

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

A bill to be entitled  
 An act relating to funeral directing, embalming, direct disposition, and cemetery services; amending s. 20.121, F.S.; establishing the Division of Funeral, Cemetery, and Consumer Services and the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services; amending s. 20.165, F.S.; abolishing the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation; amending s. 497.101, F.S.; creating the Board of Funeral, Cemetery, and Consumer Services; providing for the appointment of board members; providing terms of office; providing grounds for removal or suspension of a member; providing immunity from liability for members acting in an official capacity; specifying the headquarters for the board; providing for compensation and reimbursement for per diem expenses; creating s. 497.102, F.S.; providing for the authority of the board; creating s. 497.1021, F.S.; providing duties of the Division of Funeral, Cemetery, and Consumer Services; providing powers of enforcement; creating s. 497.1022, F.S.; establishing the office of the director of the division; providing duties; providing that the director shall also be the executive director of the board; renumbering and amending s. 455.2226, F.S., relating to instruction on HIV and AIDS for funeral directors and embalmers; conforming references and terminology; amending s. 497.105, F.S.; removing duty of the department to appoint the executive director of the board, to conform; providing duties of the Chief Financial

HB 0323

2004

30 Officer under ch. 470, F.S.; providing for type two  
 31 transfer of the Board of Funeral Directors and Embalmers  
 32 and the Board of Funeral and Cemetery Services to the  
 33 Board of Funeral, Cemetery, and Consumer Services within  
 34 the Department of Financial Services; providing for  
 35 validity of judicial and administrative actions; providing  
 36 for validity of licenses; providing for continuity of  
 37 rules; abolishing the Board of Funeral and Cemetery  
 38 Services and the Board of Funeral Directors and Embalmers;  
 39 repealing ss. 470.003, 497.107, and 497.109, F.S.,  
 40 relating to the Board of Funeral Directors and Embalmers  
 41 and the Board of Funeral and Cemetery Services, to  
 42 conform; creating s. 470.0365, F.S.; providing for  
 43 disposition of fees and penalties collected pursuant to  
 44 ch. 470, F.S.; providing for conforming of statutes;  
 45 amending s. 470.002, F.S.; revising and providing  
 46 definitions applicable to regulation of funeral directing,  
 47 embalming, and direct disposition; amending s. 470.0085,  
 48 F.S.; extending the embalmer apprentice period; amending  
 49 s. 470.015, F.S.; conforming a reference; amending s.  
 50 470.018, F.S.; increasing continuing education  
 51 requirements for direct disposers; conforming a reference;  
 52 amending s. 470.021, F.S.; providing additional  
 53 requirements to be a direct disposal establishment;  
 54 providing inspection requirements and criteria; amending  
 55 s. 470.024, F.S.; revising requirements to be a funeral  
 56 establishment; amending s. 470.025, F.S.; revising  
 57 cremation requirements for cinerator facilities relating  
 58 to simultaneous cremations, body parts, cremation

HB 0323

2004

59 containers, and the cremation chamber; providing exemption  
60 from liability for unintentional or incidental commingling  
61 of remains under certain conditions; amending s. 470.0255,  
62 F.S.; providing for cremation of parts of human bodies  
63 incidental to final disposition; amending s. 470.028,  
64 F.S.; providing for control and supervision of preneed  
65 agents; amending s. 470.029, F.S.; extending the filing  
66 time for reports of bodies embalmed or handled; amending  
67 s. 470.031, F.S.; prohibiting any guarantee on the future  
68 price of any goods or services; providing penalties;  
69 amending s. 470.0355, F.S.; revising requirements for  
70 identification of human remains prior to final  
71 disposition; providing requirements for identification of  
72 human remains in unlicensed and licensed cemeteries and by  
73 direct disposal establishments; reenacting s.  
74 470.036(1)(a), F.S., relating to disciplinary proceedings,  
75 to incorporate the amendment to s. 470.031, F.S., in a  
76 reference thereto; amending s. 497.005, F.S.; revising and  
77 providing definitions applicable to regulation of funeral  
78 and cemetery services; amending s. 497.305, F.S.;  
79 requiring cemetery company bylaws to include minimum  
80 standards for access to install burial merchandise;  
81 requiring that a cemetery company comply with its adopted  
82 bylaws; creating s. 497.306, F.S.; providing dimension and  
83 spacing standards for grave spaces; requiring a map of  
84 reference markers and a land survey for areas proposed to  
85 be developed by a licensed cemetery company; exempting  
86 adult grave spaces previously established; creating s.  
87 497.307, F.S.; providing requirements for identification

88 of human remains in licensed cemeteries; amending s.  
 89 497.325, F.S., relating to illegal tying arrangements;  
 90 providing for procedures established by other entities  
 91 operating a cemetery regarding monuments; amending s.  
 92 497.333, F.S.; providing for disclosure to customers of  
 93 information relating to placement of monuments, markers,  
 94 or memorializations at gravesites; amending s. 497.361,  
 95 F.S., relating to registration of monument establishments;  
 96 specifying conditions constituting breach of contract and  
 97 providing for refunds; requiring departmental approval of  
 98 contracts; creating s. 497.365, F.S.; providing for  
 99 regulation of monument establishments; providing for  
 100 inspections; providing for rules; providing that the  
 101 department may not unreasonably restrict commerce;  
 102 creating s. 497.371, F.S.; providing requirements for  
 103 monument establishment business locations; creating s.  
 104 497.379, F.S.; requiring monument establishments selling  
 105 preneed contracts to obtain a certificate of authority and  
 106 providing requirements therefor; prohibiting transfer or  
 107 assignment of a certificate of authority; creating s.  
 108 497.385, F.S.; requiring registration of sales  
 109 representatives of monument establishments; creating s.  
 110 497.391, F.S.; requiring board approval of preneed  
 111 contracts by monument dealers or monument establishments;  
 112 creating s. 497.395, F.S.; providing financial  
 113 requirements for monument establishments; providing  
 114 requirements for minimum net worth; providing for  
 115 submission of financial statements; providing for annual  
 116 fees based on sales volume with respect to preneed

HB 0323

2004

117 contracts; providing for guarantee agreements; providing  
 118 for additional oversight in lieu of financial  
 119 requirements; amending s. 497.405, F.S.; prohibiting any  
 120 person from advertising for sale or making any arrangement  
 121 for a preneed contract without having a valid certificate  
 122 of authority; expanding the exemption from the required  
 123 certificate of authority for certain religious-  
 124 institution-owned cemeteries to include the sale and  
 125 opening or closing of cremation interment containers to  
 126 members and family members of the religious institution;  
 127 amending s. 497.419, F.S.; requiring preneed contracts to  
 128 include in the refund notice the exclusion for amounts  
 129 allocable to burial rights, merchandise, and services used  
 130 by the purchaser; providing condition for breach of  
 131 contract by certificateholder and for rights of purchaser;  
 132 amending s. 497.436, F.S.; authorizing the board to review  
 133 the trust funds, trust agreements, and outstanding preneed  
 134 contracts of, and perform other procedures at its  
 135 discretion with respect to, a certificateholder filing  
 136 notice to become inactive; providing effective dates.

137

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

139

140 Section 1. Paragraph (n) is added to subsection (2) of  
 141 section 20.121, Florida Statutes, subsection (4) is renumbered  
 142 as subsection (5), and a new subsection (4) is added to said  
 143 section, to read:

144 20.121 Department of Financial Services.--There is created  
 145 a Department of Financial Services.

HB 0323

2004

146 (2) DIVISIONS.--The Department of Financial Services shall  
 147 consist of the following divisions:

148 (n) The Division of Funeral, Cemetery, and Consumer  
 149 Services.

150 (4) BOARD OF FUNERAL, CEMETERY, AND CONSUMER  
 151 SERVICES.--There is created within the Department of Financial  
 152 Services the Board of Funeral, Cemetery, and Consumer Services.

153 Section 2. Paragraph (a) of subsection (4) of section  
 154 20.165, Florida Statutes, is amended to read:

155 20.165 Department of Business and Professional  
 156 Regulation.--There is created a Department of Business and  
 157 Professional Regulation.

158 (4)(a) The following boards are established within the  
 159 Division of Professions:

160 1. Board of Architecture and Interior Design, created  
 161 under part I of chapter 481.

162 2. Florida Board of Auctioneers, created under part VI of  
 163 chapter 468.

164 3. Barbers' Board, created under chapter 476.

165 4. Florida Building Code Administrators and Inspectors  
 166 Board, created under part XII of chapter 468.

167 5. Construction Industry Licensing Board, created under  
 168 part I of chapter 489.

169 6. Board of Cosmetology, created under chapter 477.

170 7. Electrical Contractors' Licensing Board, created under  
 171 part II of chapter 489.

172 8. Board of Employee Leasing Companies, created under part  
 173 XI of chapter 468.

HB 0323

2004

174 ~~9. Board of Funeral Directors and Embalmers, created under~~  
 175 ~~chapter 470.~~

176 9.10. Board of Landscape Architecture, created under part  
 177 II of chapter 481.

178 10.11. Board of Pilot Commissioners, created under chapter  
 179 310.

180 11.12. Board of Professional Engineers, created under  
 181 chapter 471.

182 12.13. Board of Professional Geologists, created under  
 183 chapter 492.

184 13.14. Board of Professional Surveyors and Mappers,  
 185 created under chapter 472.

186 14.15. Board of Veterinary Medicine, created under chapter  
 187 474.

188 Section 3. Section 497.101, Florida Statutes, is amended  
 189 to read:

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

192 497.101 Board of Funeral, Cemetery, and Consumer Services;  
 193 membership; appointment; terms.--

194 (1) The Board of Funeral, Cemetery, and Consumer Services  
 195 is created within the Department of Financial Services and shall  
 196 consist of 10 members, nine of whom shall be appointed by the  
 197 Governor from nominations made by the Chief Financial Officer  
 198 and confirmed by the Senate. The Chief Financial Officer shall  
 199 nominate three persons for each of the nine vacancies on the  
 200 board, and the Governor shall fill each vacancy on the board by  
 201 appointing one of the three persons nominated by the Chief  
 202 Financial Officer to fill that vacancy. If the Governor objects

HB 0323

2004

203 to each of the three nominations for a vacancy, she or he shall  
 204 inform the Chief Financial Officer in writing. Upon notification  
 205 of an objection by the Governor, the Chief Financial Officer  
 206 shall submit three additional nominations for that vacancy until  
 207 the vacancy is filled. One member must be the State Health  
 208 Officer or her or his designee.

209 (2) Two members of the board must be funeral directors  
 210 licensed under chapter 470 who are associated with a funeral  
 211 establishment. One member of the board must be a funeral  
 212 director licensed under chapter 470 who is associated with a  
 213 funeral establishment licensed pursuant to chapter 470 which has  
 214 a valid certificate of authority issued pursuant to this chapter  
 215 and who owns or operates a cinerator facility approved pursuant  
 216 to chapters 403 and 470. Two members of the board must be  
 217 persons whose primary occupation is associated with a cemetery  
 218 company licensed pursuant to this chapter. Three members of the  
 219 board must be consumers who are residents of the state who have  
 220 never been licensed as funeral directors or embalmers and not  
 221 connected with a cemetery or cemetery company licensed pursuant  
 222 to this chapter, the death care industry, or the practice of  
 223 embalming, funeral directing, or direct disposition. One of the  
 224 consumer members must be at least 60 years of age or older and  
 225 one must be licensed as a certified public accountant pursuant  
 226 to chapter 473. One member of the board must be a monument  
 227 dealer licensed under this chapter. One member must be the State  
 228 Health Officer or her or his designee.

229 (3) Board members shall be appointed for terms of 4 years  
 230 and the State Health Officer shall serve as long as that person  
 231 holds that office. The designee of the State Health Officer



HB 0323

2004

232 shall serve at the pleasure of the Governor. When the terms of  
 233 the initial board members expire, the Chief Financial Officer  
 234 shall stagger the terms of the successor members as follows: one  
 235 funeral director, one cemetery representative, the monument  
 236 dealer, and one consumer member shall be appointed for terms of  
 237 2 years, and the remaining members shall be appointed for terms  
 238 of 4 years. All subsequent terms shall be for 4 years.

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

251 (5) A current or former board member and a person serving  
 252 on the board's probable cause panels are exempt from any civil  
 253 liability for any act or omission when acting in good faith in  
 254 her or his official capacity, and the Department of Legal  
 255 Affairs and the Division of Risk Management shall defend such  
 256 board member in any civil action against such person arising  
 257 from any such act or omission.

258 (6) The headquarters and records of the board shall be in  
 259 the Division of Funeral, Cemetery, and Consumer Services of the  
 260 Department of Financial Services in Tallahassee. The Chief

HB 0323

2004

261 Financial Officer shall annually appoint from among the board  
 262 members a chairperson and vice chairperson of the board. The  
 263 board shall meet at least every 6 months, and more often as it  
 264 deems necessary. Special meetings of the board shall be convened  
 265 upon the direction of the Chief Financial Officer. A quorum is  
 266 necessary for the conduct of business by the board. Unless  
 267 otherwise provided by law, six board members other than the  
 268 board's executive director shall constitute a quorum for the  
 269 conduct of the board's business.

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

280 Section 4. Section 497.102, Florida Statutes, is created  
 281 to read:

282 497.102 Authority of the board.--

283 (1) The board shall enforce and administer the provisions  
 284 of chapter 470 and this chapter. Notwithstanding s. 455.017, the  
 285 board shall administer those powers, duties, and functions in  
 286 chapter 455 which are necessary to enforce the provisions of  
 287 chapter 470.

288 (2) For purposes of enforcement of chapter 455 regarding  
 289 chapter 470, on and after July 1, 2004, references in chapter

HB 0323

2004

290 455 to the Department of Business and Professional Regulation or  
 291 the secretary of that department shall be read as referring to  
 292 the Department of Financial Services or the Chief Financial  
 293 Officer, as the context may indicate to be appropriate.

294 (3) The Department of Financial Services shall not adopt  
 295 any rule or publish any notice of proposed rule development as  
 296 provided in ss. 120.536-120.551 which affects the provisions of  
 297 chapter 455, chapter 470, or this chapter without first  
 298 presenting the rule or rules proposed for development to the  
 299 board for its review and recommendation, if any. This subsection  
 300 does not apply to emergency rulemaking under s. 120.54(4).

301 Section 5. Section 497.1021, Florida Statutes, is created  
 302 to read:

303 497.1021 Division of Funeral, Cemetery, and Consumer  
 304 Services; duties; oversight and enforcement.--

305 (1) There is created within the Department of Financial  
 306 Services the Division of Funeral, Cemetery, and Consumer  
 307 Services. The division shall enforce the provisions of chapter  
 308 470 and this chapter and perform such other acts as may be  
 309 necessary to carry out the provisions of chapter 470 and this  
 310 chapter.

311 (2) The division shall provide all services concerning  
 312 chapter 470 and this chapter, including, but not limited to,  
 313 recordkeeping, examination, legal, and investigative services.  
 314 Those services in chapter 455 necessary to perform the duties of  
 315 chapter 470 shall be provided by the division.

316 (3) Funds received as a result of settlements with  
 317 regulated entities and persons may be used by the division for  
 318 contracting for the training of auditors and the conduct of

HB 0323

2004

319 examinations in order to enhance oversight and enforcement of  
 320 laws and regulations governing the activities of licensees.

321 Section 6. Section 497.1022, Florida Statutes, is created  
 322 to read:

323 497.1022 Director of the Division of Funeral, Cemetery,  
 324 and Consumer Services.--

325 (1) The office of the Director of the Division of Funeral,  
 326 Cemetery, and Consumer Services is created. The director is the  
 327 agency head of the division. The director shall be appointed by  
 328 the Chief Financial Officer and shall serve at the pleasure of  
 329 the Chief Financial Officer.

330 (2) The director shall be responsible for preparation of  
 331 the board agenda, presentation of division staff  
 332 recommendations, and reports of the activities of the division  
 333 to the board and shall serve as the executive director of the  
 334 board and perform such other duties as may be assigned by the  
 335 Chief Financial Officer.

336 Section 7. Section 455.2226, Florida Statutes, is  
 337 renumbered as section 470.0145, Florida Statutes, and amended to  
 338 read:

339 470.0145 ~~455.2226~~ Funeral directors and embalmers;  
 340 instruction on HIV and AIDS.--

341 (1) The Board of Funeral, Cemetery, and Consumer Services  
 342 ~~Funeral Directors and Embalmers~~ shall require each person  
 343 licensed or registered ~~certified~~ under this chapter ~~470~~ to  
 344 complete a continuing educational course, approved by the board,  
 345 on human immunodeficiency virus and acquired immune deficiency  
 346 syndrome as part of biennial relicensure or reregistration  
 347 ~~recertification~~. The course shall consist of education on the

HB 0323

2004

348 modes of transmission, infection control procedures, clinical  
 349 management, and prevention of human immunodeficiency virus and  
 350 acquired immune deficiency syndrome. Such course shall include  
 351 information on current Florida law on acquired immune deficiency  
 352 syndrome and its impact on testing, confidentiality of test  
 353 results, and treatment of patients.

354 (2) Each such licensee or registrant ~~certificateholder~~  
 355 shall submit confirmation of having completed said course, on a  
 356 form as provided by the board, when submitting fees for each  
 357 biennial renewal.

358 (3) The board shall have the authority to approve  
 359 additional equivalent courses that may be used to satisfy the  
 360 requirements in subsection (1) and ~~. Each licensing board that~~  
 361 ~~requires a licensee to complete an educational course pursuant~~  
 362 ~~to this section~~ may count the hours required for completion of  
 363 the course included in the total continuing educational  
 364 requirements as required by law.

365 (4) Any person holding two or more licenses or  
 366 registrations subject to the provisions of this section shall be  
 367 permitted to show proof of having taken one board-approved  
 368 course on human immunodeficiency virus and acquired immune  
 369 deficiency syndrome, for purposes of relicensure or  
 370 recertification for additional licenses or registrations.

371 (5) Failure to comply with the above requirements shall  
 372 constitute grounds for disciplinary action under ~~each respective~~  
 373 ~~licensing chapter and s. 470.036 455.227(1)(e)~~. In addition to  
 374 discipline by the board, the licensee shall be required to  
 375 complete said course.

HB 0323

2004

376           (6) The board shall require as a condition of granting a  
 377       license or registration under this chapter ~~the chapters~~  
 378       ~~specified in subsection (1)~~ that an applicant making initial  
 379       application for licensure or registration complete an  
 380       educational course acceptable to the board on human  
 381       immunodeficiency virus and acquired immune deficiency syndrome.  
 382       An applicant who has not taken a course at the time of licensure  
 383       or registration shall, upon an affidavit showing good cause, be  
 384       allowed 6 months to complete this requirement.

385           (7) The board shall have the authority to adopt rules to  
 386       carry out the provisions of this section.

387           (8) The board shall report to the Legislature by March 1  
 388       of each year as to the implementation and compliance with the  
 389       requirements of this section.

390           Section 8. Section 497.105, Florida Statutes, is amended  
 391       to read:

392           497.105 Department; powers and duties.--The department  
 393       shall:

394           (1) Adopt rules establishing procedures for the renewal of  
 395       licenses, registrations, and certificates of authority.

396           ~~(2) Appoint the executive director of the Board of Funeral~~  
 397       ~~and Cemetery Services, subject to the approval of the board.~~

398           (2)~~(3)~~ With the advice of the board, submit a biennial  
 399       budget to the Legislature at a time and in the manner provided  
 400       by law.

401           (3)~~(4)~~ Develop a training program for persons newly  
 402       appointed to membership on the board. The program shall  
 403       familiarize such persons with the substantive and procedural  
 404       laws and rules which relate to the regulation under this chapter

HB 0323

2004

405 and with the structure of the department.

406 ~~(4)(5)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54  
 407 to implement the provisions of this chapter conferring duties  
 408 upon it.

409 ~~(5)(6)~~ Establish by rule procedures by which the  
 410 department shall use the expert or technical advice of the  
 411 board, for the purposes of investigation, inspection, audit,  
 412 evaluation of applications, other duties of the department, or  
 413 any other areas the department may deem appropriate.

414 ~~(6)(7)~~ Require all proceedings of the board or panels  
 415 thereof within the department and all formal or informal  
 416 proceedings conducted by the department, an administrative law  
 417 judge, or a hearing officer with respect to licensing,  
 418 registration, certification, or discipline to be electronically  
 419 recorded in a manner sufficient to ensure the accurate  
 420 transcription of all matters so recorded.

421 ~~(7)(8)~~ Select only those investigators approved by the  
 422 board. Such investigators shall report to and work in  
 423 coordination with the executive director of the board and are  
 424 responsible for all inspections and investigations other than  
 425 financial examinations.

426 Section 9. All duties performed by the Secretary of  
 427 Business and Professional Regulation under chapter 470, Florida  
 428 Statutes, shall be performed by the Chief Financial Officer  
 429 under the provisions of this act and may be delegated by the  
 430 Chief Financial Officer to the Director of the Division of the  
 431 Funeral, Cemetery, and Consumer Services.

432 Section 10. (1)(a) All of the statutory powers, duties,  
 433 and functions, records, personnel, property, and unexpended

HB 0323

2004

434 balances of appropriations, allocations, or other funds for the  
 435 administration of chapter 470, Florida Statutes, related to the  
 436 Board of Funeral Directors and Embalmers shall be transferred by  
 437 a type two transfer, as defined in s. 20.06(2), Florida  
 438 Statutes, from the Department of Business and Professional  
 439 Regulation to the Board of Funeral, Cemetery, and Consumer  
 440 Services within the Department of Financial Services.

441 (b) The transfer of regulatory authority over chapter 470,  
 442 Florida Statutes, provided by this act shall not affect the  
 443 validity of any judicial or administrative action involving the  
 444 Board of Funeral Directors and Embalmers or the Department of  
 445 Business and Professional Regulation pending on June 30, 2004,  
 446 and the Department of Financial Services or the Board of  
 447 Funeral, Cemetery, and Consumer Services shall be substituted as  
 448 a party in interest in any such action.

449 (c) Notwithstanding the transfer of regulatory authority  
 450 over chapter 470, Florida Statutes, provided by this act, all  
 451 licenses and registrations issued pursuant to chapter 470,  
 452 Florida Statutes, that are valid on June 30, 2004, shall remain  
 453 in effect subject to the provisions of chapters 470 and 455,  
 454 Florida Statutes.

455 (d) The rules of the Board of Funeral Directors and  
 456 Embalmers and the Department of Business and Professional  
 457 Regulation which were in effect on midnight, June 30, 2004,  
 458 shall become the rules of the Department of Financial Services  
 459 as is appropriate to the corresponding regulatory function and  
 460 shall remain in effect until specifically amended or repealed in  
 461 the manner provided by law.

462 (2)(a) All of the statutory powers, duties, and functions,



HB 0323

2004

463 records, personnel, property, and unexpended balances of  
464 appropriations, allocations, or other funds for the  
465 administration of chapter 497, Florida Statutes, related to the  
466 Board of Funeral and Cemetery Services shall be transferred by a  
467 type two transfer, as defined in s. 20.06(2), Florida Statutes,  
468 to the Board of Funeral, Cemetery, and Consumer Services within  
469 the Department of Financial Services.

470 (b) The transfer of regulatory authority over chapter 497,  
471 Florida Statutes, provided by this act shall not affect the  
472 validity of any judicial or administrative action involving the  
473 Board of Funeral and Cemetery Services pending on June 30, 2004,  
474 and the Board of Funeral, Cemetery, and Consumer Services shall  
475 be substituted as a party in interest in any such action.

476 (c) Notwithstanding the transfer of regulatory authority  
477 over chapter 497, Florida Statutes, provided by this act, all  
478 licenses and registrations issued pursuant to chapter 497,  
479 Florida Statutes, which are valid on June 30, 2004, shall remain  
480 in effect subject to the provisions of chapter 497, Florida  
481 Statutes.

482 (d) The rules of the Board of Funeral and Cemetery  
483 Services which were in effect on midnight, June 30, 2004, shall  
484 become the rules of the Board of Funeral, Cemetery, and Consumer  
485 Services and shall remain in effect until specifically amended  
486 or repealed in the manner provided by law.

487 Section 11. Effective midnight June 30, 2004, the Board of  
488 Funeral and Cemetery Services and the Board of Funeral Directors  
489 and Embalmers are abolished.

490 Section 12. Sections 470.003, 497.107, and 497.109,  
491 Florida Statutes, are repealed.

HB 0323

2004

492 Section 13. Section 470.0365, Florida Statutes, is created  
 493 to read:

494 470.0365 Disposition of fees and penalties.--All fees and  
 495 penalties collected pursuant to this chapter shall be deposited  
 496 in the Regulatory Trust Fund of the department.

497 Section 14. The Legislature recognizes that there is a  
 498 need to conform the Florida Statutes to the policy decisions  
 499 reflected in the provisions of this act. The Division of  
 500 Statutory Revision is directed to provide the relevant  
 501 substantive committees of the Senate and the House of  
 502 Representatives with assistance, upon request, to enable such  
 503 committees to prepare draft legislation to conform the Florida  
 504 Statutes to the provisions of this act.

505 Section 15. Section 470.002, Florida Statutes, is amended  
 506 to read:

507 470.002 Definitions.--As used in this chapter:

508 (1)(15) "Alternative container" means a nonmetal  
 509 receptacle or enclosure which is less expensive than a casket  
 510 and of sufficient strength to be used to hold and transport a  
 511 dead human body.

512 (2)(22) "At-need solicitation" means any uninvited contact  
 513 by a funeral director or direct disposer for the purpose of the  
 514 sale of funeral services or merchandise to the family or next of  
 515 kin of a person after that person has died.

516 (3)(2) "Board" means the Board of Funeral, Cemetery, and  
 517 Consumer Services ~~Funeral Directors and Embalmers.~~

518 (4) "Body parts" means:

519 (a) Limbs or other portions of the anatomy that are  
 520 removed from a person or human remains for medical purposes

HB 0323

2004

521 during treatment, surgery, biopsy, autopsy, or medical research;

522 or

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

525 ~~(5)(16)~~ "Casket" means a rigid container which is designed  
 526 for the encasement of human remains for burial, ~~and~~ which is  
 527 usually constructed of wood or metal, ornamented, and lined with  
 528 fabric, and which may or may not be combustible.

529 ~~(6)(27)~~ "Centralized embalming facility" means a facility,  
 530 not physically connected with a funeral establishment, in which  
 531 embalming takes place.

532 ~~(7)(14)~~ "Cinerator" means a facility where dead human  
 533 bodies are reduced to a residue, including bone fragments, by  
 534 direct flame, also known as "cremation," or by intense heat,  
 535 also known as "calcination."

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

539 (9) "Cremated remains" means all the remains of the human  
 540 body recovered after the completion of the cremation process,  
 541 including processing or pulverization which leaves only bone  
 542 fragments reduced to unidentifiable dimensions and may include  
 543 the residue of any foreign matter, including casket material,  
 544 bridgework, or eyeglasses that were cremated with the human  
 545 remains.

546 ~~(10)(24)~~ "Cremation" means the technical process, using  
 547 direct flame and heat or chemical means, that reduces human  
 548 remains to bone fragments through heat and evaporation.  
 549 Cremation includes the processing and usually includes the

HB 0323

2004

550 pulverization of the bone fragments ~~includes any mechanical or~~  
 551 ~~thermal process whereby a dead human body is reduced to ashes~~  
 552 ~~and bone fragments. Cremation also includes any other mechanical~~  
 553 ~~or thermal process whereby human remains are pulverized, burned,~~  
 554 ~~recremated, or otherwise further reduced in size or quantity.~~

555 (11) "Cremation chamber" means the enclosed space within  
 556 which the cremation process takes place. Cremation chambers  
 557 covered by these procedures must be used exclusively for the  
 558 cremation of human remains.

559 (12) "Cremation container" means the container in which  
 560 the human remains are transported to and placed in the cremation  
 561 chamber for a cremation. A cremation container should meet  
 562 substantially all of the following standards:

563 (a) Be composed of readily combustible materials suitable  
 564 for cremation.

565 (b) Be able to be closed in order to provide a complete  
 566 covering for the human remains.

567 (c) Be resistant to leakage or spillage.

568 (d) Be rigid enough to be handled with ease.

569 (e) Be able to provide protection for the health, safety,  
 570 and personal integrity of crematory personnel.

571 (13) "Cremation interment container" means a rigid outer  
 572 container that, subject to a cemetery's rules and regulations,  
 573 is composed of concrete, steel, fiberglass, or some similar  
 574 material in which an urn is placed prior to being interred in  
 575 the ground and that is designed to support the earth above the  
 576 urn.

577 (14)~~(1)~~ "Department" means the Department of Financial  
 578 Services ~~Business and Professional Regulation.~~

HB 0323

2004

579        (15)~~(8)~~ "Direct disposal establishment" means a facility  
 580 registered under this chapter where a direct disposer practices  
 581 direct disposition.

582        (16)~~(9)~~ "Direct disposer" means any person registered  
 583 under this chapter to practice direct disposition in this state.

584        (17)~~(28)~~ "Disinterment" means removal of a dead human body  
 585 from earth interment or aboveground interment.

586        (18)~~(5)~~ "Embalmer" means any person licensed under this  
 587 chapter to practice embalming in this state.

588        (19)~~(11)~~ "Final disposition" means the final disposal of a  
 589 dead human body by earth interment, aboveground interment,  
 590 cremation, burial at sea, or delivery to a medical institution  
 591 for lawful dissection if the medical institution assumes  
 592 responsibility for disposal. "Final disposition" does not  
 593 include the disposal or distribution of ashes and residue of  
 594 cremated human remains.

595        (20)~~(13)~~ "Funeral" or "funeral service" means the  
 596 observances, services, or ceremonies held to commemorate the  
 597 life of a specific deceased human being, and at which the human  
 598 remains are present.

599        (21)~~(3)~~ "Funeral director" means any person licensed under  
 600 this chapter to practice funeral directing in this state.

601        (22)~~(7)~~ "Funeral establishment" means a facility licensed  
 602 under this chapter where a funeral director or embalmer  
 603 practices funeral directing or embalming.

604        (23)~~(12)~~ "Funeral merchandise" or "merchandise" means any  
 605 merchandise commonly sold in connection with the funeral, final  
 606 disposition, or memorialization of human remains, including, but  
 607 not limited to, caskets, outer burial containers, alternative

HB 0323

2004

608 containers, cremation containers, cremation interment  
 609 containers, urns, monuments, private mausoleums, flowers,  
 610 shrubs, benches, vases, acknowledgment cards, register books,  
 611 memory folders, prayer cards, and clothing.

612 ~~(24)~~~~(23)~~ "Human remains" or "remains," "dead human body"  
 613 or "dead human bodies," means the body of a deceased human  
 614 person for which a death certificate or fetal death certificate  
 615 is required under chapter 382 and includes the body in any stage  
 616 of decomposition and the residue of cremated human bodies.

617 ~~(25)~~~~(18)~~ "Legally authorized person" means, in the  
 618 priority listed, the decedent, when written inter vivos  
 619 authorizations and directions are provided by the decedent, the  
 620 surviving spouse, unless the spouse has been arrested for  
 621 committing against the deceased an act of domestic violence as  
 622 defined in s. 741.28 that resulted in or contributed to the  
 623 death of the deceased, a son or daughter who is 18 years of age  
 624 or older, a parent, a brother or sister 18 years of age or over,  
 625 a grandchild who is 18 years of age or older, or a grandparent;  
 626 or any person in the next degree of kinship. In addition, the  
 627 term may include, if no family exists or is available, the  
 628 following: the guardian of the dead person at the time of death;  
 629 the personal representative of the deceased; the attorney in  
 630 fact of the dead person at the time of death; the health  
 631 surrogate of the dead person at the time of death; a public  
 632 health officer; the medical examiner, county commission or  
 633 administrator acting under part II of chapter 406, or other  
 634 public administrator; a representative of a nursing home or  
 635 other health care institution in charge of final disposition; or  
 636 a friend or other person not listed in this subsection who is

HB 0323

2004

637 willing to assume the responsibility as authorized person. When  
 638 there is a person in any priority class listed in this  
 639 subsection, the funeral establishment shall rely upon the  
 640 authorization of any one legally authorized person of that class  
 641 if that individual represents that he or she is not aware of any  
 642 objection to the cremation of the deceased's human remains by  
 643 others in the same class of the person making the representation  
 644 or of any person in a higher priority class.

645 (26) "Niche" means a compartment or cubicle for the  
 646 memorialization or permanent placement of a container or urn  
 647 containing cremated remains.

648 (27)~~(19)~~ "Outer burial container" means an enclosure into  
 649 which a casket is placed, including, but not limited to, a vault  
 650 made of concrete, steel, fiberglass, or copper, a sectional  
 651 concrete enclosure, a crypt, or a wooden enclosure.

652 (28)~~(20)~~ "Personal residence" means any residential  
 653 building in which one temporarily or permanently maintains his  
 654 or her abode, including, but not limited to, an apartment or a  
 655 hotel, motel, nursing home, convalescent home, home for the  
 656 aged, or a public or private institution.

657 (29)~~(10)~~ "Practice of direct disposition" means the  
 658 cremation of human remains without preparation of the human  
 659 remains by embalming and without any attendant services or rites  
 660 such as funeral or graveside services or the making of  
 661 arrangements for such final disposition.

662 (30)~~(6)~~ "Practice of embalming" means disinfecting or  
 663 preserving or attempting to disinfect or preserve dead human  
 664 bodies by replacing certain body fluids with preserving and  
 665 disinfecting chemicals.

HB 0323

2004

666        (31)~~(4)~~ "Practice of funeral directing" means the  
 667 performance by a licensed funeral director of any of those  
 668 functions authorized by s. 470.0087.

669        (32)~~(21)~~ "Preneed sales agent" means any person who is  
 670 registered under chapter 497 to sell preneed burial or funeral  
 671 service and merchandise contracts or direct disposition  
 672 contracts in this state.

673        (33) "Processing" means the reduction of identifiable bone  
 674 fragments after the completion of the cremation process to  
 675 unidentifiable bone fragments by manual means.

676        (34) "Pulverization" means the reduction of identifiable  
 677 bone fragments after the completion of the cremation and  
 678 processing to granulated particles by manual or mechanical  
 679 means.

680        (35)~~(25)~~ "Refrigeration facility" means a facility that is  
 681 not physically connected with a funeral establishment, crematory  
 682 or direct disposal establishment, that maintains space and  
 683 equipment for the storage and refrigeration of dead human  
 684 bodies, and that offers its service to funeral directors and  
 685 funeral establishments for a fee.

686        (36)~~(26)~~ "Removal service" means any service that operates  
 687 independently of a funeral establishment, that handles the  
 688 initial removal of dead human bodies, and that offers its  
 689 service to funeral establishments and direct disposal  
 690 establishments for a fee.

691        (37)~~(17)~~ "Solicitation" means any communication which  
 692 directly or implicitly requests an immediate oral response from  
 693 the recipient.

694        (38) "Temporary container" means a receptacle for cremated



HB 0323

2004

695 remains usually made of cardboard, plastic, or similar material  
 696 designated to hold the cremated remains until an urn or other  
 697 permanent container is acquired.

698 (39) "Urn" means a receptacle designed to permanently  
 699 encase cremated remains.

700 Section 16. Section 470.0085, Florida Statutes, is amended  
 701 to read:

702 470.0085 Establishment of embalmer apprentice  
 703 program.--The board may adopt rules establishing an embalmer  
 704 apprentice program. An embalmer apprentice may perform only  
 705 those tasks, functions, and duties relating to embalming which  
 706 are performed under the direct supervision of a licensed  
 707 embalmer. An embalmer apprentice shall be eligible to serve in  
 708 an apprentice capacity for a period not to exceed 3 years ~~1 year~~  
 709 as may be determined by board rule or for a period not to exceed  
 710 5 ~~3~~ years if the apprentice is enrolled in and attending a  
 711 course in mortuary science or funeral service education at any  
 712 mortuary college or funeral service education college or school.  
 713 An embalmer apprentice shall be registered with the board upon  
 714 payment of a registration fee not to exceed \$50.

715 Section 17. Subsection (1) of section 470.015, Florida  
 716 Statutes, is amended to read:

717 470.015 Renewal of funeral director and embalmer  
 718 licenses.--

719 (1) The department shall renew a funeral director or  
 720 embalmer license upon receipt of the renewal application and fee  
 721 set by the board not to exceed \$250. The board may prescribe by  
 722 rule continuing education requirements of up to 12 classroom  
 723 hours and may by rule establish criteria for accepting

HB 0323

2004

724 alternative nonclassroom continuing education on an hour-for-  
 725 hour basis, in addition to a board-approved course on  
 726 communicable diseases that includes the course on human  
 727 immunodeficiency virus and acquired immune deficiency syndrome  
 728 required by s. 470.0145 ~~455.2226~~, for the renewal of a funeral  
 729 director or embalmer license. The board may provide for the  
 730 waiver of continuing education requirements in circumstances  
 731 that would justify the waiver, such as hardship, disability, or  
 732 illness. The continuing education requirement is not required  
 733 after July 1, 1996, for a licensee who is over the age of 75  
 734 years if the licensee does not qualify as the sole person in  
 735 charge of an establishment or facility.

736 Section 18. Subsection (2) of section 470.018, Florida  
 737 Statutes, is amended to read:

738 470.018 Renewal of registration of direct disposer.--

739 (2) The department shall adopt rules establishing a  
 740 procedure for the biennial renewal of registrations. The board  
 741 shall prescribe by rule continuing education requirements of up  
 742 to 6 ~~3~~ classroom hours and may by rule establish criteria for  
 743 accepting alternative nonclassroom continuing education on an  
 744 hour-for-hour basis, in addition to a board-approved course on  
 745 communicable diseases that includes the course on human  
 746 immunodeficiency virus and acquired immune deficiency syndrome  
 747 required by s. 470.0145 ~~455.2226~~, for the renewal of a  
 748 registration.

749 Section 19. Subsections (2) and (5) of section 470.021,  
 750 Florida Statutes, are amended to read:

751 470.021 Direct disposal establishment; standards and  
 752 location; registration.--

HB 0323

2004

753 (2) The practice of direct disposition must be engaged in  
 754 at a fixed location of at least 625 interior contiguous square  
 755 feet and must maintain or make arrangements for suitable  
 756 capacity for the refrigeration and storage of dead human bodies  
 757 handled and stored by the establishment. No person may open or  
 758 maintain an establishment at which to engage in or hold himself  
 759 or herself out as engaging in the practice of direct disposition  
 760 unless such establishment is registered with the board. Any  
 761 change in location of such establishment shall be reported  
 762 promptly to the board as prescribed by rule of the board.

763 (5)(a) Each direct disposal establishment shall at all  
 764 times be subject to the inspection of all its buildings,  
 765 grounds, and vehicles used in the conduct of its business, by  
 766 the department, the Department of Health, and local government  
 767 inspectors and by their agents. The board shall adopt rules  
 768 which establish such inspection requirements.

769 (b) The board shall set by rule an annual inspection fee  
 770 not to exceed \$100, payable upon application for registration  
 771 and upon each renewal of such registration.

772 (c) Each cinerator facility shall be inspected prior to  
 773 the issuance and renewal of its license and shall:

774 1. Maintain one or more retorts for the reduction of dead  
 775 human bodies.

776 2. Maintain refrigeration which satisfies the standards  
 777 set by the Department of Health and which contains a sufficient  
 778 number of shelves for the average daily number of bodies stored,  
 779 if unembalmed bodies are kept at the site.

780 3. Maintain sufficient pollution control equipment to  
 781 comply with requirements of the Department of Environmental

HB 0323

2004

782 Protection in order to secure annual approved certification.

783 4. Either have on site or immediately available sufficient  
 784 sealed containers of a type required for the transportation of  
 785 bodies as specified in Rule 10D-37.012, F.A.C.

786 5. Maintain the premises in a clean and sanitary  
 787 condition.

788 6. Have appropriate Department of Environmental Protection  
 789 permits.

790 7. Retain all signed contracts for a period of at least 2  
 791 years.

792 Section 20. Subsection (1) of section 470.024, Florida  
 793 Statutes, is amended to read:

794 470.024 Funeral establishment; licensure.--

795 (1) A funeral establishment shall be a place at a specific  
 796 street address or location consisting of at least 1,250  
 797 contiguous interior square feet and must maintain or make  
 798 arrangements for ~~either~~ suitable capacity for the refrigeration  
 799 and storage of dead human bodies handled and stored by the  
 800 establishment and ~~or~~ a preparation room equipped with necessary  
 801 ventilation and drainage and containing necessary instruments  
 802 for embalming dead human bodies or must make arrangements for a  
 803 preparation room as established by board rule.

804 Section 21. Subsections (6), (13), (14), and (15) of  
 805 section 470.025, Florida Statutes, are amended, and subsection  
 806 (16) is added to said section, to read:

807 470.025 Cinerator facility; licensure.--

808 (6) No more than one dead human body may be placed in a  
 809 retort at one time, unless written permission has been received  
 810 from a legally authorized person for each body. The operator of

HB 0323

2004

811 a cinerator facility shall be entitled to rely on the permission  
 812 of a legally authorized person to cremate more than one human  
 813 body.

814 (13) A cinerator facility shall not place human remains or  
 815 body parts in a retort or cremation chamber unless the human  
 816 remains are in an alternative container, cremation container, or  
 817 casket. Human remains may be transported in a cremation  
 818 container or stored if they are completely covered, and at all  
 819 times treated with dignity and respect. Cremation may include  
 820 the processing and pulverization of bone fragments. Cremated  
 821 remains may be placed in a temporary container following  
 822 cremation. None of the provisions contained in this subsection  
 823 require the purchase of a casket for cremation. This subsection  
 824 applies to at-need contracts and preneed contracts entered into  
 825 pursuant to chapter 497 after June 1, 1996.

826 (14) Each cinerator facility shall ensure that all  
 827 alternative containers, cremation containers, or caskets used  
 828 for cremation contain no amount of chlorinated plastics not  
 829 authorized by the Department of Environmental Protection, that  
 830 they also are composed of readily combustible materials suitable  
 831 for cremation, able to be closed to provide a complete covering  
 832 for the human remains, resistant to leakage or spillage, rigid  
 833 enough for handling with ease, and able to provide for the  
 834 health, safety, and personal integrity of the public and  
 835 crematory personnel.

836 (15) The board shall adopt, by rule, criteria for  
 837 acceptable cremation and alternative containers.

838 (16) The operator of a cinerator facility shall establish  
 839 written procedures for the removal of remains and bone

HB 0323

2004

840 fragments, to the extent possible, resulting from the cremation  
 841 of a human body and the postcremation processing, shipping,  
 842 packing, or identifying of those remains. If an operator follows  
 843 these procedures, the operator is not liable for the  
 844 unintentional or incidental commingling of human remains and  
 845 bone fragments resulting from more than one cremation cycle or  
 846 from postcremation processing, shipping, packing, or identifying  
 847 of those remains. A copy of the procedures shall be available,  
 848 upon request, to the department and legally authorized persons.

849 Section 22. Subsection (3) is added to section 470.0255,  
 850 Florida Statutes, to read:

851 470.0255 Cremation; procedure required.--

852 (3) Pursuant to the request of a legally authorized person  
 853 and incidental to final disposition, cremation may be performed  
 854 on parts of human remains. This subsection does not authorize  
 855 the cremation of body parts as defined in s. 470.002.

856 Section 23. Section 470.028, Florida Statutes, is amended  
 857 to read:

858 470.028 Preneed sales; registration of agents; control and  
 859 supervision of agents.--

860 (1) All sales of preneed funeral service contracts or  
 861 direct disposition contracts shall be made pursuant to chapter  
 862 497.

863 (2) No person may act as an agent for a funeral  
 864 establishment or direct disposal establishment with respect to  
 865 the sale of preneed contracts unless such person is registered  
 866 pursuant to chapter 497.

867 (3) Each licensee or registrant shall be subject to  
 868 discipline if his or her agent violates any provision of this

HB 0323

2004

869 chapter applicable to such licensee or registrant as established  
870 by board rule.

871 (4)(a) The funeral director in charge of a funeral  
872 establishment shall be responsible for the control and  
873 activities of the establishment's preneed agents.

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

878 Section 24. Subsection (1) of section 470.029, Florida  
879 Statutes, is amended to read:

880 470.029 Reports of cases embalmed and bodies handled.--

881 (1) Each funeral establishment, direct disposal  
882 establishment, cinerator facility, and centralized embalming  
883 facility shall report on a form prescribed and furnished by the  
884 department the name of the deceased and such other information  
885 as may be required with respect to each dead human body embalmed  
886 or otherwise handled by the establishment or facility. Such  
887 forms shall be signed by the embalmer who performs the  
888 embalming, if the body is embalmed, and the funeral director in  
889 charge of the establishment or facility or by the direct  
890 disposer who disposes of the body. The board shall prescribe by  
891 rule the procedures in submitting such documentation. Reports  
892 required by this subsection shall be filed by the 20th ~~10th~~ day  
893 of each month for final dispositions handled the preceding  
894 month.

895 Section 25. Section 470.031, Florida Statutes, is amended  
896 to read:

897 470.031 Prohibitions; penalties.--

HB 0323

2004

898           (1) No person may:

899           (a) Practice funeral directing, embalming, or direct

900 disposition unless the person holds an active license or

901 registration under this chapter.

902           (b) Use the name or title "funeral director," "embalmer,"

903 or "direct disposer" when the person has not been licensed or

904 registered pursuant to this chapter.

905           (c) Represent as his or her own the license or

906 registration of another.

907           (d) Give false or forged evidence to the board, a member

908 thereof, or the department for the purpose of obtaining a

909 license or registration.

910           (e) Use or attempt to use a license or registration which

911 has been suspended or revoked.

912           (f) Knowingly employ unlicensed persons in the practice of

913 funeral directing, embalming, or direct disposing.

914           (g) Knowingly conceal information relative to violations

915 of this chapter.

916           (h) Operate an unlicensed cinerator facility.

917           (i) Except as provided for in chapter 497, guarantee the

918 price of goods and services at a future date.

919           (2) Any person who violates the provisions of this section

920 commits a misdemeanor of the second degree, punishable as

921 provided in s. 775.082 or s. 775.083.

922           Section 26. Section 470.0355, Florida Statutes, is amended

923 to read:

924           470.0355 Identification of human remains.--

925           (1) PRIOR TO FINAL DISPOSITION.--



HB 0323

2004

926        (a)~~(1)~~ The licensee or registrant in charge of the final  
 927 disposition of dead human remains shall, prior to final  
 928 disposition of such dead human remains, affix on the ankle or  
 929 wrist of the deceased, and ~~or~~ in the casket or alternative  
 930 container or cremation container, proper identification of the  
 931 dead human remains. The identification or tag shall be encased  
 932 in or consist of durable and long-lasting material containing  
 933 the name, date of birth, and date of death, ~~and social security~~  
 934 ~~number~~ of the deceased, if available. If the dead human remains  
 935 are cremated, proper identification shall be placed in the  
 936 container or urn containing the remains.

937        (b)~~(2)~~ Any licensee or registrant responsible for removal  
 938 of dead human remains to any establishment, facility, or  
 939 location shall ensure that the remains are identified by a tag  
 940 or other means of identification that is affixed to the ankle or  
 941 wrist of the deceased at the time the remains are removed from  
 942 the place of death or other location.

943        (c)~~(3)~~ Any licensee or registrant may rely on the  
 944 representation of a legally authorized person to establish the  
 945 identity of dead human remains.

946        (2) IN UNLICENSED CEMETERIES.--Effective October 1, 2004,  
 947 the identification of human remains interred in an unlicensed  
 948 cemetary shall be the responsibility of the licensed funeral  
 949 establishment in charge of the funeral arrangements for the  
 950 deceased person. The licensed funeral establishment in charge of  
 951 the funeral arrangements for the interment in an unlicensed  
 952 cemetary of human remains shall place on the outer burial  
 953 container, cremation internment container, or other container or  
 954 on the inside of a crypt or niche a tag or permanent identifying

HB 0323

2004

955 mark containing the name of the decedent and the date of death,  
 956 if available. The materials and locations of the tag or mark  
 957 shall be more specifically described by the rule of the board.

958 (3) IN LICENSED CEMETERIES.--Effective October 1, 2004,  
 959 human remains at licensed cemeteries shall be identified as  
 960 follows:

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

968 (b) Each licensed cemetery may rely entirely on the  
 969 identity stated on the burial transit permit or on the  
 970 identification supplied by a person licensed under chapter 470  
 971 to establish the identity of the dead human remains delivered by  
 972 such person for burial and shall not be liable for any  
 973 differences between the identity shown on the burial transit  
 974 permit or identification and the actual identity of the dead  
 975 human remains delivered by such person and buried in the  
 976 cemetery.

977 (4) DIRECT DISPOSAL ESTABLISHMENTS.--Direct disposal  
 978 establishments shall establish a system of identification of  
 979 human remains received which shall be designed to track the  
 980 identity of the remains from the time of receipt until delivery  
 981 of the remains to the authorized persons. This is in addition to  
 982 the requirements for identification of human remains set forth  
 983 in subsection (1). A copy of the identification procedures shall

HB 0323

2004

984 be available, upon request, to the department and legally  
 985 authorized persons.

986 Section 27. For the purpose of incorporating the amendment  
 987 to section 470.031, Florida Statutes, in a reference thereto,  
 988 paragraph (a) of subsection (1) of section 470.036, Florida  
 989 Statutes, is reenacted to read:

990 470.036 Disciplinary proceedings.--

991 (1) The following acts constitute grounds for which the  
 992 disciplinary actions in subsection (2) may be taken:

993 (a) Violation of any provision of s. 455.227(1) or s.  
 994 470.031.

995 Section 28. Section 497.005, Florida Statutes, is amended  
 996 to read:

997 497.005 Definitions.--As used in this chapter:

998 (1) "At-need solicitation" means any uninvited contact by  
 999 a licensee or her or his agent for the purpose of the sale of  
 1000 burial services or merchandise to the family or next of kin of a  
 1001 person after her or his death has occurred.

1002 (2) "Bank of belowground crypts" means any construction  
 1003 unit of belowground crypts which is acceptable to the department  
 1004 and which a cemetery uses to initiate its belowground crypt  
 1005 program or to add to existing belowground crypt structures.

1006 (3) "Belowground crypts" consist of interment space in  
 1007 preplaced chambers, either side by side or multiple depth,  
 1008 covered by earth and sod and known also as "lawn crypts,"  
 1009 "westminsters," or "turf-top crypts."

1010 (4) "Board" means the Board of Funeral, Cemetery, and  
 1011 Consumer Services ~~Funeral and Cemetery Services.~~

HB 0323

2004

1012 (5) "Burial merchandise," "funeral merchandise," or  
 1013 "merchandise" means any personal property offered or sold by any  
 1014 person for use in connection with the final disposition,  
 1015 memorialization, interment, entombment, or inurnment of human  
 1016 remains.

1017 (6) "Burial right" means the right to use a grave space,  
 1018 mausoleum, columbarium, ossuary, or scattering garden for the  
 1019 interment, entombment, inurnment, or other disposition of human  
 1020 remains.

1021 (7) "Burial service," "funeral service," or "service"  
 1022 means any service offered or provided by any person in  
 1023 connection with the final disposition, memorialization,  
 1024 interment, entombment, or inurnment of human remains.

1025 (8) "Care and maintenance" means the perpetual process of  
 1026 keeping a cemetery and its lots, graves, grounds, landscaping,  
 1027 roads, paths, parking lots, fences, mausoleums, columbaria,  
 1028 vaults, crypts, utilities, and other improvements, structures,  
 1029 and embellishments in a well-cared-for and dignified condition,  
 1030 so that the cemetery does not become a nuisance or place of  
 1031 reproach and desolation in the community. As specified in the  
 1032 rules of the board, "care and maintenance" may include, but is  
 1033 not limited to, any or all of the following activities: mowing  
 1034 the grass at reasonable intervals; raking and cleaning the grave  
 1035 spaces and adjacent areas; pruning of shrubs and trees;  
 1036 suppression of weeds and exotic flora; and maintenance, upkeep,  
 1037 and repair of drains, water lines, roads, buildings, and other  
 1038 improvements. "Care and maintenance" may include, but is not  
 1039 limited to, reasonable overhead expenses necessary for such  
 1040 purposes, including maintenance of machinery, tools, and

HB 0323

2004

1041 equipment used for such purposes. "Care and maintenance" may  
 1042 also include repair or restoration of improvements necessary or  
 1043 desirable as a result of wear, deterioration, accident, damage,  
 1044 or destruction. "Care and maintenance" does not include expenses  
 1045 for the construction and development of new grave spaces or  
 1046 interment structures to be sold to the public.

1047 (9) "Casket" means a rigid container which is designed for  
 1048 the encasement of human remains, ~~and~~ which is usually  
 1049 constructed of wood or metal, ornamented, and lined with fabric,  
 1050 and which may or may not be combustible.

1051 (10) "Cemetery" means a place dedicated to and used or  
 1052 intended to be used for the permanent interment of human  
 1053 remains. A cemetery may contain land or earth interment;  
 1054 mausoleum, vault, or crypt interment; a columbarium, ossuary,  
 1055 scattering garden, or other structure or place used or intended  
 1056 to be used for the interment or disposition of cremated human  
 1057 remains; or any combination of one or more of such structures or  
 1058 places.

1059 (11) "Cemetery company" means any legal entity that owns  
 1060 or controls cemetery lands or property.

1061 (12) "Certificateholder" or "licensee" means the person or  
 1062 entity that is authorized under this chapter to sell preneed  
 1063 funeral or burial services, preneed funeral or burial  
 1064 merchandise, or burial rights. Each term shall include the  
 1065 other, as applicable, as the context requires. For the purposes  
 1066 of chapter 120, all certificateholders, licensees, and  
 1067 registrants shall be considered licensees.

HB 0323

2004

1068 (13) "Columbarium" means a structure or building which is  
 1069 substantially exposed above the ground and which is intended to  
 1070 be used for the inurnment of cremated human remains.

1071 (14) "Common business enterprise" means a group of two or  
 1072 more business entities that share common ownership in excess of  
 1073 50 percent.

1074 (15) "Cremation" includes any mechanical or thermal  
 1075 process whereby a dead human body is reduced to ashes. Cremation  
 1076 also includes any other mechanical or thermal process whereby  
 1077 human remains are pulverized, burned, reinterred, or otherwise  
 1078 further reduced in size or quantity.

1079 (16) "Department" means the Department of Financial  
 1080 Services.

1081 (17) "Direct disposer" means any person who is registered  
 1082 in this state to practice direct disposition pursuant to the  
 1083 provisions of chapter 470.

1084 (18) "Director" means the director of the Division of  
 1085 Funeral, Cemetery, and Consumer Services.

1086 (19) "Division" means the Division of Funeral, Cemetery,  
 1087 and Consumer Services within the Department of Financial  
 1088 Services.

1089 ~~(20)~~~~(18)~~ "Final disposition" means the final disposal of a  
 1090 dead human body whether by interment, entombment, burial at sea,  
 1091 cremation, or any other means and includes, but is not limited  
 1092 to, any other disposition of remains for which a segregated  
 1093 charge is imposed.

1094 ~~(21)~~~~(19)~~ "Funeral director" means any person licensed in  
 1095 this state to practice funeral directing pursuant to the  
 1096 provisions of chapter 470.

HB 0323

2004

1097        (22)~~(20)~~ "Grave space" means a space of ground in a  
 1098 cemetery intended to be used for the interment in the ground of  
 1099 human remains.

1100        (23)~~(21)~~ "Human remains" means the bodies of deceased  
 1101 persons and includes bodies in any stage of decomposition and  
 1102 cremated remains.

1103        (24)~~(22)~~ "Mausoleum" means a structure or building which  
 1104 is substantially exposed above the ground and which is intended  
 1105 to be used for the entombment of human remains.

1106        (25)~~(23)~~ "Mausoleum section" means any construction unit  
 1107 of a mausoleum which is acceptable to the department and which a  
 1108 cemetery uses to initiate its mausoleum program or to add to its  
 1109 existing mausoleum structures.

1110        (26)~~(24)~~ "Monument" means any product used for identifying  
 1111 a grave site and cemetery memorials of all types, including  
 1112 monuments, markers, and vases.

1113        (27)~~(25)~~ "Monument establishment" means a facility that  
 1114 operates independently of a cemetery or funeral establishment  
 1115 and that offers to sell monuments or monument services to the  
 1116 public for placement in a cemetery.

1117        (28)~~(26)~~ "Net assets" means the amount by which the total  
 1118 assets of a certificateholder, excluding goodwill, franchises,  
 1119 customer lists, patents, trademarks, and receivables from or  
 1120 advances to officers, directors, employees, salespersons, and  
 1121 affiliated companies, exceed total liabilities of the  
 1122 certificateholder. For purposes of this definition, the term  
 1123 "total liabilities" does not include the capital stock, paid-in  
 1124 capital, or retained earnings of the certificateholder.

HB 0323

2004

1125 (29)~~(27)~~ "Net worth" means total assets minus total  
 1126 liabilities pursuant to generally accepted accounting  
 1127 principles.

1128 (30) "Niche" means a compartment or cubicle for the  
 1129 memorialization or permanent placement of an urn containing  
 1130 cremated remains.

1131 (31)~~(28)~~ "Ossuary" means a receptacle used for the  
 1132 communal placement of cremated human remains without benefit of  
 1133 an urn or any other container in which remains will be  
 1134 commingled with other cremated human remains and are  
 1135 nonrecoverable. It may or may not include memorialization.

1136 (32)~~(29)~~ "Outer burial container" means an enclosure into  
 1137 which a casket is placed and includes, but is not limited to,  
 1138 vaults made of concrete, steel, fiberglass, or copper; sectional  
 1139 concrete enclosures; crypts; and wooden enclosures.

1140 (33)~~(30)~~ "Preneed contract" means any arrangement or  
 1141 method, of which the provider of funeral merchandise or services  
 1142 has actual knowledge, whereby any person agrees to furnish  
 1143 funeral merchandise or service in the future.

1144 (34)~~(31)~~ "Religious institution" means an organization  
 1145 formed primarily for religious purposes which has qualified for  
 1146 exemption from federal income tax as an exempt organization  
 1147 under the provisions of s. 501(c)(3) of the Internal Revenue  
 1148 Code of 1986, as amended.

1149 (35)~~(32)~~ "Scattering garden" means a location set aside,  
 1150 within a cemetery, which is used for the spreading or  
 1151 broadcasting of cremated remains that have been removed from  
 1152 their container and can be mixed with or placed on top of the  
 1153 soil or ground cover or buried in an underground receptacle on a



HB 0323

2004

1154 commingled basis and that are nonrecoverable. It may or may not  
 1155 include memorialization.

1156 ~~(36)(33)~~ "Servicing agent" means any person acting as an  
 1157 independent contractor whose fiduciary responsibility is to  
 1158 assist both the trustee and certificateholder hereunder in  
 1159 administrating their responsibilities pursuant to this chapter.

1160 ~~(37)(34)~~ "Solicitation" means any communication that ~~which~~  
 1161 directly or implicitly requests an immediate oral response from  
 1162 the recipient.

1163 ~~(38)(35)~~ "Statutory accounting" means generally accepted  
 1164 accounting principles, except as modified by this chapter.

1165 ~~(39)~~ "Urn" means a receptacle designed to permanently  
 1166 encase cremated remains.

1167 Section 29. Subsection (3) of section 497.305, Florida  
 1168 Statutes, is amended to read:

1169 497.305 Cemetery companies; authorized functions.--

1170 (3) A cemetery company may adopt bylaws establishing  
 1171 minimum standards for burial merchandise or the installation  
 1172 thereof. Such bylaws shall include minimum standards for access  
 1173 to install burial merchandise. A cemetery company must comply  
 1174 with its adopted bylaws.

1175 Section 30. Section 497.306, Florida Statutes, is created  
 1176 to read:

1177 497.306 Standards for grave spaces.--

1178 (1) A standard adult grave space shall measure at least 42  
 1179 inches in width and 96 inches in length, except for preinstalled  
 1180 vaults in designated areas. For interments, except cremated  
 1181 remains, the covering soil shall measure no less than 12 inches  
 1182 from the top of the outer burial container, unless such level of

HB 0323

2004

1183 soil is not physically possible. In any interment, the family or  
 1184 next of kin may waive the 12-inch coverage minimum.

1185 (2)(a) Effective October 1, 2004, and prior to the sale of  
 1186 grave spaces in any undeveloped areas of a licensed cemetery,  
 1187 the cemetery company shall prepare a map documenting the  
 1188 establishment of recoverable internal survey reference markers  
 1189 installed by the cemetery company no more than 100 feet apart in  
 1190 the areas planned for development. The internal reference  
 1191 markers shall be established with reference to survey markers  
 1192 that are no more than 200 feet apart which have been set by a  
 1193 surveyor and mapper licensed under chapter 472 and documented in  
 1194 a certified land survey. Both the map and the certified land  
 1195 survey shall be maintained by the cemetery company and shall be  
 1196 made available upon request to the department or members of the  
 1197 public.

1198 (b) The map of the area proposed to be developed shall  
 1199 show:

- 1200 1. The number of grave spaces available for sale.
- 1201 2. The location of each grave space.
- 1202 3. The number designation assigned to each grave space.
- 1203 4. The dimensions of a standard adult grave space.

1204 (3) Adult grave spaces established prior to October 1,  
 1205 2004, are not required to meet the standards established under  
 1206 this section for the dimensions or separation of grave spaces.

1207 Section 31. Section 497.307, Florida Statutes, is created  
 1208 to read:

1209 497.307 Identification of human remains in licensed  
 1210 cemeteries.--On and after October 1, 2004, human remains  
 1211 interred, entombed, scattered, or otherwise placed for final

HB 0323

2004

1212 rest at licensed cemeteries shall be identified as follows:

1213 (1) Each licensed cemetery shall place on the outer burial  
 1214 container, cremation interment container, or other container, or  
 1215 on the inside of a crypt or niche, a tag or a permanent  
 1216 identifying marker containing the name of the decedent and the  
 1217 date of death, if available. The materials and location of the  
 1218 tag or marker shall be more specifically described by rule of  
 1219 the board.

1220 (2) Each licensed cemetery may rely entirely on the  
 1221 identity stated on the burial transit permit or on the  
 1222 identification supplied by a person licensed under chapter 470  
 1223 to establish the identity of the dead human remains delivered by  
 1224 such person for burial and shall not be liable for any  
 1225 differences between the identity shown on the burial transit  
 1226 permit or other identification and the actual identity of the  
 1227 dead human remains delivered by such person and buried in the  
 1228 cemetery.

1229 Section 32. Subsection (2) of section 497.325, Florida  
 1230 Statutes, is amended to read:

1231 497.325 Illegal tying arrangements.--

1232 (2)(a) Noncemetery licensed persons and firms shall have  
 1233 the right to sell monuments and to perform or provide on  
 1234 cemetery property foundation, preparation, and installation  
 1235 services for monuments. However, a cemetery company or any other  
 1236 entity owning and operating a cemetery may establish reasonable  
 1237 rules regarding the style and size of a monument or its  
 1238 foundation, provided such rules are applicable to all monuments  
 1239 from whatever source obtained and are enforced uniformly as to

HB 0323

2004

1240 all monuments. Such rules shall be conspicuously posted and  
 1241 readily accessible to inspection and copy by interested persons.

1242 (b) No person who is authorized to sell grave space and no  
 1243 cemetery company or other entity owning and operating a cemetery  
 1244 may:

1245 1. Require the payment of a setting or service charge, by  
 1246 whatever name known, from third party installers for the  
 1247 placement of a monument;

1248 2. Refuse to provide care or maintenance for any portion  
 1249 of a gravesite on which a monument has been placed; or

1250 3. Waive liability with respect to damage caused by  
 1251 cemetery employees or agents to a monument after installation,

1252  
 1253 where the monument or installation service is not purchased from  
 1254 the person authorized to sell grave space or the cemetery  
 1255 company or other legal entity providing grave space or from or  
 1256 through any other person or corporation designated by the person  
 1257 authorized to sell grave space or the cemetery company or other  
 1258 legal entity providing grave space. A ~~No~~ cemetery company or  
 1259 other entity owning and operating a cemetery may not be held  
 1260 liable for the improper installation of a monument where the  
 1261 monument is not installed by the cemetery company or its agents  
 1262 or by such other entity or its agents.

1263 Section 33. Subsection (9) is added to section 497.333,  
 1264 Florida Statutes, to read:

1265 497.333 Disclosure of information to public.--A licensee  
 1266 offering to provide burial rights, merchandise, or services to  
 1267 the public shall:

HB 0323

2004

1268 (9) Provide to each customer a complete description of any  
 1269 monument, marker, or memorialization to be placed at the  
 1270 gravesite.

1271 Section 34. Section 497.361, Florida Statutes, is amended  
 1272 to read:

1273 497.361 Registration of monument establishments;  
 1274 contracts.--

1275 (1) No person shall conduct, maintain, manage, or operate  
 1276 a monument establishment, unless such an establishment pays a  
 1277 registration fee of \$200 and is registered with the department  
 1278 in accordance with this section.

1279 ~~(2) A monument establishment shall be a physical structure~~  
 1280 ~~that is located at a specific street address.~~

1281 (2)(3) No person may engage in the retail sale of  
 1282 monuments or monument services to consumers, unless they are  
 1283 affiliated with a monument establishment, funeral establishment,  
 1284 or cemetery.

1285 (3)(4) The department, by rule, shall provide for biennial  
 1286 renewal of registrants and a renewal fee of \$150.

1287 (4)(5) Failure to deliver a monument within the specified  
 1288 timeframe shall be considered a breach of contract unless the  
 1289 monument establishment has a written agreement to extend the  
 1290 delivery date. The purchaser shall be entitled to a refund of  
 1291 all money paid for the merchandise. Such refund shall be made  
 1292 within 30 days after receipt by the monument establishment of  
 1293 the purchaser's written request for a refund. This subsection  
 1294 does not preclude the purchase and installation of a new  
 1295 monument from any other registered monument establishment or  
 1296 certificateholder. ~~Monuments shall be delivered as established~~

HB 0323

2004

1297 ~~by this chapter and installed no later than 120 days after the~~  
 1298 ~~date of sale. The establishment may request two 30-day~~  
 1299 ~~extensions. Extensions may be granted by the executive director.~~

1300 (5) All contracts with the public must be approved by the  
 1301 department and must provide a complete description of any  
 1302 monument, marker, or related product to be delivered.

1303 Section 35. Section 497.365, Florida Statutes, is created  
 1304 to read:

1305 497.365 Regulation of monument establishments.--

1306 (1) The department shall establish an inspection program  
 1307 for all monument establishments in accordance with the  
 1308 requirements of this chapter.

1309 (2) The department shall adopt rules that shall include  
 1310 requirements for the approval of contracts for memorials and  
 1311 related products, written complaint procedures and mandatory  
 1312 response to consumer complaints, disclosure to the public as to  
 1313 the form of ownership, the fingerprinting of owners, and  
 1314 appropriate recordkeeping.

1315 (3) Nothing in the department's authority or any other  
 1316 provisions of this chapter shall unreasonably restrict  
 1317 competition or permit the restraint of trade and commerce.

1318 Section 36. Section 497.371, Florida Statutes, is created  
 1319 to read:

1320 497.371 Monument establishments; business location.--

1321 (1) A monument establishment shall be a place at a  
 1322 specific street address or location consisting of an office and  
 1323 display area for monuments, markers, and related products. The  
 1324 place where the establishment is located must comply with the  
 1325 local government zoning regulations and may not be located on

HB 0323

2004

1326 tax-exempt property.

1327 (2) The monument establishment must be a full-service  
 1328 monument location open to the public during normal business  
 1329 hours, with facilities to design, inscribe, and install  
 1330 monuments and related products.

1331 (3) A person may not operate a monument establishment or  
 1332 install monuments, markers, and related products in this state  
 1333 unless the person is registered by the department under s.  
 1334 497.361 or holds a valid certificate of authority issued under  
 1335 s. 497.379.

1336 Section 37. Section 497.379, Florida Statutes, is created  
 1337 to read:

1338 497.379 Monument establishments; certificate of authority  
 1339 required to sell preneed contracts.--A monument establishment,  
 1340 including an existing registered or unregistered monument  
 1341 establishment, may not sell a preneed contract without first  
 1342 having obtained a valid certificate of authority from the  
 1343 department. A person may not be issued a certificate of  
 1344 authority as a monument establishment to sell preneed contracts  
 1345 unless such person has at least 3 years' experience in the  
 1346 operation and management of an establishment selling monuments,  
 1347 markers, and related products. A certificate of authority may  
 1348 not be transferred or assigned.

1349 Section 38. Section 497.385, Florida Statutes, is created  
 1350 to read:

1351 497.385 Monument establishments; sales  
 1352 representatives.--Each person selling monuments, markers, and  
 1353 related products for a monument establishment must register with  
 1354 the board, including any person otherwise registered or licensed

HB 0323

2004

1355 pursuant to chapter 470 or this chapter. A person selling  
 1356 monuments, markers, and related products for a monument  
 1357 establishment that has been issued a certificate of authority  
 1358 must register as a preneed agent pursuant to the requirements of  
 1359 this chapter.

1360 Section 39. Section 497.391, Florida Statutes, is created  
 1361 to read:

1362 497.391 Monument establishments; preneed contracts.--A  
 1363 monument dealer or establishment may not write a preneed  
 1364 contract unless that contract has been approved by the board.  
 1365 Any monument dealer or establishment that is paid, collects, or  
 1366 receives funds under a preneed contract for services or  
 1367 merchandise must comply with the provisions of ss. 497.413 and  
 1368 497.417.

1369 Section 40. Section 497.395, Florida Statutes, is created  
 1370 to read:

1371 497.395 Monument establishments; financial requirements.--

1372 (1) For the purposes of qualifying for a certificate of  
 1373 authority, a monument establishment must have a minimum net  
 1374 worth of \$10,000. A monument establishment holding a certificate  
 1375 of authority or an applicant for such certificate of authority  
 1376 must meet and maintain the requirements of this section on an  
 1377 annual basis in order to perform its obligation for all existing  
 1378 preneed contracts.

1379 (2) All monument establishments holding a certificate of  
 1380 authority or an applicant must submit its most recent year-end  
 1381 financial statements, including a balance sheet and income  
 1382 statement, with the certificate of authority application and  
 1383 annually thereafter as provided in s. 497.407(1). The financial



HB 0323

2004

1384 statement must be prepared in accordance with generally accepted  
 1385 accounting principles, as those principles have been defined by  
 1386 the Florida Board of Accountancy in the Florida Administrative  
 1387 Code. If the applicant does not have the minimum net worth as  
 1388 set forth in subsection (1), lacks sufficient liquid assets to  
 1389 satisfy current liabilities, or does not appear to have any  
 1390 substantial long-term assets, the department shall request  
 1391 additional financial information concerning financial statements  
 1392 and the statement of cash flow.

1393 (3) For the purposes of this section, the term "total  
 1394 preneed contracts" means the total retail value of all  
 1395 outstanding preneed contracts. There shall be an annual fee for  
 1396 the renewal of the monument establishment certificate of  
 1397 authority based on the following sales volume for total preneed  
 1398 contracts:

1399 (a) For a certificateholder that has total sales of \$1 or  
 1400 more but not more than \$50,000..... \$500.

1401 (b) For a certificateholder that has total sales of more  
 1402 than \$50,000 but not more than \$250,000..... \$750.

1403 (c) For a certificateholder that has total sales of more  
 1404 than \$250,000 but not more than \$500,000..... \$1,000.

1405 (d) For a certificateholder that has total sales of more  
 1406 than \$500,000..... \$1,250.

1407 (4) In the case of a monument establishment holding a  
 1408 certificate of authority or a licensed dealer applicant offering  
 1409 preneed sales through a subsidiary agent as provided in Rule  
 1410 69K-5.0015, Florida Administrative Code, the certificateholder  
 1411 or applicant must execute a guarantee agreement with respect to  
 1412 any contract obligations resulting from preneed sales of such a

HB 0323

2004

1413 selling agent.

1414 (5) If the certificateholder or applicant does not meet  
 1415 the financial requirements in subsection (1), the entity may  
 1416 voluntarily submit to the board additional evidence or agree to  
 1417 additional oversight as to meeting the requirements of  
 1418 subsection (1) as a condition of receiving or retaining a  
 1419 certificate of authority. Such additional evidence or oversight  
 1420 shall include, as appropriate:

1421 (a) An agreement to submit monthly financial statements of  
 1422 the entity;

1423 (b) An agreement to submit quarterly financial statements  
 1424 of the entity;

1425 (c) An appraisal of the entity's property or broker's  
 1426 opinion of the entity's assets;

1427 (d) A credit report of the entity or its principal owners;

1428 (e) Subordination-of-debt agreement from the entity's  
 1429 principal owners;

1430 (f) An indemnification or subrogation agreement binding  
 1431 the entity and principal owners;

1432 (g) A guarantee agreement for the entity from its  
 1433 principal owners;

1434 (h) Written explanation of past financial activity;

1435 (i) Submission of the 12-month projected business plan  
 1436 that includes:

1437 1. A statement of cash flows;

1438 2. Pro forma income statements, with sources of revenues  
 1439 identified; and

1440 3. Marketing initiatives;

1441 (j) Submission of previous department examination reports;

HB 0323

2004

1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1470

or

(k) An agreement of 100-percent voluntary trust by the entity.

Section 41. Subsections (1), (3), and (4) of section 497.405, Florida Statutes, are amended to read:

497.405 Certificate of authority required.--

(1)(a) No person, including any cemetery exempt under s. 497.003, may sell, advertise to sell, or make an arrangement for a preneed contract without first having a valid certificate of authority.

(b) No person, including any cemetery exempt under s. 497.003, may sell, advertise to sell, or make an arrangement for services, merchandise, or burial rights on a preneed basis unless such person is authorized pursuant to this chapter to provide such services, merchandise, or burial rights on an at-need basis.

(3) No person may obtain a certificate of authority under this chapter for the preneed sale of services unless such person or its agent, in the case of a corporate entity, holds a license as a funeral establishment or cemetery company, ~~or~~ registration as a direct disposal establishment under chapter 470, or certification as a monument establishment under this chapter.

(4) The provisions of this section do not apply to religious-institution-owned cemeteries exempt under s. 497.003(1)(d), in counties with a population of at least 960,000 persons on July 1, 1996, with respect to the sale to the religious institution's members and their families of interment rights, mausoleums, crypts, cremation niches, cremation interment containers, vaults, liners, urns, memorials, vases,

CODING: Words **stricken** are deletions; words **underlined** are additions.

HB 0323

2004

1471 foundations, memorial bases, floral arrangements, monuments,  
 1472 markers, engraving, and the opening and closing of interment  
 1473 rights, mausoleums, crypts, ~~and~~ cremation niches, and cremation  
 1474 interment containers, if such cemeteries have engaged in the  
 1475 sale of preneed contracts prior to October 1, 1993, and maintain  
 1476 a positive net worth at the end of each fiscal year of the  
 1477 cemetery.

1478 Section 42. Subsection (4) of section 497.419, Florida  
 1479 Statutes, is amended, and subsection (11) is added to said  
 1480 section, to read:

1481 497.419 Cancellation of, or default on, preneed  
 1482 contracts.--

1483 (4) Each certificateholder shall provide in conspicuous  
 1484 type in its contract that the contract purchaser may cancel the  
 1485 contract and receive a full refund within 30 days after ~~of~~ the  
 1486 date of execution of the contract, except for those amounts  
 1487 allocable to any burial rights, merchandise, or services that  
 1488 have been used by the purchaser. The failure to make such  
 1489 provision shall not impair the contract purchaser's right to  
 1490 cancellation and refund as provided in this section.

1491 (11) Failure to install a monument within 180 days after  
 1492 interment shall be considered a breach of contract unless the  
 1493 certificateholder has a written agreement to extend the  
 1494 installation date. The purchaser shall be entitled to a refund  
 1495 of all money paid for the merchandise. Such refund shall be made  
 1496 within 30 days after receipt by the certificateholder of the  
 1497 purchaser's written request for a refund. Nothing in this  
 1498 subsection shall preclude the purchase and installation of a new

HB 0323

2004

1499 monument from any other registered monument establishment or  
 1500 certificateholder.

1501 Section 43. Subsection (4) of section 497.436, Florida  
 1502 Statutes, is amended to read:

1503 497.436 Inactive and revoked certificateholders.--

1504 (4) Upon receipt of the notice, in order to protect the  
 1505 contract purchaser, the board may:

1506 (a) ~~shall~~ Review the certificateholder's:

1507 1.(a) Trust funds.

1508 2.(b) Trust agreements.

1509 3.(e) Evidence of all outstanding preneed contracts.

1510 (b) Perform other procedures the board deems necessary.

1511 Section 44. Except as otherwise provided herein, this act  
 1512 shall take effect July 1, 2004.