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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2019	.	
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The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 403 and 404  
insert:

Section 11. Section 497.459, Florida Statutes, is amended  
to read:

497.459 Cancellation of, or default on, preneed contracts;  
notice of intent to perform.—

(1) CANCELLATION BY CUSTOMER WITHIN 30 DAYS.—A purchaser,  
by providing written notice to the preneed licensee, may cancel



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11 a preneed contract within 30 days of the date that the contract  
12 was executed provided that the burial rights, merchandise and  
13 services have not yet been used. Upon providing such notice, the  
14 purchaser shall be entitled to a complete refund of the amount  
15 paid, except for the amount allocable to any burial rights,  
16 merchandise or services that have been used, and shall be  
17 released from all obligations under the contract. This  
18 subsection shall apply to all items that are purchased as part  
19 of a preneed contract, including burial rights, regardless of  
20 whether such burial rights are purchased as part of a preneed  
21 contract or purchased separately.

22 (2) CANCELLATION BY PURCHASER AFTER 30 DAYS.—

23 (a) A purchaser, by providing written notice to the preneed  
24 licensee, may cancel the services, facilities, and cash advance  
25 items portions of a preneed contract at any time, and shall be  
26 entitled to a full refund of the purchase price allocable to  
27 such items. Any accumulated earnings allocable to such preneed  
28 contract shall be paid to the preneed licensee upon such  
29 cancellation.

30 (b) Subject to subparagraphs 1. and 2., a purchaser may  
31 cancel the merchandise portion of a preneed contract by  
32 providing written notice to the preneed licensee, and shall be  
33 entitled to a full refund of the purchase price allocable to the  
34 specific item or items of merchandise that the preneed licensee  
35 cannot or does not deliver in accordance with this subsection.

36 1. Such refund shall be provided only if at the time that  
37 the preneed licensee is required to fulfill its obligations  
38 under the preneed contract the preneed licensee does not or  
39 cannot comply with the terms of the contract by actually



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40 delivering the merchandise, within a reasonable time, depending  
41 upon the nature of the merchandise purchased, after having been  
42 requested to do so.

43 2. In order to fulfill its obligations under the preneed  
44 contract, a preneed licensee may elect either or both of the  
45 following options:

46 a. Subcontract with a person located outside the preneed  
47 licensee's market area to provide the merchandise; or

48 b. Provide other items of equal or greater quality.

49 (3) REQUIRED DISCLOSURE.—Each preneed licensee shall  
50 provide in conspicuous type in its contract that the contract  
51 purchaser may cancel the contract and receive a full refund  
52 within 30 days of the date of execution of the contract. The  
53 failure to make such provision shall not impair the contract  
54 purchaser's right to cancellation and refund as provided in this  
55 section.

56 (4) BREACH OF CONTRACT BY SELLER.—Upon breach of contract  
57 or failure of the preneed licensee to provide funeral  
58 merchandise or services under a preneed contract, the contract  
59 purchaser shall be entitled to a refund of all money paid on the  
60 contract. Such refund shall be made within 30 days after receipt  
61 by the preneed licensee of the contract purchaser's written  
62 request for refund.

63 (5) DEFAULT BY PURCHASER.—If a purchaser is 90 days past  
64 due in making payments on a preneed contract, the contract shall  
65 be considered to be in default, and the preneed licensee shall  
66 be entitled to cancel the contract, withdraw all funds in trust  
67 allocable to merchandise items, and retain such funds as  
68 liquidated damages. Upon making such withdrawal, the preneed



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69 licensee shall return all funds in trust allocable to services,  
70 facilities, or cash advance items to the purchaser, provided  
71 that the preneed licensee has provided the purchaser with 30  
72 days' written notice of its intention to exercise any of its  
73 rights under this provision. The board may by rule specify the  
74 required format and content of the notice required under this  
75 subsection and the manner in which the notice shall be sent.

76 (6) OTHER PROVISIONS.—

77 (a) All preneed contracts are cancelable and revocable as  
78 provided in this section, provided that a preneed contract does  
79 not restrict any contract purchaser who is the beneficiary of  
80 the preneed contract and who is a qualified applicant for, or a  
81 recipient of, supplemental security income, temporary cash  
82 assistance, or Medicaid from making her or his contract  
83 irrevocable. A preneed contract that is made irrevocable  
84 pursuant to this section may not be canceled during the life or  
85 after the death of the contract purchaser or beneficiary as  
86 described in this section. Any unexpended moneys paid on an  
87 irrevocable contract shall be remitted to the Agency for Health  
88 Care Administration for deposit into the Medical Care Trust Fund  
89 after final disposition of the beneficiary.

90 (b) The amounts required to be refunded by this section for  
91 contracts previously entered into shall be as follows:

92 1. For contracts entered into before October 1, 1993, the  
93 refund amounts as amended by s. 7, chapter 83-316, Laws of  
94 Florida, shall apply.

95 2. For contracts entered into on or after October 1, 1993,  
96 the refund amounts as amended by s. 99, chapter 93-399, Laws of  
97 Florida, shall apply.



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98 (c) Persons who purchase merchandise or burial rights  
99 pursuant to this chapter shall have the right to sell, alienate,  
100 or otherwise transfer the merchandise or burial rights subject  
101 to and in accordance with rules adopted by the licensing  
102 authority.

103 (d) All refunds required to be made under this section to a  
104 purchaser who has canceled a contract must be made within 30  
105 days after the date written notice of cancellation is received  
106 by the preneed licensee.

107 (7) NOTICE OF INTENT TO PERFORM.—

108 (a) To facilitate the performance of a preneed contract, a  
109 preneed licensee may provide to the purchaser or to the  
110 beneficiary's legally authorized person written notice of the  
111 preneed licensee's intent to perform upon the occurrence of the  
112 earliest of any of the following events:

113 1. Fifty years after the date of execution of the preneed  
114 contract by the purchaser.

115 2. The beneficiary of the preneed contract attains the age  
116 of 105 years of age or older.

117 3. The social security number of the beneficiary of the  
118 preneed contract, as shown on the contract, is contained within  
119 the United States Social Security Administration Death Master  
120 File.

121 (b) The notice in paragraph (a) must be mailed to the last  
122 known mailing address of the purchaser as provided to the  
123 preneed licensee. If the purchaser or the beneficiary's legally  
124 authorized person fails to respond to such notice within 120  
125 days after delivery of the notice, the funds held in trust must  
126 be distributed in accordance with the terms of the preneed



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127 contract.

128 (c) This subsection does not affect a purchaser's rights to  
129 cancel the preneed contract and receive a refund or a licensee's  
130 obligations to refund established by this chapter.

131

132 ===== T I T L E A M E N D M E N T =====

133 And the title is amended as follows:

134 Delete lines 38 - 43

135 and insert:

136 certain rules; amending s. 497.458, F.S.; deleting a  
137 requirement that trust companies must operate pursuant  
138 to ch. 660, F.S., to enter into certain revocable  
139 trust instruments; amending s. 497.459, F.S.;  
140 authorizing preneed licensees, under certain  
141 circumstances, to provide certain persons with a  
142 written notice of intent to perform under the preneed  
143 contract; specifying where such notice must be sent;  
144 providing that funds held in trust must be distributed  
145 in accordance with the contract terms if certain  
146 persons fail to respond to the notice within a certain  
147 timeframe; providing construction; amending s.  
148 497.464, F.S.; deleting a requirement that trust  
149 companies must operate pursuant to ch. 660, F.S., to  
150 act as trustees for certain preneed contract  
151 purchasers; amending s. 497.604, F.S.; revising