

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 e-mail notification; amending s. 497.152,
11 F.S.; conforming provisions to changes made by the
12 act; requiring, rather than authorizing, the Board of
13 Funeral, Cemetery, and Consumer Services to provide
14 certain criteria; prohibiting the board from requiring
15 a fine when certain deficiencies are fully corrected
16 within a specified period; amending s. 497.161, F.S.;
17 requiring the Division of Funeral, Cemetery, and
18 Consumer Services to authorize specified rules for
19 preneed contracts; amending s. 497.264, F.S.;
20 requiring cemetery licensees to provide e-mail address
21 to the department; amending s. 497.266, F.S.; revising
22 the prohibition against withdrawal or transfer of
23 assets within the care and maintenance trust fund to
24 include an exception; amending s. 497.267, F.S.;
25 revising provisions relating to the disposition of
26 withdrawals from the care and maintenance trust fund;

27 | creating s. 497.2675, F.S.; defining terms; providing
 28 | for unitrust distribution method option and
 29 | requirements; eligibility for distributions; providing
 30 | for board authority to discontinue or modify unitrust
 31 | method; requiring annual reports for unitrust method;
 32 | authorizing the board to adopt certain rules; amending
 33 | s. 497.268, F.S.; conforming provisions to changes
 34 | made by the act; deleting a required deposit in a
 35 | cemetery company's care and maintenance trust fund for
 36 | mausoleums or columbaria; deleting the requirement
 37 | that taxes on capital gain be paid from the trust
 38 | corpus; amending s. 497.269, F.S.; requiring a trustee
 39 | to annually furnish financial reports that record the
 40 | fair market value of the care and maintenance trust
 41 | fund; amending ss. 497.273 and 497.274, F.S.;
 42 | conforming provisions to changes made by the act;
 43 | amending s. 497.277, F.S.; revising a limitation on
 44 | the fee for transfer of burial rights from one
 45 | purchaser to another; authorizing the board to
 46 | determine the transfer fee; amending ss. 497.283 and
 47 | 497.286, F.S.; conforming provisions to changes made
 48 | by the act; amending s. 497.371, F.S.; providing that
 49 | an applicant for the embalmer apprentice program may
 50 | not be licensed without a determination of character
 51 | by the licensing authority; amending ss. 497.372 and
 52 | 497.381, F.S.; conforming provisions to changes made

53 | by the act; amending s. 497.452, F.S.; deleting an
 54 | exception that prohibits a person from receiving
 55 | specified funds without holding a valid preneed
 56 | license; amending ss. 497.454; conforming provisions
 57 | to changes made by the act; amending s. 497.456, F.S.;
 58 | conforming provisions to changes made by the act;
 59 | amending s. 497.458, F.S.; revising requirements
 60 | relating to the disposition of proceeds on a preneed
 61 | contract; authorizing the board to adopt rules to
 62 | classify items sold in preneed contracts; requiring the
 63 | trustee to furnish the department with an annual
 64 | report regarding preneed licensee trust accounts
 65 | beginning on a specified date; providing requirements
 66 | for the annual report; revising which investments a
 67 | trustee of a trust has the power to invest in;
 68 | deleting provisions relating to the preneed licensee;
 69 | amending s. 497.459, F.S.; prohibiting certain preneed
 70 | contracts from being canceled during the life or after
 71 | the death of the contract purchaser; amending s.
 72 | 497.460, F.S.; conforming provisions to changes made
 73 | by the act; repealing s. 497.461, F.S., relating to
 74 | the authorization for a preneed licensee to elect
 75 | surety bonding as an alternative to depositing funds
 76 | into a trust; amending s. 497.462, F.S.; deleting
 77 | obsolete references to surety bonds; amending s.
 78 | 497.464, F.S.; conforming provisions to changes made

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

90

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

92 Section 1. Present subsections (5) through (61) and (63)
 93 through (71) of section 497.005, Florida Statutes, are
 94 redesignated as subsections (6) through (61), and (63) through
 95 (73), respectively, and new subsections (5) and (62) are added
 96 to that section, to read:

97 497.005 Definitions.—As used in this chapter, the term:

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

101 (62) "Purchaser" means a natural person who executes a
 102 preneed or an at-need contract for services or merchandise with
 103 a licensee.

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

105 Florida Statutes, are amended to read:
 106 497.141 Licensing; general application procedures.—
 107 (2) Any person desiring to be licensed shall apply to the
 108 licensing authority in writing using such forms and procedures
 109 as may be prescribed by rule. The application for licensure
 110 shall include the applicant's social security number if the
 111 applicant is a natural person; otherwise, the applicant's
 112 federal tax identification number shall be included.
 113 Notwithstanding any other provision of law, the department is
 114 the sole authority for determining the forms and form contents
 115 to be submitted for initial licensure and licensure renewal
 116 application. Such forms and the information and materials
 117 required by such forms may include, as appropriate,
 118 demographics, education, work history, personal background,
 119 criminal history, finances, business information, signature
 120 notarization, performance periods, reciprocity, local government
 121 approvals, supporting documentation, periodic reporting
 122 requirements, fingerprint requirements, continuing education
 123 requirements, business plans, character references, email
 124 addresses, and ongoing education monitoring. Such forms and the
 125 information and materials required by such forms may also
 126 include, to the extent such information or materials are not
 127 already in the possession of the department or the board,
 128 records or information as to complaints, inspections,
 129 investigations, discipline, and bonding. The application shall
 130 be supplemented as needed to reflect any material change in any

131 circumstance or condition stated in the application that takes
 132 place between the initial filing of the application and the
 133 final grant or denial of the license and that might affect the
 134 decision of the department or the board. After an application by
 135 a natural person for licensure under this chapter is approved,
 136 the licensing authority may require the successful applicant to
 137 provide a photograph of himself or herself for permanent
 138 lamination onto the license card to be issued to the applicant,
 139 pursuant to rules and fees adopted by the licensing authority.

140 (11) The department shall implement a system for
 141 administration of the overall licensing process, including email
 142 notification for the processing and tracking of applications for
 143 licensure, the issuance of licenses approved by the board, the
 144 tracking of licenses issued, the administration of the license
 145 renewal process, and the collection and processing of fees
 146 related to those activities. The system may use staff and
 147 facilities of the department or the department may enter into a
 148 contract for all or any part of such system, upon such terms and
 149 conditions as the department deems advisable, and such contract
 150 may be with another government agency or a private business.

151 Section 3. Section 497.146, Florida Statutes, is amended
 152 to read:

153 497.146 Licensing; address of record; changes; licensee
 154 responsibility.—Each licensee under this chapter is responsible
 155 for notifying the department in writing of the licensee's
 156 current email address, business and residence mailing address,

157 and the street address of the licensee's primary place of
 158 practice and shall notify the department ~~in writing~~ within 30
 159 days after any change in such information, in accordance with
 160 procedures and forms prescribed by rule. Notwithstanding any
 161 other provision of law, electronic notification ~~service by~~
 162 ~~regular mail~~ to a licensee's last known email address of record
 163 or preferred street address of record with the department
 164 constitutes adequate and sufficient notice to the licensee for
 165 any official communication to the licensee by the board or the
 166 department, except when other service is expressly required by
 167 this chapter. The department may adopt rules, forms, and
 168 procedures, including electronic reporting of any and all data
 169 required to be provided by this section. ~~Rules may be adopted~~
 170 ~~establishing forms and procedures for licensees to provide the~~
 171 ~~notice required by this section.~~

172 Section 4. Paragraphs (b) and (e) of subsection (8),
 173 paragraph (d) of subsection (12), paragraphs (b) and (c) of
 174 subsection (14), and paragraph (b) of subsection (15) of section
 175 497.152, Florida Statutes, are amended to read:

176 497.152 Disciplinary grounds.—This section sets forth
 177 conduct that is prohibited and that shall constitute grounds for
 178 denial of any application, imposition of discipline, or other
 179 enforcement action against the licensee or other person
 180 committing such conduct. For purposes of this section, the
 181 requirements of this chapter include the requirements of rules
 182 adopted under authority of this chapter. No subsection heading

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

185 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF
 186 HUMAN REMAINS.—

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

192 (e) Failing to obtain written authorization from a legally
 193 authorized person before ~~the family or next of kin of the~~
 194 ~~deceased prior to~~ entombment, interment, disinterment,
 195 disentombment, or disinurnment of the remains of any human
 196 being.

197 (12) DISCLOSURE REQUIREMENTS.—

198 (d) Failure by a funeral director to make full disclosure
 199 in the case of a funeral or direct disposition with regard to
 200 the use of funeral merchandise that is not to be disposed of
 201 with the body or failure to obtain written permission from a
 202 legally authorized person ~~the purchaser~~ regarding disposition of
 203 such merchandise.

204 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
 205 CUSTOMERS.—

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

208 1. Failing to acknowledge and act promptly upon

209 | communications from a licensee's customers and their
210 | representatives with respect to claims or complaints relating to
211 | the licensee's activities regulated by this chapter.

212 | 2. Denying claims or rejecting complaints received by a
213 | licensee from a customer or customer's representative, relating
214 | to the licensee's activities regulated by this chapter, without
215 | first conducting reasonable investigation based upon available
216 | information.

217 | 3. Attempting to settle a claim or complaint on the basis
218 | of a material document that was altered without notice to, or
219 | without the knowledge or consent of, the contract purchaser or a
220 | legally authorized person ~~her or his representative or legal~~
221 | ~~guardian~~.

222 | 4. Failing within a reasonable time to affirm or deny
223 | coverage of specified services or merchandise under a contract
224 | entered into by a licensee upon written request of the contract
225 | purchaser or a legally authorized person ~~her or his~~
226 | ~~representative or legal guardian~~.

227 | 5. Failing to promptly provide, in relation to a contract
228 | for funeral or burial merchandise or services entered into by
229 | the licensee or under the licensee's license, a reasonable
230 | explanation to the contract purchaser or a legally authorized
231 | person ~~her or his representative or legal guardian~~ of the
232 | licensee's basis for denying or rejecting all or any part of a
233 | claim or complaint submitted.

234 | (c) Making a material misrepresentation to a contract

235 purchaser or a legally authorized person ~~her or his~~
 236 ~~representative or legal guardian~~ for the purpose and with the
 237 intent of effecting settlement of a claim or complaint or loss
 238 under a prepaid contract on less favorable terms than those
 239 provided in, and contemplated by, the prepaid contract.
 240 For purposes of this subsection, the response of a customer
 241 recorded by the customer on a customer satisfaction
 242 questionnaire or survey form sent to the customer by the
 243 licensee, and returned by the customer to the licensee, shall
 244 not be deemed to be a complaint.

245 (15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

256 497.161 Other rulemaking provisions.—

257 (1) In addition to such other rules as are authorized or
 258 required under this chapter, the following additional rules, not
 259 inconsistent with this chapter, shall be authorized by the
 260 licensing authority.

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

264 Section 6. Paragraphs (c) and (d) of subsection (2) of
 265 section 497.264, Florida Statutes, are amended to read:

266 497.264 License not assignable or transferable.—

267 (2) Any person or entity that seeks to purchase or
 268 otherwise acquire control of any cemetery licensed under this
 269 chapter shall first apply to the licensing authority and obtain
 270 approval of such purchase or change in control.

271 (c) For applications by a natural person, the application
 272 shall state the applicant's name, email address, residence
 273 address, address of principal office or place of employment, and
 274 social security number.

275 (d) For applications by an entity, the application shall
 276 state the applicant's name, email address, address of principal
 277 place of business or headquarters offices, the names and titles
 278 of all officers of the applicant, their individual email
 279 addresses, the applicant's state of domicile and date of
 280 formation, and the applicant's federal tax identification
 281 number.

282 Section 7. Subsections (3) and (4) of section 497.266,
 283 Florida Statutes, are amended to read:

284 497.266 Care and maintenance trust fund; remedy of
 285 department for noncompliance.—

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

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

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

301 Section 8. Section 497.267, Florida Statutes, is amended
 302 to read:

303 497.267 Disposition of withdrawals from the ~~income of~~ care
 304 and maintenance trust fund; notice to purchasers and
 305 depositors. ~~Withdrawals from the~~ The net income of the care and
 306 maintenance trust fund shall be used solely for the care and
 307 maintenance of the cemetery, including maintenance of monuments,
 308 which maintenance may ~~shall~~ not be deemed to include the
 309 cleaning, refinishing, repairing, or replacement of monuments;
 310 for reasonable costs of administering the care and maintenance;
 311 and for reasonable costs of administering the trust fund. At the
 312 time of making a sale or receiving an initial deposit, the

313 cemetery company shall deliver to the person to whom the sale is
 314 made, or who makes a deposit, a written instrument which shall
 315 specifically state the purposes for which withdrawals from the
 316 ~~income of the~~ trust fund shall be used.

317 Section 9. Section 497.2675, Florida Statutes, is created
 318 to read:

319 497.2675 Distributions from the care and maintenance
 320 trusts.

321 (1) DEFINITIONS. In addition to definitions provided in s.
 322 497.005, the following definitions shall apply for purposes of
 323 care and maintenance trusts:

324 (a) "Average fair market value" means, as determined by the
 325 trustee of a care and maintenance trust, the average of the fair
 326 market values of assets held by the trust on January 1 of the
 327 current and January 1 of each of the 2 preceding years, or for
 328 the entire term of the trust if there are less than 2 preceding
 329 years, and adjusted as follows:

330 1. If assets have been added to the trust during the years used
 331 to determine the average, the amount of each addition is added
 332 to all years in which such addition was not included.

333 2. If assets have been distributed from the trust during the
 334 years used to determine the average, other than in satisfaction
 335 of the unitrust amount, the amount of each distribution is
 336 subtracted from all years in which such distribution was not
 337 included.

338 (b) "Capital gain" or "capital loss" means a change in the fair

339 market value of a capital asset, such as investment or real
340 estate, that gives it a different worth than the purchase
341 price. A capital gain or loss may be realized or unrealized. A
342 capital gain or loss is not realized until the asset is sold.
343 (c) "Ordinary income" means interest, dividends, rents and other
344 amounts received by the trust as current returns on trust
345 investments, but excluding: realized or unrealized capital gains
346 or losses; deposits to trust required under Chapter 497 and
347 other contributions of principal to the trust; and amounts
348 received as full or partial payment for the sale, transfer, or
349 exchange of a trust asset.
350 (d) "Net ordinary income of the trust" means, as determined by
351 the trustee of the care and maintenance trust, the annual
352 ordinary income of the trust reduced by the annual amount of
353 expenses of operating the trust, including but not limited to
354 trustee fees, appraisal fees, investment advisor fees, and
355 accounting fees; and reduced further by the annual amount of
356 income and other taxes, excluding capital gains taxes, paid or
357 due in regard to the trust's ordinary income.
358 (e) "Net ordinary income trust distribution method" is the
359 method of calculating the annual amount to be distributed to a
360 cemetery licensee from its care and maintenance trust, in which
361 method the annual net ordinary income of the trust is determined
362 by the trustee and that amount is distributed to the cemetery
363 licensee.
364 (f) "Fair market value" means the fair market value of the

365 assets held by the trust, reduced by all known noncontingent
366 liabilities. The fair market value of trust assets that are not
367 publicly traded on a stock or other regulated securities
368 exchange, shall be determined by written appraisal by a
369 qualified independent public appraiser not affiliated with the
370 cemetery licensee or its principals; no such appraisal shall be
371 relied upon by the trustee if it was not issued or re-confirmed
372 in writing by the appraiser within two years prior to the date
373 the appraisal is used by the trustee in the trustees fair market
374 value determinations.

375 (g) "Income" means interest, dividends, rents, and other money
376 that the trustee receives as current return from a principal
377 asset, and which is not received as full or partial payment for
378 the sale, transfer, or exchange of a trust asset.

379 (h) "Unitrust amount" and "unitrust distribution" means the
380 amount distributable from the care and maintenance trust to the
381 cemetery licensee owning the trust, as calculated using the
382 unitrust distribution method.

383 (i) "Unitrust distribution percentage" is a percentage between
384 three and five percent, inclusive, as specifically approved by
385 the Board for a particular cemetery licensee upon application by
386 the licensee to receive a unitrust distribution from the
387 licensee's care and maintenance trust. In no event shall a
388 unitrust distribution percentage in excess of five percent be
389 authorized.

390 (j) "Unitrust distribution method" is the method of calculating

391 the amount to be distributed to a cemetery licensee from its
 392 care and maintenance trust, in which method the average fair
 393 market value of the care and maintenance trust, or the preneed
 394 licensee's prorata share of a master trust, is multiplied by a
 395 unitrust distribution percentage, and the resulting unitrust
 396 amount is distributed to the cemetery licensee, all as more
 397 specifically described herein.

398 (2) DEFAULT TRUST DISTRIBUTION METHOD. Unless authorization for
 399 a unitrust distribution has been applied for and approved by the
 400 board in accordance with this section, there may be distributed
 401 from a care and maintenance trust to a cemetery licensee only
 402 the net ordinary income of the trust. Such distribution shall
 403 be at such time as the trustee is able to determine the net
 404 ordinary income of the trust.

405 (3) CEMETERIES NOT ELIGIBLE TO RECEIVE A UNITRUST DISTRIBUTION.

406 (a) A cemetery shall not be eligible to apply for or receive a
 407 unitrust distribution from its care and maintenance trust if a
 408 unitrust distribution would be materially inconsistent with the
 409 terms and conditions of the cemetery's bylaws or existing care
 410 and maintenance trust agreement document. A cemetery licensee
 411 operating under cemetery bylaws or a care and maintenance trust
 412 that specifies or by fair implication indicates that only the
 413 net ordinary income of the trust shall be distributed, and who
 414 desires to be able to receive a unitrust distribution from the
 415 trust, shall apply to the Board through the Division, for
 416 approval to amend or replace such bylaws and/or trust agreement

417 to allow the cemetery licensee to seek a unitrust distribution
 418 from the trust. The Board shall approve such application to
 419 amend the bylaws or trust agreement if the board finds that
 420 there are reasonable grounds to believe that approval would be
 421 in the best interests of the perpetual care of the cemetery, and
 422 under all the circumstances of the particular case, would be in
 423 the best interest of persons then owning interment spaces in the
 424 cemetery and the families of persons already interred in the
 425 cemetery.

426 (b) A cemetery shall not be approved to receive or continue
 427 to receive a unitrust distribution from its care and maintenance
 428 trust if there is an uncorrected care and maintenance trust
 429 deficiency as determined by an examination report of the
 430 Division, which report has become final or is pending.

431 (4) APPLICATION TO USE THE UNITRUST DISTRIBUTION METHOD.

432 (a) A licensed cemetery that is not ineligible under (3) above,
 433 may apply to the Board through the Division for approval to use
 434 the unitrust distribution method. The application shall:

- 435 1. Be signed by an officer of the licensed cemetery;
- 436 2. State the cemetery's name, license number, and address.
- 437 3. Provide a copy of the cemetery's existing bylaws, and the
 438 care and maintenance trust agreement.
- 439 4. If the applicant seeks approval of an amendment or
 440 replacement of its bylaws or care and maintenance trust
 441 agreement, provide a copy of the proposed amended or replacement
 442 bylaws and/or care and maintenance trust agreement, identifying

443 all material changes from the existing bylaws and care and
 444 maintenance trust agreement, as applicable.
 445 5. Provide a letter from, as applicable, the trustee or proposed
 446 trustee of the care and maintenance trust, signed and dated by a
 447 representative of the trustee, in which letter the trustee:
 448 a. advises the Board that the trustee is able and willing to
 449 implement the unitrust distribution method as regards to
 450 applicant's care and maintenance trust; and
 451 b. sets forth the trustee's average fair market value
 452 calculations and related and supporting data referenced in
 453 (1) (a) above.
 454
 455 6. Specify the unitrust distribution percentage the applicant
 456 seeks approval of.
 457 7. Provide copies of an annual report of the trustee of the
 458 cemetery's care and maintenance trust, for each of the preceding
 459 five years, or for each year the cemetery has been licensed,
 460 whichever period is shorter.
 461 8. Certify to the Board that all amounts required by Chapter 497
 462 to have been deposited into the trust, have been deposited, and
 463 that there have been no withdrawals from the trust in excess of
 464 those allowed under Chapter 497, to the best of the knowledge
 465 and belief of cemetery management, and that there is not pending
 466 any unresolved Division examination report asserting a
 467 deficiency in the care and maintenance trust.
 468 9. Certify to the Board that cemetery management has conducted

469 or caused to be conducted and have reviewed an analysis of the
470 proposed implementation of the unitrust distribution method as
471 applied to the cemetery's care and maintenance trust, and to the
472 best of the knowledge and belief of the cemetery's management
473 implementation of the unitrust distribution method will not
474 result in lower end of year care and maintenance trust principal
475 balances, than would be the case under the net ordinary income
476 trust distribution method.

477 (b) APPROVAL CRITERIA. The board shall approve the application
478 unless the Board determines, based on all the evidence available
479 to the board, that as regards that applicant's care and
480 maintenance trust, the unitrust distribution method is likely
481 to have a materially less favorable long term impact on the
482 cemetery' care and maintenance trust as a resource to provide
483 for the perpetual care of the cemetery after the cemetery ceases
484 active operations, as compared to the net ordinary income trust
485 distribution method.

486 (c) DURATION OF APPROVAL. An approval to use the unitrust
487 distribution shall continue in effect indefinitely until the
488 cemetery licensee applies to the Board and is approved to modify
489 its application of the unitrust distribution method, or to
490 revert to the net ordinary income trust distribution method, or
491 until the cemetery licensee is ordered by the Board to modify or
492 discontinue use of the unitrust distribution method.

493 (d) TEMPORARY INITIAL UNITRUST DISTRIBUTION PERCENTAGE. The
494 maximum unitrust distribution percentage that shall be approved

495 for the first 12 months of an applicant's use of the unitrust
 496 distribution method, shall be 4.5 percent. If the Board in the
 497 initial application proceeding approved a unitrust distribution
 498 percentage higher than 4.5 percent, then upon expiration of the
 499 said 12 months, the applicant may without further application or
 500 proceedings commence use of the higher approved unitrust
 501 distribution percentage.

502 (5) APPLICATION TO MODIFY UNITRUST DISTRIBUTION METHOD IN
 503 EFFECT.

504 (a) A cemetery licensee that has been approved to and is using
 505 the unitrust distribution method, and desires to decrease the
 506 unitrust distribution percentage being utilized, may do so
 507 without approval by the Board, but shall advise the Division in
 508 a signed and dated writing explaining the change, the effective
 509 date of the change, and the revised lower unitrust distribution
 510 percentage that will be used, within 30 days of the change.

511 (b) A cemetery licensee that has been approved to and is using
 512 the unitrust distribution method, and desires to increase the
 513 unitrust distribution percentage, or otherwise to materially
 514 modify its implementation of the unitrust distribution method
 515 from as described to and approved by the Board in the cemetery
 516 licensee's application to use the unitrust distribution method,
 517 shall prior to effecting such change apply to and receive
 518 approval from the Board concerning such change. The board shall
 519 approve the application for change unless the Board determines
 520 that approval would not be in the long term best interests of

521 the cemetery' care and maintenance trust as a resource to
 522 provide for the perpetual care of the cemetery after the
 523 cemetery ceases active operations.

524 (6) REVERSION TO NET ORDINARY INCOME DISTRIBUTION METHOD.

525 A cemetery licensee that has been approved to and is using the
 526 unitrust distribution method, and desires to revert to the net
 527 ordinary income trust distribution method, shall prior to
 528 effecting such change apply to and receive approval from the
 529 Board concerning such change. The Board shall approve such
 530 application unless it determines that approval would not be in
 531 the long term best interests of the care and maintenance trust
 532 as a resource to provide for the perpetual care of the cemetery
 533 after the cemetery ceases active operations

534 (7) APPLICATION TO RESUME THE UNITRUST DISTRIBUTION METHOD.

535 A cemetery licensee that has been approved to revert from the
 536 unitrust distribution method to the net ordinary income trust
 537 distribution method, and thereafter desires to resume use of the
 538 unitrust distribution method, shall prior to effecting such
 539 change apply to and receive approval from the Board concerning
 540 such change, by application as in (4) of this section, and
 541 providing with said application a written explanation by the
 542 applicant of the history of and reasons for the past and
 543 proposed changes to the cemetery licensee's method of
 544 distribution from its care and maintenance trust. The Board
 545 shall approve such change only if it determines that approval
 546 would clearly be in the long term best interests of the care and

547 maintenance trust as a resource to provide for the perpetual
 548 care of the cemetery after the cemetery ceases active
 549 operations.

550 (8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION METHOD.

551 The unitrust distribution calculated pursuant to the unitrust
 552 distribution method as approved by the Board for a particular
 553 licensee, shall be distributed to the preneed licensee in equal
 554 monthly or quarterly payments, at the end of each month or
 555 quarter as the case may be.

556 (9) DISTRIBUTION METHOD CHANGES TO COINCIDE WITH CALENDAR YEARS.

557 A cemetery licensee may not apply to change its care and
 558 maintenance trust distribution method more than once in any 36
 559 month period, provided the Board may by rule shorten or expand
 560 the 36 month period if it deems it advisable in the best
 561 interests of care and maintenance trusts, based on experienced
 562 gained by the Board in the use of the unitrust distribution
 563 method. A cemetery licensee may only use one method of
 564 calculating distributions from its care and maintenance trust in
 565 any one calendar year. Any change in care and maintenance trust
 566 distribution method shall be effectuated on January 1 of the
 567 calendar year following approval of such change by the Board.

568 (10) BOARD MAY ORDER DISCONTINUATION OR MODIFICATION OF A
 569 LICENSEE'S USE OF THE UNITRUST DISTRIBUTION METHOD.

570 As regards a cemetery that has been approved to and is using the
 571 unitrust distribution method, if at any time the Board
 572 determines, based on all the evidence available to the board,

573 that the use or continued use of the unitrust distribution
 574 method by that trust has resulted in or is likely to result in a
 575 materially unfavorable long term impact on the cemetery' care
 576 and maintenance trust as a resource to provide for the perpetual
 577 care of the cemetery after the cemetery ceases active
 578 operations, as compared to other available distribution options
 579 allowed under this section, the board may order the prospective
 580 modification of the unitrust distribution method as applied to
 581 the cemetery licensee, or may order that the cemetery licensee
 582 revert to the net ordinary income trust distribution method.

583 (11) ANNUAL REPORTS.

584 (a) A cemetery licensee utilizing the unitrust distribution
 585 method shall cause the trustee of the care and maintenance trust
 586 each year to prepare and provide to the Division a report as
 587 required by s. 497.269, and in addition shall cause the trustee
 588 to provide the following information to the Division with said
 589 report:

- 590 1. the net ordinary income of the trust for the calendar year
 591 being reported; and
- 592 2. setting forth the average fair market value calculations and
 593 related and supporting data referenced in (1) (a) of this
 594 section, as used in the most recent unitrust distribution to the
 595 cemetery licensee.

596 (12) RULEMAKING AUTHORITY. The licensing authority may by rule
 597 prescribe forms and procedures for applications under and
 598 implementation of this section. Such rules may require the

599 filing of such additional financial or other information as the
 600 licensing authority determines is needed for an informed
 601 decision by the board concerning the application.

602 Section 10. Paragraphs (a) and (b) of subsection (1) and
 603 subsection (2) of section 497.268, Florida Statutes, are amended
 604 to read:

605 497.268 Care and maintenance trust fund, percentage of
 606 payments for burial rights to be deposited.—

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

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

615 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
 616 ~~received.~~

617 (2) Deposits to the care and maintenance trust fund shall
 618 be made by the cemetery company not later than 30 days following
 619 the close of the calendar month in which any payment was
 620 received; however, when such payments are received in
 621 installments, the percentage of the installment payment placed
 622 in trust must be identical to the percentage which the payment
 623 received bears to the total cost for the burial rights. Trust
 624 income may be used to pay for all usual and customary services

625 for the operation of a trust account, including, but not limited
 626 to: reasonable trustee and custodian fees, investment adviser
 627 fees, allocation fees, and taxes. If the net income is not
 628 sufficient to pay the fees and other expenses, the fees and
 629 other expenses shall be paid by the cemetery company. ~~Capital~~
 630 ~~gains taxes shall be paid from the corpus.~~

631 Section 11. Section 497.269, Florida Statutes, is amended
 632 to read:

633 497.269 Care and maintenance trust fund; financial
 634 reports.—On or before April 1 of each year, the trustee shall
 635 furnish adequate financial reports that record the fair market
 636 value with respect to the care and maintenance trust fund
 637 utilizing forms and procedures specified by rule. However, the
 638 department may require the trustee to make such additional
 639 financial reports as it deems necessary. In order to ensure that
 640 the proper deposits to the trust fund have been made, the
 641 department shall examine the status of the trust fund of the
 642 company on a semiannual basis for the first 2 years of the trust
 643 fund's existence.

644 Section 12. Subsection (4) of section 497.273, Florida
 645 Statutes, is amended to read:

646 497.273 Cemetery companies; authorized functions.—

647 (4) This chapter does not prohibit the interment or
 648 entombment of the inurned cremated animal remains of the
 649 decedent's pet or pets with the decedent's human remains or
 650 cremated human remains if:

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

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

656 Section 13. Subsection (1) of section 497.274, Florida
 657 Statutes, is amended to read:

658 497.274 Standards for grave spaces.—

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

667 Section 14. Subsection (2) of section 497.277, Florida
 668 Statutes, is amended to read:

669 497.277 Other charges.—Other than the fees for the sale of
 670 burial rights, burial merchandise, and burial services, no other
 671 fee may be directly or indirectly charged, contracted for, or
 672 received by a cemetery company as a condition for a customer to
 673 use any burial right, burial merchandise, or burial service,
 674 except for:

675 (2) Charges paid for transferring burial rights from one
 676 purchaser to another; however, no such fee may exceed \$50,

677 unless a higher fee is approved by rule of the board, based on
 678 the board's findings of average administrative costs to a
 679 cemetery of transferring such burial right.

680 Section 15. Paragraph (c) of subsection (2) of section
 681 497.283, Florida Statutes, is amended to read:

682 497.283 Prohibition on sale of personal property or
 683 services.—

684 (2)

685 (c) In lieu of delivery as required by paragraph (b), for
 686 sales to cemetery companies and funeral establishments, and only
 687 for such sales, the manufacturer of a permanent outer burial
 688 receptacle which meets standards adopted by rule may elect, at
 689 its discretion, to comply with the delivery requirements of this
 690 section by annually submitting for approval pursuant to
 691 procedures and forms as specified by rule, in writing, evidence
 692 of the manufacturer's financial responsibility with the
 693 licensing authority for its review and approval. ~~The standards~~
 694 ~~and procedures to establish evidence of financial responsibility~~
 695 ~~shall be those in s. 497.461, with the manufacturer of permanent~~
 696 ~~outer burial receptacles which meet national industry standards~~
 697 ~~assuming the same rights and responsibilities as those of a~~
 698 ~~preneed licensee under s. 497.461.~~

699 Section 16. Subsection (3) of section 497.286, Florida
 700 Statutes, is amended to read:

701 497.286 Owners to provide addresses; presumption of
 702 abandonment; abandonment procedures; sale of abandoned unused

703 | burial rights.—

704 | (3) Upon the occurrence of a presumption of abandonment as
705 | set forth in subsection (2), a cemetery may file with the
706 | department a certified notice attesting to the abandonment of
707 | the burial rights. The notice shall do the following:

708 | (a) Describe the burial rights certified to have been
709 | abandoned;

710 | (b) Set forth the name of the owner or owners of the
711 | burial rights, or if the owner is known to the cemetery to be
712 | deceased, then the names, if known to the cemetery, of such
713 | claimants as are heirs at law, next of kin, or specific devisees
714 | under the will of the owner or the legally authorized person;

715 | (c) Detail the facts with respect to the failure of the
716 | owner or survivors as outlined in this section to keep the
717 | cemetery informed of the owner's address for a period of 50
718 | consecutive years or more; and

719 | (d) Certify that no burial right has been exercised which
720 | is held in common ownership with any abandoned burial rights as
721 | set forth in subsection (2).

722 | Section 17. Section 497.371, Florida Statutes, is amended
723 | to read:

724 | 497.371 Embalmers; establishment of embalmer apprentice
725 | program.—The licensing authority adopts rules establishing an
726 | embalmer apprentice program. An embalmer apprentice may perform
727 | only those tasks, functions, and duties relating to embalming
728 | which are performed under the direct supervision of an embalmer

729 | who has an active, valid license under s. 497.368 or s. 497.369.
 730 | An embalmer apprentice is ~~shall be~~ eligible to serve in an
 731 | apprentice capacity for a period not to exceed 3 years as may be
 732 | determined by licensing authority rule or for a period not to
 733 | exceed 5 years if the apprentice is enrolled in and attending a
 734 | course in mortuary science or funeral service education at any
 735 | mortuary college or funeral service education college or school.
 736 | An embalmer apprentice shall be issued a license ~~licensed~~ upon
 737 | payment of a licensure fee as determined by licensing authority
 738 | rule but not to exceed \$200. An applicant for the embalmer
 739 | apprentice program may not be issued a license unless the
 740 | licensing authority determines that the applicant is of good
 741 | character and has not demonstrated a history of lack of
 742 | trustworthiness or integrity in business or professional
 743 | matters.

744 | Section 18. Paragraph (b) of subsection (1) of section
 745 | 497.372, Florida Statutes, is amended to read:

746 | 497.372 Funeral directing; conduct constituting practice
 747 | of funeral directing.—

748 | (1) The practice of funeral directing shall be construed
 749 | to consist of the following functions, which may be performed
 750 | only by a licensed funeral director:

751 | (b) Planning or arranging, on an at-need basis, the
 752 | details of funeral services, embalming, cremation, or other
 753 | services relating to the final disposition of human remains,
 754 | including the removal of such remains from the state, ~~with the~~

755 ~~family or friends of the decedent or any other person~~
 756 ~~responsible for such services;~~ setting the time of the services;
 757 establishing the type of services to be rendered; acquiring the
 758 services of the clergy; and obtaining vital information for the
 759 filing of death certificates and obtaining of burial transit
 760 permits.

761 Section 19. Subsection (4) of section 497.381, Florida
 762 Statutes, is amended to read:

763 497.381 Solicitation of goods or services.—

764 (4) At-need solicitation of funeral merchandise or
 765 services is prohibited. A ~~No~~ funeral director or direct disposer
 766 or her or his agent or representative may not contact the
 767 legally authorized person or family ~~or next of kin of a deceased~~
 768 ~~person~~ to sell services or merchandise unless the funeral
 769 director or direct disposer or her or his agent or
 770 representative has been initially called or contacted by the
 771 legally authorized person or family ~~or next of kin of such~~
 772 ~~person~~ and requested to provide her or his services or
 773 merchandise.

774 Section 20. Paragraph (c) of subsection (2) of section
 775 497.452, Florida Statutes, is amended to read:

776 497.452 Preneed license required.—

777 (2)

778 ~~(c) The provisions of paragraph (a) do not apply to any~~
 779 ~~Florida corporation existing under chapter 607 acting as a~~
 780 ~~servicing agent hereunder in which the stock of such corporation~~

781 ~~is held by 100 or more persons licensed pursuant to part III of~~
 782 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
 783 ~~has proxies for more than 5 percent of the issued stock of such~~
 784 ~~corporation; provided the corporation has a blanket fidelity~~
 785 ~~bond, covering all employees handling the funds, in the amount~~
 786 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
 787 ~~this state; and provided the corporation processes the funds~~
 788 ~~directly to and from the trustee within the applicable time~~
 789 ~~limits set forth in this chapter. The department may require any~~
 790 ~~person claiming that the provisions of this paragraph exempt it~~
 791 ~~from the provisions of paragraph (a) to demonstrate to the~~
 792 ~~satisfaction of the department that it meets the requirements of~~
 793 ~~this paragraph.~~

794 Section 21. Subsections (1) and (3) of section 497.454,
 795 Florida Statutes, are amended to read:

796 497.454 Approval of preneed contract and related forms.—

797 (1) Preneed contract forms and related forms shall be
 798 filed with and approved by the licensing authority before ~~prior~~
 799 ~~to~~ use, pursuant to procedures specified by rule. The licensing
 800 authority may not approve any electronic or paper preneed
 801 contract ~~form~~ that does not provide for sequential prenumbering
 802 thereon.

803 ~~(3) Specific disclosure regarding the preneed licensee's~~
 804 ~~ability to select either trust funding or the financial~~
 805 ~~responsibility alternative as set forth in s. 497.461 in~~
 806 ~~connection with the receipt of preneed contract proceeds is~~

807 ~~required in the preneed contract.~~

808 Section 22. Subsections (2), (7), and (8) of section
809 497.456, Florida Statutes, are amended to read:

810 497.456 Preneed Funeral Contract Consumer Protection Trust
811 Fund.—

812 (2) Within 60 days after the end of each calendar quarter,
813 for each preneed contract written during the quarter and not
814 canceled within 30 days after the date of the execution of the
815 contract, each preneed licensee, whether funding preneed
816 contracts by the sale of insurance or by establishing a trust
817 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
818 \$2.50 for each preneed contract having a purchase price of
819 \$1,500 or less, and the sum of \$5 for each preneed contract
820 having a purchase price in excess of \$1,500; and each preneed
821 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
822 of \$5 for each preneed contract having a purchase price of
823 \$1,500 or less, and the sum of \$10 for each preneed contract
824 having a purchase price in excess of \$1,500.

825 (7) In any situation in which a delinquency proceeding has
826 not commenced, the licensing authority may, in its discretion,
827 use the trust fund for the purpose of providing restitution to
828 any consumer, owner, or beneficiary of a preneed contract or
829 similar regulated arrangement under this chapter entered into
830 after June 30, 1977. If, after investigation, the licensing
831 authority determines that a preneed licensee has breached a
832 preneed contract by failing to provide benefits or an

833 appropriate refund, or that a provider, who is a former preneed
 834 licensee or an establishment which has been regulated under this
 835 chapter, has sold a preneed contract and has failed to fulfill
 836 the arrangement or provide the appropriate refund, and such
 837 preneed licensee or provider does not provide or does not
 838 possess adequate funds to provide appropriate refunds, payments
 839 from the trust fund may be authorized by the licensing
 840 authority. In considering whether payments shall be made or when
 841 considering who will be responsible for such payments, the
 842 licensing authority shall consider whether the preneed licensee
 843 or previous provider has been acquired by a successor who is or
 844 should be responsible for the liabilities of the defaulting
 845 entity. With respect to preneed contracts funded by life
 846 insurance, payments from the fund shall be made: if the insurer
 847 is insolvent, but only to the extent that funds are not
 848 available through the liquidation proceeding of the insurer; or
 849 if the preneed licensee is unable to perform under the contract
 850 and the insurance proceeds are not sufficient to cover the cost
 851 of the merchandise and services contracted for. In no event
 852 shall the licensing authority approve payments in excess of the
 853 insurance policy limits unless it determines that at the time of
 854 sale of the preneed contract, the insurance policy would have
 855 paid for the services and merchandise contracted for. Such
 856 monetary relief shall be in an amount as the licensing authority
 857 may determine and shall be payable in such manner and upon such
 858 conditions and terms as the licensing authority may prescribe.

859 | However, with respect to preneed contracts to be funded pursuant
 860 | to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
 861 | restitution made pursuant to this subsection may ~~shall~~ not
 862 | exceed, as to any single contract or arrangement, the lesser of
 863 | the gross amount paid under the contract or 4 percent of the
 864 | uncommitted assets of the trust fund. With respect to preneed
 865 | contracts funded by life insurance policies, any restitution may
 866 | ~~shall~~ not exceed, as to any single contract or arrangement, the
 867 | lesser of the face amount of the policy, the actual cost of the
 868 | arrangement contracted for, or 4 percent of the uncommitted
 869 | assets of the trust fund. The total of all restitutions made to
 870 | all applicants under this subsection in a single fiscal year may
 871 | ~~shall~~ not exceed the greater of 30 percent of the uncommitted
 872 | assets of the trust fund as of the end of the most recent fiscal
 873 | year or \$120,000. The department may use moneys in the trust
 874 | fund to contract with independent vendors pursuant to chapter
 875 | 287 to administer the requirements of this subsection.

876 | (8) All moneys deposited in the Preneed Funeral Contract
 877 | Consumer Protection Trust Fund together with all accumulated
 878 | appreciation ~~income~~ shall be used only for the purposes
 879 | expressly authorized by this chapter and may ~~shall~~ not be
 880 | subject to any liens, charges, judgments, garnishments, or other
 881 | creditor's claims against the preneed licensee, any trustee
 882 | utilized by the preneed licensee, any company providing a surety
 883 | bond as specified in this chapter, or any purchaser of a preneed
 884 | contract. No preneed contract purchaser shall have any vested

885 rights in the trust fund.

886 Section 23. Paragraphs (a), (b), (d), (f), and (j) of
 887 subsection (1), paragraph (a) of subsection (3), subsection (4),
 888 paragraphs (a) and (c) of subsection (5), and subsections (6),
 889 (7), (8), and (9) of section 497.458, Florida Statutes, are
 890 amended to read:

891 497.458 Disposition of proceeds received on contracts.—

892 (1)(a) Any person who is paid, collects, or receives funds
 893 under a preneed contract for funeral services or merchandise or
 894 burial services or merchandise shall deposit an amount at least
 895 equal to the sum of 70 percent of the purchase price collected
 896 for all services sold and facilities rented; 100 percent of the
 897 purchase price collected for all cash advance items sold; and 30
 898 percent of the purchase price collected ~~or 110 percent of the~~
 899 ~~wholesale cost, whichever is greater,~~ for each item of
 900 merchandise sold. The board may, by rule, specify criteria for
 901 the classification of items sold in a preneed contract as
 902 services, merchandise, or cash advances.

903 ~~(b) The method of determining wholesale cost shall be~~
 904 ~~established by rule of the licensing authority and shall be~~
 905 ~~based upon the preneed licensee's stated wholesale cost for the~~
 906 ~~12-month period beginning July 1 during which the initial~~
 907 ~~deposit to the preneed trust fund for the preneed contract is~~
 908 ~~made.~~

909 (c) ~~(d)~~ The trustee shall take title to the property
 910 conveyed to the trust for the purpose of investing, protecting,

911 and conserving it for the preneed licensee; collecting income;
912 and distributing the fair market value ~~principal and income~~ as
913 prescribed in this chapter. The preneed licensee is prohibited
914 from sharing in the discharge of these responsibilities, except
915 that the preneed licensee may request the trustee to invest in
916 tax-free investments and may appoint an adviser to the trustee.
917 The licensing authority may adopt rules limiting or otherwise
918 specifying the degree to which the trustee may rely on the
919 investment advice of an investment adviser appointed by the
920 preneed licensee. The licensing authority may adopt rules
921 limiting or prohibiting payment of fees by the trust to
922 investment advisors that are employees or principals of the
923 licensee to whom the trust fund relates.

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

929 (1) Beginning April 1, 2018, and on or before each April 1
930 thereafter, the trustee shall furnish the department with an
931 annual report regarding each preneed licensee trust account held
932 by the trustee at any time during the previous calendar year.
933 The report shall state the name and address of the trustee; the
934 name, address, and license number of the licensee to whom the
935 report relates; the trust account number; the beginning and
936 ending trust balance; and, as may be specified by department

937 rule, a list of receipts showing the date and amount of any
 938 disbursement. The report must be signed by the trustee's account
 939 manager for the trust account. The trustee shall submit the
 940 report in a format and pursuant to procedures specified by
 941 department rule.

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

945 (4) The licensing authority may adopt rules exempting from
 946 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
 947 established in such rule, the investment of trust funds in
 948 investments, such as widely and publicly traded stocks and
 949 bonds, notwithstanding that the licensee, its principals, or
 950 persons related by blood or marriage to the licensee or its
 951 principals have an interest by investment in the same entity,
 952 where neither the licensee, its principals, or persons related
 953 by blood or marriage to the licensee or its principals have the
 954 ability to control the entity invested in, and it would be in
 955 the interest of the preneed contract holders whose contracts are
 956 secured by the trust funds to allow the investment.

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

959 (a) Invest in investments as prescribed in s. 518.11
 960 ~~215.47~~ and exercise the powers set forth in part VIII of chapter
 961 736, provided that life insurance policies or annuity contracts
 962 shall not be allowable investments or assets by or of the trust,

963 and real estate shall not comprise more than 25% of the trust
964 assets; provided further that the licensing authority may by
965 order require the trustee to liquidate or dispose of any
966 investment within 30 days after such order, or within such other
967 times as the order may direct. The licensing authority may issue
968 such order if it determines that the investment violates any
969 provision of this chapter or is not in the best interests of the
970 preneed contract holders whose contracts are secured by the
971 trust funds.

972 (c) Commingle the property of the trust with the property
973 of any other trust established pursuant to this chapter and make
974 corresponding allocations and divisions of assets, liabilities,
975 income, ~~and expenses,~~ and capital gains and losses.

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

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

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

988 ~~(b) Section 497.462 is a viable option available to it at~~

989 ~~any and all relevant times for contracts written prior to July~~
 990 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

991 ~~(c) For any preneed licensee authorized to do business in~~
 992 ~~this state that has total bonded liability exceeding \$100~~
 993 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
 994 ~~at any and all relevant times for contracts written prior to~~
 995 ~~December 31, 2004, for funds not held in trust as of July 1,~~
 996 ~~2001.~~

997 ~~(8) If in the preneed licensee's opinion it does not have~~
 998 ~~the ability to select the financial responsibility alternative~~
 999 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
 1000 ~~have the right to sell or solicit preneed contracts.~~

1001 ~~(6)~~(9) The amounts required to be placed in trust by this
 1002 section for contracts previously entered into shall be as
 1003 follows:

1004 (a) For contracts entered into before October 1, 1993, the
 1005 trust amounts as amended by s. 6, chapter 83-316, Laws of
 1006 Florida, shall apply.

1007 (b) For contracts entered into on or after October 1,
 1008 1993, the trust amounts as amended by s. 98, chapter 93-399,
 1009 Laws of Florida, shall apply.

1010 Section 24. Paragraph (a) of subsection (6) of section
 1011 497.459, Florida Statutes, is amended to read:

1012 497.459 Cancellation of, or default on, preneed
 1013 contracts.—

1014 (6) OTHER PROVISIONS.—

1015 (a) All preneed contracts are cancelable and revocable as
 1016 provided in this section, provided that a preneed contract does
 1017 not restrict any contract purchaser who is the beneficiary of
 1018 the preneed contract and who is a qualified applicant for, or a
 1019 recipient of, supplemental security income, temporary cash
 1020 assistance, or Medicaid from making her or his contract
 1021 irrevocable. A preneed contract that is made irrevocable
 1022 pursuant to this section may not be canceled during the life or
 1023 after the death of the contract purchaser or beneficiary as
 1024 described in this section. Any unexpended monies paid on an
 1025 irrevocable contract shall be remitted to the Agency for Health
 1026 Care Administration for deposit into the Medical Care Trust Fund
 1027 after final disposition of the beneficiary.

1028 Section 25. Section 497.460, Florida Statutes, is amended
 1029 to read:

1030 497.460 Payment of funds upon death of named beneficiary.—
 1031 Disbursements of funds discharging any preneed contract
 1032 fulfilled after September 30, 1993, shall be made by the trustee
 1033 to the preneed licensee upon receipt of a certified copy of the
 1034 death certificate of the contract beneficiary or satisfactory
 1035 evidence as established by rule of the licensing authority that
 1036 the preneed contract has been performed in whole or in part.
 1037 However, if the contract is only partially performed, the
 1038 disbursement shall only cover the fair market value of that
 1039 portion of the contract performed. In the event of any contract
 1040 default by the contract purchaser, or in the event that the

1041 funeral merchandise or service or burial merchandise or service
 1042 contracted for is not provided or is not desired by the legally
 1043 authorized person ~~heirs or personal representative of the~~
 1044 ~~contract beneficiary~~, the trustee shall return, within 30 days
 1045 after its receipt of a written request therefor, funds paid on
 1046 the contract to the preneed licensee or to its assigns, subject
 1047 to ~~the provisions of~~ s. 497.459.

1048 Section 26. Section 497.461, Florida Statutes, is
 1049 repealed.

1050 Section 27. The repeal of s. 497.461, Florida Statutes, by
 1051 this act does not apply to any surety bonds in force under s.
 1052 497.461 as of July 1, 2016, but no additional preneed contracts
 1053 shall be added under such surety bonds after July 1, 2016.

1054 Section 28. Subsection (2), paragraph (a) of subsection
 1055 (3), and subsections (7) and (10) of section 497.462, Florida
 1056 Statutes, are amended to read:

1057 497.462 Other alternatives to deposits under s. 497.458.—

1058 ~~(2) Upon prior approval by the licensing authority, the~~
 1059 ~~preneed licensee may file a letter of credit with the licensing~~
 1060 ~~authority in lieu of a surety bond. Such letter of credit must~~
 1061 ~~be in a form, and is subject to terms and conditions, prescribed~~
 1062 ~~by the board. It may be revoked only with the express approval~~
 1063 ~~of the licensing authority.~~

1064 (2)(3)(a) A buyer of preneed merchandise or services who
 1065 does not receive such services or merchandise due to the
 1066 economic failure, closing, or bankruptcy of the preneed licensee

1067 must file a claim with the surety as a prerequisite to payment
 1068 of the claim and, if the claim is not paid, may bring an action
 1069 based on the bond and recover against the surety. ~~In the case of~~
 1070 ~~a letter of credit or cash deposit that has been filed with the~~
 1071 ~~licensing authority, the buyer may file a claim with the~~
 1072 ~~licensing authority.~~

1073 (6)~~(7)~~ Any preneed contract which promises future delivery
 1074 of merchandise at no cost constitutes a paid-up contract.
 1075 Merchandise which has been delivered is not covered by the
 1076 required performance bond ~~or letter of credit~~ even though the
 1077 contract is not completely paid. The preneed licensee may not
 1078 cancel a contract unless the purchaser is in default according
 1079 to the terms of the contract and subject to the requirements of
 1080 s. 497.459. A contract sold, discounted, and transferred to a
 1081 third party constitutes a paid-up contract for the purposes of
 1082 the performance bond ~~or letter of credit~~.

1083 (9)~~(10)~~ The licensing authority may adopt forms and rules
 1084 necessary to implement this section, including, but not limited
 1085 to, rules which ensure that the surety bond provides ~~and line of~~
 1086 ~~credit provide~~ liability coverage for preneed merchandise and
 1087 services.

1088 Section 29. Paragraphs (c) and (f) of subsection (1) of
 1089 section 497.464, Florida Statutes, are amended to read:

1090 497.464 Alternative preneed contracts.—

1091 (1) Nothing in this chapter shall prevent the purchaser
 1092 and the preneed licensee from executing a preneed contract upon

1093 the terms stated in this section. Such contracts shall be
 1094 subject to ~~all provisions of~~ this chapter except:

1095 ~~(e) Section 497.458(1), (3), and (6).~~
 1096 ~~(f) Section 497.461.~~

1097 Section 30. Subsection (2) and paragraph (c) of subsection
 1098 (9) of section 497.465, Florida Statutes, are amended to
 1099 read:

1100 497.465 Inactive, surrendered, and revoked preneed
 1101 licensees.—

1102 (2) A preneed licensee shall cease all preneed sales to
 1103 the public upon becoming inactive. Upon becoming inactive, the
 1104 preneed licensee shall ~~collect and deposit into the trust~~ all of
 1105 the funds received from ~~into trust all of the funds paid toward~~
 1106 preneed contracts sold before ~~prior~~ to becoming inactive.

1107 (9) The licensing authority may adopt rules for the
 1108 implementation of this section, for the purpose of ensuring a
 1109 thorough review and investigation of the status and condition of
 1110 the preneed licensee's business affairs for the protection of
 1111 the licensee's preneed customers. Such rules may include:

1112 (c) Requirements for submission of ~~unaudited or audited~~
 1113 financial statements, as the licensing authority deems
 1114 advisable.

1115 Section 31. Paragraph (b) of subsection (1) of section
 1116 497.601, Florida Statutes, is amended to read:

1117 497.601 Direct disposition; duties.—

1118 (1) Those individuals licensed as direct disposers may

1119 perform only those functions set forth below:

1120 (b) Secure pertinent information from a legally authorized
 1121 person ~~the decedent's next of kin~~ in order to complete the death
 1122 certificate and to file for the necessary permits for ~~direct~~
 1123 disposition.

1124
 1125 Section 32. Subsection (1) of section 497.607, Florida
 1126 Statutes, is amended, present subsections (2), (3), and (4) of
 1127 that section are redesignated as subsections (3), (4), and (5),
 1128 respectively, and a new subsection (2) is added to that section,
 1129 to read:

1130 497.607 Cremation; procedure required.—

1131 (1) At the time of the arrangement for a cremation
 1132 performed by any person licensed pursuant to this chapter, the
 1133 legally authorized person contracting for cremation services
 1134 shall be required to designate her or his intentions with
 1135 respect to the disposition of the cremated remains of the
 1136 deceased in a signed declaration of intent which shall be
 1137 provided by and retained by the funeral or direct disposal
 1138 establishment. A cremation may not be performed until a legally
 1139 authorized person gives written authorization, which may include
 1140 the declaration of intent to dispose of the cremated remains,
 1141 for such cremation. The cremation must be performed within 48
 1142 hours after a specified time which has been agreed to in writing
 1143 by the person authorizing the cremation.

1144 (2) Cremated remains are not property, as defined in s.

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1145 731.201(32), and are not subject to ownership or court-ordered
1146 partition. A division of cremated remains requires the consent
1147 of the legally authorized person who approved the cremation or,
1148 if the legally authorized person is the decedent, the next
1149 legally authorized person pursuant to s. 497.005(40). A dispute
1150 regarding the division of cremated remains shall be resolved by
1151 a court of competent jurisdiction.

1152 Section 33. This act shall take effect July 1, 2016.