

CHAPTER 2016-172

Committee Substitute for Committee Substitute for Senate Bill No. 854

An act relating to funeral, cemetery, and consumer services; amending s. 497.005, F.S.; defining terms; amending s. 497.141, F.S.; revising required information for licensure to include e-mail addresses; requiring the Department of Financial Services to include e-mail notification as a means to administer the licensing process; amending s. 497.146, F.S.; revising required information for current licensees to include an address for e-mail notification; providing for rulemaking relating to electronic reporting; amending s. 497.152, F.S.; conforming provisions to changes made by the act; requiring, rather than authorizing, the Board of Funeral, Cemetery, and Consumer Services to provide certain criteria; prohibiting the board from requiring a fine when certain deficiencies are fully corrected within a specified period; amending s. 497.161, F.S.; revising requirements for rules of the licensing authority; amending s. 497.266, F.S.; revising the prohibition against withdrawal or transfer of assets within the care and maintenance trust fund to include an exception; amending s. 497.267, F.S.; revising provisions relating to the disposition of withdrawals from the care and maintenance trust fund; creating s. 497.2675, F.S.; requiring the board to adopt certain rules; requiring a licensed cemetery company to request a method for withdrawal from the cemetery company's care and maintenance trust fund; providing requirements for such methods; requiring that taxes on capital gains be paid from the trust principal; amending s. 497.268, F.S.; conforming provisions to changes made by the act; deleting a required deposit in a cemetery company's care and maintenance trust fund for mausoleums or columbaria; deleting the requirement that taxes on capital gain be paid from the trust corpus; amending s. 497.269, F.S.; requiring a trustee to annually furnish financial reports that record the fair market value of the care and maintenance trust fund; amending ss. 497.273 and 497.274, F.S.; conforming provisions to changes made by the act; amending ss. 497.283 and 497.286, F.S.; conforming provisions to changes made by the act; amending s. 497.371, F.S.; providing that an applicant for the embalmer apprentice program may not be licensed without a determination of character by the licensing authority; amending ss. 497.372 and 497.381, F.S.; conforming provisions to changes made by the act; amending s. 497.452, F.S.; deleting an exception that prohibits a person from receiving specified funds without holding a valid preneed license; amending ss. 497.454 and 497.456, F.S.; conforming provisions to changes made by the act; amending s. 497.458, F.S.; revising requirements relating to the disposition of proceeds on a preneed contract; authorizing the board to specify criteria for the classification of items sold in a preneed contract; requiring the trustee to furnish the department with an annual report regarding preneed licensee trust accounts beginning on a specified date; providing requirements for the annual report; revising which investments

a trustee of a trust has the power to invest in; deleting provisions relating to the preneed licensee; amending s. 497.459, F.S.; prohibiting certain preneed contracts from being canceled during the life or after the death of the contract purchaser or beneficiary; requiring unexpended moneys on an irrevocable contract to be deposited into the Medical Care Trust Fund under certain circumstances; amending s. 497.460, F.S.; conforming provisions to changes made by the act; repealing s. 497.461, F.S., relating to the authorization for a preneed licensee to elect surety bonding as an alternative to depositing funds into a trust; amending s. 497.462, F.S.; deleting obsolete references to surety bonds; amending s. 497.464, F.S.; conforming provisions to changes made by the act; amending s. 497.465, F.S.; requiring an inactive preneed licensee to deposit a specified amount of funds received on certain preneed contracts into the trust upon a specified time; amending ss. 497.601 and 497.607, F.S.; specifying that cremated remains are not property; requiring a division of cremated remains to be consented to by certain persons; providing that a dispute shall be resolved by a court of competent jurisdiction; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

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

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

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

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

(77) “Total return withdrawal percentage” means a percentage, not to exceed 5 percent, of the fair market value of a trust.

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

497.141 Licensing; general application procedures.—

(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 if the applicant is a natural person; otherwise, the applicant’s federal tax identification number shall be included. 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, e-mail addresses, 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, and bonding. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application that takes place between the initial filing of the application and the final grant or denial of the license and that might affect the decision of the department or the board. After an application by a natural person for licensure under this chapter is approved, the licensing authority may require the successful applicant to provide a photograph of himself or herself for permanent lamination onto the license card to be issued to the applicant, pursuant to rules and fees adopted by the licensing authority.

(11) The department shall implement a system for administration of the overall licensing process, including e-mail notification for 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 3. Section 497.146, Florida Statutes, is amended 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 e-mail address, 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, electronic notification service by regular mail to a licensee’s last known e-mail address of record or preferred street 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. The department may adopt rules, forms, and procedures, including a procedure for electronic reporting of the data provided pursuant to this section. ~~Rules may be adopted establishing forms and procedures for licensees to provide the notice required by this section.~~

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

497.152 Disciplinary grounds.—This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or 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.

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

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

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

(12) DISCLOSURE REQUIREMENTS.—

(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 that is not to be disposed of with the body or failure to obtain written permission from a legally authorized person ~~the purchaser~~ regarding disposition of such merchandise.

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

(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 that was altered without notice to, or without the knowledge or consent of, the contract purchaser or a legally authorized person ~~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 a legally authorized person ~~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 a legally authorized person ~~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 a legally authorized person ~~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.

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

(15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

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

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

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

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

(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. 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 withdrawals from the trust ~~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 7. Section 497.267, Florida Statutes, is amended to read:

497.267 Disposition of withdrawals from the income of care and maintenance trust fund; notice to purchasers and depositors.—~~Withdrawals from 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 may ~~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 withdrawals from the income of the trust fund shall be used.

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

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

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

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

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

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

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

(b) *Total return withdrawal method.*—The licensee shall multiply the average fair market value of its pro rata share of the trust by the total return withdrawal percentage and may withdraw one-fourth of that amount at least quarterly beginning the first quarter of the new trust year. The initial total return withdrawal percentage elected by the licensee may not increase the total return withdrawal percentage for that quarter. For purposes of this paragraph, “average fair market value” means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:

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

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

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

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

497.268 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 burial right 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.~~

(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.~~

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

497.269 Care and maintenance trust fund; financial reports.—On or before April 1 of each year, the trustee shall furnish adequate financial reports that record the fair market value with respect to the care and maintenance trust fund utilizing forms and procedures specified by rule. 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 11. Subsection (4) of section 497.273, Florida Statutes, is amended to read:

497.273 Cemetery companies; authorized functions.—

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

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

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

Section 12. Subsection (1) of section 497.274, Florida Statutes, is amended 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, a legally authorized person ~~the family or next of kin~~ may waive the 12-inch coverage minimum.

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

497.283 Prohibition on sale of personal property or services.—

(2)

(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 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 for its review and approval. ~~The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.461, 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 under s. 497.461.~~

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

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

(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 or the legally authorized person;
- (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).

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

497.371 Embalmers; establishment of embalmer apprentice program. The licensing authority adopts 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 embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice ~~is~~ shall be eligible to serve in an apprentice capacity for a period not to exceed 3 years as may be determined by licensing authority rule or for a period not to exceed 5 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 issued a license ~~licensed~~ upon payment of a licensure fee as determined by licensing authority rule but not to exceed \$200. An applicant for the embalmer apprentice program may not be issued a license unless the licensing authority determines that the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

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

497.372 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:

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, with the family or friends of the decedent or any other person responsible for such services; setting the time of the services; establishing the type of services 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.

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

497.381 Solicitation of goods or services.—

(4) At-need solicitation of funeral merchandise or services is prohibited. ~~A No~~ funeral director or direct disposer or her or his agent or representative may not contact the legally authorized person or 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 legally authorized person or family or next of kin of such person and requested to provide her or his services or merchandise.

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

497.452 Preneed license required.—

(2)

~~(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, 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.~~

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

497.454 Approval of preneed contract and related forms.—

(1) Preneed contract forms and related forms shall be filed with and approved by the licensing authority before ~~prior to~~ use, pursuant to procedures specified by rule. The licensing authority may not approve any

electronic or paper preneed contract ~~form~~ that does not provide for sequential prenumbering thereon.

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

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

497.456 Preneed Funeral Contract Consumer Protection Trust Fund.

(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, whether funding preneed contracts by the sale of insurance or by establishing a trust pursuant to s. 497.458 or s. 497.464, 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 utilizing ~~s. 497.461~~ or s. 497.462 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.

(7) In any situation in which a delinquency proceeding has not commenced, the licensing authority 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 determines that a preneed licensee has breached a preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former preneed licensee or an establishment which has been regulated under this chapter, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such preneed licensee 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. In considering whether payments shall be made or when considering who will be responsible for such payments, the licensing authority shall consider whether the preneed licensee 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 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 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 may determine and shall be payable in such manner and upon such conditions and terms as the licensing authority 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, any restitution made pursuant to this subsection may ~~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 may ~~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 may ~~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 appreciation ~~income~~ shall be used only for the purposes expressly authorized by this chapter and may ~~shall~~ not be subject to any liens, charges, judgments, garnishments, or other creditor's claims against the preneed licensee, any trustee utilized by the preneed licensee, 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.

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

497.458 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. The board may, by rule, specify criteria for the classification of items sold in a preneed contract as services, cash advances, or merchandise.

(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; collecting income; and distributing the fair market value ~~principal~~ ~~and income~~ as prescribed in this chapter. The preneed licensee is prohibited

from sharing in the discharge of these responsibilities, except that the preneed licensee 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.

(f) The deposited funds shall be held in trust, both as to principal and any change in fair market value ~~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.

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

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

(4) The licensing authority may adopt rules exempting from the prohibition of paragraph ~~(1)(g)~~ ~~(1)(h)~~, 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) The trustee of the trust established pursuant to this section shall only have the power to:

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

(c) Comingle 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, and capital gains and losses.

~~(6) The preneed licensee, 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.~~

~~(7) Notwithstanding anything contained in this chapter to the contrary, the preneed licensee, 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 is a viable option available to it at any and all relevant times;~~

~~(b) Section 497.462 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 authorized to do business in this state that has total bonded liability exceeding \$100 million as of July 1, 2001, s. 497.462 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) If in the preneed licensee's opinion it does not have the ability to select the financial responsibility alternative of s. 497.461 or s. 497.462, then the preneed licensee shall not have the right to sell or solicit preneed contracts.~~

~~(6)(9) The amounts required to be placed in a 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 83-316, 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.~~

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

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

(6) 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 the beneficiary of the preneed contract and 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. A preneed contract that is made irrevocable pursuant to this section may not be canceled during the life or after the death of the contract purchaser or beneficiary as described in this section. Any unexpended moneys paid on an irrevocable contract shall be remitted to the Agency for Health Care Administration for deposit into the Medical Care Trust Fund after final disposition of the beneficiary.

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

497.460 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 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 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 the fair market value of 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 legally authorized person 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 or to its assigns, subject to ~~the provisions~~ of s. 497.459.

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

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

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

497.462 Other alternatives to deposits under s. 497.458.—

~~(2) Upon prior approval by the licensing authority, the preneed licensee may file a letter of credit with the licensing authority 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.~~

~~(2)(3)(a)~~ (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 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, the buyer may file a claim with the licensing authority.~~

~~(6)(7)~~ 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 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~~.

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

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

497.464 Alternative preneed contracts.—

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

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

~~(f) Section 497.461.~~

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

497.465 Inactive, surrendered, and revoked preneed licensees.—

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

(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:

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

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

497.601 Direct disposition; duties.—

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

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

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

497.607 Cremation; procedure required.—

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the legally authorized person contracting for cremation services shall be required to designate 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, which may include the declaration of intent to dispose of the cremated remains, 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) Cremated remains are not property, as defined in s. 731.201(32), and are not subject to partition for purposes of distribution under s. 733.814. A division of cremated remains requires the consent of the legally authorized person who approved the cremation or, if the legally authorized person is the decedent, the next legally authorized person pursuant to s. 497.005(43). A dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

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

Approved by the Governor April 1, 2016.

Filed in Office Secretary of State April 1, 2016.