

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 854

**INTRODUCER:** Regulated Industries Committee; Banking and Insurance Committee; and Senator Hukill

**SUBJECT:** Funeral, Cemetery, and Consumer Services

**DATE:** January 26, 2016      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 854 amends ch. 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act (act), and the licensure requirements related to funerals and cemeteries regulated by the Department of Financial Services (department) and the Board of Funeral, Cemetery, and Consumer Services (board).

The bill:

- Creates definitions;
- Requires an applicant for embalmer apprentice to be of good character;
- Requires an e-mail address for licensure and allows the department to use email as a means of notification;
- Requires the department adopt rules regarding discipline for miscellaneous financial errors;
- Specifies that disputes regarding the division of cremated remains must be resolved by the courts;
- Specifies cremated remains are not property and not subject to partition by a court unless a legally authorized person consents;
- Provides a consistent deposit requirement for graves, mausoleums, and columbaria;
- Specifies that care and maintenance (C&M) trusts must be maintained by a cemetery company so that the grounds, structures, and improvements of a cemetery are maintained;
- Requires withdrawals from C&M trusts to cemetery companies must be done through one of two specified methods;

- Requires the board and department to adopt rules concerning C&M trusts;
- Clarifies that the C&M trust annual report must include the fair market value of the trust;
- Prohibits a trustee from investing in or counting as assets life insurance policies or annuity contracts and allows the trustee to allocate and divide capital gains and losses;
- Grants the board rulemaking authority to classify items sold in preneed contracts as services, cash advances, or merchandise;
- Requires a preneed licensee to deposit all preneed contract funds into a trust upon electing inactive status;
- Clarifies when a preneed contract may be made irrevocable, for purposes of a person qualifying for assistance programs such as Medicaid and Supplemental Security Income;
- Requires preneed licensees to provide an annual report to the department on trust accounts;
- Repeals the servicing agent exemption from preneed licensure;
- Repeals s. 497.461, F.S., which allows the use of surety bonding in lieu of the requirement for a preneed licensee to establish a trust for the deposit of funds; those licensees that have bonds in place prior to July 1, 2016 may continue to use them; and
- Requires cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to the Agency Health Care Administration for deposit into the Medical Care Trust Fund after the beneficiary's final disposition

The bill is not expected to have a fiscal impact on the state. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2016.

## II. Present Situation:

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act (act), provides for the regulatory oversight of the death care industry, which includes the following individual and entity licenses:

- Brokers of burial rights;
- Cemeteries;
- Central embalming facilities;
- Cinerator facilities;
- Direct disposer and direct disposal establishments;
- Embalmers (including apprentices, interns, and by endorsement);
- Funeral directors and funeral establishments (including interns);
- Preneed, preneed branches, and preneed sales agents;
- Monument establishments (including builders and retailers) and monument establishment sales agents;
- Refrigeration facilities;
- Removal facilities; and
- Training facilities.<sup>1</sup>

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<sup>1</sup> Department of Financial Services, Division of Funeral, Cemetery, and Consumer Services, *Who We Regulate: Regulated Categories & Number of Licensees*, (Oct. 10, 2014), available at <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last accessed Jan. 23, 2016).

The act is administered jointly by the Division of Funeral, Cemetery, and Consumer Services (division) of the Department of Financial Services (department) and the Board of Funeral, Cemetery, and Funeral Services (board).<sup>2</sup>

### **Legally Authorized Persons & the Disposition of Human Remains**

The act sets forth the order or priority of persons (legally authorized persons) who are authorized to direct the disposition of human remains. The priority order of a legally authorized person is:

- The deceased, when a written inter vivos<sup>3</sup> authorizations and directions are provided;
- The person designated by the deceased as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the deceased's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the deceased died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard;
- The surviving spouse;<sup>4</sup>
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Another person in the next degree of kinship.<sup>5</sup>

However, current usage of the above terms throughout the act is inconsistent, leading to uncertainty and potential disputes among heirs regarding the disposition of human remains. Such disputes can also involve funeral homes and other licensees under the act, because they receive, store, and process the remains.<sup>6</sup>

### **Scope of Funeral Directing**

The act sets forth the scope of the practice of funeral directing which may be performed only by a licensed funeral director. Currently, one of the permitted practices is planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains with the decedent's family, friends, or other person responsible for such services.<sup>7</sup>

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<sup>2</sup> Section 497.103, F.S.

<sup>3</sup> An *inter vivos* authorization is one made during the life of the deceased "between the living; from one living person to another." See BLACK'S LAW DICTIONARY, *What is INTER VIVOS*, available at <http://thelawdictionary.org/inter-vivos/> (last accessed Jan. 23, 2016).

<sup>4</sup> Unless the spouse has been arrested for committing an act of domestic violence, as defined in s. 741.28, F.S., against the deceased that resulted in or contributed to the death of the deceased. Section 497.005(39)(c), F.S.

<sup>5</sup> Section 497.005(39), F.S. The definition also identifies persons who may willingly assume responsibility as the legally authorized person when no family member exists or is available.

<sup>6</sup> Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015) (on file with the Senate Committee on Regulated Industries).

<sup>7</sup> Section 497.372, F.S.

### **Applicants for the Embalmer Apprentice Program**

Applicants for the following licenses require demonstration of good character:

- Cemetery companies – s. 497.263(2)(p), F.S.;
- Brokers of burial rights – s. 497.281(2)(d), F.S.;
- Embalmers and embalmers by endorsement – ss. 497.368(1)(c) and 497.369(1)(d), F.S.;
- Funeral directors and funeral directors by endorsement - ss. 497.373(1)(c) and 497.374(1)(d), F.S.;
- Funeral establishments – s. 497.380(4), F.S.;
- Removal services, refrigeration services, and centralized embalming facilities - s. 497.385(1)(a) and (2)(f), F.S.;
- Preneed licensees – s. 497.453(2)(f), F.S.;
- Direct disposers and direct disposal establishments – ss. 497.602(3)(f) and 497.604(3)(c), F.S.; and
- Cinerator facilities – s. 497.606(3)(d), F.S.

However, no such requirement currently exists for applicants for the embalmer apprentice program.

### **E-mail Notifications**

The act requires the department to administer a licensing system to process and track applications, renewals, and fees. The department is authorized to require specified information in its application forms, such as the applicant's work history, criminal history, and business plans. Application forms adopted by rule require the e-mail address of the applicant or licensee as a means of correspondence for the department.<sup>8</sup>

### **Burial Fees**

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains or cremated remains.<sup>9</sup> While cemetery companies may collect fees for the sale of burial rights, merchandise, or services, they may only charge certain fees for the use of any burial right, merchandise, or service, such as sales tax and any interest on unpaid balances. Another permissible fee is the cost of transferring burial rights from one purchaser to another, which current law caps at \$50. The price cap has not been adjusted since 1993.<sup>10</sup>

### **Sale of Personal Property or Services by Cemetery Companies**

Currently, s. 497.283, F.S., requires cemetery companies that sell personal property or services in connection with burial or commemorative services to deliver such goods or to perform such services within 120 days of receiving final payment, except for preneed contracts. "Delivery" of goods means actual delivery and installation at the time of need or at the request of the owner or

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<sup>8</sup> Section 497.141, F.S.

<sup>9</sup> Section 497.005(7), F.S.

<sup>10</sup> Section 497.277, F.S.

owner's agent.<sup>11</sup> However, s. 497.283(2)(c), F.S., provides an alternative delivery method, limited to those manufacturers of outer burial receptacles who sell to cemetery companies and funeral establishments and show evidence of "financial responsibility" as set forth in s. 497.461, F.S. (relating to surety bonding as an alternative to trust deposit for preneed licensees).

### **Care & Maintenance Trust Funds**

Cemetery companies that own or control cemetery lands and property are required to ensure that the grounds, structures, and improvements of a cemetery are well cared for and maintained in a proper and dignified condition.<sup>12</sup> To achieve this, the act requires cemetery companies to establish care and maintenance (C&M) trust funds with state or national trust companies or banks or savings and loan associations with trust powers.<sup>13</sup>

### ***Net Income Trusts vs. Total Return Unitrusts***

Since 1959, the act has required that the net income of these trust funds may only be used for the care and maintenance of the cemetery and monuments (excluding the cleaning, refinishing, repairing, or replacement of monuments) and reasonable costs of administering care, maintenance, and the trust fund.<sup>14</sup>

While the act does not define "net income," it has been understood to include only cash received by the trust as interest or dividends from trust investments, not capital gains (which are treated as accretions to principal, not income). This view has been largely informed by trust practices codified in other parts of Florida law. As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current interest or cash dividends (e.g., government securities and corporate bonds), as opposed to investing in items that provide capital appreciation (e.g., corporate stocks).<sup>15</sup> The act does not specify the permissible mix of income-producing versus capital appreciation investments for C&M trusts funds, but authorizes trustees of a C&M trust fund to invest only in those investments as are allowed for the State Board of Administration.<sup>16</sup>

Another type of trust known as the "total return trust" allows the trustee to focus on the total return and to maximize growth of both income and principal by accounting for both income and capital appreciation. One type of total return trust is the unitrust. With the unitrust, the trustee distributes a percentage of the trust based on the fair market value of its assets, regardless of income earned or the original amount invested in the trust.<sup>17</sup> As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no

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<sup>11</sup> Section 497.283(2)(b), F.S.

<sup>12</sup> Section 497.262, F.S.

<sup>13</sup> Section 497.266, F.S. The appointments of these institutional trustees are subject to the approval of the board. These trustees are subject to investment limitations and annual financial reporting requirements in the act. *See* s. 497.269, F.S.

<sup>14</sup> Section 497.267, F.S.

<sup>15</sup> Department of Financial Services, Division of Funeral, Cemetery and Consumer Services, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis*, p. 4 (Dec. 15, 2015), (on file with the Senate Committee on Regulated Industries).

<sup>16</sup> *Id.* *See also* ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the State Board of Administration, s. 215.47(1), F.S.

<sup>17</sup> Lauren Moore, American Cemetery, *Perpetual Care Roundtable*, pp. 32-33, (January 2014) (on file with the Senate Committee on Regulated Industries).

more than 5 percent, of the total fair market value of the trust for annual care and maintenance.<sup>18</sup> Chapter 731 and s. 738.1041, F.S, currently provide the laws and rules for unitrusts.

Typically, a unitrust:

- Produces a return of 2 to 4 percent greater than an income trust;
- Allows cemetery operators to receive larger distributions (on average and over time);
- Grows principal at a greater rate than an income trust; and
- Shows exactly how much funds will be available for withdrawal in advance, which is important for budgeting purposes.<sup>19</sup>

According to the department, the unitrust concept as applied to cemetery C&M trusts has been recently approved for use in three states (Iowa, Missouri, and Tennessee).<sup>20</sup>

### **Preneed Contracts**

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell burial merchandise or burial service in the future.<sup>21</sup> Examples of “burial merchandise” are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.<sup>22</sup>

Preneed sales requires a seller of burial merchandise or service to obtain a preneed license and also be licensed as a funeral establishment, cemetery company, direct disposal establishment, or monument establishment.<sup>23</sup>

## **III. Effect of Proposed Changes:**

### **Definitions**

**Section 1** amends s. 497.005, F.S., to define the following terms:

- “Beneficiary” means a natural person expressly identified in a preneed contract as the person for whom funeral merchandise or services are intended;
- “Capital gain” or “capital loss” means a change in the value of a capital asset, such as investment or real estate, which gives the asset a different worth than the purchase price. The gain or loss is not realized until the asset is sold;
- “Fair market value” means the fair market value of assets held by a trust as of a specific date, assuming all assets of the trust are sold on that specific date;

<sup>18</sup> *Supra* note 15 at 5.

<sup>19</sup> *Supra* note 17 at 33.

<sup>20</sup> *Supra* note 15 at pp. 2, 5, 11-15. Cemetery unitrusts may be used in Iowa beginning in 2016, while they were authorized in Missouri in 2009 and in Tennessee in 2006. It appears unitrusts have typically been used for the long-term higher education and charitable foundation endowment trusts.

<sup>21</sup> Section 497.005(56), F.S.

<sup>22</sup> Section 497.005(6) and (7), F.S.

<sup>23</sup> Section 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

- “Income” means earnings on trust assets, including interest, dividends, and other income earned on the principal;
- “Net income” means, in relation to a trust, ordinary income minus any income distributions for items such as trust expenses. For purposes of this definition, “ordinary income” means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived from the use of the trust principal, but does not include capital gains or capital losses;
- “Purchaser” means a natural person who has executed a preneed contract with or seeks at-need funeral merchandise or services from a licensee; and
- “Total return withdrawal percentage” means a percentage, not to exceed 5 percent, of the fair market value of a trust.

### **Disciplinary Grounds**

**Section 4** amends s. 497.152, F.S., to replace the term “his or her representative or legal guardian” with “a legally authorized person.” The board currently provides by rule the criteria for identifying minor, nonwillful trust remittance deficiencies. If the remittance deficiencies falling within such criteria are fully corrected within 30 days after notice, then they do not constitute grounds for disciplinary action *or a fine*.

### **Cremated Remains**

**Section 30** amends s. 497.607, F.S., to add the term “legally authorized” person and clarifies that the legally authorized person’s written authorization to perform a cremation may include a declaration of intent as to the cremation procedure. The bill also specifies that cremated remains are not property and are not subject to partition by a court. Any partition requires consent of the appropriate legally authorized person.

### **Embalmer Apprentice Applicants**

**Section 15** amends s. 497.371, F.S., to specify that an applicant for the embalmer apprentice program cannot be issued a license by the board unless it determines the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

### **Email**

**Sections 2 and 3** amend ss. 497.141 and 497.146, F.S., to include an email address as information the department can require for licensure and allows the department to use email as a means of notification.

### **Care & Maintenance Trust Funds**

**Section 8** creates s. 497.2675, F.S., as a C&M trust distribution statute. Specifically, this section:

- Requires the board and department to adopt rules in accordance with ss. 497.267 and 497.268, F.S., that must include:

- Reporting requirements for a cemetery licensed under ch. 497, F.S., including the requirement that specific reports be made on forms designed and approved by the board by rule; and
- Rules addressing a cemetery licensed under ch. 497, F.S., who's pro rata share of the fair market value of the trust has not grown over a 3-year average, including limiting withdrawals from the C&M trust fund, and any exceptions approved by the board.
- Requires each cemetery company licensed under ch. 497, F.S., to select one of the two methods for withdrawals from the cemetery company's C&M trust fund:
  - *Net income withdrawal method*, which allows the net income to be withdrawn from the trust, as earned, on a monthly basis; or
  - *Total return withdrawal method (unitrust)*, where a licensee must multiply the average fair market value of its pro rata share of the trust by the total return withdrawal percentage and may withdraw one-fourth of that amount at least quarterly beginning the first quarter of the new trust year. The initial total return withdrawal percentage elected by the licensee may not increase the total return withdrawal percentage for that quarter. For purposes of this method, "average fair market value" means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:
    - If assets are added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition is not included; and
    - If assets are distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, as defined in s. 738.1041, F.S., the amount of each distribution is subtracted from all other years in which such distribution is not included.
- Requires taxes on capital gains, if any, to be paid from the trust principal, without regard to the withdrawal method selected.

**Sections 6 and 7** update financial and trust terms in existing C&M trust statutes:

- **Section 6** amends s. 497.266, F.S., to substitute "assets" for "corpus" and provide that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. The bill also provides that the trustee may distribute "withdrawals" from the trust instead of "principal and income."
- **Section 7** amends s. 497.267, F.S., governing the disposition of monies from a C&M trust, to remove the term "net income" and replace it with "withdrawals." This change now requires that withdrawals from the C&M trust fund must be used only for the care and maintenance of the cemetery. The bill also requires the cemetery company, at that the time of sale or receiving of an initial deposit, to provide a written instrument that specifically states the purposes for which withdraws from the trust fund must be used. The revision is necessary to accommodate the use of a unitrust, as withdrawals are not based on the net income of the trust under **Section 8** of the bill.

**Section 10** amends s. 497.269, F.S., to clarify that the annual report must record the fair market value of the C&M trust fund.



## **Burial Fees**

**Section 9** amends s. 497.268, F.S., to provide a consistent deposit requirement for graves, mausoleums, and columbaria which are all “burial rights” and clarify that 10 percent of all sales of burial rights must be deposited into the C&M trust fund. A \$25 minimum must be deposited for each post-1993 sale of a burial right, and \$25 for each burial right provided without charge.

## **Preneed Contracts**

**Section 5** amends the rulemaking authority in s. 497.161, F.S., to provide the board with the authority to make rules that establish conditions of use for insurance as a funding mechanism for a preneed contract, if such rules are not inconsistent with part IV of the act (relating to preneed sales) and the Florida Insurance Code.

**Section 18** amends s. 497.452(2)(c), F.S., to repeal the servicing agent exemption from preneed licensure. This exemption is not currently used.

**Section 19** amends s. 497.454, F.S., to allow for approval of “electronic or paper” preneed contracts and remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

**Section 21** amends s. 497.458, F.S., which specifies the methods by which proceeds received on preneed contracts may be distributed. The bill grants the board rulemaking authority to classify items sold in preneed contracts as services, cash advances, or merchandise. Under current law and in the bill, these three different types of items trigger different trust deposit requirements.

The bill requires the trustee to file an annual report with the department regarding each preneed trust account held by a trustee at any time during the previous calendar year. The report must contain information identifying the trustee; the licensee to whom the report relates; the trust account number; the beginning and ending trust balance; and, as may be specified by department rule, a list of receipts showing the date and amount of any disbursement. The report must be signed by the trustee’s account manager and be formatted and submitted pursuant to department rule. The first report is due April 1, 2018, and subsequent annual reports must be submitted on or before April 1.

The bill prohibits a trustee from investing in or counting as assets life insurance policies or annuity contracts. Trust investments in real estate may not exceed 25 percent of trust assets. The bill allows the trustee to allocate and divide capital gains and losses. Current law also allows the allocation and division of assets, liabilities, income, and expenses.

All references to s. 497.461, F.S., are deleted because it is repealed in **Section 24**.

**Section 22** amends s. 497.459(6)(a), F.S., to specify that preneed contracts cannot restrict any purchaser who is the beneficiary of the preneed contract and is a qualified applicant for, or recipient of, Medicaid, Supplemental Security Income, or temporary cash assistance from making her or his contract irrevocable. Additionally, the bill clarifies that a preneed contract

made irrevocable pursuant to this section cannot be canceled during the life or after the death of the contract purchaser or beneficiary.<sup>24</sup>

The bill requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration for deposit into the Medical Care Trust Fund after the beneficiary's final disposition.

**Section 24** repeals s. 497.461, F.S., which currently allows a preneed licensee to use surety bonds instead of depositing moneys collected on preneed licensure sales into the trust. The use of surety bonds is not widely utilized within the industry. **Section 25** of the bill specifies that the repeal of s. 497.461, F.S., does not affect preneed licensees who have elected to maintain a surety bond in lieu of depositing funds into a trust as of July 1, 2016. **Section 26** of the bill eliminates the letter of credit as an alternative to trust deposits, as it primarily relates to the use of surety bonds that are being repealed in **Section 24**.

**Section 27** amends s. 497.464, F.S., to apply the trust deposit requirements of s. 497.458(1), (3), and (6), F.S., to alternative preneed contracts. Currently those requirements are not applicable. The bill also remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

**Section 28** amends s. 497.465, F.S., to provide that upon becoming inactive, a preneed licensee must cease all preneed sales to the public. All of the funds received on or after the date on which it became inactive from sales of preneed contracts sold before coming inactive must be deposited into the trust. The bill also removes the qualifier "unaudited or audited" from financial statements.

### Technical Changes

**Section 11** amends s. 497.273, F.S., and **Section 12** amends s. 497.274, F.S., to make technical changes that replace the terms "decedent or other" and "family or next of kin" with "legally authorized person."

**Section 13** amends s. 497.283, F.S., to remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

**Section 14** amends s. 497.286(3), F.S., to add the term "or legally authorized person."

**Section 16** amends s. 497.372, F.S., to clarify the duties of a funeral director.

**Section 17** amends s. 497.381, F.S., to replace the term "next of kin of a deceased person" with "legally authorized person."

**Section 20** amends s. 497.456, F.S., to remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24** and replaces "income" with the term "appreciation."

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<sup>24</sup> Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

**Section 23** amends s. 497.460, F.S., to add the term “fair market value” and replace the term “heirs or personal representative of the contract beneficiary” with “legally authorized person.”

**Section 29** amends s. 497.601, F.S., to replace the term “the decedent’s next of kin” with “legally authorized person.”

#### **Effective Date**

**Section 31** provides that the bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The unitrust proposal may provide a benefit to cemetery licensees in the form of increased annual distributions to licensed cemeteries to defray cemetery care and maintenance expenses.<sup>25</sup>

A preneed licensee may experience costs to provide the department with an annual trustee report. A preneed trustee may charge increased fees to provide the report, however, the department indicates that the trustees currently provide the necessary information to the licensees. The department estimated a recurring cost of \$250 annually for a preneed licensee.<sup>26</sup>

Licensees may have to provide email address to the department in order to maintain their licenses, including receipt of renewal notices via email.

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<sup>25</sup> Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015).

<sup>26</sup> *Id.*

C. **Government Sector Impact:**

The bill is not expected to have an impact on state funds.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The department will be required to develop rules to implement the provisions of the bill.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.141, 497.146, 497.152, 497.266, 497.267, 497.268, 497.269, 497.273, 497.274, 497.283, 497.286, 497.371, 497.372, 497.381, 497.452, 497.454, 497.456, 497.458, 497.459, 497.460, 497.462, 497.464, 497.465, 497.601, and 497.607.

This bill creates section 497.2675 of the Florida Statutes.

This bill repeals section 497.461 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/SB 854 by Regulated Industries on January 20, 2016:**

- The maximum \$50 fee cap in current law for charges paid for transferring burial rights from one purchaser to another is unchanged (*see* s. 497.277(2), F.S.)
- Current law requiring the deposit to a C&M trust for a preneed sale of merchandise remains the greater of 30 percent of the purchase price collected or 100 percent of the wholesale cost.
- Cremated remains are not property that may be partitioned (divided) by a court.

**CS by Banking and Insurance on January 11, 2016:**

The CS conforms to provisions in HB 473:

- Lines 5-6 change the definition of "purchaser" as compared to what was filed.
- Lines 58-78 amend s. 497.146, F.S., as it relates to email notification.
- Line 178 makes a technical cross-reference change.
- Lines 547-549 provides rulemaking authority regarding rules to classify items as merchandise, services, or cash advance.
- Lines 608-610 adds a provision prohibiting investment of preneed trust assets in insurance policies, and limits real estate investments to 25% of trust assets.
- Lines 669-672 adds language that certain preneed trust funds for unused irrevocable preneed contracts are to be remitted to an Agency for Health Care Administration trust fund.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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