

## CHAPTER 98-268

### House Bill No. 3763

An act relating to funeral and cemetery services; providing a short title; amending s. 497.005, F.S.; defining “care and maintenance”; creating s. 497.0255, F.S.; providing a duty of care and maintenance of licensed cemeteries in this state; providing rulemaking authority to the Board of Funeral and Cemetery Services for such purpose; amending s. 497.229, F.S.; providing circumstances under which a cemetery or component thereof may be deemed a public nuisance and providing for abatement thereof; amending s. 497.253, F.S.; providing additional requirements with respect to the conveyance of cemetery property to noncemetery uses, including certain notice; creating s. 497.255, F.S.; providing standards for construction and significant alteration or renovation of mausoleums and columbaria; providing rulemaking authority with respect to such standards to the board, in conjunction with the Board of Building Codes and Standards, and providing for incorporation of a portion thereof in the State Minimum Building Codes; requiring all newly constructed and significantly altered or renovated mausoleums and columbaria to conform to such standards and applicable building codes; amending s. 497.257, F.S.; including columbaria in provisions relating to preconstruction requirements applicable to mausoleums and below-ground crypts; amending s. 497.417, F.S.; deleting authority of the trustee of a trust to purchase life insurance policies and annuity contracts; repealing subsection (12) of s. 497.429, F.S., deleting the requirement that the trustee of an alternative preneed contract trust make valuations of assets and provide annual reports to the purchaser and the board; amending s. 497.527, F.S.; authorizing the Attorney General to bring a civil action for violation of chapter 497, relating to regulation of funeral and cemetery services, in the appropriate court; providing for damages; amending s. 872.02, F.S., relating to prohibitions against injuring or removing tombs or monuments or disturbing the contents of graves or tombs; increasing penalties; specifying that the term “tomb” includes any mausoleum, columbarium, and belowground crypt; amending s. 245.07, F.S.; revising provisions relating to retention and disposition of bodies received by an anatomical board; creating the Task Force on Abandoned and Neglected Cemeteries within the Department of Banking and Finance; providing for appointment of members and election of officers; authorizing reimbursement for per diem and travel; requiring the department to provide administrative and staff support; providing duties; requiring preliminary and final reports; providing for termination of the task force; providing an appropriation; providing effective dates.

WHEREAS, Florida is the retirement state of choice for most Americans, attracting hundreds of thousands of new citizens who move to this state to live their remaining years enjoying its famous climate and cultural amenities, and

WHEREAS, the number of Florida citizens over the age of 65 has dramatically increased and will continue to increase at a rate faster than the growth in the state's population as a whole, and

WHEREAS, the number of Florida citizens over the age of 85 has dramatically increased and will continue to increase more than twice as fast as those over the age of 65, and

WHEREAS, in 1995 Florida had the second highest median age in the nation, and

WHEREAS, Florida has the third highest unadjusted death rate in the United States, and

WHEREAS, 154,734 persons died in Florida in 1996, and

WHEREAS, the number of burials in Florida cemeteries will continue to increase in the future, and

WHEREAS, gross sales reported by Florida cemetery licensees increased from \$175,393,887 in 1996 to \$194,427,476 in 1997, and

WHEREAS, Florida cemetery licensees paid less than one-quarter of one percent of gross sales for their licenses in 1996, and

WHEREAS, cemeteries are a critical part of Florida's historical and cultural resources, and

WHEREAS, the legislative purposes for regulation of the cemetery industry set forth in s. 497.002(1), Florida Statutes, encompass both the prevention of economic harm to consumers and the prevention of significant emotional stress resulting from the failure to properly maintain cemetery grounds, yet the majority of the present statutory and regulatory provisions relate to economic problems but not to care and maintenance, and

WHEREAS, the families and loved ones of the deceased who are interred in Florida deserve well-maintained cemetery facilities which provide the highest dignity and respect accorded to the deceased's final resting place that is compatible with reasonable and practical economic constraints, and

WHEREAS, inadequate care and maintenance of a cemetery where a loved one is interred causes added stress and emotional trauma to the deceased's family and friends, and

WHEREAS, a person who makes burial arrangements with a Florida cemetery or preneed provider will receive assurances concerning the care, dignity, and maintenance of the deceased's final resting place, and

WHEREAS, a person who makes such arrangements may not have family members in Florida to ensure that the proper care and maintenance of the deceased's final resting place are being performed, and

WHEREAS, the state may be the only entity available to enforce minimum standards of care and maintenance to protect the dignity of the deceased and the memories of the family and loved ones, and

WHEREAS, Florida has fewer written standards regulating the physical operations of cemeteries than other states, leading to some serious inconsistencies in the quality of cemetery facilities and their care and maintenance in Florida, and

WHEREAS, a large number of cemeteries in Florida have no entity responsible for their care and maintenance and have become abandoned, overgrown, dilapidated, and otherwise neglected, creating eyesores and decreasing neighboring property values, and

WHEREAS, neglected cemeteries become breeding grounds for mosquitoes, rats, and other vermin, raising serious public health concerns, and

WHEREAS, vandalism and other crimes associated with neglected cemeteries are increasing, making the neighborhoods in which they are located less safe for families, and

WHEREAS, inadequately maintained graves, crypts, and mausoleums at abandoned cemeteries can be broken open as a result of vandalism or storm damage, exposing human remains, and

WHEREAS, citizen complaints often cause local governments to take over or perform care and maintenance at abandoned and neglected cemeteries, leading to a strain on local government financial resources, and

WHEREAS, it is an affront to the dignity of our departed and a source of pain to their families when grave spaces are overgrown with weeds and tombstones are broken and scattered due to neglect, and

WHEREAS, cemeteries that have been abandoned and neglected for long periods can become obliterated, leading to a loss of important historical, genealogical, and archaeological information, and

WHEREAS, Florida's communities should be encouraged to assist in the preservation and protection which is due the final resting places of the deceased, and

WHEREAS, the cemeteries where our deceased loved ones are interred deserve at least as much protection from vandalism and other crime as construction sites and orange groves enjoy under current law, and

WHEREAS, the Legislature finds that it is necessary to improve the regulation of the physical facilities and operations of Florida cemeteries in order to honor the memories of deceased citizens, protect the families and friends of the deceased from significant emotional stress, safeguard the integrity of Florida cemeteries, protect the interests of consumers, preserve our historical heritage, protect the public health and welfare, and reduce the financial burden on local governments, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Cemetery Preservation and Consumer Protection Act."

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

497.005 Definitions.—As used in this chapter:

~~(1)~~(17) “At-need solicitation” means any uninvited contact by a licensee or her or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after her or his death has occurred.

~~(2)~~(9) “Bank of belowground crypts” means any construction unit of belowground crypts which is acceptable to the department and which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.

~~(3)~~(8) “Belowground crypts” consist of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as “lawn crypts,” “westminsters,” or “turf-top crypts.”

~~(4)~~(30) “Board” means the Board of Funeral and Cemetery Services.

~~(5)~~(12) “Burial merchandise,” “funeral merchandise,” or “merchandise” means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

~~(6)~~(11) “Burial right” means the right to use a grave space, mausoleum, or columbarium for the interment, entombment, or inurnment of human remains.

~~(7)~~(13) “Burial service,” “funeral service,” or “service” means any service offered or provided by any person in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

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

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

(10)~~(2)~~ “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 or other structure or place used or intended to be used for the interment of cremated human remains; or any combination of one or more of such structures or places.

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

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

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

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

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

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

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

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

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

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

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

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

(23)~~(3)~~ “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.

(24)~~(10)~~ “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.

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

(26)~~(27)~~ “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.

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

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

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

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

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

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

(33)~~(23)~~ “Statutory accounting” means generally accepted accounting principles, except as modified by this chapter.

Section 3. Section 497.0255, Florida Statutes, is created to read:

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 board shall adopt, by no later than July 1, 1999, such rules as are necessary to implement and enforce this section. In developing and promulgating said rules, the 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 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 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 4. Section 497.229, Florida Statutes, is amended to read:

497.229 Courts; powers; abatement of nuisances.—

(1) In addition to all other means provided by law for the enforcement of a temporary restraining order or an injunction, the circuit court may impound the property of a cemetery company, including books, papers, documents, and records pertaining thereto, and may appoint a receiver or administrator to prevent further violation of this chapter.

(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.

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

Section 5. Section 497.253, Florida Statutes, is amended to read:

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

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

(2) Any lands owned by a licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 15 contiguous acres described in subsection (1), may be sold, conveyed, or disposed of by the licensee, after obtaining written approval of the department pursuant to subsection (3), for use by the new owner for other purposes than

as a cemetery. All of the human remains which have been previously interred therein shall first have been removed from the lands proposed to be sold, conveyed, or disposed of; however, the provisions of ss. 497.515(7) and 470.0295 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 inventory of remaining cemetery facilities in the community and upon the other factors enumerated in s. 497.201(3).
5. The impact of the proposed change in use of the subject property upon the reasonable expectations of the families of the deceased regarding whether the cemetery property was to remain as a cemetery in perpetuity.
6. Whether any living relatives of the deceased actively oppose the relocation of their deceased's remains and the conversion of the subject property to noncemetery uses.
7. The elapsed time since the last interment in the subject property.
8. 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 Banking and Finance by Order No. ...., dated .....

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

(4)(3) 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)(4) 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, 1965, which owns a total of less than 15 acres of land; however, no cemetery company shall dispose of any land without the prior written consent of the department.

Section 6. Section 497.255, Florida Statutes, is created to read:

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 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 promulgating said rules, the 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 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 board may determine that a small single-story ground level mausoleum does not require the same level of construction standards that a large multi-story 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 board shall develop the rules in cooperation with, and with

technical assistance from, the Board of Building Codes and Standards 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 Board of Building Codes and Standards advises that some of the standards proposed by the board are not appropriate for inclusion in such building codes, the 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 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 board, but only the chapter containing provisions appropriate for building codes shall be transmitted to the Board of Building Codes and Standards 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 Ch. 633 and s. 553.895, 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 board shall transmit the rules as adopted under subsection (2), hereinafter referred to as the "mausoleum standards," to the Board of Building Codes and Standards, 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 Board of Building Codes and Standards to the board with details of changes needed to make them acceptable. If such mausoleum standards are acceptable, the Board of Building Codes and Standards 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 Board of Building Codes and Standards, 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 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 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 7. Section 497.257, Florida Statutes, is amended to read:

497.257 Construction of mausoleums, columbaria, and belowground 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. 497.417. The preconstruction trust fund shall be separate from any other trust funds that may be required by this chapter.

(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 board in the form prescribed by 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 8. Subsection (4) of section 497.417, Florida Statutes, is amended to read:

497.417 Disposition of proceeds received on contracts.—

(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 board may by order require the trustee to liquidate or dispose of any investment within 30 days after such order.

~~(b) Purchase from an insurance company, licensed by this state, life insurance policies or annuity contracts not to exceed the aggregate amount of \$250,000 on any one individual life.~~

~~(b)(c)~~ 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)(d)~~ 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.

Section 9. Subsection (12) of section 497.429, Florida Statutes, is hereby repealed.

Section 10. Section 497.527, Florida Statutes, is amended to read:

497.527 Civil remedies.—The Attorney General or any person may bring a civil action against a person or company violating the provisions of this chapter in the appropriate circuit court of the county in which the alleged violator resides or has his or her 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 or \$500, whichever is greater. 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.

Section 11. Section 872.02, Florida Statutes, is amended to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(1) A person who willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, ~~commits is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. However, if the damage to such property is greater than \$100 or if any property removed is greater than \$100 in value, then the person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(2) A person who willfully and knowingly disturbs the contents of a tomb or grave ~~commits is guilty of a felony of the~~ second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section shall not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term “tomb” includes any mausoleum, columbarium, or belowground crypt.

Section 12. Section 245.07, Florida Statutes, is amended to read:

245.07 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. 470.002, ~~the person or entity in control of such body in the county where such person died,~~ to cause it to be buried or cremated in accordance with the already existing rules, laws and practices for disposing of such unclaimed bodies ~~within the confines of the said county.~~ 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 pursuant to s. 470.002(18). 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 county commission.

Section 13. (1) There is created within the Department of Banking and Finance the Task Force on Abandoned and Neglected Cemeteries. The task force shall be composed of 11 members appointed by the Comptroller and representing the following interests:

- (a) A representative of the licensed cemetery industry.
  - (b) A representative of preneed certificateholders who is not associated with a cemetery company through an ownership interest or through employment with a company which has an ownership interest in a cemetery.
  - (c) A representative of church-owned cemeteries.
  - (d) A representative of cemeteries owned by nonprofit organizations.
  - (e) A representative of consumer interests.
  - (f) A representative of the department.
  - (g) A person nominated by the Secretary of State as a representative of historic preservation and archaeological interests.
  - (h) A person nominated by the Florida League of Cities as a representative of municipally owned or maintained cemeteries.
  - (i) A person nominated by the Florida Association of Counties as a representative of county-owned or county-maintained cemeteries.
  - (j) Two citizen members.
- (2) The members of the task force shall elect from among their number a chair and a vice chair.
- (3) Members of the task force shall be appointed no later than 30 days after this act becomes a law. The task force shall serve from the time its members are appointed until adjournment sine die of the 1999 Regular Session of the Legislature.
- (4) The members of the task force shall serve without compensation, but shall be reimbursed for per diem and travel expenses as provided in s. 112.061, Florida Statutes.
- (5) The department shall provide administrative and staff support for the task force.

(6) The task force shall:

(a) Examine the extent to which some cemeteries in the state are abandoned and therefore have no existing responsible person or entity in charge, or are neglected and therefore are not receiving adequate care and maintenance.

(b) Examine the extent to which some cemeteries in the state, although they are owned and operated by some identifiable person or entity, are neglected due to a lack of sufficient funds to perform adequate care and maintenance or for other reasons.

(c) Examine the extent to which neglected cemeteries in the state create problems for citizens and local governments due to vandalism, storm damage, dilapidation, public health concerns, public safety concerns, lack of enforceable standards, and strain on local government financial resources.

(d) Examine the extent to which neglected cemeteries in the state represent a loss of significant historic or archaeological resources.

(e) Examine whether or not bringing presently unlicensed operating cemeteries under state regulation as to physical facilities and care and maintenance may help ameliorate the problems caused by neglected cemeteries.

(f) Examine whether or not a program of grants to assist in providing adequate care and maintenance for abandoned and neglected cemeteries may help ameliorate the problems caused by neglected cemeteries and, if so, how the grant program should be structured, administered, and funded.

(g) Examine current governmental and nongovernmental programs that help or could help ameliorate the problems caused by neglected cemeteries, to see if some expansion or increased emphasis or support could do more to help ameliorate the problems caused by neglected cemeteries in a more cost-effective manner than a grant program.

(h) Report findings and make recommendations concerning solutions to problems found by the task force, including a draft of any legislation deemed advisable to implement recommended solutions.

(7) The task force shall produce a preliminary report by December 1, 1998, and a final report by January 15, 1999, detailing its findings and recommendations. Copies of each report shall be transmitted to the Comptroller, the President and the Minority Leader of the Senate, and the Speaker and the Minority Leader of the House of Representatives. Copies shall also be furnished to the Governor, the Secretary of State, the Attorney General, and the Office of Program Policy Analysis and Government Accountability. After submission of the final report, members of the task force may, with the approval of the chair, receive reimbursement pursuant to subsection (4) for travel necessary to consult with the department or the Legislature concerning issues raised by the final report or other work of the task force, until termination of the task force as provided in subsection (3).



(8) This section shall take effect upon this act becoming a law.

Section 14. There is hereby appropriated \$131,042 and one career service position for fiscal year 1998-1999 to the Department of Banking and Finance from the department's Regulatory Trust Fund for the purpose of enforcing the provisions of this act.

Section 15. Except as otherwise provided herein, this act shall take effect July 1 of the year in which enacted; however, the provisions of sections 497.0255 and 497.255, Florida Statutes, as created by this act, and the changes to section 497.253, Florida Statutes, as amended by this act, shall not be enforceable until the rules implementing those provisions have been adopted by the Board of Funeral and Cemetery Services or the Department of Banking and Finance, as applicable.

Became a law without the Governor's approval May 28, 1998.

Filed in Office Secretary of State May 27, 1998.