~~has proxies for more than 5 percent of the issued stock of such~~
507 ~~corporation; provided the corporation has a blanket fidelity~~
508 ~~bond, covering all employees handling the funds, in the amount~~
509 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
510 ~~this state; and provided the corporation processes the funds~~
511 ~~directly to and from the trustee within the applicable time~~
512 ~~limits set forth in this chapter. The department may require any~~
513 ~~person claiming that the provisions of this paragraph exempt it~~
514 ~~from the provisions of paragraph (a) to demonstrate to the~~
515 ~~satisfaction of the department that it meets the requirements of~~
516 ~~this paragraph.~~

517 Section 18. Subsections (1) and (3) of section 497.454,
518 Florida Statutes, are amended to read:

519 497.454 Approval of preneed contract and related forms.—

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

8-00997-16

2016854__

523 authority may not approve any electronic or paper preneed
524 contract ~~form~~ that does not provide for sequential prenumbering
525 thereon.

526 ~~(3) Specific disclosure regarding the preneed licensee's~~
527 ~~ability to select either trust funding or the financial~~
528 ~~responsibility alternative as set forth in s. 497.461 in~~
529 ~~connection with the receipt of preneed contract proceeds is~~
530 ~~required in the preneed contract.~~

531 Section 19. Subsections (2), (7), and (8) of section
532 497.456, Florida Statutes, are amended to read:

533 497.456 Preneed Funeral Contract Consumer Protection Trust
534 Fund.—

535 (2) Within 60 days after the end of each calendar quarter,
536 for each preneed contract written during the quarter and not
537 canceled within 30 days after the date of the execution of the
538 contract, each preneed licensee, whether funding preneed
539 contracts by the sale of insurance or by establishing a trust
540 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
541 \$2.50 for each preneed contract having a purchase price of
542 \$1,500 or less, and the sum of \$5 for each preneed contract
543 having a purchase price in excess of \$1,500; and each preneed
544 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
545 of \$5 for each preneed contract having a purchase price of
546 \$1,500 or less, and the sum of \$10 for each preneed contract
547 having a purchase price in excess of \$1,500.

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

8-00997-16

2016854__

552 similar regulated arrangement under this chapter entered into
553 after June 30, 1977. If, after investigation, the licensing
554 authority determines that a preneed licensee has breached a
555 preneed contract by failing to provide benefits or an
556 appropriate refund, or that a provider, who is a former preneed
557 licensee or an establishment which has been regulated under this
558 chapter, has sold a preneed contract and has failed to fulfill
559 the arrangement or provide the appropriate refund, and such
560 preneed licensee or provider does not provide or does not
561 possess adequate funds to provide appropriate refunds, payments
562 from the trust fund may be authorized by the licensing
563 authority. In considering whether payments shall be made or when
564 considering who will be responsible for such payments, the
565 licensing authority shall consider whether the preneed licensee
566 or previous provider has been acquired by a successor who is or
567 should be responsible for the liabilities of the defaulting
568 entity. With respect to preneed contracts funded by life
569 insurance, payments from the fund shall be made: if the insurer
570 is insolvent, but only to the extent that funds are not
571 available through the liquidation proceeding of the insurer; or
572 if the preneed licensee is unable to perform under the contract
573 and the insurance proceeds are not sufficient to cover the cost
574 of the merchandise and services contracted for. In no event
575 shall the licensing authority approve payments in excess of the
576 insurance policy limits unless it determines that at the time of
577 sale of the preneed contract, the insurance policy would have
578 paid for the services and merchandise contracted for. Such
579 monetary relief shall be in an amount as the licensing authority
580 may determine and shall be payable in such manner and upon such

8-00997-16

2016854__

581 conditions and terms as the licensing authority may prescribe.
582 However, with respect to preneed contracts to be funded pursuant
583 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
584 restitution made pursuant to this subsection may ~~shall~~ not
585 exceed, as to any single contract or arrangement, the lesser of
586 the gross amount paid under the contract or 4 percent of the
587 uncommitted assets of the trust fund. With respect to preneed
588 contracts funded by life insurance policies, any restitution may
589 ~~shall~~ not exceed, as to any single contract or arrangement, the
590 lesser of the face amount of the policy, the actual cost of the
591 arrangement contracted for, or 4 percent of the uncommitted
592 assets of the trust fund. The total of all restitutions made to
593 all applicants under this subsection in a single fiscal year may
594 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
595 assets of the trust fund as of the end of the most recent fiscal
596 year or \$120,000. The department may use moneys in the trust
597 fund to contract with independent vendors pursuant to chapter
598 287 to administer the requirements of this subsection.

599 (8) All moneys deposited in the Preneed Funeral Contract
600 Consumer Protection Trust Fund together with all accumulated
601 appreciation ~~income~~ shall be used only for the purposes
602 expressly authorized by this chapter and may ~~shall~~ not be
603 subject to any liens, charges, judgments, garnishments, or other
604 creditor's claims against the preneed licensee, any trustee
605 utilized by the preneed licensee, any company providing a surety
606 bond as specified in this chapter, or any purchaser of a preneed
607 contract. No preneed contract purchaser shall have any vested
608 rights in the trust fund.

609 Section 20. Paragraphs (a), (b), (d), and (f) of subsection

8-00997-16

2016854__

610 (1) of section 497.458, Florida Statutes, are amended, a new
611 paragraph (j) is added to that subsection, and paragraph (a) of
612 subsection (3), subsection (4), paragraphs (a) and (c) of
613 subsection (5), and subsections (6) through (9) of that section
614 are amended, to read:

615 497.458 Disposition of proceeds received on contracts.—

616 (1) (a) Any person who is paid, collects, or receives funds
617 under a preneed contract for funeral services or merchandise or
618 burial services or merchandise shall deposit an amount at least
619 equal to the sum of 70 percent of the purchase price collected
620 for all services sold and facilities rented; 100 percent of the
621 purchase price collected for all cash advance items sold; and 30
622 percent of the purchase price collected ~~or 110 percent of the~~
623 ~~wholesale cost, whichever is greater,~~ for each item of
624 merchandise sold.

625 ~~(b) The method of determining wholesale cost shall be~~
626 ~~established by rule of the licensing authority and shall be~~
627 ~~based upon the preneed licensee's stated wholesale cost for the~~
628 ~~12-month period beginning July 1 during which the initial~~
629 ~~deposit to the preneed trust fund for the preneed contract is~~
630 ~~made.~~

631 (c) ~~(d)~~ The trustee shall take title to the property
632 conveyed to the trust for the purpose of investing, protecting,
633 and conserving it for the preneed licensee; collecting income;
634 and distributing the fair market value ~~principal and income~~ as
635 prescribed in this chapter. The preneed licensee is prohibited
636 from sharing in the discharge of these responsibilities, except
637 that the preneed licensee may request the trustee to invest in
638 tax-free investments and may appoint an adviser to the trustee.

8-00997-16

2016854__

639 The licensing authority may adopt rules limiting or otherwise
640 specifying the degree to which the trustee may rely on the
641 investment advice of an investment adviser appointed by the
642 preneed licensee. The licensing authority may adopt rules
643 limiting or prohibiting payment of fees by the trust to
644 investment advisors that are employees or principals of the
645 licensee to whom the trust fund relates.

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

651 (j) Beginning April 1, 2018, and on or before each April 1
652 thereafter, the trustee shall furnish the department with an
653 annual report regarding each preneed licensee trust account held
654 by the trustee at any time during the previous calendar year.
655 The report shall state the name and address of the trustee; the
656 name, address, and license number of the licensee to whom the
657 report relates; the trust account number; the beginning and
658 ending trust balance; and, as may be specified by department
659 rule, a list of receipts showing the date and amount of any
660 disbursement. The report must be signed by the trustee's account
661 manager for the trust account. The trustee shall submit the
662 report in a format and pursuant to procedures specified by
663 department rule.

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

667 (4) The licensing authority may adopt rules exempting from

8-00997-16

2016854__

668 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
669 established in such rule, the investment of trust funds in
670 investments, such as widely and publicly traded stocks and
671 bonds, notwithstanding that the licensee, its principals, or
672 persons related by blood or marriage to the licensee or its
673 principals have an interest by investment in the same entity,
674 where neither the licensee, its principals, or persons related
675 by blood or marriage to the licensee or its principals have the
676 ability to control the entity invested in, and it would be in
677 the interest of the preneed contract holders whose contracts are
678 secured by the trust funds to allow the investment.

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

681 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~
682 and exercise the powers set forth in part VIII of chapter 736,
683 provided that the licensing authority may by order require the
684 trustee to liquidate or dispose of any investment within 30 days
685 after such order, or within such other times as the order may
686 direct. The licensing authority may issue such order if it
687 determines that the investment violates any provision of this
688 chapter or is not in the best interests of the preneed contract
689 holders whose contracts are secured by the trust funds.

690 (c) Commingle the property of the trust with the property
691 of any other trust established pursuant to this chapter and make
692 corresponding allocations and divisions of assets, liabilities,
693 income, ~~and expenses,~~ and capital gains and losses.

694 ~~(6) The preneed licensee, at her or his election, shall~~
695 ~~have the right and power, at any time, to revest in it title to~~
696 ~~the trust assets, or its pro rata share thereof, provided it has~~

8-00997-16

2016854__

697 ~~complied with s. 497.461.~~

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

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

706 ~~(b) Section 497.462 is a viable option available to it at~~
707 ~~any and all relevant times for contracts written prior to July~~
708 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

709 ~~(c) For any preneed licensee authorized to do business in~~
710 ~~this state that has total bonded liability exceeding \$100~~
711 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
712 ~~at any and all relevant times for contracts written prior to~~
713 ~~December 31, 2004, for funds not held in trust as of July 1,~~
714 ~~2001.~~

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

719 ~~(6)~~(9) The amounts required to be placed in a trust by this
720 section for contracts previously entered into shall be as
721 follows:

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

725 (b) For contracts entered into on or after October 1, 1993,

8-00997-16

2016854__

726 the trust amounts as amended by s. 98, chapter 93-399, Laws of
727 Florida, shall apply.

728 Section 21. Paragraph (a) of subsection (6) of section
729 497.459, Florida Statutes, is amended to read:

730 497.459 Cancellation of, or default on, preneed contracts.-

731 (6) OTHER PROVISIONS.-

732 (a) All preneed contracts are cancelable and revocable as
733 provided in this section, provided that a preneed contract does
734 not restrict any contract purchaser who is the beneficiary of
735 the preneed contract and who is a qualified applicant for, or a
736 recipient of, supplemental security income, temporary cash
737 assistance, or Medicaid from making her or his contract
738 irrevocable. A preneed contract that is made irrevocable
739 pursuant to this section may not be canceled during the life or
740 after the death of the contract purchaser as described in this
741 section.

742 Section 22. Section 497.460, Florida Statutes, is amended
743 to read:

744 497.460 Payment of funds upon death of named beneficiary.-
745 Disbursements of funds discharging any preneed contract
746 fulfilled after September 30, 1993, shall be made by the trustee
747 to the preneed licensee upon receipt of a certified copy of the
748 death certificate of the contract beneficiary or satisfactory
749 evidence as established by rule of the licensing authority that
750 the preneed contract has been performed in whole or in part.
751 However, if the contract is only partially performed, the
752 disbursement shall only cover the fair market value of that
753 portion of the contract performed. In the event of any contract
754 default by the contract purchaser, or in the event that the

8-00997-16

2016854__

755 funeral merchandise or service or burial merchandise or service
756 contracted for is not provided or is not desired by the legally
757 authorized person ~~heirs or personal representative of the~~
758 ~~contract beneficiary~~, the trustee shall return, within 30 days
759 after its receipt of a written request therefor, funds paid on
760 the contract to the preneed licensee or to its assigns, subject
761 to ~~the provisions of s. 497.459.~~

762 Section 23. Section 497.461, Florida Statutes, is repealed.

763 Section 24. The repeal of s. 497.461, Florida Statutes, by
764 this act does not apply to a preneed licensee who has elected to
765 maintain a surety bond in lieu of depositing funds into a trust
766 as of July 1, 2016.

767 Section 25. Subsection (2), paragraph (a) of subsection
768 (3), and subsections (7) and (10) of section 497.462, Florida
769 Statutes, are amended to read:

770 497.462 Other alternatives to deposits under s. 497.458.—

771 ~~(2) Upon prior approval by the licensing authority, the~~
772 ~~preneed licensee may file a letter of credit with the licensing~~
773 ~~authority in lieu of a surety bond. Such letter of credit must~~
774 ~~be in a form, and is subject to terms and conditions, prescribed~~
775 ~~by the board. It may be revoked only with the express approval~~
776 ~~of the licensing authority.~~

777 (2)(3)(a) A buyer of preneed merchandise or services who
778 does not receive such services or merchandise due to the
779 economic failure, closing, or bankruptcy of the preneed licensee
780 must file a claim with the surety as a prerequisite to payment
781 of the claim and, if the claim is not paid, may bring an action
782 based on the bond and recover against the surety. ~~In the case of~~
783 ~~a letter of credit or cash deposit that has been filed with the~~

8-00997-16

2016854__

784 ~~licensing authority, the buyer may file a claim with the~~
785 ~~licensing authority.~~

786 (6)~~(7)~~ Any preneed contract which promises future delivery
787 of merchandise at no cost constitutes a paid-up contract.

788 Merchandise which has been delivered is not covered by the
789 required performance bond ~~or letter of credit~~ even though the
790 contract is not completely paid. The preneed licensee may not
791 cancel a contract unless the purchaser is in default according
792 to the terms of the contract and subject to the requirements of
793 s. 497.459. A contract sold, discounted, and transferred to a
794 third party constitutes a paid-up contract for the purposes of
795 the performance bond ~~or letter of credit~~.

796 (9)~~(10)~~ The licensing authority may adopt forms and rules
797 necessary to implement this section, including, but not limited
798 to, rules which ensure that the surety bond provides ~~and line of~~
799 ~~credit provide~~ liability coverage for preneed merchandise and
800 services.

801 Section 26. Paragraphs (c) and (f) of subsection (1) of
802 section 497.464, Florida Statutes, are amended to read:

803 497.464 Alternative preneed contracts.-

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

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

809 ~~(f) Section 497.461.~~

810 Section 27. Subsection (2) and paragraph (c) of subsection
811 (9) of section 497.465, Florida Statutes, are amended to read:

812 497.465 Inactive, surrendered, and revoked preneed

8-00997-16

2016854__

813 licensees.-

814 (2) A preneed licensee shall cease all preneed sales to the
815 public upon becoming inactive. Upon becoming inactive, the
816 preneed licensee shall ~~collect and deposit~~ into the trust all of
817 the funds received from ~~into trust all of the funds paid toward~~
818 preneed contracts sold before ~~prior to~~ becoming inactive.

819 (9) The licensing authority may adopt rules for the
820 implementation of this section, for the purpose of ensuring a
821 thorough review and investigation of the status and condition of
822 the preneed licensee's business affairs for the protection of
823 the licensee's preneed customers. Such rules may include:

824 (c) Requirements for submission of ~~unaudited or audited~~
825 financial statements, as the licensing authority deems
826 advisable.

827 Section 28. Paragraph (b) of subsection (1) of section
828 497.601, Florida Statutes, is amended to read:

829 497.601 Direct disposition; duties.-

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

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

836 Section 29. Subsection (1) of section 497.607, Florida
837 Statutes, is amended, present subsections (2), (3), and (4) of
838 that section are redesignated as subsections (3), (4), and (5),
839 respectively, and a new subsection (2) is added to that section,
840 to read:

841 497.607 Cremation; procedure required.-

8-00997-16

2016854__

842 (1) At the time of the arrangement for a cremation
843 performed by any person licensed pursuant to this chapter, the
844 legally authorized person contracting for cremation services
845 shall be required to designate her or his intentions with
846 respect to ~~the~~ disposition of the cremated remains of the
847 deceased in a signed declaration of intent which shall be
848 provided by and retained by the funeral or direct disposal
849 establishment. A cremation may not be performed until a legally
850 authorized person gives written authorization, which may include
851 the declaration of intent to dispose of the cremated remains,
852 for such cremation. The cremation must be performed within 48
853 hours after a specified time which has been agreed to in writing
854 by the person authorizing the cremation.

855 (2) Cremated remains are not property, as defined in s.
856 731.201(32), and are not subject to ownership or court-ordered
857 partition. A division of cremated remains requires the consent
858 of the legally authorized person who approved the cremation or,
859 if the legally authorized person is the decedent, the next
860 legally authorized person pursuant to s. 497.005(43). A dispute
861 between the legally authorized person, heirs, or other parties
862 shall be resolved by a court of competent jurisdiction.

863 Section 30. This act shall take effect July 1, 2016.