

By the Committee on Banking and Insurance; and Senator Hukill

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1 A bill to be entitled
2 An act relating to funeral, cemetery, and consumer
3 services; amending s. 497.005, F.S.; defining terms;
4 amending s. 497.141, F.S.; revising required
5 information for licensure to include e-mail addresses;
6 requiring the Department of Financial Services to
7 include e-mail notification as a means to administer
8 the licensing process; amending s. 497.146, F.S.;
9 revising required information for current licensees to
10 include an address for e-mail notification; providing
11 for rulemaking relating to electronic reporting;
12 amending s. 497.152, F.S.; conforming provisions to
13 changes made by the act; requiring, rather than
14 authorizing, the Board of Funeral, Cemetery, and
15 Consumer Services to provide certain criteria;
16 prohibiting the board from requiring a fine when
17 certain deficiencies are fully corrected within a
18 specified period; amending s. 497.161, F.S.; revising
19 requirements for rules of the licensing authority;
20 amending s. 497.266, F.S.; revising the prohibition
21 against withdrawal or transfer of assets within the
22 care and maintenance trust fund to include an
23 exception; amending s. 497.267, F.S.; revising
24 provisions relating to the disposition of withdrawals
25 from the care and maintenance trust fund; creating s.
26 497.2675, F.S.; requiring the board to adopt certain
27 rules; requiring a licensed cemetery company to
28 request a method for withdrawal from the cemetery
29 company's care and maintenance trust fund; providing
30 requirements for such methods; requiring that taxes on
31 capital gains be paid from the trust principal;
32 amending s. 497.268, F.S.; conforming provisions to

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

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62 department with an annual report regarding preneed
63 licensee trust accounts beginning on a specified date;
64 providing requirements for the annual report; revising
65 which investments a trustee of a trust has the power
66 to invest in; deleting provisions relating to the
67 preneed licensee; amending s. 497.459, F.S.;
68 prohibiting certain preneed contracts from being
69 canceled during the life or after the death of the
70 contract purchaser or beneficiary; requiring
71 unexpended moneys on an irrevocable contract to be
72 deposited into the Medical Care Trust Fund under
73 certain circumstances; amending s. 497.460, F.S.;
74 conforming provisions to changes made by the act;
75 repealing s. 497.461, F.S., relating to the
76 authorization for a preneed licensee to elect surety
77 bonding as an alternative to depositing funds into a
78 trust; amending s. 497.462, F.S.; deleting obsolete
79 references to surety bonds; amending s. 497.464, F.S.;
80 conforming provisions to changes made by the act;
81 amending s. 497.465, F.S.; requiring an inactive
82 preneed licensee to deposit a specified amount of
83 funds received on certain preneed contracts into the
84 trust upon a specified time; amending ss. 497.601 and
85 497.607, F.S.; specifying that cremated remains are
86 not property; requiring a division of cremated remains
87 to be consented to by certain persons; providing that
88 a dispute shall be resolved by a court of competent
89 jurisdiction; conforming provisions to changes made by
90 the act; providing an effective date.

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

Section 1. Present subsections (5) through (8), (9) through (31), (32) through (38), (39) through (46), (47) through (61), (62) through (70), and (71) of section 497.005, Florida Statutes, are redesignated as subsections (6) through (9), (11) through (33), (35) through (41), (43) through (50), (52) through (66), (68) through (76), and (78), respectively, and new subsections (5), (10), (34), (42), (51), (67), and (77) are added to that section, to read:

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

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

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

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

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

(51) "Net income" means, in relation to a trust, ordinary income minus any income distributions for items such as trust expenses. For purposes of this subsection, "ordinary income" means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived

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120 from the use of the trust principal, but does not include
121 capital gains or capital losses.

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

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

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

129 497.141 Licensing; general application procedures.—

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

136 Notwithstanding any other provision of law, the department is
137 the sole authority for determining the forms and form contents
138 to be submitted for initial licensure and licensure renewal
139 application. Such forms and the information and materials
140 required by such forms may include, as appropriate,
141 demographics, education, work history, personal background,
142 criminal history, finances, business information, signature
143 notarization, performance periods, reciprocity, local government
144 approvals, supporting documentation, periodic reporting
145 requirements, fingerprint requirements, continuing education
146 requirements, business plans, character references, e-mail
147 addresses, and ongoing education monitoring. Such forms and the
148 information and materials required by such forms may also

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149 include, to the extent such information or materials are not
150 already in the possession of the department or the board,
151 records or information as to complaints, inspections,
152 investigations, discipline, and bonding. The application shall
153 be supplemented as needed to reflect any material change in any
154 circumstance or condition stated in the application that takes
155 place between the initial filing of the application and the
156 final grant or denial of the license and that might affect the
157 decision of the department or the board. After an application by
158 a natural person for licensure under this chapter is approved,
159 the licensing authority may require the successful applicant to
160 provide a photograph of himself or herself for permanent
161 lamination onto the license card to be issued to the applicant,
162 pursuant to rules and fees adopted by the licensing authority.

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

175 Section 3. Section 497.146, Florida Statutes, is amended to
176 read:

177 497.146 Licensing; address of record; changes; licensee

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

196 Section 4. Paragraphs (b) and (e) of subsection (8),
197 paragraph (d) of subsection (12), paragraphs (b) and (c) of
198 subsection (14), and paragraph (b) of subsection (15) of section
199 497.152, Florida Statutes, are amended to read:

200 497.152 Disciplinary grounds.—This section sets forth
201 conduct that is prohibited and that shall constitute grounds for
202 denial of any application, imposition of discipline, or other
203 enforcement action against the licensee or other person
204 committing such conduct. For purposes of this section, the
205 requirements of this chapter include the requirements of rules
206 adopted under authority of this chapter. No subsection heading

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

209 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN
210 REMAINS.—

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

216 (e) Failing to obtain written authorization from a legally
217 authorized person before ~~the family or next of kin of the~~
218 ~~deceased prior to~~ entombment, interment, disinterment,
219 disentombment, or disinurnment of the remains of any human
220 being.

221 (12) DISCLOSURE REQUIREMENTS.—

222 (d) Failure by a funeral director to make full disclosure
223 in the case of a funeral or direct disposition with regard to
224 the use of funeral merchandise that is not to be disposed of
225 with the body or failure to obtain written permission from a
226 legally authorized person ~~the purchaser~~ regarding disposition of
227 such merchandise.

228 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
229 CUSTOMERS.—

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

232 1. Failing to acknowledge and act promptly upon
233 communications from a licensee's customers and their
234 representatives with respect to claims or complaints relating to
235 the licensee's activities regulated by this chapter.

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236 2. Denying claims or rejecting complaints received by a
237 licensee from a customer or customer's representative, relating
238 to the licensee's activities regulated by this chapter, without
239 first conducting reasonable investigation based upon available
240 information.

241 3. Attempting to settle a claim or complaint on the basis
242 of a material document that was altered without notice to, or
243 without the knowledge or consent of, the contract purchaser or a
244 legally authorized person ~~her or his representative or legal~~
245 ~~guardian~~.

246 4. Failing within a reasonable time to affirm or deny
247 coverage of specified services or merchandise under a contract
248 entered into by a licensee upon written request of the contract
249 purchaser or a legally authorized person ~~her or his~~
250 ~~representative or legal guardian~~.

251 5. Failing to promptly provide, in relation to a contract
252 for funeral or burial merchandise or services entered into by
253 the licensee or under the licensee's license, a reasonable
254 explanation to the contract purchaser or a legally authorized
255 person ~~her or his representative or legal guardian~~ of the
256 licensee's basis for denying or rejecting all or any part of a
257 claim or complaint submitted.

258 (c) Making a material misrepresentation to a contract
259 purchaser or a legally authorized person ~~her or his~~
260 ~~representative or legal guardian~~ for the purpose and with the
261 intent of effecting settlement of a claim or complaint or loss
262 under a prepaid contract on less favorable terms than those
263 provided in, and contemplated by, the prepaid contract.

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265 For purposes of this subsection, the response of a customer
266 recorded by the customer on a customer satisfaction
267 questionnaire or survey form sent to the customer by the
268 licensee, and returned by the customer to the licensee, shall
269 not be deemed to be a complaint.

270 (15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

281 497.161 Other rulemaking provisions.—

282 (1) In addition to such other rules as are authorized or
283 required under this chapter, the following additional rules, not
284 inconsistent with this chapter, shall be authorized by the
285 licensing authority.

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

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

291 497.266 Care and maintenance trust fund; remedy of
292 department for noncompliance.—

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

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

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

308 Section 7. Section 497.267, Florida Statutes, is amended to
309 read:

310 497.267 Disposition of withdrawals from the ~~income of~~ care
311 and maintenance trust fund; notice to purchasers and
312 depositors. ~~Withdrawals from the net income of the~~ care and
313 maintenance trust fund shall be used solely for the care and
314 maintenance of the cemetery, including maintenance of monuments,
315 which maintenance may ~~shall~~ not be deemed to include the
316 cleaning, refinishing, repairing, or replacement of monuments;
317 for reasonable costs of administering the care and maintenance;
318 and for reasonable costs of administering the trust fund. At the
319 time of making a sale or receiving an initial deposit, the
320 cemetery company shall deliver to the person to whom the sale is
321 made, or who makes a deposit, a written instrument which shall
322 specifically state the purposes for which withdrawals from the

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323 ~~income of the~~ trust fund shall be used.

324 Section 8. Section 497.2675, Florida Statutes, is created
325 to read:

326 497.2675 Withdrawal methods from the care and maintenance
327 trust fund.—

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

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

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

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

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

346 (b) Total return withdrawal method.—The licensee shall
347 multiply the average fair market value of its pro rata share of
348 the trust by the total return withdrawal percentage and may
349 withdraw one-fourth of that amount at least quarterly beginning
350 the first quarter of the new trust year. The initial total
351 return withdrawal percentage elected by the licensee may not

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352 increase the total return withdrawal percentage for that
353 quarter. For purposes of this paragraph, "average fair market
354 value" means, in relation to a trust, the average of the fair
355 market value of each asset held by the trust at the beginning of
356 the current year and in each of the 2 previous years, or for the
357 entire term of the trust if there are less than 2 previous
358 years, and adjusted as follows:

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

362 2. If assets are distributed from the trust during the
363 years used to determine the average, other than in satisfaction
364 of the unitrust amount, as defined in s. 738.1041, the amount of
365 each distribution is subtracted from all other years in which
366 such distribution is not included.

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

369 Section 9. Paragraphs (a) and (b) of subsection (1) and
370 subsection (2) of section 497.268, Florida Statutes, are amended
371 to read:

372 497.268 Care and maintenance trust fund, percentage of
373 payments for burial rights to be deposited.—

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

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

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381 shall be \$25.

382 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
383 ~~received.~~

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

398 Section 10. Section 497.269, Florida Statutes, is amended
399 to read:

400 497.269 Care and maintenance trust fund; financial
401 reports.—On or before April 1 of each year, the trustee shall
402 furnish adequate financial reports that record the fair market
403 value with respect to the care and maintenance trust fund
404 utilizing forms and procedures specified by rule. However, the
405 department may require the trustee to make such additional
406 financial reports as it deems necessary. In order to ensure that
407 the proper deposits to the trust fund have been made, the
408 department shall examine the status of the trust fund of the
409 company on a semiannual basis for the first 2 years of the trust

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410 fund's existence.

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

413 497.273 Cemetery companies; authorized functions.—

414 (4) This chapter does not prohibit the interment or
415 entombment of the inurned cremated animal remains of the
416 decedent's pet or pets with the decedent's human remains or
417 cremated human remains if:

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

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

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

425 497.274 Standards for grave spaces.—

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

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

436 497.277 Other charges.—Other than the fees for the sale of
437 burial rights, burial merchandise, and burial services, no other
438 fee may be directly or indirectly charged, contracted for, or

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439 received by a cemetery company as a condition for a customer to
440 use any burial right, burial merchandise, or burial service,
441 except for:

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

445 Section 14. Paragraph (c) of subsection (2) of section
446 497.283, Florida Statutes, is amended to read:

447 497.283 Prohibition on sale of personal property or
448 services.—

449 (2)

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

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

466 497.286 Owners to provide addresses; presumption of
467 abandonment; abandonment procedures; sale of abandoned unused

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468 burial rights.—

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

473 (a) Describe the burial rights certified to have been
474 abandoned;

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

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

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

487 Section 16. Section 497.371, Florida Statutes, is amended
488 to read:

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

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

509 Section 17. Paragraph (b) of subsection (1) of section
510 497.372, Florida Statutes, is amended to read:

511 497.372 Funeral directing; conduct constituting practice of
512 funeral directing.—

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

516 (b) Planning or arranging, on an at-need basis, the details
517 of funeral services, embalming, cremation, or other services
518 relating to the final disposition of human remains, including
519 the removal of such remains from the state, ~~with the family or~~
520 ~~friends of the decedent or any other person responsible for such~~
521 ~~services;~~ setting the time of the services; establishing the
522 type of services to be rendered; acquiring the services of the
523 clergy; and obtaining vital information for the filing of death
524 certificates and obtaining of burial transit permits.

525 Section 18. Subsection (4) of section 497.381, Florida

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526 Statutes, is amended to read:

527 497.381 Solicitation of goods or services.-

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

537 Section 19. Paragraph (c) of subsection (2) of section
538 497.452, Florida Statutes, is amended to read:

539 497.452 Preneed license required.-

540 (2)

541 ~~(c) The provisions of paragraph (a) do not apply to any~~
542 ~~Florida corporation existing under chapter 607 acting as a~~
543 ~~servicing agent hereunder in which the stock of such corporation~~
544 ~~is held by 100 or more persons licensed pursuant to part III of~~
545 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
546 ~~has proxies for more than 5 percent of the issued stock of such~~
547 ~~corporation; provided the corporation has a blanket fidelity~~
548 ~~bond, covering all employees handling the funds, in the amount~~
549 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
550 ~~this state; and provided the corporation processes the funds~~
551 ~~directly to and from the trustee within the applicable time~~
552 ~~limits set forth in this chapter. The department may require any~~
553 ~~person claiming that the provisions of this paragraph exempt it~~
554 ~~from the provisions of paragraph (a) to demonstrate to the~~

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555 ~~satisfaction of the department that it meets the requirements of~~
556 ~~this paragraph.~~

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

559 497.454 Approval of preneed contract and related forms.—

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

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

571 Section 21. Subsections (2), (7), and (8) of section
572 497.456, Florida Statutes, are amended to read:

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

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

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584 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
585 of \$5 for each preneed contract having a purchase price of
586 \$1,500 or less, and the sum of \$10 for each preneed contract
587 having a purchase price in excess of \$1,500.

588 (7) In any situation in which a delinquency proceeding has
589 not commenced, the licensing authority may, in its discretion,
590 use the trust fund for the purpose of providing restitution to
591 any consumer, owner, or beneficiary of a preneed contract or
592 similar regulated arrangement under this chapter entered into
593 after June 30, 1977. If, after investigation, the licensing
594 authority determines that a preneed licensee has breached a
595 preneed contract by failing to provide benefits or an
596 appropriate refund, or that a provider, who is a former preneed
597 licensee or an establishment which has been regulated under this
598 chapter, has sold a preneed contract and has failed to fulfill
599 the arrangement or provide the appropriate refund, and such
600 preneed licensee or provider does not provide or does not
601 possess adequate funds to provide appropriate refunds, payments
602 from the trust fund may be authorized by the licensing
603 authority. In considering whether payments shall be made or when
604 considering who will be responsible for such payments, the
605 licensing authority shall consider whether the preneed licensee
606 or previous provider has been acquired by a successor who is or
607 should be responsible for the liabilities of the defaulting
608 entity. With respect to preneed contracts funded by life
609 insurance, payments from the fund shall be made: if the insurer
610 is insolvent, but only to the extent that funds are not
611 available through the liquidation proceeding of the insurer; or
612 if the preneed licensee is unable to perform under the contract

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613 and the insurance proceeds are not sufficient to cover the cost
614 of the merchandise and services contracted for. In no event
615 shall the licensing authority approve payments in excess of the
616 insurance policy limits unless it determines that at the time of
617 sale of the preneed contract, the insurance policy would have
618 paid for the services and merchandise contracted for. Such
619 monetary relief shall be in an amount as the licensing authority
620 may determine and shall be payable in such manner and upon such
621 conditions and terms as the licensing authority may prescribe.
622 However, with respect to preneed contracts to be funded pursuant
623 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
624 restitution made pursuant to this subsection may ~~shall~~ not
625 exceed, as to any single contract or arrangement, the lesser of
626 the gross amount paid under the contract or 4 percent of the
627 uncommitted assets of the trust fund. With respect to preneed
628 contracts funded by life insurance policies, any restitution may
629 ~~shall~~ not exceed, as to any single contract or arrangement, the
630 lesser of the face amount of the policy, the actual cost of the
631 arrangement contracted for, or 4 percent of the uncommitted
632 assets of the trust fund. The total of all restitutions made to
633 all applicants under this subsection in a single fiscal year may
634 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
635 assets of the trust fund as of the end of the most recent fiscal
636 year or \$120,000. The department may use moneys in the trust
637 fund to contract with independent vendors pursuant to chapter
638 287 to administer the requirements of this subsection.

639 (8) All moneys deposited in the Preneed Funeral Contract
640 Consumer Protection Trust Fund together with all accumulated
641 appreciation ~~income~~ shall be used only for the purposes

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642 expressly authorized by this chapter and may ~~shall~~ not be
643 subject to any liens, charges, judgments, garnishments, or other
644 creditor's claims against the preneed licensee, any trustee
645 utilized by the preneed licensee, any company providing a surety
646 bond as specified in this chapter, or any purchaser of a preneed
647 contract. No preneed contract purchaser shall have any vested
648 rights in the trust fund.

649 Section 22. Paragraphs (a), (b), (d), and (f) of subsection
650 (1) of section 497.458, Florida Statutes, are amended, a new
651 paragraph (j) is added to that subsection, and paragraph (a) of
652 subsection (3), subsection (4), paragraphs (a) and (c) of
653 subsection (5), and subsections (6) through (9) of that section
654 are amended, to read:

655 497.458 Disposition of proceeds received on contracts.—

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

667 ~~(b) The method of determining wholesale cost shall be~~
668 ~~established by rule of the licensing authority and shall be~~
669 ~~based upon the preneed licensee's stated wholesale cost for the~~
670 ~~12-month period beginning July 1 during which the initial~~

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671 ~~deposit to the preneed trust fund for the preneed contract is~~
672 ~~made.~~

673 (c)~~(d)~~ The trustee shall take title to the property
674 conveyed to the trust for the purpose of investing, protecting,
675 and conserving it for the preneed licensee; collecting income;
676 and distributing the fair market value ~~principal and income~~ as
677 prescribed in this chapter. The preneed licensee is prohibited
678 from sharing in the discharge of these responsibilities, except
679 that the preneed licensee may request the trustee to invest in
680 tax-free investments and may appoint an adviser to the trustee.
681 The licensing authority may adopt rules limiting or otherwise
682 specifying the degree to which the trustee may rely on the
683 investment advice of an investment adviser appointed by the
684 preneed licensee. The licensing authority may adopt rules
685 limiting or prohibiting payment of fees by the trust to
686 investment advisors that are employees or principals of the
687 licensee to whom the trust fund relates.

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

693 (j) Beginning April 1, 2018, and on or before each April 1
694 thereafter, the trustee shall furnish the department with an
695 annual report regarding each preneed licensee trust account held
696 by the trustee at any time during the previous calendar year.
697 The report shall state the name and address of the trustee; the
698 name, address, and license number of the licensee to whom the
699 report relates; the trust account number; the beginning and

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700 ending trust balance; and, as may be specified by department
701 rule, a list of receipts showing the date and amount of any
702 disbursement. The report must be signed by the trustee's account
703 manager for the trust account. The trustee shall submit the
704 report in a format and pursuant to procedures specified by
705 department rule.

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

709 (4) The licensing authority may adopt rules exempting from
710 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
711 established in such rule, the investment of trust funds in
712 investments, such as widely and publicly traded stocks and
713 bonds, notwithstanding that the licensee, its principals, or
714 persons related by blood or marriage to the licensee or its
715 principals have an interest by investment in the same entity,
716 where neither the licensee, its principals, or persons related
717 by blood or marriage to the licensee or its principals have the
718 ability to control the entity invested in, and it would be in
719 the interest of the preneed contract holders whose contracts are
720 secured by the trust funds to allow the investment.

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

723 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~
724 and exercise the powers set forth in part VIII of chapter 736.
725 However, the trustee may not invest in, or count as assets, life
726 insurance policies or annuity contracts; real estate may not
727 compose more than 25 percent of the trust's assets; and,
728 ~~provided that~~ the licensing authority may by order require the

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729 trustee to liquidate or dispose of any investment within 30 days
730 after such order, or within such other times as the order may
731 direct. The licensing authority may issue such order if it
732 determines that the investment violates any provision of this
733 chapter or is not in the best interests of the preneed contract
734 holders whose contracts are secured by the trust funds.

735 (c) Commingle the property of the trust with the property
736 of any other trust established pursuant to this chapter and make
737 corresponding allocations and divisions of assets, liabilities,
738 income, ~~and expenses~~, and capital gains and losses.

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

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

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

751 ~~(b) Section 497.462 is a viable option available to it at~~
752 ~~any and all relevant times for contracts written prior to July~~
753 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

754 ~~(c) For any preneed licensee authorized to do business in~~
755 ~~this state that has total bonded liability exceeding \$100~~
756 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
757 ~~at any and all relevant times for contracts written prior to~~

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758 ~~December 31, 2004, for funds not held in trust as of July 1,~~
759 ~~2001.~~

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

764 ~~(6)(9)~~ The amounts required to be placed in a trust by this
765 section for contracts previously entered into shall be as
766 follows:

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

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

773 Section 23. Paragraph (a) of subsection (6) of section
774 497.459, Florida Statutes, is amended to read:

775 497.459 Cancellation of, or default on, preneed contracts.—

776 (6) OTHER PROVISIONS.—

777 (a) All preneed contracts are cancelable and revocable as
778 provided in this section, provided that a preneed contract does
779 not restrict any contract purchaser who is the beneficiary of
780 the preneed contract and who is a qualified applicant for, or a
781 recipient of, supplemental security income, temporary cash
782 assistance, or Medicaid from making her or his contract
783 irrevocable. A preneed contract that is made irrevocable
784 pursuant to this section may not be canceled during the life or
785 after the death of the contract purchaser or beneficiary as
786 described in this section. Any unexpended moneys paid on an

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787 irrevocable contract shall be remitted to the Agency for Health
788 Care Administration for deposit into the Medical Care Trust Fund
789 after final disposition of the beneficiary.

790 Section 24. Section 497.460, Florida Statutes, is amended
791 to read:

792 497.460 Payment of funds upon death of named beneficiary.—
793 Disbursements of funds discharging any preneed contract
794 fulfilled after September 30, 1993, shall be made by the trustee
795 to the preneed licensee upon receipt of a certified copy of the
796 death certificate of the contract beneficiary or satisfactory
797 evidence as established by rule of the licensing authority that
798 the preneed contract has been performed in whole or in part.
799 However, if the contract is only partially performed, the
800 disbursement shall only cover the fair market value of that
801 portion of the contract performed. In the event of any contract
802 default by the contract purchaser, or in the event that the
803 funeral merchandise or service or burial merchandise or service
804 contracted for is not provided or is not desired by the legally
805 authorized person ~~heirs or personal representative of the~~
806 ~~contract beneficiary~~, the trustee shall return, within 30 days
807 after its receipt of a written request therefor, funds paid on
808 the contract to the preneed licensee or to its assigns, subject
809 to ~~the provisions of~~ s. 497.459.

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

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

815 Section 27. Subsection (2), paragraph (a) of subsection

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816 (3), and subsections (7) and (10) of section 497.462, Florida
817 Statutes, are amended to read:

818 497.462 Other alternatives to deposits under s. 497.458.—

819 ~~(2) Upon prior approval by the licensing authority, the~~
820 ~~preneed licensee may file a letter of credit with the licensing~~
821 ~~authority in lieu of a surety bond. Such letter of credit must~~
822 ~~be in a form, and is subject to terms and conditions, prescribed~~
823 ~~by the board. It may be revoked only with the express approval~~
824 ~~of the licensing authority.~~

825 (2)~~(3)~~ (a) A buyer of preneed merchandise or services who
826 does not receive such services or merchandise due to the
827 economic failure, closing, or bankruptcy of the preneed licensee
828 must file a claim with the surety as a prerequisite to payment
829 of the claim and, if the claim is not paid, may bring an action
830 based on the bond and recover against the surety. ~~In the case of~~
831 ~~a letter of credit or cash deposit that has been filed with the~~
832 ~~licensing authority, the buyer may file a claim with the~~
833 ~~licensing authority.~~

834 (6)~~(7)~~ Any preneed contract which promises future delivery
835 of merchandise at no cost constitutes a paid-up contract.
836 Merchandise which has been delivered is not covered by the
837 required performance bond ~~or letter of credit~~ even though the
838 contract is not completely paid. The preneed licensee may not
839 cancel a contract unless the purchaser is in default according
840 to the terms of the contract and subject to the requirements of
841 s. 497.459. A contract sold, discounted, and transferred to a
842 third party constitutes a paid-up contract for the purposes of
843 the performance bond ~~or letter of credit~~.

844 (9)~~(10)~~ The licensing authority may adopt forms and rules

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845 necessary to implement this section, including, but not limited
846 to, rules which ensure that the surety bond provides ~~and line of~~
847 ~~credit provide~~ liability coverage for preneed merchandise and
848 services.

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

851 497.464 Alternative preneed contracts.—

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

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

857 ~~(f) Section 497.461.~~

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

860 497.465 Inactive, surrendered, and revoked preneed
861 licensees.—

862 (2) Upon becoming inactive, a preneed licensee shall cease
863 all preneed sales to the public and upon becoming inactive, the
864 preneed licensee shall collect and deposit into the trust all
865 funds it receives on or after the date on which it becomes
866 inactive from sales of into trust all of the funds paid toward
867 preneed contracts sold before ~~prior to~~ becoming inactive.

868 (9) The licensing authority may adopt rules for the
869 implementation of this section, for the purpose of ensuring a
870 thorough review and investigation of the status and condition of
871 the preneed licensee's business affairs for the protection of
872 the licensee's preneed customers. Such rules may include:

873 (c) Requirements for submission of ~~unaudited or audited~~

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874 financial statements, as the licensing authority deems
875 advisable.

876 Section 30. Paragraph (b) of subsection (1) of section
877 497.601, Florida Statutes, is amended to read:

878 497.601 Direct disposition; duties.—

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

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

885 Section 31. Subsection (1) of section 497.607, Florida
886 Statutes, is amended, present subsections (2), (3), and (4) of
887 that section are redesignated as subsections (3), (4), and (5),
888 respectively, and a new subsection (2) is added to that section,
889 to read:

890 497.607 Cremation; procedure required.—

891 (1) At the time of the arrangement for a cremation
892 performed by any person licensed pursuant to this chapter, the
893 legally authorized person contracting for cremation services
894 shall be required to designate her or his intentions with
895 respect to ~~the~~ disposition of the cremated remains of the
896 deceased in a signed declaration of intent which shall be
897 provided by and retained by the funeral or direct disposal
898 establishment. A cremation may not be performed until a legally
899 authorized person gives written authorization, which may include
900 the declaration of intent to dispose of the cremated remains,
901 for such cremation. The cremation must be performed within 48
902 hours after a specified time which has been agreed to in writing

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903 by the person authorizing the cremation.

904 (2) Cremated remains are not property, as defined in s.
905 731.201(32), and are not subject to ownership or court-ordered
906 partition. A division of cremated remains requires the consent
907 of the legally authorized person who approved the cremation or,
908 if the legally authorized person is the decedent, the next
909 legally authorized person pursuant to s. 497.005(43). A dispute
910 regarding the division of cremated remains shall be resolved by
911 a court of competent jurisdiction.

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