

**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 Regulated Industries

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BILL: CS/SB 854

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Funeral, Cemetery, and Consumer Services

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	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>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

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

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SB 854 amends ch. 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act (act), which sets forth 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).

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 in a proper, dignified condition. Withdrawals from C&M trusts to cemetery companies, limited to a percentage of the C&M trust's fair market value, are allowed, as an alternative to withdrawals limited to the net income generated by a C&M trust. Comprehensive C&M trust distribution requirements require the use of one of these withdrawal methods. Rulemaking authority is granted to the board, subject to approval of the department.

A "preneed contract" is the sale of burial merchandise or burial service in advance. The deposit of certain amounts from the sale of preneed contracts into a trust for the benefit of the purchaser is required under existing law, but the deposit required for preneed sales of merchandise is revised. A preneed licensee must deposit all preneed contract funds into a trust prior to electing inactive status. The bill 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 (SSI). Cemetery companies must remit unexpended monies paid on irrevocable preneed

contracts to the Agency Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition.

Annual reporting to the department on preneed licensees trust accounts is required, and the servicing agent exemption from preneed licensure is repealed.

The bill also:

- Creates definitions;
- Adds an e-mail address as information that can be required for licensure and allows the department to use email as a means of notification;
- Requires the department to adopt rules regarding discipline for miscellaneous financial errors;
- Provides a consistent deposit requirement for graves, mausoleums, and columbaria;
- Clarifies that the annual report must record the fair market value of the care and maintenance trust fund;
- Removes the \$50 fee cap for transferring burial rights and allows the fee to be set by rule.
- Requires an applicant for embalmer apprentice to be of good character;
- Repeals s. 497.461, F.S., which currently 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
- Specifies cremated remains are not property, and that any disputes among heirs shall be resolved by the courts.

## II. Present Situation:

Chapter 497, F.S., entitled 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:<sup>1</sup>

- 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;
- Preneed, preneed branches, and preneed sales agents;
- Monument establishments and monument establishment sales agents;
- Refrigeration facilities;
- Removal services; and
- Training facilities.

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<sup>1</sup> DEPARTMENT OF FINANCIAL SERVICES DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, Who We Regulate: Regulated Categories & Number of Licensees, <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last accessed Jan. 19, 2016).

The act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services (division) and the Board of Funeral, Cemetery & Funeral Services (board).

### **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.

### **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 "legally authorized person" concept is similar to the Probate Code's order of preference in appointing a personal representative over an estate.<sup>2</sup>

The act sets the priority of legally authorized persons<sup>3</sup> as:

1. A written *inter vivos*<sup>4</sup> authorization made by the deceased;
2. The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent 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;
3. The surviving spouse;
4. A son or daughter of majority age;
5. A parent;
6. A sibling of majority age;
7. A grandchild of majority age;
8. A grandparent; or
9. Another person in the next degree of kinship.

However, current usage of the above terms throughout the act is inconsistent, leading to concerns of 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, and they are sometimes sued by the relative whose wishes regarding final disposition did not prevail.<sup>5</sup>

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<sup>2</sup> See s. 733.301, F.S.

<sup>3</sup> See s. 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>4</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, <http://thelawdictionary.org/inter-vivos/> (last accessed Jan. 19, 2016).

<sup>5</sup> Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015) (on file with the Committee on Regulated Industries).

## **Burial Fees**

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the internment, entombment, inurnment, or other disposition of human remains or cremated remains.<sup>6</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 the inception of this statute in 1993.

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

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

Applicants for the following licenses under the act 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.

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<sup>6</sup> See s. 497.005(7), F.S.

## 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.

## Cemetery Companies - Care & Maintenance Trust Funds

Cemetery companies that own or control cemetery lands and property are required by the act to ensure that the grounds, structures and improvements of a cemetery are well cared for and maintained in a proper and dignified condition.<sup>7</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>8</sup> In other states, these trusts are commonly known as "perpetual care trusts." Cemetery companies are required to set aside and deposit specified amounts from the sales of burial rights into their care and maintenance trust funds.

## 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. This net income approach is used by cemetery licensees to determine how much may be withdrawn and paid to them every year from their C&M trust fund.

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.<sup>9</sup> 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). This approach typically results in erosion of trust principal as a result of inflation and may negatively affect the trust's long-term growth. Currently, 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 (SBA).<sup>10</sup>

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<sup>7</sup> s. 497.262, F.S.

<sup>8</sup> The appointments of these institutional trustees are subject to the approval of the licensing authority. These trustees are subject to investment limitations and annual financial reporting requirements in the act.

<sup>9</sup> DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF FUNERAL, CEMETERY, AND CONSUMER SERVICES, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis ("DFS Unitrust Analysis")* (Draft), p. 4 (Dec. 15, 2015) (on file with the Committee on Regulated Industries).

<sup>10</sup> *Id.* See ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the SBA, s. 215.47(1), F.S.

Another type of trust, known as the “total return trust,” has attracted some interest among trust practitioners for C&M trust funds and perpetual care funds. As the name implies, 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. As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no more than 5 percent, of the total fair market value of the trust for annual care and maintenance. 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>11</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>12</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 advance. 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>13</sup>

Preneed sales are governed by part IV of the act, which requires sellers of funeral 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>14</sup>

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

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

The bill amends the act to accommodate unitrusts as an alternative option to the current net income approach for C&M trust funds.

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<sup>11</sup> Lauren Moore, *Perpetual Care Roundtable*, AMERICAN CEMETERY, at p. 33 (January, 2014) (on file with the Committee on Regulated Industries).

<sup>12</sup> *DFS Unitrust Analysis*, 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 largely been used in the long-term higher education and charitable foundation endowment trusts.

<sup>13</sup> s. 497.005(56), (6), and (7), F.S.

<sup>14</sup> s. 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

**Section 8** of the bill creates s. 497.2675, F.S., as a comprehensive C&M trust distribution statute, which requires the use of one of two methods for withdrawals from a care and maintenance trust and requires the board and department to adopt rules related to C&M trusts. Specifically, this section:

- Requires the board and department to adopt rules related to the withdrawals from C&M trust accounts in accordance with ss. 497.267 and 497.268, F.S., and the rules must include:
  - Reporting requirements for a cemetery licensed under this chapter, including the requirement that specific reports be made on forms designed and approved by the board by rule; and
  - Rules to address a cemetery licensed under this chapter whose pro rata share of the fair market value of the trust has not grown over a 3-year average, including limiting withdrawals from the care and maintenance trust fund, and any exceptions approved by the board.
- Requires each cemetery company licensed under this chapter to elect one of these two methods for withdrawals from the cemetery company's care and maintenance trust fund:
  - Net income withdrawal method.—Net income may be withdrawn from the trust, as earned, on a monthly basis; or
  - Total return withdrawal method (unitrust).—The 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 paragraph, “average fair market value” means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:
    1. If assets are added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition is not included; and
    2. If assets are distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, as defined in s. 738.1041, F.S., the amount of each distribution is subtracted from all other years in which such distribution is not included.
- Without regard to the withdrawal method selected, taxes on capital gains, if any, must be paid from the trust principal.

**Sections 6 and 7** of the bill update financial and trust terms in existing C&M trust statutes.

- **Section 6** of the bill amends s. 497.266, F.S., to substitute “assets” for “corpus” and provides that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. Additionally, the bill provides that the trustee may distribute “withdrawals” from the trust instead of “principal and income.”
- **Section 7** of the bill amends s. 497.267, F.S., governing the disposition of monies from a care and maintenance trust, to eliminate the requirement that withdrawals may only be from the net income of the trust. 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. The section retains the requirement that such monies may only be used for the care and maintenance of the cemetery.

**Section 10** of the bill 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** of the bill amends s. 497.268, F.S., to provide a consistent deposit requirement for graves, mausoleums, and columbaria which are all “burial rights” under the act, and clarifies 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.

**Section 13** amends s. 497.277(2), F.S., to delete the \$50 fee limitation for transferring burial rights and instead requires the fee to be set by rule.

### **Preneed Contracts**

**Section 5** of the bill amends the act’s rulemaking authority in s. 497.161, F.S., to provide authority for rules that establish conditions of use for insurance as a funding mechanism for preneed contract, if such rules are not inconsistent with part IV of the act (relating to preneed sales) and the Florida Insurance Code. According to the division, the intent of this change is to create clear rulemaking authority for the board’s existing rule 69K-8.005, F.A.C., relating to preneed contracts funded by life insurance, because the current statutory authority may be subject to challenge. The rule was adopted in 1996, prior to the implementation of legislative changes to the Administrative Procedure Act that significantly restricted rulemaking to clear grants of rulemaking authority.

**Section 19** amends s. 497.452(2)(c), F.S., to repeal the Servicing Agent Exemption from Preneed Licensure. This exemption is not currently used.

**Section 20** amends s. 497.454, F.S., to add “electronic or paper” preneed contracts and removes a cross-reference to s. 497.461, F.S., which is being repealed in **Section 25** of the bill.

**Section 22** amends s. 497.458, F.S., which requires the methods by which proceeds received on preneed contracts may be distributed. Under current law, if an item of merchandise is sold under a preneed contract, the greater of 30 percent of the purchase price collected, or 110 percent of the wholesale price, must be deposited in a trust for the benefit of the purchaser. Instead, the bill simply requires the deposit of 30 percent of the purchase price. Elimination of the wholesale price option reduces recordkeeping requirements for vendors and is administratively less burdensome, though in some circumstances it will decrease the amount deposited into the trust. The bill eliminates the method of determining wholesale cost of a preneed contract, which would no longer be necessary.

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 an annual report be provided to 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 for the trust account 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 provisions in the act relating to s. 497.461, F.S., are deleted to conform to the repeal of that section (**Section 25**).

**Section 23** of the bill amends s. 497.459(6)(a), F.S., to specify that the requirement that preneed contracts cannot restrict any purchaser who is a qualified applicant or recipient of Medicaid, Supplemental Security Income (SSI), or temporary cash assistance from making her or his contract irrevocable must also be the beneficiary of the preneed contract. 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>15</sup>

The bill requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition. This ensures that the state and federal governments recover their respective shares of the unexpended monies of the irrevocable contract.

**Section 25** of the bill repeals s. 497.461, F.S., which currently allows a preneed licensee to use surety bonds instead of depositing into the trust moneys collected on preneed licensure sales. The use of surety bonds is not widely utilized within the industry. **Section 26** 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 27** 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 25** of the bill.

**Section 28** of the bill amends s. 497.464, F.S., to apply the trust deposit requirements of s. 497.458(1), (3), and (6), to alternative preneed contracts. Currently those requirements are not applicable.

**Section 29** of the bill amends s. 497.465, F.S., to provide that prior to electing inactive status, the licensee must deposit into the trust all of the funds received from preneed contracts. This change is intended to clarify that the licensee cannot retain any of the funds and must put them into the

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<sup>15</sup> Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

trust account in their entirety. Additionally, the bill removes the qualifier “unaudited or audited” from financial statements.

### **Email**

**Sections 2 and 3** of the bill amend s. 497.141, F.S., and s. 497.146, F.S., respectively, 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.

### **Embalmer Apprentice Applicants**

**Section 16** amends s. 497.371, F.S., to require that an applicant for the embalmer apprentice program be of good character and not have demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

### **Cremated Remains**

**Section 31** amends s. 497.607, F.S., to specify that cremated remains are not property, and that any disputes among heirs shall be resolved by the courts. The bill adds the term “legally authorized” and clarifies the legally authorized person’s written authorization to perform a cremation, required before one may be legally performed, may include a declaration of intent as to the cremation procedure.

### **Definitions**

**Section 1** amends s. 497.005, F.S., to define the following terms under the Florida Funeral, Cemetery, and Consumer Services Act (act):

- “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.
- “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 subsection, “ordinary income” means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived from the use of the trust principal, but does not include capital gains or capital losses.
- “Purchaser” means a natural person who has executed a preneed contract with or seeks at-need funeral merchandise or services from a licensee.
- “Total return withdrawal percentage” means a percentage, not to exceed 5 percent, of the fair market value of a trust.

**Technical Changes**

**Section 4** amends s. 497.152, F.S., to make technical changes that replace the term “his or her representative or legal guardian” with “a legally authorized person.”

**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 14** amends s. 497.283, F.S., to remove a cross-reference to s. 497.461, F.S., which is being repealed in the bill.

**Section 15** amends s. 497.286(3), F.S., to make a technical change that adds the term “or legally authorized person.”

**Section 17** amends s. 497.372, F.S., makes a technical change clarifying the duties of a funeral director.

**Section 18** amends s. 497.381, F.S., to make a technical change that replaces the term “next of kin of a deceased person” with “legally authorized person.”

**Section 21** amends s. 497.456, F.S., to remove a cross-reference to s. 497.461, F.S., which is being repealed in the bill, and replaces “income” with the term “appreciation.”

**Section 24** amends s. 497.460, F.S., to make a technical changes that add the terms “fair market value” and “legally authorized person.”

**Section 30** amends s. 497.601, F.S., to make a technical change that replaces the term “the decedent’s next of kin” with “legally authorized person.”

**Effective Date**

**Section 32** provides that the bill takes effect 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; however, the division states there is too little experience with the concept among other state funeral and cemetery regulators to make specific projections.

The requirement for annual trustee reports to the department may increase costs to the approximately 370 preneed licensees in the state. The costs would be in the form of increased fees charged by preneed trustees to preneed licensees. The department indicated that the cost will be relatively insignificant, because the trustees already have and provide the information to the preneed licensees. The department also indicated that the recurring cost might be in the range of \$250 per licensee per year.<sup>16</sup>

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.141, 497.146, 497.152, 497.161, 497.266, 497.267, 497.268, 497.269, 497.273, 497.274, 497.277, 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.

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<sup>16</sup> Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015).

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**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 (AHCA) trust fund.

**B. Amendments:**

None.