

## Committee Substitute for Senate Bill No. 1610

An act relating to funeral and cemetery services; amending s. 497.003, F.S.; revising references relating to need determinations; amending s. 497.005, F.S.; providing and revising definitions; amending s. 497.201, F.S.; increasing minimum acreage requirements to establish a cemetery company; eliminating need determinations for new cemeteries; clarifying provisions governing authorized trust companies, banks, and savings and loan associations; revising experience requirements for the general manager of a cemetery company; amending s. 497.237, F.S.; authorizing care and maintenance trust funds to be established with a federal savings and loan association holding trust powers in this state; amending s. 497.245, F.S.; revising provisions governing burial rights; amending s. 497.253, F.S.; revising minimum acreage requirements and references, to conform; revising requirements for sale or disposition of certain cemetery lands, to conform; repealing s. 497.353(12), F.S., relating to prohibiting the use in need determinations of spaces or lots from burial rights reacquired by a cemetery, to conform; amending s. 497.405, F.S.; clarifying provisions relating to authorized trust companies, banks, and savings and loan associations; amending s. 497.417, F.S.; clarifying provisions relating to authorized trust companies, banks, and savings and loan associations; revising the authority of certificateholders offering preneed funeral and burial merchandise and services contracts to revest title to trust assets by posting a bond or using other forms of security or insurance; providing a time limitation on such authority; amending s. 497.425, F.S.; providing a time limitation on the authority to post certain bonds to secure preneed contract assets; amending s. 497.429, F.S.; clarifying provisions relating to authorized trust companies, banks, and savings and loan associations with respect to alternative preneed contracts; amending s. 470.002, F.S.; redefining the term “legally authorized person” for purposes of ch. 470, F.S.; providing an effective date.

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

Section 1. Subsection (4) of section 497.003, Florida Statutes, is amended to read:

497.003 Cemeteries; exemption; investigation and mediation.—

(4) Any religious-institution-owned cemetery that is exempt under paragraph (1)(d), is located in a county with a population of at least 1.3 million persons on July 1, 1996, and was selling merchandise and services to the religious institution’s members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020, ~~without establishing need under s. 497.201.~~

Section 2. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter:

(1) “At-need solicitation” means any uninvited contact by a licensee or her or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after her or his death has occurred.

(2) “Bank of belowground crypts” means any construction unit of belowground crypts which is acceptable to the department and which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.

(3) “Belowground crypts” consist of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as “lawn crypts,” “westminsters,” or “turf-top crypts.”

(4) “Board” means the Board of Funeral and Cemetery Services.

(5) “Burial merchandise,” “funeral merchandise,” or “merchandise” means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

(6) “Burial right” means the right to use a grave space, mausoleum, ~~or columbarium, ossuary, or scattering garden~~ for the interment, entombment, ~~or inurnment, or other disposition~~ of human remains.

(7) “Burial service,” “funeral service,” or “service” means any service offered or provided by any person in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

(8) “Care and maintenance” means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the board, “care and maintenance” may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. “Care and maintenance” may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. “Care and maintenance” may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. “Care and maintenance” does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

(9) “Casket” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

(10) “Cemetery” means a place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated human remains; or any combination of one or more of such structures or places.

(11) “Cemetery company” means any legal entity that owns or controls cemetery lands or property.

(12) “Certificateholder” or “licensee” means the person or entity that is authorized under this chapter to sell preneed funeral or burial services, preneed funeral or burial merchandise, or burial rights. Each term shall include the other, as applicable, as the context requires. For the purposes of chapter 120, all certificateholders, licensees, and registrants shall be considered licensees.

(13) “Columbarium” means a structure or building which is substantially exposed above the ground and which is intended to be used for the inurnment of cremated human remains.

(14) “Common business enterprise” means a group of two or more business entities that share common ownership in excess of 50 percent.

~~(15) “Community” means the area within a 15-mile radius surrounding the location or proposed location of a cemetery.~~

~~(15)(16)~~ “Cremation” includes any mechanical or thermal process whereby a dead human body is reduced to ashes. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, reinterred, or otherwise further reduced in size or quantity.

~~(16)(17)~~ “Department” means the Department of Banking and Finance.

~~(17)(18)~~ “Direct disposer” means any person who is registered in this state to practice direct disposition pursuant to the provisions of chapter 470.

~~(18)(19)~~ “Final disposition” means the final disposal of a dead human body whether by interment, entombment, burial at sea, cremation, or any other means and includes, but is not limited to, any other disposition of remains for which a segregated charge is imposed.

~~(19)(20)~~ “Funeral director” means any person licensed in this state to practice funeral directing pursuant to the provisions of chapter 470.

~~(20)(21)~~ “Grave space” means a space of ground in a cemetery intended to be used for the interment in the ground of human remains.

~~(21)(22)~~ “Human remains” means the bodies of deceased persons and includes bodies in any stage of decomposition and cremated remains.

~~(22)(23)~~ “Mausoleum” means a structure or building which is substantially exposed above the ground and which is intended to be used for the entombment of human remains.

(23)(24) “Mausoleum section” means any construction unit of a mausoleum which is acceptable to the department and which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.

(24)(25) “Monument” means any product used for identifying a grave site and cemetery memorials of all types, including monuments, markers, and vases.

(25)(26) “Monument establishment” means a facility that operates independently of a cemetery or funeral establishment and that offers to sell monuments or monument services to the public for placement in a cemetery.

(26)(27) “Net assets” means the amount by which the total assets of a certificateholder, excluding goodwill, franchises, customer lists, patents, trademarks, and receivables from or advances to officers, directors, employees, salespersons, and affiliated companies, exceed total liabilities of the certificateholder. For purposes of this definition, the term “total liabilities” does not include the capital stock, paid-in capital, or retained earnings of the certificateholder.

(27)(28) “Net worth” means total assets minus total liabilities pursuant to generally accepted accounting principles.

(28) “Ossuary” means a receptacle used for the communal placement of cremated human remains without benefit of an urn or any other container. It may or may not include memorialization.

(29) “Outer burial container” means an enclosure into which a casket is placed and includes, but is not limited to, vaults made of concrete, steel, fiberglass, or copper; sectional concrete enclosures; crypts; and wooden enclosures.

(30) “Preneed contract” means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby ~~any person the funeral establishment, direct disposer, or certificateholder~~ agrees to furnish funeral merchandise or service in the future.

(31) “Religious institution” means an organization formed primarily for religious purposes which has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(32) “Scattering garden” means a location set aside, within a cemetery, which is used for the spreading or broadcasting of cremated remains. It may or may not include memorialization.

(33)(32) “Servicing agent” means any person acting as an independent contractor whose fiduciary responsibility is to assist both the trustee and certificateholder hereunder in administrating their responsibilities pursuant to this chapter.

(34)(33) “Solicitation” means any communication which directly or implicitly requests an immediate oral response from the recipient.

(35)(34) “Statutory accounting” means generally accepted accounting principles, except as modified by this chapter.

Section 3. Section 497.201, Florida Statutes, is amended to read:

497.201 Cemetery companies; license; application; fee.—

(1) No person may operate a cemetery without first obtaining a license from the department, unless specifically exempted from this chapter.

(2) The department may require any person desiring to establish a cemetery company who applies for a license to provide any information reasonably necessary to make a determination of the applicant’s eligibility for licensure. Any person desiring to establish a cemetery company shall first:

(a) File an application, which states the exact location of the proposed cemetery, which site shall contain not less than 30 15 contiguous acres; provide a financial statement signed by all officers of the company which attest to a net worth of at least \$50,000, which net worth must be continuously maintained as a condition of licensure; and pay an application fee of \$5,000;

(b) Create a legal entity; and

(c) Demonstrate to the satisfaction of the board that the applicant possesses the ability, experience, financial stability, and integrity to operate a cemetery.

~~(3) The department shall determine the need for a new cemetery by considering the adequacy of existing cemetery facilities, licensed and unlicensed, within the community; the solvency of the trust funds of the existing facilities; and the relationship between population, rate of population growth, death rate, and ratio of burials to deaths to meet the projected need for burial spaces for a period of 30 years. In order to promote competition, the department may waive the criteria of this subsection so that each county may have at least six cemeteries operated by different licensees.~~

~~(3)(4) If the board finds that the applicant meets the criteria established in subsection (2) and the department determines that a need for the new cemetery in the community exists, the department shall notify the applicant that a license will be issued when:~~

~~(a) The establishment of a care and maintenance trust fund containing not less than \$50,000 has been certified by a trust company operating pursuant to chapter 660, a state or national bank holding trust powers, or a savings and loan association holding trust powers as provided in s. 497.423 licensed in this state.~~

~~(b) The applicant has filed with the department development plans which are sufficient to ensure the department that the cemetery will provide adequate service to the community and which have been approved by the appropriate local governmental agency regulating zoning in the area of the proposed cemetery.~~

(c) The applicant holds an unencumbered fee simple title to at least 30 ~~15~~ contiguous acres of land.

(d) The applicant has designated as general manager a person who has integrity, 3 years ~~1-year~~ of cemetery management experience as defined by board rule, and the ability to operate a cemetery.

(e) The applicant has fully developed not less than 2 acres for use as burial space, such development to include a paved road from a public roadway to the developed section.

(f) The applicant has recorded, in the public records of the county in which the land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Banking and Finance, as provided in the Florida Funeral and Cemetery Services Act.

Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the licensee or may be contained in a separate recorded instrument which contains a description of the property.

~~(4)(5)~~ The department shall issue a license to operate a cemetery company to any applicant who, within 12 months after notice that a license may be issued, meets the criteria of subsection ~~(3)~~ (4). With respect to any application for which the department has given notice under subsection ~~(3)~~ (4) on or after January 1, 1984, the board may, for good cause shown, grant up to two extensions of the 12-month period within which the applicant must meet the criteria of subsection ~~(3)~~ (4).

Section 4. Subsection (1) of section 497.237, Florida Statutes, is amended to read:

497.237 Care and maintenance trust fund; remedy of department for noncompliance.—

(1) No cemetery company may establish a cemetery, or operate a cemetery if already established, without providing for the future care and maintenance of the cemetery, for which a care and maintenance trust fund shall be established, to be known as “the care and maintenance trust fund of .....” The trust fund shall be established with a trust company operating pursuant to chapter 660, ~~or~~ with a state or national bank holding trust powers, or with a federal or state savings and loan association holding trust powers. Trust funds which are with a state or national bank or savings and loan association licensed in this state on October 1, 1993, shall remain in force; however, when the amount of any such trust fund exceeds the amount that is insured by an agency of the Federal Government, the cemetery company shall transfer that trust fund to a trust company operating pursuant to chapter 660, ~~or~~ to a state or national bank holding trust powers, or to a federal or state savings and loan association holding trust powers.

Section 5. Subsection (1) of section 497.245, Florida Statutes, is amended to read:

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

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

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

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

(c) For general endowments for the care and maintenance of the cemetery, the full amount of sums received when received.

(d) For special endowments for a specific lot or grave or a family mausoleum, memorial, marker, or monument, the cemetery company may set aside the full amount received for this individual special care in a separate trust fund or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the state; however, if the licensee does not set up a separate trust fund or savings account for the special endowment, the full amount thereof shall be deposited into the care and maintenance trust fund as required of general endowments.

Section 6. Subsections (1), (2), and (5) and paragraph (c) of subsection (3) and subsection (5) of section 497.253, Florida Statutes, are amended to read:

497.253 Minimum acreage; sale or disposition of cemetery lands.—

(1) Each licensee shall set aside a minimum of 30 ~~15~~ contiguous acres of land for use by the licensee as a cemetery and shall not sell, mortgage, lease, or encumber that property without prior written approval of the department.

(2) Any lands owned by a licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 ~~15~~ contiguous acres described in subsection (1), may be sold, conveyed, or disposed of by the licensee, after obtaining written approval of the department pursuant to subsection (3), for use by the new owner for other purposes than as a cemetery. All of the human remains which have been previously interred therein shall first have been removed from the lands proposed to be sold, conveyed, or disposed of; however, the provisions of ss. 470.0295 and 497.515(7) must be complied with prior to any disinterment of human remains. Any and all titles, interests, or burial rights which may have been sold or contracted to be sold in lands which are the subject of the sale shall be conveyed to and revested in the licensee prior to consummation of any such sale, conveyance, or disposition.

(3)

(c) If the property in question has been used for the permanent interment of human remains, the department shall approve the application, in writing, if it finds that it would not be contrary to the public interest. In determining whether to approve the application, the department shall consider any evidence presented concerning the following:

1. The historical significance of the subject property, if any.
2. The archaeological significance of the subject property, if any.
3. The public purpose, if any, to be served by the proposed use of the subject property.

~~4. The impact of the proposed change in use of the subject property upon the inventory of remaining cemetery facilities in the community and upon the other factors enumerated in s. 497.201(3).~~

~~4.5.~~ The impact of the proposed change in use of the subject property upon the reasonable expectations of the families of the deceased regarding whether the cemetery property was to remain as a cemetery in perpetuity.

~~5.6.~~ Whether any living relatives of the deceased actively oppose the relocation of their deceased's remains and the conversion of the subject property to noncemetery uses.

~~6.7.~~ The elapsed time since the last interment in the subject property.

~~7.8.~~ Any other factor enumerated in this chapter that the department considers relevant to the public interest.

(5) The provisions of subsections (1) and (2) relating to a requirement for minimum acreage shall not apply to any cemetery company licensed by the department on or before July 1, 2001 ~~1965~~, which owns a total of less than ~~30~~ 15 acres of land; however, no cemetery company shall dispose of any land without the prior written consent of the department.

Section 7. Subsection (12) of section 497.353, Florida Statutes, is repealed.

Section 8. Paragraph (b) of subsection (2) of section 497.405, Florida Statutes, is amended to read:

497.405 Certificate of authority required.—

(2)(a) No person may receive any funds for payment on a preneed contract who does not hold a valid certificate of authority.

(b) The provisions of paragraph (a) do not apply to a any trust company operating pursuant to chapter 660, or to a any national or state bank holding trust powers, or to a federal or state savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

Section 9. Subsections (1), (5), and (6) of section 497.417, Florida Statutes, are amended to read:

497.417 Disposition of proceeds received on contracts.—

(1) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit ~~in this state~~ an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise sold. The method of determining wholesale cost shall be established by rule of the board and shall be based upon the certificateholder's stated wholesale cost for the 12-month period beginning July 1 during which the initial deposit to the preneed trust fund for the preneed contract is made. Such deposits shall be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company operating pursuant to chapter 660, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding having trust powers ~~or a trust company~~. The trustee shall take title to the property conveyed to the trust for the purpose of investing, protecting, and conserving it for the certificateholder; collecting income; and distributing the principal and income as prescribed in this chapter. The certificateholder is prohibited from sharing in the discharge of these responsibilities, except that the certificateholder may request the trustee to invest in tax-free investments and may appoint an adviser to the trustee. The trust agreement shall be submitted to the board for approval and filing. The funds shall be held in trust, both as to principal and income earned thereon, and shall remain intact, except that the cost of the operation of the trust or trust account authorized by this section may be deducted from the income earned thereon. The contract purchaser shall have no interest whatsoever in, or power whatsoever over, funds deposited in trust pursuant to this section. In no event may said funds be loaned to a certificateholder, an affiliate of a certificateholder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business. Furthermore, the certificateholder's interest in said trust shall not be pledged as collateral for any loans, debts, or liabilities of the certificateholder and shall not be transferred to any person without the prior written approval from the department and the trustee which shall not be unreasonably withheld. Even though the certificateholder shall be deemed and treated as the settlor and beneficiary of said trust for all purposes, all of said trust funds are exempt from all claims of creditors of the certificateholder except as to the claims of the contract purchaser, her or his representative, the board, or the department.

(5) The certificateholder, at her or his election, shall have the right and power, at any time, to revest in it title to the trust assets, or its pro rata share thereof, provided it has complied with:

(a) Section 497.423;

(b) Contracts written prior to July 1, 2001, under s. 497.425; or

(c) Contracts written prior to December 31, 2004, under s. 497.425 for any certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001 s. 497.423 or s. 497.425.

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

(a) Section 497.423 is a viable option available to it at any and all relevant times;

(b) Section 497.425 is a viable option available to it at any and all relevant times for contracts written prior to July 1, 2001, for funds not held in trust as of July 1, 2001; or

(c) For any certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, s. 497.425 is a viable option to it at any and all relevant times for contracts written prior to December 31, 2004, for funds not held in trust as of July 1, 2001 s. 497.423 or s. 497.425 is a viable option available to it at any and all relevant times.

(7) If in the certificateholder's opinion it does not have the ability to select the financial responsibility alternative of s. 497.423 or s. 497.425, then it shall not have the right to sell or solicit contracts pursuant to this section.

~~(8)~~(6) This section, as amended by s. 6, chapter 83-316, Laws of Florida, applies to preneed contracts entered into before October 1, 1993, and as amended by s. 98, chapter 93-399, Laws of Florida, applies to preneed contracts entered into on or after October 1, 1993.

Section 10. Paragraph (a) of subsection (1) of section 497.425, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

497.425 Alternatives to deposits under s. 497.417.—

(1)(a) As an alternative to the requirements of s. 497.417 that relate to trust funds for contracts written prior to July 1, 2001, or that relate to trust funds for contracts written prior to December 31, 2004, by any certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, a certificateholder may purchase a surety bond for funds not held in trust as of July 1, 2001, in an amount not less than the aggregate value of outstanding liabilities on undelivered preneed contracts for merchandise and services. For the purpose of this section, the term "outstanding liabilities" means the gross replacement or wholesale value of the preneed merchandise and services. The bond shall be made payable to the State of Florida for the benefit of the board and all purchasers of preneed cemetery merchandise or services. The bond must be approved by the board.

(12) Certificateholders may utilize the bonding alternatives to s. 497.417 provided in this section only for contracts written prior to July 1, 2001, for funds not held in trust as of July 1, 2001, or for contracts written prior to December 31, 2004, by any certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, for funds not held in trust as of July 1, 2001.

Section 11. Subsection (2) of section 497.429, Florida Statutes, is amended to read:

497.429 Alternative preneed contracts.—

(2) The contract must require that a trust be established by the certificateholder on behalf of, and for the use, benefit, and protection of, the purchaser and that the trustee must be a trust company operating pursuant to chapter 660, a national or state bank holding trust powers, or a federal or state savings and loan association holding having trust powers ~~or a trust company with the same powers of investment as provided elsewhere in this chapter.~~

Section 12. Subsection (18) of section 470.002, Florida Statutes, is amended to read:

470.002 Definitions.—As used in this chapter:

(18) “Legally authorized person” means, in the priority listed, the decedent, when written inter vivos authorizations and directions are provided by the decedent, the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of violence as defined in s. 741.28(1), a son or daughter who is 18 years of age or older, a parent, a brother or sister 18 years of age or over, a grandchild who is 18 years of age or older, or a grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family exists or is available, the following: the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commissioner or administrator acting under chapter 245, or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as authorized person.

Section 13. This act shall take effect July 1, 2001.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.