

By the Committees on Regulated Industries; and Banking and Insurance; and Senator Hukill

580-02367-16

2016854c2

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;

580-02367-16

2016854c2

32 amending s. 497.268, F.S.; conforming provisions to
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 ss. 497.283 and 497.286, F.S.;

43 conforming provisions to changes made by the act;
44 amending s. 497.371, F.S.; providing that an applicant
45 for the embalmer apprentice program may not be
46 licensed without a determination of character by the
47 licensing authority; amending ss. 497.372 and 497.381,
48 F.S.; conforming provisions to changes made by the
49 act; amending s. 497.452, F.S.; deleting an exception
50 that prohibits a person from receiving specified funds
51 without holding a valid preneed license; amending ss.
52 497.454 and 497.456, F.S.; conforming provisions to
53 changes made by the act; amending s. 497.458, F.S.;

54 revising requirements relating to the disposition of
55 proceeds on a preneed contract; authorizing the board
56 to specify criteria for the classification of items
57 sold in a preneed contract; requiring the trustee to
58 furnish the department with an annual report regarding
59 preneed licensee trust accounts beginning on a
60 specified date; providing requirements for the annual

580-02367-16

2016854c2

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

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

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580-02367-16

2016854c2

90 Section 1. Present subsections (5) through (8), (9) through
91 (31), (32) through (38), (39) through (46), (47) through (61),
92 (62) through (70), and (71) of section 497.005, Florida
93 Statutes, are redesignated as subsections (6) through (9), (11)
94 through (33), (35) through (41), (43) through (50), (52) through
95 (66), (68) through (76), and (78), respectively, and new
96 subsections (5), (10), (34), (42), (51), (67), and (77) are
97 added to that section, to read:

98 497.005 Definitions.—As used in this chapter, the term:

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

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

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

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

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

118 (67) "Purchaser" means a person who executes a preneed or

580-02367-16

2016854c2

119 an at-need contract with a licensee for merchandise or services.

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

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

125 497.141 Licensing; general application procedures.—

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

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

580-02367-16

2016854c2

148 investigations, discipline, and bonding. The application shall
149 be supplemented as needed to reflect any material change in any
150 circumstance or condition stated in the application that takes
151 place between the initial filing of the application and the
152 final grant or denial of the license and that might affect the
153 decision of the department or the board. After an application by
154 a natural person for licensure under this chapter is approved,
155 the licensing authority may require the successful applicant to
156 provide a photograph of himself or herself for permanent
157 lamination onto the license card to be issued to the applicant,
158 pursuant to rules and fees adopted by the licensing authority.

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

171 Section 3. Section 497.146, Florida Statutes, is amended to
172 read:

173 497.146 Licensing; address of record; changes; licensee
174 responsibility.—Each licensee under this chapter is responsible
175 for notifying the department in writing of the licensee's
176 current e-mail address, business and residence mailing address,

580-02367-16

2016854c2

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

192 Section 4. Paragraphs (b) and (e) of subsection (8),
193 paragraph (d) of subsection (12), paragraphs (b) and (c) of
194 subsection (14), and paragraph (b) of subsection (15) of section
195 497.152, Florida Statutes, are amended to read:

196 497.152 Disciplinary grounds.—This section sets forth
197 conduct that is prohibited and that shall constitute grounds for
198 denial of any application, imposition of discipline, or other
199 enforcement action against the licensee or other person
200 committing such conduct. For purposes of this section, the
201 requirements of this chapter include the requirements of rules
202 adopted under authority of this chapter. No subsection heading
203 in this section shall be interpreted as limiting the
204 applicability of any paragraph within the subsection.

205 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN

580-02367-16

2016854c2

206 REMAINS.—

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

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

217 (12) DISCLOSURE REQUIREMENTS.—

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

224 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
225 CUSTOMERS.—

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

228 1. Failing to acknowledge and act promptly upon
229 communications from a licensee's customers and their
230 representatives with respect to claims or complaints relating to
231 the licensee's activities regulated by this chapter.

232 2. Denying claims or rejecting complaints received by a
233 licensee from a customer or customer's representative, relating
234 to the licensee's activities regulated by this chapter, without

580-02367-16

2016854c2

235 first conducting reasonable investigation based upon available
236 information.

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

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

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

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

260
261 For purposes of this subsection, the response of a customer
262 recorded by the customer on a customer satisfaction
263 questionnaire or survey form sent to the customer by the

580-02367-16

2016854c2

264 licensee, and returned by the customer to the licensee, shall
265 not be deemed to be a complaint.

266 (15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

277 497.161 Other rulemaking provisions.—

278 (1) In addition to such other rules as are authorized or
279 required under this chapter, the following additional rules, not
280 inconsistent with this chapter, shall be authorized by the
281 licensing authority.

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

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

287 497.266 Care and maintenance trust fund; remedy of
288 department for noncompliance.—

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

580-02367-16

2016854c2

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

304 Section 7. Section 497.267, Florida Statutes, is amended to
305 read:

306 497.267 Disposition of withdrawals from the ~~income of~~ care
307 and maintenance trust fund; notice to purchasers and
308 depositors. ~~Withdrawals from the net income of the~~ care and
309 maintenance trust fund shall be used solely for the care and
310 maintenance of the cemetery, including maintenance of monuments,
311 which maintenance may ~~shall~~ not be deemed to include the
312 cleaning, refinishing, repairing, or replacement of monuments;
313 for reasonable costs of administering the care and maintenance;
314 and for reasonable costs of administering the trust fund. At the
315 time of making a sale or receiving an initial deposit, the
316 cemetery company shall deliver to the person to whom the sale is
317 made, or who makes a deposit, a written instrument which shall
318 specifically state the purposes for which withdrawals from the
319 ~~income of the~~ trust fund shall be used.

320 Section 8. Section 497.2675, Florida Statutes, is created
321 to read:

580-02367-16

2016854c2

322 497.2675 Withdrawal methods from the care and maintenance
323 trust fund.-

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

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

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

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

340 (a) Net income withdrawal method.-Net income may be
341 withdrawn from the trust, as earned, on a monthly basis.

342 (b) Total return withdrawal method.-The licensee shall
343 multiply the average fair market value of its pro rata share of
344 the trust by the total return withdrawal percentage and may
345 withdraw one-fourth of that amount at least quarterly beginning
346 the first quarter of the new trust year. The initial total
347 return withdrawal percentage elected by the licensee may not
348 increase the total return withdrawal percentage for that
349 quarter. For purposes of this paragraph, "average fair market
350 value" means, in relation to a trust, the average of the fair

580-02367-16

2016854c2

351 market value of each asset held by the trust at the beginning of
352 the current year and in each of the 2 previous years, or for the
353 entire term of the trust if there are less than 2 previous
354 years, and adjusted as follows:

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

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

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

365 Section 9. Paragraphs (a) and (b) of subsection (1) and
366 subsection (2) of section 497.268, Florida Statutes, are amended
367 to read:

368 497.268 Care and maintenance trust fund, percentage of
369 payments for burial rights to be deposited.—

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

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

378 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
379 ~~received.~~

580-02367-16

2016854c2

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

394 Section 10. Section 497.269, Florida Statutes, is amended
395 to read:

396 497.269 Care and maintenance trust fund; financial
397 reports.—On or before April 1 of each year, the trustee shall
398 furnish adequate financial reports that record the fair market
399 value with respect to the care and maintenance trust fund
400 utilizing forms and procedures specified by rule. However, the
401 department may require the trustee to make such additional
402 financial reports as it deems necessary. In order to ensure that
403 the proper deposits to the trust fund have been made, the
404 department shall examine the status of the trust fund of the
405 company on a semiannual basis for the first 2 years of the trust
406 fund's existence.

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

580-02367-16

2016854c2

409 497.273 Cemetery companies; authorized functions.—

410 (4) This chapter does not prohibit the interment or
411 entombment of the inurned cremated animal remains of the
412 decedent's pet or pets with the decedent's human remains or
413 cremated human remains if:

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

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

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

421 497.274 Standards for grave spaces.—

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

430 Section 13. Paragraph (c) of subsection (2) of section
431 497.283, Florida Statutes, is amended to read:

432 497.283 Prohibition on sale of personal property or
433 services.—

434 (2)

435 (c) In lieu of delivery as required by paragraph (b), for
436 sales to cemetery companies and funeral establishments, and only
437 for such sales, the manufacturer of a permanent outer burial

580-02367-16

2016854c2

438 receptacle which meets standards adopted by rule may elect, at
439 its discretion, to comply with the delivery requirements of this
440 section by annually submitting for approval pursuant to
441 procedures and forms as specified by rule, in writing, evidence
442 of the manufacturer's financial responsibility with the
443 licensing authority for its review and approval. ~~The standards~~
444 ~~and procedures to establish evidence of financial responsibility~~
445 ~~shall be those in s. 497.461, with the manufacturer of permanent~~
446 ~~outer burial receptacles which meet national industry standards~~
447 ~~assuming the same rights and responsibilities as those of a~~
448 ~~preneed licensee under s. 497.461.~~

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

451 497.286 Owners to provide addresses; presumption of
452 abandonment; abandonment procedures; sale of abandoned unused
453 burial rights.—

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

458 (a) Describe the burial rights certified to have been
459 abandoned;

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

465 (c) Detail the facts with respect to the failure of the
466 owner or survivors as outlined in this section to keep the

580-02367-16

2016854c2

467 cemetery informed of the owner's address for a period of 50
468 consecutive years or more; and

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

472 Section 15. Section 497.371, Florida Statutes, is amended
473 to read:

474 497.371 Embalmers; establishment of embalmer apprentice
475 program.—The licensing authority adopts rules establishing an
476 embalmer apprentice program. An embalmer apprentice may perform
477 only those tasks, functions, and duties relating to embalming
478 which are performed under the direct supervision of an embalmer
479 who has an active, valid license under s. 497.368 or s. 497.369.
480 An embalmer apprentice is ~~shall be~~ eligible to serve in an
481 apprentice capacity for a period not to exceed 3 years as may be
482 determined by licensing authority rule or for a period not to
483 exceed 5 years if the apprentice is enrolled in and attending a
484 course in mortuary science or funeral service education at any
485 mortuary college or funeral service education college or school.
486 An embalmer apprentice shall be issued a license ~~licensed~~ upon
487 payment of a licensure fee as determined by licensing authority
488 rule but not to exceed \$200. An applicant for the embalmer
489 apprentice program may not be issued a license unless the
490 licensing authority determines that the applicant is of good
491 character and has not demonstrated a history of lack of
492 trustworthiness or integrity in business or professional
493 matters.

494 Section 16. Paragraph (b) of subsection (1) of section
495 497.372, Florida Statutes, is amended to read:

580-02367-16

2016854c2

496 497.372 Funeral directing; conduct constituting practice of
497 funeral directing.-

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

501 (b) Planning or arranging, on an at-need basis, the details
502 of funeral services, embalming, cremation, or other services
503 relating to the final disposition of human remains, including
504 the removal of such remains from the state, ~~with the family or~~
505 ~~friends of the decedent or any other person responsible for such~~
506 ~~services~~; setting the time of the services; establishing the
507 type of services to be rendered; acquiring the services of the
508 clergy; and obtaining vital information for the filing of death
509 certificates and obtaining of burial transit permits.

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

512 497.381 Solicitation of goods or services.-

513 (4) At-need solicitation of funeral merchandise or services
514 is prohibited. A ~~No~~ funeral director or direct disposer or her
515 or his agent or representative may not contact the legally
516 authorized person or family ~~or next of kin of a deceased person~~
517 to sell services or merchandise unless the funeral director or
518 direct disposer or her or his agent or representative has been
519 initially called or contacted by the legally authorized person
520 or family or next of kin of such person and requested to provide
521 her or his services or merchandise.

522 Section 18. Paragraph (c) of subsection (2) of section
523 497.452, Florida Statutes, is amended to read:

524 497.452 Preneed license required.-

580-02367-16

2016854c2

525 (2)

526 ~~(c) The provisions of paragraph (a) do not apply to any~~
527 ~~Florida corporation existing under chapter 607 acting as a~~
528 ~~servicing agent hereunder in which the stock of such corporation~~
529 ~~is held by 100 or more persons licensed pursuant to part III of~~
530 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
531 ~~has proxies for more than 5 percent of the issued stock of such~~
532 ~~corporation; provided the corporation has a blanket fidelity~~
533 ~~bond, covering all employees handling the funds, in the amount~~
534 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
535 ~~this state; and provided the corporation processes the funds~~
536 ~~directly to and from the trustee within the applicable time~~
537 ~~limits set forth in this chapter. The department may require any~~
538 ~~person claiming that the provisions of this paragraph exempt it~~
539 ~~from the provisions of paragraph (a) to demonstrate to the~~
540 ~~satisfaction of the department that it meets the requirements of~~
541 ~~this paragraph.~~

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

544 497.454 Approval of preneed contract and related forms.—

545 (1) Preneed contract forms and related forms shall be filed
546 with and approved by the licensing authority before ~~prior to~~
547 use, pursuant to procedures specified by rule. The licensing
548 authority may not approve any electronic or paper preneed
549 contract ~~form~~ that does not provide for sequential prenumbering
550 thereon.

551 ~~(3) Specific disclosure regarding the preneed licensee's~~
552 ~~ability to select either trust funding or the financial~~
553 ~~responsibility alternative as set forth in s. 497.461 in~~

580-02367-16

2016854c2

554 ~~connection with the receipt of preneed contract proceeds is~~
555 ~~required in the preneed contract.~~

556 Section 20. Subsections (2), (7), and (8) of section
557 497.456, Florida Statutes, are amended to read:

558 497.456 Preneed Funeral Contract Consumer Protection Trust
559 Fund.—

560 (2) Within 60 days after the end of each calendar quarter,
561 for each preneed contract written during the quarter and not
562 canceled within 30 days after the date of the execution of the
563 contract, each preneed licensee, whether funding preneed
564 contracts by the sale of insurance or by establishing a trust
565 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
566 \$2.50 for each preneed contract having a purchase price of
567 \$1,500 or less, and the sum of \$5 for each preneed contract
568 having a purchase price in excess of \$1,500; and each preneed
569 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
570 of \$5 for each preneed contract having a purchase price of
571 \$1,500 or less, and the sum of \$10 for each preneed contract
572 having a purchase price in excess of \$1,500.

573 (7) In any situation in which a delinquency proceeding has
574 not commenced, the licensing authority may, in its discretion,
575 use the trust fund for the purpose of providing restitution to
576 any consumer, owner, or beneficiary of a preneed contract or
577 similar regulated arrangement under this chapter entered into
578 after June 30, 1977. If, after investigation, the licensing
579 authority determines that a preneed licensee has breached a
580 preneed contract by failing to provide benefits or an
581 appropriate refund, or that a provider, who is a former preneed
582 licensee or an establishment which has been regulated under this

580-02367-16

2016854c2

583 chapter, has sold a preneed contract and has failed to fulfill
584 the arrangement or provide the appropriate refund, and such
585 preneed licensee or provider does not provide or does not
586 possess adequate funds to provide appropriate refunds, payments
587 from the trust fund may be authorized by the licensing
588 authority. In considering whether payments shall be made or when
589 considering who will be responsible for such payments, the
590 licensing authority shall consider whether the preneed licensee
591 or previous provider has been acquired by a successor who is or
592 should be responsible for the liabilities of the defaulting
593 entity. With respect to preneed contracts funded by life
594 insurance, payments from the fund shall be made: if the insurer
595 is insolvent, but only to the extent that funds are not
596 available through the liquidation proceeding of the insurer; or
597 if the preneed licensee is unable to perform under the contract
598 and the insurance proceeds are not sufficient to cover the cost
599 of the merchandise and services contracted for. In no event
600 shall the licensing authority approve payments in excess of the
601 insurance policy limits unless it determines that at the time of
602 sale of the preneed contract, the insurance policy would have
603 paid for the services and merchandise contracted for. Such
604 monetary relief shall be in an amount as the licensing authority
605 may determine and shall be payable in such manner and upon such
606 conditions and terms as the licensing authority may prescribe.
607 However, with respect to preneed contracts to be funded pursuant
608 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
609 restitution made pursuant to this subsection may ~~shall~~ not
610 exceed, as to any single contract or arrangement, the lesser of
611 the gross amount paid under the contract or 4 percent of the

580-02367-16

2016854c2

612 uncommitted assets of the trust fund. With respect to preneed
613 contracts funded by life insurance policies, any restitution may
614 ~~shall~~ not exceed, as to any single contract or arrangement, the
615 lesser of the face amount of the policy, the actual cost of the
616 arrangement contracted for, or 4 percent of the uncommitted
617 assets of the trust fund. The total of all restitutions made to
618 all applicants under this subsection in a single fiscal year may
619 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
620 assets of the trust fund as of the end of the most recent fiscal
621 year or \$120,000. The department may use moneys in the trust
622 fund to contract with independent vendors pursuant to chapter
623 287 to administer the requirements of this subsection.

624 (8) All moneys deposited in the Preneed Funeral Contract
625 Consumer Protection Trust Fund together with all accumulated
626 appreciation ~~income~~ shall be used only for the purposes
627 expressly authorized by this chapter and may ~~shall~~ not be
628 subject to any liens, charges, judgments, garnishments, or other
629 creditor's claims against the preneed licensee, any trustee
630 utilized by the preneed licensee, any company providing a surety
631 bond as specified in this chapter, or any purchaser of a preneed
632 contract. No preneed contract purchaser shall have any vested
633 rights in the trust fund.

634 Section 21. Paragraphs (a), (d), and (f) of subsection (1)
635 of section 497.458, Florida Statutes, are amended, a new
636 paragraph (k) is added to that subsection, and paragraph (a) of
637 subsection (3), subsection (4), paragraphs (a) and (c) of
638 subsection (5), and subsections (6) through (9) of that section
639 are amended, to read:

640 497.458 Disposition of proceeds received on contracts.—

580-02367-16

2016854c2

641 (1) (a) Any person who is paid, collects, or receives funds
642 under a preneed contract for funeral services or merchandise or
643 burial services or merchandise shall deposit an amount at least
644 equal to the sum of 70 percent of the purchase price collected
645 for all services sold and facilities rented; 100 percent of the
646 purchase price collected for all cash advance items sold; and 30
647 percent of the purchase price collected or 110 percent of the
648 wholesale cost, whichever is greater, for each item of
649 merchandise sold. The board may, by rule, specify criteria for
650 the classification of items sold in a preneed contract as
651 services, cash advances, or merchandise.

652 (d) The trustee shall take title to the property conveyed
653 to the trust for the purpose of investing, protecting, and
654 conserving it for the preneed licensee; collecting income; and
655 distributing the fair market value ~~principal and income~~ as
656 prescribed in this chapter. The preneed licensee is prohibited
657 from sharing in the discharge of these responsibilities, except
658 that the preneed licensee may request the trustee to invest in
659 tax-free investments and may appoint an adviser to the trustee.
660 The licensing authority may adopt rules limiting or otherwise
661 specifying the degree to which the trustee may rely on the
662 investment advice of an investment adviser appointed by the
663 preneed licensee. The licensing authority may adopt rules
664 limiting or prohibiting payment of fees by the trust to
665 investment advisors that are employees or principals of the
666 licensee to whom the trust fund relates.

667 (f) The deposited funds shall be held in trust, both as to
668 principal and any change in fair market value ~~income earned~~
669 thereon, and shall remain intact, except that the cost of the

580-02367-16

2016854c2

670 operation of the trust or trust account authorized by this
671 section may be deducted from the income earned thereon.

672 (k) Beginning April 1, 2018, and on or before each April 1
673 thereafter, the trustee shall furnish the department with an
674 annual report regarding each preneed licensee trust account held
675 by the trustee at any time during the previous calendar year.
676 The report shall state the name and address of the trustee; the
677 name, address, and license number of the licensee to whom the
678 report relates; the trust account number; the beginning and
679 ending trust balance; and, as may be specified by department
680 rule, a list of receipts showing the date and amount of any
681 disbursement. The report must be signed by the trustee's account
682 manager for the trust account. The trustee shall submit the
683 report in a format and pursuant to procedures specified by
684 department rule.

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

688 (4) The licensing authority may adopt rules exempting from
689 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
690 established in such rule, the investment of trust funds in
691 investments, such as widely and publicly traded stocks and
692 bonds, notwithstanding that the licensee, its principals, or
693 persons related by blood or marriage to the licensee or its
694 principals have an interest by investment in the same entity,
695 where neither the licensee, its principals, or persons related
696 by blood or marriage to the licensee or its principals have the
697 ability to control the entity invested in, and it would be in
698 the interest of the preneed contract holders whose contracts are

580-02367-16

2016854c2

699 secured by the trust funds to allow the investment.

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

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

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

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

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

580-02367-16

2016854c2

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

730 ~~(b) Section 497.462 is a viable option available to it at~~
731 ~~any and all relevant times for contracts written prior to July~~
732 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

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

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

743 ~~(6)(9)~~ (6) The amounts required to be placed in a trust by this
744 section for contracts previously entered into shall be as
745 follows:

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

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

752 Section 22. Paragraph (a) of subsection (6) of section
753 497.459, Florida Statutes, is amended to read:

754 497.459 Cancellation of, or default on, preneed contracts.-

755 (6) OTHER PROVISIONS.-

756 (a) All preneed contracts are cancelable and revocable as

580-02367-16

2016854c2

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

769 Section 23. Section 497.460, Florida Statutes, is amended
770 to read:

771 497.460 Payment of funds upon death of named beneficiary.-
772 Disbursements of funds discharging any preneed contract
773 fulfilled after September 30, 1993, shall be made by the trustee
774 to the preneed licensee upon receipt of a certified copy of the
775 death certificate of the contract beneficiary or satisfactory
776 evidence as established by rule of the licensing authority that
777 the preneed contract has been performed in whole or in part.
778 However, if the contract is only partially performed, the
779 disbursement shall only cover the fair market value of that
780 portion of the contract performed. In the event of any contract
781 default by the contract purchaser, or in the event that the
782 funeral merchandise or service or burial merchandise or service
783 contracted for is not provided or is not desired by the legally
784 authorized person ~~heirs or personal representative of the~~
785 ~~contract beneficiary~~, the trustee shall return, within 30 days

580-02367-16

2016854c2

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

789 Section 24. Section 497.461, Florida Statutes, is repealed.

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

794 Section 26. Subsection (2), paragraph (a) of subsection
795 (3), and subsections (7) and (10) of section 497.462, Florida
796 Statutes, are amended to read:

797 497.462 Other alternatives to deposits under s. 497.458.—

798 ~~(2) Upon prior approval by the licensing authority, the~~
799 ~~preneed licensee may file a letter of credit with the licensing~~
800 ~~authority in lieu of a surety bond. Such letter of credit must~~
801 ~~be in a form, and is subject to terms and conditions, prescribed~~
802 ~~by the board. It may be revoked only with the express approval~~
803 ~~of the licensing authority.~~

804 (2)(3)(a) A buyer of preneed merchandise or services who
805 does not receive such services or merchandise due to the
806 economic failure, closing, or bankruptcy of the preneed licensee
807 must file a claim with the surety as a prerequisite to payment
808 of the claim and, if the claim is not paid, may bring an action
809 based on the bond and recover against the surety. ~~In the case of~~
810 ~~a letter of credit or cash deposit that has been filed with the~~
811 ~~licensing authority, the buyer may file a claim with the~~
812 ~~licensing authority.~~

813 (6)(7) Any preneed contract which promises future delivery
814 of merchandise at no cost constitutes a paid-up contract.

580-02367-16

2016854c2

815 Merchandise which has been delivered is not covered by the
816 required performance bond ~~or letter of credit~~ even though the
817 contract is not completely paid. The preneed licensee may not
818 cancel a contract unless the purchaser is in default according
819 to the terms of the contract and subject to the requirements of
820 s. 497.459. A contract sold, discounted, and transferred to a
821 third party constitutes a paid-up contract for the purposes of
822 the performance bond ~~or letter of credit~~.

823 (9)~~(10)~~ The licensing authority may adopt forms and rules
824 necessary to implement this section, including, but not limited
825 to, rules which ensure that the surety bond provides ~~and line of~~
826 ~~credit provide~~ liability coverage for preneed merchandise and
827 services.

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

830 497.464 Alternative preneed contracts.—

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

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

836 ~~(f) Section 497.461.~~

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

839 497.465 Inactive, surrendered, and revoked preneed
840 licensees.—

841 (2) Upon becoming inactive, a preneed licensee shall cease
842 all preneed sales to the public and ~~upon becoming inactive. the~~
843 ~~preneed licensee shall collect and deposit into the trust all~~

580-02367-16

2016854c2

844 funds it receives on or after the date on which it becomes
845 inactive from sales of ~~into trust all of the funds paid toward~~
846 ~~preneed contracts sold~~ before ~~prior to~~ becoming inactive.

847 (9) The licensing authority may adopt rules for the
848 implementation of this section, for the purpose of ensuring a
849 thorough review and investigation of the status and condition of
850 the preneed licensee's business affairs for the protection of
851 the licensee's preneed customers. Such rules may include:

852 (c) Requirements for submission of ~~unaudited or audited~~
853 financial statements, as the licensing authority deems
854 advisable.

855 Section 29. Paragraph (b) of subsection (1) of section
856 497.601, Florida Statutes, is amended to read:

857 497.601 Direct disposition; duties.—

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

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

864 Section 30. Subsection (1) of section 497.607, Florida
865 Statutes, is amended, present subsections (2), (3), and (4) of
866 that section are redesignated as subsections (3), (4), and (5),
867 respectively, and a new subsection (2) is added to that section,
868 to read:

869 497.607 Cremation; procedure required.—

870 (1) At the time of the arrangement for a cremation
871 performed by any person licensed pursuant to this chapter, the
872 legally authorized person contracting for cremation services

580-02367-16

2016854c2

873 shall be required to designate her or his intentions with
874 respect to ~~the~~ disposition of the cremated remains of the
875 deceased in a signed declaration of intent which shall be
876 provided by and retained by the funeral or direct disposal
877 establishment. A cremation may not be performed until a legally
878 authorized person gives written authorization, which may include
879 the declaration of intent to dispose of the cremated remains,
880 for such cremation. The cremation must be performed within 48
881 hours after a specified time which has been agreed to in writing
882 by the person authorizing the cremation.

883 (2) Cremated remains are not property, as defined in s.
884 731.201(32), and are not subject to partition for purposes of
885 distribution under s. 733.814. A division of cremated remains
886 requires the consent of the legally authorized person who
887 approved the cremation or, if the legally authorized person is
888 the decedent, the next legally authorized person pursuant to s.
889 497.005(43). A dispute regarding the division of cremated
890 remains shall be resolved by a court of competent jurisdiction.

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