

Committee Substitute for
Committee Substitute for Senate Bill No. 528

An act relating to regulation of the funeral and cemetery industry; providing a short title; creating in the Department of Financial Services the Division of Funeral, Cemetery, and Consumer Services; creating in the Department of Financial Services the Board of Funeral, Cemetery, and Consumer Services; abolishing the Board of Funeral and Cemetery Services; abolishing the Board of Funeral Directors and Embalmers; consolidating regulation under chs. 470 and 497, F.S., into ch. 497, F.S., under the Board of Funeral, Cemetery, and Consumer Services in the Department of Financial Services; removing responsibility regarding ch. 470, F.S., from the Department of Business and Professional Regulation; dividing ch. 497, F.S., into part I relating to general provisions, part II relating to cemetery regulation, part III relating to funeral directing, embalming, and related services, part IV relating to preneed sales, part V relating to monument establishments, and part VI relating to cremation, crematories, and direct disposition; providing for the continued validity of licenses, registrations, and certificates issued under chs. 470 and 497, F.S.; providing for continued validity of rules of the Board of Funeral and Cemetery Services, the Board of Funeral Directors and Embalmers, and the Department of Business and Professional Regulation, adopted under or in relation to ch. 470, F.S., or ch. 497, F.S.; providing for continued validity of orders entered by the Board of Funeral and Cemetery Services, the Board of Funeral Directors and Embalmers, and the Department of Business and Professional Regulation for or in relation to the enforcement of ch. 470, F.S., or ch. 497, F.S.; providing for the substitution of the Department of Financial Services and the Board of Funeral, Cemetery, and Consumer Services as parties in pending litigation; providing for type two transfers; providing for a transitional timeline and procedures; eliminating or consolidating duplicative provisions from chs. 470 and 497, F.S.; replacing references to registrations, registrants, certificates, and certificateholders with references to licenses and licensees; conforming internal statutory references; amending ss. 497.001, 497.002, 497.005, 497.101, 497.103, and 497.107, F.S., to conform; amending and renumbering ss. 470.006, 470.007, 470.008, 470.0085, 470.0087, 470.009, 470.011, 470.012, 470.013, 470.014, 470.015, 470.016, 470.0165, 470.017, 470.018, 470.0201, 470.021, 470.022, 470.024, 470.025, 470.0255, 470.026, 470.029, 470.0294, 470.0295, 470.0301, 470.0315, 470.032, 470.0355, 470.0375, 470.038, 470.039, 470.0395, 497.003, 497.004, 497.025, 497.0255, 497.121, 497.133, 497.201, 497.205, 497.213, 497.229, 497.237, 497.241, 497.245, 497.249, 497.253, 497.255, 497.257, 497.305, 497.309, 497.313, 497.317, 497.321, 497.325, 497.329, 497.333, 497.337, 497.345, 497.349, 497.353, 497.357, 497.361, 497.401, 497.403, 497.405, 497.407, 497.409, 497.411, 497.413, 497.415, 497.417, 497.419, 497.421, 497.423, 497.425, 497.427,

497.429, 497.436, 497.437, 497.439, 497.441, 497.525, 497.527, and 497.531, F.S., to conform; creating ss. 497.0021, 497.141, 497.142, 497.143, 497.144, 497.145, 497.146, 497.147, 497.148, 497.149, 497.150, 497.151, 497.152, 497.153, 497.156, 497.157, 497.159, 497.161, 497.163, 497.166, 497.167, 497.168, 497.274, 497.275, 497.365, 497.366, 497.367, 497.551, 497.552, 497.553, 497.554, 497.555, 497.556, and 497.608, F.S.; amending chapter name; clarifying purpose and intent of chapter; amending and providing additional definitions; creating the Board of Funeral, Cemetery, and Consumer Services, identifying criteria for membership, describing procedures for appointment of members, and providing administrative procedures regarding operation; allocating authority and responsibility between the board and the Department of Financial Services; providing procedures for establishing and processing fees; providing for creation of disciplinary guidelines; providing for the issuance of disciplinary citations; providing authority for judicial actions to terminate violations and abate nuisances; establishing health and safety education requirements; establishing authority and requirements for the regulation of solicitation of goods and services; establishing liability of owners and others for trust fund deficits; authorizing and clarifying provisions regarding private actions; prohibiting unauthorized arrangements for the sale of funeral or burial merchandiser services; clarifying authority and procedures regarding complaints against unlicensed cemeteries; establishing prohibitions against discrimination based on race or color; providing procedures for the transfer of cemetery licenses; requiring reference to authorizing statute in trust instrument's; clarifying requirements for minimum acreage in cemeteries; establishing requirements for sale, leasing, or encumbering cemetery lands; amending requirements regarding illegal tying arrangements; establishing requirements regarding burial rights brokers; establishing requirements regarding informational brochures to be provided by cemeteries to customers; authorizing payment of court costs and attorney fees in litigation to enforce reporting requirements by unlicensed cemeteries; authorizing fees to be specified by the board subject to caps; providing rulemaking authority to the board and the department; establishing and clarifying requirements regarding the processing of the human bodies; establishing requirements for the approval of preneed contract forms and related forms; authorizing rules regarding the reliance by preneed trustees on the advice of investment advisers, and restricting payments to investment advisers; establishing restrictions on the investing or loaning of preneed trust funds; providing additional authority in the board concerning orders to liquidate specified preneed trust fund investments; providing additional authority in the board regarding the requirements of preneed trust instrument's; providing requirements and additional authority in the board regarding surrender of preneed licenses; providing procedures and requirements regarding application and issuance of licenses to preneed sales agents; clarifying and establishing requirements regarding persons legally authorized to authorize burial and funeral services and procedures; clarifying applicability

of parts; providing general procedures applicable to licensing; providing authority and procedures regarding submission and processing of fingerprints; providing authority and procedures for limited licensing of retired professionals; providing procedures and requirements regarding licensing examinations; allowing use of professional testing services; providing requirements for notification of licensee change of address; providing procedures and requirements for continuing education; providing requirements for monitoring of continuing education by licensees; providing procedures and authority for investigations, inspections, and hearings to be conducted by the department; providing procedures and authority for financial and compliance examinations of licensees by the department; establishing requirements and authority regarding retention of complaints and creation of complaint logs; establishing grounds for disciplinary action; establishing disciplinary procedures and authorizing penalties; providing authority and procedures for action against unlicensed practice; identifying conduct constituting criminal violations; authorizing and providing procedures for receivership proceedings; authorizing rules; providing restrictions in relation to citizenship; establishing responsibility of licensees regarding preneed sales by persons under their supervision; clarifying the relationship of part IV to other parts of the chapter; requiring toll-free telephone hotline; identifying and providing authority and procedures regarding executive director of the board; establishing requirements for submission for budget; establishing requirements for training program for the board members; authorizing newsletters and other informational communications with licensees; authorizing screen of licensed records in relation to child support requirements; clarifying status in regard to insurance coverage and immunity of agents retained by the department; authorizing use of disciplinary settlement funds for training of staff; establishing deadlines for completeness of applications for submission and board meetings; authorizing rules record applicants to appear before the board for oral interview by the board; establishing procedures for calculating deadlines for filings by licensees; clarifying status of elected officials licensed under the chapter; providing for presentation of applications to the board by the department; providing standing to the department in judicial proceedings; providing for certain legal services to the board by the Department of Legal Affairs; establishing requirements and authority regarding member of the military reserves; establishing procedures and fees for application for licensure as a cemetery; establishing standards and mapping requirements for grave spaces; establishing requirements for placement of identification tags on grave vaults, mausoleum crypts, and other outer burial containers, in licensed cemeteries; establishing requirements and procedures regarding inactive and delinquent licenses under part III; establishing requirements for sending renewal and cancellation of licensed notices; establishing requirements for instruction on HIV and AIDS; authorizing fees to be determined by the board subject to specified caps; providing rulemaking authority to the board and department; establishing and clarifying requirements re-

garding the handling and processing of dead human bodies; establishing requirements regarding identification of human remains in licensed and unlicensed cemeteries, and by direct disposal establishments; establishing procedures and requirements regarding application for preneed license; authorizing issuance of licenses on probationary status; establishing procedures and requirements for change in control of the preneed license; establishing requirements regarding renewal of preneed licenses; establishing requirements and procedures for the licensure and operation of preneed branches; establishing requirements regarding reports by preneed trusts; establishing procedures and requirements for the licensure of monument establishment businesses; establishing requirements for the renewal of monument establishment licenses; establishing requirements for approval of sales agreement forms used by monument establishments; establishing requirements for procedures by monument establishments in relation to complaints from customers; establishing requirements for refund of moneys to customers in regard to failure to deliver monuments according to contract terms; establishing requirements and procedures for the licensing of sales persons employed by monument establishments; establishing procedures and requirements regarding licensure of monument establishments to engage in preneed sales; establishing requirements and procedures for licensure of direct disposers; establishing requirements and procedures for licensure of direct disposal establishments; establishing requirements applicable to the operation of direct disposal establishments; establishing procedures and requirements for the licensure of cinerator facilities; establishing requirements and procedures for the supervision and operation of cinerator facilities; establishing restrictions on liability for unintentional commingling of cremation residues; amending ss. 20.121, 20.165, 316.1974, 381.0098, 382.002, 403.703, 406.02, 406.50, 406.52, 406.53, 455.2226, 501.022, 501.604, 626.785, and 765.519, F.S.; conforming references; repealing ss. 470.001, 470.002, 470.003, 470.005, 470.019, 470.023, 470.027, 470.028, 470.031, 470.033, 470.034, 470.035, 470.036, 497.105, 497.109, 497.111, 497.113, 497.115, 497.117, 497.119, 497.123, 497.125, 497.127, 497.129, 497.131, 497.135, 497.137, 497.209, 497.217, 497.221, 497.225, 497.233, 497.301, 497.341, 497.431, 497.435, 497.443, 497.445, 497.447, 497.515, 497.517, 497.519, and 497.529, F.S., to conform; providing effective dates.

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

Section 1. This act may be cited as the “Senator Howard E. Futch Act.”

Section 2. Part I of chapter 497, Florida Statutes, consisting of sections 497.001, 497.002, 497.0021, 497.005, 497.101, 497.103, 497.107, 497.140, 497.141, 497.142, 497.143, 497.144, 497.145, 497.146, 497.147, 497.148, 497.149, 497.150, 497.151, 497.152, 497.153, 497.154, 497.155, 497.156, 497.157, 497.158, 497.159, 497.160, 497.161, 497.162, 497.163, 497.164, 497.165, 497.166, 497.167, 497.168, 497.169, and 497.170, is created to read:

PART I
GENERAL PROVISIONS

Section 3. Section 497.001, Florida Statutes, is amended to read:

497.001 Short title.—This chapter may be cited as the “Florida Funeral, ~~and Cemetery, and Consumer~~ Services Act.”

Section 4. Section 497.002, Florida Statutes, is amended to read:

497.002 Purpose and intent.—

(1) The Legislature recognizes that purchasers of preneed burial rights, funeral or burial merchandise, or funeral or burial services may suffer serious economic harm if purchase money is not set aside for future use as intended by the purchaser and that the failure to maintain cemetery grounds properly may cause significant emotional stress. Therefore, it is necessary in the interest of the public welfare to regulate preneed sales and cemeteries certificateholders, licensees, registrants, and cemetery companies in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from significant or discernible harm or damage and not in a manner which will unreasonably affect the competitive market.

(2) Subject to certain interests of society, the Legislature finds that every competent adult has the right to control the decisions relating to her or his own funeral arrangements. Accordingly, unless otherwise stated herein, it is the Legislature’s express intent that nothing contained in this chapter should be construed or interpreted in any manner as to subject preneed contract purchasers to federal income taxation under the grantor trust rules contained in ss. 671 et seq. of the Internal Revenue Code of 1986, as amended.

(3) The Legislature deems it necessary in the interest of public health and safety to establish minimum qualifications for entry into the professions and occupations of embalming, funeral directing, cremation, direct disposition, and monument sales, to regulate such activities, and to provide for swift and effective discipline for those practitioners who violate the law.

Section 5. Section 497.0021, Florida Statutes, is created to read:

497.0021 Applicability of parts.—The provisions of this part shall be applicable to and supplement the provisions of parts II, III, IV, V, and VI of this chapter and shall be applicable to all licensees under this chapter, except to the extent specifically provided otherwise in this chapter.

Section 6. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter:

(1) “Alternative container” means a nonmetal receptacle or enclosure which is less expensive than a casket and of sufficient strength to be used to hold and transport a dead human body.

(2)(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.

(3)(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.

(4)(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.”

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

(6) “Body parts” means:

(a) Limbs or other portions of the anatomy which are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or

(b) Human bodies or any portions of human bodies which have been donated to science for medical research purposes.

(7)(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.

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

(9)(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.

(10)(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 licensing authority 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.

~~(11)~~⁽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.

~~(12)~~⁽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.

~~(13)~~⁽¹¹⁾ "Cemetery company" means any legal entity that owns or controls cemetery lands or property.

(14) "Centralized embalming facility" means a facility, not physically connected with a funeral establishment, in which embalming takes place.

~~(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.~~

(15) "Cinerator" means a facility where dead human bodies are reduced to a residue, including bone fragments, by direct flame, also known as "cremation," or by intense heat, also known as "calcination."

(16) "Closed container" means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of the remains.

~~(17)~~⁽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.

~~(18)~~⁽¹⁴⁾ "Common business enterprise" means a group of two or more business entities that share common ownership in excess of 50 percent.

(19) "Control" means the possession, directly or indirectly, through the ownership of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the power to direct or cause the direction of the management and policies of a person or entity. However, a person or entity shall not be deemed to have control if the person or entity holds voting shares, in good faith and not for the purpose of circumventing this definition, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control.

(20) “Cremated remains” means all the remains of the human body recovered after the completion of the cremation process, including processing or pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may include the residue of any foreign matter, including casket material, bridgework, or eyeglasses that were cremated with the human remains.

~~(21)(15) “Cremation” means the technical process, using direct flame and heat or chemical means, which reduces human remains to bone fragments through heat and evaporation. Cremation includes the processing and usually includes the pulverization of the bone fragments 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, re Cremated, or otherwise further reduced in size or quantity.~~

(22) “Cremation chamber” means the enclosed space within which the cremation process takes place. Cremation chambers covered by these procedures must be used exclusively for the cremation of human remains.

(23) “Cremation container” means the container in which the human remains are transported to and placed in the cremation chamber for a cremation. A cremation container should meet substantially all of the following standards:

- (a) Be composed of readily combustible materials suitable for cremation.
- (b) Be able to be closed in order to provide a complete covering for the human remains.
- (c) Be resistant to leakage or spillage.
- (d) Be rigid enough to be handled with ease.
- (e) Be able to provide protection for the health, safety, and personal integrity of crematory personnel.

(24) “Cremation interment container” means a rigid outer container that, subject to a cemetery’s rules and regulations, is composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and that is designed to support the earth above the urn.

~~(25)(16) “Department” means the Department of Financial Services.~~

(26) “Direct disposal establishment” means a facility licensed under this chapter where a direct disposer practices direct disposition.

~~(27)(17) “Direct disposer” means any person licensed under this chapter who is registered in this state to practice direct disposition in this state pursuant to the provisions of chapter 470.~~

(28) “Director” means the director of the Division of Funeral, Cemetery, and Consumer Services.

(29) “Disinterment” means removal of a dead human body from earth interment or aboveground interment.

(30) “Division” means the Division of Funeral, Cemetery, and Consumer Services within the Department of Financial Services.

(31) “Embalmer” means any person licensed under this chapter to practice embalming in this state.

~~(32)(18) “Final disposition” means the final disposal of a dead human body by earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal. “Final disposition” does not include the disposal or distribution of ashes and residue of cremated remains 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.~~

(33) “Funeral” or “funeral service” means the observances, services, or ceremonies held to commemorate the life of a specific deceased human being and at which the human remains are present.

~~(34)(19) “Funeral director” means any person licensed under this chapter in this state to practice funeral directing in this state pursuant to the provisions of chapter 470.~~

(35) “Funeral establishment” means a facility licensed under this chapter where a funeral director or embalmer practices funeral directing or embalming.

(36) “Funeral merchandise” or “merchandise” means any merchandise commonly sold in connection with the funeral, final disposition, or memorialization of human remains, including, but not limited to, caskets, outer burial containers, alternative containers, cremation containers, cremation interment containers, urns, monuments, private mausoleums, flowers, benches, vases, acknowledgment cards, register books, memory folders, prayer cards, and clothing.

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

(38)(21) “Human remains” or “remains,” or “dead human body” or “dead human bodies,” means the body of a deceased human person for which a death certificate or fetal death certificate is required under chapter 382 and includes the body in any stage of decomposition and the residue of cremated human bodies means the bodies of deceased persons and includes bodies in any stage of decomposition and cremated remains.

(39) “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 domestic violence as defined in s. 741.28 which resulted in or contributed to the death of the deceased;

a son or daughter who is 18 years of age or older; a parent; a brother or sister who is 18 years of age or older; a grandchild who is 18 years of age or older; a grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family member exists or is available, 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 commission, or administrator acting under part II of chapter 406 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 the legally authorized person. Where there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that individual represents that she or he is not aware of any objection to the cremation of the deceased's human remains by others in the same class of the person making the representation or of any person in a higher priority class.

(40) "License" includes all authorizations required or issued under this chapter, except where expressly indicated otherwise, and shall be understood to include authorizations previously referred to as registrations or certificates of authority in chapters 470 and 497 as those chapters appeared in the 2004 edition of the Florida Statutes.

(41) "Licensee" means the person or entity holding any license or other authorization issued under this chapter, except where expressly indicated otherwise.

(42)(22) "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.

(43)(23) "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.

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

(45)(25) "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.

(46)(26) "Net assets" means the amount by which the total assets of a ~~licensee 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 ~~licensee certificateholder~~. For purposes of this definition, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earnings of the ~~licensee certificateholder~~.

~~(47)~~(27) “Net worth” means total assets minus total liabilities pursuant to generally accepted accounting principles.

(48) “Niche” means a compartment or cubicle for the memorialization or permanent placement of a container or urn containing cremated remains.

~~(49)~~(28) “Ossuary” means a receptacle used for the communal placement of cremated human remains without benefit of an urn or any other container in which cremated remains may be commingled with other cremated remains and are nonrecoverable. It may or may not include memorialization.

~~(50)~~(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.

(51) “Person” when used without qualification such as “natural” or “individual” includes both natural persons and legal entities.

(52) “Personal residence” means any residential building in which one temporarily or permanently maintains her or his abode, including, but not limited to, an apartment or a hotel, motel, nursing home, convalescent home, home for the aged, or a public or private institution.

(53) “Practice of direct disposition” means the cremation of human remains without preparation of the human remains by embalming and without any attendant services or rites such as funeral or graveside services or the making of arrangements for such final disposition.

(54) “Practice of embalming” means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(55) “Practice of funeral directing” means the performance by a licensed funeral director of any of those functions authorized by s. 497.372.

~~(56)~~(30) “Preneed contract” means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

(57) “Preneed sales agent” means any person who is licensed under this chapter to sell preneed burial or funeral service and merchandise contracts or direct disposition contracts in this state.

(58) “Principal” means and includes the sole proprietor of a sole proprietorship; all partners of a partnership; all members of a limited liability company; regarding a corporation, all directors and officers, and all stockholders controlling more than 10 percent of the voting stock; and all other persons who can exercise control over the person or entity.

(59) “Processing” means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual means.

(60) “Profession” and “occupation” are used interchangeably in this chapter. The use of the word “profession” in this chapter with respect to any activities regulated under this chapter shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(61) “Pulverization” means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.

(62) “Refrigeration facility” means a facility that is not physically connected with a funeral establishment, crematory, or direct disposal establishment, that maintains space and equipment for the storage and refrigeration of dead human bodies, and that offers its service to funeral directors and funeral establishments for a fee.

(63)(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.

(64) “Removal service” means any service that operates independently of a funeral establishment, that handles the initial removal of dead human bodies, and that offers its service to funeral establishments and direct disposal establishments for a fee.

(65) “Rules” refers to rules adopted under this chapter unless expressly indicated to the contrary.

(66)(32) “Scattering garden” means a location set aside, within a cemetery, which is used for the spreading or broadcasting of cremated remains that have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a commingled basis and that are nonrecoverable. It may or may not include memorialization.

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

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

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

(70) “Temporary container” means a receptacle for cremated remains usually made of cardboard, plastic, or similar material designated to hold the cremated remains until an urn or other permanent container is acquired.

(71) “Urn” means a receptacle designed to permanently encase cremated remains.

Section 7. Section 497.101, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 497.101, F.S., for present text.)

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, nine of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the three persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the three nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter which has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Three members of the board must be consumers who are residents of the state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the consumer members must be at least 60 years of age, and one must be licensed as a certified public accountant under chapter 473. One member of the board must be a monument dealer licensed under this chapter. One member must be the State Health Officer or her or his designee. There shall not be two or more board members who are directors, employees, partners, shareholders, or members of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument dealer, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.

(4) The Governor may suspend and the Senate may remove any board member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the Governor or Senate, as applicable, to evidence a lack of fitness to sit on the board. A board member shall be deemed to have resigned her or his board membership, and that position shall be deemed vacant, upon the failure of the member to attend three consecutive meetings of the board or at least half of the meetings of the board during any 12-month period, unless the Chief Financial Officer determines that there was good and adequate justification for the absences and that such absences are not likely to continue.

(5) A current or former board member is exempt from any civil liability for any act or omission when acting in good faith in her or his official capacity, and the Department of Legal Affairs and the Division of Risk Management shall defend such board member in any civil action against such person arising from any such act or omission.

(6) The headquarters and records of the board shall be in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. Unless otherwise provided by law, six board members shall constitute a quorum for the conduct of the board's business.

(7) A board member shall be compensated \$50 for each day the member attends an official meeting and each day the member participates at the request of the board's executive director in any other business involving the board. To the extent authorized by the s. 112.061, a board member is entitled to reimbursement for expenses incurred in connection with official duties. Out-of-state travel by board members on official business shall, in each specific instance, require the advance approval of the board's executive director in order for the travel to be eligible for reimbursement of expenses.

Section 8. Section 497.103, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 497.103, F.S., for present text.)

497.103 Rulemaking authority of board and department.—

(1) BOARD AUTHORITY.—Subject to the provisions of this section, all authority provided under this chapter, including rulemaking authority, relating to the following matters, is vested solely in the board, and the board shall be deemed the licensing authority as to such matters:

(a) Authority to determine any and all criteria for licensure under this chapter as to which this chapter vests discretion in the licensing authority.

(b) Authority to specify who may conduct practical examination under this chapter.

(c) Authority to specify the content of examinations for licensure, both written and practical, and the relative weighting of areas examined, and grading criteria, and determination of what constitutes a passing grade.

(d) Authority to strike any examination question determined before or after an examination to be inappropriate for any reason.

(e) Authority to specify which national examinations or parts thereof shall or shall not be required or accepted regarding Florida licensure.

(f) Authority to determine time limits and substantive requirements regarding reexamination of applicants who fail any portion of a licensing examination.

(g) Authority to determine substantive requirements and conditions relating to apprenticeships and internships, and temporary licensure pending examination.

(h) Authority to determine substantive requirements for licensure by endorsement.

(i) Authority to specify substantive requirements for reactivation of inactive licenses, such as, but not limited to, requirements for examination or education prior to reactivation.

(j) Authority to approve or deny applications for initial licensure of all types under this chapter and to specify conditions for probationary initial licensure.

(k) Authority to renew or decline to renew licenses issued under this chapter.

(l) Authority to approve or deny applications for change of control or location of any licensee.

(m) Authority to determine standards of construction applicable to facilities utilized by licensees under this chapter.

(n) Authority to specify standards of operation applicable to licensees, including required equipment, supplies, facilities, and professional techniques and practices utilized by licensees.

(o) Authority to specify required access to be provided by cemeteries to monument establishments licensed under this chapter.

(p) Authority to determine required criteria for and provisions in agreements among licensees regarding the shared use of professional facilities, such as, but not limited to, embalming preparation rooms.

(q) Authority to specify the amount and content of continuing education required of licensees and the acceptability of continuing education by distance learning.

(r) Authority to approve or disapprove providers of continuing education.

(s) Authority to specify the amount and content of safety education courses required by unlicensed staff of licensees.

(t) Authority regarding establishing requirements to maintain complaint logs and complaint records.

(u) Authority to approve or disapprove contract forms, trust instruments, and all other forms required to be filed by licensees for approval under this chapter.

(v) Authority to determine through probable cause panels of the board whether proposed administrative prosecutions of licensees shall go forward.

(w) Authority to establish disciplinary guidelines and to identify violations or categories of violation for which the department may issue citations under this chapter.

(x) Authority to determine whether any licensee shall have her or his license revoked or suspended or be fined or otherwise sanctioned and to take final action in that regard.

(y) Authority to determine the validity of and amount due on claims against the Preneed Funeral Contract Consumer Protection Trust Fund.

(z) Authority to approve or deny applications to utilize any alternative to trust deposits concerning preneed sales.

(aa) Authority to determine the method by which wholesale cost is determined for purposes of determining the amount of the preneed trust deposits required under this chapter.

(bb) Authority to determine the amount of any fee payable under this chapter as to which this chapter provides discretion in setting the amount of the fee.

(cc) Authority to direct the initiation of receivership or other delinquency proceedings against any licensee under this chapter.

(2) DEPARTMENT AUTHORITY.—All authority provided by this chapter and not expressly vested in the board by subsection (1) is vested in the department, and the department shall be deemed to be the licensing authority as to such matters. Without limiting the generality of the foregoing vesting of authority in the department, the authority provided by this chapter which is vested solely in the department includes:

(a) Authority relating to the conduct of investigations, financial examinations, and inspections, including, but not limited to:

1. Determination of applicants, licensees, and other persons to be investigated, subjected to financial examination, or inspected.

2. The frequency, duration, and extent of investigations, financial examinations, and inspections.

3. Techniques and procedures utilized in, and staff assigned to, investigations, financial examinations, and inspections.

4. Establishment of requirements binding upon licensees and other persons regarding records and information to be produced or provided, and access to facilities and staff, in regard to investigations, financial examinations, and inspections.

5. Preparation and filing of reports concerning investigations, financial examinations, and inspections.

(b) Authority to receive fees and other amounts payable under this chapter to the licensing authority or to the Regulatory Trust Fund or Preneed Funeral Contract Consumer Protection Trust Fund from licensees, applicants, and others and to process and deposit such receipts in accordance with this chapter and the laws of this state.

(c) Authority to prescribe forms and procedures to be used by applicants or licensees relating to any and all applications, filings, or reports of any type that are made with or submitted to the licensing authority by any person or entity pursuant to this chapter, including, but not limited to, applications for licenses of any type under this chapter, applications for renewal of license, applications for approval of forms, applications for approval of change of control, periodic reports of operations, including format and reporting period for financial statements, and procedures and provisions relating to electronic submissions.

(d) Authority to determine any application or other filing made under this chapter to be incomplete and not subject to further processing until made complete.

(e) Authority to initiate and prosecute administrative and judicial action, including taking final action, regarding activity by persons and entities not licensed under this chapter engaging in activity the department deems to be in violation of this chapter.

(f) Authority regarding procedures and requirements relating to security of examinations for licensure.

(g) Authority to determine the systems, methods, means, facilities, equipment, procedures, budgets, department staff, and other persons and entities, whether inside or outside the department, to be used in relation to recording, tracking, and processing licensing applications, the administrative issuance and denial of licenses, license renewals, disciplinary actions, continuing education, filings made or required under this chapter, and all other administrative matters relating to the implementation and enforcement of this chapter.

(h) Authority to determine the number, hiring, assignment, and discharge of department staff in relation to implementation of this chapter.

(i) Authority to determine whether any contract or agreement authorized to be entered into by this chapter, on any subject matter, shall be entered

into and sole authority to enter into any such other contract or agreement regarding the implementation of this chapter.

(j) Subject to the requirements for probable cause proceedings before a probable cause panel of the board and subject to the sole authority of the board to take final action imposing disciplinary sanctions, all authority to draft, execute, file, serve, and prosecute administrative complaints and other action against any licensee. However, the Chief Financial Officer may in particular instances decline to prosecute or to continue to prosecute, in which case the board may request the Department of Legal Affairs to conduct or continue to conduct the prosecution and the Department of Legal Affairs shall be authorized at its discretion to do so.

(k) Authority to seek administrative or judicial enforcement of orders of the board or department or of statutory predecessors to the board or department. However, the Chief Financial Officer may in particular instances decline to seek enforcement or to continue to seek enforcement of any order, in which case the board may request the Department of Legal Affairs to conduct or continue to conduct such enforcement action and the Department of Legal Affairs shall be authorized at its discretion to do so.

(l) The department shall represent the board in any appeal of a board final order. However, the Chief Financial Officer may in particular instances decline to represent the board, in which case the board may request the Department of Legal Affairs to represent the board in the matter and the Department of Legal Affairs shall be authorized at its discretion to do so.

(m) Authority to take emergency action against any licensee under this chapter without prior consultation with the board.

(n) Authority to develop and submit to the Legislature from time to time budgets for the implementation of this chapter.

(o) The department shall have the authority and duty to provide necessary administrative support to the board as reasonably required to allow the board to discharge its responsibilities under this chapter.

(3) RECOMMENDATIONS BY DEPARTMENT STAFF.—The board shall carefully review and give substantial weight to any recommendation of department staff concerning any matter coming before the board and upon request of department staff shall state with specificity on the record at the board meeting where the rejection occurs the reason or reasons why the board has rejected a particular recommendation of the department staff.

(4) RECOMMENDATIONS BY THE CHIEF FINANCIAL OFFICER.—

(a) As to any matter falling within the board's authority, if the Chief Financial Officer submits or causes to be submitted to the board at any board meeting any recommendation signed by the Chief Financial Officer, the Chief Financial Officer's recommendation shall be adopted by the board and the board shall act and be deemed to act in accordance with such recommendation, unless at such meeting 70 percent of the board members present and voting vote to reject the Chief Financial Officer's recommenda-

tion. Any fractional vote resulting from application of the 70-percent requirement shall be rounded upward and counted as one additional vote in determining how many votes are required to reject the Chief Financial Officer's recommendation. The Chief Financial Officer's recommendation to the board shall be in regard to one or more of the following matters:

1. Protecting the public from any significant and discernible harm or damage.

2. Preventing the unreasonable restriction of competition or the availability of professional services in the state or in a significant part of the state.

3. Preventing the unnecessary increase in cost of professional services without a corresponding or equivalent public benefit.

(b) If the recommendation of department staff to the board as to any matter shall be rejected or otherwise overridden by the board to any degree, the board's action in the matter shall not be final until 14 days have elapsed after the board rejected or overrode the recommendation of department staff, and if during such 14-day period the Chief Financial Officer submits a recommendation concerning the matter to the board pursuant to paragraph (a), until the effect of such recommendation is determined in accordance with paragraph (a). The running of the period under s. 120.60 for approving or denying a completed application shall be tolled during such 14-day period.

(c) If the Chief Financial Officer makes any recommendation pursuant to this subsection concerning approval or denial of an application for license or otherwise under this chapter, the running of the period under s. 120.60 for approving or denying a completed application shall be tolled from the date of the Chief Financial Officer's recommendation is made for the shorter of 90 days or until the effect of such recommendation is determined in accordance with paragraph (a).

(d) If any recommendation by the Chief Financial Officer made under this subsection would require initiation of rulemaking proceedings under chapter 120 as a prerequisite to implementation of such recommendation by the board and such recommendation becomes binding on the board pursuant to this subsection, the board shall promptly and in good faith initiate and conduct such rulemaking proceedings or may in regard to the promulgation of the specific rule in issue delegate to the department the board's rulemaking authority under this chapter, in which case the department shall be authorized to adopt the rule.

(5) RULEMAKING.—

(a) The board is authorized to adopt all rules authorized under this chapter regarding matters under the board's authority.

(b) The department is authorized to adopt all rules authorized under this chapter regarding matters which fall under the department's authority or as to which the board has delegated rulemaking authority to the department.

(c) Neither the board nor the department shall initiate rulemaking under their respective rulemaking authority under this chapter unless they have provided each other at least 60 days' advance notice of their intent to initiate rulemaking proceedings and during that 60-day period have conferred and consulted with each other concerning the purpose and intent of the rulemaking. However, the 60-day advance notice requirement does not apply to the promulgation of emergency rules.

(6) FINAL ORDERS.—

(a) The board shall have authority to take final action and issue final orders as to all matters under its authority. The chairperson of the board shall be authorized to sign orders of the board and may delegate such authority to the executive director of the board.

(b) The department shall have authority to take final action and issue final orders as to all matters under its authority.

(7) ACTIONS BY BOARD AND DEPARTMENT.—

(a) The department and the board shall each have standing to institute judicial or other proceedings against the other for the enforcement of this section.

(b) The board shall have standing as a party litigant to challenge any rule proposed or adopted by the department under authority of this chapter, upon any grounds enumerated in s. 120.52(8).

(c) The board shall be represented by the Department of Legal Affairs in any litigation by the board against the department authorized by this subsection, and the Department of Financial Services shall provide reasonable funds for the conduct of such litigation by the board.

(d) No applicant, licensee, or person other than the board shall have standing in any proceeding under chapter 120 to assert that any rule adopted by the department under asserted authority of this chapter is invalid because it relates to a matter under the board's authority.

Section 9. Section 497.107, Florida Statutes, is amended to read:

497.107 Headquarters.—The Board of Funeral, ~~and Cemetery, and Consumer Services~~ may be contacted through division at the headquarters of the department in the City of Tallahassee.

Section 10. Section 497.525, Florida Statutes, is renumbered as section 497.140, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.525, F.S., for present text.)

497.140 Fees.—

(1)(a) As to any fee payable under this chapter as to which discretion is provided to the licensing authority to specify the amount of the fee subject

to a cap stated in this chapter, the board shall from time to time as requested by the department determine by rule the amount of such fee, based upon department-prepared estimates of the revenue required to implement all provisions of this chapter.

(b) It is the legislative intent that the costs of regulation under this chapter be provided for by fees collected under this chapter. The board shall ensure that fees are adequate to cover all anticipated costs of implementation of this chapter. The department shall at least every other year provide the board with estimates as to projected costs in implementing this chapter and projected fee collections under this chapter for the following 2 years, information as to balances of regulatory trusts from fees collected, other information which the department deems material to the setting of fees by the board at proper levels, and a department recommendation as to action, if any, regarding changing fee levels. The board shall review such information provided by the department and make such changes in fees, up or down, as the board determines appropriate. If sufficient action is not taken by the board within 1 year after notification by the department that fees are projected to be inadequate, the department shall set fees on behalf of the board to cover anticipated costs.

(c) The board may from time to time by rule assess and collect a one-time fee from each active and each voluntary inactive licensee under this chapter in an amount necessary to correct an inadequacy of fees received to implement regulation required by this chapter, provided that no more than one such assessment may be made in any 4-year period without specific legislative authorization.

(2) All moneys collected under this chapter shall be paid into the Regulatory Trust Fund, except as otherwise expressly provided in this chapter, for the purpose of providing for the payment of all expenses in respect to the administration of this chapter.

(3) The department, in consultation with the board, shall from time to time recommended fee and fee cap increases to the Legislature as deemed advisable.

(4) If a duplicate license is required or requested by the licensee, the department may charge a fee as determined by rule not to exceed \$25 before issuance of the duplicate license.

(5) The department shall charge a fee not to exceed \$25 for the certification of a public record. The fee shall be determined by rule of the department. The department shall assess a fee for duplication of a public record as provided in s. 119.07(1)(a) and (b).

(6)(a) The department shall impose, upon initial licensure and each renewal thereof, a special unlicensed activity fee of \$5 per licensee, in addition to all other fees provided for in this chapter. Such fee shall be used by the department to fund efforts to identify and combat unlicensed activity which violates this chapter. Such fee shall be in addition to all other fees collected from each licensee and shall be deposited in a separate account of the Regulatory Trust Fund; however, the department is not limited to the funds

in such an account for combating improper unlicensed activity in violation of this chapter.

(b) The board may with the concurrence of the department, if that portion of the Regulatory Trust Fund held by the department for implementation of this chapter is not in deficit and has a reasonable cash balance, earmark \$5 of each initial licensure and each license renewal fee collected under this chapter and direct the deposit of each such amount into the separate account required in paragraph (a), to be utilized by the department for the purposes of combating unlicensed practice in violation of this chapter. Such earmarked amount may be, as the board directs, in lieu of or in addition to the special unlicensed activity fee imposed under paragraph (a). The earmarking may be imposed and thereafter eliminated from time to time according to the adequacy of trust funds held for implementation of this chapter.

(c) The department shall confer and consult with the board regarding enforcement methods and strategies regarding the use of such unlicensed activity fee funds.

(7) Any fee required to be paid under this chapter, which was set at a fixed amount as the 2004 edition of the Florida Statutes, but as to which this chapter now provides to be a fee as determined by board rule subject to a cap specified in this chapter, shall remain at the amount as set in the 2004 edition of the Florida Statutes unless and until the board shall change such fee by rule.

Section 11. Section 497.141, Florida Statutes, is created to read:

497.141 Licensing; general application procedures.—

(1) The provisions of this section shall supplement and implement all provisions of this chapter relating to application for licensure.

(2) Any person desiring to be licensed shall apply to the licensing authority in writing using such forms and procedures as may be prescribed by rule. The application for licensure shall include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the forms and form contents to be submitted for initial licensure and licensure renewal application. Such forms and the information and materials required by such forms may include, as appropriate, demographics, education, work history, personal background, criminal history, finances, business information, signature notarization, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, business plans, character references, and ongoing education monitoring. Such forms and the information and materials required by such forms may also include, to the extent such information or materials are not already in the possession of the department or the board, records or information as to complaints, inspections, investigations, discipline, bonding, and photographs. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application

and the final grant or denial of the license and which might affect the decision of the department or the board.

(3) The department shall conduct such investigation of the applicant and the application as the department deems necessary or advisable to establish the correctness of matters stated in the application and to determine whether the applicable licensing criteria are met and shall make recommendations in those regards to the board.

(4) Before the issuance of any license, the department shall collect such initial fee as specified by this chapter or, where authorized, by rule of the board. Upon receipt of a completed application and the appropriate fee, and certification by the board that the applicant meets the applicable requirements of law and rules, the department shall issue the license applied for. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

(5) The board may refuse to rule on an initial application for licensure by any applicant who is under investigation or prosecution in any jurisdiction for an action which there is reasonable cause to believe would constitute a violation of this chapter if committed in this state, until such time as such investigation or prosecution is completed and the results of the investigation or prosecution are reviewed by the board.

(6) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance or denial of a license under this chapter, the administrative law judge shall submit her or his recommended order to the board, which shall thereupon issue a final order. The applicant for a license may appeal the final order in accordance with the provisions of chapter 120.

(7) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(8) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each applicant for licensure is required to provide her or his social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement and use by the department and as otherwise provided by law.

(9) Whenever any provision of this chapter or rules adopted under this chapter require student completion of a specific number of clock hours of classroom instruction for initial licensure purposes, there shall be established by rule the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies

shall be certified by the educational institution. The provisions of this subsection shall not apply if federal licensure standards are more restrictive or stringent than the standards prescribed in this chapter.

(10) No license issued under this chapter shall be assignable or transferable except to the extent specifically provided by this chapter.

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

Section 12. Section 497.142, Florida Statutes, is created to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(1) In any instance that this chapter requires submission of fingerprints in connection with an application for license, the provisions of this section shall apply.

(2) The fingerprints must be taken by a law enforcement agency or other agency or entity approved by the department and in such a way as to allow their use to obtain a criminal history check through the Department of Law Enforcement.

(3) The department shall submit the fingerprints to or cause them to be submitted to the Department of Law Enforcement for the purpose of ascertaining whether the person fingerprinted has a criminal history in any state or before the Federal Government and, if so, the nature of the criminal history.

(4) The Department of Law Enforcement may accept fingerprints of any applicant under this chapter, any principal of any such applicant, and any other person who is examined or investigated or who is subject to examination or investigation under the provisions of this chapter.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department and the board for the purpose of the issuance, denial, suspension, or revocation of any license or other application under this chapter.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or board or any applicant or licensee regulated by the department or board who is required to demonstrate that she or he has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department, submit the fingerprints to the Federal Bureau of Investigation to check federal criminal history records.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and board for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) For the purposes of criminal background checks, applicants and principals of applicants for any approval or license under this chapter may be required to disclose whether they have ever had their name legally changed and any prior name or names they have used.

(10) If any applicant under this chapter has been, within the 10 years preceding the application under this chapter, convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction, the application shall not be deemed complete until such time as the applicant provides such certified true copies of the court records evidencing the conviction, finding, or plea, as the licensing authority may by rule require.

Section 13. Section 497.143, Florida Statutes, is created to read:

497.143 Licensing; limited licenses for retired professionals.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, rules may be adopted to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the department an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of her or his profession, the application and all licensure fees shall be waived.

(3) Limited licensure may be denied to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline under this chapter.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which

meet the requirements of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. Rules may be adopted to define underserved and critical need areas and to ensure implementation of this section.

(5) The department may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter under which the limited license is issued which are not in conflict with this section.

Section 14. Section 497.144, Florida Statutes, is created to read:

497.144 Licensing; examinations, general provisions.—

(1) The department shall, with the approval of the board, provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations and may use professional testing services for the development, preparation, and evaluation of examinations, when such services are available. The department may contract with the Department of Business and Professional Regulation for any examination services.

(2) After an examination has been administered, the board may reject any question that does not reliably measure the required competency.

(3) For each examination there shall by rule be specified the general areas of competency to be covered by the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps shall apply. This subsection does not apply to national examinations approved and administered pursuant to subsection (5).

(4) If a practical examination is utilized, rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. Procedures for practical examinations shall be specified by rule. Board members may serve as examiners at a practical examination with the consent of the board.

(5) The board may approve the use of any national examination. Providers of examinations may be either profit or nonprofit entities. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the department or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination. The depart-

ment may delegate to the board the duty to provide and administer the examination.

(6) Rules may be adopted establishing procedures and requirements for the security and monitoring of examinations. In order to maintain the security of examinations, the department may seek fines and injunctive relief in the courts of this state against an examinee who violates applicable security rules. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce the security of examinations.

(7) The department may, with the approval of the board and for a fee, share with any other state's licensing authority an examination developed by or for the board unless prohibited by a contract entered into by the department for development or purchase of the examination. The department shall establish guidelines that ensure security of a shared examination and shall require that any other state's licensing authority comply with those guidelines.

(8) If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which she or he failed to achieve a passing grade, if she or he successfully passes that portion within a reasonable time of her or his passing the other portion. Rules may be adopted establishing procedures and reasonable times for retaking failed portions of any examination.

(9) Except for national examinations approved and administered pursuant to this section, procedures shall be established by rule for applicants who have taken and failed a written examination to review their examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of her or his examination grades. Rules may be adopted establishing procedures for such reviews.

(10) For each examination administered under this chapter, an accurate record of each applicant's examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to this section.

(11) In addition to meeting any other requirements for licensure by examination or by endorsement, an applicant may be required by the board to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated under this chapter.

(12) Examinations and reexaminations for any license under this chapter shall be administered in the English language unless 15 or more applicants request that the examination or reexamination be administered in their

native language. Such requests must be received at least 6 months prior to the examination or reexamination. In the event that such examination or reexamination is administered in a foreign language, the full cost to the board and department of preparing and administering the examination shall be borne by the applicants. Where the taking of a national examination is required by this chapter or rule adopted under this chapter, the examination may not be required to be given in any language other than English unless the national examination is available in the requested language. Rules may be adopted establishing procedures for requesting examinations in languages other than English and establishing the costs related to such examinations.

(13) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

Section 15. Section 497.145, Florida Statutes, is created to read:

497.145 Licensing; use of professional testing services.—Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board.

Section 16. Section 497.146, Florida Statutes, is created to read:

497.146 Licensing; address of record; changes; licensee responsibility.—Each licensee under this chapter is responsible for notifying the department in writing of the licensee's current business and residence mailing address and the street address of the licensee's primary place of practice and shall notify the department in writing within 30 days after any change in such information, in accordance with procedures and forms prescribed by rule. Notwithstanding any other provision of law, service by regular mail to a licensee's last known address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department, except when other service is expressly required by this chapter. Rules may be adopted establishing forms and procedures for licensees to provide the notice required by this section.

Section 17. Section 497.147, Florida Statutes, is created to read:

497.147 Continuing education; general provisions.—

(1) As to any licensure under this chapter that requires prelicensure training or continuing education for renewal of a license, no such training or continuing education shall be accepted in satisfaction of the requirements of this chapter, unless approved by the board.

(2) There shall be adopted rules by the board to establish the criteria for such training or continuing education courses.

(3) The licensing authority may provide by rule that distance learning may be used to satisfy continuing education requirements and may specify conditions applicable to such distance learning for credit under this chapter.

(4) The licensing authority is authorized to adopt rules to implement requirements regarding prelicensure training and continuing education requirements under this chapter. Persons providing prelicensure training or continuing education for credit against the requirements of this chapter are hereinafter referred to as "providers."

(a) The rules may establish criteria for obtaining approval from the licensing authority as a provider, and for periodic renewal of such approval, and may establish procedures and forms for use in applying to obtain and renew such approval from the licensing authority.

(b) The rules may establish conditions and requirements applicable to providers, including, but not limited to:

1. Periodic submission by the provider to the licensing authority of information and documentation as to course materials, class locations and schedules, names of scheduled instructors, resumes of instructors, and descriptions of facilities.

2. Requirements for periodic reporting by the provider to the licensing authority of information concerning enrollment, attendance, and status of persons enrolled for credit under this chapter.

3. Requirements for inspection by the licensing authority of records of the provider related to training or continuing education of applicants and licensees under this chapter.

4. Requirements for announced or unannounced attendance by department staff or board members at scheduled classes or training, for the purpose of ensuring that the training meets the requirements of this chapter and rules adopted under this chapter.

5. Requirements for written contracts or agreements required to be entered into by providers with the licensing authority as a prerequisite to acceptance of training or continuing education provided by such provider for credit under this chapter.

6. Requirements regarding retention of records by the provider regarding training or continuing education for which credit has been given to any licensee under this chapter.

7. Procedures and criteria for terminating the status of any provider as an approved source of training or continuing education for credit under this chapter.

8. Requirements for fees to accompany applications from providers for approval or renewal of approval as a provider, not to exceed \$250 per year. The rules may exempt nonprofit entities from such fees.

(c) The rules may list all approved providers and identify the training or continuing education each provider is approved to provide for credit under this chapter.

(d) Such rules may establish procedures and forms for use by applicants, licensees, and providers in reporting completed training and continuing education to the licensing authority.

(5) The board may by rule provide up to 5 hours of continuing education credit per continuing education reporting period for licensees attending board meetings or selected types or portions of board meetings, as specified by such rules. The rules may limit the number of times such credit may be utilized by a licensee. The rules may include provisions as to the minimum amount of time that must be spent in the board meeting room viewing proceedings, which may be more than 5 hours of attendance, requirements for advance notice by licensees to department staff of proposed attendance, requirements to sign in and out of the meeting room on lists maintained at the meeting site by department staff, forms that must be completed by the licensee to obtain such credit, and such other requirements deemed by the board to be advisable or necessary to prevent abuse of such rules and to ensure that useful information is obtained by licensees as a result of attendance. Procedural requirements of such rules requiring action by the department shall be subject to approval by the department prior to promulgation.

Section 18. Section 497.148, Florida Statutes, is created to read:

497.148 Continuing education; monitoring of compliance.—The department shall establish a system to monitor licensee compliance with applicable trainings and continuing education requirements and to determine each licensee's continuing education status. The department is authorized to provide for a phase-in of the compliance monitoring system. The compliance monitoring system may use staff and facilities of the department, or the department may enter into a contract for compliance monitoring services, upon such terms and conditions as the department deems advisable. Such contract may be with another government agency or a private business.

Section 19. Section 497.149, Florida Statutes, is created to read:

497.149 Investigations, hearings, and inspections.—

(1) INVESTIGATIONS.—Investigations shall be conducted by the department. The following provisions shall apply concerning investigations:

(a) There shall be investigated all complaints directly or indirectly alleging violation of any provision of this chapter or rules adopted pursuant to this chapter. Investigations may be conducted regarding any applicant for licensure under this chapter to ensure that the applicant satisfies the requirements for licensure and to ensure the accuracy and truthfulness of any matters represented to the department or the board in connection with the application. There may be such investigations of persons and entities not licensed under this chapter to determine if they are engaging in activities for which a license under this chapter is required, or are otherwise in violation of this chapter, as is deemed necessary to ensure compliance with this

chapter. There may be conducted such other investigations, in addition to investigations expressly authorized or required by this chapter, as are deemed necessary or advisable by the department to determine whether any person is, has, or may violate any provision of this chapter or to secure information useful in the lawful administration of this chapter.

(b) Every person and entity being investigated, and its officers, attorneys, unless it violates the attorney-client privilege, employees, agents, and representatives, shall make freely available to the department the accounts, records, documents, files, information, assets, business premises, and matters in their possession or control relating to the subject of the investigation. If records relating to a licensee or to activities regulated by this chapter are maintained by an agent on premises owned or operated by a third party, the agent and the third party shall provide the department access to the records.

(c) If the department finds any accounts or records of a licensee required by this chapter to be created and maintained by the licensee to be inadequate or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being investigated, provided the person has failed to maintain, complete, or correct such records or accounting after the department has given her or him notice and a reasonable opportunity to do so.

(d) In connection with any investigation under this chapter, the department may administer oaths, examine witnesses, and receive oral and documentary evidence, require the licensee to answer under oath interrogatories propounded by the department, issue a subpoena for testimony or the production of records to any person believed to have information or materials relevant to the subject matter of the investigation, and compel such attendance and testimony and the production of such materials for inspection and copying. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which she or he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, may, on the application of the department, issue an order requiring such person to comply with the subpoena and to testify. Subpoenas may be served, and proof of such service made, by any employee of the department.

(e) The department may retain and pay such experts on a case-by-case basis, as it deems necessary for the investigation and prosecution, if any, of any alleged violation of this chapter.

(2) INSPECTIONS.—The department may conduct such inspections of licensee's premises and records during normal business hours, at such intervals, as the department deems necessary to ensure compliance with this chapter.

(a) Inspections may be announced or unannounced as the department determines appropriate on a case-by-case basis.

(b) Every licensee being inspected, and its employees, officers, attorneys, unless it violates the attorney-client privilege, employees, agents, and repre-

sentatives, shall freely and immediately make available to the department for inspection during normal business hours the licensee's entire premises and the records and information in their possession or control relating to the inspection.

(c) The department may adopt rules regarding inspection procedures.

(3) HEARINGS.—The department may hold public hearings to secure information useful in the lawful administration of this chapter. The department may require the attendance of witnesses by subpoena and the giving of testimony under oath.

(4) RULES.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for the implementation of this section.

Section 20. Section 497.150, Florida Statutes, is created to read:

497.150 Compliance examinations of existing licensees.—

(1) There may be examined by the department the facilities, records, operations, trust accounts, and financial affairs of licensees under this chapter, as often as may be deemed necessary by the department, to ensure compliance with the provisions of this chapter and rules adopted under this chapter. The provisions of this section shall apply to examinations conducted by the department under this chapter.

(2) The examination may, as deemed necessary by the department, include examination of the affairs, transactions, accounts, and records of the licensee's agents and controlling or controlled person, relating directly or indirectly to the licensee.

(3) The examination may be conducted at the offices, wherever located, of the person being examined or investigated and at such other places as may be required for determination of matters under examination.

(4) Every person being examined, and its officers, attorneys, unless it violates the attorney-client privilege, employees, agents, and representatives, shall make freely available the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination.

(5) The licensee shall provide for the department examiner's use during the examination such suitable private office work location and facilities, including desk, chair, and adequate lighting and ventilation, as are reasonably available on the licensee's premises.

(6) If the department finds any accounts or records required to be made or maintained by a licensee under this chapter to be inadequate or inadequately kept or posted, it may be employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined, provided the person has failed to maintain, complete, or correct such records or accounting after the department has given her or him notice and a reasonable opportunity to do so.

(7) In connection with any examination under this chapter, the department may administer oaths, examine witnesses, and receive oral and documentary evidence, require the licensee to answer under oath interrogatories propounded by the department, issue a subpoena for testimony or the production of records to any person believed to have information or materials relevant to the subject matter of the examination, and compel such attendance and testimony and the production of such materials for inspection and copying. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which she or he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, may, on the application of the department, issue an order requiring such person to comply with the subpoena and to testify. Subpoenas may be served, and proof of such service made, by any employee of the department.

(8) The department shall furnish a copy of any examination report to the licensee examined within a reasonable period of time, and the licensee shall have 30 days thereafter in which to prepare and provide the department a response to the examination report. No examination report shall be filed by the department until such 30-day period has elapsed. If the licensee provides a written response to the department within such 30-day period, the response shall be attached to and made a part of the report as filed in the department's files.

(9) The examination report when so filed shall thereafter be admissible in evidence in any judicial or administrative action or proceeding brought by the department against the person examined, or against its officers, employees, or agents, or for the enforcement of an investigative subpoena issued by the department in any investigation of, involving, or relating to the person examined. In all other proceedings, the admissibility of the examination report is governed by the evidence code. The department or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been made, furnished, or filed in the department.

(10) The written report of each preneed examination, when completed, shall be filed in the office of the board and, when so filed, shall constitute a public record.

(11) The person or organization examined shall pay the travel expense and per diem subsistence allowance provided for state employees under s. 112.061 for out-of-state travel incurred by department representatives or examiners in connection with an examination.

(12) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for the implementation of this section.

Section 21. Section 497.151, Florida Statutes, is created to read:

497.151 Complaints; logs; procedures.—

(1) This section shall be applicable to all licensees under this chapter except preneed sales agent licensees.

(2) Licensees shall cause to be maintained on a continuing basis a log of all written complaints received by the licensee regarding any aspect of the licensee's operations. The log shall show the complainant's name, the date the complaint was received, and the complainant's address and phone number if shown in the complaint. Each written complaint received shall be entered into the complaint log within 10 days after receiving such complaint. The licensing authority may by rule establish requirements relating to complaint logs, including whether the log may be electronically maintained or must be kept in writing by pen and ink. Each licensee under this chapter shall retain in its records all written complaints received by the licensee or the licensee's staff. All complaint logs, and all written complaints and related papers, shall be retained by the licensee until the completion of the next examination by the department of the licensee, which examination covers the period the complaint was received or such other period as the licensing authority may by rule require.

(3) Rules may be adopted modifying the requirements of this section as applied to different categories of licensees under this chapter, if the board determines that the requirements of this section are impractical as to any category of licensees.

Section 22. Section 497.152, Florida Statutes, is created to read:

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

(1) GENERAL PROVISIONS.—The generality of the provisions of this subsection shall not be deemed to be limited by the provisions of any other subsection.

(a) Violating any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Committing fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Failing while holding a license under this chapter to maintain one or more of the qualifications for such license.

(d) Refusing to sell or issue a contract or provide services to any person because of the person's race, color, creed, marital status, sex, or national origin.

(2) CRIMINAL ACTIVITY.—Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession or occupation under this chapter.

(3) DISCIPLINARY ACTION BY OTHER AUTHORITIES.—Having a license or the authority to practice a profession or occupation revoked, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of any jurisdiction, including its agencies or subdivisions, for conduct that would constitute a violation of this chapter if committed in this state or upon grounds which directly relate to the ability to practice under this chapter. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the license shall be construed as action against the license.

(4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT AGENCIES.—

(a) Improperly interfering with an investigation or inspection authorized by statute or with any disciplinary proceeding.

(b) Failure to comply with a lawfully issued subpoena of the department.

(c) Refusal to produce records to the department or board in connection with any activity regulated pursuant to this chapter.

(d) Failing to report to the department any person who the licensee knows is in violation of this chapter.

(e) Knowingly concealing information relative to violations of this chapter.

(f) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, false or forged evidence, or misrepresentation or through an error of the department or board.

(g) Making or filing a report or statement to or with any government entity which the licensee knows or has reason to know to be false; or intentionally or negligently failing to file a report or record required to be filed with any government entity, or willfully impeding or obstructing another person to do so, or inducing another person to impede or obstruct such filing.

(h) Failing to perform any statutory or legal obligation placed upon a licensee.

(5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED PRACTICE.—

(a) Practicing or offering to practice beyond the scope permitted by this chapter and rules adopted under this chapter for the type of licensure held or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(b) Practicing or attempting to practice with a revoked, suspended, inactive, or delinquent license.

(c) Representing as her or his own the license of another.

(d) Aiding, assisting, procuring, employing, or advising any person or entity to practice a profession or occupation regulated by this chapter without required licensure under this chapter.

(e) Aiding, assisting, procuring, employing, or advising any person or entity to operate or in operating an establishment regulated by this chapter without the required licensure under this chapter.

(f) Delegating to any person the performance of professional activities, or contracting with any person for the performance of professional activities by such person, when the licensee knows or has reason to know the person is not qualified by training, experience, and authorization to perform such responsibilities.

(g) Using the name or title “funeral director,” “embalmer,” “direct disposer,” or other title suggesting licensure which the person using such name or title does not hold.

(h) Engaging by a direct disposer in the practice of direct burial or offering the at-need or preneed service of direct burial.

(6) EDUCATIONAL REQUIREMENTS.—

(a) Failing to comply with applicable educational course requirements pursuant to this chapter or rules adopted under this chapter regarding human immunodeficiency virus and acquired immune deficiency syndrome.

(b) Failing to timely comply with applicable continuing education requirements of this chapter.

(7) RELATIONS WITH OTHER LICENSEES.—

(a) Having been found liable in a civil proceeding for knowingly filing a false report or complaint against another licensee with the department or the board.

(b) Making any misleading statements or misrepresentations as to the financial condition of any person, or which are falsely and maliciously critical of any person for the purpose damaging that person’s business regulated under this chapter.

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

(a) Violation of any state law or rule or any municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(b) Refusing to surrender promptly the custody of a dead human body upon the express order of the person legally authorized to its custody; how-

ever, this provision shall be subject to any state or local laws or rules governing custody or transportation of dead human bodies.

(c) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person. If oral permission is granted, the licensee must obtain written permission within a reasonable time as established by rule.

(d) Embalming human remains without first having obtained written or oral permission from a legally authorized person; however, washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded. If oral permission is granted, the licensee must obtain written permission within a reasonable time as established by board rule.

(e) Failing to obtain written authorization from the family or next of kin of the deceased prior to entombment, interment, disinterment, disentombment, or disinurnment of the remains of any human being.

(9) SALES PRACTICES IN GENERAL.—

(a) Soliciting by the licensee, or by her or his agent, assistant, or employee, through the use of fraud, undue influence, intimidation, overreaching, or other means which takes advantage of a customer's ignorance or emotional vulnerability.

(b) Exercising undue influence on a client for the purpose of financial gain of the licensee or a third party in connection with any transaction regulated by this chapter.

(c) Discouraging a customer's purchase of any funeral merchandise or service which is advertised or offered for sale, with the purpose of encouraging the purchase of additional or more expensive merchandise or service, by disparaging its quality or appearance, except that true factual statements concerning features, design, or construction do not constitute disparagement; by misrepresenting its availability or any delay involved in obtaining it; or by suggesting directly or by implication that a customer's concern for price or expressed interest in inexpensive funeral merchandise or services is improper, inappropriate, or indicative of diminished respect or affection for the deceased.

(d) Misrepresenting the benefits, advantages, conditions, or terms of any contract to provide any services or merchandise regulated under this chapter.

(e) Advertising goods and services in a manner that is fraudulent, deceptive, or misleading in form or content.

(f) Directly or indirectly making any deceptive, misleading, or untrue representations, whether oral or written, or employing any trick, scheme, or artifice, in or related to the practice of a profession or occupation regulated under this chapter, including in the advertising or sale of any merchandise or services related to the practice of the profession or occupation.

(10) SPECIFIC MISREPRESENTATIONS.—

(a) Making any false or misleading statement of the legal requirement as to the necessity of any particular burial or funeral merchandise or services.

(b) Making any oral, written, or visual representations, directly or indirectly, that any funeral merchandise or service is offered for sale when such is not a bona fide offer to sell such merchandise or service.

(c) Making any misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any preneed contract or any life insurance policy pledged or assigned to secure payment for funeral or burial goods or services.

(d) Misrepresenting pertinent facts or prepaid contract provisions relating to funeral or burial merchandise or services.

(e) Misrepresenting the amount advanced on behalf of a customer for any item of service or merchandise, including, but not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates, described as cash advances, accommodations, or words of similar import on the contract, final bill, or other written evidence of agreement or obligation furnished to customers; however, nothing in this paragraph shall require disclosure of a discount or rebate which may accrue to a licensee subsequent to making a cash advance.

(f) Making any false or misleading statement or claim that natural decomposition or decay of human remains can be prevented or substantially delayed by embalming, use of a gasketed or ungasketed casket, or use of an adhesive or nonadhesive closure on an outer burial container.

(g) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of dead human bodies.

(h) Making any false or misleading statements of the legal requirement as to the conditions under which preservation of a dead human body is required or as to the necessity of a casket or outer burial container.

(11) SPECIFIC SALES PRACTICES.—

(a) Failing to furnish, for retention, to each purchaser of burial rights, burial or funeral merchandise, or burial or funeral services a written agreement, the form of which has been previously approved if and as required by this chapter, which lists in detail the items and services purchased together with the prices for the items and services purchased; the name, address, and telephone number of the licensee; the signatures of the customer and the licensee or her or his representative; and the date signed.

(b) Using any name or title in any contract regulated under this chapter which misrepresents the true nature of the contract.

(c) Selling an irrevocable preneed contract to a person who is not an applicant for or recipient of Supplemental Security Income or Aid to Families with Dependent Children or pursuant to s. 497.459(6)(a).

(d) Except as authorized in part IV of this chapter, guaranteeing the price of goods and services at a future date.

(e) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(f) When displaying any caskets for sale, failing to display the least expensive casket offered for sale or use in adult funerals in the same general manner as the funeral service industry member's other caskets are displayed.

(g) Assessing fees and costs that have not been disclosed to the customer in connection with any transaction regulated by this chapter.

(h) Failure by a cemetery licensed under this chapter to provide to any person, upon request, a copy of the cemetery bylaws.

(i) Requirements by a cemetery licensee that lot owners or current customers make unnecessary visits to the cemetery company office for the purpose of solicitation.

(12) DISCLOSURE REQUIREMENTS.—

(a) Failure to disclose, when such disclosure is desired, the components of the prices for alternatives offered by the licensee from whom disclosure is requested, such as graveside service, direct disposition, and body donation without any rites or ceremonies prior to the delivery of the body and prices of service if there are to be such after the residue has been removed following the use thereof.

(b) Failing to furnish, for retention, to anyone who inquires in person about burial rights, burial or funeral merchandise, or burial or funeral services, before any discussion of selection, a printed or typewritten list specifying the range of retail prices for such rights, merchandise, or services. At a minimum, the list shall itemize the highest and lowest priced product and service regularly offered and shall include the name, address, and telephone number of the licensee and statements that the customer may choose only the items the customer desires, that the customer will be charged for only those items selected, and that there may be other charges for other items or other services.

(c) Failing to reasonably provide by telephone, upon request, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that licensee.

(d) Failure by a funeral director to make full disclosure in the case of a funeral or direct disposition with regard to the use of funeral merchandise which is not to be disposed of with the body or failure to obtain written permission from the purchaser regarding disposition of such merchandise.

(e) Failure by any funeral director to fully disclose all of her or his available services and merchandise prior to the selection of a casket offered by a licensee. The full disclosure required shall identify what is included in the funeral or direct disposition and the prices of all services and merchandise provided by the licensee or registrant.

(f) Failing to have the price of any casket offered for sale clearly marked on or in the casket, whether the casket is displayed at a funeral establishment or at any other location, regardless of whether the licensee is in control of such location. If a licensee uses books, catalogs, brochures, or other printed display aids, the price of each casket shall be clearly marked.

(g) Failing to disclose all fees and costs the customer may incur to use the burial rights or merchandise purchased.

(13) CONTRACT OBLIGATIONS.—

(a) Failing without reasonable justification to timely honor contracts entered into by the licensee or under the licensee's license for funeral or burial merchandise or services.

(b) Failure to honor preneed contract cancellation requests and make refunds as required by the chapter.

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

(a) Failing to adopt and implement standards for the proper investigation and resolution of claims and complaints received by a licensee relating to the licensee's activities regulated by this chapter.

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

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

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

3. Attempting to settle a claim or complaint on the basis of a material document which was altered without notice to, or without the knowledge or consent of, the contract purchaser or her or his representative or legal guardian.

4. Failing within a reasonable time to affirm or deny coverage of specified services or merchandise under a contract entered into by a licensee upon written request of the contract purchaser or her or his representative or legal guardian.

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

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

(d) Failing to maintain a complete copy of every complaint received by the licensee since the date of the last examination of the licensee by the department. For purposes of this subsection, the term "complaint" means any written communication primarily expressing a grievance and which communication is from:

1. A representative or family member of a deceased person interred at the licensee's facilities or using the licensee's services, or which deceased's remains were the subject of any service provided by the licensee or licensee's business; or

2. A person, or such person's family member or representative, who inquired of the licensee or licensee's business concerning the purchase of, or who purchased or contracted to purchase, any funeral or burial merchandise or services from the licensee or licensee's business.

(15) MISCELLANEOUS FINANCIAL MATTERS.—

(a) Failing to timely pay any fee required by this chapter.

(b) Failing to timely remit as required by this chapter the required amounts to any trust fund required by this chapter.

(c) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for any business regulated under this chapter, whether such payments are made or received by the licensee, or her or his agent, assistant, or employee; however, this provision shall not prohibit the payment of commissions by a funeral director, funeral establishment, cemetery, or monument establishment to its preneed agents licensed pursuant to this chapter or to licensees under this chapter.

Section 23. Section 497.153, Florida Statutes, is created to read:

497.153 Disciplinary procedures and penalties.—

(1) JURISDICTION OF LICENSING AUTHORITY TO INVESTIGATE AND PROSECUTE.—The expiration, nonrenewal, or surrender of licensure under this chapter shall not eliminate jurisdiction in the licensing authority to investigate and prosecute for violations committed while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of any complaint.

(2) DETERMINATION OF PROBABLE CAUSE.—

(a) If the department shall determine that there is reasonable cause to believe that any licensee under this chapter is subject to disciplinary action under this chapter and is not eligible for a citation or notice of noncompliance pursuant to criteria established by the board, the department shall present the matter to a probable cause panel of the board.

(b) Prior to submitting a matter to the probable cause panel, the licensee who is the subject of the matter shall be provided by the department with a copy of any written complaint received by the department in the matter and shall be advised that she or he may, within 20 days after receipt of a copy of such complaint from the department, submit to the department a written response. Any response timely received by the department shall be provided by the department to the probable cause panel. Licensees may not appear in person or through a representative at any probable cause panel proceeding. This paragraph shall not apply to emergency action.

(3) PROBABLE CAUSE PROCEEDINGS.—

(a) The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available and willing to serve. Any probable cause panel must include a present board member. The board shall enact rules consistent with this section specifying, according to what categories of licensure are represented on a probable cause panel, what categories of licensee cases may be presented to that panel. Former board members may be from the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession.

(b) The probable cause panel may make a reasonable request to the department for additional investigative information, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days after the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination as to the existence of probable cause within 30 days after referral of the matter to the probable cause panel by the department. The Chief Financial Officer may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists.

(c) The probable cause panel may not resolve or direct resolution of a matter presented to it, by issuance of a citation or a letter of guidance or noncompliance or other informal resolution, without the concurrence of the department.

(d) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board.

(e) If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee.

(4) ACTION AFTER PROBABLE CAUSE FOUND.—

(a) Service of an administrative complaint may be in person by department staff or any person authorized to make service of process under the Florida rules of civil procedure. Service upon a licensee may in the alternative be made by certified mail, return receipt requested, to the last known address of record provided by the licensee to the department.

(b) If after service of the administrative complaint on a licensee the licensee does not dispute the facts alleged, the department shall present the matter to the board for final action.

(c) The department may at any time present to the board a proposed settlement of any matter as to which probable cause has been found. If the board accepts the proposed settlement, it shall issue its final order adopting the settlement. If the board does not accept such settlement, the prosecution of the matter shall be resumed. No settlement of any disciplinary matter as to which probable cause has been found may be entered into by the board prior to receipt of a recommended order of an administrative law judge without the department's concurrence.

(d) Hearings concerning disputes as to any fact alleged in a disciplinary action shall be held before an administrative law judge of the Division of Administrative Hearings in accordance with chapter 120. The department shall present the recommended order of the administrative law judge to the board for final action.

(e) If at any time after probable cause has been found in a matter the department shall conclude that the matter should not be further prosecuted, the department may present the matter to any probable cause panel of the board. If that probable cause panel concurs with the department, the prosecution may be terminated, without prejudice to subsequent prosecution of the same matter. If the probable cause panel does not concur with the department, the matter shall be returned to the department for continued prosecution. Upon commencement of taking of evidence in a matter before an administrative law judge, the jurisdiction of the administrative law judge may not be terminated except by order of the administrative law judge or a court of competent jurisdiction.

(f) No disciplinary matter may come before the board for final or other action, nor shall action by the board be taken as to any disciplinary matter, except upon presentation and recommendation by the department.

(5) PENALTIES.—

(a) When the board finds any person to be subject to discipline under this chapter, it may enter an order imposing one or more of the following:

1. Denial of an application for a license.
2. Issuance of a written reprimand.
3. Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
4. Restrictions on the authorized scope of practice of the licensee.
5. Requirements that the licensee complete additional education or training as specified by the board.

6. Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense; provided, a licensee may by settlement agree to a fine in excess of such \$5,000 limitation.

7. Suspension of a license. A suspension may be for such period and subject to such terms as the board shall specify in its order imposing discipline. Unless ordered otherwise by the board, during the period of suspension, the person whose license has been suspended shall continue to file all such reports, complete all continuing education, and pay all fees as required under this chapter as if the license had continued in full force. Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the suspended license shall automatically be reinstated unless the board has ordered that the licensee apply for reinstatement, and the board may deny such application if the board finds that the causes of the suspension have not been resolved or that such person is otherwise not in compliance with the requirements of the order or this chapter.

8. Revocation of licensure. The board may specify by final order on a case-by-case basis the period of time that must elapse before a revoked licensee may apply or reapply for any licensure under this chapter. The board may by order on a case-by-case basis specify that a revocation is permanent and that no future application for licensure under this chapter by the revoked person or entity shall be accepted, processed or approved. In no event shall any person or entity who has been revoked under this section subsequently be issued the same or other licensure under this chapter unless such person shall show by clear and convincing evidence that the person or entity has been rehabilitated and otherwise qualifies for the licensure applied for.

(b) In addition to any fine and other sanction imposed, the board may order the payment by the licensee of the reasonable costs of the department and the board associated with investigation and prosecution the matter, and may order the licensee to make restitution as directed by board order to persons harmed by the violation.

(c) The failure of a licensee to timely comply with a final order of the board imposing discipline shall be grounds for emergency suspension of all

licensure held by the licensee under this chapter; provided, the department shall give written notice to such licensee, at least 7 days before such emergency suspension, of the department's intent to enter an emergency order of suspension and the ground therefore, and such emergency suspension shall not occur if during the 7-day period the licensee shall provide the department with evidence satisfactory to the department that the licensee was in compliance or has come into compliance with the disciplinary order. Any emergency suspension imposed shall be effective when served, and shall terminate upon notice to the licensee by the department that the department has received evidence satisfactory to the department that the licensee has come into compliance with the board's order, which notice the department shall promptly provide to the licensee upon receipt of such evidence. Notwithstanding the licensee's correction of any noncompliance with a board order, such licensee shall be liable for additional disciplinary action for failure to timely comply with an order of the board.

(d) Any order imposing any penalty pursuant to this section shall recite the grounds upon which the penalty is based.

(6) PROTECTION OF CUSTOMERS OF DISCIPLINED LICENSEES.—In imposing any discipline under this section the board may also impose by its order such restrictions, conditions and requirements on the licensee and the licensee's assets and the assets of any trust under this chapter utilized by the licensee, as are reasonably necessary for the protection of persons to whom the disciplined licensee is obligated for the future performance or delivery of funeral or burial merchandise or services. The board shall have continuing jurisdiction over revoked persons and entities and their assets and related trusts under this chapter, for the purpose of and to the extent necessary for the protection of persons to whom the disciplined licensee is obligated for the future performance or delivery of funeral or burial merchandise or services, and may issue such subsequent and additional orders as from time to time the board deems necessary or advisable for such purposes. The courts of this state shall have jurisdiction to enforce the reasonable orders of the board issued for such purposes.

(7) LIABILITY FOR AGENTS AND EMPLOYEES.—For purposes of this section, the acts or omissions of any person employed by or under contract to the licensee shall be treated as acts or omissions of the licensee. However, the board may determine that disciplinary action may be more appropriately taken against an individual licensed preneed agent or licensed branch rather than taking action against the sponsoring preneed licensee.

(8) PUBLICATION OF DISCIPLINARY ACTION.—The department may cause notice of any disciplinary action of the board to be published in one or more newspapers of general circulation published in this state.

(9) DETERMINATIONS NOT SUBJECT TO CHAPTER 120.—The following determinations shall not entitle any person to proceedings under chapter 120:

(a) A determination by the department to exercise its authority under this chapter to investigate, financially examine, or inspect any person or entity; or a determination by the department concerning how to conduct

such investigation, financial examination, or inspection; or a determination by the department concerning the content of any report of investigation, financial examination, or inspection.

(b) A determination by the department that there is reasonable cause to believe that a licensee under this chapter is subject to disciplinary action under this chapter and that the matter should be presented to a probable cause panel of the board, or that the licensee is not eligible for a citation pursuant to criteria established by the board.

(c) A determination by a probable cause panel of the board that probable cause does or does not exist, or a determination by the department under paragraph (3)(b).

(d) A determination by the department not to offer any settlement to a licensee concerning any disciplinary matter.

Section 24. Section 497.133, Florida Statutes, is renumbered as section 497.154, Florida Statutes, to read:

497.154 ~~497.133~~ Disciplinary guidelines.—

(1) The board shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board pursuant to this chapter, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth in this section to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The rules provided for in this section shall be adopted ~~promulgated~~ within 6 months after the enactment of the board.

(6) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 25. Section 497.121, Florida Statutes, is renumbered as section 497.155, Florida Statutes, and amended to read:

~~497.155~~ ~~497.121~~ Disciplinary citations and minor violations ~~Authority to issue citations.~~—

(1) CITATIONS.—

(a) Notwithstanding the provisions of s. ~~497.153~~ ~~497.131~~, the board shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedures under s. ~~497.153~~ ~~497.131~~. If the subject disputes the matter in the citation, the procedures set forth in s. ~~497.153~~ ~~497.131~~ must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the board and shall constitute discipline. The penalty shall be a fine or other conditions as established by rule.

~~(b)(2)~~ The board shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare. Citations shall not be utilized if there was any significant consumer harm resulting from the violation.

~~(c)(3)~~ The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board rule, as part of the penalty levied pursuant to the citation.

~~(d)(4)~~ A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

~~(e)(5)~~ Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(2) MINOR VIOLATIONS.—

(a) The board may by rule specify violations of this chapter, and criteria for use by the department in identifying violations of this chapter, which are minor violations and which, if promptly corrected by the licensee upon notice by the department during investigation, may, with the concurrence of the department, result in closure of the investigation in the matter without further action by the department or the board.

(b) The rules may establish limits as to the number of times in total, or per period of time, that this subsection may be used in regard to any one licensee.

(c) The rules may establish limits or prohibitions on the use of this subsection where the violation relates to a consumer complaint received by the department concerning the licensee, and the complaint has not been resolved.

(d) There may by rule be specified notices of noncompliance and other forms and procedures for use in implementation of this subsection.

Section 26. Section 497.156, Florida Statutes, is created to read:

497.156 Emergency action against licensees.—In addition to or in lieu of other actions authorized under this chapter for the enforcement of this chapter, the department may issue emergency orders under s. 120.60(6) suspending or restricting a license or ordering a licensee to cease or desist from specified conduct, or taking other action deemed necessary in the circumstances, but shall thereafter promptly present the matter to a probable cause panel of the board. Emergency orders shall be effective when issued, shall be appealable as provided by law, and shall be enforceable in the courts of this state.

Section 27. Section 497.157, Florida Statutes, is created to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(1) No person or entity shall engage in any activity for which a license is required under this chapter, without holding such licensure in good standing.

(2)(a) When the department has reasonable cause to believe that any person or entity not licensed under this chapter has violated any provision of this chapter or any rule adopted under this chapter, the department may issue an administrative complaint to such person or entity, alleging violation of this chapter and providing notice therein of intent by the department to order such person to cease and desist from the alleged violation of this chapter, to take corrective action including payment of restitution to persons adversely affected by the violation, to pay the department's reasonable costs of investigation and prosecution, or to impose a fine of up to \$10,000 upon such person for each violation of this chapter alleged in the administrative complaint.

(b) The issuance of the administrative complaint shall be a decision affecting substantial interests and shall entitle the respondent therein to proceedings pursuant to s. 120.569, if such proceedings are requested by the respondent in a writing received by the department within 21 days after service of the administrative complaint. If such proceedings are timely requested and the respondent shall contest any material fact alleged in the administrative complaint, the matter shall be heard before an administrative law judge of the Division of Administrative Hearings, who shall issue her or his recommended order to the department; otherwise, the proceedings shall be before the Chief Financial Officer or her or his designee. Upon conclusion of proceedings under s. 120.57 if the subject timely requested a hearing, or after the expiration of 21 days after service of the administrative complaint if no request for hearing is received within those 21 days, the department may take final agency action and issue its final order concerning the matter, which final order shall be enforceable as set forth in s. 120.69.

(3) Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and shall be effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (2), unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph shall be, at the election of the department, in the courts of Leon County, or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (2), except that, absent order of a court to the contrary, the immediate final order shall be effective throughout the pendency of proceedings under subsection (2).

(4) For the purpose of this section, the violation of this chapter by a person who is not licensed under this chapter or by any person who aids and abets the unlicensed activity shall be presumed to be irreparable harm to the public health, safety, or welfare.

(5) Any administrative complaint or immediate final order under this section may be served in person by a department employee or by certified mail, return receipt requested, to the subject's place of residence or business, or by other means authorized by law.

Section 28. Section 497.229, Florida Statutes, is renumbered as section 497.158, Florida Statutes, and amended to read:

497.158 ~~497.229~~ Court enforcement actions; Courts; powers; abatement of nuisances.—

(1) In addition to or in lieu of other actions authorized by this chapter, the department may petition the courts of this state for injunctive or other relief against any licensed or unlicensed person, for the enforcement of this chapter and orders issued under this chapter. The court shall be authorized to impose a fine of up to \$5,000 per violation, payable to the department, upon any person determined by the court to have violated this chapter, and may order payment to the department of the department's attorney's fees and litigation costs, by any person found to have violated this chapter.

(2)(4) In addition to all other means provided by law for the enforcement by a court of a temporary restraining order or an injunction, the circuit court

may impound the property of a licensee cemetery company, including books, papers, documents, and records pertaining thereto, and may appoint a receiver or administrator to prevent further violation of this chapter.

~~(3)~~⁽²⁾ A court-appointed receiver or administrator may take any action to implement the provisions of the court order, to ensure the performance of the order, and to remedy any breach thereof.

~~(4)~~⁽³⁾ Any nonconforming physical condition in a cemetery or component thereof which is the result of a violation of this chapter or of the rules adopted under this chapter of the board relating to construction, physical operations, or care and maintenance at the cemetery shall be deemed a public nuisance, and the nonconforming physical conditions caused by such violation may be abated as provided in s. 60.05.

Section 29. Section 497.159, Florida Statutes, is created to read:

497.159 Crimes.—

(1) The theft of an examination in whole or in part or the act of unauthorized reproducing or copying any examination administered by the department or the board, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) The act of knowingly giving false information in the course of applying for or obtaining a license under this chapter, with intent to mislead the board or a public employee in the performance of her or his official duties, or the act of attempting to obtain or obtaining a license under this chapter by knowingly misleading statements or knowing misrepresentations, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any individual who willfully obstructs the department or its examiner in any examination or investigation authorized by this chapter is guilty of a misdemeanor of the second degree and is, in addition to any disciplinary action under this chapter, punishable as provided in s. 775.082 or s. 775.083.

(4) Any officer or director, or person occupying similar status or performing similar functions, of a licensee under this chapter who knowingly directs or causes the failure to make required deposits to any trust fund required by this chapter, or with knowledge that such required deposits are not being made as required by law fails to report such failure to the department, or who knowingly directs or causes the unlawful withdrawal of funds from any trust fund required by this chapter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) No cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution cemeteries may limit burials to members of the religious institution and their families.

(b) Any cemetery company or other legal entity which violates the provisions of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.

(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 30. Section 497.437, Florida Statutes, is renumbered as section 497.160, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.437, F.S., for present text.)

497.160 Receivership proceedings.—

(1) The department with the approval of the board may petition the circuit courts of this state for appointment of a receiver of any licensee or revoked or suspended licensee under this chapter, or person who has without license conducted activities requiring licensure under this chapter. The court shall appoint a receiver if the court shall determine that a receivership is necessary or advisable:

(a) To ensure the orderly and proper conduct of a licensee's professional business and affairs during or in the aftermath of the administrative proceeding to revoke or suspend the licensee.

(b) For the protection of the public's interest and rights in the business, premises, or activities of the person sought to be placed in receivership.

(c) Upon a showing of actual or constructive abandonment of premises or business licensed or which were not but should have been licensed under this chapter.

(d) Upon a showing of serious and repeated violations of this chapter demonstrating and inability or unwillingness of a licensee to comply with the requirements of this chapter.

(e) To prevent loss, wasting, dissipation, theft, or conversion of assets that should be marshaled and held available for the honoring of obligations under this chapter.

(f) Upon proof of other grounds which the court deems good and sufficient for instituting receivership action concerning the respondent sought to be placed in receivership.

(2) A receivership under this section may be temporary, or for the winding up and dissolution of the business, as the department may request and the court determines to be necessary or advisable in the circumstances. Venue of receivership proceedings may, at the department's election, in Leon County, or the county where the subject of the receivership is located. The appointed receiver shall be the department or such person as the department may nominate and the court shall approve. The provisions of part

I of chapter 631 shall be applicable to receiverships under this section except to the extent the court shall determine the application of particular of such provisions to be impracticable or would produce unfair results in the circumstances. Expenditures by the department from its budgeted funds, the Pre-need Funeral Contract Consumer Protection Trust Fund, and other regulatory trust funds derived from this chapter, for implementation and effectuation of such a receivership, shall be authorized; any such funds expended shall be a claim against the estate in the receivership proceedings.

(3) The department may adopt rules for the implementation of this section.

Section 31. Section 497.161, Florida Statutes, is created to read:

497.161 Other rulemaking provisions.—

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

(a) Rules by the board defining any technical term used but not defined in his chapter, and defining the terms “at-need” and “preneed” as used in this chapter:

(b) Rules by the board defining and regulating hazardous materials generated in connection with the practice of embalming, funeral directing, or direct disposition.

(c) Rules by the board governing the operation of cemeteries in this state.

(d) Rules establishing a fee of up to \$100 for issuance of a duplicate license or for a name change on a license.

(e) Rules allowing and prescribing procedure and formats for the electronic submission of any applications, documents, filings or fees required by this chapter.

(f) Rules establishing procedures for investigation, financial examination and inspection of licensees.

(g) Rules establishing procedures by which the department may use the expert or technical advice of the board or members of the board for the purposes of any investigation, inspection, or financial examination, without thereby disqualifying the board member from voting on final action in the matter.

(h) In connection with the statutory revisions by the 2005 Regular Session of the Legislature merging chapters 470 and 497 as those chapters appeared in the 2004 edition of the Florida Statutes and the elimination of the former boards under those chapters and the movement of regulation out of the Department of Business and Professional Regulation, the licensing authority shall through July 1, 2006, be deemed to have extraordinary rulemaking authority to adopt any and all rules jointly agreed by the board

and the department to be necessary for the protection of the public concerning the regulation of the professions and occupations regulated under this chapter, or for the relief of licensees regulated under this chapter concerning any impacts which the department and the board jointly agree were unintended or not contemplated in the enactment of the 2005 legislative changes. The authority under this paragraph and any rules adopted under authority of this paragraph shall expire July 1, 2006.

(2) In addition to challenges for any invalid exercise of delegated legislative authority, no rule shall be adopted under this chapter, and the administrative law judge upon such a challenge by the department or the board, may declare all or part of a rule or proposed rule invalid, if the rule or proposed rule:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(3) The department and the board shall each have standing under chapter 120 for the purposes of challenging rules or proposed rules under this chapter.

Section 32. Section 470.0201, Florida Statutes, is renumbered as section 497.162, Florida Statutes, and amended to read:

497.162 ~~470.0201~~ Health and safety education.—All individuals not licensed under this chapter ~~by the department~~ who intend to be employed as operational personnel affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, as well as all nonlicensed individuals who intend to be involved in the removal or transportation of human remains on behalf of a funeral establishment, direct disposal establishment, or cinerator facility shall complete one course approved by the licensing authority board on communicable diseases, within 10 days after the date that they begin functioning as operational personnel on behalf of any entity that is regulated by this chapter. The course shall not exceed 3 hours and shall be offered at approved locations throughout the state. Such locations may include establishments that are licensed ~~or registered~~ under this chapter. The licensing authority board shall adopt rules to implement and enforce this provision, which rules shall include provisions that provide for the use of approved videocassette courses and other types of audio, video, or home study courses to fulfill the continuing education requirements of this section.

Section 33. Section 497.163, Florida Statutes, is created to read:

497.163 Restriction on requirement of citizenship.—No person shall be disqualified from practicing an occupation or profession regulated by this chapter solely because she or he is not a United States citizen.

Section 34. Section 497.321, Florida Statutes, is renumbered as section 497.164, Florida Statutes, and amended to read:

497.164 ~~497.321~~ Solicitation of goods or services.—

(1) The board is authorized to adopt rules regulating the solicitation of sales of burial rights, merchandise, or services by licensees.

(2) The board shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, ~~vexatious~~, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The board shall regulate any solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public have a high expectation of privacy in their personal residences, and the department by rule shall restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this section ~~aet~~ shall be construed to restrict the right of a person to lawfully advertise, use direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of goods and services being offered.

(5) At-need solicitation of sales of burial rights, merchandise, or services is prohibited. No person ~~cemetery company or any agent or representative of that company~~ may contact the family or next of kin of a deceased person to sell services or merchandise unless the person ~~cemetery company or an agent or representative of the company~~ has been initially called or contacted by the family or next of kin of such person or persons and requested to provide services or merchandise.

Section 35. Section 497.025, Florida Statutes, is renumbered as section 497.165, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.025, F.S., for present text.)

497.165 Liability of owners, directors, and officers regarding trust funds.—The owners, officers, and directors of any licensee under this chapter may be held jointly and severally liable for any deficiency in any trust fund required by this chapter, to the extent the deficiency arose during the period they were owners, officers or directors of the licensee, if their conduct, or their negligence in the performance of their duties, caused the deficiency or substantially contributed to conditions that allowed the deficiency to arise or increase.

Section 36. Section 497.166, Florida Statutes, is created to read:

497.166 Preneed sales.—

(1) Regulation of preneed sales shall be as set forth in part IV of this chapter. No person may act as an agent for a funeral establishment or direct disposal establishment with respect to preneed contracts unless such person is licensed as a preneed sales agent pursuant to part IV of this chapter.

(2) Nothing in parts I, II, III, V, or VI of this chapter shall understood to necessarily prohibit any licensee under this chapter from selling preneed funerals and funeral merchandise through its agents and employees, so long as such sales are permitted by part IV of this chapter.

(3)(a) The funeral director in charge of a funeral establishment shall be responsible for the control and activities of the establishment's preneed sales agents.

(b) The direct disposer in charge or a funeral director acting as a direct disposer in charge of a direct disposal establishment shall be responsible for the control and activities of the establishment's preneed sales agents.

Section 37. Section 497.167, Florida Statutes, is created to read:

497.167 Administrative matters.—

(1) The department shall establish and operate a toll-free telephone hot-line to receive complaints and provide information relating to the regulation under this chapter.

(2) The director of the division shall serve as executive director of the board. The director is the agency head of the division. The director shall be appointed by and serve at the pleasure of the Chief Financial Officer. The director shall be responsible for preparation of the agenda for each board meeting, and may make presentation to the board of department recommendations and reports, and shall perform such other duties as may be assigned by the Chief Financial Officer.

(3) There shall be submitted to the legislature a biennial budget for the board's operations at a time and in the manner provided by law.

(4) There shall be developed and implemented a training program for persons newly appointed to membership on the board. The program shall familiarize such persons with the substantive and procedural laws and rules which relate to the regulation under this chapter and with the structure of the department.

(5) There may be informational newsletters, bulletins, and brochures produced and provided to licensees and consumers concerning regulation under this chapter.

(6) The department shall allow applicants for new or renewal licenses and current licensees to be screened by the Title IV-D child support agency pursuant to s. 409.2598 to ensure compliance with a support obligation. The

purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation, as defined in s. 409.2554. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

(7) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department, relating to regulation under this chapter, shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

(8) Funds due from any licensee as a result of disciplinary settlements under this chapter may be directed by the board and department to use in support of training of examiners, investigators, and inspectors concerning examinations, investigations and inspections under this chapter, and to the conduct of examinations and investigations under this chapter, in order to enhance oversight and enforcement of laws and regulations governing the activities of licensees under this chapter.

(9) Any application under this chapter which must be reviewed and acted upon by the board under this chapter, shall be acted upon by the board at a regularly scheduled board meeting, and such application must be complete at least 25 days in advance of a regularly scheduled board meeting to be considered by the board at such board meeting. The time for approval of completed applications under s. 120.60, shall be deemed tolled between the date the application is complete, and the next regularly scheduled board meeting at which the application may be considered by the board.

(10) The board may establish by rule procedures and requirements for the appearance before the board of any applicant or principal of an applicant, to stand for oral interview by the board at a public meeting board, before an application shall be deemed complete. Such rule may require such appearance for all or specified categories of applicants and may provide criteria for determining when such appearance shall be required.

(11) In any instance in which a licensee or applicant under this chapter is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(12) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(13) No application for any approval by the board may come before the board for final or other action, nor shall action by the board be taken as to any application, except upon presentation and recommendation by the department.

(14) The department shall have standing to appear as a party litigant in any judicial proceeding for the purpose of enforcing this chapter or for the protection Florida residents from the effects of any violation of this chapter.

(15) The Department of Legal Affairs shall provide legal services to the board within the Department of Financial Services, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the board with respect to its obligations under the laws of the state. Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel shall be paid from the Regulatory Trust Fund.

Section 38. Section 497.168, Florida Statutes, is created to read:

497.168 Members of Armed Forces in good standing with administrative boards.—

(1) Any reserve member of the Armed Forces of the United States, and any member of any element of the national guard, now or hereafter called to active duty in the Armed Forces of the United States for a continuous period of 30 or more days, who at the time of being called to active duty was licensed in good standing to practice a profession under this chapter, shall remain in good standing, without registering, paying dues or fees, or being required to perform any other act, as long as she or he remains on such active duty and for a period of 6 months after discharge from active duty.

(2) The licensing authority shall adopt rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions, but only in cases of absence from the state because of their spouses' call to active duty from the reserves or national guard.

Section 39. Section 497.527, Florida Statutes, is renumbered as section 497.169, Florida Statutes, and amended to read:

497.169 497.527 Private actions; actions on behalf of consumers; attorneys fee Civil remedies.—

(1) The Attorney General, or the department on behalf of Florida residents, or any person may bring a civil action against a person or company violating the provisions of this chapter in the appropriate court of the county in which the alleged violator resides or has ~~his or~~ her or ~~his~~ or its principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages caused by such violation. The court may, as provided by common law, award punitive damages and may provide such equitable relief as it deems proper or necessary, including enjoining the defendant from further violations of this chapter.

(2) In any civil litigation resulting from a transaction involving a violation of this chapter, the court may award to the prevailing party, after judgment in the trial court and exhaustion of any appeal, reasonable attorney's fees and costs from the nonprevailing party in an amount to be determined by the trial court. Any award of attorney's fees or costs shall become a part of the judgment and shall be subject to execution as the law allows.

(3) The provisions of this chapter are cumulative to rights under the general civil and common law, and no action of the department may abrogate such rights to damages or other relief in any court.

Section 40. Section 497.531, Florida Statutes, is renumbered as section 497.170, Florida Statutes, to read:

497.170 ~~497.531~~ Unauthorized arrangements.—

(1) Any arrangement to provide merchandise or services as defined in this chapter, by which payment for such merchandise or services is to be paid for through a financial arrangement, other than as authorized pursuant to this chapter, in which the provider of the merchandise or services is a beneficiary, party, agent, or owner is in violation of this chapter.

(2) Any person who provides merchandise or services and who knowingly becomes a beneficiary, agent, party, or coowner as described in subsection (1) is in violation of this chapter.

Section 41. Part II of chapter 497, consisting of sections 497.260, 497.261, 497.262, 497.263, 497.264, 497.265, 497.266, 497.267, 497.268, 497.269, 497.270, 497.271, 497.272, 497.273, 497.274, 497.275, 497.276, 497.277, 497.278, 497.280, 497.281, 497.282, 497.283, 497.284, 497.285, 497.286, and 497.287, is created to read:

PART II CEMETERY REGULATION

Section 42. Section 497.003, Florida Statutes, is renumbered as section 497.260, Florida Statutes, and amended to read:

497.260 ~~497.003~~ Cemeteries; exemption; investigation and mediation.—

(1) The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto shall apply to all cemeteries except for:

(a) Religious institution cemeteries of less than 5 acres which provide only single-level ground burial.

(b) County and municipal cemeteries.

(c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.

(d) Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976.

(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.

(f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the religious institution relocates, the religious institution shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution.

(g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.

(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

(2) Section 497.276(1) ~~497.309(1)~~ as to burial records, and ss. 497.164, 497.152(1)(d), 497.280, and 497.284 ~~497.321~~, ~~497.325~~, ~~497.341~~, and ~~497.345~~ apply to all cemeteries in this state.

(3) All cemeteries exempted under this chapter which are in excess of 5 acres must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:

(a) The exempt cemetery shall make every effort to first resolve a consumer complaint;

(b) If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;

(c) If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;

(d) If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;

(e) If the department conducts an onsite investigation and face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and mediation fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and

(f) If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter if it is determined in a proceeding complying with chapter 120 that the

cemetery is guilty of fraud, deceit, theft, gross negligence, incompetence, unjustified failure to honor its contracts, or failure to adequately maintain its premises. The department may file and serve on the cemetery an administrative complaint and cause the matter to be prosecuted and may thereafter issue and enforce its final order in the matter pursuant to chapter 120.

(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.

(5) Any religious-institution-owned cemetery exempt under subsection (1), except those cemeteries qualifying under paragraph (1)(d), which becomes affiliated with a commercial enterprise must meet the requirements of s. 497.263 ~~497.201~~.

(6)(a) This subsection applies to all cemeteries in this state.

(b) No cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution cemeteries may limit burials to members of the religious institution and their families.

(c) Any cemetery company or other legal entity which violates the provisions of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.

Section 43. Section 497.004, Florida Statutes, is renumbered as section 497.261, Florida Statutes, to read:

497.261 ~~497.004~~ Existing companies, effect of this chapter.—Cemetery companies existing on October 1, 1993, shall continue in full force and effect but shall be operated in accordance with the provisions of this chapter.

Section 44. Section 497.0255, Florida Statutes, is renumbered as section 497.262, Florida Statutes, and amended to read:

497.262 ~~497.0255~~ Duty of care and maintenance of licensed cemetery.—Every cemetery company or other entity responsible for the care and maintenance of a licensed cemetery in this state shall ensure that the grounds, structures, and other improvements of the cemetery are well cared for and maintained in a proper and dignified condition. The licensing authority board shall adopt, by no later than July 1, 1999, such rules as are necessary to implement and enforce this section. In developing and adopting such promulgating said rules, the licensing authority board may define different classes of cemeteries or care and maintenance, and may provide for different rules to apply to each of said classes, if the designation of classes and the application of different rules is in the public interest and is supported by

findings by the licensing authority board based on evidence of industry practices, economic and physical feasibility, location, or intended uses; provided, that the rules shall provide minimum standards applicable to all cemeteries. For example, and without limiting the generality of the foregoing, the licensing authority board may determine that a small rural cemetery with large trees and shade area does not require, and may not be able to attain, the same level of lawn care as a large urban cemetery with large open grassy areas and sprinkler systems.

Section 45. Section 497.201, Florida Statutes, is renumbered as section 497.263, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.201, F.S., for present text.)

497.263 Cemetery companies; license required; licensure requirements and procedures.—

(1) LICENSE REQUIRED.—No person may operate a cemetery without first obtaining a license under this section, unless specifically exempted from this chapter.

(2) APPLICATION PROCEDURES.—

(a) A person seeking a cemetery license under this section shall apply for such licensure using forms and procedures prescribed by rule.

(b) The applicant shall be corporation or a partnership, or a limited liability company formed prior to January 1, 2005 which limited liability company already holds a license under this chapter.

(c) The application shall require the name, principle place of business, date of formation, and federal tax identification number, of the applicant.

(d) The application shall require such historical sketches and audited or unaudited financial statements concerning the applicant and each principal of applicant, as the licensing authority may require by rule.

(e) The application shall state any and all names under which the cemetery may do business if licensed, if different from applicant's name.

(f) The application shall state the exact location of the proposed cemetery.

(g) The proposed cemetery must contain at least 30 contiguous acres. The application shall state the exact number of acres in the proposed cemetery.

(h) The applicant must have a net worth of \$50,000, as attested to by a sworn statement signed by all officers of applicant. Such net worth must be continually maintained as a condition of licensure.

(i) The application shall be accompanied by such description of the proposed financial structure of the cemetery, as the licensing authority may require by rule.

(j) The application shall be accompanied by a legal description of the cemetery.

(k) The application shall be accompanied by such maps or surveys of the proposed cemetery, and maps showing the location of the proposed cemetery in the local area, as the licensing authority may require by rule, and the licensing authority may by rule require such maps or surveys of the cemetery to be prepared by a licensed Florida professional surveyor.

(l) The application shall include such description of the development plans for the proposed cemetery, as the licensing authority may require by rule.

(m) The application shall require the applicant to disclose whether the applicant or any principal of applicant has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.

(n) The application shall require the applicant to disclose whether the applicant or any principal of applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. The licensing authority may require by rule additional information to be provided concerning any affirmative answers. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.

(o) The application shall require the applicant and applicant's principals to provide fingerprints in accordance with part I of this chapter.

(p) The applicant shall demonstrate by clear and convincing evidence that the applicant has the ability, experience, financial stability, and integrity to operate a cemetery, and that its principals are of good character.

(q) The application shall be signed by the president of the applicant.

(r) The application shall be accompanied by a nonrefundable application fee of \$5,000.

(s) The licensing authority may establish by rule requirements for the appearance before the licensing authority of the applicant and the applicant's principals, to stand for oral interview by the licensing authority at a public licensing authority meeting, before the application shall be deemed complete.

(3) ACTION CONCERNING APPLICATIONS.—If the licensing authority finds that the applicant meets the criteria established in subsection (2), the applicant shall be notified that a license will be issued when all of the following conditions are satisfied:

(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. 497.458, pursuant to a trust agreement approved by the licensing authority. The \$50,000 required for the care and maintenance trust fund shall be over and above the \$50,000 net worth required by subsection (2).

(b) The applicant files with the licensing authority an opinion or certification from a Florida attorney in good standing, or a Florida title company, in a form acceptable to the licensing authority, that the applicant holds unencumbered fee simple title to all land identified in the application.

(c) The applicant obtains approval of the local zoning authorities regarding the cemetery, and files with the licensing authority evidence satisfactory to the licensing authority of such approval, or if no approval by local zoning authorities is required, such approval of residents adjacent to the proposed cemetery as the licensing authority may require by rule.

(d) The licensing authority determines that the applicant has designated as general manager of the cemetery a person of integrity, and who has 3 years of cemetery management experience as defined by rule of the licensing authority, and who has the ability to operate a cemetery.

(e) Evidence satisfactory to the licensing authority that 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) Regarding the cemetery land identified in the application, the applicant has recorded, and provides the licensing authority with a written attestation of such recording signed by a licensed Florida attorney, in the public records of real estate in the county in which the cemetery 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 Financial Services, as provided in Chapter 497, Florida Statutes.

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) ISSUANCE OF LICENSE.—There shall be issued 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). The licensing authority 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).

Section 46. Section 497.205, Florida Statutes, is renumbered as section 497.264, Florida Statutes, and amended to read:

~~497.264~~ 497.205 License not assignable or transferable.—

(1) A license issued to operate a cemetery pursuant to this chapter is not transferable or assignable, and a licensee may not develop or operate any cemetery authorized by this chapter at any location other than that contained in the application for the license.

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

(a) The licensing authority may adopt rules establishing forms and procedures for such applications.

(b) The application shall state the name and address of the licensed cemetery to which the application relates.

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

(d) For applications by an entity, the application shall state applicant's name, address of principal place of business or headquarters offices, the names and titles of all officers of applicant, applicant's state of domicile and date of formation, and applicant's federal tax identification number.

(e) The application shall require such historical sketches and audited or unaudited financial statements concerning the applicant and each principal of the applicant, as the licensing authority may require by rule.

(f) The applicant must have a net worth of \$50,000, as attested to by a sworn statement signed by applicant if a natural person, otherwise by all officers of applicant. Such net worth must be continually maintained as a condition of licensure of the cemetery if the application is approved.

(g) The application shall include such description of the development plans the applicant has for the proposed cemetery, as the licensing authority may require by rule.

(h) The application shall require the applicant to disclose whether the applicant or any principal of applicant has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.

(i) The application shall require the applicant to disclose whether the applicant or any principal of applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. The licensing authority may require by rule additional information to be provided concerning any affirmative answers. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order,

or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license. The licensing authority may require by rule additional information to be provided concerning any affirmative answers.

(j) The application shall require the applicant and applicant's principals to provide fingerprints in accordance with part I of this chapter.

(k) The applicant shall demonstrate by clear and convincing evidence that the applicant has the ability, experience, financial stability, and integrity to operate a cemetery, and if the applicant is an entity, that applicant's principals are of good character.

(l) The application shall be signed by the applicant if a natural person, otherwise by the president of the applicant.

(m) The application shall be accompanied by a nonrefundable application fee of \$5,000; provided, the fee shall be \$500 if the application is in regards to a change in ownership that will not be accompanied by any change in ultimate control.

(n) The licensing authority may establish by rule requirements for the appearance before the licensing authority of the applicant and the applicant's principals, to stand for oral interview by the licensing authority at a public licensing authority meeting, before the application shall be deemed complete.

(o) A completed application shall be approved if the requirements of this section are met.

~~(2) Any person who seeks to purchase or acquire control of an existing licensed cemetery shall first apply to the board for approval of the proposed change of ownership. The application shall contain the name and address of the proposed new owner, a financial statement signed by all officers of the company attesting to a net worth of at least \$50,000, and other information required by the board. The board may approve a change of ownership only after it has conducted an investigation of the applicant and determined that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner. The department may examine the records of the cemetery company as part of the investigation in accordance with this chapter. The application shall be accompanied by an investigation fee of \$5,000. Upon consummation of the purchase or acquisition of control and upon receipt of all documents required by the board, the department shall issue the new license for that cemetery effective on the date of that purchase or acquisition of control.~~

Section 47. Section 497.213, Florida Statutes, is renumbered as section 497.265, Florida Statutes, and amended to read:

497.265 ~~497.213~~ Annual license fees.—

(1) The department shall collect from each cemetery company operating under the provisions of this chapter an annual license fee as follows:

- (a) For a cemetery with less than \$25,000 annual gross sales . . . \$250.
- (b) For a cemetery with at least \$25,000 but less than \$100,000 annual gross sales \$350.
- (c) For a cemetery with annual gross sales of at least \$100,000 but less than \$250,000 \$600.
- (d) For a cemetery with annual gross sales of at least \$250,000 but less than \$500,000 \$900.
- (e) For a cemetery with annual gross sales of at least \$500,000 but less than \$750,000 \$1,350.
- (f) For a cemetery with annual gross sales of at least \$750,000 but less than \$1 million \$2,250.
- (g) For a cemetery with annual gross sales of at least \$1 million but less than \$5 million \$3,250.
- (h) For a cemetery with annual gross sales of \$5 million or more \$4,900.

(2) An application for license renewal shall be submitted, along with the applicable license fee, on or before December 31 each year in the case of an existing cemetery company and before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control pursuant to s. 497.264 ~~ss. 497.205 and 497.209~~. If the renewal application and fee are not received by December 31, the department shall collect a penalty in the amount of \$200 per month or fraction of a month for each month delinquent. For the purposes of this subsection, a renewal application and fee submitted by mail shall be considered timely submitted and received if postmarked by December 31 of the applicable year.

Section 48. Section 497.237, Florida Statutes, is renumbered as section 497.266, Florida Statutes, and amended to read:

497.266 ~~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, 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, to a state or national bank holding trust powers, or to a federal or state savings and loan association holding trust powers.

(2) The cemetery company may appoint a person to advise the trustee in the investment of the trust fund. The licensing authority board must approve the appointment of the initial trustee, and any subsequent changes of the trustee shall also be approved by the licensing authority, pursuant to procedures and utilizing forms as specified by rule board. If a cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this chapter, the licensing authority board, after reasonable notice, shall enforce compliance. However, a nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding \$2 million is not required to designate a corporate trustee. The trust fund agreement shall specify the following: the name, location, and address of both the licensee and the trustee, the terms and conditions of the trust, a statement that the trust is established pursuant to ss. 497.266 and 497.268, and showing the date of agreement, together with the percentages required to be deposited pursuant to this chapter.

(3) No person may withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the licensing authority board. ~~Funds deposited pursuant to this chapter may not be loaned to any cemetery company or person who is directly or indirectly engaged in the burial, funeral home, or cemetery business.~~

(4) The trustee of the trust established pursuant to this section may only invest in investments and loan trust funds, as prescribed in s. ~~497.458~~ 497.417. The trustee shall take title to the property conveyed to the trust for the purposes of investing, protecting, and conserving it for the cemetery company; collecting income; and distributing the principal and income as prescribed in this chapter. The cemetery company is prohibited from sharing in the discharge of the trustee's responsibilities under this subsection, except that the cemetery company may request the trustee to invest in tax-free investments.

Section 49. Section 497.241, Florida Statutes, is renumbered as section 497.267, Florida Statutes, to read:

497.267 ~~497.241~~ Disposition of income of care and maintenance trust fund; notice to purchasers and depositors.—The net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, including maintenance of monuments, which maintenance shall not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs of administering the care and maintenance; and for reasonable costs of administering the trust fund. At the time of making a sale or receiving an initial deposit, the cemetery company shall deliver to the person to whom the sale is made, or who makes a deposit, a written instrument which shall specifically state the purposes for which the income of the trust fund shall be used.

Section 50. Section 497.245, Florida Statutes, is renumbered as section 497.268, Florida Statutes, to read:

497.268 ~~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, 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 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.

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

(3) Any payments made to the care and maintenance trust fund on contracts which are canceled shall be credited against future obligations to the care and maintenance trust fund, provided they have been refunded to the purchaser.

(4) When a cemetery which is exempt from the provisions of this chapter changes ownership so as to lose its exempt status, it shall establish and maintain a care and maintenance trust fund pursuant to this chapter. The initial deposit for establishment of this trust fund shall be \$25 per space for all spaces either previously sold or contracted for sale in the cemetery at the time of conversion or \$50,000, whichever is greater.

(5) In each sales contract, reservation, or agreement wherein burial rights are priced separately, the purchase price of the burial rights shall be

the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately, the full amount of the contract, reservation, or agreement shall be subject to care and maintenance trust fund deposits as provided in this section, unless the purchase price of the burial rights can be determined from the accounting records of the cemetery company.

(6) If an installment contract or promissory note for the purchase of a burial space is sold or discounted to a third party, the entire amount due the care and maintenance trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold or discounted.

Section 51. Section 497.249, Florida Statutes, is renumbered as section 497.269, Florida Statutes, and amended to read:

497.269 ~~497.249~~ Care and maintenance trust fund; financial reports.— On or before April 1 of each year, the trustee shall furnish adequate financial reports with respect to the care and maintenance trust fund utilizing forms and procedures specified by rule ~~on forms provided by the department~~. However, the department may require the trustee to make such additional financial reports as it deems necessary. In order to ensure that the proper deposits to the trust fund have been made, the department shall examine the status of the trust fund of the company on a semiannual basis for the first 2 years of the trust fund's existence.

Section 52. Section 497.253, Florida Statutes, is renumbered as section 497.270, Florida Statutes, and amended to read:

497.270 ~~497.253~~ Minimum acreage; sale or disposition of cemetery lands.—

(1) No land in a licensed cemetery may be sold, mortgaged, leased, or encumbered without prior approval of the licensing authority pursuant to procedures specified by rule. Such approval shall not be given unless it be shown that such approval would be in the public interest. The licensing authority may adopt rules establishing criteria for approval of the sale, mortgaging, leasing, or encumbering of cemetery land. Each licensee shall set aside a minimum of 30 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 in excess of a contiguous, adjoining, or adjacent to the minimum of 30 contiguous acres described in subsection (1), may be sold, conveyed, or disposed of by the licensee, after obtaining written approval pursuant to procedures and utilizing forms specified by rule and consistent with 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. ~~497.384 and 497.152(8)(e) 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)(a) If the property to be sold, conveyed, or disposed of under subsection (2) has been or is being used for the permanent interment of human remains, the applicant for approval of such sale, conveyance, or disposition shall cause to be published, at least once a week for 4 consecutive weeks, a notice meeting the standards of publication set forth in s. 125.66(4)(b)2. The notice shall describe the property in question and the proposed noncemetery use and shall advise substantially affected persons that they may file a written request for a hearing pursuant to chapter 120, within 14 days after the date of last publication of the notice, with the department if they object to granting the applicant's request to sell, convey, or dispose of the subject property for noncemetery uses.

(b) If the property in question has never been used for the permanent interment of human remains, no notice or hearing is required.

(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 reasonable expectations of the families of the deceased regarding whether the cemetery property was to remain as a cemetery in perpetuity.
5. 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. The elapsed time since the last interment in the subject property.
7. Any other factor enumerated in this chapter that the department considers relevant to the public interest.

(d) Any deed, mortgage, or other conveyance by a cemetery company or other owner pursuant to subsections (a) and (c) above must contain a disclosure in the following or substantially similar form:

NOTICE: The property described herein was formerly used and dedicated as a cemetery. Conveyance of this property and its use for noncemetery

purposes was authorized by the Florida Department of Financial Services by Order No., dated

(e) The department shall adopt such rules as are necessary to carry out the provisions of this section.

(4) A licensee may convey and transfer to a municipality or county its real and personal property, together with moneys deposited in trust funds pursuant to this chapter, provided the municipality or county will accept responsibility for maintenance thereof and prior written approval of the department is obtained.

(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, which owns a total of less than 30 acres of land; however, no cemetery company shall dispose of any land without the prior written consent of the department.

Section 53. Section 497.255, Florida Statutes, is renumbered as section 497.271, Florida Statutes, and amended to read:

497.271 ~~497.255~~ Standards for construction and significant alteration or renovation of mausoleums and columbaria.—

(1) All newly constructed and significantly altered or renovated mausoleums and columbaria must, in addition to complying with applicable building codes, conform to the standards adopted under this section.

(2) The licensing authority ~~board~~ shall adopt, by no later than July 1, 1999, rules establishing minimum standards for all newly constructed and significantly altered or renovated mausoleums and columbaria; however, in the case of significant alterations or renovations to existing structures, the rules shall apply only, when physically feasible, to the newly altered or renovated portion of such structures, except as specified in subsection (4). In developing and adopting such ~~promulgating said~~ rules, the licensing authority ~~board~~ may define different classes of structures or construction standards, and may provide for different rules to apply to each of said classes, if the designation of classes and the application of different rules is in the public interest and is supported by findings by the licensing authority ~~board~~ based on evidence of industry practices, economic and physical feasibility, location, or intended uses; provided, that the rules shall provide minimum standards applicable to all construction. For example, and without limiting the generality of the foregoing, the licensing authority ~~board~~ may determine that a small single-story ground level mausoleum does not require the same level of construction standards that a large multistory mausoleum might require; or that a mausoleum located in a low-lying area subject to frequent flooding or hurricane threats might require different standards than one located on high ground in an area not subject to frequent severe weather threats. The licensing authority ~~board~~ shall develop the rules in cooperation with, and with technical assistance from, the Florida Building Commission of the Department of Community Affairs, to ensure that the rules are in the proper form and content to be included as part of the State Minimum Building Codes under part VII of chapter 553. If the

Florida Building Commission advises that some of the standards proposed by the ~~licensing authority board~~ are not appropriate for inclusion in such building codes, the ~~licensing authority board~~ may choose to include those standards in a distinct chapter of its rules entitled “Non-Building-Code Standards for Mausoleums” or “Additional Standards for Mausoleums,” or other terminology to that effect. If the ~~licensing authority board~~ elects to divide the standards into two or more chapters, all such rules shall be binding on licensees and others subject to the jurisdiction of the ~~licensing authority board~~, but only the chapter containing provisions appropriate for building codes shall be transmitted to the Florida Building Commission pursuant to subsection (3). Such rules may be in the form of standards for design and construction; methods, materials, and specifications for construction; or other mechanisms. Such rules shall encompass, at a minimum, the following standards:

(a) No structure may be built or significantly altered for use for interment, entombment, or inurnment purposes unless constructed of such material and workmanship as will ensure its durability and permanence, as well as the safety, convenience, comfort, and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science.

(b) Such structure must be so arranged that the exterior of any vault, niche, or crypt may be readily examined at any time by any person authorized by law to do so.

(c) Such structure must contain adequate provision for drainage and ventilation.

(d) Such structure must be of fire-resistant construction. Notwithstanding the requirements of s. 553.895 and chapter 633, any mausoleum or columbarium constructed of noncombustible materials, as defined in the Standard Building Code, shall not require a sprinkler system.

(e) Such structure must be resistant to hurricane and other storm damage to the highest degree provided under applicable building codes for buildings of that class.

(f) Suitable provisions must be made for securely and permanently sealing each crypt with durable materials after the interment or entombment of human remains, so that no effluvia or odors may escape therefrom except as provided by design and sanitary engineering standards. Panels for permanent seals must be solid and constructed of materials of sufficient weight, permanence, density, imperviousness, and strength as to ensure their durability and continued functioning. Permanent crypt sealing panels must be securely installed and set in with high quality fire-resistant, resilient, and durable materials after the interment or entombment of human remains. The outer or exposed covering of each crypt must be of a durable, permanent, fire-resistant material; however, plastic, fiberglass, and wood are not acceptable materials for such outer or exposed coverings.

(g) Interior and exterior fastenings for hangers, clips, doors, and other objects must be of copper, copper-base alloy, aluminum, or stainless steel of

adequate gauges, or other materials established by rule which provide equivalent or better strength and durability, and must be properly installed.

(3) The licensing authority board shall transmit the rules as adopted under subsection (2), hereinafter referred to as the “mausoleum standards,” to the Florida Building Commission, which shall initiate rulemaking under chapter 120 to consider such mausoleum standards. If such mausoleum standards are not deemed acceptable, they shall be returned by the Florida Building Commission to the licensing authority board with details of changes needed to make them acceptable. If such mausoleum standards are acceptable, the Florida Building Commission shall adopt a rule designating the mausoleum standards as an approved revision to the State Minimum Building Codes under part VII of chapter 553. When so designated by the Florida Building Commission, such mausoleum standards shall become a required element of the State Minimum Building Codes under s. 553.73(2) and shall be transmitted to each local enforcement agency, as defined in s. 553.71(5). Such local enforcement agency shall consider and inspect for compliance with such mausoleum standards as if they were part of the local building code, but shall have no continuing duty to inspect after final approval of the construction pursuant to the local building code. Any further amendments to the mausoleum standards shall be accomplished by the same procedure. Such designated mausoleum standards, as from time to time amended, shall be a part of the State Minimum Building Codes under s. 553.73 until the adoption and effective date of a new statewide uniform minimum building code, which may supersede the mausoleum standards as provided by the law enacting the new statewide uniform minimum building code.

(4) In addition to the rules adopted under subsection (2), the licensing authority board shall adopt rules providing that following all interments, inurnments, and entombments in mausoleums and columbaria occurring after the effective date of such rules, whether newly constructed or existing, suitable provision must be made, when physically feasible, for sealing each crypt in accordance with standards adopted ~~promulgated~~ pursuant to paragraph (2)(f).

(5) For purposes of this section, “significant alteration or renovation” means any addition, renovation, or repair which results in the creation of new crypt or niche spaces.

Section 54. Section 497.257, Florida Statutes, is renumbered as section 497.272, Florida Statutes, and amended to read:

497.272 ~~497.257~~ Construction of mausoleums, columbaria, and below-ground crypts; preconstruction trust fund; compliance requirement.—

(1) A cemetery company shall start construction of that section of a mausoleum, columbarium, or bank of belowground crypts in which sales, contracts for sales, reservations for sales, or agreements for sales are being made within 4 years after the date of the first such sale or 50 percent of the mausoleum, columbarium, or belowground crypts have been sold and the purchase price has been received, whichever occurs first. The construction shall be completed within 5 years after the date of the first sale made.

However, extensions for completion, not to exceed 1 year, may be granted by the department for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, all moneys paid shall be refunded upon request, plus interest earned thereon for that portion of the moneys deposited in the trust fund and an amount equal to the interest that would have been earned on that portion of the moneys that were not in trust.

(2) A cemetery company which plans to offer for sale space in a section of a mausoleum, columbarium, or bank of belowground crypts prior to construction shall establish a preconstruction trust fund by written instrument. The preconstruction trust fund shall be administered by a corporate trustee and operated in conformity with s. ~~497.458~~ 497.417. The preconstruction trust fund shall be separate from any other trust funds that may be required by this chapter. The written instrument by which the trustee of the preconstruction trust fund agrees to act as trustee shall contain a statement that the trust is created pursuant to the requirements of this section. The trust shall be subject to examination by the licensing authority.

(3) Before a sale, contract for sale, reservation for sale, or agreement for sale in a mausoleum section, columbarium, or bank of belowground crypts may be made, the cemetery company shall compute the amount to be deposited to the preconstruction trust fund. The total amount to be deposited in the fund for each unit of the project shall be computed by dividing the cost of the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts in the section or bank of belowground crypts or the number of niches in the columbarium. When payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost of the contract, including other merchandise and services purchased. Preconstruction trust fund payments shall be made within 30 days after the end of the month in which payment is received.

(4) When the cemetery company delivers a completed crypt or niche acceptable to the purchaser in lieu of the crypt or niche purchased prior to construction, all sums deposited to the preconstruction trust fund for that purchaser shall be paid to the cemetery company.

(5) Each cemetery company may negotiate, at the time of establishment of the preconstruction trust fund, a procedure for withdrawal of the escrowed funds as a part of the construction cost of the mausoleum section, columbarium, or bank of belowground crypts contemplated, subject to the approval of the department. Upon completion of the mausoleum section, columbarium, or bank of belowground crypts, the cemetery company shall certify completion to the trustee and shall be entitled to withdraw all funds deposited to the account thereof.

(6) If the mausoleum section, columbarium, or bank of belowground crypts is not completed within the time limits set out in this section, the trustee shall contract for and cause the project to be completed and pay therefor from the trust funds deposited to the project's account paying any

balance, less cost and expenses, to the cemetery company. The refund provisions of subsection (1) apply only to the extent there are funds remaining in excess of the costs to complete the facilities, prior to any payments to the cemetery company.

(7) On or before April 1 of each year, the trustee shall file with the licensing authority board in the form prescribed by rule ~~the board~~ a full and true statement as to the activities of any trust established ~~by the board~~ pursuant to this chapter for the preceding calendar year.

(8) In lieu of the payments outlined hereunder to the preconstruction trust fund, the cemetery company may deliver to the department a performance bond in an amount and by a surety company acceptable to the department.

Section 55. Section 497.305, Florida Statutes, is renumbered as section 497.273, Florida Statutes, and amended to read:

497.273 ~~497.305~~ Cemetery companies; authorized functions.—

(1) Within the boundaries of the cemetery lands it owns, a cemetery company may perform the following functions:

(a) The exclusive care and maintenance of the cemetery.

(b) The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or services shall disclose, pursuant to licensing authority board rule, whether opening and closing of the burial space is included in the contract and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

(c) The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment; however, nothing herein shall limit the right of a person owning interment or burial rights to sell those rights to third parties subject to the transfer of title by the cemetery company.

(d) The adoption of bylaws regulating the activities conducted within its boundaries, provided that no funeral director licensed pursuant to this chapter ~~470~~ shall be denied access to any cemetery to conduct a funeral for or supervise a disinterment of human remains. All bylaws provided for herein shall be subject to the approval of the licensing authority board under the provisions of chapter 120 prior to becoming effective. The licensing authority board shall not approve any bylaw which unreasonably restricts the use of interment or burial rights, which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

(e) The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

(f) The nonexclusive cremation of human remains, subject to provisions of s. 497.606 ~~470.025~~.

(g) The entry into sales or management contracts with other persons. The cemetery company shall be responsible for the deposit of all moneys required by this part to be placed in a trust fund.

(2) A full disclosure shall be made for all fees required for interment, entombment, or inurnment of human remains.

(3) A cemetery company may adopt bylaws establishing minimum standards for burial merchandise or the installation thereof. Such bylaws shall include minimum standards for access to install burial merchandise. A cemetery company must comply with its adopted bylaws.

Section 56. Section 497.274, Florida Statutes, is created to read:

497.274 Standards for grave spaces.—

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

(2)(a) Prior to the sale of grave spaces in any undeveloped areas of a licensed cemetery, the cemetery company shall prepare a map documenting the establishment of recoverable internal survey reference markers installed by the cemetery company no more than 100 feet apart in the areas planned for development. The internal reference markers shall be established with reference to survey markers that are no more than 200 feet apart which have been set by a surveyor and mapper licensed under chapter 472 and documented in a certified land survey. Both the map and the certified land survey shall be maintained by the cemetery company and shall be made available upon request to the department or members of the public.

(b) The map of the area proposed to be developed shall show:

1. The number of grave spaces available for sale.
2. The location of each grave space.
3. The number designation assigned to each grave space.
4. The dimensions of a standard adult grave space.

(3) Adult grave spaces established prior to October 1, 2005, are not required to meet the standards established under this section for the dimensions or separation of grave spaces.

Section 57. Section 497.275, Florida Statutes, is created to read:

497.275 Identification of human remains in licensed cemeteries.—On and after October 1, 2005, human remains interred, entombed, or otherwise placed for final rest at licensed cemeteries shall be identified as follows:

(1) Each licensed cemetery shall place on the outer burial container, cremation interment container, or other container, or on the inside of a crypt or niche, a tag or a permanent identifying marker containing the name of the decedent and the date of death, if available. The materials and location of the tag or marker shall be more specifically described by rule.

(2) Each licensed cemetery may rely entirely on the identity stated on the burial transit permit or on the identification supplied by a person licensed under part III of this chapter to establish the identity of the dead human remains delivered by such person for burial and shall not be liable for any differences between the identity shown on the burial transit permit or other identification and the actual identity of the dead human remains delivered by such person and buried in the cemetery.

Section 58. Section 497.309, Florida Statutes, is renumbered as section 497.276, Florida Statutes, and amended to read:

497.276 497.309 Records.—

(1) A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial and the name of the person buried, together with lot, plot, and space in which the burial was made. All financial records of the cemetery company shall be available at its principal place of business in this state and shall be readily available at all reasonable times for examination by the department.

(2) Notwithstanding the provisions of subsection (1), the licensing authority board may, upon request, authorize a cemetery company to maintain its financial records at a location other than its principal place of business and may, if necessary, require the company to make its books, accounts, records, and documents available at a reasonable and convenient location in this state.

(3) The licensing authority board may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of a cemetery company to enable the department to determine the company's compliance with this chapter, and may prescribe financial statements that shall be prepared annually by licensed cemetery companies.

Section 59. Section 497.313, Florida Statutes, is renumbered as section 497.277, Florida Statutes, to read:

497.277 497.313 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(1) Charges paid for opening and closing a grave and vault installation.

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

(3) Charges for sales, documentary excise, and other taxes actually and necessarily paid to a public official, which charges must be supported in fact.

(4) Charges for credit life and credit disability insurance, as requested by the purchaser, the premiums for which may not exceed the applicable premiums chargeable in accordance with the rates filed with the Office of Insurance Regulation of the Financial Services Commission.

(5) Charges for interest on unpaid balances pursuant to chapter 687.

Section 60. Section 497.317, Florida Statutes, is renumbered as section 497.278, Florida Statutes, to read:

497.278 ~~497.317~~ Monuments; installation fees.—

(1) No cemetery company may charge a fee for the installation of a monument purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents.

(2) To verify that a monument is installed on the proper grave in accordance with cemetery bylaws, rules, or regulations, the cemetery company shall mark the place on the grave where the marker or monument is to be installed and shall inspect the installation when completed. Nothing in this subsection is intended to imply or require that a cemetery company shall have to lay out or engineer a grave site or grave sites for the installation of a marker or monument.

(3) A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.

Section 61. Section 497.325, Florida Statutes, is renumbered as section 497.280, Florida Statutes, and amended to read:

497.280 ~~497.325~~ Illegal tying arrangements.—

(1) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation.

(2)(a) Noncemetery licensed persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation, and installation services for monuments. However, a cemetery company or any other entity owning and operating a cemetery may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

(b) No person who is authorized to sell grave space and no cemetery company or other entity owning and operating a cemetery may:

1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;
2. Refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or
3. Require waiver of ~~Waive~~ liability with respect to damage caused by cemetery employees or agents to a monument after installation,

where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

(3) No program offering free burial rights may be conditioned by any requirement to purchase additional burial rights, funeral merchandise, or services. Any program offering free burial rights shall comply with s. 817.415.

Section 62. Section 497.329, Florida Statutes, is renumbered as section 497.281, Florida Statutes, and amended to read:

497.281 ~~497.329~~ Licensure ~~Registration~~ of brokers of burial rights.—

(1) No person shall receive compensation to act as a third party to the sale or transfer of three or more burial rights in a 12-month period unless the person pays a license registration fee as determined by licensing authority rule but not to exceed \$250 ~~of \$150~~ and is licensed ~~registered~~ with the department as a burial rights broker in accordance with this section.

(2) The department, by rule, shall provide for the biennial renewal of licenses under this section ~~registrants~~ and a renewal fee as determined by licensing authority rule but not to exceed \$250 ~~of \$100~~.

(3) This section shall not apply to persons otherwise licensed ~~or registered~~ pursuant to this chapter.

(4) The licensing authority may by rule specify records of brokerage transactions which shall be required to be maintained by burial rights brokers licensed under this subsection, and which shall be subject to inspection by the department.

Section 63. Section 497.333, Florida Statutes, is renumbered as section 497.282, Florida Statutes, and amended to read:

497.282 ~~497.333~~ Disclosure of information to public.—A licensee offering to provide burial rights, merchandise, or services to the public shall:

(1) Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by the licensee.

(2) Fully disclose all regularly offered services and merchandise prior to the selection of burial services or merchandise. The full disclosure required shall identify the prices of all burial rights, services, and merchandise provided by the licensee.

(3) Not make any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container.

(4) Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights, merchandise, or services purchased.

(5) Provide to the customer, upon request, a current copy of the bylaws of the licensee.

(6) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract, the form of which has been approved by the licensing authority pursuant to procedures specified by rule board.

(a) The written contract shall be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) The written contract shall provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(c) A description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(7) Provide the licensee's policy on cancellation and refunds to each customer.

(8) In a manner established by rule of the licensing authority board, provide on the signature page, clearly and conspicuously in boldfaced 10-point type or larger, the following:

(a) The words "purchase price."

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services, and cash advances.

(e) The toll-free number of the department which is available for questions or complaints.

(f) A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid for items not used.

(9) Effective October 1, 2006, display in its offices for free distribution to all potential customers, and provide to all customers at the time of sale, a brochure explaining how and by whom cemeteries and preneed sales are regulated, summarizing consumer rights under the law, and providing the name, address, and phone number of the department's consumer affairs division. The format and content of the brochure shall be as prescribed by the rule. The licensing authority may cause the publication of such brochures and by rule establishing requirements that cemetery and preneed licensees purchase and make available such brochures as so published, in the licensee's offices, to all potential customers.

(10) Provide to each customer a complete description of any monument, marker, or memorialization to be placed at the gravesite.

Section 64. Section 497.337, Florida Statutes, is renumbered as section 497.283, Florida Statutes, and amended to read:

497.283 497.337 Prohibition on sale of personal property or services.—

(1) This section applies to all cemetery companies licensed pursuant to this chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of human remains or the commemoration of the memory of a deceased human being and also to any person in direct written contractual relationship with licensed cemetery companies.

(2)(a) Except as otherwise provided in this chapter, no cemetery company shall directly or indirectly enter into a contract for the sale of personal property or services, excluding burial or interment rights, which may be used in a cemetery in connection with disposing of human remains, or commemorating the memory of a deceased human being, if delivery of the personal property or performance of the service is to be made more than 120 days after receipt of final payment under the contract of sale, except as provided in s. 497.458 ~~497.417~~. This shall include, but not be limited to, the sale for future delivery of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries and interment fees but excluding burial or interment rights.

(b) For the purposes of this section, the term “delivery” means actual delivery and installation at the time of need or at the request of the owner or the owner's agent. Merchandise is not considered delivered under paragraph (a) if it is stored on the grounds of the cemetery or at a storage facility except for monuments, markers, and permanent outer burial receptacles that are stored in a protected environment and are comprised of materials designed to withstand prolonged, protected storage without adversely affecting the structural integrity or aesthetic characteristics of such permanent outer burial receptacles.

(c) In lieu of delivery as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by rule ~~the board~~ may elect, at its discretion, to comply with the

delivery requirements of this section by annually submitting for approval pursuant to procedures and forms as specified by rule, in writing, evidence of the manufacturer's financial responsibility with the licensing authority board for its review and approval. The standards and procedures to establish evidence of financial responsibility shall be those in s. ~~497.461 497.423 or s. 497.425~~, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a preneed licensee certificateholder under s. ~~497.461 497.423 or s. 497.425~~.

(3) No nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding \$2 million shall be required to designate a corporate trustee.

Section 65. Section 497.345, Florida Statutes, is renumbered as section 497.284, Florida Statutes, to read:

497.284 497.345 Abandoned cemeteries; immunity; actions.—

(1) Notwithstanding any provision of law to the contrary, a county or municipality which has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months may, upon notice to the department, take such action as is necessary and appropriate to provide for maintenance and security of the cemetery. The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall establish an ongoing obligation or duty to provide continuous security or maintenance for any cemetery.

(2) No county or municipality nor any person under the supervision or direction of the county or municipality, providing good faith assistance in securing or maintaining a cemetery under subsection (1), may be subject to civil liabilities or penalties of any type for damages to property at the cemetery.

(3) A county or municipality that has maintained or secured a cemetery pursuant to the provisions of subsection (1) may maintain an action at law against the owner of the cemetery to recover an amount equal to the value of such maintenance or security.

Section 66. Section 497.349, Florida Statutes, is renumbered as section 497.285, Florida Statutes, and amended to read:

497.285 497.349 Inactive cemeteries.—

(1) A licensee shall be considered inactive upon the acceptance of the surrender of its license by the department or upon the nonreceipt by the department of the license renewal fees required by s. ~~497.265 497.213(2)~~.

(2) A cemetery licensee licensed to engage in preneed sales shall cease all preneed sales to the public upon becoming inactive in regards to its

cemetery license. At-need sales to the public shall cease within 30 days after becoming inactive.

(3) Any licensee desiring to surrender its license to the department shall first:

(a) File notice with the department.

(b) Submit copies of its existing trust agreements.

(c) Resolve to the department's satisfaction all findings and violations resulting from the last examination conducted.

(d) Pay all outstanding fines and invoices due the department.

(e) Submit its current license.

(4) Upon receipt of the notice, the department shall review the licensee's:

(a) Trust funds.

(b) Trust agreements.

(c) Care and maintenance of the cemetery grounds.

(5) After a review to the department's satisfaction, the department shall terminate the license.

(6)(a) The care and maintenance trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and funds in that trust fund shall be disbursed to the cemetery on a regular basis for the upkeep of the grounds.

(b) The merchandise trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and the funds in that trust fund shall be disbursed in accordance with the requirements of the written contracts until the fund has been exhausted.

Section 67. Section 497.353, Florida Statutes, is renumbered as section 497.286, Florida Statutes, and amended to read:

497.286 ~~497.353~~ Owners to provide addresses; presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.—

(1) For purposes of this section, all owners of burial rights in any cemetery licensed under the provisions of this chapter ~~the Florida Funeral and Cemetery Services Act~~ shall have the legal duty to keep the cemetery companies informed in writing of their residence addresses. Cemetery companies shall notify their present burial rights owners by letter at the owner's last known address and notify all future burial rights owners, in the contract for sale and the certificate of ownership, of the requirement to keep the cemetery company informed in writing of their current residence address.

(2) There is hereby created a presumption that burial rights in any cemetery licensed under this chapter have been abandoned when an owner of

unused burial rights has failed to provide the cemetery with a current residence address for a period of 50 consecutive years and the cemetery is unable to communicate by certified letter with said owner of unused burial rights for lack of address. No such presumption of abandonment shall exist for burial rights held in common ownership which are adjoining, whether in a grave space, plot, mausoleum, columbarium, or other place of interment, if any such burial rights have been used within such common ownership.

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

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

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

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

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

(4) Irrespective of diversity of ownership of the burial rights, a cemetery may include in its certification burial rights in as many owners as are certified to have been abandoned.

(5) The department shall notice and publish the approved abandoned burial rights in the manner provided by s. 717.118.

(6) Within 120 days from the final notice and publication as provided in subsection (5), the department shall notify the cemetery if there has been no claim filed for the burial rights, and the cemetery shall have the right to sell such burial rights at a public sale subject to the approval of the sale price by the department.

(7) Notice of the time and place of any sale held pursuant to the provisions of this section shall be published by the cemetery once in a newspaper of general circulation in the county in which the cemetery is located, such publication to be not less than 30 days prior to the date of sale.

(8) The proceeds derived from any sale shall be disbursed in the following manner: an amount specified in s. ~~497.268~~ 497.245 shall be deposited to the cemetery care and maintenance trust fund; an amount equal to the cemetery company's actual and necessary costs incurred pursuant to this section but not to exceed 10 percent of the selling price of the abandoned burial right shall be deposited to the cemetery company's operating account; and the balance of the proceeds shall be deposited with the department within 20

days after receipt of said funds. The department shall deposit all funds received pursuant to this subsection in accordance with the provisions of s. 717.123.

(9) Persons or their heirs who were owners of burial rights which were sold under this section shall have the right at any time to obtain equivalent burial rights in the cemetery without further charge. If no burial rights are desired, such persons or their heirs may obtain the amount paid to the department in accordance with the provisions of s. 717.124.

(10) The cemetery shall set aside equivalent burial rights equal to 10 percent of the abandoned burial rights sold under this section for the exclusive use of persons or their heirs who were owners of burial rights which were sold under this section, who have the right at any time to obtain equivalent burial rights in the cemetery under this section.

(11) Persons who purchase burial rights at a sale pursuant to this section shall have the right to sell, alienate, or otherwise transfer said burial rights subject to and in accordance with the rules and regulations of the cemetery and payment of a reasonable transfer fee.

Section 68. Section 497.357, Florida Statutes, is renumbered as section 497.287, Florida Statutes, and amended to read:

497.287 ~~497.357~~ Report of identification of exempt cemeteries.—

(1) All cemeteries in excess of 5 acres located in this state that are exempt from the provisions of this chapter shall be required to file a report of identification with the department and pay a \$25 fee. The department shall maintain such reports as public records. Such report of identification shall be refiled every 5 years pursuant to a schedule set by board rule. Solely for purposes of chapter 120, such report of identification shall be considered a license registration with the department.

(2) The report shall be submitted on a form and pursuant to procedures specified by rule approved by the board, and shall list the name and address of the authorized agent who is responsible for conducting the business of the cemetery and to whom inquiries about the cemetery can be directed.

(3) The ~~department board~~ may institute proceedings in any appropriate court for injunctive relief to enforce this section. Upon issuance of an injunctive order, the court shall award the department its costs and attorney fees in the action.

Section 69. Part III of chapter 497, Florida Statutes, consisting of sections 497.365, 497.366, 497.367, 497.368, 497.369, 497.370, 497.371, 497.372, 497.373, 497.374, 497.375, 497.376, 497.377, 497.378, 497.379, 497.380, 497.381, 497.382, 497.383, 497.384, 497.385, 497.386, 497.387, 497.388, 497.389, 497.390, 497.391, and 497.392, is created to read:

PART III

FUNERAL DIRECTING, EMBALMING, AND RELATED SERVICES

Section 70. Section 497.365, Florida Statutes, is created to read:

497.365 Licensure; inactive and delinquent status.—

(1) This section shall apply only to licenses issued under this part. A licensee may practice a profession or occupation regulated under this part only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this chapter and the licensing authority may impose discipline on the licensee.

(2) Pursuant to procedures specified by rule, a licensee shall be permitted to choose, at the time of licensure renewal, an active or inactive status. However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.

(3) There shall be imposed pursuant to rule a fee for an inactive status license which is no greater than the fee for an active status license.

(4) An inactive status licensee may change to active status at any time, provided the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the licensing authority, and meets all continuing education requirements as specified in this section.

(5) A licensee shall apply with a complete application, as defined by rule of the licensing authority, to renew an active or inactive status license, before the license expires. Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.

(6) A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the licensing authority, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license null without any further action by the board or the licensing authority. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(7) There shall be imposed pursuant to rule an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent status licensee when such licensee applies for active or inactive status.

(8) There shall be imposed pursuant to rule an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) There may be imposed pursuant to rule reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination, to assess current competency necessary to ensure that a licensee who has been on inactive status for more than 4

consecutive years and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) Before reactivation, an inactive or delinquent licensee shall meet the same continuing education requirements, if any, imposed on an active status licensee for all licensure periods in which the licensee was inactive or delinquent.

(11) The status or a change in status of a licensee shall not alter in any way the right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

Section 71. Section 497.366, Florida Statutes, is created to read:

497.366 Licensure; renewal and cancellation notices.—

(1) At least 90 days before the end of a licensure cycle, the licensing authority shall:

(a) Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record with the licensing authority.

(b) Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record with the licensing authority.

(2) Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than 4 years and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the licensing authority.

(3) This section shall apply only to licensees licensed under this part.

Section 72. Section 497.367, Florida Statutes, is created to read:

497.367 Instruction on HIV and AIDS, funeral directors and embalmers.—

(1) Each person licensed as a funeral director or embalmer under this chapter shall be required to complete an approved continuing educational course on human immunodeficiency virus and acquired immune deficiency syndrome, at least every 2 years. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.

(2) Confirmation of completed continuing education concerning each funeral director or embalmer licensee shall be submitted according to procedures, forms, and methods as specified by rule of the licensing authority.

(3) There may be approved by the licensing authority by rule or order additional equivalent courses that may be used to satisfy the requirements in subsection (1). There may be counted the hours required for completion of the course included in the total continuing educational requirements as required by law.

(4) Any person holding two or more licenses subject to the provisions of this section shall only be required to take the course once every 2 years notwithstanding the number of licenses held by that person.

(5) Failure to timely comply with the above requirements shall constitute grounds for disciplinary action against the licensee.

(6) It shall be required as a condition of granting a license as a funeral director and embalmer under this chapter that an applicant making initial application for licensure complete an educational course approved by the licensing authority on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

Section 73. Section 470.006, Florida Statutes, is renumbered as section 497.368, Florida Statutes, and amended to read:

497.368 470.006 Embalmers; licensure as an embalmer by examination; provisional license.—

(1) Any person desiring to be licensed as an embalmer shall apply to the licensing authority department ~~department~~ to take the licensure examination. The licensing authority department ~~department~~ shall examine each applicant who has remitted an examination fee set by rule of the licensing authority ~~the board~~ not to exceed \$200 plus the actual per applicant cost to the licensing authority department ~~the board~~ for portions of the examination and who ~~the board certifies~~ has:

(a) Completed the application form and remitted a nonrefundable application fee set by the licensing authority board ~~board~~ not to exceed \$200 ~~\$50~~.

(b) Submitted proof satisfactory to the licensing authority board ~~board~~ that the applicant is at least 18 years of age and is a recipient of a high school degree or equivalent.

(c) Had no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the ability to practice embalming or the practice of embalming.

(d) Completed a course in mortuary science approved by the licensing authority board ~~board~~, which course embraces, at least, the following subjects: theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, and public health and sanitation.

(e) Submitted proof of completion of a ~~board-approved~~ course on communicable diseases approved by the licensing authority.

(2) The licensing authority ~~department~~ shall license the applicant as an embalmer if the applicant:

(a) Passes an examination on the subjects of the theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, public health and sanitation, and local, state, and federal laws and rules relating to the disposition of dead human bodies; however, there may be the board by rule approved by the licensing authority ~~may adopt~~ the use of a national examination, such as the embalming examination prepared by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement; and

(b) Completes a 1-year internship under a licensed embalmer.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as an embalmer may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed embalmer for a limited period of 6 months as provided by rule of the licensing authority ~~board~~. The fee for provisional licensure shall be set by rule of the licensing authority ~~the board~~, but may not exceed \$200 ~~\$125~~, and shall be nonrefundable and in addition to the fee required in subsection (1). This provisional license may be renewed no more than one time.

Section 74. Section 470.007, Florida Statutes, is renumbered as section 497.369, Florida Statutes, and amended to read:

497.369 ~~470.007~~ Embalmers; licensure as an embalmer by endorsement; licensure ~~registration~~ of a temporary embalmer.—

(1) The licensing authority ~~department~~ shall issue a license by endorsement to practice embalming to an applicant who has remitted an examination fee set by rule of the licensing authority ~~the board~~ not to exceed \$200 and who the licensing authority ~~board~~ certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority ~~the board~~ not to exceed \$200 ~~\$50~~.

(b)1. Holds a valid license to practice embalming in another state of the United States, provided that, when the applicant secured ~~his or her~~ or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2. Meets the qualifications for licensure in s. 497.368 ~~470.006~~, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state, and has, within 10 years prior to the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority ~~board~~, is substantially equivalent to or

more stringent than the examination given by the licensing authority department.

(c) Has submitted proof of completion of a licensing authority approved board-approved course on communicable diseases.

(2) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or more stringent than the examination and requirements in this state unless found otherwise by rule of the licensing authority board.

(3) The licensing authority department shall not issue a license by endorsement or a temporary license registration to any applicant who is under investigation or prosecution in any jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation or prosecution is complete.

(4) Each applicant for licensure by endorsement must pass the examination on local, state, and federal laws and rules relating to the disposition of dead human bodies which is required under s. 497.368 ~~470.006~~ and which shall be given by the licensing authority department.

(5) There may be adopted by the licensing authority ~~The board may adopt~~ rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by subsection (4) to be licensed register as a temporary licensed embalmer. A temporary licensed registered temporary embalmer may work as an embalmer in a licensed funeral establishment under the general supervision of a licensed embalmer. Such temporary license registration shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license registration may be renewed one time under the same conditions as initial issuance. The fee for issuance registration or renewal of an embalmer temporary license registration as a temporary embalmer shall be set by rule of the licensing authority ~~the board~~ but may not exceed \$200 ~~\$125~~. The fee required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1).

Section 75. Section 470.008, Florida Statutes, is renumbered as section 497.370, Florida Statutes, and amended to read:

497.370 ~~470.008~~ Embalmers; licensure ~~Registration~~ of an embalmer intern.—

(1) Any person desiring to become an embalmer intern shall make application to the licensing authority department on forms specified by rule provided by the department, together with a nonrefundable fee determined by rule of the licensing authority but not to exceed \$200 ~~\$100~~. The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment or centralized embalming facility where such training is to be conducted. The embalmer intern shall intern under the direct supervision of a licensed embalmer who has an active, valid license under s. 497.368 or s. 497.369.

(2) An applicant for internship under this section shall meet the requirements of ~~s. 497.368(1)(b)-(e)~~ 470.006(1)(b)-(e) prior to being licensed registered ~~by the board~~ as an embalmer intern.

(3) ~~There shall be adopted~~ The board shall adopt rules establishing an embalmer internship program and criteria for embalmer intern training agencies and supervisors. Any funeral establishment or centralized embalming facility where embalming is conducted must apply to the licensing authority board for approval as an embalmer intern training agency.

(4) A funeral establishment or centralized embalming facility designated as an embalmer intern training agency may not exact a fee from any person obtaining intern training at such funeral establishment or centralized embalming facility.

Section 76. Section 470.0085, Florida Statutes, is renumbered as section 497.371, Florida Statutes, and amended to read:

497.371 ~~470.0085~~ Embalmers; establishment of embalmer apprentice program.—~~The licensing authority adopts board may adopt~~ rules establishing an embalmer apprentice program. An embalmer apprentice may perform only those tasks, functions, and duties relating to embalming which are performed under the direct supervision of an a licensed embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice shall be eligible to serve in an apprentice capacity for a period not to exceed 3 years ~~1 year~~ as may be determined by licensing authority board rule or for a period not to exceed 5 ~~3~~ years if the apprentice is enrolled in and attending a course in mortuary science or funeral service education at any mortuary college or funeral service education college or school. An embalmer apprentice shall be licensed registered ~~with the board~~ upon payment of a licensure registration ~~fee~~ as determined by licensing authority rule but not to exceed \$200 ~~\$50~~.

Section 77. Section 470.0087, Florida Statutes, is renumbered as section 497.372, Florida Statutes, and amended to read:

497.372 ~~470.0087~~ Funeral directing; conduct constituting Practice of funeral directing.—

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

(a) Selling or offering to sell funeral services on an at-need basis.

(b) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for such service; setting the time of the service; establishing the type of service to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

(c) Making, negotiating, or completing the financial arrangements for a funeral service on an at-need basis, provided that nonlicensed personnel may assist the funeral director in performing such tasks.

(d) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, a visitation or viewing. Such functions shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.

(e) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any funeral service held in a funeral establishment, cemetery, or elsewhere.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a licensee certificateholder or registrant.

(g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such person is engaged in the practice of funeral directing or that such person is holding ~~himself or herself or himself~~ out to the public as being engaged in the practice of funeral directing; provided, however, that nothing in this paragraph shall prevent using the name of any owner, officer, or corporate director of a funeral establishment, who is not a licensee, in connection with the name of the funeral establishment with which such individual is affiliated, so long as such individual's affiliation is properly specified.

(h) Managing or supervising the operation of a funeral establishment, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions.

(2) The practice of funeral directing shall not be construed to consist of the following functions:

(a) The phoning-in or faxing of obituary notices; ordering of flowers or merchandise; delivery of death certificates to attending physicians; or clerical preparation of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director or that are incidental to any of the functions specified above.

(b) Furnishing standard printed price lists and other disclosure information to the public by telephone or by providing such lists to persons making inquiry.

(c) Removing or transporting human remains from the place of death, or removing or transporting human remains from or to a funeral establishment, centralized embalming facility, refrigeration facility, cemetery, crematory, medical examiner's office, common carrier, or other locations as authorized and provided by law.

(d) Arranging, coordinating, or employing licensed ~~registered~~ removal services, licensed ~~registered~~ refrigeration facilities, or licensed ~~registered~~ centralized embalming facilities.

- (e) Any aspect of making preneed funeral arrangements or entering into preneed contracts.
- (f) Any functions normally performed by cemetery or crematory personnel.

Section 78. Section 470.009, Florida Statutes, is renumbered as section 497.373, Florida Statutes, and amended to read:

~~497.373~~ 470.009 Funeral directing; licensure as a funeral director by examination; provisional license.—

(1) Any person desiring to be licensed as a funeral director shall apply to the licensing authority ~~department~~ to take the licensure examination. The licensing authority ~~department~~ shall examine each applicant who has remitted an examination fee set by rule of the licensing authority ~~the board~~ not to exceed \$200 plus the actual per applicant cost to the licensing authority ~~department~~ for portions of the examination and who the licensing authority ~~board~~ certifies has:

(a) Completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority ~~the board~~ not to exceed \$200 ~~\$50~~.

(b) Submitted proof satisfactory to the licensing authority ~~board~~ that the applicant is at least 18 years of age and is a recipient of a high school degree or equivalent.

(c) Had no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the ability to practice funeral directing or the practice of funeral directing.

(d)1. Received an associate in arts degree, associate in science degree, or an associate in applied science degree in mortuary science approved by the licensing authority ~~board~~; or

2. Holds an associate degree or higher from a college or university accredited by a regional association of colleges and schools recognized by the United States Department of Education and is a graduate of at least an approved ~~a~~ 1-year course in mortuary science approved by the licensing authority ~~board~~.

(e) Submitted proof of completion of a ~~board-approved~~ course on communicable diseases approved by the licensing authority.

(2) The licensing authority ~~department~~ shall license the applicant as a funeral director if ~~he or she~~ or he:

(a) Passes an examination on the subjects of the theory and practice of funeral directing, public health and sanitation, and local, state, and federal laws and rules relating to the disposition of dead human bodies; however, there may be approved by rule ~~the board by rule may adopt~~ the use of a national examination, such as the funeral service arts examination prepared

by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement.

(b) Completes a 1-year internship under a licensed funeral director.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as a funeral director may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed funeral director for a limited period of 6 months as provided by rule of the licensing authority board. The fee for provisional licensure shall be set by rule of the licensing authority the board but may not exceed ~~\$200~~ \$125. The fee required in this subsection shall be nonrefundable and in addition to the fee required by subsection (1). This provisional license may be renewed no more than one time.

Section 79. Section 470.011, Florida Statutes, is renumbered as section 497.374, Florida Statutes, and amended to read:

497.374 ~~470.011~~ Funeral directing; licensure as a funeral director by endorsement; licensure registration of a temporary funeral director.—

(1) The licensing authority department shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority the board not to exceed \$200 and who ~~the board certifies~~:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority the board not to exceed \$200 ~~\$50~~.

(b)1. Holds a valid license to practice funeral directing in another state of the United States, provided that, when the applicant secured ~~his or her~~ or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2. Meets the qualifications for licensure in s. ~~497.373~~ 470.009 and has, within 10 years prior to the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority board, is substantially equivalent to or more stringent than the examination given by the licensing authority department.

(c) Has submitted proof of completion of a licensing authority approved ~~board-approved~~ course on communicable diseases.

(2) The licensing authority department shall not issue a license by endorsement or a temporary license registration to any applicant who is under investigation or prosecution in any jurisdiction for acts which would constitute a violation of this chapter until such time as the investigation or prosecution is complete.

(3) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or

more stringent than the examination and requirements in this state unless found otherwise by rule of the licensing authority board.

(4) Each applicant for licensure by endorsement must pass the examination on local, state, and federal laws and rules relating to the disposition of dead human bodies which is required under s. ~~497.373~~ 470.009 and which shall be given by the licensing authority department.

(5) ~~There may be adopted~~ The board may adopt rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by subsection (4) to obtain a license register as a temporary funeral director. A licensed registered temporary funeral director may work as a funeral director in a licensed funeral establishment under the general supervision of a licensed funeral director licensed under subsection (1) or s. 497.373. Such license registration shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license registration may be renewed one time under the same conditions as initial issuance. The fee for initial issuance or renewal of a temporary license under this subsection registration or renewal of registration as a temporary funeral director shall be set by rule of the licensing authority the board but may not exceed ~~\$200~~ \$125. The fee required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1).

Section 80. Section 470.012, Florida Statutes, is renumbered as section 497.375, Florida Statutes, and amended to read:

~~497.375~~ 470.012 Funeral directing; licensure ~~Registration~~ of a funeral director intern.—

(1) Any person desiring to become a funeral director intern shall make application ~~to the department on forms as required by rule provided by the department,~~ together with a nonrefundable fee as determined by rule of the licensing authority but not to exceed ~~\$200~~ \$100. The application shall indicate the name and address of the licensed funeral director licensed under s. 497.373 or s. 497.374(1) under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training is to be conducted. The funeral director intern shall intern under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1).

(2) ~~Rules shall be adopted~~ The board shall adopt rules establishing a funeral director internship program and criteria for funeral director intern training agencies and supervisors. Any funeral establishment where funeral directing is conducted may apply to the licensing authority board for approval as a funeral director intern training agency.

(3) A funeral establishment designated as a funeral director intern training agency may not exact a fee from any person obtaining intern training at such funeral establishment.

Section 81. Section 470.013, Florida Statutes, is renumbered as section 497.376, Florida Statutes, and amended to read:

497.376 470.013 License as funeral director and embalmer permitted; display of license.—

(1) Nothing in this chapter may be construed to prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time.

(2) ~~There shall be adopted~~ ~~The board shall adopt~~ rules which require each license issued under this chapter to be displayed in such a manner as to make it visible to the public and to facilitate inspection by the licensing authority ~~department~~. However, each licensee shall permanently affix a recent photograph of the licensee to each displayed license issued to that licensee as a funeral director or embalmer.

Section 82. Section 470.014, Florida Statutes, is renumbered as section 497.377, Florida Statutes, and amended to read:

497.377 470.014 Concurrent internships.—The internship requirement for embalmers and funeral directors may be served concurrently pursuant to rules adopted by the licensing authority ~~board~~.

Section 83. Section 470.015, Florida Statutes, is renumbered as section 497.378, Florida Statutes, and amended to read:

497.378 470.015 Renewal of funeral director and embalmer licenses.—

(1) ~~There shall be renewed~~ ~~The department shall renew~~ a funeral director or embalmer license upon receipt of the renewal application and fee set by the licensing authority ~~board~~ not to exceed \$250. The licensing authority ~~board~~ may prescribe by rule continuing education requirements of up to 12 classroom hours and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis, in addition to a licensing authority-approved ~~board-approved~~ course on communicable diseases that includes the course on human immunodeficiency virus and acquired immune deficiency syndrome required by s. 497.367 ~~455.2226~~, for the renewal of a funeral director or embalmer license. The rule ~~board~~ may provide for the waiver of continuing education requirements in circumstances that would justify the waiver, such as hardship, disability, or illness. The continuing education requirement is not required after July 1, 1996, for a licensee who is over the age of 75 years if the licensee does not qualify as the sole person in charge of an establishment or facility.

(2) The licensing authority ~~department~~ shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The licensing authority ~~board~~ shall adopt rules to establish requirements for the advertising of continuing education courses.

Section 84. Section 470.016, Florida Statutes, is renumbered as section 497.379, Florida Statutes, and amended to read:

497.379 470.016 Inactive status.—

(1) A funeral director or embalmer license that has become inactive may be reactivated under s. ~~497.378~~ 470.015 upon application to the licensing authority ~~department~~. The licensing authority board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours, and the licensing authority board may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis, in addition to a licensing authority-approved board-approved course on communicable diseases, for each year the license was inactive.

(2) The licensing authority board shall prescribe by rule an application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for reactivation of a license. None of these fees may exceed the biennial renewal fee established by the licensing authority board for an active license.

(3) The licensing authority department may not reactivate a license unless the inactive or delinquent licensee has paid any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

Section 85. Section 470.024, Florida Statutes, is renumbered as section 497.380, Florida Statutes, and amended to read:

497.380 ~~470.024~~ Funeral establishment; licensure.—

(1) A funeral establishment shall be a place at a specific street address or location consisting of at least 1,250 contiguous interior square feet and must maintain or make arrangements for either suitable capacity for the refrigeration and storage of dead human bodies handled and stored by the establishment and ~~or~~ a preparation room equipped with necessary ventilation and drainage and containing necessary instruments for embalming dead human bodies or must make arrangements for a preparation room as established by rule.

(2) Each licensed funeral establishment may operate a visitation chapel at a separate location within the county in which the funeral establishment is located. A visitation chapel must be a facility of not less than 500 square feet and not more than 700 square feet and may be operated only when a licensed funeral director is present at the facility. A visitation chapel may be used only for visitation of a deceased human body and may not be used for any other activity permitted by this chapter.

(3) No person may conduct, maintain, manage, or operate a funeral establishment unless a funeral ~~an~~ establishment operating license has been issued under this chapter ~~by the department~~ for that funeral establishment.

(4) Application for a funeral establishment license shall be made on forms and pursuant to procedures specified by rule ~~furnished by the department~~, shall be accompanied by a nonrefundable fee not to exceed \$300 as set by licensing authority board rule, and shall include the name of the licensed funeral director who is in charge of that establishment.

(5) A funeral establishment license shall be renewable biennially pursuant to procedures, and upon payment of a nonrefundable fee not to exceed \$300, as set by licensing authority board rule. The licensing authority board may also establish by rule a delinquency fee not to exceed \$50 per day.

(6) The practice of embalming done at a funeral establishment shall only be practiced by an embalmer licensed under this chapter.

(7) Each licensed funeral establishment shall have one full-time funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for that establishment. The full-time funeral director in charge must have an active license and may not be the full-time funeral director in charge of any other funeral establishment or of any other direct disposal establishment.

(8) The issuance of a license to operate a funeral establishment to a person or entity who is not individually licensed as a funeral director does not entitle the person to practice funeral directing.

(9) Each funeral establishment located at a specific address shall be deemed to be a separate entity and shall require separate licensing and compliance with the requirements of this chapter. A funeral establishment may not be operated at the same location as any other funeral establishment or direct disposal establishment unless such establishments were licensed as colocated establishments on October 1, 1993.

(10) Every funeral establishment licensed under this chapter shall at all times be subject to the inspection of all its buildings, grounds, and vehicles used in the conduct of its business, by the department or any of its designated representatives or agents, or local or Department of Health inspectors. The licensing authority board shall by rule establish requirements for inspection of funeral establishments.

(11) The licensing authority board shall set by rule an annual inspection fee not to exceed ~~\$300~~ \$100, payable upon application for licensure and upon each renewal of such license.

(12) A change in ownership of a funeral establishment shall be promptly reported pursuant to procedures established by rule to the department and shall require the relicensure of the funeral establishment, including reinspection and payment of applicable fees.

(13) Each application for a funeral establishment license shall identify every person with the ability to direct the management or policies of the establishment and must identify every person having more than a 10-percent ownership interest in the establishment or the business or corporation which owns the establishment. The licensing authority board may deny, suspend, or revoke the license if any person identified in the application has been or thereafter is ever been ~~been or thereafter is ever been~~ disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter. The licensing authority board may deny, suspend, or revoke the license if any person identified in the application has ever been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication,

a crime in any jurisdiction that directly relates to the ability to operate a funeral establishment.

(14) Each funeral establishment must display at the public entrance the name of the establishment and the name of the full-time funeral director in charge. A funeral establishment must transact its business under the name by which it is licensed.

Section 86. Section 470.026, Florida Statutes, is renumbered as section 497.381, Florida Statutes, and amended to read:

497.381 ~~470.026~~ Solicitation of goods or services.—

(1) The licensing authority ~~board~~ shall adopt rules regulating the solicitation of goods or services by licensees ~~or registrants~~.

(2) The licensing authority ~~board~~ shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, ~~vexatious~~, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The licensing authority ~~board~~ shall regulate such solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public has a high expectation of privacy in one's personal residence, and the licensing authority ~~board~~ by rule may restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this chapter may be construed to restrict the right of a person to lawfully advertise, direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(5) At-need solicitation of funeral merchandise or services is prohibited. No funeral director or direct disposer or her or his agent or representative may contact the family or next of kin of a deceased person to sell services or merchandise unless the funeral director or direct disposer or her or his agent or representative has been initially called or contacted by the family or next of kin of such person and requested to provide her or his services or merchandise.

Section 87. Section 470.029, Florida Statutes, is renumbered as section 497.382, Florida Statutes, and amended to read:

497.382 ~~470.029~~ Reports of cases embalmed and bodies handled.—

(1) Each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility shall report on a form prescribed and furnished by the licensing authority ~~department~~ the name of the deceased and such other information as may be required with respect to each dead human body embalmed or otherwise handled by the establishment or

facility. Such forms shall be signed by the embalmer who performs the embalming, if the body is embalmed, and the funeral director in charge of the establishment or facility or by the direct disposer who disposes of the body. The licensing authority board shall prescribe by rule the procedures in submitting such documentation. Reports required by this subsection shall be filed by the 20th ~~10th~~ day of each month for final dispositions handled the preceding month.

(2) Funeral directors performing disinterments shall report, using a form and procedures specified by rule ~~on a form prescribed and furnished by the department~~, the name of the deceased and such other information as may be required by rule with respect to each dead human body disinterred.

Section 88. Section 470.0294, Florida Statutes, is renumbered as section 497.383, Florida Statutes, and amended to read:

497.383 ~~470.0294~~ Additional rights of legally authorized persons.—

(1) In addition to any other common law or statutory rights a legally authorized person may otherwise have, that person may authorize a funeral director or direct disposer licensed under this chapter to lawfully dispose of fetal remains in circumstances when a fetal death certificate is not issued under chapter 382. A person licensed under this chapter or former chapter 470 is not liable for damages as a result of following the instructions of the legally authorized person in connection with the final disposition of fetal remains in circumstances in which a fetal death certificate is not issued under chapter 382 or in connection with the final disposition of a dead human body.

(2) Any ambiguity or dispute concerning the right of any legally authorized person to provide authorization under this chapter or the validity of any documentation purporting to grant that authorization shall be resolved by a court of competent jurisdiction.

Section 89. Section 470.0295, Florida Statutes, is renumbered as section 497.384, Florida Statutes, and amended to read:

497.384 ~~470.0295~~ Disinterment; transportation; authorization and notification.—

(1) The disinterment and reinterment of human remains shall require the physical presence of a licensed funeral director, unless the reinterment is to be made in the same cemetery.

(2) In order to ensure that any disinterment or transportation of a dead human body is conducted in a manner that properly protects the public health, safety, and welfare, the licensing authority board may adopt rules to regulate the disinterment and transportation of human remains.

(3) The funeral director shall obtain written authorization from a legally authorized person or a court of competent jurisdiction prior to the disinterment and reinterment of a dead human body.

(4) Notification must be provided licensing authority ~~to the board and department~~ as provided in s. ~~497.382~~ 470.029.

(5) The removal of human remains from a designated temporary storage area to a place of permanent burial within a cemetery shall not be considered a disinterment or reinterment.

Section 90. Section 470.0301, Florida Statutes, is renumbered as section 497.385, Florida Statutes, and amended to read:

~~497.385~~ 470.0301 Removal services; refrigeration facilities; centralized embalming facilities.—In order to ensure that the removal, refrigeration, and embalming of all dead human bodies is conducted in a manner that properly protects the public's health and safety, the licensing authority board shall adopt rules to provide for the licensure registration of removal services, refrigeration facilities, and centralized embalming facilities operated independently of funeral establishments, direct disposal establishments, and cinerator facilities.

(1) REMOVAL SERVICES AND REFRIGERATION SERVICES.—

(a) Application for licensure registration of a removal service or a refrigeration service shall be made using forms and procedures as specified by rule ~~on forms furnished by the department~~, shall be accompanied by a nonrefundable fee not to exceed \$300 as set by licensing authority board rule, and shall include the name of the business owner, manager in charge, business address, and copies of occupational and other local permits.

(b) The licensing authority board shall set by rule requirements for licensure registration of removal services and refrigeration services.

(c) ~~The licensure Registration~~ shall be renewed biennially pursuant to procedures and upon payment of a nonrefundable fee not to exceed \$300 as set by licensing authority board rule. The licensing authority board may also establish by rule a late renewal penalty fee not to exceed \$50 per day. Any licensure registration not renewed within 30 days after its renewal date shall expire without further action ~~by the department~~.

(d) Each business located at a specific address shall be deemed to be a separate entity and shall require separate licensure registration and compliance with the requirements of this chapter.

(e) Every licensee registrant under this section shall at all times be subject to the inspection of all its buildings, grounds, and vehicles used in the conduct of its business, by the department or any of its designated representatives or agents, or local or Department of Health inspectors. The licensing authority board shall by rule establish requirements for inspection of removal services and refrigeration services.

(f) The licensing authority board shall set by rule an annual inspection fee not to exceed ~~\$300~~ \$100, payable upon application for licensure registration and upon each renewal of such licensure registration.

(g) A change in ownership shall be promptly reported using forms and procedures specified by rule to the department and may require the relicensure of the licensee registrant, including reinspection and payment of applicable fees, as required by rule.

(h) The licensing authority board may deny, suspend, or revoke the license registration if any person identified in the application has ever been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter. The licensing authority board may deny, suspend, or revoke the license of registration if any person identified in the application who has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the ability to operate a removal service or refrigeration service.

(i) Each business must display at the public entrance the name of the establishment and the name of the full-time manager in charge. Each licensee registrant must transact its business under the name by which it is licensed registered with the licensing authority department.

(j) No person may conduct, maintain, manage, or operate a removal service or refrigeration service unless licensed registration for such service under this chapter has been issued by the department.

(k) Such removal services and refrigeration services may not enter into removal or refrigeration contracts with the general public.

(2) CENTRALIZED EMBALMING FACILITIES.—In order to ensure that all funeral establishments have access to embalming facilities that comply with all applicable health and safety requirements, the licensing authority board shall adopt rules to provide for the license registration and operation of centralized embalming facilities and shall require, at a minimum, the following:

(a) All centralized embalming facilities shall contain all of the equipment and meet all of the requirements that a preparation room located in a funeral establishment is required to meet, but such facilities shall not be required to comply with any of the other requirements for funeral establishments, as set forth in s. 497.380 470.024.

(b) Each licensed centralized embalming facility shall have at least one full-time embalmer in charge. The full-time embalmer in charge must have an active license and may not be the full-time embalmer in charge, full-time funeral director in charge, or full-time direct disposer in charge of any other establishment licensed under this chapter.

(c) Any person, regardless of whether such person is otherwise regulated by this chapter, may own such a facility, provided that such facility is operated in accordance with the rules established by the licensing authority board.

(d) A centralized embalming facility may only provide services to funeral establishments.

(e) The practice of embalming done at a centralized embalming facility shall only be practiced by an embalmer licensed under this chapter and shall be provided only to licensed funeral establishments.

(f) Application for ~~licensure registration~~ of a centralized embalming facility shall be made utilizing forms and procedures prescribed by rule ~~on forms furnished by the department~~ and shall be accompanied by a nonrefundable fee not to exceed \$300 as set by ~~licensing authority board rule~~, and licensure registration shall be renewed biennially pursuant to procedures and upon payment of a nonrefundable fee not to exceed \$300 as set by licensing authority board rule. The licensing authority board may also establish by rule a late fee not to exceed \$50 per day. Any ~~licensure registration~~ not renewed within 30 days after the renewal date shall expire without further action by the department.

(g) The licensing authority board shall set by rule an annual inspection fee not to exceed ~~\$300~~ \$100, payable upon application for licensure registration and upon renewal of such licensure registration.

(h) The licensing authority board shall, by rule, establish operating procedures which shall require, at a minimum, that centralized embalming facilities maintain a system of identification of human remains received for embalming.

Section 91. Section 470.0315, Florida Statutes, is renumbered as section 497.386, Florida Statutes, and amended to read:

497.386 ~~470.0315~~ Storage, preservation, and transportation of human remains.—

(1) A person may not store or maintain human remains at any establishment or facility except an establishment or facility licensed ~~or registered~~ under this chapter or a health care facility, medical examiner's facility, morgue, or cemetery holding facility.

(2) A dead human body may not be held in any place or in transit over 24 hours after death or pending final disposition unless the body is maintained under refrigeration at a temperature of 40 degrees Fahrenheit or below or is embalmed or otherwise preserved in a manner approved by the licensing authority board in accordance with the provisions of this chapter.

(3) A dead human body transported by common carrier or any agency or individual authorized to carry dead human bodies must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors. A dead human body may be transported only when accompanied by a properly completed burial-transit permit issued in accordance with the provisions of chapter 382.

(4) The licensing authority board shall establish by rule the minimal standards of acceptable and prevailing practices for the handling and storing of dead human bodies, provided that all human remains transported or stored must be completely covered and at all times treated with dignity and respect.

(5) A person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 92. Section 470.032, Florida Statutes, is renumbered as section 497.387, Florida Statutes, and amended to read:

497.387 470.032 Unlawful to remove or embalm body without consent of proper official when crime is suspected.—It is unlawful for a licensee under this chapter ~~or registrant~~ to remove or embalm a dead human body when she or he has information indicating crime or violence of any sort in connection with the cause of death until permission of the medical examiner or other lawfully authorized official has first been obtained.

Section 93. Section 470.0355, Florida Statutes, is renumbered as section 497.388, Florida Statutes, and amended to read:

497.388 470.0355 Identification of human remains.—

(1) PRIOR TO FINAL DISPOSITION.—

(a) The licensee ~~or registrant~~ in charge of the final disposition of dead human remains shall, prior to final disposition of such dead human remains, affix on the ankle or wrist of the deceased, and ~~or~~ in the casket or alternative container or cremation container, proper identification of the dead human remains. The identification or tag shall be encased in or consist of durable and long-lasting material containing the name, date of birth, and date of death, ~~and social security number~~ of the deceased, if available. If the dead human remains are cremated, proper identification shall be placed in the container or urn containing the remains.

(b)(2) Any licensee ~~or registrant~~ responsible for removal of dead human remains to any establishment, facility, or location shall ensure that the remains are identified by a tag or other means of identification that is affixed to the ankle or wrist of the deceased at the time the remains are removed from the place of death or other location.

(c)(3) Any licensee ~~or registrant~~ may rely on the representation of a legally authorized person to establish the identity of dead human remains.

(2) IN UNLICENSED CEMETERIES.—The identification of human remains interred in an unlicensed cemetery shall be the responsibility of the licensed funeral establishment in charge of the funeral arrangements for the deceased person. The licensed funeral establishment in charge of the funeral arrangements for the interment in an unlicensed cemetery of human remains shall place on the outer burial container, cremation interment container, or other container or on the inside of a crypt or niche a tag or permanent identifying mark containing the name of the decedent and the date of death, if available. The materials and locations of the tag or mark shall be more specifically described by rule of the licensing authority.

(3) IN LICENSED CEMETERIES.—Human remains at licensed cemeteries shall be identified as follows:

(a) Each licensed cemetery shall place on the outer burial container, cremation interment container, or other container or on the inside of a crypt or niche a tag or permanent identifying marker containing the name of the decedent and the date of death, if available. The materials and the location of the tag or marker shall be more specifically described by rule of the board.

(b) Each licensed cemetery may rely entirely on the identity stated on the burial transit permit or on the identification supplied by a person licensed under this chapter to establish the identity of the dead human remains delivered by such person for burial and shall not be liable for any differences between the identity shown on the burial transit permit or identification and the actual identity of the dead human remains delivered by such person and buried in the cemetery.

(4) DIRECT DISPOSAL ESTABLISHMENTS.—Direct disposal establishments shall establish a system of identification of human remains received which shall be designed to track the identity of the remains from the time of receipt until delivery of the remains to the authorized persons. This is in addition to the requirements for identification of human remains set forth in subsection (1). A copy of the identification procedures shall be available, upon request, to the department and legally authorized persons.

Section 94. Section 470.0375, Florida Statutes, is renumbered as section 497.389, Florida Statutes, and amended to read:

497.389 470.0375 Funeral establishments; cash advance accounts; escrow refund accounts.—

(1) Funeral establishments may elect to maintain special, segregated bank accounts to be used in conjunction with making cash advances to vendors. The money in such accounts may be used by the funeral establishments to pay third-party vendors when such amounts must be paid before the funeral establishment has been paid by the purchaser.

(2) Funeral establishments may elect to maintain special, segregated escrow accounts to be used in conjunction with making cash refunds to their purchasers. A funeral establishment may deposit in such accounts any amounts paid by its purchasers that were in excess of the actual funeral costs incurred and cash advances made by the funeral establishment.

Section 95. Section 470.038, Florida Statutes, is renumbered as section 497.390, Florida Statutes, and amended to read:

497.390 470.038 Reciprocity.—In order to ensure that funeral directors, embalmers, and direct disposers who are licensed ~~or registered~~ in this state may be considered for licensure or registration in other jurisdictions, the licensing authority board may enter into reciprocity agreements with other jurisdictions.

Section 96. Section 470.039, Florida Statutes, is renumbered as section 497.391, Florida Statutes, and amended to read:

497.391 470.039 Exceptions.—

(1) Nothing in this chapter may be construed to limit the sale of caskets, alternative containers, outer burial containers, or funeral merchandise by any person on an at-need basis.

(2) Nothing in this chapter may be construed to override the written instructions or wishes of the deceased as to how ~~his or her~~ or his body is to be disposed of, if such instructions are reasonably available at the time of death.

Section 97. Section 470.0395, Florida Statutes, is renumbered as section 497.392, Florida Statutes, and amended to read:

497.392 ~~470.0395~~ Branch chapels.—Notwithstanding the provisions of s. ~~497.380~~ ~~470.024~~, any licensed establishment operating a branch chapel on June 30, 1979, in accordance with the law then in effect, as determined by the licensing authority ~~board~~, may continue to operate such branch chapel for the sole and exclusive purpose of providing and holding funeral services.

Section 98. Part IV of chapter 497, Florida Statutes, consisting of sections 497.450, 497.451, 497.452, 497.453, 497.454, 497.455, 497.456, 497.457, 497.458, 497.459, 497.460, 497.461, 497.462, 497.463, 497.464, 497.465, 497.466, and 497.467, is created to read:

PART IV
PRENEED SALES

Section 99. Section 497.401, Florida Statutes, is renumbered as section 497.450, Florida Statutes, to read:

497.450 ~~497.401~~ Preneed sales; chapter exclusive; applicability of other laws.—Except as provided in this chapter, preneed funeral merchandise or service contract businesses and preneed burial merchandise or service contract businesses shall be governed by this chapter and shall be exempt from all provisions of the Florida Insurance Code.

Section 100. Section 497.403, Florida Statutes, is renumbered as section 497.451, Florida Statutes, to read:

497.451 ~~497.403~~ Insurance business not authorized.—Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any preneed funeral merchandise or service contract business or any preneed burial merchandise or service business to transact any insurance business, other than that of preneed funeral merchandise or service insurance or preneed burial merchandise or service insurance, or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued under the provisions of the Florida Insurance Code. Any insurance business transacted under this section must comply with the provisions of s. 626.785.

Section 101. Section 497.405, Florida Statutes, is renumbered as section 497.452, Florida Statutes, and amended to read:

497.452 ~~497.405~~ Preneed license ~~Certificate of authority~~ required.—

(1)(a) No person, including any cemetery exempt under s. ~~497.260~~ 497.003, may sell, advertise to sell, or make an arrangement for a preneed contract without first having a valid preneed license certificate of authority.

(b) No person, including any cemetery exempt under s. ~~497.260~~ 497.003, may sell, advertise to sell, or make an arrangement for services, merchandise, or burial rights on a preneed basis unless such person is authorized pursuant to this chapter to provide such services, merchandise, or burial rights on an at-need basis.

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

(b) The provisions of paragraph (a) do not apply to a trust company operating pursuant to chapter 660, to a 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.

(c) The provisions of paragraph (a) do not apply to any Florida corporation existing under chapter 607 acting as a servicing agent hereunder in which the stock of such corporation is held by 100 or more persons licensed pursuant to part III of this chapter ~~470~~, provided no one stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation; provided the corporation has a blanket fidelity bond, covering all employees handling the funds, in the amount of \$50,000 or more issued by a licensed insurance carrier in this state; and provided the corporation processes the funds directly to and from the trustee within the applicable time limits set forth in this chapter. The department may require any person claiming that the provisions of this paragraph exempt it from the provisions of paragraph (a) to demonstrate to the satisfaction of the department that it meets the requirements of this paragraph.

(3) No person may obtain a preneed license certificate of authority under this chapter for the preneed sale of merchandise or services unless such person or its agent, in the case of a corporate entity, holds a license as a funeral establishment, ~~or cemetery company, or registration as a direct disposal establishment, or monument establishment under chapter 470.~~

(4) The provisions of this section do not apply to religious-institution-owned cemeteries exempt under s. ~~497.260(1)(d)~~ 497.003(1)(d), in counties with a population of at least 960,000 persons on July 1, 1996, with respect to the sale to the religious institution's members and their families of interment rights, mausoleums, crypts, cremation niches, cremation interment containers, vaults, liners, urns, memorials, vases, foundations, memorial bases, floral arrangements, monuments, markers, engraving, and the opening and closing of interment rights, mausoleums, crypts, ~~and cremation niches, and cremation interment containers~~, if such cemeteries have engaged in the sale of preneed contracts prior to October 1, 1993, and maintain a positive net worth at the end of each fiscal year of the cemetery.

Section 102. Section 497.407, Florida Statutes, is renumbered as section 497.453, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.407, F.S., for present text.)

497.453 Application for preneed license, procedures and criteria; renewal; reports.—

(1) PRENEED LICENSE APPLICATION PROCEDURES.—

(a) A person seeking a license to enter into preneed contracts shall apply for such licensure using forms prescribed by rule.

(b) The application shall require the name, business address, residence address, date and place of birth or incorporation, and business phone number, of applicant and all principals of applicant. The application shall require the applicant's social security number, or if the applicant is an entity, its federal tax identification number.

(c) The application may require information as to the applicant's financial resources.

(d) The application may require information as to the educational and employment history of an individual applicant; and as to applicants that are not natural persons, the business and employment history of the applicant and principals of applicant.

(e) The application shall require the applicant to disclose whether the applicant or any of applicant's principals has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(f) The application shall require the applicant to disclose whether the applicant or any of applicant's principals has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) The application shall require the applicant and its principals to provide fingerprints in accordance with part I of this chapter.

(h) The application shall state the name and license number of the funeral establishment, cemetery company, direct disposal establishment, or monument establishment, under whose license the preneed application is made.

(i) The application shall state the types of preneed contracts proposed to be written.

(j) The application shall disclose the existence of all preneed contracts for service or merchandise entered into by the applicant, or by any other entity under common control with the applicant, without or prior to authorization under this section or predecessors to this section. As to each such contract

the applicant shall disclose the name and address of the contract purchaser, the status of the contract, and what steps or measures the applicant has taken to ensure performance of unfulfilled contracts, setting forth the treatment and status of funds received from the customer in regard to the contract, and stating the name and address of any institution where such funds are deposited and the number used by the institution to identify the account. With respect to contracts entered into before January 1, 1983, an application to issue or renew a preneed license may not be denied solely on the basis of such disclosure. The purchaser of any such contract may not be required to liquidate the account if such account was established before July 1, 1965. Information disclosed may be used by the licensing authority to notify the contract purchaser and the institution in which such funds are deposited should the holder of a preneed be unable to fulfill the requirements of the contract.

(k) The application shall require the applicant to demonstrate that applicant complies and will comply with all requirements for preneed contract licensure under this chapter.

(l) The application may require any other information considered necessary by the department or board to meet its responsibilities under this chapter.

(m) The application shall be sworn to and signed by the applicant if a natural person, or by the president of an applicant that is not a natural person.

(n) The application shall be accompanied by a nonrefundable fee as determined by licensing authority rule but not to exceed \$500.

(2) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure under this section, accompanied by the required fees, shall be approved and license issued, if the licensing authority determines that the following conditions are met:

(a) The application is made by a funeral establishment, cemetery company, direct disposal establishment, or monument establishment, or on behalf of one of the preceding licensees by its agent in the case of a corporate entity, licensed and in good standing under this chapter.

(b) Applicant meets net worth requirements specified by rule of the licensing authority.

(c) Applicant has and will have the ability to discharge her or his liabilities as they become due in the normal course of business, and has and will have sufficient funds available during the calendar year to perform her or his obligations under her or his contracts.

(d) If the applicant or any entity under common control with the applicant has entered into preneed contracts prior to being authorized to do so under the laws of this state:

1. The licensing authority determines that adequate provision has been made to ensure the performance of such contracts.

2. The licensing authority determines that the improper sale of such preneed contracts prior to authorization under this chapter does not indicate, under the facts of the particular application in issue, that applicant has a disregard of the laws of this state such as would expose the public to unreasonable risk if the applicant were issued a preneed license.

3. Nothing in this section shall imply any authorization to enter into preneed contracts without authorization under this chapter.

(e) Neither applicant nor applicant's principals have a demonstrated history of conducting their business affairs to the detriment of the public.

(f) Applicant and applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

(g) The applicant does and will comply with all other requirements of this chapter relating to preneed licensure.

(3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.—It is the policy of this state to encourage competition for the public benefit in the preneed contract business by, among other means, the entry of new licensees into that business. To facilitate issuance of licenses concerning applications judged by the licensing authority to be borderline as to qualification for licensure, the licensing authority may issue a new license under this section on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 12 months of licensure, to ensure the licensee's responsibility, competency, financial stability, and compliance with this chapter. Provided, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority must within 12 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure under this chapter and institute proceedings for revocation of licensure.

(4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.—

(a) Each licensee under this section must provide notice as required by rule prior to any change in control of the licensee. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter, based upon criteria established by rule, which criteria shall promote the purposes of this part in protecting the consumer.

(b) The licensing authority may authorize the transfer of a preneed license and establish by rule a fee for the transfer in an amount not to exceed \$500. Upon receipt of an application for transfer, the executive director may grant a temporary preneed license to the proposed transferee, based upon criteria established by the licensing authority by rule, which criteria shall promote the purposes of this chapter in protecting the consumer. Such a temporary preneed license shall expire at the conclusion of the next regular

meeting of the board unless renewed by the board. The licensing authority may by rule establish forms and procedures for the implementation of this paragraph.

(5) RENEWAL OF LICENSES.—

(a) A preneed license shall expire annually on June 1, unless renewed, or at such other time or times as may be provided by rule. The application for renewal of the license shall be on forms prescribed by rule and shall be accompanied a renewal fee as specified in paragraph (c).

(b) Within 3 months after the end of its fiscal period, or within an extension of time therefore, as the department for good cause may grant, the licensee shall file with the department a full and true statement of her or his financial condition, transactions, and affairs, prepared on a basis as adopted by rule, as of the end of the preceding fiscal period or at such other time or times as may be required by rule, together with such other information and data which may be required by rule. To facilitate uniformity in financial statements and to facilitate department analysis, there may be adopted by rule a form for financial statements.

(c) Each annual application for renewal of a preneed license shall be accompanied by the appropriate fee as follows:

1. For a preneed licensee with no preneed contract sales during the immediately preceding year \$300.

2. For a preneed licensee with at least 1 but fewer than 50 preneed contract sales during the immediately preceding year \$400.

3. For a preneed licensee with at least 50 but fewer than 250 preneed contract sales during the immediately preceding year \$500.

4. For a preneed licensee with at least 250 but fewer than 1,000 preneed contract sales during the immediately preceding year \$850.

5. For a preneed licensee with at least 1,000 but fewer than 2,500 preneed contract sales during the immediately preceding ear \$1,500.

6. For a preneed licensee with at least 2,500 but fewer than 5,000 preneed contract sales during the immediately preceding year \$2,500.

7. For a preneed licensee with at least 5,000 but fewer than 15,000 preneed contract sales during the immediately preceding year . . \$6,000.

8. For a preneed licensee with at least 15,000 but fewer than 30,000 preneed contract sales during the immediately preceding year \$12,500.

9. For a preneed licensee with 30,000 preneed contract sales or more during the immediately preceding year \$18,500.

(d) An application for renewal shall disclose the existence of all preneed contracts for service or merchandise funded by any method other than a

method permitted by this chapter, which contracts are known to the applicant and were entered into by the applicant, or any other entity under common control with the applicant, during the annual license period then ending. Such disclosure shall include the name and address of the contract purchaser, the name and address of the institution where such funds are deposited, and the number used by the institution to identify the account.

(e) In addition to any other penalty that may be provided for under this chapter, there may be levied a late fee as determined by licensing authority rule but not to exceed \$50 a day for each day the preneed licensee fails to file its annual statement, and there may be levied a late fee as determined by licensing authority rule but not to exceed \$50 a day for each day the preneed licensee fails to file the statement of activities of the trust. Upon notice to the preneed licensee by the department that the preneed licensee has failed to file the annual statement or the statement of activities of the trust, the preneed licensee's authority to sell preneed contracts shall cease while such default continues.

(6) QUARTERLY PAYMENTS.—In addition to other amounts required to be paid by this section, each preneed licensee shall pay to the Regulatory Trust Fund an amount established by rule not to exceed \$10 for each preneed contract entered into. This amount must be paid within 60 days after the end of each quarter. These funds must be used to defray the cost of administering the provisions of this part.

(7) BRANCH OPERATIONS AND LICENSURE.—

(a) Any person or entity that is part of a common business enterprise that has a preneed license issued pursuant to this section and desires to operate under a name other than that of the common business enterprise, may submit an application on a form adopted by rule to become a branch licensee. The application shall be accompanied by an application fee as determined by licensing authority rule but not to exceed \$300.

(b) Upon a determination that such applicant qualifies to sell preneed contracts under this part except for the requirements of paragraph (2)(c), and if the preneed licensee meets the requirements of such paragraph and is in compliance with all requirements of this part regarding its preneed license and operations thereunder, a branch license shall be issued.

(c) Branch licenses shall be renewed annually by payment of a renewal fee set by licensing authority rule and not to exceed \$300. Branch licenses may be renewed only so long as the preneed license of the sponsoring preneed licensee remains in good standing.

(d) Violations of this part by the branch shall be deemed to be violations of this part by its sponsoring preneed licensee, unless the licensing authority determines that extenuating circumstances indicate that it would be unjust to attribute the branch's misconduct to the sponsoring preneed licensee. Preneed sales of the branch shall be deemed to be sales of the sponsoring licensee for purposes of renewal fees and trust requirements under this chapter.

(e) The sponsoring preneed licensee shall be responsible for performance of preneed contracts entered into by its branches if the branch does not timely fulfill any such contract.

(8) ANNUAL TRUST REPORTS.—On or before April 1 of each year, the preneed licensee shall file in the form prescribed by rule a full and true statement as to the activities of any trust established by it pursuant to this part for the preceding calendar year.

(9) DEPOSIT OF FUNDS.—All sums collected under this section shall be deposited to the credit of the Regulatory Trust Fund.

Section 103. Section 497.409, Florida Statutes, is renumbered as section 497.454, Florida Statutes, and amended to read:

497.454 ~~497.409~~ Approval of preneed contract and related forms.—

(1) Preneed contract forms and related forms shall be filed with and approved by the licensing authority prior to use, pursuant to procedures specified by rule board. ~~The licensing authority board~~ may not approve any preneed contract form that does not provide for sequential prenumbering thereon.

(2) A form filed for approval under this section shall be approved unless it is determined that it:

(a) Is in any respect in violation of, or does not comply with, this chapter.

(b) Contains, or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the benefits purportedly provided to the customer in the general terms of the contract.

(c) Has any title, heading, or other indication of its contents which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision substantially illegible, or contains variations in print size which de-emphasize provisions which limit or restrict the customers rights under the contract.

(e) Contains provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation.

(f) Does not provide for the specification in reasonable detail of the type, size, and design of merchandise and the description of service to be delivered or performed.

(3)(2) Specific disclosure regarding the ~~preneed licensee's certificate-holder's~~ ability to select either trust funding or the financial responsibility alternative as set forth in s. ~~497.461~~ ~~497.423~~ or s. ~~497.425~~ in connection with the receipt of preneed contract proceeds is required in the preneed contract.

Section 104. Section 497.411, Florida Statutes, is renumbered as section 497.455, Florida Statutes, and amended to read:

497.455 ~~497.411~~ Nonconforming contracts.—Any preneed contract that requires the moneys paid to the seller or trustee to be placed in trust and fails to comply with s. 497.458 ~~497.417~~ shall comply with and be construed under s. 497.464 ~~497.429~~.

Section 105. Section 497.413, Florida Statutes, is renumbered as section 497.456, Florida Statutes, and amended to read:

497.456 ~~497.413~~ Preneed Funeral Contract Consumer Protection Trust Fund.—

(1) There is hereby created in the department the Preneed Funeral Contract Consumer Protection Trust Fund to be administered and regulated by the licensing authority board.

(2) Within 60 days after the end of each calendar quarter, for each preneed contract written during the quarter and not canceled within 30 days after the date of the execution of the contract, each preneed licensee certificateholder, whether funding preneed contracts by the sale of insurance or by establishing a trust pursuant to s. 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~, shall remit the sum of \$2.50 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$5 for each preneed contract having a purchase price in excess of \$1,500; and each preneed licensee certificateholder utilizing s. 497.461 or s. 497.462 ~~497.423~~ or s. ~~497.425~~ shall remit the sum of \$5 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$10 for each preneed contract having a purchase price in excess of \$1,500.

(3) In addition to the amounts specified in subsection (2), each remittance shall contain such other additional information as needed by the licensing authority board to carry out its responsibilities under this chapter and as prescribed by rule ~~of the board~~.

(4) All funds received by the licensing authority board ~~or the department~~ pursuant to this section shall be deposited into the Preneed Funeral Contract Consumer Protection Trust Fund.

(5) The amounts remitted for deposit into the Preneed Funeral Contract Consumer Protection Trust Fund shall not be deemed proceeds from the sale of a preneed contract within the meaning of this chapter.

(6) Upon the commencement of a delinquency proceeding pursuant to this chapter against a preneed licensee certificateholder, the licensing authority board may use up to 50 percent of the balance of the trust fund not already committed to a prior delinquency proceeding solely for the purpose of providing restitution to preneed contract purchasers and their estates due to a preneed licensee's certificateholder's failure to provide the benefits of a preneed contract or failure to refund the appropriate principal amount by reason of cancellation thereof. The balance of the trust fund shall be determined as of the date of the delinquency proceeding.

(7) In any situation in which a delinquency proceeding has not commenced, the licensing authority board may, in its discretion, use the trust

fund for the purpose of providing restitution to any consumer, owner, or beneficiary of a preneed contract or similar regulated arrangement under this chapter entered into after June 30, 1977. If, after investigation, the licensing authority board determines that a preneed licensee certificateholder has breached a preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former preneed licensee certificateholder or an establishment which has been regulated under this chapter ~~or chapter 470~~, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such preneed licensee certificateholder or provider does not provide or does not possess adequate funds to provide appropriate refunds, payments from the trust fund may be authorized by the licensing authority board. In considering whether payments shall be made or when considering who will be responsible for such payments, the licensing authority board shall consider whether the preneed licensee certificateholder or previous provider has been acquired by a successor who is or should be responsible for the liabilities of the defaulting entity. With respect to preneed contracts funded by life insurance, payments from the fund shall be made: if the insurer is insolvent, but only to the extent that funds are not available through the liquidation proceeding of the insurer; or if the preneed licensee certificateholder is unable to perform under the contract and the insurance proceeds are not sufficient to cover the cost of the merchandise and services contracted for. In no event shall the licensing authority board approve payments in excess of the insurance policy limits unless it determines that at the time of sale of the preneed contract, the insurance policy would have paid for the services and merchandise contracted for. Such monetary relief shall be in an amount as the licensing authority board may determine and shall be payable in such manner and upon such conditions and terms as the licensing authority board may prescribe. However, with respect to preneed contracts to be funded pursuant to s. 497.458, s. 497.459, s. 497.461, or s. 497.462 ~~s. 497.417, s. 497.419, s. 497.423, or s. 497.425~~, any restitution made pursuant to this subsection shall not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund. With respect to preneed contracts funded by life insurance policies, any restitution shall not exceed, as to any single contract or arrangement, the lesser of the face amount of the policy, the actual cost of the arrangement contracted for, or 4 percent of the uncommitted assets of the trust fund. The total of all restitutions made to all applicants under this subsection in a single fiscal year shall not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or \$120,000. The department may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287 to administer the requirements of this subsection.

(8) All moneys deposited in the Preneed Funeral Contract Consumer Protection Trust Fund together with all accumulated income shall be used only for the purposes expressed authorized by this chapter in this section and shall not be subject to any liens, charges, judgments, garnishments, or other creditor's claims against the preneed licensee certificateholder, any trustee utilized by the preneed licensee certificateholder, any company providing a surety bond as specified in this chapter, or any purchaser of a

preneed contract. No preneed contract purchaser shall have any vested rights in the trust fund.

(9) If restitution is paid to a preneed contract purchaser or her or his estate in accordance with this section, the amount of restitution paid shall not exceed the gross amount of the principal payments made by the purchaser on its contract.

(10) Whenever the licensing authority board makes payments from the trust fund to a purchaser or its estate, the licensing authority board shall be subrogated to the purchaser's rights under the contract, and any amounts so collected by the licensing authority board shall be deposited in the Preneed Funeral Contract Consumer Protection Trust Fund.

(11) No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Preneed Funeral Contract Consumer Protection Trust Fund for the purpose of sales, solicitation, or inducement to purchase any form of preneed contract covered under this chapter.

(12) Notwithstanding the fee structure in subsection (2), the department shall review the status of the trust fund annually, and if it determines that the uncommitted trust fund balance exceeds \$1 million, the licensing authority board may by rule lower the required payments to the trust fund to an amount not less than \$1 per preneed contract.

(13) Regarding the Preneed Funeral Contract Consumer Protection Trust Fund, the licensing authority shall have authority to adopt rules for the implementation of this section, including:

- (a) Forms to be used in filing claims against the trust fund.
- (b) Procedures to be used for filing claims against the trust fund.
- (c) Information and supporting documentation that must be provided by claimants to support claims against the trust fund.
- (d) Procedures for the investigation of claims against the trust fund.
- (e) Criteria to be used in determining whether a claim is allowable and in what amount.
- (f) Forms and procedures to be used by preneed licensees in making remittances to the trust fund required by this chapter.

Section 106. Section 497.415, Florida Statutes, is renumbered as section 497.457, Florida Statutes, and amended to read:

497.457 ~~497.415~~ Ownership of proceeds received on contracts.—

(1) Subject to the provisions of this chapter, all funds paid pursuant to a preneed contract by a purchaser to a preneed licensee certificateholder shall be the sole property of, and within the full dominion and control of, said preneed licensee certificateholder.

(2) Subject to the provisions of this chapter, the relationship between the purchaser of a preneed contract and a preneed licensee certificateholder shall be deemed for all purposes as a debtor-creditor relationship.

Section 107. Section 497.417, Florida Statutes, is renumbered as section 497.458, Florida Statutes, and amended to read:

497.458 ~~497.417~~ Disposition of proceeds received on contracts.—

(1)(a) 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 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.

(b) The method of determining wholesale cost shall be established by rule of the licensing authority board and shall be based upon the preneed licensee's 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.

(c) 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 trust powers.

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

(e) The trust agreement shall be submitted to the licensing authority board for approval and filing prior to use. The licensing authority may adopt rules specifying procedures and establishing criteria and requirements not inconsistent with this chapter for approval of trusts submitted under this paragraph.

(f) The deposited 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.

(g) The preneed contract purchaser shall have no interest whatsoever in, or power whatsoever over, funds deposited in trust pursuant to this section.

(h) In no event may said funds be loaned to a preneed licensee certificateholder, an affiliate of a preneed licensee certificateholder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business.

(i) Furthermore, The preneed licensee's certificateholder's interest in said trust shall not be pledged as collateral for any loans, debts, or liabilities of the preneed licensee 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.

(j) Even though the preneed licensee 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 preneed licensee certificateholder except as to the claims of the preneed contract purchaser, her or his representative, the board, or the department.

(2) Except as provided in s. 497.283 ~~497.337~~, the delivery of funeral merchandise before the death of the person for whom it is purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract entered into after July 1, 1977.

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

(b) Any person who withdraws appreciation in the value of trust, other than the pro rata portion of such appreciation which may be withdrawn upon the death of a contract beneficiary or upon cancellation of a preneed contract, shall be required to make additional deposits from her or his own funds to restore the aggregate value of assets to the value of funds deposited in trust, but excluding from the funds deposited those funds paid out upon preneed contracts which such person has fully performed or which have been otherwise withdrawn, as provided for in this chapter.

(c) The preneed licensee certificateholder shall be liable to third parties to the extent that income from the trust is not sufficient to pay the expenses of the trust.

(4)(a) Trust funds shall not be invested in or loaned to or for the benefit of any business venture in which the preneed licensee, its principals, or persons related by blood or marriage to the licensee or its principals, have a direct or indirect interest, without the prior approval of the licensing authority.

(b) Trust funds shall not be loaned to or for the benefit of the preneed licensee, its principals, or persons related by blood or marriage to the licensee or its principals, without the prior approval of the licensing authority.

(c) No approval of such loans or investments shall be given unless it be shown by clear and convincing evidence that such loan or investment would be in the interest of the preneed contract holders whose contracts are secured by the trust funds.

(d) The licensing authority may adopt rules exempting from the prohibition of this subsection, pursuant to criteria established in such rule, the investment of trust funds in investments, such as widely and publicly traded stocks and bonds, notwithstanding that the licensee, its principals, or persons related by blood or marriage to the licensee or its principals have an interest by investment in the same entity, where neither the licensee, its principals, or persons related by blood or marriage to the licensee or its principals, have the ability to control the entity invested in, and it would be in the interest of the preneed contract holders whose contracts are secured by the trust funds, to allow the investment.

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

(a) Invest in investments as prescribed in s. 215.47 and exercise the powers set forth in part IV of chapter 737, provided that the licensing authority board may by order require the trustee to liquidate or dispose of any investment within 30 days after such order, or within such other times as the order may direct. The licensing authority may issue such order if it determines that the investment violates any provision of this chapter or is not in the best interests of the preneed contract holders whose contracts are secured by the trust funds.

(b) Borrow money up to an aggregate amount of 10 percent of trust assets, at interest rates then prevailing from any individual, bank, insurance company, or other source, irrespective of whether any such person is then acting as trustee, and to create security interests in no more than 10 percent of trust assets by mortgage, pledge, or otherwise, upon the terms and conditions and for such purposes as the trustee may deem advisable.

(c) Commingle the property of the trust with the property of any other trust established pursuant to this chapter and make corresponding allocations and divisions of assets, liabilities, income, and expenses.

(6)(5) The preneed licensee 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 s. 497.461.:

(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.

(7)(6) Notwithstanding anything contained in this chapter to the contrary, the preneed licensee 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 497.461 ~~497.423~~ is a viable option available to it at any and all relevant times;

(b) Section 497.462 ~~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 preneed licensee certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, s. 497.462 ~~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.

(8)(7) If in the preneed licensee's certificateholder's opinion it does not have the ability to select the financial responsibility alternative of s. 497.461 or s. 497.462 ~~497.423~~ or s. ~~497.425~~, then the preneed licensee it shall not have the right to sell or solicit preneed contracts ~~pursuant to this section~~.

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

(a) For contracts entered into before October 1, 1993, the trust amounts as amended by s. 6, chapter 83-816, Laws of Florida, shall apply.

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

~~(8) 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 108. Section 497.419, Florida Statutes, is renumbered as section 497.459, Florida Statutes, and amended to read:

497.459 ~~497.419~~ Cancellation of, or default on, preneed contracts.—

(1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.— A purchaser, by providing written notice to the preneed licensee certificateholder, may cancel a preneed contract within 30 days of the date that the contract was executed provided that the burial rights, merchandise and services have not yet been used. Upon providing such notice, the purchaser shall be entitled to a complete refund of the amount paid, except for the amount allocable to any burial rights, merchandise or services that have been used, and shall be released from all obligations under the contract. This subsection shall apply to all items that are purchased as part of a preneed contract, including

burial rights, regardless of whether such burial rights are purchased as part of a preneed contract or purchased separately.

(2) CANCELLATION BY PURCHASER AFTER 30 DAYS.—

(a) A purchaser, by providing written notice to the preneed licensee certificateholder, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee certificateholder upon such cancellation.

(b)(3) Subject to subparagraphs 1. and 2., paragraphs (a) and (b) a purchaser may cancel the merchandise portion of a preneed contract by providing written notice to the preneed licensee certificateholder, and shall be entitled to a full refund of the purchase price allocable to the specific item or items of merchandise that the preneed licensee certificateholder cannot or does not deliver in accordance with this subsection.

1.(a) Such refund shall be provided only if at the time that the preneed licensee certificateholder is required to fulfill its obligations under the preneed contract the preneed licensee certificateholder does not or cannot comply with the terms of the contract by actually delivering the merchandise, within a reasonable time, depending upon the nature of the merchandise purchased, after having been requested to do so.

2.(b) In order to fulfill its obligations under the preneed contract, a preneed licensee certificateholder may elect either or both of the following options:

a.1. Subcontract with a person located outside the preneed licensee's certificateholder's market area to provide the merchandise; or

b.2. Provide other items of equal or greater quality.

(3)(4) REQUIRED DISCLOSURE.—Each preneed licensee certificateholder shall provide in conspicuous type in its contract that the contract purchaser may cancel the contract and receive a full refund within 30 days of the date of execution of the contract. The failure to make such provision shall not impair the contract purchaser's right to cancellation and refund as provided in this section.

(4)(5) BREACH OF CONTRACT BY SELLER.—Upon breach of contract or failure of the preneed licensee certificateholder to provide funeral merchandise or services under a preneed contract, the contract purchaser shall be entitled to a refund of all money paid on the contract. Such refund shall be made within 30 days after receipt by the preneed licensee certificateholder of the contract purchaser's written request for refund.

(5)(6) DEFAULT BY PURCHASER.—If a purchaser is 90 days past due in making payments on a preneed contract, the contract shall be considered to be in default, and the preneed licensee certificateholder shall be entitled to cancel the contract, withdraw all funds in trust allocable to merchandise

items, and retain such funds as liquidated damages. Upon making such withdrawal, the preneed licensee certificateholder shall return all funds in trust allocable to services, facilities, or cash advance items to the purchaser, provided that the preneed licensee certificateholder has provided the purchaser with 30 days' written notice of its intention to exercise any of its rights under this provision. The board may by rule specify the required format and content of the notice required under this subsection and the manner in which the notice shall be sent.

~~(6)~~(7) OTHER PROVISIONS.—

(a) All preneed contracts are cancelable and revocable as provided in this section, provided that a preneed contract does not restrict any contract purchaser who is a qualified applicant for, or a recipient of, supplemental security income, temporary cash assistance, or Medicaid from making her or his contract irrevocable.

(b) The amounts required to be refunded by this section for contracts previously entered into shall be as follows:

1. For contracts entered into before October 1, 1993, the refund amounts as amended by s. 7, chapter 83-816, Laws of Florida, shall apply.

2. For contracts entered into on or after October 1, 1993, the refund amounts as amended by s. 99, chapter 93-399, Laws of Florida, shall apply.

~~(8) This section, as amended by s. 7, 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.~~

~~(c)~~(9) Persons who purchase merchandise or burial rights pursuant to this chapter shall have the right to sell, alienate, or otherwise transfer the merchandise or burial rights subject to and in accordance with rules adopted by the licensing authority board.

~~(d)~~(10) All refunds required to be made under this section to a purchaser who has canceled a contract must be made within 30 days after the date written notice of cancellation is received by the preneed licensee certificateholder.

Section 109. Section 497.421, Florida Statutes, is renumbered as section 497.460, Florida Statutes, and amended to read:

497.460 ~~497.421~~ Payment of funds upon death of named beneficiary.— Disbursements of funds discharging any preneed contract fulfilled after September 30, 1993, shall be made by the trustee to the preneed licensee certificateholder upon receipt of a certified copy of the death certificate of the contract beneficiary or satisfactory evidence as established by rule of the licensing authority the board that the preneed contract has been performed in whole or in part. However, if the contract is only partially performed, the disbursement shall only cover that portion of the contract performed. In the event of any contract default by the contract purchaser, or in the event that

the funeral merchandise or service or burial merchandise or service contracted for is not provided or is not desired by the heirs or personal representative of the contract beneficiary, the trustee shall return, within 30 days after its receipt of a written request therefor, funds paid on the contract to the preneed licensee certificateholder or to its assigns, subject to the provisions of s. 497.459 ~~497.419~~.

Section 110. Section 497.423, Florida Statutes, is renumbered as section 497.461, Florida Statutes, and amended to read:

497.461 ~~497.423~~ Surety bonding ~~Evidence of financial responsibility~~ as alternative to trust deposit.—

(1) In lieu of depositing funds into a trust as required by s. 497.548(1) or s. 497.464 ~~497.417(1)~~ or s. 497.429, a preneed licensee certificateholder may elect annually, at its discretion, to comply with this section by filing annually a written request with, and receiving annual approval from, the licensing authority board.

(2) No preneed licensee certificateholder shall utilize this section unless it has filed annually a written request with, and received approval by, the licensing authority board.

(3) The preneed licensee certificateholder receiving approval from the licensing authority board to comply with this section shall maintain compliance with this section at all times during the period this election is in effect.

(4) The preneed licensee's certificateholder's request to be governed by this section shall be in the form prescribed by rule by the licensing authority board and shall be accompanied by, in addition to other information that the licensing authority board may require by rule, the surety bond, the audited financial statements, and proof of the other requirements specified in this section, all as described in this section.

(5) For each 12-month period, or any part thereof, in which this section is applicable, the electing preneed licensee certificateholder shall maintain a bond, issued by a surety company admitted to do business in this state, in an amount at least equal to the sum of:

(a) All amounts not currently in trust,₅

(b) An amount equal to the total purchase price for all installed preneed contracts where the total purchase price has not been collected, excluding those amounts already in trust,₅

(c) All amounts the preneed licensee certificateholder intends to remove from trust if the licensing authority board approves the preneed licensee's certificateholder's request to comply with this section,₅ and

(d) An amount equal to 70 percent of the total purchase price for each preneed contract the preneed licensee certificateholder expects to sell in the year for which the preneed licensee certificateholder is electing to comply with this section.

(6) The surety bond shall be conditioned in such a manner to secure the faithful performance of all conditions of any preneed contracts for which the preneed licensee certificateholder was required to have covered by the amount of the bond, including refunds requested pursuant to ss. 497.459 and 497.460 ~~497.419 and 497.421~~. The surety bond shall also guarantee the financial responsibility of such preneed licensee certificateholder against its default arising out of any of its preneed contracts. The terms of the surety bond shall cover liabilities arising from all moneys received by the electing preneed licensee certificateholder from preneed contracts for which the preneed licensee certificateholder was required to have covered by the amount of the bond during the time the bond is in effect, and the liability of the surety shall continue until the contracts thereunder are fulfilled. The bond shall be in favor of the state for the benefit of any person damaged as a result of purchasing a preneed contract from the preneed licensee certificateholder. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds shall in no event exceed the amount of the bond. The per preneed contract liability shall not exceed the amount of the funds received by the preneed licensee certificateholder per preneed contract during the effective period in which the bond is issued. The bond shall be filed and maintained with the licensing authority board.

(7)(6) The amount of the surety bond shall, upon order of the licensing authority board, be increased if, in the licensing authority's board's discretion, it finds such increase to be warranted by the volume of preneed contracts handled, or expected to be handled, by the preneed licensee certificateholder.

(8) The surety bond shall be in a form to be approved by the licensing authority board, and the licensing authority board shall have the right to disapprove any bond which does not provide assurance as provided in, and required by, this section.

(9)(7) The bond shall be maintained unimpaired for as long as the preneed licensee certificateholder continues in business in this state and continues to utilize this section. Whenever the preneed licensee certificateholder notifies the licensing authority board that it no longer desires to be governed by this section and furnishes to the licensing authority board satisfactory proof that it has discharged or otherwise adequately provided for all of its obligations to its preneed contract purchasers covered by the bond, such as by evidence satisfactory to the licensing authority board demonstrating that s. 497.458 or s. 497.464 ~~497.417 or s. 497.429~~ has been complied with, the licensing authority board shall release the bond to the entitled parties, provided said parties acknowledge receipt of same.

(10)(8) No surety bond used to comply with this section shall be canceled or subject to cancellation unless at least 60 days' advance notice thereof, in writing, is filed with the licensing authority board, by the surety company. The cancellation of the bond shall not relieve the obligation of the surety company for claims arising out of contracts issued or otherwise covered before cancellation of the bond.

(11) In the event that notice of cancellation termination of the bond is filed with the licensing authority board, the preneed licensee certificate

~~holder~~ insured thereunder shall, within 30 days of the filing of the notice of termination with the licensing authority board, provide the licensing authority board with a replacement bond or with evidence which is satisfactory to the licensing authority board demonstrating that s. 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~ has been fully complied with. If within 30 days of filing of the notice of termination with the licensing authority board no replacement bond acceptable to the licensing authority board or no evidence satisfactory to the licensing authority board demonstrating that s. 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~ has been complied with as filed with the licensing authority board, the licensing authority board shall suspend the license of the preneed licensee certificateholder until the preneed licensee certificateholder files a replacement bond acceptable to the board or demonstrates to the satisfaction of the licensing authority board that it has complied with s. 497.458 or s. 497.464 ~~497.417~~ or s. ~~497.429~~.

(12)(9) In lieu of the surety bond, the licensing authority board may provide by rule for other forms of security or insurance.

(13)(10) Every preneed licensee certificateholder electing to be governed by this section shall have its financial statements, submitted to the department pursuant to s. 497.453 ~~497.407~~, audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

(a) The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the licensing authority board, and:

1. A balance sheet;
2. A statement of income and expenses; and
3. A statement of changes in financial position.

(b) Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the preneed licensee certificateholder. The notes shall include a schedule, based upon statutory accounting principles, indicating that the preneed licensee certificateholder which has held a license certificate pursuant to this chapter for less than 10 years has a current ratio of no less than 3 to 1 of current assets to current liabilities and net assets of at least \$600,000 or that the preneed licensee certificateholder which has held a license certificate pursuant to this chapter for 10 years or more has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$400,000.

(c) An indication that the preneed licensee certificateholder has sufficient funds available to perform the obligations under all its preneed contracts.

(14)(11) The licensing authority board may require that the audited financial statements be prepared on a calendar-year basis.

~~(15)(12)~~ The electing ~~preneed licensee certificateholder~~ shall provide the ~~licensing authority board~~ interim unaudited financial statements on a quarterly basis demonstrating financial compliance with this section.

~~(16)(13)~~ In lieu of subsections ~~(4)-(14)~~ ~~(4)-(11)~~, a ~~preneed licensee certificateholder~~ with net assets of at least \$25,000 may request to comply with this section by providing a written guarantee from a qualified guaranteeing organization. If the ~~preneed licensee certificateholder~~ so elects, the ~~preneed licensee's certificateholder's~~ requests to be governed by this section shall be in the form prescribed by ~~rule the board~~ and shall be accompanied by, in addition to other information the ~~licensing authority board~~ may require by rule, a written guarantee approved by the ~~licensing authority board~~ as meeting the requirements of this section from a qualified guaranteeing organization, acceptable to the ~~licensing authority board~~, which:

(a) Is either a ~~preneed licensee certificateholder~~ or servicing agent.

(b) Is a corporation formed under the laws of this state or of another state, district, territory, or possession of the United States.

(c) Has been in operation for 10 or more years.

(d) Submits to the ~~licensing authority board~~ its annual financial statements audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

1. The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the ~~licensing authority board~~, and:

a. A balance sheet;

b. A statement of income and expenses; and

c. A statement of changes in financial position.

2. Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the ~~preneed licensee certificateholder~~. The notes shall include a schedule, based upon statutory accounting principles, indicating that the guaranteeing organization has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$250,000.

(e) Has sufficient funds available to perform the obligations under its guarantees.

(f) Has complied with subsections ~~(5)-(11)~~ ~~(5), (6), (7), and (8)~~, except that the bond shall be maintained by the guaranteeing organization in the minimum aggregate principal amount of \$1 million.

(g) Has principals, including directors, officers, stockholders, employees, and agents that are of good moral character and have reputations for fair dealing in business matters, both as determined by the licensing authority board.

Section 111. Section 497.425, Florida Statutes, is renumbered as section 497.462, Florida Statutes, and amended to read:

497.462 ~~497.425~~ Other alternatives to deposits under s. 497.458 ~~497.417~~.—

(1)(a) As an alternative to the requirements of s. 497.458 ~~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 preneed licensee certificateholder authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, and subject to the other restrictions of this section, a preneed licensee 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 licensing authority board and all purchasers of preneed cemetery merchandise or services. The bond must be approved by the licensing authority board.

(b) The amount of the bond shall be based on a report documenting the outstanding liabilities of the preneed licensee certificateholder and shall be prepared by the preneed licensee certificateholder using generally accepted accounting principles and signed by the preneed licensee's certificateholder's chief financial officer.

(c) The report shall be compiled as of the end of the preneed licensee's certificateholder's fiscal year and updated annually. The amount of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities.

(d) If a preneed licensee certificateholder fails to maintain a bond pursuant to this section, the preneed licensee certificateholder shall cease the sale of preneed merchandise and services.

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

(3)(a) A buyer of preneed merchandise or services who does not receive such services or merchandise due to the economic failure, closing, or bankruptcy of the preneed licensee certificateholder must file a claim with the surety as a prerequisite to payment of the claim and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In

the case of a letter of credit or cash deposit that has been filed with the licensing authority board, the buyer may file a claim with the licensing authority board.

(b) In order to qualify for recovery on any claim under paragraph (a), the buyer must file the claim no later than 1 year after the date on which the preneed licensee certificateholder closed or bankruptcy was filed.

(c) The licensing authority board may file a claim with the surety on behalf of any buyer under paragraph (a). The surety shall pay the amount of the claims to the licensing authority board for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(d) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(e) If the total value of the claims filed exceeds the amount of the bond, the surety shall pay the amount of the bond to the licensing authority board for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(4) The preneed licensee certificateholder shall maintain accurate records of the bond and premium payments on it, which records shall be open to inspection by the licensing authority board.

~~(5) For purposes of this section, a preneed contract is a contract calling for the delivery of merchandise and services in the future and entered into before the death of the prospective recipient.~~

~~(5)(6)~~ This act does not relieve the preneed licensee certificateholder or other entity from liability for nonperformance of contractual terms unless the preneed licensee certificateholder cannot deliver the merchandise or services because of a national emergency, strike, or act of God.

~~(6)(7)~~ The licensing authority board may require the holder of any assets of the preneed licensee certificateholder to furnish written verification of the financial report required to be submitted by the preneed licensee certificateholder or other entity.

~~(7)(8)~~ Any preneed contract which promises future delivery of merchandise at no cost constitutes a paid-up contract. Merchandise which has been delivered is not covered by the required performance bond or letter of credit even though the contract is not completely paid. The preneed licensee certificateholder may not cancel a contract unless the purchaser is in default according to the terms of the contract and subject to the requirements of s. 497.459. A contract sold, discounted, and transferred to a third party constitutes a paid-up contract for the purposes of the performance bond or letter of credit.

~~(8)(9)~~ Each contract must state the type, size, and design of merchandise and the description of service to be delivered or performed.

~~(9)(10)~~ A purchaser and a preneed licensee certificateholder who are parties to a preneed contract executed prior to July 2, 1988, may enter into

an amended preneed contract which is made subject to this section. On and after January 1, 2006, this subsection may no longer be used to make any additional contracts subject to a bond under this section, provided that contracts already amended and made subject to a bond as of December 31, 2005, may remain under such bond.

(10)(11) The licensing authority board may adopt forms and rules necessary to implement this section, including, but not limited to, rules which ensure that the surety bond and line of credit provide liability coverage for preneed merchandise and services.

(11)(12) Preneed licensees Certificateholders may utilize the bonding alternatives to s. ~~497.458~~ ~~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 preneed licensee 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 112. Section 497.427, Florida Statutes, is renumbered as section 497.463, Florida Statutes, and amended to read:

~~497.463~~ ~~497.427~~ Existing merchandise trust funds; proof of compliance with law.—The preneed licensee certificateholder shall present to the licensing authority board prior to the implementation of the alternatives provided in s. ~~497.462~~ ~~497.425~~ documentation which demonstrates that the existing merchandise trust fund complies with the law and that the elected alternative plan conforms to the requirements of this chapter.

Section 113. Section 497.429, Florida Statutes, is renumbered as section 497.464, Florida Statutes, and amended to read:

~~497.464~~ ~~497.429~~ Alternative preneed contracts.—

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

- (a) Section ~~497.454(2)~~ ~~497.409(2)~~.
- (b) Section ~~497.457~~ ~~497.415~~.
- (c) Section ~~497.458(1), (3), and (6)~~ ~~497.417(1), (3), and (5)~~.
- (d) Section ~~497.459(1), (2), and (4)~~ ~~497.419(1), (2), and (5)~~.
- (e) Section ~~497.460~~ ~~497.421~~.
- (f) Section ~~497.461~~ ~~497.423~~.
- (g) Section ~~497.462~~ ~~497.425~~.

(2) The contract must require that a trust be established by the preneed licensee certificateholder on behalf of, and for the use, benefit, and protec-

tion 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 trust powers.

(3) The contract must require that the purchaser make all payments required by the contract directly to the trustee or its qualified servicing agent and that the funds shall be deposited in this state, subject to the terms of a trust instrument approved by the licensing authority board. The licensing authority may adopt rules establishing procedures and forms for the submission of trust instruments for approval by the licensing authority, establishing criteria for the approval of such trust instruments, and specifying information required to be provided by the applicant in connection with submission of a trust instrument for approval. A copy of the trust instrument shall be made available to the purchaser, at any reasonable time, upon request.

(4) The contract or trust instrument shall expressly state that the pre-need licensee certificateholder does not have any dominion or control over the trust or its assets, except to the extent that subsection (6) applies, until such time as the preneed contract is entirely completed or performed.

(5) The trust instrument shall prohibit the trustee from distributing any appreciation on the trust to any person and shall require that the trustee accumulate the entire net income of the trust, or its pro rata share thereof. The accumulated net income shall be distributed to the preneed licensee certificateholder upon cancellation or performance of the contract.

(6) The contract and trust instrument may provide that the preneed licensee certificateholder may receive a current distribution of not more than 10 percent of all funds paid or collected by the trustee and may further provide for liquidated damages during the first 3 years after the execution of the contract of not more than 10 percent of all the funds paid on the preneed contract, except that no liquidated damages shall apply for cancellation within 30 days of the date of execution of the contract.

(7) Disbursement of funds discharging any preneed contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed contract has been fully performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service contracted for is not provided or is not desired by the purchaser or the heirs or personal representative of the contract beneficiary, the trustee shall return, within 30 days after its receipt of a written request therefor, funds paid on the contract to the contract purchaser or to her or his assigns, heirs, or personal representative, subject to the lawful liquidation damage provision in the contract.

(8) The contract shall provide, in conspicuous type, that the purchaser may receive a federal income tax informational statement, pursuant to the grantor trust rules of ss. 671 et seq. of the Internal Revenue Code of 1986, as amended, from the trustee reflecting all of the income earned by the trust; and, accordingly, the purchaser should seek the advice of an independent

tax professional for the tax impact upon the purchaser as a result of executing the preneed contract.

(9) The contract may provide that the preneed licensee certificateholder may cancel the contract, but only in the event that the purchaser is more than 90 days in default of the terms of the contract; and, unless subject to the provisions of s. ~~497.459(5)~~ 497.419(6), must provide that the purchaser, or her or his representative, has the right, at any time prior to the performance of the contract, to cancel the preneed contract and revest title to all the funds paid on the preneed contract, except for applicable liquidated damages, and the preneed licensee's certificateholder's rights in the net income of the trust.

(10) The contract or trust agreement may require the trustee to invest in solely tax-free investments.

(11) In the event the parties execute a contract pursuant to this section, the purchaser shall be deemed, and treated for all purposes, as the settlor of the trust established thereunder.

Section 114. Section 497.436, Florida Statutes, is renumbered as section 497.465, Florida Statutes, and amended to read:

497.465 ~~497.436~~ Inactive, surrendered, and revoked preneed licensees certificateholders.—

(1) A preneed licensee certificateholder shall be considered inactive upon the acceptance of the surrender of its license by the licensing authority board or upon the nonreceipt by the licensing authority board of the preneed license certificate of authority renewal application and fees required by s. 497.265 ~~497.213(2)~~.

(2) A preneed licensee certificateholder shall cease all preneed sales to the public upon becoming inactive. The preneed licensee certificateholder shall collect and deposit into trust all of the funds paid toward preneed contracts sold prior to becoming inactive.

(3) Any preneed licensee certificateholder desiring to surrender its license to the licensing authority board shall first:

- (a) File notice with the licensing authority board.
- (b) Submit copies of its existing trust agreements.
- (c) Submit a sample copy of each type of preneed contract sold.

(d) Resolve to the licensing authority's board's satisfaction all unresolved findings and violations resulting from prior examinations ~~the last examination~~ conducted.

(e) Pay all outstanding fines and invoices due the licensing authority board.

- (f) Submit its current preneed license certificate of authority.

(4) Upon receipt of the notice, the licensing authority board shall review the preneed licensee's certificateholder's:

- (a) Trust funds.
- (b) Trust agreements.
- (c) Evidence of all outstanding preneed contracts.

(5) After a review to the licensing authority's board's satisfaction, the licensing authority board shall terminate the preneed license certificate of authority by an order which shall set forth the conditions of termination established by the licensing authority board to ensure that the preneed funds will be available for their intended purpose.

(6) The trust fund of the preneed licensee certificateholder shall be held intact and in trust after the preneed licensee certificateholder has become inactive, and the funds in that trust shall be disbursed in accordance with the requirements of the written contracts and this chapter until the funds have been exhausted.

(7) The licensing authority board shall continue to have jurisdiction over the inactive preneed licensee and the trust funds certificateholder as if the preneed license certificate were active and to require such reports and inspect such records as the licensing authority board deems appropriate so long as there are funds in trust or preneed contracts that are not fulfilled.

(8) In addition to any other terms of revocation or suspension ordered pursuant to this chapter, s. 497.233, the provisions of this section shall also apply in the event of revocation or suspension of a preneed license, unless the provisions of the suspension or revocation order specifically provide otherwise.

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

(a) The form of notice required by paragraph (3)(a), and the information or materials to be contained in or accompany the notice or otherwise to be provided, which may include any information or materials the licensing authority deems needed for the discharge of its responsibilities under this section.

(b) Requirements for the submission of sworn affidavits by or the taking of sworn testimony from the licensee and its principals and employees and sales agents.

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

Section 115. Section 497.439, Florida Statutes, is renumbered as section 497.466, Florida Statutes, and amended to read:

497.466 497.439 Preneed sales agents, license required; application procedures and criteria; responsibility of preneed licensee.—

(1) GENERAL PROVISIONS APPLICABLE TO PRENEED SALES AGENTS.—

(a) All individuals who offer preneed contracts to the public, or who execute preneed contracts on behalf of a preneed licensee certificateholder, including all individuals who offer, sell, or sign contracts for the preneed sale of burial rights, shall be licensed ~~registered with the board~~ as preneed sales agents, pursuant to this section, unless such individuals are licensed as funeral directors pursuant to this chapter.

(b)(2) All preneed sales agents and funeral directors acting as preneed sales agents must be employed by or under written contract with ~~affiliated with the preneed licensee certificateholder~~ that they are representing.

(c)(3) A preneed licensee certificateholder shall be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales agents, who are affiliated with the preneed licensee certificateholder and who perform any type of preneed-related activity on behalf of the preneed licensee certificateholder. In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each preneed licensee certificateholder shall also be subject to discipline if its preneed sales agents or funeral directors acting as preneed sales agents violate any provision of this chapter.

(d)(4) A preneed sales agent and a funeral director acting as a preneed sales agent shall be authorized to sell, offer, and execute preneed contracts on behalf of all entities owned or operated by its sponsoring preneed licensee certificateholder.

(e) An individual may be licensed as a preneed sales agent on behalf of more than one preneed licensee, provided that the individual has received the written consent of all such preneed licensees and makes separate application under this section for each such agency.

(f) A sponsoring preneed licensee shall notify the department in writing within 30 days after the sponsored preneed sales agent's authority to represent that preneed licensee has terminated.

(2) APPLICATION PROCEDURES.—

(a) A person seeking licensure as a preneed sales agent shall apply for such licensure using forms prescribed by rule of the licensing authority.

(b) The application shall require the name, residence address, residence phone number if any, and date and place of birth, of the preneed sales agent applicant. Applicants shall be at least 18 years of age. The application shall require identification of the name, address, and license number of the sponsoring preneed licensee. The application shall require the preneed sales agent applicant's social security number and the federal tax identification number of the sponsoring preneed licensee.

(c) The application shall require information as to the educational and employment history of the preneed sales agent applicant.

(d) The application shall require the preneed sales agent applicant to disclose whether the preneed sales agent applicant has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(e) The application shall require the preneed sales agent applicant to disclose whether the preneed sales agent applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(f) The application shall require a representation by the sponsoring preneed licensee, that:

1. The sponsoring preneed licensee's license is in good standing.

2. Upon licensure as a preneed sales agent the sponsored preneed sales agent applicant will be authorized to offer, sell, and sign preneed contracts on behalf of the preneed licensee.

3. The preneed licensee has trained the applicant in the provisions of this chapter relating to preneed sales, the provisions of the preneed licensee's preneed contracts, and the nature of the merchandise, services, or burial rights sold by the preneed licensee.

(g) The application shall require the preneed sales agent applicant to indicate whether the applicant has any type of working relationship with any other preneed licensee or insurance company, and if yes, to identify such other preneed licensee or insurance company, as the case may be.

(h) The applicant shall be required to submit her or his fingerprints in accordance with part I of this chapter.

(i) The application shall be signed by the applicant and by an officer or manager of the sponsoring preneed licensee.

(j) The application shall be accompanied by a nonrefundable fee of \$100. The licensing authority may from time to time increase such fee but not to exceed \$200.

(3) ACTION CONCERNING APPLICATIONS; TEMPORARY AND REGULAR LICENSURE.—

(a) An applicant shall be deemed to have been issued a temporary preneed sales agent license and may begin functioning as a preneed sales agent, immediately upon receipt by the department of a duly completed application for licensure under this section, if the application shows an applicant of at

least 18 years of age who has answered in the negative regarding paragraphs (2)(d) and (e) relating to prior criminal and disciplinary actions, and which application is accompanied by the required application fee. The temporary preneed sales agent license shall be valid for 90 days unless earlier suspended by the licensing authority for cause. If the application is approved by the board within the 90-day period, the temporary license shall be deemed converted to a regular biennial license which shall expire in accordance with the schedule established by the licensing authority by rule.

(b)1. A person who cannot truthfully answer in the negative regarding paragraphs (2)(d) and (e) relating to prior criminal and disciplinary actions, may apply to the licensing authority for issuance of a preneed sales agent license notwithstanding such criminal or disciplinary record. The licensing authority may by rule specify forms and procedures for use by such persons in applying for preneed sales agent licensure, to be used by such persons in lieu of the forms and procedures specified under paragraph (a). Licensure shall be granted unless the licensing authority reasonably determines that the prior criminal or disciplinary record indicates that the granting of licensure would pose unreasonable risk to the public.

2. To facilitate issuance of licenses concerning applicants with criminal or disciplinary records which the licensing authority judges to make the applicant borderline as to qualification for licensure, the licensing authority may issue a new license under this section on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 24 months of licensure, to ensure the preneed sales agent licensee's integrity, trustworthiness, and compliance with this chapter. Provided, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority must within 24 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure under this chapter and institute proceedings for revocation of licensure. The licensing authority may adopt rules prescribing criteria and procedures for issuance of such probationary licenses.

(4) RENEWAL OF LICENSES.—Nontemporary preneed sales agent licenses under this section shall be renewed biennially in accordance with a schedule, forms, and procedures established by rule. The nonrefundable biennial renewal fee shall be as determined by licensing authority rule but not to exceed \$200.

(5) SIMPLIFIED PROCEDURES FOR SUBSEQUENT CHANGE OF SPONSORING LICENSEE.—The board may by rule establish simplified requirements and procedures under which any preneed sales agent who, within the 12 months preceding application under this subsection held in good standing a preneed sales agent license under this section, may obtain a preneed sales agent's license under this section to represent a different sponsoring preneed licensee. The simplified requirements shall dispense with the requirement for submission of fingerprints. The licensing authority may by rule prescribe forms to be used by applicants under this subsection,

which forms may dispense with the requirement for any information not deemed by the licensing authority to be necessary to tracking the identify of the preneed licensee responsible for the activities of the preneed sales agent. No preneed sales agent licensee whose sales agent license issued by the board was revoked or suspended or otherwise terminated while in other than good standing, shall be eligible to use the simplified requirements and procedures. The issuance of a preneed sales agent license under this subsection shall not operate as a bar to any subsequent disciplinary action relating to grounds arising prior to obtaining the license under this subsection. There shall be a fee payable to the department under such simplified procedures, which fee shall be the same as the fee paid upon initial application for preneed sales agent license, except that no fingerprint fee shall be required if such fingerprint fee is required for initial applications.

~~(5) An individual may begin functioning as a preneed sales agent as soon as a completed application for registration, as set forth in subsection (7), is sent to the department.~~

~~(6) The qualifications for a preneed sales agent are as follows:~~

~~(a) The applicant must be at least 18 years of age.~~

~~(b) The applicant must be in good standing with the board.~~

~~(c) The applicant must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter.~~

~~(7) An application for registration as a preneed sales agent shall be submitted to the department with an application fee of \$100 by the certificateholder in a form that has been prescribed by department rule and approved by the board. Such application shall contain, at a minimum, the following:~~

~~(a) The name, address, social security number, and date of birth of the applicant and such other information as the board may reasonably require of the applicant.~~

~~(b) The name, address, and license number of the sponsoring certificateholder.~~

~~(c) A representation, signed by the applicant, that the applicant meets the requirements set forth in subsection (6).~~

~~(d) A representation, signed by the certificateholder, that the applicant is authorized to offer, sell, and sign preneed contracts on behalf of the certificateholder, and that the certificateholder has trained the applicant in the provisions of this chapter relating to preneed sales as determined by the board, the provisions of the certificateholder's preneed contract, and the nature of the merchandise, services, or burial rights sold by the certificateholder.~~

~~(e) A statement indicating whether the applicant has any type of working relationship with any other certificateholder or insurance company.~~

~~(8) An individual may be registered as a preneed sales agent on behalf of more than one certificateholder, provided that the individual has received the written consent of all such certificateholders.~~

~~(9) A certificateholder who has registered a preneed sales agent shall notify the department within 30 days after such individual's status as a preneed sales agent has been terminated.~~

~~(10) Upon receipt of an application that complies with all of the requirements of subsection (7), the department shall register the applicant. The department shall by rule provide for biennial renewal of registration and a renewal fee of \$150.~~

Section 116. Section 497.441, Florida Statutes, is renumbered as section 497.467, Florida Statutes, and amended to read:

497.467 497.441 Acceptability of funeral and burial merchandise.—Each person who engages in preneed sales of funeral or burial merchandise shall determine, and notify the purchaser in writing prior to the completion of the contract, that the merchandise being considered for purchase will be accepted in the cemetery of the purchaser's choice. The failure to comply with this chapter shall nullify the agreement, and all moneys paid in shall be returned, notwithstanding the existence of any liquidated damages provision otherwise applicable by contract or statute pursuant to s. 497.419(2).

Section 117. Part V of chapter 497, Florida Statutes, consisting of sections 497.550, 497.551, 497.552, 497.553, 497.554, 497.555, and 497.556, is created to read:

PART V MONUMENT ESTABLISHMENTS

Section 118. Section 497.361, Florida Statutes, is renumbered as section 497.550, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 497.361, F.S., for present text.)

497.550 Licensure of monument establishments required; procedures and criteria.—

(1) LICENSE REQUIRED.—No person shall conduct, maintain, manage, or operate a monument establishment in this state unless the monument establishment is licensed pursuant to this part.

(2) APPLICATION PROCEDURES.—A person seeking licensure as a monument establishment shall apply for such licensure using forms prescribed by rule.

(a) The application shall require the applicant's name and address, and the name and address of all principals of the applicant. The application shall require the applicant's social security number, or if the applicant is an entity, its federal tax identification number.

(b) The application may require information as to the applicant's financial resources, and may require information as to the experience of the applicant and its principals in the monument establishment business or death care industry.

(c) The application shall require the applicant to disclose whether the applicant or any of its principals has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(d) The application shall require the applicant to disclose whether the applicant or any of its principals has ever had a license or the authority to practice a profession or occupation revoked, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction.

(e) The application shall require the applicant's principals to provide fingerprints in accordance with part I of this chapter.

(f) The applicant shall be a natural person at least 18 years of age, a corporation, a partnership, or a limited liability company formed prior to January 1, 2005 which limited liability company already holds a license under this chapter.

(g) The applications shall require the applicant to demonstrate that the applicant has, or will have before commencing operations, the facilities required under this part.

(h) The application shall be signed by the applicant if a natural person, or by the president of an applicant that is a corporation.

(i) The application shall be accompanied by an application fee as determined by licensing authority rule but not to exceed \$500.

(3) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure as a monument establishment, accompanied by the required application fee, shall be approved unless there is shown by clear and convincing evidence that the applicant will not, before commencing operations, have the facilities required by this part or that issuance of the license would pose an unreasonable risk to the public because one or more of the following factors:

(a) The applicant's lack of experience.

(b) The applicant's lack of financial resources.

(c) The criminal or disciplinary record of applicant or its principals.

(d) A demonstrated history of violations of the laws of this state by applicant or its principals regarding the funeral or cemetery business or other business activities.

(e) A demonstrated history of lack of trustworthiness or integrity on the part of the applicant or its principals.

(4) PROBATIONARY STATUS.—It is the policy of this state to encourage competition for the public benefit in the monument establishment business by, among other means, the entry of new licensees into the monument establishment business. To facilitate issuance of licenses concerning applications judged by the licensing authority to be borderline as to qualification for licensure, the licensing authority may issue new monument establishment licenses on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 24 months of licensure, to ensure the licensee's responsibility, competency, and financial stability. However, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority must within 24 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure and institute proceedings for revocation of licensure.

(5) LICENSE NOT TRANSFERABLE OR ASSIGNABLE.—A monument establishment license shall not be transferable or assignable.

Section 119. Section 497.551, Florida Statutes, is created to read:

497.551 Renewal of monument establishment licensure.—

(1) A monument establishment license must be renewed biennially by the licensee.

(2) A monument establishment licensee that does not hold a preneed sales license as of 90 days prior to the date its monument establishment license renewal is due, shall renew its monument establishment license by payment of a renewal fee established by rule not to exceed \$250.

(3) A monument establishment licensee which as of 90 days prior to its monument establishment license renewal date also holds a preneed sales license issued under this chapter, shall renew its monument establishment license by payment of a renewal fee determined by its total gross aggregate at-need and preneed retail sales for the 12-month period ending 2 full calendar months prior to the month in which the renewal is required, as follow:

(a) Total sales of \$1 to \$50,000, renewal fee \$1,000.

(b) Total sales \$50,001 to \$250,000, renewal fee \$1,500.

(c) Total sales of \$250,001 to \$500,000, renewal fee \$2,000.

(d) Total sales over \$500,000, renewal fee \$2,500.

(4) Rules may be adopted providing procedures, forms, and uniform time-frames for monument establishment license renewals.

Section 120. Section 497.552, Florida Statutes, is created to read:

497.552 Required facilities.—Effective January 1, 2006, a monument establishment shall at all times have and maintain a full-service place of

business at a specific street address or location in Florida complying with the following requirements:

(1) It shall include an office for the conduct of its business including the reception of customers.

(2) It shall include a display area in which is displayed a selection of monuments, markers, and related products for inspection by customers prior to sale.

(3) Its office and display area shall normally be open to the public week-days during normal business hours.

(4) It shall have facilities for inscribing monuments, and equipment to deliver and install markers and monuments.

(5) It shall comply with any local government zoning regulations and may not be located on tax-exempt property.

Section 121. Section 497.553, Florida Statutes, is created to read:

497.553 Regulation of monument establishments.—

(1) The Department of Financial Services shall establish and implement an inspection program for all monument establishments in accordance with the requirements of this act.

(2) Commencing January 1, 2006, all retail sales by monument establishments shall be on a sales agreement form filed by the monument establishment with and approved by the licensing authority. Sales agreement forms must provide a complete description of any monument, marker, or related product to be delivered, and shall prominently and clearly specify the agreed date for delivery and installation. Procedures for submission and approval of such forms shall be established by rule.

(3) Commencing January 1, 2006, all monument establishments shall have written procedures for the receipt, investigation, and disposition of customer complaints, and shall ensure that their staff who receive or process such complaints are familiar with and follow such procedures.

(4) Commencing January 1, 2006, all monument establishments shall maintain for inspection by the department records of written complaints received by the monument establishment. Such complaint records shall include a chronological log of written complaints received, in which the name and address of each complainant and date of complaint is entered consecutively within 10 business days of receipt of each complaint. The licensing authority may by rule establish requirements regarding the format of complaint logs, including whether they may be maintained electronically, or shall be maintained by pen and ink on paper; the licensing authority may by order direct a licensee to maintain complaint logs by pen and ink in writing. The original or complete copy of each written complaint received by a monument establishment, and all subsequent correspondence related to such complaint, shall be maintained by the monument establishment, for

inspection by the department, for the longer of 24 months or 12 months after the most recent department inspection during which the complaint was in the monument establishment's complaint records and available for the department's review.

(5) Commencing January 1, 2006, the failure of a monument establishment to deliver and install a purchased monument or marker by the date agreed in the sales agreement shall entitle the customer to a full refund of all amounts paid by the customer for the monument and its delivery and installation, unless the monument establishment has obtained a written agreement from the customer extending the delivery date. Such refund shall be made within 30 days after receipt by the monument establishment of the customer's written request for a refund. This subsection does not preclude the purchase and installation of a new monument from any other registered monument establishment or preneed sales licensee.

Section 122. Section 497.554, Florida Statutes, is created to read:

497.554 Monument establishment sales representatives.—

(1) LICENSE REQUIRED.—Each person selling monuments, markers, or related products for a monument establishment must be licensed as a monument establishment sales agent. This requirement shall apply notwithstanding that such person is already registered or licensed in another capacity pursuant to this chapter.

(2) APPLICATION PROCEDURES.—Licensure as an monument establishment sale agent shall be by submission of an application for licensure to the department on a form prescribed by rule.

(a) The application shall require the applicant to state her or his name, residence and business address, business phone number, social security number, and the name and address of the monument establishment for which the applicant will be selling.

(b) The application shall require the applicant to disclose whether the applicant has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(c) The application shall require the applicant to disclose whether the applicant has ever had a license or the authority to practice a profession or occupation revoked, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction.

(d) The application shall be signed by the applicant and the owner or an officer of the sponsoring monument establishment.

(e) The monument establishment sales agent application shall be accompanied by a fee of \$50. The licensing authority may from time to time increase the application fee by rule but not to exceed \$200.

(3) APPROVAL OR DENIAL OF APPLICATION.—

(a) If a properly completed application accompanied by the required application fee indicates the applicant has no criminal or disciplinary record, the requested licensure shall be deemed granted upon receipt of the duly completed application by the department.

(b) If the application indicates the applicant has any criminal or disciplinary history, licensure shall be granted unless the licensing authority determines that the licensure of the applicant would pose a substantial threat to the welfare of the public with which the applicant might be dealing as a monument establishment sales agent. Rules may be adopted providing criteria for evaluating criminal and disciplinary records as they may affect applications for licensure under this section.

(4) TERMINATION OF AUTHORITY.—

(a) Once issued, a monument establishment sales agent license of an agent not licensed to make preneed sales shall remain in effect without renewal until surrendered, or the sponsoring monument establishment terminates the agent's authority to sell on behalf of that monument establishment, or the license is revoked or suspended by the licensing authority for cause.

(b) The monument establishment whose officer signed the sales agent application shall terminate that agent's authority to sell on behalf of that monument establishment, and the monument establishment in writing shall advise the licensing authority of such termination within 30 days after the termination.

(5) RESPONSIBILITY FOR AGENTS.—The sponsoring monument establishment shall be responsible for the activities of its sales agents concerning their sales activities and shall reasonably supervise such activities.

(6) AGENT LICENSE REQUIRED.—A person selling monuments, markers, and related products on a preneed basis for a monument establishment that has been issued a preneed sales license must also obtain authorization as a preneed sales agent under part IV of this chapter.

Section 123. Section 497.555, Florida Statutes, is created to read:

497.555 Required rules.—Rules shall be adopted establishing minimum standards for access to all cemeteries by licensed monument establishments, for the purpose of delivering and installing markers and monuments. In all cases, cemeteries must comply with these minimum standards.

Section 124. Section 497.556, Florida Statutes, is created to read:

497.556 Requirements relating to monument establishments.—

(1) INITIAL LICENSURE.—No monument establishment shall be issued a license to engage in preneed sales under this chapter unless the monument establishment shall, in addition to the other requirements of this part for issuance of a preneed license, meet the following requirements:

(a) The monument establishment or its principals shall demonstrate at least 3 years of experience in the operation of a monument establishment.

(b) The monument establishment shall demonstrate that it has a net worth of at least \$10,000 pursuant to generally accepted accounting principles. If the monument establishment applying for preneed licensure cannot demonstrate a net worth of at least \$10,000, the licensing authority may in accordance with subsection (3) accept alternative factors or arrangements as substituting for the \$10,000 net worth requirement, and issue the license on that basis. A monument establishment which is issued a preneed sales license based upon subsection (3) shall be subject to subsection (2) regarding subsequent renewals of its preneed sales license.

(2) RENEWAL LICENSURE.—Each monument establishment seeking to renew its preneed sales license shall demonstrate, in addition to the other requirements of part IV of this chapter relating to renewal of preneed licenses, a net worth of \$10,000 as of the year end for its fiscal year most recently concluded prior to the renewal date. Such net worth shall be demonstrated in financial statements prepared in accordance with generally accepted accounting principles and filed with the licensing authority. If the monument establishment seeking renewal of its preneed licensure cannot demonstrate the required net worth the licensing authority may in accordance with subsection (3) accept alternative factors or arrangements as substituting for the \$10,000 net worth requirement and renew the license for that renewal cycle on that basis.

(3) ALTERNATIVES TO \$10,000 NET WORTH REQUIREMENT.—

(a) A monument establishment that cannot demonstrate the required \$10,000 net worth may voluntarily submit to the licensing authority and request acceptance of alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Such additional evidence or oversight may include, as appropriate, one or more of the following:

1. An agreement to submit monthly financial statements of the entity.
2. An agreement to submit quarterly financial statements of the entity.
3. An appraisal of the entity's property or broker's opinion of the entity's assets.
4. A credit report of the entity or its principals.
5. A subordination-of-debt agreement from the entity's principals.
6. An indemnification or subrogation agreement binding the entity and its principals.
7. A guarantee agreement for the entity from its principals.
8. A written explanation of past financial activity.

9. Submission of a 12-month projected business plan that includes:
 - a. A statement of cash flows.
 - b. Pro forma income statements, with sources of revenues identified.
 - c. Marketing initiatives.
10. Submission of previous department examination reports.
11. An agreement of 100 percent voluntary trust by the entity.

(b) The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for \$10,000 of net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the monument establishment on its retail sales agreements.

(4) BRANCH OPERATIONS.—A licensed monument establishment under common control with another monument establishment, funeral establishment, or licensed cemetery, which other monument establishment, funeral establishment, or licensed cemetery holds a preneed sales license in good standing, may engage in preneed sales under and as a branch of that other entity's preneed sales license, if there is compliance with the usual requirements of this part for branch operation, and the entity holding the preneed sales license executes and files with the licensing authority a written agreement in a form acceptable to the licensing authority, guaranteeing performance of the preneed sales of the branch.

Section 125. Part VI of chapter 497, Florida Statutes, consisting of sections 497.601, 497.602, 497.603, 497.604, 497.605, 497.606, 497.607, and 497.608, is created to read:

PART VI
CREMATION, CREMATORIES, AND DIRECT DISPOSITION

Section 126. Section 470.0165, Florida Statutes, is renumbered as section 497.601, Florida Statutes, and amended to read:

497.601 470.0165 Direct disposition; duties.—

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

(a) Remove human remains from the place of death and store human remains in registered direct disposal establishments.

(b) Secure pertinent information from the decedent's next of kin in order to complete the death certificate and to file for the necessary permits for direct disposition.

(c) Obtain the necessary permits for direct disposition and arrange for obituaries and death notices to be placed in newspapers; provided, however, that the name of the direct disposal establishment may not appear in any

death notice or obituary if any funeral service, memorial service, or grave-side service is to take place and such service is mentioned in the death notice or obituary.

(d) Refrigerate human remains prior to direct disposition and transport human remains to a direct disposal establishment for direct disposition.

(e) Contract with a removal service or refrigeration facility to provide such services or facilities to a direct disposal establishment.

(2) Direct disposers or funeral directors functioning as direct disposers may not, in their capacity as direct disposers, sell, conduct, or arrange for burials, funeral services, memorial services, visitations, or viewings; hold themselves out to the public as funeral directors; or use any name, title, or advertisement that may tend to connote that they are funeral directors. These prohibitions shall apply regardless of the fact that such individuals may be licensed as funeral directors.

(3) Provided that direct disposers limit their activities to those functions set forth in subsection (1), those activities shall not be deemed to constitute funeral directing or embalming or the functions performed by a funeral director or embalmer as otherwise set forth in this chapter.

Section 127. Section 470.017, Florida Statutes, is renumbered as section 497.602, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 470.017, F.S., for present text.)

497.602 Direct disposers, license required; licensing procedures and criteria; regulation.—

(1) LICENSE REQUIRED.—Any person who is not a licensed funeral director and who engages in the practice of direct disposition must be licensed pursuant to this section as a direct disposer.

(2) APPLICATION PROCEDURES.—

(a) A person seeking licensure as a direct disposer shall apply for such licensure using forms prescribed by rule.

(b) The application shall require the name, residence address, date and place of birth, and social security number, of the applicant.

(c) The application may require information as to the educational and employment history of the applicant.

(d) The application shall require the applicant to disclose whether the applicant has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(e) The application shall require the applicant to disclose whether the applicant has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or

disciplined, by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(f) The application shall require the applicant to provide fingerprints in accordance with part I of this chapter.

(g) The application shall require the applicant to demonstrate that the applicant does, or will before commencing operations under the license, comply with all requirements of this chapter relating to the licensure applied for.

(h) The application shall be signed by the applicant.

(i) The application shall be accompanied by a nonrefundable fee of \$300. The licensing authority may from time to time increase the fee by rule but not to exceed more than \$500.

(3) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure under this section, accompanied by the required fees, shall be approved if the licensing authority determines that the following conditions are met:

(a) The applicant is a natural person at least 18 years of age and a high school graduate or equivalent.

(b) Applicant has taken and received a passing grade in a college credit course in Florida mortuary law.

(c) Applicant has completed a course on communicable diseases approved by the licensing authority.

(d) Applicant has passed an examination prepared by the department on the local, state, and federal laws and rules relating to the disposition of dead human bodies.

(e) The applicant does or will prior to commencing operations under the license comply with all requirements of this chapter relating to the license applied for.

(f) Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

(4) ISSUANCE OF LICENSE.—Upon approval of the application by the licensing authority, the license shall be issued.

(5) DISPLAY OF LICENSE.—There shall be adopted rules which require each license issued under this section to be displayed in such a manner as to make it visible to the public and to facilitate inspection by the department. Each licensee shall permanently affix a recent photograph of the licensee to each displayed license issued to that licensee as a direct disposer.

Section 128. Section 470.018, Florida Statutes, is renumbered as section 497.603, Florida Statutes, and amended to read:

497.603 470.018 Direct disposers, renewal of license ~~Renewal of registration of direct disposer.—~~

(1) ~~A direct disposer's renewal of license~~ The department shall renew a registration upon receipt of the renewal application and fee set by rule of the licensing authority but the department not to exceed \$250.

(2) ~~There shall be adopted~~ The department shall adopt rules establishing a schedule and forms and procedure for the biennial renewal of licenses as direct disposers registrations. There shall be adopted ~~The board shall prescribe~~ by rule continuing education requirements of up to 6 3 classroom hours and there may by rule be established ~~establish~~ criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis, in addition to an approved a board-approved course on communicable diseases that includes the course on human immunodeficiency virus and acquired immune deficiency syndrome required by s. 497.367 455.2226, for the renewal of a license as a direct disposer registration.

Section 129. Section 470.021, Florida Statutes, is renumbered as section 497.604, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 470.021, F.S., for present text.)

497.604 Direct disposal establishments, license required; licensing procedures and criteria; license renewal; regulation.—

(1) LICENSE REQUIRED.—A direct disposer shall practice at a direct disposal establishment which has been licensed under this section and which may be a cinerator facility licensed under s. 497.606. No person may open or maintain an establishment at which to engage in or hold herself or himself out as engaging in the practice of direct disposition unless such establishment is licensed pursuant to this section.

(2) APPLICATION PROCEDURES.—

(a) A person seeking licensure as a direct disposal establishment shall apply for such licensure using forms prescribed by rule.

(b) The application shall require the name, business address, residence address, date and place of birth or incorporation, and business phone number, of applicant and all principals of applicant. The application shall require the applicant's social security number, or if the applicant is an entity, its federal tax identification number.

(c) The application shall name the licensed direct disposer or licensed funeral director who will acting as a direct disposer in charge of the direct disposal establishment.

(d) The application may require information as to the applicant's financial resources.

(e) The application may require information as to the educational and employment history of an individual applicant; and as to applicants that are

not natural persons, the business and employment history of the applicant and principals of applicant.

(f) The application shall require the applicant to disclose whether the applicant or any of applicant's principals including its proposed supervising licensee has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(g) The application shall require the applicant to disclose whether the applicant or any of applicant's principals including its proposed supervising licensee has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(h) The application shall require the applicant and its principals to provide fingerprints in accordance with part I of this chapter.

(i) The application shall require the applicant to demonstrate that the applicant does, or will before commencing operations under the license, comply with all requirements of this chapter relating to the licensure applied for.

(j) The application shall be signed by the applicant if a natural person, or by the president of an applicant that is not a natural person.

(k) The application shall be accompanied by a nonrefundable fee of \$300. The licensing authority may from time to time by rule increase the fee but not to exceed \$500.

(3) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure under this section, accompanied by the required fee, shall be approved if the licensing authority determines that the following conditions are met:

(a) The applicant is a natural person at least 18 years of age, a corporation, a partnership, or a limited liability company formed prior to January 1, 2006, which limited liability company already holds a license under this chapter.

(b) The applicant does or will prior to commencing operations under the license comply with all requirements of this chapter relating to the license applied for.

(c) Applicant and applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

(4) ISSUANCE OF LICENSE.—Upon approval of the application by the licensing authority, the license shall be issued.

(5) PROBATIONARY STATUS.—It is the policy of this state to encourage competition for the public benefit in the direct disposal establishment business by, among other means, the entry of new licensees into that business. To facilitate issuance of licenses concerning applications judged by the licensing authority to be borderline as to qualification for licensure, the licensing authority may issue a new license under this section on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 24 months of licensure, to ensure the licensee's responsibility, competency, financial stability, and compliance with this chapter. However, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority must within 24 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure under this chapter and institute proceedings for revocation of licensure.

(6) RENEWAL OF LICENSE.—A direct disposal establishment license shall be renewed biennially pursuant to schedule, forms, procedures and upon payment of a fee of \$200. The licensing authority may from time to time increase the fee by rule but not to exceed \$400.

(7) CHANGES SUBSEQUENT TO LICENSURE.—Each licensee under this section must provide notice as required by rule prior to any change in location or control of the licensee or licensed person in charge of the licensee's operations. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter.

(8) SUPERVISION OF FACILITIES.—Each direct disposal establishment shall have one full-time licensed direct disposer or licensed funeral director acting as a direct disposer in charge and reasonably available to the public during normal business hours for that establishment. Such person may be in charge of only one facility. Such licensed funeral director or licensed direct disposer shall be responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules.

(9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.—

(a) There shall be established by rule standards for direct disposal establishments, including, but not limited to, requirements for refrigeration and storage of dead human bodies.

(b) The practice of direct disposition must be engaged in at a fixed location of at least 625 interior contiguous square feet and must maintain or make arrangements for suitable capacity for the refrigeration and storage of dead human bodies handled and stored by the establishment.

(c) Each direct disposal establishment shall at all times be subject to the inspection of all its buildings, grounds, and vehicles used in the conduct of its business, by the department, the Department of Health, and local government inspectors and by their agents. There shall be adopted rules which

establish such inspection requirements. There shall be adopted by rule of the licensing authority an annual inspection fee not to exceed \$300, payable upon issuance of license and upon each renewal of such license.

(d) Each direct disposal establishment must display at the public entrance the name of the establishment and the name of the direct disposer or licensed funeral director acting as a direct disposer responsible for that establishment. A direct disposal establishment must transact its business under the name by which it is licensed.

(e) A direct disposal establishment may not be operated at the same location as any other direct disposal establishment or funeral establishment unless such establishments were licensed as colocated establishments on July 1, 2000.

Section 130. Section 470.022, Florida Statutes, is renumbered as section 497.605, Florida Statutes, and amended to read:

497.605 470.022 Direct disposition not funeral directing.—The duties, functions, and services performed by a direct disposer ~~licensee registrant~~, as provided by this chapter, shall not be deemed to constitute funeral directing or embalming or the duties, functions, or services performed by a funeral director or embalmer as otherwise defined and provided by this chapter.

Section 131. Section 470.025, Florida Statutes, is renumbered as section 497.606, Florida Statutes, and amended to read:

(Substantial rewording of section. See s. 470.025, F.S., for present text.)

497.606 Cinerator facility, licensure required; licensing procedures and criteria; license renewal; regulation.—

(1) LICENSE REQUIRED.—No person may conduct, maintain, manage, or operate a cinerator facility unless a license for such facility has been issued and is in good standing under this section.

(2) APPLICATION PROCEDURES.—

(a) A person seeking licensure as a cinerator facility shall apply for such licensure using forms prescribed by rule.

(b) The application shall require the name, business address, residence address, date and place of birth or incorporation, and business phone number, of applicant and all principals of applicant. The application shall require the applicant's social security number, or if the applicant is an entity, its federal tax identification number.

(c) The application shall name the licensed funeral director or licensed direct disposer who will be in charge of the cinerator facility.

(d) The application may require information as to the applicant's financial resources.

(e) The application may require information as to the educational and employment history of an individual applicant, and as to applicants that are not natural persons, the business and employment history of the applicant and principals of applicant.

(f) The application shall require the applicant to disclose whether the applicant or any of applicant's principals including its proposed supervising licensee has ever been convicted or found guilty of, or entered a plea of no contest to, regardless of adjudication, any crime in any jurisdiction.

(g) The application shall require the applicant to disclose whether the applicant or any of applicant's principals including its proposed supervising licensee has ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined, by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(h) The application shall require the applicant and its principals to provide fingerprints in accordance with part I of this chapter.

(i) The application shall require the applicant to demonstrate that the applicant does, or will before commencing operations under the license, comply with all requirements of this chapter relating to the licensure applied for.

(j) The application shall be signed by the applicant if a natural person, or by the president of an applicant that is not a natural person.

(k) The application shall be accompanied by a nonrefundable fee of \$300. The licensing authority may from time to time increase the fee by rule but not to exceed \$500.

(3) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure under this section, accompanied by the required fee, shall be approved if the licensing authority determines that the following conditions are met:

(a) No license may be issued unless the cinerator facility has been inspected and approved as meeting all requirements as set forth by the department, the Department of Health, the Department of Environmental Protection, or any local ordinance regulating the facility.

(b) The applicant is a natural person at least 18 years of age, a corporation, a partnership, or a limited liability company formed prior to January 1, 2006, which limited liability company already holds a license under this chapter.

(c) The applicant does or will prior to commencing operations under the license comply with all requirements of this chapter relating to the license applied for.

(d) Applicant and applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

(4) PROBATIONARY STATUS.—It is the policy of this state to encourage competition for the public benefit in the cinerator facility business by, among other means, the entry of new licensees into that business. To facilitate issuance of licenses concerning applications judged by the licensing authority to be borderline as to qualification for licensure, the licensing authority may issue a new license under this section on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 24 months of licensure, to ensure the licensee's responsible, competency, financial stability, and compliance with this chapter. Provided, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority must within 24 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure under this chapter and institute proceedings for revocation of licensure.

(5) ISSUANCE OF LICENSE.—Upon approval of the application by the licensing authority, the license shall be issued.

(6) RENEWAL OF LICENSE.—Licenses under this section shall be renewed biennially in accordance with a schedule, forms, and procedures established by rule. The nonrefundable and nonproratable biennial renewal fee shall be as determined by licensing authority rule but not to exceed \$500.

(7) CHANGES SUBSEQUENT TO LICENSURE.—Each licensee under this section must provide notice as required by rule prior to any change in location, control, or licensed person in charge. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter.

(8) SUPERVISION OF FACILITIES.—Each cinerator facility shall have one full-time licensed direct disposer or licensed funeral director in charge for that facility. Such person may be in charge of only one facility. Such licensed funeral director or licensed direct disposer shall be responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules.

(9) REGULATION OF CINERATOR FACILITIES.—

(a) There shall be established by rule standards for cinerator facilities, including, but not limited to, requirements for refrigeration and storage of dead human bodies, use of forms and contracts, and record retention.

(b) No more than one dead human body may be placed in a retort at one time, unless written permission has been received from a legally authorized person for each body. The operator of a cinerator facility shall be entitled to rely on the permission of a legally authorized person to cremate more than one human body at a time.

(c) Each cinerator facility shall at all times be subject to the inspection of all its buildings, grounds, records, equipment, and vehicles used in the conduct of its business, by the department, the Department of Environmental Protection, the Department of Health, and local government inspectors and by their agents. Rules shall be adopted which establish such inspection requirements. There shall by rule of the licensing authority be adopted an annual inspection fee not to exceed \$300, payable prior to issuance of license and upon each renewal of such license.

(d) A cinerator facility licensed under this section shall only receive dead human bodies for cremation. A cinerator facility may not receive other materials, or medical, hazardous, and biohazardous waste, for the purpose of disposal in a retort.

(e) Each cinerator facility must display at its public entrance the name of the facility and the name of the funeral director or direct disposer responsible for that facility. A cinerator facility must transact its business under the name by which it is licensed.

(f) A cinerator facility located at the same address as a funeral establishment may not have a direct disposer as its individual in charge.

(g) A cinerator facility shall not place human remains or body parts in a retort or cremation chamber unless the human remains are in an alternative container, cremation container, or casket. Human remains may be transported in a cremation container or stored if they are completely covered, and at all times treated with dignity and respect. Cremation may include the processing and pulverization of bone fragments. Cremated remains may be placed in a temporary container following cremation. None of the provisions contained in this subsection require the purchase of a casket for cremation. This subsection applies to at-need contracts and preneed contracts entered into pursuant to this chapter after June 1, 1996.

(h) Each cinerator facility shall ensure that all alternative containers, cremation containers, or caskets used for cremation contain no amount of chlorinated plastics not authorized by the Department of Environmental Protection, that they also are composed of readily combustible materials suitable for cremation, able to be closed to provide a complete covering for the human remains, resistant to leakage or spillage, rigid enough for handling with ease, and able to provide for the health, safety, and personal integrity of the public and crematory personnel.

(i) There shall be adopted by rule criteria for acceptable cremation and alternative containers.

(j) There shall be rules adopted requiring each facility to submit periodic reports to the department which include the names of persons cremated, the date and county of death, the name of each person supervising each cremation, the name and license number of the establishment requesting cremation, and the types of containers used to hold the body during cremation.

(k) Each cinerator facility must be inspected prior to the issuance and renewal of its license and shall:

1. Maintain one or more retorts for the reduction of dead human bodies.
2. Maintain refrigeration that satisfies the standards set by the Department of Health and contains a sufficient number of shelves for the average daily number of bodies stored, if unembalmed bodies are kept at the site.
3. Maintain sufficient pollution control equipment to comply with requirements of the Department of Environmental Protection in order to secure annual approved certification.
4. Either have on site or immediately available sufficient sealed containers of a type required for the transportation of bodies as specified in applicable state rules.
5. Maintain the premises in a clean and sanitary condition.
6. Have appropriate Department of Environmental Protection permits.
7. Retain all signed contracts for a period of at least 2 years.

Section 132. Section 470.0255, Florida Statutes, is renumbered as section 497.607, Florida Statutes, and amended to read:

497.607 470.0255 Cremation; procedure required.—

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

(2) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct disposal establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a licensed cemetery scatter garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule ~~of the department or board.~~

(3) Pursuant to the request of a legally authorized person and incidental to final disposition, cremation may be performed on parts of human remains. This subsection does not authorize the cremation of body parts as defined in s. 497.005.

Section 133. Section 497.608, Florida Statutes, is created to read:

497.608 Liability for unintentional commingling of the residue of the cremation process.—

(1) The Legislature recognizes that the unintentional or incidental commingling of the residue of the cremation of human remains is an inevitable byproduct of the cremation process in a cinerator retort or cremation chamber.

(2) The operator of a cinerator facility shall establish written procedures for the removal of cremated remains, to the extent possible, resulting from the cremation of a human body and the postcremation processing, shipping, packing or identifying of those remains. The operator of a cinerator facility shall file its written procedures, and any revisions to those written procedures, with the licensing authority for its approval, and effective January 1, 2006, the cremation facility shall not be operated unless it has and follows such written procedures approved by the licensing authority; provided, the licensing authority may adopt by rule standard uniform procedures for the removal of such cremated remains, which may be adopted by any cinerator facility in lieu of promulgating, filing, and obtaining approval of procedures. A cinerator facility choosing to the utilize standard uniform procedures specified by rule shall file notice of its choice with the licensing authority pursuant to procedures and forms specified by rule.

(3) If an operator follows the procedures set forth in written procedures filed and approved by the licensing authority, or adopts and follows the standard uniform procedures adopted by the licensing authority, the operator shall not liable for the unintentional or the incidental commingling of cremated remains resulting from more than one cremation cycle or from postcremation processing, shipping, packing, or identifying those remains.

(4) A copy of the procedures being utilized by a cinerator facility shall be provided by the cinerator facility upon request, to customers and their representatives, the department, and other legally authorized persons.

Section 134. Section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(1) DEPARTMENT HEAD.—The head of the Department of Financial Services is the Chief Financial Officer.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions:

(a) The Division of Accounting and Auditing, which shall include the following bureau and office:

1. The Bureau of Unclaimed Property.

2. The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tend-

ing to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

(d) The Division of Treasury, which shall include a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan established under s. 112.215 for state employees.

(e) The Division of Insurance Fraud.

(f) The Division of Rehabilitation and Liquidation.

(g) The Division of Insurance Agents and Agency Services.

(h) The Division of Consumer Services, ~~which shall include a Bureau of Funeral and Cemetery Services.~~

1. The Division of Consumer Services shall perform the following functions concerning products or services regulated by the Department of Financial Services or by either office of the Financial Services Commission:

a. Receive inquiries and complaints from consumers.;

b. Prepare and disseminate such information as the department deems appropriate to inform or assist consumers.;

c. Provide direct assistance and advocacy for consumers who request such assistance or advocacy.;

d. With respect to apparent or potential violations of law or applicable rules by a person or entity licensed by the department or by either office of the commission, report such apparent or potential violation to the appropriate division of the department or office of the commission, which may take such further action as it deems appropriate.

2. Any person licensed or issued a certificate of authority by the department or by the Office of Insurance Regulation shall respond, in writing, to the Division of Consumer Services within 20 days after receipt of a written request for information from the division concerning a consumer complaint. The response must address the issues and allegations raised in this complaint. The division may, in its discretion, impose an administrative penalty for failure to comply with this subparagraph in an amount up to \$2,500 per violation upon any entity licensed by the department or the Office of Insurance Regulation and \$250 for the first violation, \$500 for the second violation and up to \$1,000 per violation thereafter upon any individual licensed by the department or the Office of Insurance Regulation.

3. The department may adopt rules to implement the provisions of this paragraph.

4. The powers, duties, and responsibilities expressed or granted in this paragraph shall not limit the powers, duties, and responsibilities of the Department of Financial Services, the Financial Services Commission, the Office of Insurance Regulation, or the Office of Financial Regulation set forth elsewhere in the Florida Statutes.

- (i) The Division of Workers' Compensation.
- (j) The Division of Administration.
- (k) The Division of Legal Services.
- (l) The Division of Information Systems.
- (m) The Office of Insurance Consumer Advocate.
- (n) The Division of Funeral, Cemetery, and Consumer Services.

(3) FINANCIAL SERVICES COMMISSION.—Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

(a) Structure.—The major structural unit of the commission is the office. Each office shall be headed by a director. The following offices are established:

1. The Office of Insurance Regulation, which shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or chapter 636. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation.

2. The Office of Financial Regulation, which shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. The head of the office is the Director of the Office of Financial Regulation. The Office of Financial Regulation shall include a Bureau of Financial Investigations, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The bureau may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If, during an investigation, the office has reason to believe that any criminal

law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) Organization.—The commission shall establish by rule any additional organizational structure of the offices. It is the intent of the Legislature to provide the commission with the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability.

(c) Powers.—Commission members shall serve as the agency head for purposes of rulemaking under ss. 120.536-120.565 by the commission and all subunits of the commission. Each director is agency head for purposes of final agency action under chapter 120 for all areas within the regulatory authority delegated to the director's office.

(d) Appointment and qualifications of directors.—The commission shall appoint or remove each director by a majority vote consisting of at least three affirmative votes, with both the Governor and the Chief Financial Officer on the prevailing side. The minimum qualifications of the directors are as follows:

1. Prior to appointment as director, the Director of the Office of Insurance Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full time in areas within the scope of the subject matter jurisdiction of the Office of Insurance Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over insurers or insurance agencies.

2. Prior to appointment as director, the Director of the Office of Financial Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full time in areas within the subject matter jurisdiction of the Office of Financial Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over financial institutions, finance companies, or securities companies.

(e) Administrative support.—The offices shall have a sufficient number of attorneys, examiners, investigators, other professional personnel to carry out their responsibilities and administrative personnel as determined annually in the appropriations process. The Department of Financial Services shall provide administrative and information systems support to the offices.

(f) Records retention schedules.—The commission and the offices may destroy general correspondence files and also any other records that they deem no longer necessary to preserve in accordance with retention schedules and destruction notices established under rules of the Division of Library and Information Services, records and information management program, of the Department of State. Such schedules and notices relating to financial records of the commission and offices shall be subject to the approval of the Auditor General.

(g) Records storage.—The commission and offices may photograph, microphotograph, or reproduce on film such documents and records as they may select, in such manner that each page will be exposed in exact conformity with the original. After reproduction and filing, original documents and records may be destroyed in accordance with the provisions of paragraph (f).

(4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES.—The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services.

~~(5)~~(4) TRANSITIONAL RULES.—Effective January 7, 2003, the rules of the Department of Banking and Finance and of the Department of Insurance that were in effect on January 6, 2003, shall become rules of the Department of Financial Services or the Financial Services Commission as is appropriate to the corresponding regulatory or constitutional function and shall remain in effect until specifically amended or repealed in the manner provided by law.

Section 135. Paragraph (a) of subsection (4) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards are established within the Division of Professions:

1. Board of Architecture and Interior Design, created under part I of chapter 481.
2. Florida Board of Auctioneers, created under part VI of chapter 468.
3. Barbers' Board, created under chapter 476.
4. Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.
5. Construction Industry Licensing Board, created under part I of chapter 489.
6. Board of Cosmetology, created under chapter 477.
7. Electrical Contractors' Licensing Board, created under part II of chapter 489.
8. Board of Employee Leasing Companies, created under part XI of chapter 468.
- ~~9. Board of Funeral Directors and Embalmers, created under chapter 470.~~
- ~~9.10.~~ Board of Landscape Architecture, created under part II of chapter 481.

~~10.11.~~ Board of Pilot Commissioners, created under chapter 310.

~~11.12.~~ Board of Professional Engineers, created under chapter 471.

~~12.13.~~ Board of Professional Geologists, created under chapter 492.

~~13.14.~~ Board of Professional Surveyors and Mappers, created under chapter 472.

~~14.15.~~ Board of Veterinary Medicine, created under chapter 474.

Section 136. Paragraph (a) of subsection (1) of section 316.1974, Florida Statutes, is amended to read:

316.1974 Funeral procession right-of-way and liability.—

(1) DEFINITIONS.—

(a) “Funeral director” and “funeral establishment” shall have the same meaning as set forth in s. ~~497.005~~ 470.002.

Section 137. Paragraph (a) of subsection (2) of section 381.0098, Florida Statutes, is amended to read:

381.0098 Biomedical waste.—

(2) DEFINITIONS.—As used in this section, the term:

(a) “Biomedical waste” means any solid or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contains human-disease-causing agents; discarded disposable sharps; human blood, blood products, and body fluids; and other materials which in the opinion of the department represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under chapter ~~497~~ 470.

Section 138. Subsection (7) of section 382.002, Florida Statutes, is amended to read:

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

(7) “Funeral director” means a licensed funeral director or direct disposer licensed pursuant to chapter ~~497~~ 470 or other person who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection (5).

Section 139. Subsections (21), (37), and (39) of section 403.703, Florida Statutes, are amended to read:

403.703 Definitions.—As used in this act, unless the context clearly indicates otherwise, the term:

(21) “Hazardous waste” means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical,

or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under chapter 497 470.

(37) “Biomedical waste” means any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, and human blood products and body fluids; and other materials which in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under chapter 497 470.

(39) “Biological waste” means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 497 470.

Section 140. Paragraph (a) of subsection (1) of section 406.02, Florida Statutes, is amended to read:

406.02 Medical Examiners Commission; membership; terms; duties; staff.—

(1) There is created the Medical Examiners Commission within the Department of Law Enforcement. The commission shall consist of nine persons appointed or selected as follows:

(a) The Governor shall appoint:

1. Two members who are physicians licensed pursuant to chapter 458 or chapter 459 and who are active district medical examiners;

2. One member who is a funeral director licensed pursuant to chapter 497 470;

3. One member who is a state attorney;

4. One member who is a public defender;

5. One member who is a sheriff; and

6. One member who is a county commissioner.

Section 141. Section 406.50, Florida Statutes, is amended to read:

406.50 Unclaimed dead bodies or human remains; disposition, procedure.—All public officers, agents, or employees of every county, city, village, town, or municipality and every person in charge of any prison, morgue,

hospital, funeral parlor, or mortuary and all other persons coming into possession, charge, or control of any dead human body or remains which are unclaimed or which are required to be buried or cremated at public expense are hereby required to notify, immediately, the anatomical board, whenever any such body, bodies, or remains come into its possession, charge, or control. Notification of the anatomical board is not required if the death was caused by crushing injury, the deceased had a contagious disease, an autopsy was required to determine cause of death, the body was in a state of severe decomposition, or a family member objects to use of the body for medical education and research.

(1) The person or entity in charge or control of the dead body or human remains shall make a reasonable effort to determine:

(a) The identity of the deceased person and shall further make a reasonable effort to contact any relatives of such deceased person.

(b) Whether or not the deceased person is entitled to burial in a national cemetery as a veteran of the armed forces and, if so, shall make arrangements for such burial services in accordance with the provisions of 38 C.F.R. For purposes of this subsection, “a reasonable effort” includes contacting the county veterans service office or regional office of the United States Department of Veterans Affairs.

(2) Such dead human bodies as described in this chapter shall be delivered to the anatomical board as soon as possible after death.

(3) Nothing herein shall affect the right of a medical examiner to hold such dead body or remains for the purpose of investigating the cause of death, nor shall this chapter affect the right of any court of competent jurisdiction to enter an order affecting the disposition of such body or remains.

(4) In the event more than one legally authorized person claims a body for interment, the requests shall be prioritized in accordance with s. 732.103.

For purposes of this chapter, the term “anatomical board” means the anatomical board of this state located at the University of Florida Health Science Center, and the term “unclaimed” means a dead body or human remains that is not claimed by a legally authorized person, as defined in s. 497.005, for interment at that person’s expense.

Section 142. Section 406.52, Florida Statutes, is amended to read:

406.52 Retention of bodies before use; unfit or excess number of bodies, disposition procedure.—All bodies received by the anatomical board shall be retained in receiving vaults for a period of not less than 48 hours before allowing their use for medical science; if at any time more bodies are made available to the anatomical board than can be used for medical science under its jurisdiction, or if a body shall be deemed by the anatomical board to be unfit for anatomical purposes, the anatomical board may notify, in writing, the county commissioners or other legally authorized person, as defined in

s. ~~497.005~~ 470.002, in the county where such person died, to cause it to be buried or cremated in accordance with the rules, laws and practices for disposing of such unclaimed bodies. However, prior to having any body buried or cremated, the county shall make a reasonable effort to determine the identity of the body and shall further make a reasonable effort to contact any relatives of the deceased person. If a relative of the deceased person is contacted and expresses a preference for either burial or cremation, the county shall make a reasonable effort to accommodate the request of the relative. For purposes of this section, the county commissioners of the county where such person died shall be considered a legally authorized person as defined in s. ~~497.005~~ 470.002. A person licensed under ~~chapter 470 or chapter 497~~ shall not be liable for any damages resulting from cremating or burying such body at the direction of the county's legally authorized person.

Section 143. Section 406.53, Florida Statutes, is amended to read:

406.53 Death of indigents; notice; delivery to the anatomical board when unclaimed; exceptions; assessment of fees.—

(1) Notice of death to the anatomical board in cases of indigent persons is not required if:

- (a) Death was caused by crushing injury.
- (b) The deceased had a contagious disease.
- (c) An autopsy was required to determine cause of death.
- (d) The body was in a state of severe decomposition.

(e) Any relative, by blood or marriage, claims the body for burial at the expense of such relative, but the body shall be surrendered to the claimant for interment, but if such relative is indigent, in a manner consistent with the policy of the agency in possession or control of the body.

(f) Any friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, or a governmental agency which was providing residential care to the indigent person at the time of his or her death claims the body for burial at his or her, its, or their expense.

(g) The deceased person was an honorably discharged member of the Armed Forces of the United States or the state who served during a period of wartime service as defined in s. 1.01(14); but such body shall be buried in accordance with the provisions of the existing laws.

(2) When the Department of Health claims the body of a client according to this section, the department shall assess fees for burial pursuant to s. 402.33.

(3) For purposes of this chapter, the term indigent shall be 100 percent of the federal poverty level recognized by the Federal Income Guidelines produced by the United States Department of Health and Human Services.

Section 144. Subsection (1) of section 455.2226, Florida Statutes, is amended to read:

455.2226 Funeral directors and embalmers; instruction on HIV and AIDS.—

(1) The Board of Funeral Directors and Embalmers shall require each person licensed or certified under chapter ~~497~~ 470 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.

Section 145. Paragraph (b) of subsection (1) of section 501.022, Florida Statutes, is amended to read:

501.022 Home solicitation sale; permit required.—

(1)

(b) The following are excluded from the operation of this section:

1. Bona fide agents, business representatives, or salespersons making calls or soliciting orders at the usual place of business of a customer regarding products or services for use in connection with the customer's business.

2. Solicitors, salespersons, or agents making a call or business visit upon the express invitation, oral or written, of an inhabitant of the premises or her or his agent.

3. Telephone solicitors, salespersons, or agents making calls which involve transactions that are unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

4. Solicitors, salespersons, or agents conducting a sale, lease, or rental of consumer goods or services by sample, catalog, or brochure for future delivery.

5. Minors, as defined in s. 1.01(13), conducting home solicitation sales under the supervision of an adult supervisor who holds a valid home solicitation sale permit. Minors excluded from operation of this section must, however, carry personal identification which includes their full name, date of birth, residence address, and employer and the name and permit number of their adult supervisor.

6. Those sellers or their representatives that are currently regulated as to the sale of goods and services by ~~chapter 470~~, chapter 475, or chapter 497.

7. Solicitors, salespersons, or agents making calls or soliciting orders on behalf of a religious, charitable, scientific, educational, or veterans' institution or organization holding a sales tax exemption certificate under s. 212.08(7)(a).

Section 146. Subsection (15) of section 501.604, Florida Statutes, is amended to read:

501.604 Exemptions.—The provisions of this part, except ss. 501.608 and 501.616(6) and (7), do not apply to:

(15) A person who is licensed pursuant to ~~chapter 470 or~~ chapter 497 and who is soliciting within the scope of the license.

Section 147. Paragraph (d) of subsection (1) of section 626.785, Florida Statutes, is amended to read:

626.785 Qualifications for license.—

(1) The department shall not grant or issue a license as life agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(d) Must not be a funeral director or direct disposer, or an employee or representative thereof, or have an office in, or in connection with, a funeral establishment, except that a funeral establishment may contract with a life insurance agent to sell a preneed contract as defined in s. 497.005 ~~chapter 497~~. Notwithstanding other provisions of this chapter, such insurance agent may sell limited policies of insurance covering the expense of final disposition or burial of an insured in the amount of \$12,500, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2003.

Section 148. Section 765.519, Florida Statutes, is amended to read:

765.519 Enucleation of eyes by licensed funeral directors.—With respect to a gift of an eye as provided for in this part, a licensed funeral director as defined in chapter ~~497~~ 470 who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Florida School of Medicine, the University of South Florida School of Medicine, or the University of Miami School of Medicine may enucleate eyes for gift after proper certification of death by a physician and in compliance with the intent of the gift as defined in this chapter. No properly certified funeral director acting in accordance with the terms of this part shall have any civil or criminal liability for eye enucleation.

Section 149. (1) All of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of chapter 470, Florida Statutes, related to the Board of Funeral Directors and Embalmers, shall be

transferred by a type two transfer, as defined in section 20.06(2), Florida Statutes, from the Department of Business and Professional Regulation to the Department of Financial Services.

(2) All of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of chapter 497, Florida Statutes, related to the Board of Funeral and Cemetery Services, shall be transferred by a type two transfer, as defined in section 20.06(2), Florida Statutes, to the Board of Funeral, Cemetery, and Consumer Services and the Department of Financial Services, as appropriate.

Section 150. (1) The transfer of regulatory authority under chapter 470, Florida Statutes, provided by this act shall not affect the validity of any judicial or administrative action pending as of 11:59 p.m. on the day before the effective date of this act, to which action the Board of Funeral Directors and Embalmers, or the Department of Business and Professional Regulation in relation to the Board of Funeral Directors and Embalmers, are at that time parties, and the Board of Funeral, Cemetery, and Consumer Services or the Department of Financial Services, as appropriate, shall be substituted as a party in interest in any such action.

(2) The transfer of regulatory authority under chapter 497, Florida Statutes, provided by this act shall not affect the validity of any judicial or administrative action pending as of 11:59 p.m. on the day prior to this act taking effect, to which action the Board of Funeral and Cemetery Services, or the Department of Financial Services in relation to the Board of Funeral and Cemetery Services, is at that time a party, and the Board of Funeral, Cemetery, and Consumer Services, or the Department of Financial Services, as appropriate, shall be substituted as a party in interest in any such action.

Section 151. (1) All lawful orders issued by the Board of Funeral Directors and Embalmers, or by the Department of Business and Professional Regulation, implementing or enforcing or otherwise in regard to any provision of chapter 470, Florida Statutes, issued prior to the effective date of this act, shall remain in effect and be enforceable after the effective date of this act, unless thereafter modified in accordance with law.

(2) All lawful orders issued by the Board of Funeral and Cemetery Services, or the Department of Financial Services in regard to the Board of Funeral and Cemetery Services, implementing or enforcing or otherwise in regard to any provision of chapter 497, Florida Statutes, issued prior to the effective date of this act, shall remain in effect and be enforceable after the effective date of this act.

Section 152. (1) The rules of the Board of Funeral Directors and Embalmers and of the Department of Business and Professional Regulation relating to the Board of Funeral Directors and Embalmers or implementation of chapter 470, Florida Statutes, which were in effect at 11:59 p.m. on the day prior to this act taking effect shall become the rules of the Department of Financial Services and the Board of Funeral, Cemetery, and Consumer Services and shall remain in effect until amended or repealed in the manner provided by law.

(2) The rules of the Board of Funeral and Cemetery Services which were in effect at 11:59 p.m. on the day prior to this act taking effect shall become the rules of the Department of Financial Services and the Board of Funeral, Cemetery, and Consumer Services and shall remain in effect until specifically amended or repealed in the manner provided by law.

(3) The rules of the Department of Financial Services relating to chapter 497, Florida Statutes, which were in effect at 11:59 P.M. on the day prior to this act taking effect shall continue in force until thereafter repealed or amended pursuant to chapter 120, Florida Statutes, and this act.

Section 153. (1) Notwithstanding the transfer of regulatory authority over chapters 470 and 497, Florida Statutes, provided by this act, persons and entities holding in good standing any license under chapters 470 or 497, Florida Statutes, as of 11:59 p.m. on the day prior to the effective date of this act, shall be deemed to hold in good standing a license in the same capacity under chapter 497, Florida Statutes, as of the effective date of this act.

(2) Notwithstanding the transfer of regulatory authority over chapters 470 and 497, Florida Statutes, provided by this act, persons and entities holding in good standing a preneed certificate of authority under chapter 497, Florida Statutes, as of 11:59 p.m. on the day prior to the effective date of this act, shall be deemed to hold in good standing a preneed license under part IV of chapter 497, Florida Statutes, as of the effective date of this act, and their certificate of authority shall be deemed a preneed license for purposes of chapter 497, Florida Statutes.

(3) Notwithstanding the transfer of regulatory authority over chapters 470 and 497, Florida Statutes, provided by this act, persons and entities holding in good standing any registration under chapters 470 or 497, Florida Statutes, as of 11:59 p.m. on the day prior to the effective date of this act, shall as of the effective date of this act be deemed to be licensed in the same capacity in which they were formerly registered, and their registration shall thereafter be deemed a license for purposes of chapter 497, Florida Statutes.

Section 154. (1) The Department of Financial Services shall, no later than November 1, 2004, notify the Department of Business and Professional Regulation of its intention to contract with the Department of Business and Professional Regulation, another governmental agency, or a private business for the implementation of a system for the administration of the overall licensing process, including the processing and tracking of applications for licensure, the issuance of licenses approved by the board, the tracking of licenses issued, the administration of the license renewal process, and the collection and processing of fees relating to those activities. If the Department of Financial Services elects to contract with the Department of Business and Professional Regulation for the services described in this subsection, they shall enter into a contract no later than February 1, 2005, to become effective upon the effective date of this act. If the Department of Financial Services elects not to contract with the Department of Business and Professional Regulation for those services, the Department of Financial Services shall begin working with the Department of Business and Professional Regulation no later than February 1, 2005, for the conversion of those services, which conversion is to be completed before September 1, 2005.

(2) The Department of Financial Services shall, no later than November 1, 2004, notify the Department of Business and Professional Regulation of its intention to contract with the Department of Business and Professional Regulation for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. If the Department of Financial Services elects to contract with the Department of Business and Professional Regulation for the services described in this subsection, they shall enter into a contract no later than February 1, 2005, to become effective upon the effective date of this act. If the Department of Financial Services elects not to contract with the Department of Business and Professional Regulation for those services, the Department of Financial Services shall begin working with the Department of Business and Professional Regulation no later than February 1, 2005, for the conversion of those services, which conversion is to be completed before September 1, 2005.

(3) The Department of Financial Services shall, no later than November 1, 2004, notify the Department of Business and Professional Regulation of its intention to contract with the Department of Business and Professional Regulation, another governmental agency, or a private business for the continuing education compliance monitoring systems and services. If the Department of Financial Services elects to contract with the Department of Business and Professional Regulation for the services described in this subsection, they shall enter into a contract no later than February 1, 2005, to become effective upon the effective date of this act. If the Department of Financial Services elects not to contract with the Department of Business and Professional Regulation for those services, the Department of Financial Services shall begin working with the Department of Business and Professional Regulation no later than February 1, 2005, for the conversion of those services, which conversion is to be completed before September 1, 2005.

(4) No later than July 1, 2005, the Department of Financial Services shall begin to consult at least biweekly with prosecuting attorneys and investigators of the Department of Business and Professional Regulation to ensure the transition of pending disciplinary matters.

Section 155. The Legislature recognizes that there is a need to conform the Florida Statutes to the policy decisions reflected in the provisions of this act. The Division of Statutory Revision is directed to provide the relevant substantive committees of the Senate and the House of Representatives with assistance, upon request, to enable such committees to prepare draft legislation to conform the Florida Statutes to the provisions of this act.

Section 156. Effective at 11:59 p.m. on September 30, 2005, the Board of Funeral and Cemetery Services and the Board of Funeral Directors and Embalmers are abolished.

Section 157. Sections 470.001, 470.002, 470.003, 470.005, 470.019, 470.023, 470.027, 470.028, 470.031, 470.033, 470.034, 470.035, 470.036, 497.105, 497.109, 497.111, 497.113, 497.115, 497.117, 497.119, 497.123, 497.125, 497.127, 497.129, 497.131, 497.135, 497.137, 497.209, 497.217, 497.221, 497.225, 497.233, 497.301, 497.341, 497.431, 497.435, 497.443, 497.445, 497.447, 497.515, 497.517, 497.519, and 497.529, Florida Statutes, are repealed.

Section 158. Except as otherwise provided herein, this act shall take effect October 1, 2005.

Approved by the Governor June 17, 2004.

Filed in Office Secretary of State June 17, 2004.