



# Journal of the Senate

Number 4—Special Session B

Thursday, May 27, 1993

## CALL TO ORDER

The Senate was called to order by the President at 10:41 a.m. A quorum present—37:

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dyer	Johnson	Sullivan
Beard	Forman	Jones	Thomas
Boczar	Grant	Kirkpatrick	Turner
Brown-Waite	Grogan	Kiser	Weinstein
Burt	Gutman	Kurth	Wexler
Casas	Harden	McKay	Williams
Childers	Hargrett	Meadows	
Crist	Holzendorf	Scott	
Dantzler	Jenne	Siegel	

Excused: Senators Foley and Myers; Senator Dudley until 12:00 noon; periodically, the following conferees on CS for HB 39-B and SB 26-B: Senators Wexler, Siegel, Dantzler, Burt, Meadows and Bankhead.

## PRAYER

The following prayer was offered by James C. Vaughn, Jr., Reading Clerk:

Eternal God, as we pause for a moment of contemplation upon your mercy and goodness, may the poignant words of Dr. Benjamin Elijah Mays give comfort and strength to these Senators when he said: "To be able to stand the troubles of life, one must have a sense of mission and the belief that God sent her or him into the world for a purpose, to do something unique and distinctive; and that if they do not do it, life will be worse off because it was not done."

In your name we submit. Amen.

## PLEDGE

Senator Thomas led the Senate in the pledge of allegiance to the flag of the United States of America.

By direction of the President, the Secretary read the following proclamations:

### PROCLAMATION State of Florida Executive Department Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

WHEREAS, the Thirteenth Legislature of the State of Florida, under the Florida Constitution, 1968 Revision, convened in regular session on Tuesday, February 2, 1993, and adjourned sine die on Sunday, April 4, 1993, and

WHEREAS, by proclamation of the Governor dated May 13, 1993, as amended May 25, 1993, the Florida Legislature was called into special session to consider legislation authorizing the construction of additional prison capacity within the state correctional system and legislation appropriating monies sufficient to fund such prison expansion as well as other issues as specified within those proclamations, and

WHEREAS, as a result of sunset amendments made to the statute providing for the Florida Development Finance Corporation by the last regular session of the Florida legislature, certain private bond rating services placed low rating on the bonds issued by that corporation, and

WHEREAS, such low bond ratings impede the function of the Florida Development Finance Corporation by discouraging investors interested in purchasing such bonds, and

WHEREAS, the Florida Development Finance Corporation provides loans to small to medium sized Florida firms to encourage economic development and to allow improvement in Florida's industrial infrastructure, and

WHEREAS, it is appropriate to amend the sunset provisions of the statute to allow the Florida Development Finance Corporation to effectively fulfill its statutory duties.

NOW, THEREFORE, I, LAWTON CHILES, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1), Florida Constitution, do hereby amend the proclamation of the Governor issued May 13, 1993, as amended May 25, 1993, as follows:

In addition to the matters stated by the proclamation of the Governor of May 13, 1993, as amended May 25, 1993, the Legislature of the State of Florida is convened for the purpose of considering the following supplemental issue:

Legislation to amend the sunset provisions of the Florida Development Finance Corporation to allow legislative review of that agency, but ensure that the obligations of the corporation will be paid.



IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 27th day of May, 1993.

Lawton Chiles  
GOVERNOR

ATTEST:  
Jim Smith  
SECRETARY OF STATE

### PROCLAMATION State of Florida Executive Department Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

WHEREAS, the Thirteenth Legislature of the State of Florida, under the Florida Constitution, 1968 Revision, convened in regular session on Tuesday, February 2, 1993, and adjourned sine die on Sunday, April 4, 1993, and

WHEREAS, by proclamation of the Governor dated May 13, 1993, as amended May 25, and May 27, 1993, the Florida Legislature was called into special session to consider legislation authorizing the construction of additional prison capacity within the state correctional system and legislation appropriating monies sufficient to fund such prison expansion as well as other issues as specified within those proclamations, and

WHEREAS, as a result of sunset amendments made to the statute providing for the Florida Development Finance Corporation by the last regular session of the Florida legislature, certain private bond rating services placed low rating on the bonds issued by that corporation, and

WHEREAS, such low bond ratings impede the function of the Florida Development Finance Corporation by discouraging investors interested in purchasing such bonds, and

WHEREAS, the Florida Development Finance Corporation provides loans to small to medium sized Florida firms to encourage economic development and to allow improvement in Florida's industrial infrastructure, and

WHEREAS, it is appropriate to amend the sunset provisions of the statute to allow the Florida Development Finance Corporation to effectively fulfill its statutory duties.

WHEREAS, it is further appropriate to restate the subject matter of the amendment to the proclamation of the Governor issued May 27, 1993.

NOW, THEREFORE, I, LAWTON CHILES, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1), Florida Constitution, do hereby amend the proclamation of the Governor issued May 13, 1993, as amended May 25, and May 27, 1993, as follows:

The amendment to the proclamation by the Governor dated May 27, 1993, amending the proclamations of the Governor dated May 13 and May 25, 1993, is hereby restated to add the following matter for consideration by the Legislature of the State of Florida:

Legislation to amend or repeal the sunset provisions of the statute regarding the Florida Development Finance Corporation.



IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 27th day of May, 1993.

Lawton Chiles  
GOVERNOR

ATTEST:  
Jim Smith  
SECRETARY OF STATE

### MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Jennings, by two-thirds vote **SB 6-B** was withdrawn from the Committees on Corrections, Probation and Parole; and Appropriations.

On motion by Senator Boczar, by two-thirds vote **SB 34-B** was withdrawn from the Committees on Criminal Justice and Appropriations. The vote was:

Yeas—20      Nays—9

### MOTIONS

On motions by Senator Jennings, the rules were waived and by two-thirds vote **SB 20-B**, proposed **Senate Rule 1.444**, **SB 52-B**, **SB 58-B**, **CS for SB's 14-B**, **16-B** and **18-B** and **SB 6-B** were established as the Special Order Calendar this day.

On motions by Senator Jennings, the rules were waived and by two-thirds vote **CS for SB 8-B** was placed on the Special Order Calendar.

On motions by Senator Jennings, provisions of Rule 13.3 relating to committee meeting notices and provisions of Rule 2.39 relating to two-hour notice of amendments were waived; and the Committee on International Trade, Economic Development and Tourism was granted permission to meet at 2:00 p.m. this day until completion of the agenda.

On motion by Senator Thomas, the House was requested to return **CS for SB 42-B**.

### SPECIAL ORDER

**SB 20-B**—A bill to be entitled An act relating to legislative and public records; creating s. 11.0431, F.S., providing legislative intent, specifying public records of the legislative branch that are exempt from public disclosure, providing that certain records become public after a specified period, and defining public record; amending s. 11.26, F.S., relating to legislative employees, to conform; reenacting ss. 119.012 and 119.083(1)(a), F.S., relating to records associated with payment of dues and membership contributions by agencies and copyright of data process-

ing software created by agencies to incorporate the amendment to s. 119.011, F.S., in references thereto; amending s. 119.07, F.S., providing an exemption from public records requirements for records relating to certain allegations of employment discrimination, and certain medical information relating to agency officers and employees; amending s. 119.011, F.S., to include the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel within the meaning of "agency" for purposes of the public records law; creating s. 14.28, F.S., providing an exemption from public records and public meetings requirements for records relating to Board of Executive Clemency investigations and meetings between board members; amending s. 943.03, F.S., providing an exemption from public records requirements for records relating to certain investigations by the Department of Law Enforcement at the direction of the Governor, and providing for subsequent review and repeal; providing an effective date.

—was read the second time by title.

The Committee on Rules and Calendar recommended the following amendment which was moved by Senator Jennings:

**Amendment 1**—On page 3, strike lines 11 through 14 and insert:

(c) A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(d) A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(e) A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.

(Reletter existing paragraphs.)

Senators Grogan, Johnson and Boczar offered the following amendment to **Amendment 1** which was moved by Senator Grogan and failed:

**Amendment 1A**—On page 1, strike lines 12 through 28

Senator Jennings moved the following amendment to **Amendment 1** which was adopted:

**Amendment 1B**—On page 1, line 16, after "Legislature," insert: a member of the Legislature who is a supervisor of the legislative employee,

**Amendment 1** as amended was adopted.

The Committee on Rules and Calendar recommended the following amendment which was moved by Senator Jennings:

**Amendment 2**—On page 3, line 22, after "records" insert: , and who was a witness or the subject of the inquiry

Senator Dudley offered the following substitute amendment which was moved by Senator Jennings and adopted:

**Amendment 3**—On page 3, strike lines 18 through 22 and insert:

(e) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.

The Committee on Rules and Calendar recommended the following amendment which was moved by Senator Jennings:

**Amendment 4**—On page 6, line 27, insert:

(dd) Any active investigatory record of the chief inspector general or an agency inspector general is exempt from s. 119.07(1). An investigation is active if it is an ongoing investigation or inquiry or collection of information and evidence and it is continuing with a reasonable, good-faith anticipation of resolution in the foreseeable future. At the time a

report detailing the investigation is provided to the Governor or the head of an agency, the report and all associated records or work product shall no longer be exempt from s. 119.07(1).

Senator Jenne moved the following substitute amendment which was adopted:

**Amendment 5 (with Title Amendment)**—On page 6, line 27, insert:

(dd)1. *If certified pursuant to 2., an investigatory record of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the chief inspector general under s. 112.3189 is exempt from the provisions of subsection (1) until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Investigatory records are those records which are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General or by an agency inspector general, as named under the provisions of s. 112.3189, in the course of an investigation. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.*

2. *The Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, may certify such investigatory records require an exemption to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. The certification shall specify the nature and purpose of the investigation and shall be kept with the exempt records and made public when the records are made public.*

3. *The provisions of this paragraph do not apply to whistle-blower investigations conducted pursuant to the provisions of ss. 112.3187, 112.3188, 112.3189, and 112.31895.*

And the title is amended as follows:

In title, on page 1, strike lines 20 through 21 and insert: discrimination, certain medical information relating to agency officers and employees, and certain information relating to active investigations;

Senators Boczar, Johnson and Grogan offered the following amendment which was moved by Senator Boczar and failed:

**Amendment 6**—On page 3, strike lines 1 through 10

Senator Diaz-Balart moved the following amendment which was adopted:

**Amendment 7 (with Title Amendment)**—On page 7, strike lines 7 through 16, and renumber subsequent sections

And the title is amended as follows:

In title, on page 1, strike lines 26-31, and insert: the public records law; amending s. 943.03, F.S., providing an

On motion by Senator Jennings, by two-thirds vote **SB 20-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—31 Nays—6

**SB 52-B**—A bill to be entitled An act relating to corrections; amending s. 20.315, F.S.; creating the Youth Corrections Authority within the Department of Corrections; providing for an executive director of the authority; providing for the budget of the authority to be independent of the department; deleting the Youth Offender Program Office within the department; amending s. 958.011, F.S.; redesignating the Florida Youthful Offender Act as the Florida Serious and Chronic Young Offender Act; creating s. 958.022, F.S.; providing legislative policy with respect to serious and chronic young offenders; amending s. 958.03, F.S.; providing definitions; amending s. 958.04, F.S.; providing for judicial disposition of serious and chronic young offenders; creating s. 958.16, F.S.; limiting eligibility of a serious and chronic young offender or a youthful offender for gain-time, provisional release, or control release; authorizing the court

to recommend a release from incarceration for such offenders upon a recommendation by the Youth Corrections Authority; amending s. 958.19, F.S.; redesignating the Youth Corrections Program as the Serious and Chronic Young Offender Program; repealing s. 958.021, F.S., relating to legislative intent; providing an effective date.

—was read the second time by title.

The Committee on Health and Rehabilitative Services recommended the following amendment which was moved by Senator Forman:

**Amendment 1 (with Title Amendment)**—On page 31, between lines 5 and 6, insert:

Section 9. Upon consultation with the legislative appropriations and corrections committees, the Governor and Cabinet shall transfer such funds as are necessary to implement this act from the Department of Health and Rehabilitative Services to the Youth Corrections Authority, but not to exceed the funds necessary for 50 beds. These funds shall include, at a minimum, the pro-rata share of all necessary beds and costs related to indirect support and supervisory personnel.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 29, following the semicolon (;) insert: providing for transfer of moneys to implement this act and prescribing guidelines for such transfer;

Senator McKay moved the following amendment to **Amendment 1** which was adopted:

**Amendment 1A**—On page 1, line 17, strike "50" and insert: 80

**Amendment 1** as amended was adopted.

The Committee on Health and Rehabilitative Services recommended the following amendment which was moved by Senator Forman:

**Amendment 2**—On page 20, line 11, strike "Alleged to have committed" and insert: Arrested for

Senator McKay moved the following substitute amendment which was adopted:

**Amendment 3**—On page 20, strike lines 11 and 12, and insert:

(a) *Convicted of or been adjudicated delinquent for a predicate offense; or*

(b) *Convicted of or been adjudicated delinquent for a felonious offense and who has had*

The Committee on Health and Rehabilitative Services recommended the following amendment which was moved by Senator Bankhead and adopted:

**Amendment 4 (with Title Amendment)**—On page 17, lines 19 through 31; on page 18, lines 1 through 31; and on page 19, lines 1 through 4, strike all of said lines and renumber subsequent sections.

And the title is amended as follows:

In title, on page 1, lines 12, 13 and 14, strike: "creating s. 958.022, F.S.; providing legislative policy with respect to serious and chronic young offenders;"

On motion by Senator Thomas, by two-thirds vote **SB 52-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36 Nays—None

On motion by Senator Bankhead, consideration of **SB 58-B** was deferred.

**CS for SB's 14-B, 16-B and 18-B**—A bill to be entitled An act relating to funeral, cemetery, and crematory services; abrogating the repeal, under the Regulatory Sunset Act, of ch. 470, F.S., relating to funeral directing, embalming, and direct disposition; abrogating the repeal under s. 11.61, F.S., the Regulatory Sunset Act, of ch. 497, F.S.,

relating to cemeteries; abrogating the repeal, under the Regulatory Sunset Act, of ch. 639, F.S., relating to preneed funeral merchandise; providing for future repeal and legislative review of chs. 470, 497, 639, F.S.; providing an effective date.

—was read the second time by title.

Senators Sullivan, Dudley, Gutman, Hargrett, Johnson, Williams and Grant offered the following amendment which was moved by Senator Sullivan and adopted:

**Amendment 1 (with Title Amendment)**—On page 1, line 18, strike everything after the enacting clause and insert:

Section 1. Section 470.001, Florida Statutes, is amended to read:

470.001 Legislative findings and intent.—

(1) The Legislature finds that the practice of embalming, and funeral directing, and final disposition by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about embalmers and funeral directors and that the consequences of a wrong choice could endanger the public health and welfare. The only way to protect the public from the incompetent practice of embalming, and funeral directing, and final disposition is through the establishment of minimum qualifications for entry into such professions the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The Legislature further finds that the unregistered practice of direct disposition presents may present a danger to the public welfare and, therefore, deems it necessary to provide for the registration of all direct disposers, to provide against improper conduct by practitioners of direct disposition, and to establish swift and effective discipline for those these practitioners who violate the law.

Section 2. Section 470.002, Florida Statutes, 1992 Supplement, is amended to read:

470.002 Definitions.—As used in this chapter:

(1) "Department" means the Department of Business and Professional Regulation.

(2) "Board" means the Board of Funeral Directors and Embalmers.

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

(4) "Practice of funeral directing" means the performance by a licensed funeral director of any of those functions authorized by s. 470.0087 making, at need or preneed, arrangements for, or directing the arrangements for, the preparation and transportation of dead human bodies for final disposition; or using, in connection with one's name the words "funeral director," "licensed funeral director," "undertaker," or "mortician"; or offering or holding oneself out as offering such services. However, nothing herein shall be construed to require a direct disposer to be a funeral director nor shall it be construed to require an agent registered under chapter 639 to be a funeral director, provided such agent does not make or continue to make arrangements for final disposition after learning that the subject of such arrangements is deceased.

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

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

(7) "Funeral establishment" means a facility place licensed under this chapter where a funeral director or embalmer practices his funeral directing or embalming.

(8) "Direct disposal establishment" means a facility place registered under this chapter where a direct disposer practices direct disposition.

(9) "Direct disposer" means any person who is registered under this chapter in this state to practice direct disposition in this state.

(10) "Practice of direct disposition" means the cremation of human remains final disposition of a dead human body without preparation of the human remains body by embalming and without any attendant services or rites such as funeral or graveside services or the making of arrangements for such final disposition.

(11) "Final disposition" means the final disposal of a dead human body whether it be by, but not limited to, earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal. "Final disposition" does not include the disposal or distribution of ashes and residue of cremated human remains.

(12) "Funeral merchandise" or "merchandise" means any merchandise commonly sold in connection with the funeral, final disposition, or memorialization of human remains, including, but not limited to, caskets, outer burial containers, alternative containers, cremation containers, urns, monuments, private mausoleums, flowers, shrubs, benches, vases, acknowledgement cards, register books, memory folders, prayer cards, and clothing. "Funeral merchandise" means the goods, sold or offered for sale, including, but not limited to, a casket or alternative container, which is used in connection with the final disposition of a dead human body.

(13) "Funeral" or "funeral service" means the observances, services, or ceremonies held to commemorate the life of a specific deceased human being, and at which the human remains are present for dead human bodies.

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

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

(16) "Casket" means a rigid container which is designed for the encasement of human remains for burial and which is usually constructed of wood or metal, ornamented, and lined with fabric.

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

(18) "Legally authorized person" means the surviving spouse, son or daughter who is 18 years of age or older, parent, brother or sister 18 years of age or over, grandchild who is 18 years of age or older, or grandparent; any person in the next degree of kinship; the guardian of the dead person at the time of death; the personal representative of the deceased; or a public health officer.

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

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

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

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

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

(24) "Cremation" includes any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, reinterred, or otherwise further reduced in size or quantity.

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

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

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

Section 3. Section 470.003, Florida Statutes, is amended to read:

470.003 Board of Funeral Directors and Embalmers; membership; appointment; terms.—

(1) The Board of Funeral Directors and Embalmers is created within the Department of Business and Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be funeral directors licensed licensees under this chapter, no more than two of whom may be associated with a cemetery company through ownership interests or through employment with a company which has an ownership interest in a cemetery. The remaining two members must be residents of the state who have never been licensed as funeral directors or embalmers and who are in no way connected with a cemetery, the death care industry, or the practice of embalming, or funeral directing, or direct disposition. At least one consumer member of the board must be 60 years of age or older. No licensee on the board may be associated by employment or ownership with a funeral establishment or cemetery which is owned partly or wholly by a person, business, corporation, or other entity which is associated with another licensee on the board.

(3) The Governor shall appoint members for terms of 4 years, and such members shall serve until their successors are appointed.

(4) All provisions of chapter 455 and s. 20.165 relating to activities of regulatory boards shall apply.

Section 4. Section 470.005, Florida Statutes, 1992 Supplement, is amended to read:

470.005 Rulemaking authority of board and department.—

(1) The board is authorized to ~~adopt make such~~ rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public. *The department is authorized to adopt rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the department by this chapter and as may be necessary to protect the health, safety, and welfare of the public.*

(2) The board may adopt rules not inconsistent with law to define and regulate hazardous materials generated in connection with the practice of embalming, funeral directing, or direct disposition.

(3) The ~~board department~~ shall adopt rules which establish requirements for inspection of *direct disposal establishments, funeral establishments, and cinerator facilities cinerators*. Such rules shall include, but not be limited to, requirements to inspect for compliance with federal and state laws relating to the receiving, handling, storage, and disposal of biohazardous and hazardous waste.

(4) *The board may prescribe by rule a fee of up to \$25 for a duplicate license, registration, or certificate of authority and for a name change on a license, registration, or certificate of authority.*

Section 5. Section 470.006, Florida Statutes, is amended to read:

470.006 Licensure as an embalmer by examination; provisional license.—

(1) Any person desiring to be licensed as an embalmer shall apply to the department to take the licensure examination. The department shall examine each applicant who *has remitted an examination fee set by the board not to exceed \$200 plus the actual per applicant cost to the department for portions of the examination and who the board certifies has:*

(a) Completed the application form and remitted a *nonrefundable application an examination* fee set by the board not to exceed \$50 ~~\$250 plus the actual per applicant cost to the department for purchase of portions of the examination from the Conference of Funeral Service Examining Boards or a similar national organization.~~

(b) Submitted proof satisfactory to the ~~board department~~ that *the applicant he* is not less than 18 years of age and is a recipient of a high school degree or equivalent.

(c) Had no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the ability to practice embalming or the practice of embalming.

(d) Completed a course in mortuary science approved by the board which course embraces, at least, the following subjects: theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, and public health and sanitation.

(e) *Submitted proof of completion of a board-approved course on communicable diseases.*

(2) ~~If The department finds that the applicant has met all the requirements of subsection (1) and the other provisions of this chapter,~~ it shall license the applicant *as an embalmer* if he passes an examination on the subjects of the theory and practice of embalming, restorative art, pathology, anatomy, microbiology, chemistry, hygiene, public health and sanitation, and local, ~~and state,~~ *and federal* laws and rules relating to the disposition of dead *human* bodies; however, the board by rule may adopt the use of a national examination, such as the embalming examination prepared by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement.

(3) *Any applicant who has been approved for examination as an embalmer may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed embalmer for a limited period of 6 months as provided by rule of the board, for a fee of \$50. This provisional license may be renewed no more than one time. No applicant may shall be granted a license until he has completed a 1-year internship under a licensed embalmer.*

Section 6. Section 470.007, Florida Statutes, 1992 Supplement, is amended to read:

470.007 Licensure as an embalmer by endorsement; registration of a temporary embalmer.—

(1) The department shall issue a license by endorsement to practice embalming to an applicant who *has remitted an examination, upon applying to the department and remitting a fee set by the board not to exceed \$200 and who \$250, demonstrates to the board certifies that he:*

(a) *Has completed the application form and remitted a nonrefundable application fee set by the board not to exceed \$50.*

(b)1. Holds a valid license to practice embalming in another state of the United States, provided that, when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2.~~(b)1.~~ Meets the qualifications for licensure in s. 470.006, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state; and

2. ~~has~~ has successfully completed a state, regional, or national examination in mortuary science, which is substantially equivalent to or more stringent than the examination given by the department, within 10 years of the date of application.

(c) *Has submitted proof of completion of a board-approved course on communicable diseases.*

(2) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or more stringent than the examination and requirements in this state unless found otherwise by rule of the board. ~~Such presumption shall not arise until January 1, 1980.~~

(3) The department shall not issue a license by endorsement to any applicant who is under investigation or prosecution in another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation or prosecution is complete.

(4) Each applicant for licensure by endorsement must pass the examination on local, ~~and state,~~ *and federal* laws and rules relating to the disposition of dead human bodies which is required under s. 470.006 and which shall be given by the department.

(5) The board may adopt rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) ~~paragraph (1)(a)~~ and who is awaiting an opportunity to take the examination required by subsection (4) to register as a temporary embalmer. A registered temporary embalmer may work as an embalmer in a licensed funeral establishment under the ~~general direct~~ supervision of a licensed embalmer. Such registration shall expire 60 days after the date of the next available examination required under subsection (4); *however, the temporary registration may be renewed one time under the same conditions as initial issuance unless extended by the board for good cause.* The fee for registration as a temporary embalmer shall be set by the board and shall not exceed \$125, which shall be in addition to the fee required in subsection (1).

Section 7. Section 470.008, Florida Statutes, 1992 Supplement, is amended to read:

470.008 Registration of an embalmer intern.—

(1) Any person desiring to become an embalmer intern shall make application to the department on forms provided by the department, together with a nonrefundable fee not to exceed \$100. The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training is to be conducted. The embalmer intern shall intern under the supervision of a licensed embalmer.

(2) An applicant for internship shall meet the requirements of s. 470.006(1)(b) and (c) prior to being registered by the board as an intern.

(3) The board shall adopt rules establishing an internship program and criteria for intern training agencies and intern supervisors. Any funeral establishment where embalming is conducted may apply to the board for approval as an intern training agency.

(4) No funeral establishment designated as an intern training agency may ~~shall~~ exact a fee from any person obtaining intern training at such funeral establishment.

Section 8. Section 470.0087, Florida Statutes, is created to read:

470.0087 Practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(a) Selling or offering to sell funeral services on an at-need basis.

(b) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for such service; setting the time of the service; establishing the type of service to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

(c) Making, negotiating, or completing the financial arrangements for a funeral service on an at-need basis, provided that nonlicensed personnel may assist the funeral director in performing such tasks.

(d) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, a visitation or viewing. Such functions shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.

(e) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any funeral service held in a funeral establishment, cemetery, or elsewhere.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a certificateholder or registrant.

(g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such person is engaged in the practice of funeral directing or that such person is holding himself or herself out to the public as being engaged in the practice of funeral directing; provided, however, that

nothing in this paragraph shall prevent using the name of any owner, officer or corporate director of a funeral establishment, who is not a licensee, in connection with the name of the funeral establishment with which such individual is affiliated, so long as such individual's affiliation is properly specified.

(h) Managing or supervising the operation of a funeral establishment, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions.

(2) The practice of funeral directing shall not be construed to consist of the following functions:

(a) The phoning-in or faxing of obituary notices; ordering of flowers or merchandise; delivery of death certificates to attending physicians; or clerical preparation of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director or that are incidental to any of the functions specified above.

(b) Furnishing standard printed price lists and other disclosure information to the public by telephone or by providing such lists to persons making inquiry.

(c) Removing or transporting human remains from the place of death, or removing or transporting human remains from or to a funeral establishment, centralized embalming facility, refrigeration facility, cemetery, crematory, medical examiner's office, common carrier, or other locations as authorized and provided by law.

(d) Arranging, coordinating, or employing registered removal services, registered refrigeration facilities, or registered centralized embalming facilities.

(e) Any aspect of making preneed funeral arrangements or entering into preneed contracts.

(f) Any functions normally performed by cemetery or crematory personnel.

Section 9. Section 470.009, Florida Statutes, is amended to read:

470.009 Licensure as a funeral director by examination; *provisional license.*—

(1) Any person desiring to be licensed as a funeral director shall apply to the department to take the licensure examination. The department shall examine each applicant who *has remitted an examination fee set by the board not to exceed \$200 plus the actual per applicant cost to the department for portions of the examination and who the board certifies has:*

(a) *Completed the application form and remitted a nonrefundable application fee set by the board not to exceed \$50.*

(b) *Submitted proof satisfactory to the board that the applicant is not less than 18 years of age and is a recipient of a high school degree or equivalent.*

(c) *Had no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the ability to practice funeral directing or the practice of funeral directing.*

(d)1. *Received an associate in arts degree, associate in science degree, or an associate in applied science degree in mortuary science approved by the board; or*

2. *Holds an associate degree or higher from a college or university accredited by a regional association of colleges and schools recognized by the United States Department of Education and is a graduate of at least a 1-year course in mortuary science approved by the board. ~~met the requirements to qualify to take the examination to be a licensed embalmer pursuant to s. 470.006(1)(a)-(c) and has been granted an Associate of Arts degree in mortuary science. No applicant shall be granted a license until such person~~*

(e) *Submitted proof of completion of a board-approved course on communicable diseases.*

(f) *Has completed a 1-year internship under a licensed funeral director.*

(2) ~~If The department finds that the applicant meets the requirements of subsection (1) and any other provisions of this chapter, it shall license the applicant person as a funeral director if he passes has passed an examination on the subjects of the theory and practice of funeral directing, public health and sanitation, and local, state, and federal laws and rules relating to the disposition of dead human bodies; however, the board by rule may adopt the use of a national examination, such as the funeral service arts examination prepared by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement prepared by the department on the laws and rules of the state and Federal Government concerning funeral directing and embalming, disposition of dead human bodies, vital statistics, medical examiners, preneed funeral merchandise or service contracts, offenses concerning dead human bodies, and the transportation, storage, and disinterment of dead human bodies.~~

(3) *Any applicant who has been approved for examination as a funeral director may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed funeral director for a limited period of 6 months as provided by rule of the board, for a fee of \$50. This provisional license may be renewed no more than one time.*

Section 10. Section 470.011, Florida Statutes, 1992 Supplement, is amended to read:

470.011 Licensure as a funeral director by endorsement; registration of a temporary funeral director.—

(1) The department shall issue a license by endorsement to practice funeral directing to an applicant who *has remitted, upon applying to the department and remitting a fee set by the board not to exceed \$200 and who \$250, demonstrates to the board certifies that he:*

(a) *Has completed the application form and remitted a nonrefundable application fee set by the board not to exceed \$50.*

(b)1. *Holds a valid license to practice funeral directing in another state of the United States, provided that, when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or*

2.(b) *Meets the qualifications for licensure in s. 470.009 and has successfully completed a state, regional, or national examination in mortuary science, which is substantially equivalent to or more stringent than the examination given by the department, within 10 years of the date of application.*

(c) *Has submitted proof of completion of a board-approved course on communicable diseases.*

(2) The department shall not issue a license by endorsement to any applicant who is under investigation or prosecution in another jurisdiction for acts which would constitute a violation of this chapter until such time as the investigation or prosecution is complete.

(3) State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to or more stringent than the examination and requirements in this state unless found otherwise by rule of the board. ~~Such presumption shall not arise until January 1, 1980.~~

(4) Each applicant for licensure by endorsement must pass the examination on local, ~~and state, and federal~~ laws and rules relating to the disposition of dead human bodies which is required under s. 470.009 and which shall be given by the department.

(5) The board may adopt rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) ~~paragraph (1)(a)~~ and who is awaiting an opportunity to take the examination required by subsection (4) to register as a temporary funeral director. A registered temporary funeral director may work as a funeral director in a licensed funeral establishment under the *general direct* supervision of a licensed funeral director. Such registration shall expire 60 days after the date of the next available examination required under subsection (4); *however, the temporary registration may be renewed one time under the same conditions as initial issuance unless extended by the board for good cause.* The fee for registration as a temporary funeral director shall be set by the board and shall not exceed \$125, which shall be in addition to the fee required in subsection (1).

Section 11. Section 470.012, Florida Statutes, 1992 Supplement, is amended to read:

470.012 Registration of a funeral director intern.—

(1) Any person desiring to become a funeral director intern shall make application to the department on forms provided by the department, together with a nonrefundable fee not to exceed \$100. The application shall indicate the name and address of the licensed funeral director under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training is to be conducted. The funeral director intern shall intern under the supervision of a licensed funeral director.

(2) The board shall adopt rules establishing an internship program and criteria for intern training agencies and intern supervisors. Any funeral establishment where funeral directing is conducted may apply to the board for approval as an intern training agency.

(3) No funeral establishment designated as an intern training agency ~~may shall~~ exact a fee from any person obtaining intern training at such funeral establishment.

Section 12. Section 470.013, Florida Statutes, 1992 Supplement, is amended to read:

470.013 License as funeral director and embalmer permitted; display of license.—

(1) Nothing in this chapter ~~may shall~~ be construed to prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time.

(2) Each license issued to a funeral director or embalmer shall include a recent photograph of the licensee. The board shall adopt rules which require each license issued under this chapter to be displayed in such a manner as to make it visible to the public and to facilitate inspection by the department.

Section 13. Section 470.015, Florida Statutes, is amended to read:

470.015 Renewal of funeral director and embalmer licenses.—

(1) The department shall renew a *funeral director or embalmer* license upon receipt of the renewal application and fee set by the board not to exceed \$250. *The board may prescribe by rule continuing education requirements of up to 12 classroom hours, in addition to a board-approved course on communicable diseases, for the renewal of a funeral director or embalmer license.*

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 470.016.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

Section 14. Section 470.016, Florida Statutes, is amended to read:

470.016 Inactive status.—

(1) A *funeral director or embalmer* license which has become inactive may be reactivated pursuant to s. 470.015 upon application to the department. The board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours, *in addition to a board-approved course on communicable diseases, for each year the license was inactive.* Any such license which has been inactive for more than *one renewal cycle 4 years* shall automatically expire if the licensee has not made application for *reactivation or renewal of inactive status such license.* Once a license expires, it becomes ~~null and void~~ without any further action by the board or department. One year prior to expiration of the license, the department shall give notice to the licensee.

(2) The board shall promulgate rules relating to *application procedures for inactive status, the biennial licenses which have become inactive and for the renewal of inactive licenses, and the reactivation of*

licenses. The board shall prescribe by rule an application fee for inactive status, a renewal fee for inactive status, and a fee for reactivation of a license. These fees may not exceed the biennial renewal fee established by the board for an active license a fee not to exceed \$50 for the reactivation of an inactive license and a fee not to exceed \$50 for the renewal of an inactive license.

(3) The department may not reactivate a license unless the inactive licensee has paid an inactive application fee, any applicable biennial renewal fee, and a reactivation fee.

Section 15. Section 470.0165, Florida Statutes, is created to read:

470.0165 Direct disposition; duties.—

(1) Those individuals registered as direct disposers may perform only those functions set forth below:

(a) Remove human remains from the place of death and store human remains in registered direct disposal establishments.

(b) Secure pertinent information from the decedent's next of kin in order to complete the death certificate and to file for the necessary permits for direct disposition.

(c) Obtain the necessary permits for direct disposition and arrange for obituaries and death notices to be placed in newspapers; provided, however, that the name of the direct disposal establishment may not appear in any death notice or obituary if any funeral service, memorial service or graveside service is to take place and such service is mentioned in the death notice or obituary.

(d) Refrigerate human remains prior to direct disposition and transport human remains to a direct disposal establishment for direct disposition.

(e) Contract with a removal service or refrigeration facility to provide such services or facilities to a direct disposal establishment.

(2) Direct disposers or funeral directors functioning as direct disposers may not, in their capacity as direct disposers, sell, conduct or arrange for funeral services, memorial services, visitations or viewings; hold themselves out to the public as funeral directors; or use any name, title or advertisement that may tend to connote that they are funeral directors. These prohibitions shall apply regardless of the fact that such individuals may be licensed as funeral directors.

(3) Provided that direct disposers limit their activities to those functions set forth in subsection (1), those activities shall not be deemed to constitute funeral directing or embalming or the functions performed by a funeral director or embalmer as otherwise set forth in this part.

Section 16. Section 470.017, Florida Statutes, is amended to read:

470.017 Registration as a direct disposer.—

(1) Any person who is not a licensed funeral director and who engages in the practice of direct disposition of dead human bodies as defined by this chapter shall be registered pursuant to this section as a direct disposer.

(2) Any person who desires to be registered as a direct disposer shall file an application with the department on a form furnished by the department. The department shall register each applicant who has remitted a registration fee set by the department, not to exceed \$200; has completed the application form and remitted a nonrefundable application fee set by the department, not to exceed \$50; pay the applicable fee, as provided by department rule, not to exceed \$250; and meets the following requirements:

(a) Is Be 18 years of age.

(b) Is Be a high school graduate or equivalent.

(c) Has Have no conviction or finding of guilt, and has never entered a plea of *nolo contendere*, regardless of adjudication, for a crime which directly relates to the functions and duties of a direct disposer or the practice of direct disposition.

(d) Has completed a college credit course in Florida mortuary law.

(e) Has completed a board-approved course on communicable diseases.

(f)(d) Has Have passed an examination prepared by the department on the subjects of the signs of death, the manner in which death may be determined, and the local, state, and federal laws and rules relating to the of the state and Federal Government concerning disposition of dead human bodies, vital statistics, medical examiners, and offenses concerning dead human bodies.

(3) Each registration issued to a direct disposer shall include a recent photograph of the registrant. The board shall adopt rules which require each registration issued under this section to be displayed in such a manner as to make it visible to the public and to facilitate inspection by the department.

(4) Notwithstanding the provisions of paragraph (2)(b), any person may be registered as a direct disposer who has attained at least 5 years of continuous experience as a cinerator facility operator, applied to the board by October 1, 1994, and has otherwise met the requirements of subsection (2). Proof of the necessary experience may be required by the board by rule.

Section 17. Section 470.018, Florida Statutes, is amended to read:

470.018 Renewal of registration of direct disposer.—

(1) The department shall renew a registration license upon receipt of the renewal application and fee set by the department board not to exceed \$250.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of registrations licenses. The board shall prescribe by rule continuing education requirements of up to 3 classroom hours, in addition to a board-approved course on communicable diseases, for the renewal of a registration.

(3) Any registration license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in s. 470.016.

(4) Sixty days prior to the end of the biennium and automatic reversion of a registration license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the registrant licensee.

Section 18. Section 470.019, Florida Statutes, is amended to read:

470.019 Disciplinary actions against direct disposers and direct disposal establishments.—

(1) Upon a finding of a violation of any one or more of the grounds enumerated in subsection (2) or any other section of this chapter, the board department may take the following actions:

(a) Deny an application for registration as a direct disposer or direct disposal establishment.

(b) Revoke the registration of a direct disposer or direct disposal establishment.

(c) Suspend the registration of a direct disposer or direct disposal establishment.

(d) Impose an administrative fine, not to exceed \$1,000, for each count or separate offense.

(e) Issue a public reprimand.

(f) Place the registrant on probation, subject to such conditions as the department may specify, including requiring the registrant to attend continuing education courses or work under the supervision of another registrant.

(2) The following shall be sufficient grounds for disciplining according to subsection (1):

(a) Procuring or attempting to procure a registration by bribery, by fraudulent misrepresentations, or through an error of the department or board.

(b) Having been convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction that directly relates to the practice of direct disposition or the ability to practice direct disposition. A plea of *nolo contendere* shall create a rebuttable presumption of guilt to the underlying criminal charges; provided, however, that the board shall allow the person being disciplined to present any evidence relevant to the underlying charges and the circumstances surrounding his plea.

(c) Having been disciplined by a regulatory agency in *any jurisdiction another state* for any offense that would constitute a violation of this chapter, *chapter 245, chapter 382, chapter 406, or chapter 872 or that directly relates to the practice of direct disposition as it relates to direct disposers or direct disposal establishments.*

(d) Misrepresentation or fraud in the conduct of the business of a direct disposer or direct disposal establishment.

(e) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of the dead human bodies.

(f) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for direct disposing business, by the registrant or his agent, assistant, or employee; however, this provision shall not prohibit the payment of commissions by a direct disposer to his agents registered pursuant to *s. 497.439 chapter 639* or to registrants *under this section hereunder.*

(g) Aiding or abetting an unregistered person to engage in the disposition of dead human bodies or remains as provided under this chapter or to engage in conduct or activities for which a license to engage in the profession of funeral directing or embalming is required.

(h) Violation of any state law or rule or any municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(i) Refusing to surrender promptly the custody of a dead human body upon the expressed order of the person legally authorized to its custody; however, this provision shall be subject to any state or local laws or rules governing custody or transportation of dead human bodies.

(j) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person to remove the body.

(k) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(l) Advertising goods and services in a manner which is fraudulent, deceptive, or misleading in form or content.

(m) Violating a statute or administrative rule regulating practice under this chapter or a lawful disciplinary order of the board or the department.

(n) Practicing with a revoked, suspended, or inactive registration.

(o) Soliciting by the registrant ~~or licensee~~, or by his agent, assistant, or employee, through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

(p) Fraud or deceit in the practice of direct disposition.

Section 19. Section 470.0201, Florida Statutes, is created to read:

470.0201 Health and safety education.—All individuals who intend to function as operational personnel affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, as well as all nonlicensed individuals who intend to be involved in the removal or transportation of human remains on behalf of a funeral establishment, shall complete one course approved by the board on communicable diseases, within 10 days after the date that they begin functioning as operational personnel on behalf of any entity that is regulated by this chapter. The course shall not exceed 3 hours and shall be offered at approved locations throughout the state. Such locations may include establishments that are licensed or registered under this chapter. The board shall adopt rules to implement and enforce this provision, which rules shall include provisions that provide for the use of approved videocassette courses and other types of audio, video, or home study courses to fulfill the continuing education requirements of this section.

Section 20. Section 470.021, Florida Statutes, is amended to read:

470.021 Direct disposal establishment; standards and location; registration.—

(1) A direct disposer shall practice at a direct disposal establishment which has been registered with the department and which may be a cinerator facility licensed under *s. 470.025*. The board department shall establish by rule standards for *direct disposal establishments such facilities*, including, but not limited to, requirements for refrigeration and storage of dead human bodies.

(2) The practice of direct disposition must be engaged in at a fixed location. No person ~~may, partnership, corporation, association, or other organization shall~~ open or maintain ~~an a place or~~ establishment at which to engage in ~~or conduct~~ or hold himself ~~or itself~~ out as engaging in the practice of direct disposition unless *such establishment has registered with permission has been granted by the board department*. Any change in location of such *establishment facility* shall be reported promptly to the board department as prescribed by rule of the board department.

(3) An application for a direct disposal establishment registration shall be made on a form furnished by the department, *shall include the name of the registered direct disposer who is in charge of that establishment*, and shall be accompanied by a nonrefundable fee not to exceed \$300 ~~\$100~~ as set by the department.

(4) A direct disposal establishment registration shall be renewed biennially pursuant to procedures and upon payment of a fee not to exceed \$300 ~~\$100~~ as set by the board department. The board may also establish by rule a late renewal penalty fee *not to exceed \$50*. Any direct disposal establishment registration not renewed within 30 days shall expire without further action by the department or the board.

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

(b) The board shall set by rule an annual inspection fee not to exceed \$100 ~~\$50~~, payable upon application for registration and upon each renewal of such registration. ~~No reinspection fee may be charged.~~

(6) *Each application for a direct disposal establishment registration must identify every person with the ability to direct the management or policies of the establishment and must identify every person having more than a 10-percent ownership interest in the establishment or the business or corporation which owns the establishment. The board may deny, suspend, or revoke the registration if any person identified in the application has ever been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter. The board may deny, suspend, or revoke the registration if any person identified in the application has ever been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the ability to operate a direct disposal establishment.*

(7) *Each direct disposal establishment must display at the public entrance the name of the establishment and the name of the direct disposer responsible for that establishment. A direct disposal establishment must transact its business under the name by which it is registered.*

(8) *Each direct disposal establishment must notify the board in writing prior to any change in ownership, name, or registered person in charge.*

(9) *Each registered direct disposal establishment shall have one full-time registered direct disposer in charge and shall have a direct disposer reasonably available to the public during normal business hours for that establishment. The full-time direct disposer in charge may not be the full-time direct disposer in charge of any other direct disposal establishment.*

Section 21. Section 470.0301, Florida Statutes, is created to read:

470.0301 Removal services; refrigeration facilities; centralized embalming facilities.—

(1) In order to ensure that the removal and storage of all dead human bodies is conducted in a manner that properly protects the public's health and safety, the board shall adopt rules to provide for the registration of removal services and refrigeration facilities operated independently of funeral establishments and direct disposal establishments.

(2) In order to ensure that all funeral establishments have access to embalming facilities that comply with all applicable health and safety requirements, the board shall adopt rules to provide for the registration of centralized embalming facilities. Such rules shall provide, at a minimum, that all centralized embalming facilities shall contain all of the equipment and meet all of the requirements that a preparation room located in a funeral establishment is required to meet, but such facilities shall not be required to comply with any of the other requirements for funeral establishments, as set forth in s. 470.024. Each licensed centralized embalming facility shall have at least one full-time embalmer in charge. Any person, regardless of whether such person is otherwise regulated by this chapter, may own such a facility, provided that such facility is operated in accordance with the rules established by the board. A centralized embalming facility may only provide services to funeral establishments.

Section 22. Section 470.023, Florida Statutes, is amended to read:

470.023 Practice of direct disposition without registration.—Any person ~~as an individual, as a partner in a partnership, or as an officer or employee of a corporation, association, or other organization~~, except for a licensed funeral director ~~as defined by this chapter~~, who, without registration, holds himself out as a direct disposer or engages in direct disposition ~~is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 23. Section 470.024, Florida Statutes, is amended to read:

470.024 Funeral establishment; licensure.—

(1) A funeral establishment shall be a place at a specific street address or location *consisting of at least 1,250 contiguous interior square feet and must consist of and maintain or make arrangements for either a suitable capacity room for the refrigeration and storage of dead human bodies handled and stored by the establishment or a preparation room equipped with necessary ventilation and drainage and containing necessary instruments for embalming dead human bodies.*

(2) No person *may shall* conduct, maintain, manage, or operate a funeral establishment unless an establishment operating license has been issued by the department for that funeral establishment.

(3) Application for a funeral establishment license shall be made on forms furnished by the department, shall be accompanied by a *nonrefundable* fee not to exceed \$300 ~~\$100~~ as set by ~~board department~~ rule, and shall include the name of the licensed funeral director who is in charge of that establishment.

(4) A funeral establishment license shall be renewable biennially pursuant to procedures, and upon payment of a *nonrefundable* fee not to exceed \$300 ~~\$100~~, as set by ~~board department~~ rule. The board may also establish by rule a late renewal penalty fee *not to exceed \$50. Any funeral establishment license not renewed within 30 days shall expire without further action by the department.*

(5) ~~If~~ The practice of embalming is done at a funeral establishment, ~~it shall only be practiced by an a-licensed embalmer licensed under this chapter.~~

(6) Each licensed funeral establishment shall have at least one full-time funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for that establishment. *The full-time funeral director in charge may not be the full-time funeral director in charge of any other funeral establishment.*

(7) The issuance of a license to operate a funeral establishment to a person or entity who is not individually licensed as a funeral director does not entitle the person to practice funeral directing ~~as defined in this chapter, it being the intent of this chapter that such practice may be performed only by persons licensed as funeral directors.~~

(8) Each funeral establishment located at a specific address shall be deemed to be a separate entity and shall require separate licensing and compliance with the requirements of this chapter. *No funeral establishment shall be operated at the same location as any other funeral establishment or direct disposal establishment unless such establishments were co-located on January 1, 1993.*

(9) Every funeral establishment licensed under this chapter shall at all times be subject to the inspection of all its buildings, grounds, and vehicles used in the conduct of its business, by the department or any of

its designated representatives or agents, or local or Department of Health and Rehabilitative Services inspectors. ~~The board department shall by rule establish requirements for inspection of funeral establishments.~~

(10) The board shall set by rule an annual inspection fee not to exceed \$100 ~~\$50~~, payable upon application for ~~licensure registration~~ and upon each renewal of such ~~license registration~~. ~~No reinspection fee may be charged.~~

(11) A change in ownership of a funeral establishment shall be promptly reported to the department and may require the relicensure of the funeral establishment, including reinspection and payment of applicable fees.

(12) *Each application for a funeral establishment license shall identify every person with the ability to direct the management or policies of the establishment and must identify every person having more than a 10-percent ownership interest in the establishment or the business or corporation which owns the establishment. The board may deny, suspend, or revoke the license if any person identified in the application has ever been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter. The board may deny, suspend, or revoke the license if any person identified in the application has ever been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the ability to operate a funeral establishment.*

(13) *Each funeral establishment must display at the public entrance the name of the establishment and the name of the full-time funeral director in charge. A funeral establishment must transact its business under the name by which it is licensed.*

Section 24. Section 470.025, Florida Statutes, 1992 Supplement, is amended to read:

470.025 Cinerator facility; licensure.—

(1) No person *may shall* conduct, maintain, manage, or operate a cinerator facility unless a license for such facility has been issued by the department.

(2) Application for licensure of cinerator facilities shall be on a form furnished and prescribed by the department and shall be accompanied by a *nonrefundable* license fee of up to \$300 ~~\$100~~ as set by ~~board department~~ rule. No license *may shall* be issued unless the cinerator facility has been inspected and approved as meeting all requirements as set forth by the department, the Department of Health and Rehabilitative Services, the Department of Environmental Regulation, or any local ordinance regulating the same. *The board shall establish by rule standards for cinerator facilities, including, but not limited to, requirements for refrigeration and storage of dead human bodies, use of forms and contracts, and record retention.*

(3) Licenses shall be renewed biennially in accordance with a schedule established by the department. The *nonrefundable* biennial renewal fee shall be up to \$300 ~~\$100~~ as set by ~~board department~~ rule. The board may also establish by rule a late renewal penalty fee *not to exceed \$50. Any cinerator facility license not renewed within 30 days shall expire without further action by the department or the board.*

(4) A change in ownership of a cinerator facility shall be promptly reported to the department and may require the relicensure of the cinerator facility, including reinspection and payment of applicable fees.

(5) The board shall adopt rules requiring each facility to submit periodic reports to the department which include the names of persons cremated, *the date and county of death, the name of each person supervising each cremation, the name and license number of the establishment requesting cremation, and the types of containers used to hold the body during cremation.*

(6) No more than one dead human body *may shall* be placed in a retort at one time, unless written permission has been received from a legally authorized person ~~the personal representative responsible~~ for each body.

(7)(a) Each cinerator facility shall at all times be subject to the inspection of all its buildings, grounds, and vehicles used in the conduct of its business, by the department ~~of Professional Regulation, the Department of Environmental Regulation, the Department of Health~~

and Rehabilitative Services, and local government inspectors and by their agents. The ~~board Department of Professional Regulation~~ shall adopt rules which establish such inspection requirements. ~~The board shall not establish the same fee required of cinerator facilities if the cinerator facility is owned by the same or related legal entity and is located at an establishment or immediately adjacent to an establishment inspected pursuant to s. 470.021 or s. 470.024.~~

(b) The board shall set by rule an annual inspection fee not to exceed \$100 \$50, payable upon application for ~~licensure registration~~ and upon each renewal of such ~~license registration~~. ~~No reinspection fee may be charged.~~

(8) A cinerator facility licensed under this section shall only receive dead human bodies for cremation. A cinerator facility may not receive other materials, such as medical, hazardous, and biohazardous waste, for the purpose of disposal in a retort.

(9) ~~After April 1, 1993,~~ Each cinerator facility shall be under the general supervision of a licensed funeral director or registered direct disposer who shall be responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules.

(10) *Each application for a cinerator facility license must identify every person with the ability to direct the management or policies of the facility and must identify every person having more than a 10-percent ownership interest in the facility or the business or corporation which owns the facility. The board may deny, suspend, or revoke the license if any person identified in the application has ever been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter. The board may deny, suspend, or revoke the license if any person identified in the application has ever been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the ability to operate a cinerator facility.*

(11) *Each cinerator facility must display at the public entrance the name of the facility and the name of the funeral director or direct disposer responsible for that facility. A cinerator facility must transact its business under the name by which it is licensed.*

Section 25. Section 470.0255, Florida Statutes, is amended to read:

470.0255 Cremation; procedure required.—

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the person contracting for cremation services shall be required to designate his intentions with respect to the disposition of the cremated remains of the deceased in a signed declaration of intent which shall be provided by and retained by the funeral or direct disposal establishment. A cremation may not be performed until a legally authorized person gives written authorization for such cremation. *The cremation must be performed within 48 hours after a specified time which has been agreed to in writing by the person authorizing the cremation.*

(2) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct disposal establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a licensed cemetery scatter garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule of the department or board.

~~(3) Funeral or direct disposal establishments which have retained and stored the remains of deceased persons which were cremated prior to October 1, 1986, are authorized to dispose of any or all of these remains by means provided for in subsection (2) if said remains are not claimed on or before October 1, 1987.~~

Section 26. Section 470.026, Florida Statutes, is amended to read:

470.026 Solicitation of goods or services.—

(1) The ~~board department~~ shall adopt rules regulating the solicitation of goods or services by licensees or registrants.

(2) The ~~board department~~ shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The ~~board department~~ shall regulate such solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public has a high expectation of privacy in one's personal residence, and the ~~board department~~ by rule may restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this ~~chapter may not~~ shall be construed to restrict the right of a person to lawfully advertise, direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(5) At-need solicitation of funeral merchandise or services is prohibited. No funeral director or direct disposer or his agent or representative ~~may shall~~ contact the family or next of kin of a deceased person to sell services or merchandise unless the funeral director or direct disposer or his agent or representative has been initially called or contacted by the family or next of kin of such person and requested to provide his services or merchandise.

Section 27. Section 470.027, Florida Statutes, is amended to read:

470.027 Exemption of certificateholder under chapter 497 639.— Nothing in this chapter shall prevent a certificateholder under chapter 497 639 from selling preneed funerals and funeral merchandise through its agents and employees.

Section 28. Section 470.028, Florida Statutes, is amended to read:

470.028 Preneed sales; registration of agents.—

(1) All sales of preneed funeral service contracts or direct disposition contracts shall be made pursuant to chapter 497 639.

(2) No person may act as an agent for a funeral director, funeral establishment, direct disposer, or direct disposer establishment with respect to the sale of preneed contracts unless such person is registered pursuant to chapter 497 639.

(3) Each licensee or registrant shall be subject to discipline if his agent violates any provision of this chapter applicable to such licensee or registrant.

Section 29. Section 470.029, Florida Statutes, is amended to read:

470.029 ~~Reports Affidavit~~ of cases embalmed and bodies handled.— Each funeral establishment or direct disposal establishment shall report ~~monthly~~ on a form prescribed and furnished by the department the name of the deceased and such other information as may be required with respect to each dead human body embalmed or otherwise handled by the establishment. Such forms shall be signed by the embalmer who performs the embalming, *if the body is embalmed*, and the funeral director in charge of the establishment or by the direct disposer who disposes of the body. ~~These reports, in affidavit form, shall be submitted to the local registrar of vital statistics within 5 working days after the end of each month. The local registrar shall forward said reports to the department within 10 days after receipt.~~

Section 30. Section 470.031, Florida Statutes, is amended to read:

470.031 Prohibitions; penalties.—

(1) No person ~~may shall~~:

(a) Practice funeral directing, embalming, or direct disposition unless the person holds an active license or registration under this chapter.

(b) Use the name or title "funeral director," "embalmer," or "direct disposer" when the person has not been licensed or registered pursuant to this chapter.

(c) Represent as his own the license or registration of another.

(d) Give false or forged evidence to the board, a member thereof, or the department for the purpose of obtaining a license or registration.

(e) Use or attempt to use a license or registration which has been suspended or revoked.

(f) Knowingly employ unlicensed persons in the practice of funeral directing, embalming, or direct disposing.

(g) Knowingly conceal information relative to violations of this chapter.

(h) Operate an unlicensed cinerator facility.

(2) Any person who violates the provisions of this section *commits* is ~~guilty~~ of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 31. Section 470.036, Florida Statutes, is amended to read:

470.036 Disciplinary proceedings.—

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

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

(b) Attempting to procure, or procuring, a license *or registration pursuant to this chapter* ~~to practice embalming, funeral directing, or operating a cinerator facility~~ by bribery *or*, by fraudulent misrepresentations, ~~or through an error of the department or the board.~~

(c) Having a license to practice funeral directing *or*, embalming, *or to operate* ~~operating~~ a cinerator facility *or a funeral establishment*, revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction.

(d) Being convicted or found guilty *of, or entering a plea of nolo contendere to*, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of embalming *or*, funeral directing, or operation of a cinerator facility *or funeral establishment*, or the ability to practice embalming *or*, funeral directing, *or operate* ~~operation of~~ a cinerator facility *or funeral establishment*.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state, local, or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed funeral director, embalmer, or cinerator facility operator.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Fraud, deceit, negligence, incompetency, or misconduct, in the practice of funeral directing *or*, embalming, *funeral establishment operation*, or cinerator facility operation.

(h) A violation or repeated violation of this chapter or of chapter 455 and any rules promulgated pursuant thereto.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failure to comply with a lawfully issued subpoena of the board or department.

(j) Practicing with a revoked, suspended, or inactive license.

(k) Misrepresentation or fraud in the conduct of the business of or profession of the licensee.

(l) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the disposition of dead human bodies.

(m) Making any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with funeral directing, embalming, *funeral establishment operation*, or cinerator facility operation on a preneed or at-need basis.

(n) Aiding or abetting an unlicensed person to practice any licensed activity.

(o) Violation of any state law or rule or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead *human* bodies.

(p) Refusing to surrender promptly the custody of a dead human body upon the express order of the legally authorized person; however, this provision shall be subject to any state laws or rules governing custody or transportation of deceased human bodies.

(q) Paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate

in any form whatsoever for funeral directing services, embalming services, *funeral establishment services*, or cinerator facility services, by the licensee, or his agent, assistant, or employee; however, this provision shall not prohibit the payment of commissions by a funeral director, funeral establishment, or cinerator facility to its *preneed* agents registered pursuant to chapter 497 ~~630~~ or to licensees hereunder.

(r) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person.

(s) Requiring that a casket be purchased for cremation or claiming directly or by implication that a casket is required for cremation.

(t) Embalming a deceased human body without first having obtained written ~~or oral~~ permission from a legally authorized person; however, washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded.

(u) Misrepresenting the amount advanced on behalf of a customer for any item of service or merchandise, including, but not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates, described as cash advances, accommodations, or words of similar import on the contract, final bill, or other written evidence of agreement or obligation furnished to customers; however, nothing herein shall require disclosure of a discount or rebate which may accrue to a licensee subsequent to making a cash advance.

(v) Making any false or misleading statement or claim that natural decomposition or decay of human remains can be prevented or substantially delayed by embalming, use of a sealed or unsealed casket, or use of a sealed or unsealed outer burial container.

(w) Solicitation by the licensee, or his agent, employee, or assistant, through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

(x) *Having been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of this chapter, chapter 245, chapter 382, chapter 406, chapter 497, or chapter 872 or that directly relates to the ability to practice under this chapter.*

(2) When the board finds any licensed embalmer, embalmer intern, funeral director, funeral director intern, funeral establishment, cinerator facility, or cinerator facility operator guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$5,000 ~~\$1,000~~ for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.

(f) Restriction of the authorized scope of practice.

(g) *Assessment of costs associated with investigation and prosecution.*

(3) The department shall reissue the *suspended* license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order; *however, revocation of a license is permanent.*

Section 32. Section 470.0375, Florida Statutes, is created to read:

470.0375 Cash advance accounts; escrow refund accounts.—

(1) Funeral establishments may elect to maintain special, segregated bank accounts to be used in conjunction with making cash advances to vendors. The money in such accounts may be used by the funeral establishments to pay third-party vendors when such amounts must be paid before the funeral establishment has been paid by the purchaser.

(2) Funeral establishments may elect to maintain special, segregated escrow accounts to be used in conjunction with making cash refunds to their purchasers. A funeral establishment may deposit in such accounts any amounts paid by its purchasers that were in excess of the actual funeral costs incurred and cash advances made by the funeral establishment.

Section 33. Section 470.038, Florida Statutes, is amended to read:

470.038 Reciprocity.—In order to ensure that funeral directors, embalmers, and direct disposers who are licensed or registered in this state may be considered for licensure or registration in other *jurisdictions states*, the board may enter into reciprocity agreements with other *jurisdictions states*.

Section 34. Section 470.039, Florida Statutes, is amended to read:

470.039 Exceptions.—

(1) Nothing in this chapter ~~may shall~~ be construed to limit the sale of caskets, alternative containers, outer burial containers, or funeral merchandise by any person.

(2) Nothing in this chapter ~~may shall~~ be construed to override the written instructions or wishes of the deceased as to how his body is to be disposed of, if such instructions are reasonably available at the time of death.

Section 35. Section 470.0395, Florida Statutes, is amended to read:

470.0395 Saving clauses.—

(1) No judicial or administrative proceeding pending on *October 1, 1993 July 1, 1979*, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on the effective date of this act shall remain in full force and effect. Henceforth, all licenses or registrations shall be applied for and renewed in accordance with this chapter.

(3) Notwithstanding the provisions of s. 470.024, any licensed establishment operating a branch chapel on June 30, 1979, in accordance with the law then in effect, as determined by the board, may continue to operate such branch chapel for the sole and exclusive purpose of providing and holding funeral services.

Section 36. Section 497.001, Florida Statutes, is amended to read:

497.001 Short title.—This chapter may be cited as the "Florida Funeral and Cemetery Services Act."

Section 37. Section 497.002, Florida Statutes, is amended to read:

497.002 Purpose and intent.—

(1) The Legislature recognizes that purchasers of preneed burial rights or *burial cemetery* merchandise may suffer serious economic harm if purchase money is not set aside for future use as intended by the purchaser and that the failure to maintain cemetery grounds properly may cause significant emotional stress. Therefore, it is necessary in the interest of the public welfare to regulate cemetery companies in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from significant or discernible harm or damage and not in a manner which will unreasonably affect the competitive market.

(2) *Subject to certain interests of society, the Legislature finds that every competent adult has the right to control the decisions relating to his own funeral arrangements. Accordingly, unless otherwise stated herein, it is the Legislature's express intent that nothing contained in this chapter should be construed or interpreted in any manner as to subject preneed contract purchasers to federal income taxation under the grantor trust rules contained in ss. 671 et seq. of the Internal Revenue Code of 1986, as amended.*

Section 38. Section 497.003, Florida Statutes, is amended to read:

497.003 *Cemeteries; exemption; investigation and mediation Scope.*—

(1) *The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto to this chapter shall apply to all cemeteries except for:*

(a) Church cemeteries of less than 5 acres which provide only single-level ground burial.

(b) County and municipal cemeteries.

(c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or *burial cemetery* merchandise.

(d) Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.

(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.

(f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing church facility and is subject to local government zoning. The church establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the church relocates, the church shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the church.

(g) *Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.*

(h) *A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing church or synagogue facility and is subject to local government zoning. The church or synagogue establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the church or synagogue. The church or synagogue establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.*

(2) *Sections 497.321, 497.325, 497.341, and 497.345 apply Section 497.061 applies* to all cemeteries in this state.

(3) *All cemeteries exempted under this chapter which are in excess of 5 acres must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:*

(a) *The exempt cemetery shall make every effort to first resolve a consumer complaint;*

(b) *If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;*

(c) *If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;*

(d) *If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;*

(e) *If the department conducts an onsite investigation and face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and mediation fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and*

(f) *If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter.*

Section 39. Section 497.004, Florida Statutes, is amended to read:

497.004 Existing companies, effect of this chapter.—Cemetery companies existing on *October 1, 1993 July 1, 1959*, shall continue in full force and effect but shall be operated in accordance with the provisions of this chapter.

Section 40. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter:

(1) "Human remains" means the bodies of deceased persons and includes bodies in any stage of decomposition and cremated remains.

(2) "Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium or other structure or place used or intended to be used for the interment of cremated human remains; or any combination of one or more of such structures or places.

(3) "Mausoleum" means a structure or building which is substantially exposed above the ground and which is intended to be used for the entombment of human remains.

(4) "Columbarium" means a structure or building which is substantially exposed above the ground and which is intended to be used for the interment of cremated human remains.

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

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

(7) "Department" means the Department of Banking and Finance.

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

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

(10) "Mausoleum section" means any construction unit of a mausoleum which is acceptable to the department and which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Statutory accounting" means generally accepted accounting principles, except as modified by this chapter.

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

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

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

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

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

(29) "Net worth" means total assets minus total liabilities pursuant to generally accepted accounting principles.

(30) "Board" means the Board of Funeral and Cemetery Services.

Section 41. Effective July 1, 1993, section 497.101, Florida Statutes, is created to read:

497.101 Board of Funeral and Cemetery Services; membership; appointment; terms.—

(1) The Board of Funeral and Cemetery Services is created within the Department of Banking and Finance and shall consist of seven members appointed by the Governor, from nominations made by the Comptroller, and confirmed by the Senate. The Comptroller shall nominate three persons for each vacancy on the board, and the Governor shall fill each vacancy on the board by appointing one of the three persons nominated by the Comptroller to fill that vacancy. If the Governor objects to each of the three nominations for a vacancy, he shall inform the Comptroller in writing. Upon notification of an objection by the Governor, the Comptroller shall submit three additional nominations for that vacancy until the vacancy is filled.

(2) Two members of the board must be funeral directors licensed under chapter 470 who are not associated with a cemetery company through ownership interests or through employment with a company which has an ownership interest in a cemetery. Two members must be owners or operators of a cemetery licensed under this chapter. The remaining three members must be residents of the state who have never been licensed as funeral directors or embalmers and who are in no way connected with a cemetery, the death care industry, or the practice of embalming, funeral directing, or direct disposition. At least one consumer member of the board must be 60 years of age or older. No licensee on the board may be associated by employment or ownership with a funeral establishment or cemetery which is owned partly or wholly by a person, business, corporation, or other entity which is associated with another licensee on the board.

(3) The Governor shall appoint members for terms of 4 years, and such members shall serve until their successors are appointed.

Section 42. Section 497.103, Florida Statutes, is created to read:

497.103 Rulemaking authority of board and department.—

(1) The board is authorized to adopt rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public. The department is authorized to adopt rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the department by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

(2) The board shall adopt rules which establish requirements for inspection of cemeteries.

(3) The board shall adopt and enforce rules governing the operation of cemeteries in this state and arrange for the preparation, publication, and dissemination to the public of these rules and other information and material relevant to the operation of cemeteries.

(4) The department shall examine the financial affairs of any cemetery company and any preneed sales certificateholder and charge an examination fee as prescribed in s. 497.431.

Section 43. Section 497.105, Florida Statutes, is created to read:

497.105 Department of Banking and Finance; powers and duties.—The Department of Banking and Finance shall:

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

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

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

(4) Develop a training program for persons newly appointed to membership on the board. The program shall familiarize such persons with the substantive and procedural laws and rules which relate to the regulation under this chapter and with the structure of the department.

(5) Adopt all rules necessary to administer this chapter.

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

(7) Require all proceedings of the board or panels thereof within the department and all formal or informal proceedings conducted by the department or a hearing officer with respect to licensing, registration, certification, or discipline to be electronically recorded in a manner sufficient to ensure the accurate transcription of all matters so recorded.

(8) Select only those investigators approved by the board. Such investigators shall report to and work under the executive director of the board and are responsible for all inspections and investigations other than financial examinations.

Section 44. Section 497.107, Florida Statutes, is created to read:

497.107 Headquarters.—The Board of Funeral and Cemetery Services may be contacted through the headquarters of the Department of Banking and Finance in the City of Tallahassee.

Section 45. Section 497.109, Florida Statutes, is created to read:

497.109 Board of Funeral and Cemetery Services; membership.—

(1) The Board of Funeral and Cemetery Services shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a chair and a vice chair.

(3) The board shall hold such meetings during the year as it may deem necessary, one of which shall be the annual meeting. The chair or a quorum of the board may call other meetings, and a quorum is necessary for the conduct of business by the board. Unless otherwise provided by law, a majority of the members of the board constitutes a quorum. A vacancy shall occur upon the failure of a member of the board to attend three consecutive meetings of the board or at least half of the meetings of the board during any 12-month period.

(4) Unless otherwise provided by law, a board member shall be compensated \$50 for each day the member attends an official meeting of the board and for each day the member participates in any other business involving the board. The board shall adopt rules defining the phrase "other business involving the board," but the phrase may not be defined to include telephone conference calls. A board member is entitled to reimbursement for expenses pursuant to s. 112.061, but travel out of state requires the prior approval of the Comptroller.

Section 46. Section 497.111, Florida Statutes, is created to read:

497.111 Publication of information.—The department and the board may periodically advise licensees, registrants, and certificateholders, through the publication of a newsletter, about information that the department or the board determines is of interest to the death care industry.

Section 47. Section 497.113, Florida Statutes, is created to read:

497.113 Accountability and liability of board members.—

(1) Each board member is accountable to the Governor for the proper performance of his or her duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department concerning the actions of the board or individual members of the board. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or commission of a felony.

(2) Each board member, and each past board member serving on a probable cause panel, is exempt from civil liability for any act or omission when acting in an official capacity, and the department or the Department of Legal Affairs shall defend any such member in any action against the board or member of the board arising from any such act or omission. In providing such defense, the department or the Department of Legal Affairs may employ or utilize the legal services of outside counsel.

Section 48. Section 497.115, Florida Statutes, is created to read:

497.115 Board rules; final agency action; challenges.—

(1) The Comptroller shall have standing to challenge any rule or proposed rule of the board pursuant to ss. 120.54 and 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the hearing officer, upon such a challenge by the Comptroller, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the Comptroller or the board shall be a substantially interested party for purposes of s. 120.54(5). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

Section 49. Section 497.117, Florida Statutes, is created to read:

497.117 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to the board within the Department of Banking and Finance, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the board with respect to its obligations under the laws of the state. Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel shall be paid from the Regulatory Trust Fund.

(2) The Department of Banking and Finance may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter or provide legal services to the board with respect to the same matter.

Section 50. Section 497.119, Florida Statutes, is created to read:

497.119 Mediation.—

(1) Notwithstanding the provisions of s. 497.131, the board may adopt rules to designate which violations of this chapter are appropriate for mediation. The board may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days after the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 497.131.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 497.131. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 497.131.

(4) No licensee may go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision may not be considered a final agency action for purposes of chapter 120.

Section 51. Section 497.121, Florida Statutes, is created to read:

497.121 Authority to issue citations.—

(1) Notwithstanding the provisions of s. 497.131, the board shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedures under s. 497.131. If the subject disputes the matter in the citation, the procedures set forth in s. 497.131 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the board and shall constitute discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board rule, as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

Section 52. Section 497.123, Florida Statutes, is created to read:

497.123 Powers to administer oaths and issue subpoenas.—

(1)(a) The board or the department has the power to issue and to serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The department, or its duly authorized representative, has the power to administer oaths and affirmations to any person.

(b) The board or the department may, in its discretion, seek subpoenas or subpoenas duces tecum from any court of competent jurisdiction commanding the appearance of witnesses and the production of books, accounts, records, and other documents or materials at a time and place named in the subpoenas; and any authorized representative of the department may serve any subpoena.

(2)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the board or the department, the board or the department may petition the circuit court or any other court of competent jurisdiction of the county in which the person subpoenaed resides or has its principal place of business for an

order requiring the subpoenaed person to appear and testify and to produce such books, accounts, records, and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, entering into, offering to enter into, continuing, or completing a contract pursuant to the provisions of this chapter. The court may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of the person's assets or any concealment, alteration, destruction, or other disposition of books, accounts, records, or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena duces tecum and the department has completed its investigation or examination. In addition, the court may order the refund of any fees collected in a transaction whenever books and documents substantiating the transaction are not produced or cannot be produced. The department is entitled to the summary procedure provided in s. 51.011, and the court shall advance such cause on its calendar. Attorney's fees and any other costs incurred by the department to obtain an order granting, in whole or part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order is a contempt of court.

(b) When it appears to the department that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the department pursuant to this section is essential and otherwise unavailable to an investigation or examination, the department, in addition to the other remedies provided for in this section, may apply to the circuit court or any other court of competent jurisdiction of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne exeat. The court shall thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond upon the payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(c) Alternatively, the department may seek a writ of attachment from the court having jurisdiction over the person who has refused to obey a subpoena, who has refused to give testimony, or who has refused to produce the matters described in the subpoena duces tecum.

Section 53. Section 497.125, Florida Statutes, is created to read:

497.125 Evidence; examiner's worksheets, investigative reports, other related documents.—In any hearing in which the financial examiner acting under authority of this chapter is available for cross-examination, any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by the financial examiner, after being duly authenticated by the examiner, may be admitted as competent evidence upon the oath of the examiner that the report, worksheet, or related paper was prepared as a result of an examination of the books and records of a licensee or other person conducted pursuant to the authority of this chapter.

Section 54. Section 497.127, Florida Statutes, is created to read:

497.127 Injunction to restrain violations.—

(1) The board or the department may bring action through its own counsel in the name and on behalf of the state against any person who has violated or is about to violate any provision of this chapter or any rule or order of the department issued under this chapter to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(2) In any injunctive proceeding, the court may, on due showing by the board or the department, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(3) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceeding, the court has the power and jurisdiction, upon application of the board or the department, to impound, and to appoint a receiver or administrator for, the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, has all powers and duties as to custody, collection, administration, winding up, and liq-

uidation of the property and business as are from time to time conferred upon him by the court. In any such action, the court may issue an order staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the property, assets, and business, or the court, in its discretion and with the consent of the chief judge of the circuit, may require that all such suits be assigned to the circuit court judge who appoints the receiver or administrator.

Section 55. Section 497.129, Florida Statutes, is created to read:

497.129 Cease and desist order; civil penalty; enforcement.—

(1) The department or the board has the power to issue and serve upon any person an order to cease and desist and to take corrective action whenever it has reason to believe the person is violating, has violated, or is about to violate any provision of this chapter, any rule or order of the department or the board issued under this chapter, or any written agreement between the person and the department or the board. All procedural matters relating to issuance and enforcement of such a cease and desist order are governed by the Administrative Procedure Act.

(2) Failure to respond to a complaint within the time allowed in s. 120.57 shall constitute a default and shall be grounds for the issuance of a final order to cease and desist.

(3) The department or the board may issue an emergency cease and desist order pursuant to s. 120.59.

(4) For the purpose of enforcing a cease and desist order, the board or the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order. In addition to the foregoing remedies, the board or the department may impose an administrative penalty not to exceed \$5,000 per violation, pursuant to the provisions of chapter 120. If the board or the department is required to seek enforcement of the agency order for a penalty pursuant to s. 120.58, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(5) In addition to or in lieu of any remedy provided in subsection (1), the board or the department may seek the imposition of a civil penalty through the circuit court for any violation for which the board or the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less the \$500 and no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, in the event the board or the department prevails, may also award reasonable costs of investigation.

Section 56. Effective June 30, 1993, section 497.131, Florida Statutes, is created to read:

497.131 Disciplinary proceedings.—

(1) The department shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts which show that a violation of this chapter, or of any rule promulgated by the department or board has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate or continue to investigate, and the department and the board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates his desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the alleged violations in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a person has violated a state statute, a rule of the department, or a rule of the board. When an investigation of any person is undertaken, the department shall promptly furnish to the person or his attorney a copy of the complaint or document which resulted in the initiation of the investigation. The person may submit a written response to the information contained in such complaint or document within 20 days after service to the person of the complaint or document. The person's written response shall be considered by the probable cause panel. This right to

respond shall not prohibit the department from issuing a summary emergency order if necessary to protect the public. However, if the Comptroller or his designee and the chairman of the board or the chairman of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any person if the act under investigation is a criminal offense.

(2) The department shall expeditiously investigate complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. The board shall establish by rule those minor violations under this provision that do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board. The board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from the provisions of s. 286.011 until probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The Comptroller may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the depart-

ment may decide not to prosecute the complaint if it finds that probable cause had been improbably found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. A probable cause panel or the board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Regulatory Trust Fund. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.53(1)(d).

(5) A formal hearing before a hearing officer from the Division of Administrative Hearings of the Department of Management Services shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The hearing officer shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The board, with those members of the panel who reviewed the investigation pursuant to subsection (4) being excused, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of a license, of a licensee pursuant to s. 120.60(8) shall be conducted by the Comptroller or his designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department shall be exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation and written request by the subject, the department shall provide the subject an opportunity to inspect or, at the subject's expense, forward to the subject a copy of the department's investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. Nothing in this subsection shall be construed to prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this chapter, unless the complainant or witness acted in bad faith or with malice in providing such information.

Section 57. Section 497.133, Florida Statutes, is created to read:

497.133 Disciplinary guidelines.—

(1) The board shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board pursuant to this chapter, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth in this section to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to ss. 120.54 and 120.56.

(5) The rules provided for in this section shall be promulgated within 6 months after the enactment of the board.

(6) The hearing officer, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 58. Section 497.135, Florida Statutes, is created to read:

497.135 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to this chapter, the act of knowingly giving false information in the course of applying for or obtaining a license from the department or the board, with intent to mislead a public servant in the performance of his official duties, or the act of attempting to obtain or obtaining a license to practice by misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 59. Section 497.006, Florida Statutes, is renumbered as section 497.201, Florida Statutes, and amended to read:

497.201 ~~497.006~~ Cemetery companies; license; application; fee.—

(1) No person ~~may~~ shall operate a cemetery without first obtaining a license from the department, unless specifically exempted from this chapter.

(2) *The department may require any person desiring to establish a cemetery company who applies for a license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure.* Any person desiring to establish a cemetery company shall first:

(a) File an application, which ~~states shall state~~ the exact location of the proposed cemetery, which site shall contain not less than 15 contiguous acres; *provide a financial statement signed by all officers of the company which attest to a net worth of at least \$50,000, which net worth must be continuously maintained as a condition of licensure;* and pay an application fee of \$5,000;

(b) Create a legal entity; and

(c) Demonstrate to the satisfaction of the ~~board department~~ that *the applicant* he possesses the ability, experience, financial stability, and integrity to operate a cemetery.

(3) The department shall determine the need for a new cemetery ~~in the community~~ by considering the adequacy of existing cemetery facilities, licensed and unlicensed, within the *community county*; the solvency of the trust funds of the existing facilities; and the relationship between population, rate of population growth, death rate, and ratio of burials to deaths to meet the projected need for burial spaces for a period of 30 years. In order to promote competition, the department may waive the criteria of this subsection so that each county may have at least six cemeteries operated by different licensees.

(4) If the ~~board department~~ finds that the applicant meets the criteria established in subsection (2) and *the department* determines that a need for the new cemetery in the community exists, the department shall notify the applicant that a license will be issued when:

(a) The establishment of a care and maintenance trust fund containing not less than ~~\$50,000~~ *\$25,000* has been certified by a trust company, a state or national bank, or a savings and loan association licensed in this state.

(b) The applicant has filed with the department development plans which are sufficient to ~~ensure assure~~ the department that the cemetery will provide adequate service to the community and which have been approved by the appropriate local governmental agency regulating zoning in the area of the proposed cemetery.

(c) The applicant holds an unencumbered fee simple title to at least 15 contiguous acres of land.

(d) The applicant has designated as general manager a person who has integrity, 1 year of cemetery experience, and the ability to operate a cemetery.

(e) The applicant has fully developed not less than 2 acres for use as burial space, such development to include a paved road from a public roadway to the developed section.

(f) The applicant has recorded, in the public records of the county in which the land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Banking and Finance, as provided in the Florida *Funeral and Cemetery Services Act*.

Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the licensee or may be contained in a separate recorded instrument which contains a description of the property.

(5) The department shall issue a license to operate a cemetery company to any applicant who, within 12 months after notice that a license may be issued, meets the criteria of subsection (4). With respect to any application for which the department has given notice under subsection (4) on or after January 1, 1984, the ~~board department~~ may, for good cause shown, grant up to two extensions of the 12-month period within which the applicant must meet the criteria of subsection (4).

Section 60. Section 497.007, Florida Statutes, is renumbered as section 497.205, Florida Statutes, and amended to read:

~~497.205 497.007~~ License not assignable or transferable.—

(1) A ~~no~~ license issued to operate a cemetery pursuant to this chapter is not under ~~s. 497.009~~ shall be transferable or assignable, and a ~~no~~ licensee may not ~~shall~~ develop or operate any cemetery authorized by this chapter ~~under any name or~~ at any location other than that contained in the application for ~~the~~ such license.

(2) Any person who seeks to purchase or acquire control of an existing licensed cemetery shall first apply to the ~~board department~~ for a ~~certificate of approval of~~ for the proposed change of ownership. The application shall contain the name and address of the proposed new owner, a *financial statement signed by all officers of the company attesting to a net worth of at least \$50,000*, and other information required by the ~~board department~~. The ~~board department~~ may approve a change of ownership ~~shall issue a certificate of approval~~ only after it has conducted an investigation of the applicant and determined that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner. The department may examine the records of the cemetery company as part of the investigation in accordance with *this chapter s. 497.011(2)(b)*. The application shall be accompanied by an investigation a fee of \$5,000. *Upon consummation of the purchase or acquisition of control and upon receipt of all documents required by the board, the department shall issue the new license for that cemetery effective on the date of that purchase or acquisition of control.*

Section 61. Section 497.008, Florida Statutes, is renumbered as section 497.209, Florida Statutes, and amended to read:

~~497.209 497.008~~ Application for change of control among existing stockholders or partners; *investigation filing fee*.—Any stockholders or partners who intend to acquire control of an existing cemetery company from other stockholders or partners shall first apply to the ~~board department~~ for a ~~certificate of approval of~~ for the proposed change of control. The application shall contain the names and addresses of the stockholders or partners seeking to acquire control and a *financial statement signed by all officers of the company attesting to a net worth of at least \$50,000*; and the ~~board department~~ may approve the change of control ~~shall issue a certificate of approval~~ only after it has conducted an investigation of the applicants and determined that such individuals are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner and that the interest of the public generally will not be jeopardized by the ~~proposed~~ change in

ownership and management. The department may examine the records of the cemetery company as part of the investigation in accordance with *this chapter s. 497.011(2)(b)*. The application shall be accompanied by an *investigation initial filing fee* of \$2,500.

Section 62. Section 497.009, Florida Statutes, is renumbered as section 497.213, Florida Statutes, and amended to read:

~~497.213 497.009~~ Annual license fees.—

(1) The department shall collect from each cemetery company operating under the provisions of this chapter an annual license fee as follows:

- (a) For a cemetery with less than \$25,000 annual gross sales ..... \$250.
- (b) For a cemetery with at least \$25,000 but less than \$100,000 annual gross sales ..... \$350.
- (c) For a cemetery with annual gross sales of at least \$100,000 but less than \$250,000 ..... \$600.
- (d) For a cemetery with annual gross sales of at least \$250,000 but less than \$500,000 ..... \$900.
- (e) For a cemetery with annual gross sales of at least \$500,000 but less than \$750,000 ..... \$1,350.
- (f) For a cemetery with annual gross sales of at least \$750,000 but less than \$1,000,000 ..... \$1,750.
- (g) For a cemetery with annual gross sales of \$1,000,000 or more ..... \$2,650.

(2) An application for license renewal shall be submitted, *along with the applicable license fee*, on or before December 31 each year in the case of an existing cemetery company and before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control pursuant to ss. ~~497.205 497.007~~ and ~~497.209 497.008~~. If the renewal application *and fee are* is not received by December 31, the department shall collect a penalty in the amount of \$200 ~~\$25~~ per month or fraction of a month for each month delinquent. *For the purposes of this subsection, a renewal application and fee submitted by mail shall be considered timely submitted and received if postmarked by December 31 of the applicable year.*

Section 63. Section 497.018, Florida Statutes, is renumbered as section 497.233, Florida Statutes, and amended to read:

~~497.233 497.018~~ Disciplinary proceedings.—

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

- (a) Violating any ~~provision provisions~~ of this chapter.
- (b) Failing to comply with a rule or lawful order of the department.
- (c) Failing to pay the fees required by *this chapter herein*.
- (d) Failing to remit the required amounts to any trust fund required by this chapter.
- (e) Attempting to procure, or procuring, by bribery or fraudulent ~~misrepresentation misrepresentations~~, a license to operate a cemetery company.
- (f) Having a license to operate a cemetery company revoked, suspended, or otherwise acted against, including having a license denied, by the licensing authority of another jurisdiction.
- (g) Being convicted or found guilty in any jurisdiction, regardless of adjudication, of a crime which directly relates to the operation of a cemetery.
- (h) Making or filing a report required by this chapter which the licensee knows to be false or willfully failing to make or file a report required by this chapter.
- (i) Fraud, deceit, misrepresentation, negligence, incompetency, or misconduct in the operation of a cemetery.
- (j) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(k) Making any false or misleading statement of the legal requirement as to the necessity of any particular burial merchandise or services.

(l) Making any false or misleading statement regarding the sale of services or merchandise in connection with the operation of a cemetery.

(m) Making any false or misleading statement that natural decomposition or decay of human remains can be prevented or substantially delayed by use of a sealed or unsealed casket or outer burial container.

(n) Soliciting through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

(o) Discouraging the purchase of any burial merchandise or service which is advertised or offered for sale, with the purpose of encouraging the purchase of additional or more expensive burial merchandise or service, by disparaging its quality or appearance, except that factual statements concerning features, design, or construction do not constitute disparagement, or by suggesting directly or by implication that a customer's concern for the price or expressed interest in inexpensive burial merchandise or services is improper, inappropriate, or indicative of diminished respect or affection for the deceased.

(p) Failing to furnish, for retention, to anyone who inquires in person about burial rights, burial merchandise, or burial services, before any discussion of selection, a printed or typewritten list specifying the retail prices for such rights, merchandise, or services. The list shall itemize each product and service available and shall include the name, address, and telephone number of the licensee and statements that the customer consumer may choose only the items he desires, that he will be charged for only those items purchased, and that there may be extra charges for other items or services such as those provided by funeral directors or direct disposers.

(q) Failing to furnish, for retention, to each purchaser of burial rights, burial merchandise, or burial services a written agreement, the form of which has been previously approved by the department, which lists the items and services purchased together with the prices for the items and services purchased; the name, address, and telephone number of the licensee; the signatures of the customer and the licensee or his representative; and the date signed.

(r) Failing to provide to any person, upon request, a copy of the cemetery bylaws.

(s) Assessing fees and costs which have not been disclosed to the customer.

(2) When the board department finds any licensee guilty of any of the acts specified in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$5,000 \$1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the licensee on probation for a period of time subject to such conditions as the board department may specify.

(3) For purposes of this section, the acts or omissions of any person employed by or under contract to the licensee shall be treated as acts or omissions of the licensee.

(4) Any order imposing any penalty pursuant to this section shall recite the grounds upon which the penalty is based.

Section 64. Section 497.021, Florida Statutes, is renumbered as section 497.237, Florida Statutes, and amended to read:

497.237 ~~497.021~~ Care and maintenance trust fund; remedy of department for noncompliance.—

(1) No cemetery company may ~~shall~~ establish a cemetery, or operate a cemetery if already established, without providing for the future care and maintenance of the cemetery, for which a care and maintenance trust fund shall be established, to be known as "the care and maintenance trust fund of . . . ." The trust fund shall be established with a trust company operating pursuant to chapter 660 or with a state or national bank hold-

ing trust powers. Trust funds which are with a state or national bank or savings and loan association licensed in this state on the effective date of this act shall remain in force; however, ~~state or national bank or savings and loan association licensed in this state, provided that funds deposited in a savings and loan association or savings account in a state or national bank shall be limited to an amount insured by an agency of the Federal Government. The provisions of chapter 660 shall not apply to such savings account.~~ when the amount of any such the trust fund exceeds the amount that is insured by an agency of the Federal Government, the cemetery company shall ~~establish and transfer that the~~ trust fund to a trust company operating pursuant to chapter 660 or to a state or national bank holding trust powers.

(2) The cemetery company may appoint a person to advise the trustee in the investment of the trust fund. The ~~board department~~ must approve the appointment of the initial trustee, and any subsequent changes of the trustee shall also be approved by the ~~board department~~. If a cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this chapter, the ~~board department~~, after reasonable notice, shall enforce compliance. However, a ~~no~~ nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding \$2 million is ~~not shall~~ be required to designate a corporate trustee. The trust fund agreement shall specify the following: the name, location, and address of both the licensee and the trustee, showing the date of agreement, together with the percentages required to be deposited pursuant to this chapter ~~§ 497.023~~.

(3) No person may ~~shall~~ withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the ~~board department~~. Funds deposited pursuant to this chapter may ~~shall~~ not be loaned to any cemetery company or person who is directly or indirectly engaged in the burial, funeral home, or cemetery business.

(4) The trustee of the trust established pursuant to this section may only invest in investments as prescribed in s. 497.417. The trustee shall take title to the property conveyed to the trust for the purposes of investing, protecting, and conserving it for the cemetery company; collecting income; and distributing the principal and income as prescribed in this chapter. The cemetery company is prohibited from sharing in the discharge of the trustee's responsibilities under this subsection, except that the cemetery company may request the trustee to invest in tax-free investments.

Section 65. Section 497.023, Florida Statutes, is renumbered as section 497.245, Florida Statutes, and amended to read:

497.245 ~~497.023~~ Care and maintenance trust fund, percentage of payments for burial rights and ~~monument maintenance~~ to be deposited.—

(1) Each cemetery company shall set aside and deposit in its care and maintenance trust fund the following percentages or amounts for all sums received from sales of burial rights and ~~from assessment of any monument maintenance fee as provided in s. 497.041(3)~~:

(a) For graves, 10 percent of all payments received; however, for sales made after December 31, 1959, no deposit shall be less than \$25 \$10 per grave. For each burial right, grave, or space which is provided without charge, the deposit to the fund shall be \$25 \$10.

(b) For mausoleums or columbaria, 10 percent of payments received.

(c) For general endowments for the care and maintenance of the cemetery, the full amount of sums received when received.

(d) For special endowments for a specific lot or grave or a family mausoleum, memorial, marker, or monument, the cemetery company may set aside the full amount received for this individual special care in a separate trust fund or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the state, however, if the licensee does not set up a separate trust fund or savings account for the special endowment, the full amount thereof shall be deposited into the care and maintenance trust fund as required of general endowments.

~~(e) For monument maintenance, the full amount of such sum when received.~~

(2) Deposits to the care and maintenance trust fund shall be made by the cemetery company not later than 30 days following the close of the calendar month in which any payment was received; however, when such payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost for the burial rights. The entire amount required to be deposited into the trust fund shall be paid within 4 years from the date of any contract requiring such payment, regardless of whether all amounts have been received by the cemetery company. *Trust income may be used to pay for all usual and customary services for the operation of a trust account, including, but not limited to: reasonable trustee and custodian fees, investment adviser fees, allocation fees, taxes, and annual examination fees. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the certificateholder. Capital gains taxes shall be paid from the corpus. The care and maintenance trust fund shall be invested and reinvested by the trustee pursuant to chapter 518. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and shall not be paid from the corpus. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the cemetery company.*

(3) Any payments made to the care and maintenance trust fund on contracts which are canceled shall be credited against future obligations to the care and maintenance trust fund, provided they have been refunded to the purchaser.

(4) When a cemetery which is exempt from the provisions of this chapter pursuant to s. 497.003 changes ownership so as to lose its exempt status, it shall establish and maintain a care and maintenance trust fund pursuant to this chapter. The initial deposit for establishment of this trust fund shall be \$25 \$10 per space for all spaces either previously sold or contracted for sale in the cemetery at the time of conversion or \$50,000 \$25,000, whichever is greater.

~~(5) Each cemetery hereafter established shall create a care and maintenance trust fund, depositing therein an initial deposit of not less than \$25,000, and shall submit proof thereof to the department prior to offering for sale any burial rights in grave spaces, niches, mausoleums, columbaria, or crypts. Payments required under subsection (1) shall be credited against this initial deposit until the sum of \$25,000 is reached.~~

(5)(6) In each sales contract, reservation, or agreement wherein burial rights are priced separately, the purchase price of the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately, the full amount of the contract, reservation, or agreement shall be subject to care and maintenance trust fund deposits as provided in this section herein, unless the purchase price of the burial rights can be determined from the accounting records of the cemetery company.

(6)(7) If an installment contract or promissory note for the purchase of a burial space is sold or discounted to a third party, the entire amount due the care and maintenance trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold or discounted.

Section 66. Section 497.029, Florida Statutes, is renumbered as section 497.257, Florida Statutes, and amended to read:

497.257 497.029 Construction of mausoleums and belowground crypts; preconstruction trust fund; compliance requirement.—

(1) A cemetery company shall start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sales, reservations for sales, or agreements for sales are being made within 4 years after the date of the first such sale or 50 percent of the mausoleum or belowground crypts have been sold and the purchase price has been received, whichever occurs first. The construction shall be completed within 5 years after the date of the first sale made. However, extensions for completion, not to exceed 1 year, may be granted by the department for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, all moneys paid shall be refunded upon request, plus interest earned thereon for that portion of the moneys deposited in the trust fund and an amount equal to the interest that would have been earned on that portion of the moneys that were not in trust.

(2) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of belowground crypts prior to construction

shall establish a preconstruction trust fund by written instrument. The preconstruction trust fund shall be administered by a corporate trustee and operated in conformity with s. 497.417 497.021. The preconstruction trust fund shall be separate from any other trust funds that may be required by this chapter.

(3) Before a sale, contract for sale, reservation for sale, or agreement for sale in a mausoleum section or bank of belowground crypts may be made, the cemetery company shall compute the amount to be deposited to the preconstruction trust fund. ~~The total amount portion of each payment required to be deposited in the fund for each unit of the project shall be computed by dividing the cost of the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts in the section or bank of belowground crypts, to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain the percentage of each payment which shall be required to be deposited in the preconstruction trust fund.~~ When payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost of the contract, including other merchandise and services purchased. Preconstruction trust fund payments shall be made within 30 days after receipt of payment by the cemetery company or its agent.

(4) When the cemetery company delivers a completed crypt acceptable to the purchaser in lieu of the crypt purchased prior to construction, all sums deposited to the preconstruction trust fund for that purchaser shall be paid to the cemetery company.

(5) Each cemetery company may negotiate, at the time of establishment of the preconstruction trust fund, a procedure for withdrawal of the escrowed funds as a part of the construction cost of the mausoleum section or bank of belowground crypts contemplated, subject to the approval of the department. Upon completion of the mausoleum section or bank of belowground crypts, the cemetery company shall certify completion to the trustee and shall be entitled to withdraw all funds deposited to the account thereof.

(6) If the mausoleum section or bank of belowground crypts is not completed within the time limits set out in this section, the trustee shall contract for and cause the project to be completed and pay therefor from the trust funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(7) Within 105 days after the end of the fiscal year of the cemetery company, the trustee shall file a financial report of the preconstruction trust fund with the department.

(8) In lieu of the payments outlined hereunder to the preconstruction trust fund, the cemetery company may deliver to the department a performance bond in an amount and by a surety company acceptable to the department.

Section 67. Section 497.031, Florida Statutes, is renumbered as section 497.301, Florida Statutes, and amended to read:

497.301 497.031 Display of notice of regulation; civil penalties.—

(1) Each cemetery company licensed pursuant to this chapter shall display in a place that is in clear and unobstructed public view a notice that the place of business is licensed and regulated by the Department of Banking and Finance and that any questions or complaints may be directed to the department. The notice shall be in a form specified by the department.

(2) *The department shall establish and operate a toll-free telephone hotline to receive complaints and provide information relating to the regulation under this chapter. The department may levy a civil penalty of \$50 for the failure of any licensee to comply with this section.*

Section 68. Section 497.033, Florida Statutes, is renumbered as section 497.305, Florida Statutes, and amended to read:

497.305 497.033 Cemetery companies; authorized functions.—

(1) Within the boundaries of the cemetery lands it owns, a cemetery company may perform the following functions:

(a) The exclusive care and maintenance of the cemetery.

(b) The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and

close all ground, mausoleum, and urn burials. *Each preneed contract for burial rights or services shall disclose, pursuant to board rule, whether opening and closing of the burial space is included in the contract and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.*

(c) The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment; however, nothing herein shall limit the right of a person owning interment or burial rights to sell those rights to third parties subject to the transfer of title by the cemetery company.

(d) The adoption of bylaws regulating the activities conducted within its boundaries, provided that no funeral director licensed pursuant to chapter 470 shall be denied access to any cemetery to conduct a funeral for or supervise a disinterment of human remains. All bylaws provided for herein shall be subject to the approval of the ~~board department~~ under the provisions of chapter 120 prior to becoming effective. The ~~board department~~ shall not approve any bylaw which unreasonably restricts the use of interment or burial rights, which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

(e) The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

(f) The nonexclusive cremation of human remains, subject to provisions of s. 470.025.

(g) The entry into sales or management contracts with other persons. The cemetery company shall be responsible for the deposit of all moneys required by this part to be placed in a trust fund.

(2) A full disclosure shall be made for all fees required for interment, entombment, or inurnment of human remains.

(3) A cemetery company may adopt bylaws establishing minimum standards for burial merchandise or the installation thereof.

Section 69. Section 497.035, Florida Statutes, is renumbered as section 497.309, Florida Statutes, and amended to read:

~~497.309~~ 497.035 Records.—

(1) A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial and the name of the person buried, together with lot, plot, and space in which the burial was made. All financial records of the *cemetery company licensee* shall be available at ~~its the licensee's~~ principal place of business in this state and shall be readily available at all reasonable times for examination by the department.

(2) *Notwithstanding the provisions of subsection (1), the board may, upon request, authorize a cemetery company to maintain its financial records at a location other than its principal place of business and may, if necessary, require the company to make its books, accounts, records, and documents available at a reasonable and convenient location in this state.*

(3) *The board may prescribe the minimum information to be shown in the books, accounts, records, and documents of a cemetery company to enable the department to determine the company's compliance with this chapter.*

Section 70. Section 497.313, Florida Statutes, is created to read:

497.313 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(1) Charges paid for opening and closing a grave and vault installation.

(2) Charges paid for transferring burial rights from one purchaser to another; however, no such fee may exceed \$50.

(3) Charges for sales, documentary excise, and other taxes actually and necessarily paid to a public official, which charges must be supported in fact.

(4) Charges for credit life and credit disability insurance, as requested by the purchaser, the premiums for which may not exceed the applicable premiums chargeable in accordance with the rates filed with the Department of Insurance.

(5) Charges for interest on unpaid balances pursuant to chapter 687.

Section 71. Section 497.041, Florida Statutes, is renumbered as section 497.317, Florida Statutes, and amended to read:

~~497.317~~ 497.041 Monuments; installation and maintenance fees.—

(1) No cemetery company ~~may shall~~ charge a fee for the installation of a monument purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents.

(2) To verify that a monument is installed on the proper grave in accordance with cemetery bylaws, rules, or regulations, the cemetery company shall mark the place on the grave where the marker or monument is to be installed and shall inspect the installation when completed. ~~A cemetery company may charge a fee not to exceed \$25, which includes both marking the grave and inspecting any monument not installed by the cemetery company or its agents. Nothing in this subsection is intended to imply or require that a cemetery company shall have to lay out or engineer a grave site or grave sites for the installation of a marker or monument.~~

(3) *A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property. A cemetery company may assess, at the time of installation, a charge not to exceed 10 cents per square inch of the size of the base of a monument for the maintenance of such monument. Such fee shall be assessed uniformly without regard to whether the installer is the cemetery company or a person or firm other than the cemetery company or its agent. All funds collected pursuant to this section shall be deposited by the cemetery company in its care and maintenance trust fund as provided in s. 497.023(2).*

Section 72. Section 497.043, Florida Statutes, is renumbered as section 497.321, Florida Statutes, and amended to read:

~~497.321~~ 497.043 Solicitation of goods or services.—

(1) The ~~board department~~ is authorized to adopt rules regulating the solicitation of sales of burial rights, merchandise, or services by licensees.

(2) The ~~board department~~ shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) The ~~board department~~ shall regulate any solicitation which comprises an uninvited invasion of personal privacy. It is the express finding of the Legislature that the public have a high expectation of privacy in their personal residences, and the department by rule shall restrict the hours or otherwise regulate such solicitation in the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

(4) Nothing in this act shall be construed to restrict the right of a person to lawfully advertise, use direct mail, or otherwise communicate in a manner not within the definition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of goods and services being offered.

(5) At-need solicitation of sales of burial rights, merchandise, or services is prohibited. No *cemetery company licensee* or *any his agent* or representative of that company ~~may shall~~ contact the family or next of kin of a deceased person to sell services or merchandise unless the *cemetery company licensee* or *an his agent* or representative of the company has been initially called or contacted by the family or next of kin of such person or persons and requested to provide ~~his~~ services or merchandise.

Section 73. Section 497.044, Florida Statutes, is renumbered as section 497.325, Florida Statutes, and amended to read:

~~497.325~~ 497.044 Illegal tying arrangements.—

(1)(a) No person authorized to sell grave space ~~may shall~~ tie the purchase of any grave space to the purchase of a monument from or through the seller or any other designated person or corporation.

(b) Noncemetery licensed persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation, and installation services for monuments. *However,*

~~1. A cemetery company shall be permitted to require that any person or firm who installs, places, or sets a monument be duly licensed in the county in which the cemetery is located, carry liability insurance for any vehicle brought onto cemetery property, and carry public liability insurance. The cemetery company shall not require any installer to carry more than \$1 million in coverage. If the cemetery company carries an amount of insurance that is less than \$1 million, the cemetery company shall not require any installer to carry an amount of insurance any greater than it carries. Any such rules shall be conspicuously posted and readily accessible for inspection and copying by interested persons.~~

~~2. Nothing contained in this paragraph shall prohibit a cemetery company may establish from establishing reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.~~

(c) No person who is authorized to sell grave space and no cemetery company may shall:

1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument, ~~except as provided in s. 497.041;~~

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

3. Waive liability with respect to damage to a monument after installation,

where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

(2) No program offering free burial rights may shall be conditioned by any requirement to purchase additional burial rights or merchandise. Any program offering free burial rights shall comply with s. 817.415.

Section 74. Section 497.329, Florida Statutes, is created to read:

497.329 Registration of brokers of burial rights.—

(1) No person shall receive compensation to act as a third party to the sale or transfer of three or more burial rights in a 12-month period unless the person pays a registration fee of \$150 and is registered with the department in accordance with this section.

(2) The department, by rule, shall provide for the biennial renewal of registrants and a renewal fee of \$100.

(3) This section shall not apply to persons otherwise licensed or registered pursuant to this chapter.

Section 75. Section 497.046, Florida Statutes, is renumbered as section 497.333, Florida Statutes, and amended to read:

~~497.333 497.046 Disclosure of information to public.—If A licensee offering offers to provide burial merchandise or services to the public, he shall be subject to disciplinary action as provided in this chapter if he:~~

(1) ~~Fails to reasonably~~ Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by *the licensee and him or fails to* disclose, in response to a general telephone inquiry about the licensee's offerings or prices, that price information is available over the telephone.

(2) ~~Fails to~~ Fully disclose all of his available services and merchandise prior to the selection of burial merchandise. The full disclosure required shall identify the prices of all services and merchandise provided by the licensee.

(3) ~~Not make~~ Makes any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container.

(4) Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights or merchandise purchased.

(5) Provide to the customer, upon request, a current copy of the bylaws of the licensee.

(6) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract.

(a) The written contract shall be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) The written contract shall provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(7) Provide the licensee's policy on cancellation and refunds to each customer.

(8) In a manner established by rule of the board, provide on the signature page, clearly and conspicuously in bold faced type larger than the largest type on the rest of the page, the following:

(a) The purchase price.

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services and cash advances.

(e) A description of the merchandise covered by the contract to include, when applicable, model, manufacturer and other relevant specifications.

(f) The toll-free number of the department which is available for questions or complaints.

(g) A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid.

Section 76. Section 497.048, Florida Statutes, is renumbered as section 497.337, Florida Statutes, and amended to read:

~~497.337 497.048 Prohibition on Receipts from sale of personal property or services; deposits into merchandise trust fund; refunds.—~~

(1) This section applies to all cemetery companies licensed pursuant to this chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of human remains or the commemoration of the memory of a deceased human being and also to any person in direct written contractual relationship with licensed cemetery companies.

(2)(a) Except as otherwise provided in this chapter, no cemetery company shall directly or indirectly enter into a contract for the sale of personal property or services, excluding burial or interment rights, which may be used in a cemetery in connection with disposing of human remains, or commemorating the memory of a deceased human being, if delivery of the personal property or performance of the service is to be made more than 120 days after receipt of final payment under the contract of sale, except as provided in s. 497.417 paragraph (3)(a); however, ~~the entire amount required to be deposited into the fund shall be paid within 7 years from the date of any contract requiring such payment, regardless of whether all amounts have been received by the cemetery company.~~ This shall include, but not be limited to, the sale for future delivery of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries and interment fees but excluding burial or interment rights.

(b) For the purposes of this section, the term "delivery" means actual delivery and installation at the time of need or at the request of the owner or the owner's agent. Merchandise is not considered delivered under paragraph (a) if it is stored on the grounds of the cemetery or at a storage facility except for monuments, markers, and permanent outer burial receptacles that are stored in a protected environment and are comprised of materials designed to withstand prolonged, protected storage without adversely affecting the structural integrity or aesthetic characteristics of such permanent outer burial receptacles.

(c) *In lieu of delivery as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by the board may elect, at its discretion, to comply with the delivery requirements of this section by annually submitting, in writing, evidence of the manufacturer's financial responsibility with the board for its review and approval. The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.423 or s. 497.425, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a certificateholder under s. 497.423 or s. 497.425.*

(3)(a) ~~Any cemetery company entering into a contract for the sale of such personal property or services shall deposit into a merchandise trust fund 110 percent of the wholesale purchase price of the personal property or services sold for future use or delivery; the wholesale purchase price shall be determined at the time of initial deposit to the merchandise trust fund based upon cost determined by the department in accordance with subsection (4). The merchandise trust fund shall be administered by a corporate trustee in accordance with a written trust instrument. However, No nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding \$2 million shall be required to designate a corporate trustee.~~

(b) ~~The deposit shall be made within 30 days after the end of the calendar month in which any payment is received by the cemetery company. The percentage of the 110 percent of the wholesale cost placed in trust must be identical to the percentage which the payment received bears to the total cost of the items and services.~~

(c) ~~Any cemetery company which promises the future delivery of such personal property or services at no cost shall, within 30 days after the end of the calendar month in which the promise was made, deposit into a merchandise trust fund 110 percent of the wholesale purchase price.~~

(d) ~~The cemetery company shall maintain records to demonstrate compliance with this section.~~

(e) ~~The merchandise trust fund shall be operated in conformity with s. 497.021 with respect to the nature and character of the trustee. Alternatively, the merchandise trust fund shall be deposited in a savings account in the name of the cemetery company, as trustee, with a bank, trust company, or savings and loan association incorporated under and authorized by the laws of this state or of the United States, provided that such accounts shall be fully insured by the United States or an agency or instrumentality thereof. The provisions of chapter 660 shall not apply to such savings account. When the amount of the trust fund exceeds the amount that is insured by an agency of the Federal Government, the cemetery company shall establish and transfer the trust fund to a trust company operating pursuant to chapter 660 or with a state or national bank holding trust powers. If a cemetery company elects to maintain a savings account in its own name, as trustee, as provided herein, it shall promptly notify the department in writing of that fact and furnish any relevant information that the department may require. In addition to such notice, the cemetery company shall also execute and deliver to the bank, trust company, or savings and loan association in which the trust account is maintained a power of attorney and any other indemnification agreement that may be required by the bank, trust company, or savings and loan association. The cemetery company shall also furnish satisfactory evidence to the department that it has executed and delivered such instruments to the bank, trust company, or savings and loan association.~~

(4) ~~The wholesale purchase price shall be based on the invoices of the cemetery. If an invoice is not available, estimates and other data may be used to determine the wholesale purchase price. The cemetery company shall maintain invoices and other documentation used in determining the wholesale purchase price of preneed merchandise or services.~~

(5) ~~In order to ensure that the proper deposits are made to the trust fund, the department shall examine the status of the trust fund of each company on a semiannual basis for the first 2 years of the trust fund's existence.~~

(6)(a) ~~The funds shall be held in trust, both as to principal and income earned thereon, and shall remain intact, except that the cost of the operation of the trust or the trust account authorized by paragraph (3)(c) may be deducted from the income earned thereon, until delivery of the merchandise is made or the services are performed by the cemetery~~

~~company. Upon delivery of the merchandise or performance of the services, the cemetery company shall certify same to the trustee, or to the department if the funds are deposited in a trust account with the cemetery company as trustee. Upon certification, the amount of money on deposit to the credit of that particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery company, or the cemetery company may withdraw the amount from the trust account maintained by it as trustee. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.~~

(b) ~~If a cemetery company which has entered into a contract for the sale of personal property or services and which has made the deposit to the merchandise trust fund or trust account cannot or does not provide the personal property or perform the services called for by the contract after written request to do so, the purchaser or his heirs or assigns or duly authorized representative shall have the right to provide such personal property or services and, having provided the property or services, shall be entitled to receive the deposit to the credit of that particular contract. The trustee, bank, trust company, or savings and loan association shall not be held responsible for any refunds made on account of the cemetery company's written direction or an affidavit submitted in accordance with this section. However, nothing herein contained shall relieve the cemetery company from any liability for nonperformance of the contract terms.~~

(c) ~~If the cemetery company cannot deliver the personal property sold because of a national emergency, the provisions of paragraph (b) shall not apply.~~

(7) ~~The trustee shall annually, within 105 days after the end of its fiscal year, file a financial report of the merchandise trust fund with the department, setting forth the principal thereof, the investments and payments made, and the income earned and disbursed. The department may require the trustee to make such additional financial reports as it may deem necessary. If the account is held by the cemetery company as trustee, the department may require the bank, trust company, or savings and loan association in which the account is maintained to furnish written verification of the financial report required to be submitted by the cemetery company.~~

(8) ~~The department shall from time to time, as it deems necessary, examine the business affairs of each cemetery company which writes contracts for the sale of property or services. The examination shall be made at the expense of the licensee. The written report of the examination shall be filed in the office of the department. A licensee which is being examined shall produce all records of the company, including those records of the company held by the bank, trust company, or savings and loan association in which the merchandise trust fund is maintained.~~

(9) ~~Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.~~

(10) ~~This section does not apply to persons holding a license or certificate under chapter 470 or chapter 639 when performing services or selling items authorized by such chapter.~~

(11) ~~Each contract for the sale of personal property or the performance of services must state the type, size, and design of personal property and the description of service to be delivered or performed.~~

(12) ~~If an installment contract for the purchase of personal property or services is sold, transferred, or discounted to a third party, the entire amount due the merchandise trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold, transferred, or discounted.~~

Section 77. Section 497.0484, Florida Statutes, is renumbered as section 497.425, Florida Statutes, and amended to read:

497.425 497.0484 Alternatives to deposits under s. 497.417 497.048.—

(1)(a) As an alternative to the requirements of s. 497.417 497.048 that relate to trust funds, a *certificateholder* cemetery may purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered preneed contracts for merchandise and services. For the purpose of this section, the term "outstanding liabilities" means the gross replacement or wholesale value of the preneed merchandise and services. The bond shall be made payable to the State of Florida for the ben-

efit of the ~~board department~~ and all purchasers of preneed cemetery merchandise or services. The bond must be approved by the ~~board department~~.

(b) The amount of the bond shall be based on a report documenting the outstanding liabilities of the ~~certificateholder cemetery company~~ and shall be prepared by the ~~certificateholder cemetery company~~ using generally accepted accounting principles and signed by the ~~certificateholder's cemetery company's~~ chief financial officer.

(c) The report shall be compiled as of the end of the ~~certificateholder's cemetery company's~~ fiscal year and updated annually. The amount of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities.

(d) If a ~~certificateholder cemetery company~~ fails to maintain a bond pursuant to this section, the ~~certificateholder cemetery company~~ shall cease the sale of preneed merchandise and services.

(2) Upon prior approval by the ~~board department~~, the ~~certificateholder cemetery company~~ may file a letter of credit with the ~~board department~~ in lieu of a surety bond. Such letter of credit must be in a form, and is subject to terms and conditions, prescribed by the ~~board department~~. It may be revoked only with the express approval of the ~~board department~~.

(3)(a) A buyer of preneed merchandise or services who does not receive such services or merchandise due to the economic failure, closing, or bankruptcy of the ~~certificateholder cemetery company~~ must file a claim with the surety as a prerequisite to payment of the claim and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In the case of a letter of credit or cash deposit that has been filed with the ~~board department~~, the buyer may file a claim with the ~~board department~~.

(b) In order to qualify for recovery on any claim under paragraph (a), the buyer must file the claim no later than 1 year after the date on which the ~~certificateholder cemetery~~ closed or bankruptcy was filed.

(c) The ~~board department~~ may file a claim with the surety on behalf of any buyer under paragraph (a). The surety shall pay the amount of the claims to the ~~board department~~ for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(d) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(e) If the total value of the claims filed exceeds the amount of the bond, the surety shall pay the amount of the bond to the ~~board department~~ for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(4) The ~~certificateholder cemetery company~~ shall maintain accurate records of the bond and premium payments on it, which records shall be open to inspection by the ~~board department~~.

(5) For purposes of this section, a preneed contract is a contract calling for the delivery of merchandise and services in the future and entered into before the death of the prospective recipient.

(6) This act does not relieve the ~~certificateholder cemetery company~~ or other entity from liability for nonperformance of contractual terms unless the ~~certificateholder cemetery company~~ cannot deliver the merchandise or services because of a national emergency, strike, or act of God.

(7) The ~~board department~~ may require the holder of any assets of the ~~certificateholder cemetery company~~ to furnish written verification of the financial report required to be submitted by the ~~certificateholder cemetery company~~ or other entity.

(8) Any preneed contract which promises future delivery of merchandise at no cost constitutes a paid-up contract. Merchandise which has been delivered is not covered by the required performance bond or letter of credit even though the contract is not completely paid. The ~~certificateholder cemetery company~~ may not cancel a contract unless the purchaser is in default according to the terms of the contract. A contract sold, discounted, and transferred to a third party constitutes a paid-up contract for the purposes of the performance bond or letter of credit.

(9) Each contract must state the type, size, and design of merchandise and the description of service to be delivered or performed.

~~(10) This section does not apply to contracts entered into by a person or legal entity holding a license or certificate under chapter 470 or chapter 630 for services or items authorized by those chapters.~~

~~(10)(11)~~ A purchaser and a ~~certificateholder cemetery company~~ who are parties to a preneed contract executed prior to July 2, 1988, may enter into an amended preneed contract which is made subject to this section.

~~(11)(12)~~ The ~~board department~~ may adopt forms and rules necessary to implement this section, including, but not limited to, rules which ensure assure that the surety bond and line of credit provide liability coverage for preneed merchandise and services.

Section 78. Section 497.049, Florida Statutes, is renumbered as section 497.427, Florida Statutes, and amended to read:

~~497.427 497.049~~ Existing merchandise trust funds; proof of compliance with law.—The ~~certificateholder cemetery company~~ shall present to the ~~board department~~ prior to the implementation of the alternatives provided in s. ~~497.425 497.0484~~ documentation which demonstrates that the existing merchandise trust fund complies with the law and that the elected alternative plan conforms to the requirements of this chapter.

Section 79. Section 497.054, Florida Statutes, is renumbered as section 497.519, Florida Statutes, and amended to read:

~~497.519 497.054~~ Penalties.—Any officer or director, or person occupying similar status or performing similar functions, of a ~~certificateholder cemetery company~~ which fails to make required deposits to any trust fund required by this chapter; any director, officer, agent, or employee of a ~~certificateholder cemetery company~~ who makes any unlawful withdrawal of funds from any such account or who knowingly discloses to the department or an employee thereof any false report made pursuant to this chapter ~~s. 497.054~~; or any person who willfully violates any of the provisions of this chapter ~~commits a felony~~ of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 80. Section 497.056, Florida Statutes, is renumbered as section 497.527, Florida Statutes, and amended to read:

~~497.527 497.056~~ Civil remedies.—Any person may bring a civil action against a person or company violating the provisions of this chapter in the circuit court of the county in which the alleged violator resides or has his or its principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or \$500, whichever is greater. The court may, as provided by common law, award punitive damages and may provide such equitable relief as it deems proper or necessary, including enjoining the defendant from further violations of this ~~chapter act~~.

Section 81. Section 497.515, Florida Statutes, is created to read:

497.515 Additional prohibited acts.—In addition to the acts set forth elsewhere in this chapter, the following acts are prohibited:

(1) Requiring lot owners or current customers to make unnecessary visits to the cemetery company office for the purpose of solicitation.

(2) Soliciting that overreaches and takes advantage of a customer's ignorance or emotional vulnerability.

(3) Failing to disclose all fees and costs the customer may incur to use the burial rights or merchandise purchased.

(4) Failing to provide a detailed description on the written contract of all burial merchandise purchased.

(5) Failing to honor cancellations and issue refunds as provided by s. 497.419.

(6) Misrepresenting any burial merchandise or service when offered for sale to the public.

(7) Failing to obtain written authorization from the family or next of kin of the deceased prior to disinterment, disinterment, or disinterment.

Section 82. Section 497.057, Florida Statutes, is renumbered as section 497.517, Florida Statutes, and amended to read:

~~497.517 497.057~~ Attorney's fees.—

(1) In any civil litigation resulting from a transaction involving a violation of this chapter, ~~except as provided in s. 497.011~~, the court may award to the prevailing party, after judgment in the trial court and exhaustion of any appeal, reasonable attorney's fees and costs from the nonprevailing party in an amount to be determined by the trial court.

(2) Any award of attorney's fees or costs shall become a part of the judgment and shall be subject to execution as the law allows.

(3) Subsections (1) and (2) shall not apply to any action initiated by the department.

Section 83. Section 497.061, Florida Statutes, is renumbered as section 497.341, Florida Statutes, and amended to read:

~~497.341 497.061~~ Burial without regard to race or color.—

(1) No cemetery company or other legal entity conducting or maintaining any public or private cemetery ~~may~~ shall deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Church cemeteries may limit burials to church members and their families.

(2) Any cemetery company or other legal entity which violates the provisions of this section ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.

Section 84. Section 497.071, Florida Statutes, is renumbered as section 497.345, Florida Statutes, and amended to read:

~~497.345 497.071~~ Abandoned cemeteries; immunity; actions.—

(1) Notwithstanding any provision of law to the contrary, a county or municipality which has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months may, upon notice to the department, take such action as is necessary and appropriate to provide for maintenance and security of the cemetery. The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall establish an ongoing obligation or duty to provide continuous security or maintenance for any cemetery.

(2) No county or municipality nor any person under the supervision or direction of the county or municipality, providing good faith assistance in securing or maintaining a cemetery under subsection (1), ~~may~~ shall be subject to civil liabilities or penalties of any type for damages to property at the cemetery.

(3) A county or municipality that has maintained or secured a cemetery pursuant to the provisions of subsection (1) may maintain an action at law against the owner of the cemetery to recover an amount equal to the value of such maintenance or security.

Section 85. Section 497.349, Florida Statutes, is created to read:

497.349 Inactive cemeteries.—

(1) A licensee shall be considered inactive upon the acceptance of the surrender of its license by the department or upon the nonreceipt by the department of the license renewal fees required by s. 497.213(2).

(2) A licensee shall cease all preneed sales to the public upon becoming inactive. At-need sales to the public shall cease within 30 days after becoming inactive.

(3) Any licensee desiring to surrender its license to the department shall first:

- (a) File notice with the department.
- (b) Submit copies of its existing trust agreements.
- (c) Resolve to the department's satisfaction all findings and violations resulting from the last examination conducted.
- (d) Pay all outstanding fines and invoices due the department.
- (e) Submit its current license.

(4) Upon receipt of the notice, the department shall review the licensee's:

- (a) Trust funds.
- (b) Trust agreements.
- (c) Care and maintenance of the cemetery grounds.

(5) After a review to the department's satisfaction, the department shall terminate the license.

(6)(a) The care and maintenance trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and funds in that trust fund shall be disbursed to the cemetery on a regular basis for the upkeep of the grounds.

(b) The merchandise trust fund of a licensee shall be held intact and in trust after the licensee has become inactive, and the funds in that trust fund shall be disbursed in accordance with the requirements of the written contracts until the fund has been exhausted.

Section 86. Section 497.091, Florida Statutes, is renumbered as section 497.353, Florida Statutes, and amended to read:

~~497.353 497.091~~ Owners to provide addresses; presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.—

(1) For purposes of this section, all owners of burial rights in any cemetery licensed under the provisions of the Florida *Funeral and Cemetery Services Act* shall have the legal duty to keep the cemetery companies informed in writing of their residence addresses. Cemetery companies shall notify their present burial rights owners by letter at the owner's last known address and notify all future burial rights owners, in the contract for sale and the certificate of ownership, of the requirement to keep the cemetery company informed in writing of their current residence address.

(2) There is hereby created a presumption that burial rights in any cemetery licensed under this chapter have been abandoned when an owner of unused burial rights has failed to provide the cemetery with a current residence address for a period of 50 consecutive years and the cemetery is unable to communicate by certified letter with said owner of unused burial rights for lack of address. No such presumption of abandonment shall exist for burial rights held in common ownership which are adjoining, whether in a grave space, plot, mausoleum, columbarium, or other place of interment, if any such burial rights have been used within such common ownership.

(3) Upon the occurrence of a presumption of abandonment as set forth in subsection (2), a cemetery may file with the department a certified notice attesting to the abandonment of the burial rights. The notice shall do the following:

- (a) Describe the burial rights certified to have been abandoned;
- (b) Set forth the name of the owner or owners of the burial rights, or if the owner is known to the cemetery to be deceased, then the names, if known to the cemetery, of such claimants as are heirs at law, next of kin, or specific devisees under the will of the owner;

(c) Detail the facts with respect to the failure of the owner or survivors as outlined in this section ~~herein~~ to keep the cemetery informed of the owner's address for a period of 50 consecutive years or more; and

(d) Certify that no burial right has been exercised which is held in common ownership with any abandoned burial rights as set forth in subsection (2).

(4) Irrespective of diversity of ownership of the burial rights, a cemetery may include in its certification burial rights in as many owners as are certified to have been abandoned.

(5) The department shall notice and publish the approved abandoned burial rights in the manner provided by s. 717.118 ~~717-13~~.

(6) Within 120 days from the final notice and publication as provided in subsection (5), the department shall notify the cemetery if there has been no claim filed for the burial rights, and the cemetery shall have the right to sell such burial rights at a public sale subject to the approval of the sale price by the department.

(7) Notice of the time and place of any sale held pursuant to the provisions of this section shall be published by the cemetery once in a newspaper of general circulation in the county in which the cemetery is located, such publication to be not less than 30 days prior to the date of sale.

(8) The proceeds derived from any sale shall be disbursed in the following manner: an amount specified in s. 497.245 ~~497-023~~ shall be deposited to the cemetery care and maintenance trust fund; an amount equal to the cemetery company's actual and necessary costs incurred pursuant to this section but not to exceed 10 percent of the selling price of the abandoned burial right shall be deposited to the cemetery company's operating account; and the balance of the proceeds shall be deposited with the department within 20 days after receipt of said funds. The department shall deposit all funds received pursuant to this subsection in accordance with the provisions of s. 717.123 ~~717-19~~.

(9) Persons or their heirs who were owners of burial rights which were sold under this section shall have the right at any time to obtain equivalent burial rights in the cemetery without further charge. If no burial rights are desired, such persons or their heirs may obtain the amount paid to the department in accordance with the provisions of s. 717.124 ~~ss. 717-20 and 717-21~~.

(10) The cemetery shall set aside equivalent burial rights equal to 10 percent of the abandoned burial rights sold under this section for the exclusive use of persons or their heirs who were owners of burial rights which were sold under this section, who have the right at any time to obtain equivalent burial rights in the cemetery under this section.

(11) Persons who purchase burial rights at a sale pursuant to this section shall have the right to sell, alienate, or otherwise transfer said burial rights subject to and in accordance with the rules and regulations of the cemetery and payment of a reasonable transfer fee.

(12) No burial rights reacquired pursuant to this section by a cemetery may be included in determining available inventory of burial spaces or lots in the evaluation of need for new cemeteries pursuant to s. 497.006.

Section 87. Section 497.357, Florida Statutes, is created to read:

497.357 Registration of exempt cemeteries.—

(1) All cemeteries in excess of 5 acres located in this state that are exempt from the provisions of this chapter shall be required to register and pay a registration fee of \$25 with the department by filing a report of identification with the department. The department shall maintain such reports as public records. Such registration shall be renewed every 5 years pursuant to a schedule set by board rule.

(2) The report shall be submitted on a form approved by the board, and shall list the name and address of the authorized agent who is responsible for conducting the business of the cemetery and to whom inquiries about the cemetery can be directed.

(3) The board may institute proceedings in any appropriate court for injunctive relief to enforce this section.

Section 88. Section 497.361, Florida Statutes, is created to read:

497.361 Registration of monument establishments.—

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

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

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

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

Section 89. Sections 497.012, 497.014, 497.015, 497.016, 497.019, 497.022, 497.024, and 497.027, Florida Statutes, are renumbered as sections 497.217, 497.221, 497.225, 497.229, 497.525, 497.241, 497.249, and 497.253, Florida Statutes, respectively.

Section 90. Section 639.085, Florida Statutes, is renumbered as section 497.401, Florida Statutes, and amended to read:

497.401 ~~639-085~~ *Preneed sales*; chapter exclusive; applicability of other laws.—Except as provided in this chapter, preneed funeral merchandise or service contract businesses and *preneed burial merchandise or service contract businesses* shall be governed by this chapter and shall be exempt from all other provisions of the Florida Insurance Code.

Section 91. Section 639.087, Florida Statutes, is renumbered as section 497.403, Florida Statutes, and amended to read:

497.403 ~~639-087~~ Insurance business not authorized.—Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any preneed funeral merchandise or service contract business or any *preneed burial merchandise or service business* to transact any insurance business, other than that of preneed funeral merchandise or service insurance or *preneed burial merchandise or service insurance*, or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the Department of Insurance under the provisions of the Florida Insurance Code. *Any insurance business transacted under this section must comply with the provisions of s. 626.785.*

Section 92. Section 639.09, Florida Statutes, is renumbered as section 497.405, Florida Statutes, and amended to read:

497.405 ~~639-09~~ Certificate of authority required.—

(1)(a) No person may sell a preneed contract without first having a valid certificate of authority.

(b) *No person may sell 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.*

(2)(a) No person may receive any funds for payment on a preneed contract who does not hold a valid certificate of authority.

(b) The provisions of paragraph (a) do not apply to any trust company or to any national or state bank or savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

(c) The provisions of paragraph (a) do not apply to any Florida corporation existing under chapter 607 acting as a servicing agent hereunder in which the stock of such corporation is held by 100 or more persons licensed pursuant to chapter 470, provided no one stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation; provided the corporation has a blanket fidelity bond, covering all employees handling the funds, in the amount of \$50,000 or more issued by a licensed insurance carrier in this state; and provided the corporation processes the funds directly to and from the trustee within the applicable time limits set forth in this chapter. The department may require any person claiming that the provisions of this paragraph exempt it from the provisions of paragraph (a) to demonstrate to the satisfaction of the department that it meets the requirements of this paragraph.

(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.

Section 93. Section 639.10, Florida Statutes, is renumbered as section 497.407, Florida Statutes, and amended to read:

497.407 ~~639-10~~ Certificate of authority; annual statement; renewal.—

(1) An application to the ~~board department~~ for a certificate of authority shall be accompanied by the statement and other matters described in this section in the form prescribed by the ~~board department~~. Annually thereafter, within 3 months after the end of its fiscal period, or within an extension of time therefor, as the ~~board department~~ for good cause may grant, the person authorized to engage in the sale of preneed contracts shall file with the department a full and true statement of his financial condition, transactions, and affairs, prepared on a basis as adopted by rule of the ~~board department~~, as of the preceding fiscal period or at such other time or times as the ~~board department~~ may provide by rule, together with information and data which may be required by the ~~board department~~.

(2) The statement shall include the following:

- (a) The types of preneed contracts proposed to be written.
- (b) The name and address of the place of business of the person offering to write preneed contracts.
- (c) Evidence that the person offering the statement:

1. Has the ability to discharge his liabilities as they become due in the normal course of business and has sufficient funds available during the calendar year to perform his obligations under his contract;

2. Has complied with the trust requirements for the funds received under contracts issued by himself as hereinafter described;

3. Has disbursed interest, dividends, or accretions earned by trust funds, in accordance with this chapter and rules promulgated thereunder; and

4. Has complied with this chapter and any rules of the *board and the department*.

(d) Any other information considered necessary by the *board department* to meet its responsibilities under this chapter.

(3) If the person is an individual, the statement shall be sworn by him; if a firm or association, by all members thereof; or, if a corporation, by the president and secretary thereof.

(4) The fee payable to the department for issuance of the original certificate of authority and each annual renewal thereof shall be set by the *board at an amount not to exceed \$500 and \$100, which sum* shall accompany each application for an original certificate and, thereafter, each annual statement. The fee shall be payable to the *Insurance Commissioner's Regulatory Trust Fund under the Division of Finance*.

(5) Upon the *board department's* being satisfied that the statement and matters which may accompany it meet the requirements of this chapter and of its rules, it shall issue or renew the certificate of authority if upon investigation by the *board department* it appears that the principals, including directors, officers, stockholders, employees, and agents of such person, are of good moral character and have reputations for fair dealing in business matters.

(6) The certificate of authority shall expire annually on June 1, unless renewed, or at such other time or times as the *board department* may provide by rule.

(7) An application for an initial certificate of authority or for the annual renewal of the certificate shall disclose the existence of all preneed contracts for service or merchandise funded by any method other than a method permitted by this chapter, which contracts are known to the applicant and name the applicant or his business as the beneficiary upon the death of the purchaser of the preneed contract. Such disclosure shall include the name and address of the contract purchaser, the name and address of the institution where such funds are deposited, and the number used by the institution to identify the account. With respect to contracts entered into before January 1, 1983, the *board department* may not deny or refuse to renew a certificate of authority solely on the basis of such disclosure. The *board department* may not require the purchaser of any such contract to liquidate the account if such account was established before July 1, 1965. The *board department* may use the information disclosed to notify the contract purchaser and the institution in which such funds are deposited should the holder of a certificate of authority be unable to fulfill the requirements of the contract.

(8) On or before April 1 of each year, the certificateholder shall file with the *board department* in the form prescribed by the *board department* a full and true statement as to the activities of any trust established by it pursuant to this chapter for the preceding calendar year.

(9) In addition to any other penalty that may be provided for under this chapter, the *board department* may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file its annual statement, and the *board department* may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file the statement of activities of the trust. Upon notice to the certificateholder by the *board department* that the certificateholder has failed to file the annual statement or the statement of activities of the trust, the certificateholder's authority to sell preneed contracts shall cease while such default continues. The *board department* shall deposit all sums collected under this section to the credit of the *Insurance Commissioner's Regulatory Trust Fund under the Division of Finance*.

(10) To facilitate uniformity in financial statements and to facilitate department analysis, the *board department* may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners or its successor organization and may by rule require each certificateholder to submit to the *board department* all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system of the department.

Section 94. Section 639.105, Florida Statutes, is renumbered as section 497.409, Florida Statutes, and amended to read:

~~497.409 639.105~~ Approval of forms.—

(1) Preneed contract forms and related forms shall be filed with and approved by the *board department*, ~~as provided in s. 627.410~~. The *board department* may not approve any preneed contract form that does not provide for sequential prenumbering thereon.

(2) Specific disclosure regarding the certificateholder's ability to select either trust funding or the financial responsibility alternative as set forth in s. 497.423 or s. 497.425 ~~639.145~~ in connection with the receipt of preneed contract proceeds is required in the preneed contract.

Section 95. Section 639.107, Florida Statutes, is renumbered as section 497.411, Florida Statutes, and amended to read:

~~497.411 639.107~~ Nonconforming contracts.—Any preneed contract that requires the moneys paid to the seller or trustee to be placed in trust and fails to comply with s. 497.417 ~~639.14~~ shall comply with and be construed under s. 497.429 ~~639.149~~.

Section 96. Section 639.108, Florida Statutes, 1992 Supplement, is renumbered as section 497.413, Florida Statutes, and amended to read:

~~497.413 639.108~~ Preneed Funeral Contract Consumer Protection Trust Fund.—

(1) There is hereby created in the department of ~~Insurance~~ the Preneed Funeral Contract Consumer Protection Trust Fund to be administered and regulated by the *board Department of Insurance*.

(2) Within 60 days after the end of each calendar quarter, for each preneed contract written during the quarter and not canceled within 30 days after the date of the execution of the contract, each certificateholder utilizing s. 497.417 ~~639.14~~ or s. 497.429 ~~639.149~~ shall remit the sum of \$2.50 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$5 for each preneed contract having a purchase price in excess of \$1,500; and each certificateholder utilizing s. 497.423 or s. 497.425 ~~639.145~~ shall remit the sum of \$5 for each preneed contract having a purchase price of \$1,500 or less, and the sum of \$10 for each preneed contract having a purchase price in excess of \$1,500.

(3) In addition to the amounts specified in subsection (2), each remittance shall contain such other additional information as needed by the *board department* to carry out its responsibilities under this chapter and as prescribed by rule of the *board department*.

(4) All funds received by the *board or the department* pursuant to this section shall be deposited into the Preneed Funeral Contract Consumer Protection Trust Fund.

(5) The amounts remitted to the *department* for deposit into the Preneed Funeral Contract Consumer Protection Trust Fund shall not be deemed proceeds from the sale of a preneed contract within the meaning of this chapter.

(6) Upon the commencement of a delinquency proceeding pursuant to chapter 631 against a certificateholder, the *board department* may use up to 50 percent of the balance of the trust fund not already committed to a prior delinquency proceeding solely for the purpose of providing restitution to preneed contract purchasers and their estates due to a certificateholder's failure to provide the benefits of a preneed contract or failure to refund the appropriate principal amount by reason of cancellation thereof. The balance of the trust fund shall be determined as of the date of the delinquency proceeding.

(7) In any situation in which a delinquency proceeding has not commenced, the *board department* may, in its discretion, use the trust fund for the purpose of providing restitution to any consumer, owner, or beneficiary of a preneed contract or similar regulated arrangement under this chapter entered into after June 30, 1977, if, after investigation, the *board*

department determines that the certificateholder has breached the preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former certificateholder or an establishment which has been regulated under chapter 470, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such certificateholder or provider does not possess adequate funds to provide appropriate refunds. Such monetary relief shall be in an amount as the board department may determine and shall be payable in such manner and upon such conditions and terms as the board department may prescribe. However, any restitution made pursuant to this subsection shall not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund, and the total of all restitutions made to all applicants under this subsection in a single fiscal year shall not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or \$120,000. The department may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287 to administer the requirements of this subsection.

(8) All moneys deposited in the Preneed Funeral Contract Consumer Protection Trust Fund together with all accumulated income shall be used only for the purposes expressed in this section and shall not be subject to any liens, charges, judgments, garnishments, or other creditor's claims against the certificateholder, any trustee utilized by the certificateholder, any company providing a surety bond as specified in this chapter, or any purchaser of a preneed contract. No preneed contract purchaser shall have any vested rights in the trust fund.

(9) If restitution is paid to a preneed contract purchaser or his estate in accordance with this section, the amount of restitution paid shall not exceed the gross amount of the principal payments made by the purchaser on its contract.

(10) Whenever the board department makes payments from the trust fund to a purchaser or its estate, the board department shall be subrogated to the purchaser's rights under the contract, and any amounts so collected by the board department shall be deposited in the Preneed Funeral Contract Consumer Protection Trust Fund.

(11) No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Preneed Funeral Contract Consumer Protection Trust Fund for the purpose of sales, solicitation, or inducement to purchase any form of preneed contract covered under this chapter.

(12) Notwithstanding the fee structure in subsection (2), the department shall review the status of the trust fund annually, and if it determines that the uncommitted trust fund balance exceeds \$1 million, the board department may by rule lower the required payments to the trust fund to an amount not less than \$1 per preneed contract.

Section 97. Section 639.109, Florida Statutes, is renumbered as section 497.415, Florida Statutes, to read:

497.415 639.109 Ownership of proceeds received on contracts.—

(1) Subject to the provisions of this chapter, all funds paid pursuant to a preneed contract by a purchaser to a certificateholder shall be the sole property of, and within the full dominion and control of, said certificateholder.

(2) Subject to the provisions of this chapter, the relationship between the purchaser of a preneed contract and a certificateholder shall be deemed for all purposes as a debtor-creditor relationship.

Section 98. Section 639.11, Florida Statutes, is renumbered as section 497.417, Florida Statutes, and amended to read:

497.417 639.11 Disposition of proceeds received on contracts.—

(1) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit in this state an amount at least equal to the sum of 70 percent of the purchase price funds collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price col-

lected or 110% of the wholesale cost, whichever is greater, for all merchandise sold. The wholesale cost shall be based upon the certificateholder's stated wholesale cost for the calendar year during which the initial deposit to the preneed trust fund for the preneed contract is made. Such deposits shall be made or paid on the preneed contract, within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a national or state bank or savings and loan association having trust powers or a trust company. Within this 30-day period, a certificateholder may, at his election, deposit into the trust any amount greater than 70 percent, but not to exceed 100 percent, of the funds collected. The trustee shall take title to the property conveyed to the trust for the purpose of investing, protecting, and conserving it for the certificateholder; collecting income; and distributing the principal and income as prescribed in this chapter. The certificateholder is prohibited from sharing in the discharge of these responsibilities, except that the certificateholder may request the trustee to invest in tax-free investments and may appoint an advisor to the trustee. The trust agreement shall be submitted to the board department for approval and filing. The funds shall be held in trust, both as to principal and income earned thereon, and shall remain intact, except that the cost of the operation of the trust or trust account authorized by this section may be deducted from the income earned thereon. During the term of the trust, the trustee shall distribute to the certificateholder the entire net income of the trust, or its pro rata share thereof, in convenient installments, at least as frequently as annually; however, no interest, dividend, or accretion on the funds deposited in trust which has been credited to an individual contract may be withdrawn unless an amount equal to 70 percent of all payments on the contract is on deposit and maintained in the trust. The contract purchaser shall have no interest whatsoever in, or power whatsoever over, funds deposited in trust pursuant to this section. In no event may said funds be loaned to a certificateholder, an affiliate of a certificateholder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business. Furthermore, the certificateholder's interest in said trust shall not be pledged as collateral for any loans, debts, or liabilities of the certificateholder and shall not be transferred to any person without the prior written approval from the department and the trustee which shall not be unreasonably withheld. Even though the certificateholder shall be deemed and treated as the settlor and beneficiary of said trust for all purposes, all of said trust funds are exempt from all claims of creditors of the certificateholder except as to the claims of the contract purchaser, his representative, the board or the department.

(2) Except as provided in s. 497.337, the delivery of funeral merchandise before the death of the person for whom it is purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract entered into after July 1, 1977.

(3) At reasonable times, the trustee may disburse income on, and appreciation of, trust funds to a certificateholder under this chapter. Such disbursement of income and appreciation shall be made in accordance with the terms of the trust instrument and the preneed contract subject to the provisions of this chapter. The trustee shall make regular valuations of assets it holds in trust and provide a report of such valuations to the certificateholder at least quarterly. Any person who withdraws appreciation in the value of trust, other than the pro rata portion of such appreciation which may be withdrawn upon the death of a contract beneficiary or upon cancellation of a preneed contract, shall be required to make additional deposits from his own funds to restore the aggregate value of assets to the value of funds deposited in trust, but excluding from the funds deposited those funds paid out upon preneed contracts which such person has fully performed or which have been otherwise withdrawn, as provided for in this chapter. The certificateholder shall be liable to third parties to the extent that income from the trust is not sufficient to pay the expenses of the trust.

(4) The trustee of the trust established pursuant to this section, without being limited by any statute or rule of law governing investment by trustees, shall only have the power to:

(a) Invest in investments as prescribed in s. 215.47 part II of chapter 625 and exercise the powers set forth in part IV of chapter 737, provided that the board department may by order require the trustee to liquidate or dispose of any investment within 30 days after such order.

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

(c) Borrow money up to an aggregate amount of 10 percent of trust assets, at interest rates then prevailing from any individual, bank, insurance company, or other source, irrespective of whether any such person is then acting as trustee, and to create security interests in no more than 10 percent of trust assets by mortgage, pledge, or otherwise, upon the terms and conditions and for such purposes as the trustee may deem advisable.

(d) Commingle the property of the trust with the property of any other trust established pursuant to this chapter and make corresponding allocations and divisions of assets, liabilities, income, and expenses.

~~(e) Make distributions of income received by the trustee based upon estimates, and shall annually adjust any differences between such estimates and the actual net income.~~

(5) The certificateholder, at his election, shall have the right and power, at any time, to invest in it title to the trust assets, or its pro rata share thereof, provided it has complied with s. 497.423 or s. 497.425 ~~639-145~~. Notwithstanding anything contained in this chapter to the contrary, the certificateholder, via its election to sell or offer for sale preneed contracts subject to this section, shall represent and warrant, and is hereby deemed to have done such, to all federal and Florida taxing authorities, as well as to all potential and actual preneed contract purchasers, that s. 497.423 or s. 497.425 ~~639-145~~ is a viable option available to it at any and all relevant times. If in the certificateholder's opinion it does not have the ability to select the financial responsibility alternative of s. 497.423 or s. 497.425 ~~639-145~~, then it shall not have the right to sell or solicit contracts pursuant to this section.

(6) This section, as amended by s. 6 of chapter 83-316, Laws of Florida, applies only to preneed contracts entered into on or after October 1, 1983.

Section 99. Section 639.13, Florida Statutes, is renumbered as section 497.419, Florida Statutes, and amended to read:

~~497.419 639-13~~ Cancellation of, or default on, preneed contracts.—

~~(1) A purchaser, by providing written notice to the certificateholder, may cancel a preneed contract within 30 days of the date that the contract was executed provided that the burial rights, merchandise and services have not yet been used. Upon providing such notice, the purchaser shall be entitled to a complete refund of the amount paid, except for the amount allocable to any burial rights, merchandise or services that have been used, and shall be released from all obligations under the contract. This subsection shall apply to all items that are purchased as part of a preneed contract, including burial rights, regardless of whether such burial rights are purchased as part of a preneed contract or purchased separately. Any contract purchaser or his representative or legal guardian may cancel, at any time, a preneed contract by notifying the certificateholder of such cancellation in writing. The certificateholder shall refund all money paid on the contract, except such amounts as may be retained by the certificateholder as liquidated damages as authorized in subsection (2), within 30 days after receipt of written notification of cancellation by the contract purchaser or to the estate of the contract beneficiary.~~

(2) A purchaser, by providing written notice to the certificateholder, may cancel the services, facilities and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the certificateholder upon such cancellation. ~~The certificateholder may provide in its contract for liquidated damages in the event of cancellation by the contract purchaser. Such liquidated damages for the first, second, and third years after execution of the contract may not exceed the percentage of the amounts paid on the contract as follows:~~

~~(a) For the first year after execution of the contract, not more than 30 percent;~~

~~(b) For the second year after execution of the contract, not more than 20 percent; and~~

~~(c) For the third year after the execution of the contract, not more than 10 percent;~~

~~and thereafter no liquidated damages provision shall apply.~~

(3) Subject to paragraphs (a) and (b) a purchaser may cancel the merchandise portion of a preneed contract by providing written notice to the certificateholder, and shall be entitled to a full refund of the purchase price allocable to the specific item or items of merchandise that the certificateholder cannot or does not deliver in accordance with this subsection.

(a) Such refund shall be provided only if at the time that the certificateholder is required to fulfill its obligations under the preneed contract the certificateholder does not or cannot comply with the terms of the contract by actually delivering the merchandise, within a reasonable time, depending upon the nature of the merchandise purchased, after having been requested to do so.

(b) In order to fulfill its obligations under the preneed contract, a certificateholder may elect either or both of the following options:

1. Subcontract with a person located outside the certificateholder's market area to provide the merchandise; or

2. Provide other items of equal or greater quality.

~~(4)(3) Each certificateholder shall provide in conspicuous type in its contract that the contract purchaser may cancel the contract and receive a full refund without payment of liquidated damages within 30 days of the date of execution of the contract. The failure to make such provision shall not impair the contract purchaser's right to cancellation and refund as provided in this section.~~

~~(5)(4) Upon breach of contract or failure of the certificateholder to provide funeral merchandise or services under a preneed contract, the contract purchaser shall be entitled to a refund of all money paid on the contract. Such refund shall be made within 30 days after receipt by the certificateholder of the contract purchaser's written request for refund.~~

(6) If a purchaser is 90 days past due in making payments on a preneed contract, the contract shall be considered to be in default, and the certificateholder shall be entitled to cancel the contract, withdraw all funds in trust allocable to merchandise items and retain such funds as liquidated damages. Upon making such withdrawal, the certificateholder shall return all funds in trust allocable to services, facilities or cash advance items to the purchaser, provided that the certificateholder has provided the purchaser with 30 days' written notice of its intention to exercise any of its rights under this provision.

~~(5) Except upon cancellation by the contract purchaser under subsection (1), if the contract purchaser is more than 60 days in default on the preneed contract, the certificateholder may cancel the contract and retain as liquidated damages the percentage of the contract amount as authorized in subsection (2); any funds in excess of that amount shall be refunded to the contract purchaser or to the estate of the contract beneficiary. Such refund shall be made within 30 days of cancellation by the certificateholder. The seller of a preneed contract may not cancel the contract unless the purchaser is in default.~~

~~(7)(6) No preneed contract shall restrict any contract purchaser who is an applicant for, or a recipient of, supplemental security income, aid to families with dependent children, or Medicaid from making his contract irrevocable.~~

~~(8)(7) This section, as amended by s. 7 of chapter 83-316, Laws of Florida, applies only to preneed contracts entered into on or after October 1, 1983.~~

(9) Persons who purchase merchandise or burial rights pursuant to this chapter shall have the right to sell, alienate, or otherwise transfer the merchandise or burial rights subject to and in accordance with rules adopted by the board.

Section 100. Section 639.14, Florida Statutes, is renumbered as section 497.421, Florida Statutes, and amended to read:

~~497.421 639-14~~ Payment of funds upon death of named beneficiary.— Disbursements of funds discharging any preneed contract shall be made by the trustee to the certificateholder upon receipt of a certified copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed contract has been fully performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service or *burial merchandise or service* contracted for is not provided or is not desired by the heirs or personal representative of the contract beneficiary, the trustee shall return, within

30 days after its receipt of a written request therefor, funds paid on the contract to the certificateholder or to its assigns, subject to the provisions of s. 497.419 639.13.

Section 101. Section 639.145, Florida Statutes, is renumbered as section 497.423, Florida Statutes, and amended to read:

497.423 639.145 Evidence of financial responsibility as alternative to trust deposit —

(1) In lieu of depositing funds into a trust as required by s. 497.417(1) 639.11(1) or s. 497.429 639.149, a certificateholder may elect annually, at its discretion, to comply with this section by filing annually a written request with, and receiving annual approval from, the *board department*.

(2) No certificateholder shall utilize this section unless it has filed annually a written request with, and received approval by, the *board department*.

(3) The certificateholder receiving approval from the *board department* to comply with this section shall maintain compliance with this section at all times during the period this election is in effect.

(4) The certificateholder's request to be governed by this section shall be in the form prescribed by the *board department* and shall be accompanied by, in addition to other information that the *board department* may require by rule, the surety bond, the audited financial statements, and proof of the other requirements specified in this section, all as described in this section.

(5) For each 12-month period, or any part thereof, in which this section is applicable, the electing certificateholder shall maintain a bond, issued by a surety company admitted to do business in this state, in an amount at least equal to the sum of all amounts not currently in trust, an amount equal to the total purchase price for all installed preneed contracts where the total purchase price has not been collected, excluding those amounts already in trust, all amounts the certificateholder intends to remove from trust if the *board department* approves the certificateholder's request to comply with this section, and an amount equal to 70 percent of the total purchase price for each preneed contract the certificateholder expects to sell in the year for which the certificateholder is electing to comply with this section. The surety bond shall be conditioned in such a manner to secure the faithful performance of all conditions of any preneed contracts for which the certificateholder was required to have covered by the amount of the bond, including refunds requested pursuant to ss. 497.419 639.13 and 497.421 639.14. The surety bond shall also guarantee the financial responsibility of such certificateholder against its default arising out of any of its preneed contracts. The terms of the surety bond shall cover liabilities arising from all moneys received by the electing certificateholder from preneed contracts for which the certificateholder was required to have covered by the amount of the bond during the time the bond is in effect, and the liability of the surety shall continue until the contracts thereunder are fulfilled. The bond shall be in favor of the state for the benefit of any person damaged as a result of purchasing a preneed contract from the certificateholder. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds shall in no event exceed the amount of the bond. The per preneed contract liability shall not exceed the amount of the funds received by the certificateholder per preneed contract during the effective period in which the bond is issued. The bond shall be filed and maintained with the *board department*.

(6) The amount of the surety bond shall, upon order of the *board department*, be increased if, in the *board's department's* discretion, it finds such increase to be warranted by the volume of preneed contracts handled, or expected to be handled, by the certificateholder. The surety bond shall be in a form to be approved by the *board department*, and the *board department* shall have the right to disapprove any bond which does not provide assurance as provided in, and required by, this section.

(7) The bond shall be maintained unimpaired for as long as the certificateholder continues in business in this state and continues to utilize this section. Whenever the certificateholder notifies the *board department* that it no longer desires to be governed by this section and furnishes to the *board department* satisfactory proof that it has discharged or otherwise adequately provided for all of its obligations to its preneed contract purchasers covered by the bond, such as by evidence satisfactory to the *board department* demonstrating that s. 497.417 639.11 or s. 497.429 639.149 has been complied with, the *board department* shall release the bond to the entitled parties, provided said parties acknowledge receipt of same.

(8) No surety bond used to comply with this section shall be canceled or subject to cancellation unless at least 60 days' advance notice thereof, in writing, is filed with the *board department*, by the surety company. The cancellation of the bond shall not relieve the obligation of the surety company for claims arising out of contracts issued or otherwise covered before cancellation of the bond. In the event that notice of termination of the bond is filed with the *board department*, the certificateholder insured thereunder shall, within 30 days of the filing of the notice of termination with the *board department*, provide the *board department* with a replacement bond or with evidence which is satisfactory to the *board department* demonstrating that s. 497.417 639.11 or s. 497.429 639.149 has been fully complied with. If within 30 days of filing of the notice of termination with the *board department* no replacement bond acceptable to the *board department* or no evidence satisfactory to the *board department* demonstrating that s. 497.417 639.11 or s. 497.429 639.149 has been complied with is filed with the *board department*, the *board department* shall suspend the license of the certificateholder until the certificateholder files a replacement bond acceptable to the *board department* or demonstrates to the satisfaction of the *board department* that it has complied with s. 497.417 639.11 or s. 497.429 639.149.

(9) In lieu of the surety bond, the *board department* may provide by rule for other forms of security or insurance.

(10) Every certificateholder electing to be governed by this section shall have its financial statements, submitted to the department pursuant to s. 497.407 639.10, audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

(a) The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the *board department*, and:

1. A balance sheet;
2. A statement of income and expenses; and
3. A statement of changes in financial position.

(b) Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the certificateholder. The notes shall include a schedule, based upon statutory accounting principles, indicating that the certificateholder which has held a certificate pursuant to this chapter for less than 10 years has a current ratio of no less than 3 to 1 of current assets to current liabilities and net assets of at least \$600,000 or that the certificateholder which has held a certificate pursuant to this chapter for 10 years or more has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$400,000.

(c) An indication that the certificateholder has sufficient funds available to perform the obligations under all its preneed contracts.

(11) The *board department* may require that the audited financial statements be prepared on a calendar-year basis.

(12) The electing certificateholder shall provide the *board department* interim unaudited financial statements on a quarterly basis demonstrating financial compliance with this section.

(13) In lieu of subsections (4) through (11), a certificateholder with net assets of at least \$25,000 may request to comply with this section by providing a written guarantee from a qualified guaranteeing organization. If the certificateholder so elects, the certificateholder's requests to be governed by this section shall be in the form prescribed by the *board department* and shall be accompanied by, in addition to other information the *board department* may require by rule, a written guarantee approved by the *board department* as meeting the requirements of this section from a qualified guaranteeing organization, acceptable to the *board department*, which:

- (a) Is either a certificateholder or servicing agent.
- (b) Is a corporation formed under the laws of this state or of another state, district, territory, or possession of the United States.
- (c) Has been in operation for 10 or more years.

(d) Submits to the *board department* its annual financial statements audited by an independent public accountant certified pursuant to chapter 473. The financial statements shall contain, in accordance with generally accepted accounting principles, for two or more consecutive annual periods, the following:

1. The certified public accountant's unqualified opinion or, in the case of a qualified opinion, a qualified opinion acceptable to the *board department*, and:

- a. A balance sheet;
- b. A statement of income and expenses; and
- c. A statement of changes in financial position.

2. Notes to the financial statements considered customary or necessary for full disclosure and adequate understanding of the financial statements, financial condition, and operation of the certificateholder. The notes shall include a schedule, based upon statutory accounting principles, indicating that the guaranteeing organization has a current ratio of no less than 2 to 1 of current assets to current liabilities and net assets of at least \$250,000.

(e) Has sufficient funds available to perform the obligations under its guarantees.

(f) Has complied with subsections (5), (6), (7), and (8), except that the bond shall be maintained by the guaranteeing organization in the minimum aggregate principal amount of \$1 million.

(g) Has principals, including directors, officers, stockholders, employees, and agents that are of good moral character and have reputations for fair dealing in business matters, both as determined by the *board department*.

Section 102. Section 639.149, Florida Statutes, is renumbered as section 497.429, Florida Statutes, and amended to read:

~~497.429 639.149~~ Alternative preneed contracts.—

(1) Nothing in this chapter shall prevent the purchaser and the certificateholder from executing a preneed contract upon the terms stated in this section. Such contracts shall be subject to all provisions of this chapter except:

- (a) Section 497.409(2) ~~639.105(2)~~.
- (b) Section 497.415 ~~639.109~~.
- (c) Section 497.417(1) ~~639.11(1)~~, (3), and (5).
- (d) Section 497.419(1) ~~639.13(1)~~, (2), and (5).
- (e) Section 497.421 ~~639.14~~.
- (f) Section 497.423 ~~639.145~~.
- (g) Section 497.425.

(2) The contract must require that a trust be established by the certificateholder on behalf of, and for the use, benefit, and protection of, the purchaser and that the trustee must be a national or state bank or savings and loan association having trust powers or a trust company with the same powers of investment as provided elsewhere in this chapter.

(3) The contract must require that the purchaser make all payments required by the contract directly to the trustee or its qualified servicing agent and that the funds shall be deposited in this state, subject to the terms of a trust instrument approved by the *board department*. A copy of the trust instrument shall be made available to the purchaser, at any reasonable time, upon request.

(4) The contract or trust instrument shall expressly state that the certificateholder does not have any dominion or control over the trust or its assets, except to the extent that subsection (6) applies, until such time as the preneed contract is entirely completed or performed.

(5) The trust instrument shall prohibit the trustee from distributing any appreciation on the trust to any person and shall require that the trustee accumulate the entire net income of the trust, or its pro rata share thereof. The accumulated net income shall be distributed to the certificateholder upon cancellation or performance of the contract.

(6) The contract and trust instrument may provide that the certificateholder may receive a current distribution of not more than 10 percent of all funds paid or collected by the trustee and may further provide for liquidated damages during the first 3 years after the execution of the contract of not more than 10 percent of all the funds paid on the preneed contract, except that no liquidated damages shall apply for cancellation within 30 days of the date of execution of the contract.

(7) Disbursement of funds discharging any preneed contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed contract has been fully performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service contracted for is not provided or is not desired by the purchaser or the heirs or personal representative of the contract beneficiary, the trustee shall return, within 30 days after its receipt of a written request therefor, funds paid on the contract to the contract purchaser or to his assigns, heirs, or personal representative, subject to the lawful liquidation damage provision in the contract.

(8) The contract shall provide, in conspicuous type, that the purchaser may receive a federal income tax informational statement, pursuant to the grantor trust rules of ss. 671 et seq. of the Internal Revenue Code of 1986, as amended, from the trustee reflecting all of the income earned by the trust; and, accordingly, the purchaser should seek the advice of an independent tax professional for the tax impact upon the purchaser as a result of executing the preneed contract.

(9) The contract may provide that the certificateholder may cancel the contract, but only in the event that the purchaser is more than 60 days in default of the terms of the contract; and, unless subject to the provisions of s. 497.419(6) ~~639.13(6)~~, must provide that the purchaser, or his representative, has the right, at any time prior to the performance of the contract, to cancel the preneed contract and revert title to all the funds paid on the preneed contract, except for applicable liquidated damages, and the certificateholder's rights in the net income of the trust.

(10) The contract or trust agreement may require the trustee to invest in solely tax-free investments.

(11) In the event the parties execute a contract pursuant to this section, the purchaser shall be deemed, and treated for all purposes, as the settlor of the trust established thereunder.

(12) The trustee shall make regular valuations of assets it holds in trust and provide the purchaser and the *board department* a report of such valuations at least annually.

Section 103. Section 639.15, Florida Statutes, is renumbered as section 497.431, Florida Statutes, and amended to read:

~~497.431 639.15~~ Examinations and investigations.—The department shall, as often as it may deem necessary but at least once every 3 years, examine the business of any person writing preneed contracts and any guaranteeing organization existing under this chapter to the extent applicable in the same manner as is provided for examination of insurance companies. The examination shall be at the expense of the person or organization examined as provided in *this section s. 624.320* and shall be made by the designated representative or examiner of the department. The written report of each such examination, when completed, shall be filed in the office of the *board department* and, when so filed, shall constitute a public record. Any such person or organization being examined shall produce, upon request, all records of the company or organization. The designated representative of the *board department* may at any time examine the records and affairs of any such person or organization, whether in connection with a formal examination or not. The *board department* may waive the examination requirements of this section if the certificateholder or guaranteeing organization submits audited financial statements. *The department may charge an examination fee prescribed by rule, but such fee may not exceed \$300 per 8-hour day for each examiner. Such examination fee shall be calculated on an hourly basis and shall be rounded to the nearest hour. For out-of-state travel, the licensee shall also pay the travel expense and per diem subsistence allowance provided for state employees under s. 112.061.*

Section 104. Section 639.16, Florida Statutes, is renumbered as section 497.433, Florida Statutes, and amended to read:

497.433 ~~639.16~~ Denial, refusal to renew, revocation, or suspension of certificate of authority.—

(1) The ~~board department~~ shall deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed contracts upon a determination that any one or more of the following grounds exist and are applicable to such person:

(a) Lack of one or more of the qualifications for the certificate of authority.

(b) Material misstatement, misrepresentation, or fraud in obtaining the certificate of authority or in attempting to obtain the certificate of authority.

(c) ~~Willful~~ Use of the certificate of authority to circumvent the provisions of this chapter.

(d) ~~Willful~~ Misrepresentation of any preneed contract.

(e) Fraudulent or dishonest practice in the conduct of business under the certificate of authority.

(f) ~~Willful~~ Failure to maintain the funds received from contracts in the unimpaired state, disbursed income on, and appreciation of, trust or escrowed funds, as described in s. 497.417 ~~639.11~~.

(g) Upon proper request, ~~willful~~ failure to cancel a contract or refund that part of the amount paid on the contract as required by s. 497.419 ~~639.13~~.

(h) ~~Willful~~ Failure to secure the release, upon the death of a beneficiary, of the entire amount received on a contract as required by s. 497.421 ~~639.14~~.

(i) Refusal to produce records in connection with the business.

(j) Revocation, suspension, or denial of licensure to sell preneed contracts by a licensing authority of another jurisdiction.

(k) Being convicted or found guilty of, or entered a plea of *nolo contendere* to, regardless of adjudication, of a crime in any jurisdiction which directly relates to the sale of preneed contracts.

(l) Solicitation by the certificateholder or his agents, employees, or representatives through the use of fraud, undue influence, intimidation, overreaching, or any other form of vexatious conduct.

(m) Failure to comply with, or violation of, any proper order or rule of the *board or the department*, or violation of any provision of this chapter.

(n) Refusal to remove anyone serving as a trustee under any provision of this chapter if the trustee is not acting in accordance with, or is violating, any proper order or rule of the *board or the department*, or is violating any provision of this chapter.

(2) The ~~board department~~ may deny, refuse to renew, suspend, or revoke the certificate of authority of a person to issue preneed contracts upon a determination that the person has violated any provision of this chapter or rule or order of the *board or the department* for which suspension is not mandatory.

(3) A suspension or revocation of the certificate of authority shall be by order of the ~~board department~~. A person whose certificate of authority has been suspended or revoked may not solicit or write any new business in this state during the period of any such suspension or revocation.

(4) In its discretion, the ~~board department~~ may cause notice of any such suspension or revocation to be published in one or more newspapers of general circulation published in this state.

(5) The suspension of a certificate of authority shall be for such period, not to exceed 1 year, as is fixed by the ~~board department~~ in the order of suspension, unless the ~~board department~~ shortens or rescinds such suspension or unless the order upon which the suspension is based is modified, rescinded, or reversed.

(6) During the period of suspension, the person whose certificate of authority has been suspended shall file the annual statement and pay license fees as required under this chapter as if the certificate had continued in full force.

(7) Upon expiration of the suspension period, if within such period the certificate of authority has not otherwise terminated, the certificate of authority of the person whose certificate of authority has been suspended shall automatically be reinstated unless the ~~board department~~ finds that the causes of the suspension have not been removed or that such person is otherwise not in compliance with the requirements of this chapter. If not so reinstated automatically, the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon the failure of the person whose certificate of authority has been suspended to continue the certificate during the suspension period, whichever event first occurs.

Section 105. Section 639.162, Florida Statutes, is renumbered as section 497.435, Florida Statutes, and amended to read:

497.435 ~~639.162~~ Administrative fine in lieu of revocation or suspension of certificate of authority.—

(1) If the ~~board department~~ finds that one or more grounds exist for the discretionary suspension or revocation of a certificate of authority issued under this chapter, it may, in lieu of such suspension or revocation, impose a fine upon the certificateholder in an amount not to exceed \$1,000 for each nonwillful violation and in an amount not to exceed \$10,000 for each willful violation.

(2) The ~~board department~~ may grant not more than 30 days from the date of the order for the payment of any fine.

(3) The fine shall be deposited into the ~~Insurance Commissioner's~~ Regulatory Trust Fund *under the Division of Finance*.

Section 106. Section 639.165, Florida Statutes, is renumbered as section 497.437, Florida Statutes, and amended to read:

497.437 ~~639.165~~ Dissolution or liquidation.—Any dissolution or liquidation of a certificateholder shall be under the supervision of the ~~board department~~, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of companies pursuant to chapter 631, as applicable.

Section 107. Section 497.439, Florida Statutes, is created to read:

497.439 Preneed sales agents.—

(1) All individuals who offer preneed contracts to the public, or who execute preneed contracts on behalf of a certificateholder, including all individuals who offer, sell, or sign contracts for the preneed sale of burial rights, shall be registered with the board as preneed sales agents, pursuant to this section, unless such individuals are licensed as funeral directors pursuant to this chapter.

(2) All preneed sales agents and funeral directors acting as preneed sales agents must be affiliated with the certificateholder that they are representing.

(3) A certificateholder shall be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales agents, who are affiliated with the certificateholder and who perform any type of preneed-related activity on behalf of the certificateholder. In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each certificateholder shall also be subject to discipline if its preneed sales agents or funeral directors acting as preneed sales agents violate any provision of this chapter.

(4) A preneed sales agent and a funeral director acting as a preneed sales agent shall be authorized to sell, offer, and execute preneed contracts on behalf of all entities owned or operated by its sponsoring certificateholder.

(5) An individual may begin functioning as a preneed sales agent as soon as a completed application for registration, as set forth in subsection (7), is sent to the department.

(6) The qualifications for a preneed sales agent are as follows:

(a) The applicant must be at least 18 years of age.

(b) The applicant must be in good standing with the board.

(c) The applicant must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter.

(7) An application for registration as a preneed sales agent shall be submitted to the department with an application fee of \$100 by certified mail, return receipt requested, by the certificateholder on a form that has been approved by the board and shall contain, at a minimum, the following:

(a) The name, address, social security number, and date of birth of the applicant and such other information as the board may reasonably require of the applicant.

(b) The name, address, and license number of the sponsoring certificateholder.

(c) A representation, signed by the applicant, that the applicant meets the requirements set forth in subsection (6).

(d) A representation, signed by the certificateholder, that the applicant is authorized to offer, sell, and sign preneed contracts on behalf of the certificateholder, and that the certificateholder has trained the applicant in the provisions of this chapter relating to preneed sales as determined by the board, the provisions of the certificateholder's preneed contract, and the nature of the merchandise, services, or burial rights sold by the certificateholder.

(e) A statement indicating whether the applicant has any type of working relationship with any other certificateholder or insurance company.

(8) An individual may be registered as a preneed sales agent on behalf of more than one certificateholder, provided that the individual has received the written consent of all such certificateholders.

(9) A certificateholder who has registered a preneed sales agent shall notify the department within 30 days after such individual's status as a preneed sales agent has been terminated.

(10) Upon receipt of an application that complies with all of the requirements of subsection (7), the department shall register the applicant. The department shall by rule provide for biennial renewal of registration and a renewal fee of \$150.

Section 108. Section 639.21, Florida Statutes, is renumbered as section 497.441, Florida Statutes, and amended to read:

**497.441 639.21** Acceptability of funeral and burial merchandise.—Each person who engages in preneed sales of funeral or burial merchandise shall determine, and notify the purchaser in writing prior to the completion of the contract, that the merchandise being considered for purchase will be accepted in the cemetery of the purchaser's choice. The failure to comply with this chapter shall nullify the agreement, and all moneys paid in shall be returned, notwithstanding the existence of any liquidated damages provision pursuant to s. 497.419(2) ~~639.19(2)~~.

Section 109. Section 639.22, Florida Statutes, is renumbered as section 497.443, Florida Statutes, and amended to read:

**497.443 639.22** Unfair methods of competition and unfair or deceptive acts or practices prohibited.—No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to s. 497.445 ~~639.23~~ to be, an unfair method of competition or an unfair or deceptive act or practice.

Section 110. Section 639.23, Florida Statutes, is renumbered as section 497.445, Florida Statutes, and amended to read:

**497.445 639.23** Unfair methods of competition and unfair or deceptive acts or practices defined.—Unfair methods of competition and unfair or deceptive acts or practices are defined as the following:

(1) **MISREPRESENTATION AND FALSE ADVERTISING OF PRENEED CONTRACT.**—Knowingly making, issuing, or circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any preneed contract.

(b) Is misleading, or is a misrepresentation as to the financial condition of any person.

(c) Uses any name or title of any preneed contract misrepresenting the true nature thereof.

(d) Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any preneed contract.

(2) **FALSE INFORMATION AND ADVERTISING GENERALLY.**—Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

(a) In a newspaper, magazine, or other publication;

(b) In the form of a notice, circular, pamphlet, letter, or poster;

(c) Over any radio or television station; or

(d) In any other way;

an advertisement, announcement, or statement containing any assertion, representation, or statement which is untrue, deceptive, or misleading with respect to any preneed contract.

(3) **DEFAMATION.**—Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated to injure such person.

(4) **FALSE STATEMENTS AND ENTRIES.**—Knowingly:

(a) Filing any false statement with any supervisory or other public official;

(b) Making, publishing, disseminating, or circulating any false statement;

(c) Delivering any false statement to any person;

(d) Placing any false statement before the public;

(e) Causing, directly or indirectly, any false statement to be made, published, disseminated, circulated, delivered to any person, or placed before the public; or

(f) Making any false entry of a material fact in any book, report, or statement of any person.

(5) **UNFAIR CLAIM SETTLEMENT PRACTICES.**—

(a) Attempting to settle a claim on the basis of a material document which was altered without notice to, or without the knowledge or consent of, the contract purchaser or his representative or legal guardian.

(b) Making a material misrepresentation to a contract purchaser or his representative or legal guardian for the purpose and with the intent of effecting settlement of a claim or loss under a prepaid contract on less favorable terms than those provided in, and contemplated by, the prepaid contract; or

(c) Committing or performing with such frequency as to indicate a general business practice any of the following acts:

1. Failing to adopt and implement standards for the proper investigation of claims;

2. Misrepresenting pertinent facts or prepaid contract provisions relating to issues on coverage of funeral merchandise or services or burial merchandise or services;

3. Failing to acknowledge and act promptly upon communications with respect to claims;

4. Denying claims without conducting reasonable investigations based upon available information;

5. Failing to affirm or deny coverage of a claim upon written request of a contract purchaser or his representative or legal guardian within a reasonable time; or

6. Failing to provide promptly a reasonable explanation to a contract purchaser or his representative or legal guardian of the basis, in the prepaid contract in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement.

(6) **FAILURE TO MAINTAIN PROCEDURES FOR HANDLING**

COMPLAINTS.—Failing to maintain a complete record of every complaint received since the date of the last examination. For purposes of this subsection, the term “complaint” means any written communication primarily expressing a grievance.

(7) DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT.—Refusing to issue a contract solely because of an individual’s race, color, creed, marital status, sex, or national origin.

Section 111. Section 639.25, Florida Statutes, is renumbered as section 497.447, Florida Statutes, and amended to read:

497.447 ~~639.25~~ Prohibited practices; hearings, witnesses, appearances, production of books, and service of process.—

(1) Whenever the ~~board department~~ has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 497.445 ~~639.23~~, or is engaging in the sale of preneed contracts without being properly licensed as required by this chapter, and that a proceeding by the ~~board department~~ in respect thereto would be in the interest of the public, the ~~board department~~ shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The ~~board department~~ or a duly empowered hearing officer shall, during the conduct of such hearing, have those powers enumerated in s. 120.58; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed \$1,000 per violation.

(3) A statement of charges, notice, or order or other process under this chapter may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, or order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, or order or other process, setting forth the manner of the service, shall be proof of the service; and the return postcard receipt for such statement, notice, or order or other process, certified and mailed as provided in this subsection, shall be proof of service of the statement, notice, or order or other process.

Section 112. Section 639.30, Florida Statutes, is renumbered as section 497.529, Florida Statutes, and amended to read:

497.529 ~~639.30~~ Civil liability.—The provisions of this chapter are cumulative to rights under the general civil and common law, and no action of the department may ~~shall~~ abrogate such rights to damages or other relief in any court.

Section 113. Paragraph (b) of subsection (1) of section 501.022, Florida Statutes, is amended to read:

501.022 Home solicitation sale; permit required.—

(1)

(b) The following are excluded from the operation of this section:

1. Bona fide agents, business representatives, or salesmen making calls or soliciting orders at the usual place of business of a customer regarding products or services for use in connection with the customer’s business.

2. Solicitors, salesmen, or agents making a call or business visit upon the express invitation, oral or written, of an inhabitant of the premises or his agent.

3. Telephone solicitors, salesmen, or agents making calls which involve transactions that are unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

4. Solicitors, salesmen, or agents conducting a sale, lease, or rental of consumer goods or services by sample, catalog, or brochure for future delivery.

5. Minors, as defined in s. 1.01(14), conducting home solicitation sales under the supervision of an adult supervisor who holds a valid home solicitation sale permit. Minors excluded from operation of this section must, however, carry personal identification which includes their full name, date of birth, residence address, and employer and the name and permit number of their adult supervisor.

6. Those sellers or their representatives that are currently regulated as to the sale of goods and services by chapter 470, chapter 475, or chapter 497, ~~or chapter 639~~.

7. Solicitors, salesmen, or agents making calls or soliciting orders on behalf of a religious, charitable, scientific, educational, or veterans’ institution or organization holding a sales tax exemption certificate under s. 212.08(7)(a).

Section 114. Section 624.01, Florida Statutes, is amended to read:

624.01 Short title.—Chapters 624 through 632, 634, 635, 637, 638, ~~639~~, 641, 642, 648, and 651 constitute the “Florida Insurance Code.”

Section 115. Paragraph (d) of subsection (1) and subsection (3) of section 626.785, Florida Statutes, are amended to read:

626.785 Qualifications for license.—

(1) The department shall not grant or issue a license as life agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(d) Must not be a funeral director or direct disposer, or an employee or representative thereof, or have an office in, or in connection with, a funeral establishment, except that a funeral establishment may contract with a life insurance agent to sell a preneed contract as defined in chapter 497 ~~639~~. Notwithstanding other provisions of this chapter, such insurance agent may sell limited policies of insurance covering the expense of final disposition or burial of an insured in an amount not to exceed \$7,500.

(3) Notwithstanding any other provisions of this chapter, a funeral director, a direct disposer, or an employee of a funeral establishment which holds a certificate of authority pursuant to s. 497.405 ~~639.09~~ may obtain an agent’s license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise so as to provide funds at the time the services and merchandise are needed. The face amount of insurance covered by any such policy shall not exceed \$7,500.

Section 116. Paragraph (h) of subsection (1) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term “specialty insurer” means any person holding a license or certificate of authority as:

(h) A licensed direct disposer or a licensed funeral director authorized to issue preneed contracts as those terms are defined in s. 497.005(19), (21), and (22) ~~639.07(2), (4), and (6)~~;

Section 117. Sections 497.011, 497.026, 497.0435, 639.055, 639.07, 639.08, 639.106, 639.17, 639.20, 639.24, 639.26, 639.27, 639.28, and 639.29, Florida Statutes; section 639.185, Florida Statutes, as amended by chapter 91-108, Laws of Florida; and section 639.33, Florida Statutes, as amended by chapter 93-113, Laws of Florida, are repealed.

Section 118. Paragraph (m) of subsection (1) of section 624.523, Florida Statutes, is repealed.

Section 119. All licenses and registrations issued pursuant to chapter 470 or chapter 497, Florida Statutes, and all certificates of authority issued pursuant to chapter 639, Florida Statutes, which are valid on September 30, 1993, shall remain in effect, subject to the provisions of this act. All licenses, registrations, and certificates of authority shall be applied for and renewed in accordance with this act.

Section 120. All funds held in the Preneed Funeral Contract Consumer Protection Fund pursuant to s. 639.108, Florida Statutes, as of the effective date of this act, shall be transferred with the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance upon the effective date of this act.

Section 121. The provisions of this act shall not affect the validity of any judicial or administrative proceeding pending as of the effective date of this act, and the Department of Banking and Finance shall be substituted for the Department of Insurance, where appropriate, as a party in interest.

Section 122. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and

repeal in accordance with s. 11.61, Florida Statutes, and except as otherwise specifically provided herein, chapters 470, 497, and 639, Florida Statutes, shall not stand repealed on October 1, 1993, and shall continue in full force and effect as amended herein.

Section 123. Two full-time employees and the sum of \$91,974 are hereby transferred by a type four transfer as defined in s. 20.06(4), Florida Statutes, from the Division of Insurer Services of the Department of Insurance to the Division of Finance of the Department of Banking and Finance.

Section 124. Amendments to sections of the Florida Statutes enacted by this act shall not operate to repeal or otherwise negate amendments to the same sections which may have been enacted at the 1993 Regular Session of the Florida Legislature and which are not indicated herein, and full effect shall be given to each, if that is possible. If provisions of this act are in direct conflict with amendments enacted at the 1993 Regular Session of the Legislature, the provisions of this act shall control.

Section 125. Except as otherwise provided herein, this act shall take effect October 1, 1993.

And the title is amended as follows:

In title, on page 1, line 1, strike everything before the enacting and insert: A bill to be entitled An act relating to funeral, cemetery, and crematory services; revising chapter 470, F.S., relating to funeral directing, embalming, and direct disposition; merging chapter 639, F.S., relating to preneed funeral contracts, into chapter 497, F.S., relating to cemeteries, and providing for jurisdiction by the Department of Banking and Finance and the Board of Funeral and Cemetery Services, as specified; amending s. 470.001, F.S., relating to legislative findings and intent; amending s. 470.002, F.S.; revising and providing definitions; amending s. 470.003, F.S.; relating to the Board of Funeral Directors and Embalmers; revising qualifications for membership on the board; amending s. 470.005, F.S.; providing rulemaking authority of the board and department; amending s. 470.006, F.S., relating to licensure as an embalmer by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending s. 470.007, F.S., relating to licensure as an embalmer by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending s. 470.008, F.S.; revising terminology; creating s. 470.0087, F.S.; describing the functions that constitute the practice of funeral directing; amending s. 470.009, F.S.; revising requirements for licensure as a funeral director by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending s. 470.011, F.S., relating to licensure as a funeral director by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending ss. 470.012 and 470.013, F.S.; revising terminology; amending s. 470.015, F.S.; authorizing the board to prescribe by rule certain continuing education requirements for renewal of license of a funeral director or embalmer; amending s. 470.016, F.S.; requiring a board-approved course on communicable diseases in addition to other continuing education requirements for reactivation of an inactive license; providing for automatic expiration of any license not renewed or reactivated after one renewal cycle; requiring certain fees for reactivation; creating s. 470.0165, F.S.; prescribing authorized duties of direct disposers; amending s. 470.017, F.S., relating to registration as a direct disposer; revising registration and application fees; requiring applicants to have completed a course on communicable diseases and a college credit course on state mortuary law; requiring registrations to have a recent photograph of the registrant; providing for the registration of certain applicants who are not high school graduates; amending s. 470.018, F.S.; requiring the board to prescribe by rule continuing education requirements, including a board-approved course on communicable diseases, for renewal of registration as a direct disposer; amending s. 470.019, F.S.; including a ground for disciplinary action against a direct disposer or direct disposal establishment relating to discipline by other jurisdictions for violations relating to the disposition of dead human bodies; creating s. 470.0201, F.S.; providing for health and safety education; amending s. 470.021, F.S., relating to standards, location, and regis-

tration of direct disposal establishments; revising registration and inspection fees; eliminating the prohibition against reinspection fees; providing for automatic expiration of registration under certain circumstances; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of person identified in the application; requiring certain display of the establishment name and the name of the direct disposer in charge; restricting the direct disposer in charge to one establishment; requiring prior notification to the board of any change in ownership, name, or direct disposer in charge; requiring a direct disposer in charge and providing the requirements thereof; requiring the establishment to transact its business under the name by which it is registered; creating s. 470.0301, F.S.; providing for regulation of removal services, refrigeration facilities, and centralized embalming facilities; amending s. 470.023, F.S., relating to the penalty for the practice of direct disposition without registration; providing editorial changes; amending s. 470.024, F.S., relating to licensure as a funeral establishment; prescribing additional requirements for funeral establishments; revising licensure and inspection fees; providing for automatic expiration of license under certain circumstances; eliminating the prohibition against reinspection fees; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of persons identified in the application; requiring certain display of the establishment name and of the funeral director in charge; restricting the funeral director in charge to one establishment; amending s. 470.025, F.S., relating to licensure as a cinerator facility; revising licensure and inspection fees; eliminating the prohibition against reinspection fees; requiring the board to establish by rule standards for cinerator facilities; expanding the contents of reports to the department; expanding facility inspection authorities to include the Department of Environmental Regulation; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the facility; authorizing the board to deny, suspend, or revoke a license based on the histories of persons identified in the application; requiring certain display of the facility name and of the direct disposer in charge; requiring the facility to transact business in the name by which it is licensed; amending s. 470.0255, F.S.; providing a time within which cremation must be performed; amending s. 470.026, F.S.; transferring from the department to the board rulemaking and regulation of solicitation of goods and services; prohibiting at-need solicitation of burial rights, merchandise, and services; amending ss. 470.027 and 470.028, F.S.; correcting cross references; amending s. 470.029, F.S.; requiring the reporting of cases embalmed and bodies handled directly to the department and eliminating the local registrar of vital statistics as an intermediary; amending s. 470.031, F.S., relating to prohibitions and penalties; providing editorial changes; amending s. 470.036, F.S., relating to disciplinary proceedings; revising and providing grounds for disciplinary action, including having been disciplined in another jurisdiction for a violation relating to the disposition of dead human bodies; authorizing assessment of costs associated with investigation and prosecution; providing that license revocation is permanent; creating s. 470.0375, F.S.; providing for cash advance and escrow refund accounts for funeral establishments; amending s. 470.038, F.S., relating to reciprocity; revising terminology; amending s. 470.039, F.S., relating to exceptions to regulation; providing editorial changes; amending s. 470.0395, F.S.; updating saving clauses; amending s. 497.001, F.S.; revising the short title; amending s. 497.002, F.S., relating to purpose and intent; amending s. 497.003, F.S.; exempting certain family cemeteries and certain mausoleums; applying to all cemetery laws relating to solicitation of goods and services, illegal tying arrangements, and abandoned cemeteries; requiring certain exempt cemeteries to submit to investigation and mediation by the department; amending s. 497.004, F.S.; updating applicability to existing cemetery companies; amending s. 497.005, F.S.; revising and providing definitions; creating s. 497.101, F.S.; creating the Board of Funeral and Cemetery Services and providing for its members, organization, meetings, and duties; creating s. 497.103, F.S.; providing rulemaking authority of the board and the Department of Banking and Finance; creating s. 497.105, F.S.; providing general powers and duties of the department with respect to such regulation; creating s. 497.107, F.S.; providing that the board may be contacted through the headquarters of the department in Tallahassee; creating s. 497.109, F.S.; providing for officers, meetings, official business, and compensation of the board; creating s. 497.111, F.S.; authorizing the board and department to publish an advisory newsletter; creating s. 497.113, F.S.; provid-

ing accountability and liability of board members; creating s. 497.115, F.S.; providing for board rules, final agency action, and challenges; creating s. 497.117, F.S.; providing for legal and investigative services, including duties of the Department of Legal Affairs with respect thereto; creating s. 497.119, F.S.; providing a mediation process applicable to certain violations of the chapter; creating s. 497.121, F.S.; providing for the issuance of citations applicable to certain violations of the chapter; creating s. 497.123, F.S.; providing powers to administer oaths and issue subpoenas; creating s. 497.125, F.S.; providing for the admission of financial examiners' worksheets, investigative reports, and other related documents as evidence under certain circumstances; creating s. 497.127, F.S.; providing for injunction; creating s. 497.129, F.S.; providing for cease and desist orders, civil penalties, and enforcement; creating s. 497.131, F.S.; providing disciplinary proceedings; providing exemptions from public records and public meetings requirements relating to probable cause investigations; providing for future review and repeal; creating s. 497.133, F.S.; providing disciplinary guidelines; creating s. 497.135, F.S.; prohibiting the giving of false information, misleading statements, or knowing misrepresentations relating to obtaining or attempting to obtain licensure under the chapter; providing a penalty; amending and renumbering s. 497.006, F.S., relating to licensure as a cemetery company; requiring applicants to provide information necessary to determine eligibility; requiring a financial statement attesting to a specified minimum net worth; raising the minimum amount care and maintenance trust funds must contain; revising the requirements of savings and loan associations certifying care and maintenance trust funds; amending and renumbering s. 497.007, F.S.; revising requirements relating to the purchase or acquisition of control of an existing cemetery; requiring a financial statement attesting to a specified minimum net worth; amending and renumbering s. 497.008, F.S.; revising provisions relating to change of control of an existing cemetery company; requiring a financial statement attesting to a specified minimum net worth; requiring an investigation rather than an initial filing fee; amending and renumbering s. 497.009, F.S., relating to annual license fees; increasing the late renewal fee and providing for timely submission of renewal applications and fees; amending and renumbering s. 497.018, F.S.; revising and providing acts which constitute grounds for specified disciplinary actions; increasing the administrative fine; amending and renumbering s. 497.021, F.S., relating to care and maintenance trust funds; revising provisions relating to the entities with which such trust funds may be established; providing requirements and investment restrictions of trustees; amending and renumbering s. 497.023, F.S.; deleting reference to monument maintenance fees; raising the minimum amount per grave space required to be deposited in a care and maintenance trust fund; revising deposit requirements for cemeteries losing their exempt status; eliminating a provision relating to minimum deposits in new trust funds; amending and renumbering s. 497.029, F.S.; revising deposit requirements of preconstruction trust funds to conform to other cemetery trust funds; amending and renumbering s. 497.031, F.S.; requiring the establishment of a toll-free number; eliminating a penalty applicable to failure to display the cemetery license; amending and renumbering s. 497.033, F.S.; requiring preneed burial contracts to disclose certain information relating to the opening and closing of a burial space; requiring cemeteries offering preneed contracts to offer opening and closing of the burial space as part of the contract; amending and renumbering s. 497.035, F.S.; authorizing cemetery companies to keep financial records at a location other than the principal place of business; authorizing the board to prescribe the minimum information required to be kept; creating s. 497.313, F.S.; authorizing charges for opening and closing a grave, transferring burial rights, certain taxes, credit life and disability insurance, and interest on unpaid balances; amending and renumbering s. 497.041, F.S.; prohibiting cemetery companies from requiring monument dealers to obtain insurance, bond, or surety as a condition of access to the cemetery; eliminating monument maintenance fees; deleting a provision authorizing a cemetery company to charge a fee for marking the grave and inspecting a monument not installed by the cemetery company or its agents; amending and renumbering s. 497.043, F.S., relating to solicitation of goods or services; correcting terminology; amending and renumbering s. 497.044, F.S., relating to illegal tying arrangements; eliminating a cemetery company's right to require monument dealers to maintain certain insurance; creating s. 497.329, F.S.; requiring registration of brokers of burial rights; amending and renumbering s. 497.046, F.S.; providing additional information required to be disclosed to the public; amending and renumbering s. 497.048, F.S.; prohibiting the sale of personal property and services by a cemetery company under certain circumstances; amending and renumbering s. 497.0484, F.S., relating to alternatives to deposits in a merchandise trust fund; transferring regulation from the department to the board; amend-

ing and renumbering s. 497.049, F.S., relating to proof of compliance with law applicable to existing merchandise trust funds, to conform; amending and renumbering s. 497.054, F.S., relating to penalties; amending and renumbering s. 497.056, F.S., relating to civil remedies; revising terminology; creating s. 497.515, F.S.; providing additional prohibited acts; amending and renumbering s. 497.057, F.S., relating to attorney's fees; amending and renumbering s. 497.061, F.S., relating to burial without regard to race or color; providing editorial changes; amending and renumbering s. 497.071, F.S., relating to abandoned cemeteries; providing editorial changes; creating s. 497.349, F.S.; providing procedures applicable to inactive cemeteries; amending and renumbering s. 497.091, F.S.; conforming terminology and correcting cross references; creating s. 497.357, F.S.; providing for registration of exempt cemeteries; creating s. 497.361, F.S.; providing for registration of monument establishments; amending and renumbering s. 639.085, F.S.; including preneed burial merchandise and service contracts under regulation of the chapter; amending and renumbering s. 639.087, F.S., relating to insurance business not authorized, to conform; amending and renumbering s. 639.09, F.S., relating to certificate of authority required to sell preneed contracts, to include reference to cemeteries; prohibiting the sale of preneed services, merchandise, or burial rights without a license or registration to sell on an at-need basis; amending and renumbering s. 639.10, F.S.; transferring from the department to the board rule and regulatory authority relating to certificates of authority; revising certification fees; revising the payee and depository of fees and other funds; amending and renumbering s. 639.105, F.S., relating to approval of forms; transferring responsibilities from the department to the board; amending and renumbering s. 639.107, F.S., relating to non-conforming contracts; correcting cross references; amending and renumbering s. 639.108, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund; transferring authority over the administration and regulation of the trust fund to the board; amending and renumbering s. 639.11, F.S., relating to disposition of proceeds received on preneed funeral and burial contracts; revising the amounts required to be deposited based on the merchandise or service sold or rented; providing for the holding of deposited funds in trust; providing for transfer of merchandise and burial rights; amending and renumbering s. 639.13, F.S.; revising provisions relating to cancellation of or default on preneed contracts; amending and renumbering s. 639.14, F.S.; relating to payment of funds upon death of named beneficiary; amending and renumbering s. 639.145, F.S., relating to evidence of financial responsibility as alternative to trust deposit; transferring from the department to the board such regulatory responsibility; amending and renumbering s. 639.149, F.S., relating to alternative preneed contracts; making the board the responsible regulatory party; amending and renumbering s. 639.15, F.S., relating to examinations and investigations; making the board the responsible regulatory party; authorizing the department to charge an examination fee and certain travel expenses; amending and renumbering s. 639.16, F.S., relating to grounds for discipline; making the board the responsible regulatory party; removing the requirement that certain violations be willful; amending and renumbering s. 639.162, F.S., relating to administrative fine in lieu of revocation or suspension of certificate of authority; making the board the responsible regulatory party; changing the fine depository; amending and renumbering s. 639.165, F.S., relating to dissolution or liquidation; making the board the responsible regulatory party; creating s. 497.439, F.S.; providing for registration of preneed sales agents; amending and renumbering s. 639.21, F.S., relating to acceptability of funeral and burial merchandise; amending and renumbering s. 639.22, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; amending and renumbering s. 639.23, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined; amending and renumbering s. 639.25, F.S., relating to hearings, witnesses, appearances, production of books, and service of process relating to unfair methods of competition or unfair or deceptive acts or practices; making the board the responsible regulatory party; amending and renumbering s. 639.30, F.S., relating to civil liability; revising terminology; amending ss. 501.022, 624.01, 626.785, and 628.4615, F.S.; correcting cross references; repealing ss. 497.011, 497.026, 497.0435, 639.055, 639.07, 639.08, 639.106, 639.17, 639.185, 639.20, 639.24, 639.26, 639.27, 639.28, 639.29, and 639.33, F.S., relating to various aspects of funeral, cemetery, and crematory regulation rendered redundant or unnecessary by other provisions of this act; repealing s. 624.523(1)(m), F.S., relating to the deposit of sums received under s. 639.10(4), F.S., in the Insurance Commissioner's Regulatory Trust Fund; continuing the validity of licenses, registrations, and certificates of authority issued under chapters 470, 497, and 639, F.S.; providing for transfer of funds in the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance; preserving the

validity of any judicial or administrative proceedings pending on the effective date of the act and substituting the Department of Banking and Finance as a party in interest, if applicable; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for type four transfer of positions and funding from the Department of Insurance to the Department of Banking and Finance; providing effective dates.

On motion by Senator Jennings, by two-thirds vote **CS for SB's 14-B, 16-B and 18-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—37      Nays—None

### RECESS

On motion by Senator Jennings, the Senate recessed at 12:04 p.m. to reconvene at 4:00 p.m.

### AFTERNOON SESSION

The Senate was called to order by the President at 4:24 p.m. A quorum present—35:

Mr. President	Diaz-Balart	Holzendorf	Scott
Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Forman	Jones	Thomas
Brown-Waite	Grant	Kirkpatrick	Turner
Casas	Grogan	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	

### MOTIONS

On motion by Senator Jennings, the House was requested to return **SB 20-B**.

On motions by Senator Jennings, the rules were waived and by two-thirds vote **CS for SB 64-B** was placed on the Special Order Calendar.

### SPECIAL ORDER, continued

**SB 58-B**—A bill to be entitled An act relating to juvenile justice; amending s. 39.025, F.S., relating to district juvenile justice boards; providing technical amendments; repealing section 1 of ch. 93-196, Laws of Florida, (1993), relating to juvenile delinquency and gang prevention councils; reenacting s. 39.042, F.S., relating to use of detention; revising membership of the Task Force on the Use of Department of Health and Rehabilitative Services Detention Facilities and Resources; providing an effective date.

—was read the second time by title.

The Committee on Health and Rehabilitative Services recommended the following amendments which were moved by Senator Forman and adopted:

**Amendment 1**—On page 10, line 9, after "families." insert: *To aid in this process, the department shall provide fiscal-agency services for the councils.*

**Amendment 2**—On page 13, line 2, after "annually." insert: *To aid the planning process, the department shall provide to district juvenile justice boards routinely collected ethnicity data. The Department of Law Enforcement shall include ethnicity as a field in the Florida Intelligence Center data base, and shall collect the data routinely and make it available to district juvenile justice boards.*

**Amendment 3 (with Title Amendment)**—On page 21, between lines 10 and 11, insert:

Section 5. Subsection (1) of section 944.095, Florida Statutes, is amended to read:

944.095 Siting of additional correctional facilities; study; criteria.—

(1) The Department of Corrections and the Department of Health and Rehabilitative Services are each directed to conduct a statewide comprehensive study to determine current and future needs for all types

of correctional facilities in this state. As used in this section, "correctional facilities" include both adult and juvenile facilities, and "department" means either the Department of Corrections or the Department of Health and Rehabilitative Services, as the context requires.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 12, after the semicolon (;) insert: amending s. 944.095, F.S.; revising provisions relating to the siting of facilities study;

On motion by Senator Bankhead, by two-thirds vote **SB 58-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—29      Nays—3

### MOTION

Senator Boczar moved that the rules be waived and **SB 34-B** be placed on the Special Order Calendar. The motion failed to receive the required two-thirds vote. The vote was:

Yeas—21      Nays—11

### RECONSIDERATION

On motion by Senator Jennings, the Senate reconsidered the vote by which **SB 58-B** passed this day.

On motion by Senator Jennings, by two-thirds vote the Senate reconsidered the vote by which **SB 58-B** was read the third time.

Pending further consideration of **SB 58-B** as amended, on motion by Senator Jennings, by two-thirds vote **HB 75-B** was withdrawn from the Committee on Health and Rehabilitative Services.

On motion by Senator Jennings—

**HB 75-B**—A bill to be entitled An act relating to juvenile justice; amending s. 39.025, F.S., relating to district juvenile justice boards; providing technical amendments; repealing section 1 of ch. 93-196, Laws of Florida, (1993), relating to juvenile delinquency and gang prevention councils; reenacting s. 39.042, F.S., relating to use of detention; revising membership of the Task Force on the Use of Department of Health and Rehabilitative Services Detention Facilities and Resources; amending s. 944.095, F.S.; revising provisions relating to the siting of facilities study; providing an effective date.

—a companion measure, was substituted for **SB 58-B** and read the second time by title. On motion by Senator Jennings, by two-thirds vote **HB 75-B** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—21      Nays—9

Consideration of **SB 6-B** was deferred.

**CS for SB 8-B**—A bill to be entitled An act making supplemental appropriations; providing or adjusting moneys from the named funds for the annual periods beginning July 1, 1992, and ending June 30, 1993, and beginning July 1, 1993 and ending June 30, 1994, to pay salaries, and other expenses, capital outlay - buildings and other improvements, and for other specified purposes of the various agencies of State government; supplementing or adjusting appropriations as provided in Chapters 92-293 and 93-184, Laws of Florida, providing effective dates.

—was read the second time by title.

Senator Scott moved **Amendment 1**.

Pursuant to Rule 7.6, the amendment constituted an entirely new bill and was not published in the Journal.

POINT OF ORDER

Senator Hargrett raised a point of order that pursuant to Rule 4.8 the bill should be referred to the Committee on Appropriations.

RULING ON POINT OF ORDER

On recommendation of Senator Jennings, Chairman of the Committee on Rules and Calendar, the President ruled the point not well taken.

Senator Turner moved the following amendment to Amendment 1 which was adopted:

Amendment 1A—

SECTION 1A STRIKE: INSERT:
PAGE 2
ITEM 13

DEPARTMENT OF EDUCATION
PUBLIC SCHOOLS, DIVISION OF

Insert new item, following item 13:

13A AID TO LOCAL GOVERNMENTS
GRANTS AND AIDS - SAFE SCHOOLS
FROM GENERAL REVENUE FUND 9,521,846

The vote was:

Yeas—20 Nays—11

Amendment 1 as amended failed.

On motion by Senator Scott, by two-thirds vote CS for SB 8-B was read the third time by title. The vote was:

Yeas—25 Nays—12

On motion by Senator Scott, further consideration of CS for SB 8-B was deferred.

On motion by Senator Hargrett, by two-thirds vote HB 95-B was withdrawn from the Committee on International Trade, Economic Development and Tourism.

On motions by Senator Hargrett, by two-thirds vote—

HB 95-B—A bill to be entitled An act relating to economic development; amending s. 62 of ch. 93-187, Laws of Florida; abrogating the future repeal of portions of the Florida Development Finance Corporation Act of 1993; providing for legislative review of the corporation; providing an effective date.

—a companion measure, was substituted for CS for SB 64-B and by two-thirds vote read the second time by title. On motion by Senator Hargrett, by two-thirds vote HB 95-B was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

RECESS

On motion by Senator Jennings, the Senate recessed at 5:40 p.m. to reconvene at 6:15 p.m.

CALL TO ORDER

The Senate was called to order by the President at 6:21 p.m. A quorum present—26:

Mr. President Dyer Johnson Siegel
Beard Grogan Jones Sullivan
Boczar Harden Kiser Thomas
Brown-Waite Hargrett Kurth Turner
Casas Holzendorf McKay Williams
Crist Jenne Meadows
Dudley Jennings Scott

Motion

Senator Boczar moved that CS for HB 47-B be withdrawn from the Committees on Criminal Justice and Appropriations and placed on the calendar. The motion failed to receive the required two-thirds vote. The vote was:

Yeas—15 Nays—10

RECESS

On motion by Senator Jennings, the Senate recessed at 6:23 p.m. to reconvene at 6:48 p.m.

CALL TO ORDER

The Senate was called to order by the President at 6:55 p.m. A quorum present—38:

Mr. President Diaz-Balart Jenne Siegel
Bankhead Dudley Jennings Silver
Beard Dyer Johnson Sullivan
Boczar Forman Jones Thomas
Brown-Waite Grant Kirkpatrick Turner
Burt Grogan Kiser Weinstein
Casas Gutman Kurth Wexler
Childers Harden McKay Williams
Crist Hargrett Meadows
Dantzler Holzendorf Scott

SPECIAL ORDER, continued

Pursuant to Article III, Section 19(d) of the Constitution and Joint Rule 2.1(4), and the constitutional 72-hour review period having elapsed, the Senate resumed consideration of—

CS for SB 8-B—A bill to be entitled An act making supplemental appropriations; providing or adjusting moneys from the named funds for the annual periods beginning July 1, 1992, and ending June 30, 1993, and beginning July 1, 1993 and ending June 30, 1994, to pay salaries, and other expenses, capital outlay - buildings and other improvements, and for other specified purposes of the various agencies of State government; supplementing or adjusting appropriations as provided in Chapters 92-293 and 93-184, Laws of Florida, providing effective dates.

On motion by Senator Scott, CS for SB 8-B was read by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—1

RECESS

On motion by Senator Jennings, the Senate recessed at 7:04 p.m. to reconvene at 8:15 p.m.

EVENING SESSION

The Senate was called to order by the President at 8:45 p.m. A quorum present—38:

Mr. President Diaz-Balart Jenne Siegel
Bankhead Dudley Jennings Silver
Beard Dyer Johnson Sullivan
Boczar Forman Jones Thomas
Brown-Waite Grant Kirkpatrick Turner
Burt Grogan Kiser Weinstein
Casas Gutman Kurth Wexler
Childers Harden McKay Williams
Crist Hargrett Meadows
Dantzler Holzendorf Scott

RECESS

On motion by Senator Jennings, the Senate recessed at 9:06 p.m. to reconvene at 9:45 p.m.

### CALL TO ORDER

The Senate was called to order by the President at 11:27 p.m. A quorum present—37:

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

### POINT OF ORDER

Senator Boczar raised a point of order that pursuant to Rule 4.5 the Conference Committee Report on **SB 26-B** should be available to the membership twelve hours prior to the time scheduled for a vote.

### RULING ON POINT OF ORDER

Senator Jennings, Chairman of the Committee on Rules and Calendar, cited Rule 13.6 regarding Conference Committee Reports during special sessions.

On recommendation of Senator Jennings, the President ruled the point not well taken.

### RECESS

The President declared the Senate recessed at 1:00 a.m.

### CALL TO ORDER

The Senate was called to order by the President at 1:44 a.m. A quorum present—37:

President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

### CONFERENCE COMMITTEE REPORT ON SB 26-B

*The Honorable Ander Crenshaw*  
President of the Senate

*The Honorable Bolley L. Johnson*  
Speaker, House of Representatives

Sirs:

Your Conference Committee on the disagreeing votes of the two Houses on Senate Bill 26-B, the same being:

An act relating to corrections;

having met, and after full and free conference, have agreed to recommend and do recommend to their respective Houses, as follows:

1. That the House recede from Amendment Number 1.
2. That the Senate and House of Representatives adopt the Conference Committee Amendment attached hereto, and by reference made a part of this report.
3. That the Senate and House pass Senate Bill 26-B as amended by said Conference Committee Amendment.

*s/Robert Wexler*  
*s/William G. Bankhead*  
*s/W. L. "Locke" Burt*  
*s/Rick Dantzler*

*s/Elvin L. Martinez*  
*s/Scott Clemons*  
*s/Carol G. Hanson*  
Willie Logan, Jr.

*s/Matthew Meadows*  
*s/Gary Siegel*

*s/Sandra Mortham*  
*s/Kelley R. Smith*

Managers on the part of the Senate

Managers on the part of the House of Representatives

**Conference Committee Amendment 1 (with Title Amendment)**—On page 1, strike everything after the enacting clause and insert:

Section 1. *1994 Revision of the Sentencing Guidelines; legislative intent.*—This revision of the sentencing guidelines may be cited as the "Safe Streets Initiative of 1994," and is designed to emphasize incarceration in the state prison system for violent offenders and nonviolent offenders who have repeatedly committed criminal offenses and have demonstrated an inability to comply with less restrictive penalties previously imposed.

Section 2. Section 775.084, Florida Statutes, is amended to read:

775.084 Habitual felony offenders and habitual violent felony offenders; extended terms; definitions; procedure; penalties.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony or other qualified offense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4.3. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

5.4. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- a. Arson,
- b. Sexual battery,
- c. Robbery,
- d. Kidnapping,
- e. Aggravated child abuse,
- f. Aggravated assault,
- g. Murder,
- h. Manslaughter,
- i. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- j. Armed burglary, or
- k. Aggravated battery;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior enumerated felony or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 30.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.
3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3).

(d) A sentence imposed under this section shall not be increased after such imposition.

(e) A sentence imposed under this section is shall not be subject to the provisions of s. 921.001. The provisions of s. 947.146 chapter 947 shall not be applied to persons sentenced as habitual offenders under paragraph (1)(a), but shall not be applied to persons sentenced as habitual violent felony offenders under paragraph (1)(b) such person. The provi-

sions of s. 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders. A defendant sentenced under this section is shall not be eligible for gain-time granted by the Department of Corrections, except that the department may grant up to 25 20 days of incentive gain-time each month as provided for in s. 944.275(4)(b).

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

(6) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. The state attorney in each judicial circuit shall adopt uniform criteria to be used in determining if an offender is eligible to be sentenced as a habitual offender or a habitual violent felony offender. The criteria shall be designed to ensure fair and impartial application of the habitual offender statute. A deviation from this criteria must be explained in writing, signed by the state attorney, and placed in the case file maintained by the state attorney. A deviation from the adopted criteria is not subject to appellate review.

Section 4. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 777.04, Florida Statutes, is amended to read:

777.04 Attempts, solicitation, and conspiracy, generally.—

(1) A person who ~~Whoever~~ attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such an offense, but fails in the perpetration or is intercepted or prevented in the execution thereof of the same, commits the offense of criminal attempt, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such attempt, be punished as provided in subsection (4). ~~The offense of Criminal attempt includes shall include~~ the act of an adult who, with intent to commit an offense prohibited by law, allures, seduces, coaxes, or induces a child under the age of 12 to engage in an offense prohibited by law.

(2) A person who ~~Whoever~~ solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense commits the offense of criminal solicitation, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such solicitation, be punished as provided in subsection (4).

(3) A person who ~~Whoever~~ agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such conspiracy, be punished as provided in subsection (4).

(4)(a) Except as otherwise provided in s. 921.0012, the offense of criminal attempt or criminal solicitation is ranked on the offense severity ranking chart in s. 921.0012 two levels below the offense attempted or solicited is, was, or would have been ranked on the offense severity ranking chart.

(b) Except as otherwise provided in s. 921.0012, the offense of criminal conspiracy is ranked on the offense severity ranking chart in s. 921.0012 one level below the offense conspired to is, was, or would have been ranked on the offense severity ranking chart.

(c) If the offense attempted, solicited, or conspired to is a capital felony, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) If the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the

offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) If the offense attempted, solicited, or conspired to is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(g) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) Whoever commits the offense of criminal attempt, criminal solicitation, or criminal conspiracy shall be punished as follows:~~

~~(a) If the offense attempted, solicited, or conspired to is a capital felony, the person convicted is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the person convicted is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(c) If the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the person convicted is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(d) If the offense attempted, solicited, or conspired to is a felony of the third degree, the person convicted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(e) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the person convicted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(5) It is a defense to a charge of criminal attempt, criminal solicitation, or criminal conspiracy under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose, the defendant:

(a) Abandoned his attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

Section 5. Effective upon this act becoming a law and applicable to sentencing for offenses committed on or after January 1, 1994, section 921.001, Florida Statutes, 1992 Supplement, is amended to read:

921.001 Sentencing Commission and sentencing guidelines generally.—

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a uniform sentencing policy in cooperation with the Supreme Court. In furtherance of this cooperative effort, the Legislature there is created a Sentencing Commission, which shall be responsible for the initial development of a statewide system of sentencing guidelines, evaluating the commission shall evaluate these guidelines periodically, and recommending recommend such changes on a continuing basis changes as are necessary to ensure incarceration of:

(a) Violent criminal offenders; and

(b) Nonviolent criminal offenders who commit repeated acts of criminal behavior and who have demonstrated an inability to comply with less restrictive penalties previously imposed for nonviolent criminal acts.

(2)(a) The commission is ~~shall be~~ composed of 17 members, consisting of: two members of the Senate to be appointed by the President of the Senate; two members of the House of Representatives to be appointed by the Speaker of the House of Representatives; the Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice; three circuit court judges, one county court judge, and one representative of the victim advocacy profession, to be appointed by the Chief Justice of the Supreme Court; the Attorney General or his designee; and the secretary of the Department of Corrections or his designee. The following members are ~~shall be~~ appointed by the Governor: one state attorney recommended by the Florida Prosecuting Attorneys Association; one public defender recommended by the Public Defenders Association; one private attorney recommended by the President of The Florida Bar; and two persons of the Governor's choice. The membership of the commission shall reflect the geographic and ethnic diversity of the state. The Chief Justice or the member of the Supreme Court designated by the Chief Justice serves ~~shall serve~~ as chairman of the commission.

(b) The members of the commission appointed by the Governor and the members from the Senate and the House of Representatives shall serve 2-year terms. The members appointed by the Chief Justice of the Supreme Court shall serve at his pleasure.

(c) Membership on the commission does ~~shall~~ not disqualify a member from holding any other public office or from being employed by a public entity. The Legislature finds and declares that the commission serves a state, county, and municipal purpose and that service on the commission is consistent with a member's principal service in a public office or in public employment.

(d) Members of the commission shall serve without compensation but are ~~shall be~~ entitled to be reimbursed for per diem and travel expenses as provided for in s. 112.061.

(e) The office of the State Courts Administrator shall act as staff for the commission and shall provide all necessary data collection, analysis, and research, and support services.

(3)(a) The commission shall meet annually or at the call of the chairman to review sentencing practices and recommend modifications to the guidelines. In recommending modifications to modifying the sentencing guidelines, the commission shall take into consideration the existing current sentencing and release practices and correctional resources, including the capacities of local and state correctional facilities, in addition to other relevant factors.

(b) For the this purpose of assisting the commission in recommending modifications to the sentencing guidelines, the Department of Corrections ~~commission~~ is authorized to collect and evaluate data on sentencing practices in the state from each of the judicial circuits and provide technical assistance to the commission upon request. The Department of Corrections shall, no later than October 1 of each year, provide the commission with a yearly report detailing the rate of compliance of each judicial circuit in providing scoresheets to the department.

(4) The purpose of the sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decisionmaking process. The guidelines represent a synthesis of current sentencing theory, historical sentencing practices, and a rational approach to managing correctional resources. The sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining the relative importance of those criteria in the sentencing decision.

(a) The sentencing guidelines embody the principles that:

1. Sentencing is neutral with respect to race, gender, and social and economic status.

2. The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.

3. The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

4. The severity of the sentence increases with the length and nature of the offender's prior record.

5. The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time.

6. Departures from the recommended sentences established in the guidelines are articulated in writing and made only when circumstances or factors reasonably justify the aggravation or mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the sentencing guidelines is a preponderance of the evidence.

7. Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

(b)(4)(a) The guidelines enacted effective October 1, 1983, apply shall be applied to all felonies, except capital felonies, committed on or after October 1, 1983; and to all felonies, except capital felonies and life felonies, committed prior to that date and October 1, 1983, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to such the provisions of this act. The 1994 guidelines apply to sentencing for all felonies, except capital felonies, committed on or after January 1, 1994, and to sentencing for all felonies, except capital felonies, committed before January 1, 1994, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the 1994 guidelines.

(c)(b) The commission shall, no later than October 1 of each year, make a recommendation to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives, and the chairs of the relevant substantive committees of both houses on the need for changes in the guidelines. Upon receipt of such recommendation, the Supreme Court may revise the statewide sentencing guidelines to conform them with all or part of the commission recommendation. Such revision shall be submitted by the Supreme Court to the President of the Senate, and the Speaker of the House of Representatives, and the chairs of the relevant substantive committees of both houses no later than December 1 February 1 of each year following the receipt of the recommendations of the commission. However, such revision is shall become effective only upon the subsequent adoption by the Legislature of legislation implementing the guidelines as then revised. The court may also revise the statewide sentencing guidelines if it certifies that the revisions are necessary to conform the guidelines to previously adopted statutory revisions.

(d) The commission, with the assistance of the Department of Corrections, shall estimate how sentencing score thresholds and weights assigned to the sentencing factors will affect the rates of incarceration and the levels of prison population and shall submit to the Legislature, by October 1 of each year, recommended sentencing score thresholds, recommended weights assigned to the sentencing factors, and a recommended appropriation for state correctional resources that is sufficient to fund the estimated prison population.

(e) The Division of Economic and Demographic Research of the Joint Legislative Management Committee shall prepare alternative proposals which revise the statewide sentencing guidelines and submit such proposals to the Senate Committee on Corrections, Probation, and Parole; the Senate Committee on Criminal Justice; the House Committee on Corrections; the House Committee on Criminal Justice; and to the Sentencing Guidelines Commission by November 1, 1991. The commission is hereby ordered to develop revised statewide sentencing guidelines and provide them to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by January 1, 1992, which emphasize incarceration for violent offenders and alternatives to incarceration for nonviolent offenders. In developing revised sentencing guidelines, the commission shall consider present and future state prison resources so that available spaces for incarceration are used as specified in paragraphs (1)(a) and (b).

(d) In developing revised sentencing guidelines to meet the requirements of paragraphs (1)(a) and (b) and (4)(c), the commission shall:

1. Rank the gravity of offenses to reflect judgments about harm or potential harm to the community, the culpability of the offender, and the physical injury to the victim.

2. Develop a scoring system to assign weight to such offender characteristics as the nature and extent of prior criminal convictions, the juve-

nile record, the offender's legal status at the time of the offense, whether extended periods of crime-free behavior will diminish the weight given to earlier convictions, and how multiple convictions arising out of a single criminal episode should be counted.

3. Define a dispositional policy to determine which offenders should go to state prison and which should be sanctioned in other ways.

4. Establish a durational policy to set the lengths of sentences.

5. Develop policy and procedure to govern when a judge may depart from the guidelines to impose a more severe or less severe sanction.

(5) Sentences imposed by trial court judges under the 1994 revised sentencing guidelines on or after January 1, 1994, must be in all cases within the 1994 guidelines unless there is a departure sentence with written findings any relevant minimum and maximum sentence limitations provided by statute and must conform to all other statutory provisions. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure. If a departure sentence, with written findings, is imposed, such sentence must be within any relevant maximum sentence limitations provided in s. 775.082. The failure of a trial court to impose a sentence within the sentencing guidelines is shall be subject to appellate review pursuant to chapter 924. However, the extent of a departure from a guidelines sentence is not subject to appellate review. However, any person sentenced for a felony offense committed after October 1, 1983, whose presumptive sentence is any non-state prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). The extent of departure from a guideline sentence shall not be subject to appellate review.

(6) A court may impose a departure sentence outside the sentencing guidelines A departure sentence shall be based upon circumstances or factors which reasonably justify the aggravation or mitigation of the sentence in accordance with s. 921.0016. The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of the evidence. When multiple reasons exist to support a departure from a guidelines sentence, the departure shall be upheld when at least one circumstance or factor justifies the departure regardless of the presence of other circumstances or factors found not to justify departure.

(6) The sentencing guidelines shall provide that Any sentence sentences imposed outside the range recommended by the guidelines must be explained in writing by the trial court judge.

(7) A court may impose A sentence may be imposed outside the guidelines based on when credible facts, which may include an oral or written statement submitted by the victim or next of kin pursuant to s. 921.143, proven by a preponderance of the evidence, which demonstrate that the victim suffered excessive physical or emotional trauma at the hands of the defendant; and: such departure is not barred because victim injury has been utilized in the calculation of the guidelines sentence.

(8) For purposes of the statewide sentencing guidelines, if the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense includes sexual penetration, the sexual penetration must receive the score indicated for penetration or slight injury, regardless of whether there is evidence of any physical injury. If the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense does not include sexual penetration, the sexual contact must receive the score indicated for contact but no penetration, regardless of whether there is evidence of any physical injury. If the victim of an offense described in chapter 794, chapter 800, or s. 826.04 suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

(8)(9) A trial court may impose A sentence may be imposed outside the guidelines based on when credible facts, proven by a preponderance of the evidence, which demonstrate that the defendant's prior record, including offenses for which adjudication was withheld, and the current criminal offense for which the defendant is being sentenced, indicate an escalating pattern of criminal conduct. The escalating pattern of criminal conduct may be evidenced by a progression from nonviolent to violent crimes, or a progression of increasingly violent crimes, or a pattern of increasingly serious criminal activity.

(9)(a)(10) The Sentencing Commission and the office of the State Courts Administrator shall conduct ongoing research on the impact of the sentencing guidelines adopted by the commission on sentencing practices, the use of imprisonment and alternatives to imprisonment, and plea bargaining. The commission, with the aid of the office of the State Courts Administrator, the Department of Corrections, and the Parole Commission, shall estimate the impact of any proposed changes to the sentencing guidelines on future rates of incarceration and levels of prison population. ~~Such estimates shall be based in part on historical data of sentencing practices which have been accumulated by the office of the State Courts Administrator and on Department of Corrections records reflecting average time served for offenses covered by the proposed changes to the guidelines. Projections of impact shall be reviewed by The commission shall review the projections of impact and shall make them and made available to other appropriate agencies of state government, including the Legislature, by October 1 December 15 of each year.~~

(b) On or after January 1, 1994, any legislation which:

1. Creates a felony offense;
2. Enhances a misdemeanor offense to a felony offense;
3. Moves a felony offense from a lesser offense severity level to a higher offense severity level in the offense severity ranking chart in s. 921.0012; or
4. Reclassifies an existing felony offense to a greater felony classification

must provide that such a change result in a net zero sum impact in the overall prison population, as determined by the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to accommodate such change or a provision which specifically abrogates the application of this paragraph.

(10)(a)(11) A person who is convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may ~~shall~~ be released from incarceration only:

- 1.(a) Upon expiration of his sentence;
- 2.(b) Upon expiration of his sentence as reduced by accumulated gain-time;
- 3.(c) As directed by an executive order granting clemency;
- 4.(d) Upon attaining the provisional release date;
- 5.(e) Upon placement in a conditional release program pursuant to s. 947.1405; or
- 6.(f) Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of his sentence;
2. Upon expiration of his sentence as reduced by accumulated meritorious or incentive gain-time;
3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405; or
5. Upon the granting of control release pursuant to s. 947.146.

(11)(12) A person who is convicted of a crime committed on or after December 1, 1990, and who receives a control release date may not refuse to accept the terms or conditions of control release.

Section 6. Subsection (1) of section 924.06, Florida Statutes, is amended to read:

924.06 Appeal by defendant.—

- (1) A defendant may appeal from:
  - (a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);
  - (b) An order granting probation under chapter 948;
  - (c) An order revoking probation under chapter 948;

(d) A sentence, on the ground that it is illegal; or

(e) A sentence imposed outside the range recommended by the guidelines authorized by ~~chapter 921 s. 921.001.~~

Section 7. Section 924.07, Florida Statutes, as amended by chapter 93-37, Laws of Florida, is amended to read:

924.07 Appeal by state.—

(1) The state may appeal from:

(a) An order dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release.

(b) An order granting a new trial.

(c) An order arresting judgment.

(d) A ruling on a question of law when the defendant is convicted and appeals from the judgment. Once the state's cross-appeal is instituted, the appellate court shall review and rule upon the question raised by the state regardless of the disposition of the defendant's appeal.

(e) The sentence, on the ground that it is illegal.

(f) A judgment discharging a prisoner on habeas corpus.

(g) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure.

(h) All other pretrial orders, except that it may not take more than one appeal under this subsection in any case.

(i) A sentence imposed outside the range recommended by the guidelines authorized by ~~chapter 921 s. 921.001.~~

(j) A ruling granting a motion for judgment of acquittal after a jury verdict.

(k) An order denying restitution under s. 775.089.

(l) *An order or ruling suppressing evidence or evidence in limine at trial.*

(2) An appeal under this section shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee.

Section 8. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, subsection (3) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(3) The provisions of this section shall not be used to impose a greater sentence than the maximum recommended range as established by statewide sentencing guidelines pursuant to ~~chapter 921 s. 921.001~~ unless reasons are explained in writing by the trial court judge which reasonably justify departure. A sentence imposed outside of such guidelines shall be subject to appeal pursuant to s. 924.06 or s. 924.07.

Section 9. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0011, Florida Statutes, is created to read:

921.0011 Definitions.—As used in this chapter, the term:

(1) "Additional offense" means any offense other than the primary offense for which an offender is convicted and that is pending before the court for sentencing at the time of the primary offense.

(2) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

(3) "Legal status violation" includes:

(a) An escape from incarceration.

(b) Flight to avoid prosecution.

(c) Failure to appear for a criminal proceeding.

(d) Violation of any condition of a supersedeas bond.

(4) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(5) "Prior record" means a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in the offender's prior record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Juvenile dispositions of offenses committed by the offender within 3 years before the primary offense are included in the offender's prior record if the offender would have been a crime had the offender been an adult rather than a juvenile. Juvenile dispositions of sexual offenses committed by the offender which were committed 3 years or more before the primary offense are included in the offender's prior record if the offender has not maintained a conviction-free record, either as an adult or a juvenile, for a period of 3 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense.

(6) "Release program" includes:

(a) Parole.

(b) Control release.

(c) Probation.

(d) Community control.

(e) Pretrial intervention or diversion.

(f) Provisional release supervision.

(g) Conditional release supervision.

(h) Supervised community release supervision.

(i) Conditional medical release supervision.

(7) "Victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any offense other than the primary offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense. If the conviction is for an offense involving sexual contact which includes sexual penetration, the sexual penetration must be scored as a severe injury regardless of whether there is evidence of any physical injury. If the conviction is for an offense involving sexual contact which does not include sexual penetration, the sexual contact must be scored as a moderate injury regardless of whether there is evidence of any physical injury. If the victim of an offense involving sexual contact suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

Section 10. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0012, Florida Statutes, is created to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.—A single offense severity ranking chart must be used to compute a sentence score for each felony offender. The offense severity ranking chart has 10 offense levels, ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense.

OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
LEVEL 1		
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.

212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$100 but less than \$20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license.
322.212(5)	3rd	False application for driver's license.
370.13(4)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.
372.663(1)	3rd	Poach any alligator or crocodilia.
409.325(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
409.325(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
458.327(1)(a)	3rd	Unlicensed practice of medicine.
466.026(1)(a)	3rd	Unlicensed practice of dentistry or dental hygiene.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
812.014(2)(d)	3rd	Petit theft (3rd conviction); theft of any property not specified in other paragraphs of subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e. computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.

860.13(1)(a)	3rd	Operate aircraft while under the influence.	796.05(1)	3rd	Live on earnings of a prostitute.
893.13(2)(a)2.	3rd	Purchase of cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	810.08(2)(c)	3rd	Trespass on property armed with firearm or dangerous weapon.
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
LEVEL 2					
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.	812.014(2)(c)1.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
517.07	3rd	Registration of securities and furnishing of prospectus required.	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
590.28(1)	3rd	Willful, malicious, or intentional burning.	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.	817.233	3rd	Burning to defraud insurer.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
806.13(1)(a)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.	843.19	3rd	Injure, disable, or kill police dog or horse.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.	870.01(2)	3rd	Riot; inciting or encouraging.
817.52(3)	3rd	Failure to redeliver hired vehicle.	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c), (3), or (4) drugs within 200 feet of university, public housing facility, or public park.
817.60(5)	3rd	Dealing in credit cards of another.	893.13(6)(a)	3rd	Possession of cocaine.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
817.60(6)(b)	3rd	Possess two or more false credit cards.	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.	944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
831.01	3rd	Forgery.	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.	LEVEL 4		
831.07	3rd	Forging bank bills or promissory note.	231.06(2)	3rd	Battery of school employee.
831.08	3rd	Possession of 10 or more forged notes.	240.381(2)	3rd	Battery of community college security officer.
831.09	3rd	Uttering forged bills; passes as bank bill or promissory note.	381.0025(4)(b)	3rd	Battery of HRS employee.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
843.08	3rd	Falsely impersonating an officer.	787.03(1)	3rd	Interference with custody; wrongly takes child from appointed guardian.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
LEVEL 3					
39.061	3rd	Escapes from juvenile facility (secure detention or residential commitment facility).	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.	790.01(2)	3rd	Carrying a concealed firearm.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.	810.02(3)	3rd	Burglary of an unoccupied conveyance or structure; unarmed; attempted burglary.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.	810.06	3rd	Burglary; possession of tools.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.	812.014(2)(c)1.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.	812.014(2)(c)2.-8.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	837.02(1)	3rd	Perjury in official proceedings.

837.021(1)	3rd	Make contradictory statements in official proceedings.	787.02(1)(a)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), or (2)(a) or (b) drugs).	794.041(2)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
914.14(1)(b)	3rd	Witnesses accepting bribes to withhold testimony, information, document, or thing.	794.05(1)	2nd	Unlawful carnal intercourse with unmarried person under 18 of previous chaste character.
914.22(1)(a)	3rd	Force, threaten, etc., witness to withhold testimony, documents, or objects.	810.02(3)	2nd	Burglary of occupied structure or unoccupied dwelling; not armed, no assault.
914.22(1)(f)	3rd	Force, threaten, bribe, etc., witness to testify falsely.	812.014(2)(b)	2nd	Property stolen over \$20,000 and less than \$100,000, grand theft in 2nd degree.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
		LEVEL 5	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
316.027(2)	3rd	Accidents involving death or personal injuries, failure to stop; leaving scene.	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
322.34(3)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.	836.05	2nd	Threats; extortion.
			836.10	2nd	Written threats to kill or do bodily injury.
			843.12	3rd	Aids or assists person to escape.
			914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.	944.40	2nd	Escapes.
415.111(5)	3rd	Exploit an aged person or disabled adult by the improper or illegal use of funds, assets, property, power of attorney, or guardianship.	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
790.162	2nd	Threat to throw or discharge destructive device.	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
790.163	2nd	False report of deadly explosive.	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
790.164(1)	2nd	False report of deadly explosive or act of arson or violence to state property.			LEVEL 7
790.165(2)	3rd	Manufacture, sell, possess, or deliver hoax bomb.	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	415.111(3)	2nd	Knowingly abuse or neglect aged or disabled adult resulting in bodily harm or disability.
790.23	2nd	Felons in possession of firearms or electronic weapons or devices.	782.07	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	782.071	3rd	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
812.019(1)	2nd	Stolen property; dealing in or trafficking in.	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
843.01	3rd	Resist officer with violence to his person; resist arrest with violence.	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).	796.03	2nd	Procuring any person under 16 years for prostitution.
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1)(c), (2)(c), (3), or (4) drugs) within 1,000 feet of a school.	800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 200 feet of university, public housing facility, or public park.	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).	810.02(3)	2nd	Burglary of occupied conveyance or dwelling.
951.075	2nd	Prisoner commits assault or battery.	812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; 1st degree grand theft.
		LEVEL 6	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.	827.04(1)	3rd	Deprive child of necessities causing great bodily harm or disfigurement.
775.087(2)(a)2.		Battery upon law enforcement officer or firefighter while possessing firearm.	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 1,000 feet of a school.
775.0875(1)	3rd	Taking firearm from law enforcement officer.	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 100 lbs., less than 2,000 lbs.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than 28 grams, less than 200 grams.  
 893.135(1)(e)1. 1st Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.  
 893.135(1)(f)1. 1st Trafficking in amphetamine, more than 14 grams, less than 28 grams.

LEVEL 8

316.193(3)(c)3. 2nd DUI manslaughter.  
 782.04(4) 2nd Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.  
 794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.  
 806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.  
 810.02(2)(a) 1st,PBL Burglary with assault or battery.  
 810.02(2)(b) 1st,PBL Burglary; armed with explosives or dangerous weapon.  
 812.13(2)(b) 1st Robbery with a weapon.  
 827.03(1)(a) 2nd Commits aggravated battery on a child.  
 893.13(1)(b) 1st Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).  
 893.13(2)(b) 1st Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).  
 893.13(6)(c) 1st Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).  
 893.135(1)(a)2. 1st Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.  
 893.135(1)(b)1.b. 1st Trafficking in cocaine, more than 200 grams, less than 400 grams.  
 893.135(1)(c)1.b. 1st Trafficking in illegal drugs, more than 14 grams, less than 28 grams.  
 893.135(1)(d)2. 1st Trafficking in phencyclidine, more than 200 grams, less than 400 grams.  
 893.135(1)(e)2. 1st Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.  
 893.135(1)(f)2. 1st Trafficking in amphetamine, more than 28 grams, less than 200 grams.  
 895.03(1) 1st Use or invest proceeds derived from pattern of racketeering activity.  
 895.03(2) 1st Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.  
 895.03(3) 1st Conduct or participate in any enterprise through pattern of racketeering activity.

LEVEL 9

782.04(1) 1st Attempted premeditated murder.  
 782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.  
 784.07(3) Life Attempted murder of law enforcement officer engaged in duty.  
 787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.  
 787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.  
 787.02(3)(a) 1st False imprisonment; child under age 13; perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.  
 790.161 1st Attempted capital firearms offense.  
 794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.  
 794.011(2) Life Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.  
 794.011(4) 1st Sexual battery; victim 12 years or older, certain circumstances.  
 794.041(2)(b) 1st Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.

812.13(2)(a) 1st,PBL Robbery with firearm or other deadly weapon.  
 893.135 1st Attempted capital trafficking offense.  
 893.135(1)(a)3. 1st Trafficking in cannabis, more than 10,000 lbs.  
 893.135(1)(b)1.c. 1st Trafficking in cocaine, more than 400 grams, less than 150 kilograms.  
 893.135(1)(c)1.c. 1st Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.  
 893.135(1)(d)3. 1st Trafficking in phencyclidine, more than 400 grams.  
 893.135(1)(e)3. 1st Trafficking in methaqualone, more than 25 kilograms.  
 893.135(1)(f)3. 1st Trafficking in amphetamine, more than 200 grams.

LEVEL 10

782.04(2) 1st,PBL Unlawful killing of human; act is homicide, unpremeditated.  
 787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm upon or terrorize victim.  
 787.01(3)(a) Life Kidnapping; child under age 13, perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.  
 794.011(3) Life Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.

Section 11. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0013, Florida Statutes, is created to read:

921.0013 Sentencing guidelines; ranking unlisted felony offenses.—A felony offense not listed in s. 921.0012 is ranked with respect to offense severity level by the Legislature, commensurate with the harm or potential harm that is caused by the offense to the community. Prior to the time the Legislature ranks an offense which has not been ranked, the severity level is within the following parameters:

- (1) A felony of the third degree within offense level 1.
- (2) A felony of the second degree within offense level 4.
- (3) A felony of the first degree within offense level 7.
- (4) A felony of the first degree punishable by life within offense level 9.
- (5) A life felony within offense level 10.

Section 12. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0014, Florida Statutes, is created to read:

921.0014 Sentencing guidelines; worksheet computations; scoresheets.—

(1) The sentencing guidelines worksheet is used to compute the subtotal and total sentence points. If both of the sentencing enhancements are applicable, only the enhancement with the highest multiplier is used in the total sentence points computation. The worksheet is used as follows:

FLORIDA SENTENCING GUIDELINES WORKSHEET  
OFFENSE SCORE

Primary Offense			
Level	Sentence Points		Total
10	116	=	
9	91	=	
8	74	=	
7	42	=	
6	36	=	
5	28	=	
4	22	=	
3	16	=	
2	10	=	
1	4	=	
			Total

DRUG TRAFFICKER (no)(yes) (× multiplier)  
LAW ENF. PROTECT. (no)(yes) (× multiplier)

Additional Offenses			
Level	Sentence Points	Counts	Total
10	12.0	x	=
9	10.8	x	=
8	9.6	x	=
7	8.4	x	=
6	7.2	x	=
5	5.4	x	=
4	3.6	x	=
3	2.4	x	=
2	1.2	x	=
1	0.7	x	=
M	0.2	x	=
Total			

Victim Injury			
Level	Sentence Points	Number	Total
2nd degree murder-death	120	x	=
Death	60	x	=
Severe Sexual penetration	40	x	=
Moderate Sexual contact	18	x	=
Slight	4	x	=
Total			

Primary Offense + Additional Offenses + Victim Injury =

TOTAL OFFENSE SCORE

PRIOR RECORD SCORE

Prior Record

Level	Sentence Points	Number	Total
10	8.0	x	=
9	7.2	x	=
8	6.4	x	=
7	5.6	x	=
6	4.8	x	=
5	3.6	x	=
4	2.4	x	=
3	1.6	x	=
2	0.8	x	=
1	0.5	x	=
M	0.2	x	=
Total			

Legal Status Violation

Sentence Points	Total
4	

Sentence Points	Total
6 for each violation, up to a total of 18	

Prior Record Score + Legal Status Violation + Release Program Violation = TOTAL PRIOR RECORD SCORE

TOTAL OFFENSE SCORE  
TOTAL PRIOR RECORD SCORE  
FIREARM OR DESTRUCTIVE DEVICE  
SEMIAUTOMATIC WEAPON  
SUBTOTAL

VIOLENT HABITUAL OFFENDER (no)(yes)  
HABITUAL OFFENDER (no)(yes)

TOTAL

WORKSHEET KEY:

Recommended Sentences:

If the total sentence points are less than or equal to 40, the recommended sentence shall not be a state prison sentence; however, the court, in its discretion, may increase the total sentence points by up to, and including, 15 percent.

If the total sentence points are greater than 40 and less than or equal to 52, the decision to incarcerate in a state prison is left to the discretion of the court.

If the total sentence points are greater than 52, the sentence must be a state prison sentence calculated by total sentence points. A state prison sentence is calculated as follows:

State prison months = total sentence points minus 28.

The recommended sentence length in state prison months may be increased by up to, and including, 25 percent or decreased by up to, and including, 25 percent, at the discretion of the court. The recommended sentence length may not be increased if the total sentence points have been increased for that offense by up to, and including, 15 percent. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence recommended under the guidelines must be imposed absent a departure.

Legal status violation includes escape from incarceration, flight to avoid prosecution, failure to appear for a criminal proceeding, and violation of any condition of a supersedeas bond.

Release program violation includes violation of any condition of parole, control release, probation, community control, pretrial intervention or diversion, provisional release supervision, conditional release supervision, supervised community release supervision, or conditional medical release supervision.

Possession of a firearm or destructive device: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession a firearm as defined in s. 790.001(6), an additional 18 sentence points are added to the offender's subtotal sentence points.

Possession of a semiautomatic weapon: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession a semiautomatic firearm as defined in s. 775.087(2) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are added to the offender's subtotal sentence points.

If both of the following sentencing enhancements are applicable, only the enhancement with the highest multiplier is used:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, then the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), then the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 775.087(2)(a)2. or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(6) or (7), then the subtotal sentence points are multiplied by 1.5.

(2) A single guidelines scoresheet shall be prepared for each defendant. The scoresheet must cover all the defendant's offenses pending before the court for sentencing. Either the office of the state attorney or the Probation Services Office, or both where appropriate, shall prepare the scoresheet and the scoresheet must be presented to the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet must be approved by sentencing judge.

(3) The Department of Corrections shall develop and submit the revised sentencing guidelines scoresheet to the Sentencing Commission

by September 1, 1993. Following the Supreme Court's approval of the revised procedures, the Department of Corrections shall produce and provide sufficient copies of the revised scoresheets to the clerks of the circuit courts by no later than December 31, 1993.

(4) Beginning January 1, 1994, the clerks of the circuit courts for the individual counties shall distribute sufficient copies of the sentencing guidelines scoresheets to those persons charged with the responsibility for preparing sentencing guidelines scoresheets, either the office of the state attorney or the Probation Services Office, or both where appropriate.

(5) The clerk of the circuit court shall transmit a complete, accurate, and legible copy of the guidelines scoresheet utilized in each guidelines sentencing proceeding to the Department of Corrections. Scoresheets must be transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.

(6) A copy of the individual offender's sentencing guidelines scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Florida Rules of Criminal Procedure, must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections.

Section 13. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0016, Florida Statutes, is created to read:

921.0016 Recommended sentences; departure sentences; aggravating and mitigating circumstances.—

(1)(a) The recommended guidelines sentence provided by the total sentence points is assumed to be appropriate for the offender.

(b) A trial court judge may impose a state prison sentence which varies upward or downward by up to, and including, 25 percent from the recommended guidelines state prison sentence without issuing a written statement delineating the reasons for the variation.

(c) A state prison sentence which varies upward or downward from the recommended guidelines prison sentence by more than 25 percent is a departure sentence and must be accompanied by a written statement delineating the reasons for the departure, filed within 15 days after the date of sentencing. A written transcription of orally stated reasons for departure from the guidelines at sentencing is permissible if it is filed by the court within 15 days after the date of sentencing.

(d) The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute a departure from sentencing guidelines. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.

(e) A departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082.

(2) A departure from the recommended guidelines sentence is discouraged unless there are circumstances or factors which reasonably justify the departure. Aggravating and mitigating factors to be considered include, but are not limited to, those listed in subsections (3) and (4). The failure of a trial court to impose a sentence within the sentencing guidelines is subject to appellate review under chapter 924, but the extent of departure from a guidelines sentence is not subject to appellate review.

(3) Aggravating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.

(c) The offenses before the court for sentencing arose out of separate episodes; the primary offense is scored at offense level 4 or higher; and the defendant has committed five or more offenses within a 180-day period that have resulted in convictions.

(d) The primary offense is scored at offense level 3 and the defendant has committed eight or more offenses within a 180-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was discharged from a release program, as defined in s. 921.0011(6), or released from state prison, whichever is later.

(f) The defendant occupied a leadership role in a criminal organization.

(g) The offense was committed by a public official under color of office.

(h) The defendant knew the victim was a law enforcement officer at the time of the offense; the offense was a violent offense; and that status is not an element of the primary offense.

(i) The offense created a substantial risk of death or great bodily harm to many persons or to one or more small children.

(j) The victim was especially vulnerable due to age or physical or mental disability.

(k) The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.

(l) The victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.

(m) The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.

(n) The offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

1. The offense involved multiple victims or multiple incidents per victim;

2. The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

3. The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or

4. The defendant was in the past involved in other conduct similar to that involved in the current offense.

(o) The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.

(p) The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).

(q) The defendant induced a minor to participate in any of the offenses pending before the court for disposition.

(r) The primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.

(s) The defendant has an extensive unscorable juvenile record.

(4) Mitigating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

Section 14. Section 921.0017, Florida Statutes, is created to read:

921.0017 Credit upon recommitment of offender serving split sentence.—Effective for offenses committed on or after January 1, 1994, if an offender's probation or community control is revoked and the offender is serving a split sentence pursuant to s. 948.01, upon recommitment to the Department of Corrections, the court shall order credit for time served only, without considering any type of gain-time earned before release to supervision, or any type of sentence reduction granted to avoid prison overcrowding, including, but not limited to, any sentence reduction resulting from administrative gain-time, provisional credits, or control release. The court shall determine the amount of jail-time credit to be awarded for time served between the date of arrest as a violator and the date of recommitment, and shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitment. This section does not affect or limit the department's authority to forfeit gain time under ss. 944.28(1) and 948.06(6).

Section 15. Notwithstanding ss. 921.0015 and 921.001(4)(c), Florida Statutes, the Department of Corrections shall develop and submit the sentencing guidelines scoresheet to the Sentencing Commission no later than September 1, 1993. Pursuant to the revision of chapter 921, Florida Statutes, by this act, the Sentencing Commission shall prepare, adopt, and, no later than October 1, 1993, submit to the Supreme Court for its approval procedures for implementing the 1994 revised sentencing guidelines in strict accordance with chapter 921, Florida Statutes, as revised by this act, applicable to sentencing for offenses committed on or after January 1, 1994. The Supreme Court shall have the new procedures in place no later than December 1, 1993.

Section 16. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 775.0823, Florida Statutes, is amended to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—Any provision of law to the contrary notwithstanding, the Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Article V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer by imposing a mandatory minimum sentence without possibility of early release through any gain-time, provisional release credits, conditional release supervision, supervised community release, transition assistance program, or parole during the mandatory minimum portion of the sentence, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release shall be imposed.

(2) For murder in the second degree as described in s. 782.04(2) and (3), a sentence pursuant to the sentencing guidelines of imprisonment for 25 years before eligibility for release shall be imposed.

(3) For murder in the third degree as described in s. 782.04(4), a sentence pursuant to the sentencing guidelines of imprisonment for 15 years before eligibility for release shall be imposed.

(4) For manslaughter as described in s. 782.07 during the commission of a crime, a sentence pursuant to the sentencing guidelines of imprisonment for 10 years before eligibility for release shall be imposed.

(5) For kidnapping as described in s. 787.01, a sentence pursuant to the sentencing guidelines of imprisonment for 15 years before eligibility for release shall be imposed.

(6) For aggravated battery as described in s. 784.045, a sentence pursuant to the sentencing guidelines of imprisonment for 3 years before eligibility for release shall be imposed.

(7) For aggravated assault as described in s. 784.021, a sentence pursuant to the sentencing guidelines of imprisonment for 1 year before eligibility for release shall be imposed.

~~Any person convicted of an offense under this section is ineligible to receive provisional release credits during any portion of his sentence. Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.~~

Section 17. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 775.0875, Florida Statutes, is amended to read:

775.0875 Unlawful taking, possession, or use of law enforcement officer's firearm; crime reclassification; penalties.—

(1) A person who, without authorization, takes a firearm from a law enforcement officer lawfully engaged in law enforcement duties commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall serve a sentence of imprisonment for a mandatory minimum period of 3 calendar years before eligibility for release.

(2) A person who violates subsection (1) and commits any other crime involving the firearm taken from the law enforcement officer commits a crime which shall be reclassified as follows:

(a) In the case of a life felony, to a capital felony.

(b) In the case of a felony of the first degree, to a life felony.

(c) In the case of a felony of the second degree, to a felony of the first degree.

(d) In the case of a felony of the third degree, to a felony of the second degree.

(e) In the case of a misdemeanor, to a felony of the third degree.

(3) A person who possesses a firearm which he knows was unlawfully taken from a law enforcement officer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 784.08, Florida Statutes, 1992 Supplement, is amended to read:

784.08 Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence.—

(1) A person who is convicted of an aggravated assault or aggravated battery upon a person 65 years of age or older shall be sentenced pursuant to the sentencing guidelines to a mandatory minimum term of 3 calendar years and fined not more than \$10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence which may be imposed and shall not be in lieu thereof.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65 years of age or older, regardless of whether he knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 19. Effective January 1, 1994, and applicable to offenses committed on or after that date, section 790.161, Florida Statutes, is amended to read:

790.161 Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do, felony; penalties.—A person who willfully and unlawfully makes, possesses, throws, projects, places, discharges, or attempts to make, possess, throw, project, place, or discharge any destructive device:

(1) Commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084.

(2) If the act is perpetrated with the intent to do bodily harm to any person, or with the intent to do property damage, or if the act results in a disruption of governmental operations, commerce, or the private affairs of another person, commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084, ~~and the person shall be required to serve a term of imprisonment of not less than 5 calendar years before becoming eligible for parole.~~

(3) If the act results in bodily harm to another person or in property damage, commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, ~~and the person shall be required to serve a term of imprisonment of not less than 10 calendar years before becoming eligible for parole.~~

(4) If the act results in the death of another person, commits a capital felony, punishable by death. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment, and such person shall be required to serve a term of imprisonment of not less than 25 calendar years before becoming eligible for parole.

Section 20. Effective January 1, 1994, and applicable to offenses committed on or after that date, section 790.165, Florida Statutes, is amended to read:

790.165 Planting of "hoax bomb" prohibited; penalties.—

(1) For the purposes of this section, "hoax bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive as defined in this chapter, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented.

(2) Any person who manufactures, possesses, sells, or delivers a hoax bomb or mails or sends a hoax bomb to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Any person violating the provisions of this subsection shall be sentenced to a minimum term of imprisonment of 3 calendar years.~~ Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld. However, the state attorney or defense attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals.

(4) The provisions of subsection (2) shall not apply to any law enforcement officer, fireman, person, or corporation licensed pursuant to chapter 493, or member of the armed forces of the United States while engaged in training or other lawful activity within the scope of his employment, or to any person properly authorized to test a security

system, or to any security personnel, while operating within the scope of their employment, including, but not limited to, security personnel in airports and other controlled access areas, or to any member of a theatrical company or production utilizing a hoax bomb as property during the course of a rehearsal or performance.

Section 21. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 790.221, Florida Statutes, is amended to read:

790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.—

(1) It is unlawful for any person to own or to have in his care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

(2) A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Upon conviction thereof he shall be sentenced to a mandatory minimum term of imprisonment of 5 years.~~

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

Section 22. Effective upon this act becoming a law, through December 31, 1993, paragraphs (e) and (i) of subsection (1) of section 893.13, Florida Statutes, are amended to read:

893.13 Prohibited acts; penalties.—

(1)

(e) Except as authorized by this chapter, it is unlawful for any person to sell, purchase, manufacture, or deliver, or to possess with the intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) ~~commits is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and must shall be sentenced to a minimum term of imprisonment of 3 calendar years and is shall not be eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain-time under s. 944.275 before prior to serving such minimum sentence.~~

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) ~~commits is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, ~~must shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.~~

(i) Except as authorized by this chapter, it is unlawful for any person to sell, purchase, manufacture, or deliver, or to possess with the intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) ~~commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and is shall not be eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain-time under s. 944.275.~~

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) ~~commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, ~~must shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.~~

Section 23. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.13, Florida Statutes, as amended by chapters 93-59 and 93-194, Laws of Florida, is amended to read:

*(Substantial rewording of section. See s. 893.13, F.S., for present text.)*

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 a.m. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and must be sentenced to a minimum term of imprisonment of 3 calendar years.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who delivers, without consideration, not more than 20 grams of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this paragraph, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis* or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(c) Except as provided in this chapter, it is unlawful to possess in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7)(a) It is unlawful for any person:

1. To distribute or dispense a controlled substance in violation of this chapter.

2. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. To refuse an entry into any premises for any inspection or to refuse to allow any inspection authorized by this chapter.

4. To distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. To use to his or her own personal advantage, or to reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. To withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the last 30 days.

8. To possess a prescription form which has not been completed and signed by the practitioner whose name appears printed thereon, unless the person is that practitioner, is an agent or employee of that practitioner, is a pharmacist, or is a supplier of prescription forms who is authorized by that practitioner to possess those forms.

9. To acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. To affix any false or forged label to a package or receptacle containing a controlled substance.

11. To furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

(b) Any person who violates the provisions of subparagraphs 1.-8. of paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates the provisions of subparagraphs 9.-11. of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Notwithstanding any provision to the contrary of the laws of this state:

(a) The court may assess for alcohol and other drug abuse programs as provided in s. 893.165 any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this chapter or which involves a criminal violation of s. 316.193, s. 856.011, s. 856.015, or chapter 562, chapter 567, or chapter 568, in addition to any fine and other penalty provided by law, an amount up to the amount of the fine authorized for the violation.

(b) The court may assess any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this section, without regard to whether adjudication was withheld, in addition to any fine and other penalty provided or authorized by law, an amount of \$100, to be paid to the clerk of the court, who shall forward it to the Operating Trust Fund of the Department of Law Enforcement to be used by the statewide criminal analysis laboratory system for the purposes specified in s. 943.361.

The court is authorized to order a defendant to pay an additional assessment if it finds that the defendant has the ability to pay the fine and the additional assessment and will not be prevented thereby from being rehabilitated or from making restitution.

(9) The provisions of subsections (1) through (7) are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(d) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(e) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Common carriers.

(g) Manufacturers, wholesalers, and distributors.

(h) Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

(10) Notwithstanding any provision of the sentencing guidelines to the contrary, on or after October 1, 1993, any defendant who:

1. Violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a); and

2. Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.

(11) Notwithstanding any provision of the sentencing guidelines to the contrary, on or after January 1, 1994, any defendant who:

1. Violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a); and

2. Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(2), in lieu of serving a term of imprisonment.

Section 24. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.135, Florida Statutes, as amended by chapter 93-92, Laws of Florida, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 100 pounds of cannabis commits a felony of the first degree, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

1. Is in excess of 100 pounds, but less than 2,000 pounds, such person shall be sentenced pursuant to the sentencing guidelines to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be sentenced pursuant to the sentencing guidelines to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$50,000.

3. Is 10,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine." If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine, punishable by a term of life imprisonment without the possibility of parole. However, if, in addition to the commission of any act specified in this paragraph, that person:

a. Intentionally kills an individual or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined, with respect to the commission of that act, to have had a highly culpable mental state and, as a result of that act, the defendant's conduct led to a natural, though not inevitable, lethal result, which state may be taken into account in any capital sentencing judgment,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this paragraph, a "highly culpable mental state" is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a) or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 10 calendar years~~ and to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of \$500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs, punishable by a term of life imprisonment without the possibility of parole. However, if, in addition to the commission of any act specified in this paragraph, that person:

a. Intentionally kills an individual or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined, with respect to the commission of that act, to have had a highly culpable mental state and, as a result of that act, the defendant's conduct led to a natural, though not inevitable, lethal result, which state may be taken into account in any capital sentencing judgment,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this paragraph, a "highly culpable mental state" is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(d) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine." If the quantity involved:

1. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000.

2. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$100,000.

3. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.

(e) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone." If the quantity involved:

1. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

2. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

3. Is 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.

(f) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine." If the quantity involved:

1. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

2. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

3. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

Section 25. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.20, Florida Statutes, is amended to read:

893.20 Continuing criminal enterprise.—

(1) Any person who commits three or more felonies under this chapter in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

(2)(a) A person who commits the offense of engaging in a continuing criminal enterprise is guilty of a life felony, punishable pursuant to the sentencing guidelines by a term of imprisonment for life or by a term of imprisonment of not less than 25 years and by a fine of \$500,000.

(b) ~~A violation of this section is exempt from the application of sentencing guidelines pursuant to s. 921.001.~~

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld, ~~nor is such person eligible for parole or provisional credits under s. 944.277 prior to serving the mandatory minimum term of imprisonment prescribed in this section.~~

(4) This section does not prohibit separate convictions and sentences for violation of this section and for felony violations of this chapter.

(5) This section must be interpreted in concert with its federal analog, 21 U.S.C. s. 848.

Section 26. Section 944.275, Florida Statutes, is amended to read:

944.275 Gain-time.—

(1) The department is authorized to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

(2)(a) The department shall establish for each prisoner sentenced to a term of years a "maximum sentence expiration date," which shall be the date when the sentence or combined sentences imposed on a prisoner will expire. In establishing this date, the department shall reduce the total time to be served by any time lawfully credited.

(b) When a prisoner with an established maximum sentence expiration date is sentenced to an additional term or terms without having been released from custody, the department shall extend the maximum sentence expiration date by the length of time imposed in the new sentence or sentences, less lawful credits.

(c) When an escaped prisoner or a parole violator is returned to the custody of the department, the maximum sentence expiration date in effect when the escape occurred or the parole was effective shall be extended by the amount of time the prisoner was not in custody plus the time imposed in any new sentence or sentences, but reduced by any lawful credits.

(3)(a) The department shall also establish for each prisoner sentenced to a term of years a "tentative release date" which shall be the date projected for the prisoner's release from custody by virtue of gain-time granted or forfeited as described in this section. The initial tentative release date shall be determined by deducting basic gain-time granted from the maximum sentence expiration date. Other gain-time shall be applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, shall be applied to make the tentative release date proportionately later.

(b) When an initial tentative release date is reestablished because of additional sentences imposed before the prisoner has completely served all prior sentences, any gain-time granted during service of a prior sentence and not forfeited shall be applied.

(c) The tentative release date may not be later than the maximum sentence expiration date.

(4)(a) As a means of encouraging satisfactory behavior, the department shall grant basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner, subject to the following:

1. Portions of any sentences to be served concurrently shall be treated as a single sentence when determining basic gain-time.

2. Basic gain-time for a partial month shall be prorated on the basis of a 30-day month.

3. When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time shall be granted for the amount of time the maximum sentence expiration date was extended.

(b) For each month in which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant up to 20 days of incentive gain-time, which shall be credited and applied monthly.

(c) For each month in which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the departments may grant incentive gain-time in accordance with this paragraph. For sentences imposed for offenses committed on or after January 1, 1994, for offenses which are, were, or would have been ranked on the offense severity chart in s. 921.0012 in:

1. Levels 1 through 7, up to 25 days of incentive gain-time, which shall be credited and applied monthly.

2. Levels 8, 9, and 10, up to 20 days of incentive gain-time, which shall be credited and applied monthly.

(d)(e) An inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his sentence may be granted meritorious gain-time of from 1 to 60 days.

(e)(d) Notwithstanding paragraph (b), the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a general educational development certificate or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(5) When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law.

(6)(a) Basic gain-time under this section shall be computed on and applied to all sentences imposed for offenses committed on or after July 1, 1978, and before January 1, 1994.

(b) ~~On the effective date of the act, All incentive and meritorious gain-time is shall be granted according to this section the provisions of this act.~~

(c) All additional gain-time previously awarded under former subsections (2) and (3) and all forfeitures ordered prior to the effective date of ~~the this act that created this section~~ shall remain in effect and be applied in establishing an initial tentative release date.

(7) The department shall ~~adopt promulgate~~ rules to implement the granting, forfeiture, and restoration, and deletion of gain-time.

Section 27. Section 947.146, Florida Statutes, 1992 Supplement, as amended by chapter 93-61, Laws of Florida, is amended to read:

947.146 Control Release Authority.—

(1) There is created a Control Release Authority which shall be composed of the members of the Parole Commission and which shall have the same chairman as the commission. The authority shall utilize such commission staff as it determines is necessary to carry out its purposes.

(2) The authority ~~has shall have~~ as its primary purpose the implementation of a system of uniform criteria for the determination of the number and type of inmates who must be released into the community under control release in order to maintain the state prison system at or below 99 ~~below 97.5~~ percent of its lawful capacity as defined in s. 944.096. No inmate has a right to control release. Control release is an administrative function solely used to manage the state prison population within lawful capacity. *An inmate may not receive an advancement of his control release date by an award of control release award allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of his advanceable control release date.*

~~(3) There shall be no award of provisional credits by the secretary of the department pursuant to s. 944.277 unless either:~~

~~(a) The chairman of the Control Release Authority certifies in writing to the secretary of the department that the authority is unable to maintain the state prison system below 97.5 percent of its lawful capacity; or~~

~~(b) Based upon the failure of the authority to act, the state prison system reaches 98 percent of its lawful capacity as provided in s. 944.277.~~

(3)(4) A panel of no fewer than two members of the authority shall establish a control release date for each parole ineligible inmate committed to the department and incarcerated within the state, within 90 days following notification by the department of receipt of the inmate or within 90 days following the completion of proceedings revoking an offender's release and notification by the department of receipt of the inmate, except an inmate who:

(a) Is serving a sentence ~~that which~~ includes a mandatory minimum provision for a capital offense or drug trafficking offense and has not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;

(b) Is serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2);

(c) Is convicted, or has been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

(d) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;

(e) Is convicted, or has been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;

(f) Is convicted, or has been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(g) Is sentenced, has previously been sentenced, or has been sentenced at any time as a violent habitual offender for a crime committed on or after October 1, 1988 ~~under s. 775.084~~, or has been sentenced at any time in another jurisdiction as a violent habitual offender;

(h) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against a state attorney or assistant state attorney; or against a justice or judge of a court described in Article V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction; or

(i) Is convicted, or has been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or has ever been convicted of any degree of murder or attempted murder in another jurisdiction;

*(j) Is convicted, or has been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., and is sentenced, or has been sentenced at any time, as a habitual offender for such offense, or has been sentenced at any time in another jurisdiction as a habitual offender for such offense;*

*(k) Is serving a sentence for an offense committed on or after January 1, 1994, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), and the subtotal of the offender's sentence points is multiplied pursuant to s. 921.0014;*

*(l) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a firearm or destructive device in which additional points are added to the subtotal of the offender's sentence points pursuant to s. 921.0014; or*

*(m) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a semiautomatic weapon, and additional points are added to the subtotal of the offender's sentence points pursuant to s. 921.0014.*

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense. *The 90-day requirement for the establishment of a control release date for all eligible inmates for control release consideration does not apply to a person sentenced as a habitual felony offender.*

(4)(5) Control release dates shall be based upon a system of uniform criteria which shall include, but not be limited to, present offenses for which the person is committed, past criminal conduct, length of cumulative sentences, and age of the offender at the time of commitment, together with any aggravating or mitigating circumstances.

(5)(6) For purpose of determining eligibility for control release, the mandatory minimum portion of a concurrent sentence will begin on the date the sentence begins to run as provided in s. 921.161. The mandatory minimum portions of consecutive sentences shall be served at the beginning of the maximum sentence as established by the Department of Corrections. With respect to offenders who have more than one sentence with a mandatory minimum portion, each mandatory minimum portion of consecutive sentences shall be served consecutively; provided, that in no case shall a sentence begin to run before the date of imposition of that sentence.

(6)(7) The authority has the power and duty to:

(a) Extend or advance the control release date of any inmate for whom a date has been established, based upon one or more of the following:

1. Recently discovered information of:
  - a. Past criminal conduct;
  - b. Verified threats by inmates provided by victims, law enforcement, or the department;
  - c. Potential risk to or vulnerability of a victim;
  - d. Psychological or physical trauma to the victim due to the criminal offense;
  - e. Court-ordered restitution;
  - f. History of abuse or addiction to a chemical substance verified by a presentence or postsentence investigation report;

- g. The inmate's ties to organized crime;
  - h. A change in the inmate's sentence structure;
  - i. Cooperation with law enforcement;
  - j. Strong community support; and
  - k. A documented mental condition as a factor for future criminal behavior.
2. The recommendation of the department regarding:
    - a. A medical or mental health-related condition; or
    - b. Institutional adjustment of the inmate, which may include refusal by the inmate to sign the agreement to the conditions of the release plan.
  3. Lawful capacity of the state prison system.

(b) Authorize an individual commissioner to postpone a control release date for not more than 60 days without a hearing for any inmate who has become the subject of a disciplinary proceeding, a criminal arrest, an information, or an indictment; who has been terminated from work release; or about whom there is any recently discovered information as specified in paragraph (a).

(c) Determine the terms, conditions, and period of time of control release for persons released pursuant to this section.

(d) Determine violations of control release and what actions shall be taken with reference thereto.

(e) Provide for victim input into the decisionmaking process which may be used by the authority as aggravation or mitigation in determining which persons shall be released on control release.

(f) Make such investigations as may be necessary for the purposes of establishing, modifying, or revoking a control release date.

(g) Contract with a public defender or private counsel for representation of indigent persons charged with violating the terms of control release.

(h) Create a periodic review process for inmates whose original control release dates are established at the maximum category.

(i) Adopt such rules as the authority deems necessary for implementation of the provisions of this section.

(7) *If the population of the state correctional system, as defined in s. 944.02, exceeds 99.5 percent of lawful capacity, the Secretary of Corrections shall notify the chair of the Parole Commission and certify to the chair the lawful capacity of the state correctional system and the current population. Upon receiving such certification, the chair of the Parole Commission shall advise the Governor that a state of emergency exists. When the Governor verifies the state of emergency to the Control Release Authority by letter, the Control Release Authority shall establish emergency control release dates for inmates who are ineligible for parole, who are excluded from control release under paragraphs (3)(a), (b), (g), or (h), and who the authority determines are the most suitable for release. Under no circumstances shall an inmate convicted of a capital felony be eligible for emergency control release.*

(a) *The authority shall extend or advance emergency control release dates pursuant to this section.*

(b) *The authority shall maintain the inmate population below 100 percent of lawful capacity by releasing inmates on emergency control release as well as control release as otherwise provided in this section.*

(c) *A state of emergency ceases to exist when the inmate population drops to 99 percent of lawful capacity and remains at or below that level for 30 consecutive days without requiring the release of inmates through the establishment of additional emergency control release dates.*

(d) *Nothing in this subsection prohibits the establishment of a control release date under other provisions of this section or creates any right to an early release for any inmate. An inmate has no right to be reviewed for the establishment of an emergency control release date. The establishment of emergency control release dates under this subsection is solely an administrative function used to manage the prison population within lawful capacity.*

(e) *When a state of emergency ceases to exist pursuant to paragraph (c), all emergency control release dates must be suspended and no inmate is eligible for release under any previously established emergency control release date.*

(8) The Department of Corrections shall select and contract with public or private organizations for the provision of basic support services for inmates whose term of control release supervision does not exceed 180 90 days. Basic support services shall include, but not be limited to, substance abuse counseling, temporary housing, family counseling, and employment support programs.

(9) The authority shall examine such records as it deems necessary of the department, the Department of Health and Rehabilitative Services, the Department of Law Enforcement, and any other such agency for the purpose of either establishing, modifying, or revoking a control release date. The victim impact statement shall be included in such records for examination. Such agencies shall provide the information requested by the authority for the purposes of fulfilling the requirements of this section.

(10) *The authority shall adopt as a standard condition for all persons released pursuant to this section that such persons shall not commit a violation which constitutes a felony.* The authority shall determine the appropriate terms, conditions, and lengths of supervision, if any, for persons placed on control release, except that such lengths of supervision shall be determined as provided in s. 947.24 and may not exceed the maximum period for which the person has been sentenced. If the person's conviction was for a controlled substance violation, the conditions must include a requirement that the person submit to random substance abuse testing intermittently throughout the term of supervision, and, when warranted, a requirement that the person participate in substance abuse assessment and substance abuse treatment services upon the direction of the correctional probation officer as defined in s. 943.10(3). If any inmate placed on control release supervision is also subject to probation or community control, the department shall supervise such person according to the conditions imposed by the court, and the authority shall defer to such supervision. If the court revokes the probation or community control, the authority, as the result of the revocation, may vacate the grant of control release and resulting deferred control release supervision or take other action it considers appropriate. If the term of control release supervision exceeds that of the probation or community control, then supervision shall revert to the authority's conditions upon expiration of the probation or community control.

(11) If an inmate is released on control release supervision subject to a detainer for a pending charge and the pending charge results in a new commitment to incarceration before expiration of the terms of control release supervision, the authority may vacate the grant of control release date and the control release supervision or take other action it considers appropriate.

(12) When the authority has reasonable grounds to believe that an offender released under this section has violated the terms and conditions of control release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

(13) If it is discovered that any control releasee was placed on control release by error or while statutorily ineligible for such release, the his order of control release may be vacated and the Control Release Authority may cause a warrant to be issued for the arrest and return of the control releasee to the custody of the Department of Corrections for service of the unserved portion of the his sentence or combined sentences.

Section 28. (1) An offender designated for early release by the Control Release Authority who is serving:

(a) A sentence for a controlled substance offense under s. 893.13(1)(e) or (1)(i), Florida Statutes (1991), for purchase or possession with intent to sell, manufacture, or deliver; or

(b) A sentence, or has previously served a sentence, as a habitual offender under s. 775.084(1)(a), Florida Statutes, for a primary offense involving drug possession or purchase,

may be released into supervision under s. 948.001(3), Florida Statutes. Supervision may include a requirement that a substance abuse assessment be conducted and, when warranted, appropriate substance abuse treatment services shall be provided.

(2) An offender designated for early release by the Control Release Authority who is serving:

(a) A sentence for a controlled substance offense under s. 893.13(1)(e) or (1)(i), Florida Statutes (1991), for sale, manufacture, or delivery; or

(b) A sentence, or has previously served a sentence, as a habitual offender under s. 775.084(1)(a), Florida Statutes, for a primary offense involving drug sale, manufacture, delivery, or trafficking.

shall be released into supervision under s. 948.001(3), Florida Statutes. Supervision may include a requirement that a substance abuse assessment be conducted and, when warranted, appropriate substance abuse treatment services shall be provided.

Section 29. (1) Any inmate who is sentenced under s. 893.13(1)(e)1. or (1)(i)1., Florida Statutes, who has not served such mandatory minimum term, or who is sentenced under s. 775.084(1)(a), Florida Statutes, shall only be placed in an advanceable category as the result of a critical depletion transfer in the following order of priority:

(a) Inmates sentenced under s. 893.13(1)(e)1. or (1)(i)1., Florida Statutes;

(b) Inmates sentenced under s. 775.084(1)(a), Florida Statutes, except those whose primary offense at conviction is for burglary as provided in s. 810.02, Florida Statutes;

(c) Inmates sentenced under s. 775.084(1)(a), Florida Statutes, whose primary offense at conviction is for burglary as provided in s. 810.02, Florida Statutes.

(2) A critical depletion transfer occurs whenever the release of eligible inmates under control release depletes the total number of eligible inmates with advanceable control release dates to less than 4,000, and inmates in the nonadvanceable subdivision Maximum A category are transferred to the advanceable category with the control release date established at the tentative release date in compliance with the following specifications and criteria:

(a) The number transferred shall be equal to the minimum number needed to return the pool of inmates with control release dates established at tentative release dates or earlier to 4,020.

(b) Those inmates who are closest to their tentative release dates or presumptive release dates shall be eligible for transfer.

(c) Inmates shall be ineligible for transfer if subject to disciplinary proceedings during the 60 days prior to the transfer action.

(d) Inmates selected for transfer shall have their control release dates reestablished at their current tentative release date or presumptive release date, whichever is earlier.

Section 30. Effective on June 1, 1995:

(1) The amendment to paragraph (g) of subsection (3) of s. 947.146, Florida Statutes, contained in this act shall be null and void and that paragraph shall revert to the language existing in that paragraph on April 22, 1993.

(2) Section 28 of this act is repealed.

(3) Section 29 of this act is repealed.

Section 31. Before the release pursuant to this act under s. 947.146, Florida Statutes, of any inmate sentenced as a habitual felony offender pursuant to this act, the Control Release Authority shall develop a uniform procedure for the award of control release dates to inmates sentenced as habitual felony offenders. The procedure must give priority consideration for early release to habitualized offenders who have been in the state prison system on their current commitment for the longest period of time. It is the intent of the Legislature that the habitual felony offender serve at least a significant portion of the court-imposed sentence before release.

Section 32. Section 944.277, Florida Statutes, as amended by section 12 of chapter 92-310, Laws of Florida, and s. 944.598, Florida Statutes, as amended by section 10 of chapter 92-47, Laws of Florida, are repealed.

Section 33. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare for introduction during the 1994 Regular Session of the Legislature a reviser's bill to conform all cross references to s. 893.13, Florida Statutes, to the amendment to that section in section 23 of this act.

Section 34. Section 944.405, Florida Statutes, is amended to read:

944.405 Warrant for retaking offender who has escaped from custody or absconded from rehabilitative community reentry program, or who is ineligible for release.—

(1) If there is reasonable justification to believe that an offender has escaped from the custody of the department of ~~Corrections~~, or has absconded from a rehabilitative community reentry program; before ~~the~~ such offender has satisfied his or her sentence or combined sentences, or if it is determined an offender was released in error, or if it is subsequently determined the offender was statutorily ineligible for release, the secretary of the department or the secretary's his designated representative may issue a warrant for retaking ~~the~~ such offender into custody until he or she has served the remainder of ~~the~~ such sentence or combined sentences.

(2) An offender who is arrested as provided in subsection (1) is ineligible for bond, bail, or release on his own recognizance.

(3) A warrant issued under subsection (1) is in effect until the offender has been returned to the custody of the department, or until the sentence is deemed satisfied, whichever occurs first.

(4) The issuance of a warrant pursuant to this section does not negate or interfere with the right to issuance of a warrant under any other provision of law.

Section 35. Section 944.278, Florida Statutes, is created to read:

944.278 Cancellation of administrative gain-time and provisional credits.—All awards of administrative gain-time under s. 944.276 and provisional credits under s. 944.277 are hereby cancelled for all inmates serving a sentence or combined sentences in the custody of the department, or serving a state sentence in the custody of another jurisdiction. Release dates of all inmates with 1 or more days of such awards shall be extended by the length of time equal to the number of days of administrative gain-time and provisional credits which were cancelled. Inmates who are out of custody due to an escape or a release on bond, or whose post-release supervision is revoked on or after the effective date of this act, shall have all administrative gain-time and provisional credits cancelled when the inmate's release date is reestablished upon return to custody. Offenders who are under provisional release supervision as of the effective date of this section shall be subject to the terms and conditions established at the time of release until such offenders have been discharged from supervision. Offenders who have warrants outstanding based on violation of supervision as of the effective date of this section, or who violate terms of supervision subsequent to enactment of this section, shall be terminated from supervision and returned to custody. All provisional credits shall be canceled when an offender's tentative release date is reestablished.

Section 36. Effective upon this act becoming a law, notwithstanding the provisions of sections 921.001, 921.187, 775.08, 944.02, and 951.23, Florida Statutes, or any other law to the contrary, a person whose presumptive sentence is 1 year and 1 day up to 22 months in a state correctional institution may be placed by the court into the custody of a local detention facility as a condition of probation or community control for a felony offense contained in Sentencing Guidelines categories five through nine contained in Florida Rules of Criminal Procedure 3.701 and 3.988, or such similar levels as may be set out in substantive legislation revising the sentencing guidelines, except for any such offense in those categories in which physical force was used, threatened, or attempted or violence was an element. The court may place such person for the duration of the presumptive sentence. The court may only place a person in a local detention facility pursuant to this section if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections. The agreement must provide for a per diem reimbursement for each person placed under this section, which is payable by the Department of Corrections for the duration of the offender's placement in the facility. This section does not limit the court's ability to place a person in a local detention facility for less than 1 year.

Section 37. Effective upon this act becoming a law, section 33 of chapter 93-185, Laws of Florida, is hereby repealed.

Section 38. It is the intent of the Legislature that the requirements for space in correctional facilities resulting from the revisions to the sentencing guidelines and the other provisions of this act in the first 5 fiscal years following this act becoming a law stand as the commitment of the

state to appropriate the necessary funding to actually construct and operate the requisite, sited correctional facilities from general revenue, the Grants and Donations Trust Fund of the Department of Corrections, or any other revenue or funding source for said purposes.

Section 39. When the population of the state correctional system reaches 99 percent of its lawful capacity, the Governor, pursuant to s. 252.36, Florida Statutes, shall use his emergency powers to reduce the capacity of the state correctional system as follows: The Governor shall inform any federal jurisdiction which has a concurrent or consecutive sentence or any active detainee placed on any prisoner in the state correctional system of his intention to transfer custody to that jurisdiction within 30 days. No prisoner shall be so transferred who is convicted of a capital felony in this state nor shall any transfer take place to any county or municipal jurisdiction within the state.

Section 40. Chapter 957, Florida Statutes, consisting of sections 957.01, 957.02, 957.03, 957.04, 957.05, 957.06, 957.07, 957.08, 957.09, 957.11, and 957.12, is created to read:

CHAPTER 957  
CORRECTIONAL PRIVATIZATION COMMISSION

957.01 Short title.—This chapter may be cited as the "Correctional Privatization Commission Act."

957.02 Definitions.—As used in this chapter:

- (1) "Commission" means the Correctional Privatization Commission.
- (2) "Department" means the Department of Corrections.

957.03 Correctional Privatization Commission.—

(1) COMMISSION.—The Correctional Privatization Commission is created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities. For administrative purposes, the commission is created within the Department of Management Services.

(2) MEMBERS; QUALIFICATIONS.—The commission shall consist of five members appointed by the Governor, none of whom may be an employee of the Department of Corrections, one of whom must be a minority person as defined in s. 288.703(3), and four of whom must be employed by the private sector. A commissioner may not have been an employee or a contract vendor of or a consultant to the department, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to appointment to the commission and may not become an employee or a contract vendor of or a consultant to the department, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following the termination of the appointment to the commission.

(3) TERMS, ORGANIZATION, AND MEETINGS.—

- (a) The term of office for a member of the commission is 4 years.
- (b) A vacancy shall be filled in the same manner as the original appointment and shall be for the remainder of the unexpired term only.
- (c) The Governor shall appoint from among the members a chair and a vice chair for terms of 2 years each.
- (d) Members of the commission shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(e) The commission may employ an executive director and such staff as is necessary, within the limits of legislative appropriation. The commission may retain such consultants as it deems necessary to accomplish its mission. Neither the executive director nor any consultant retained by the commission may have been an employee or a contract vendor of or a consultant to the department, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to employment with the commission and may not become an employee or a contract vendor of or a consultant to the department, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following termination of employment with the commission.

(f) The commission shall meet upon the call of the chair or a majority of the members of the commission. A majority of the members of the commission constitutes a quorum.

(g) In accordance with all provisions of law, the commission may lease such office space as is necessary, within the limits of legislative appropriation.

(4) DUTIES.—

(a) The commission shall enter into a contract or contracts with one contractor per facility for the designing, acquiring, financing, leasing, constructing, and operating of that facility. The commission shall not enter into any contract to design, acquire, finance, lease, construct, or operate more than two private correctional facilities without specific legislative authorization.

(b) In its request for proposals, the commission shall invite innovation and shall not require use of prototype designs of state correctional facilities specified or designed by or for the department. The commission shall not require the use of any prototype design that specially advantages any contractor.

(c) The commission must report to the Speaker of the House of Representatives and the President of the Senate by December 1 each year on the status and effectiveness of the facilities under its management. Each report must also include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the department.

957.04 Contract requirements.—

(1) A contract entered into under this chapter for the operation of private correctional facilities shall:

(a) Be negotiated with the firm found most qualified. However, a contract for private correctional services may not be entered into by the commission unless the commission determines that the contractor has demonstrated that it has:

1. The qualifications, experience, and management personnel necessary to carry out the terms of the contract.
2. The ability to expedite the siting, design, and construction of correctional facilities.
3. The ability to comply with applicable laws, court orders, and national correctional standards.

(b) Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability. Proof of satisfactory insurance is required in an amount to be determined by the commission, following consultation with the Division of Risk Management of the Department of Insurance. Not less than 30 days prior to the release of each request for proposals by the commission, the commission shall request the written recommendation of the division regarding indemnification of the state and the department under this paragraph. Within 15 days after such request, the division shall provide a written recommendation to the commission regarding the amount and manner of such indemnification. The commission shall adopt the division's recommendation unless, based on substantial competent evidence, the commission determines a different amount and manner of indemnification is sufficient.

(c) Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract. Compliance with amendments to the accreditation standards of the association is required upon the approval of such amendments by the commission.

(d) Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.

(e) Establish operations standards for correctional facilities subject to the contract. The commission may waive any rule, policy, or procedure of the department related to the operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.

(f) Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities. The work and education programs must be designed to reduce recidivism.

(g) Require the selection and appointment of a full-time contract monitor. The contract monitor shall be appointed and supervised by the commission. The contractor is required to reimburse the commission for the salary and expenses of the contract monitor. It is the obligation of the contractor to provide suitable office space for the contract monitor at the correctional facility. The contract monitor shall have unlimited access to the correctional facility.

(h) Be for a period of 3 years and may be renewed for successive 2-year periods thereafter. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.

(2) Each contract entered into for the design and construction of a private correctional facility must include:

(a) Notwithstanding any provision of chapter 255 to the contrary, a specific provision authorizing the use of tax-exempt financing through the issuance of tax-exempt bonds, certificates of participation, lease-purchase agreements, or other tax-exempt financing methods. Pursuant to s. 255.25, approval is hereby provided for the lease-purchase of up to two private correctional facilities.

(b) A specific provision requiring the design and construction of the proposed facilities to meet the applicable standards of the American Correctional Association and the requirements of all applicable court orders and state law.

(c) A specific provision requiring the contractor, and not the commission, to obtain the financing required to design and construct the private correctional facility built under this chapter.

(d) A specific provision stating that the state is not obligated for any payments that exceed the amount of the current annual appropriation.

(3) Each contract for the designing, financing, acquiring, leasing, constructing, and operating of a private correctional facility shall be subject to ss. 255.2502 and 255.2503.

(4) A contract entered into under this chapter does not accord third-party beneficiary status to any inmate or to any member of the general public.

(5) Each contract entered into by the commission must include substantial minority participation unless demonstrated by evidence, after a good faith effort, as impractical and must also include any other requirements the commission considers necessary and appropriate for carrying out the purposes of this chapter.

957.05 Requirements for contractors operating private correctional facilities.—

(1) Each contractor entering into a contract under this chapter is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract. Sovereign immunity may not be raised by a contractor, or the insurer of that contractor on the contractor's behalf, as a defense in any action arising out of the performance of any contract entered into under this chapter or as a defense in tort, or any other application, with respect to the care and custody of inmates under the contractor's supervision and for any breach of contract.

(2)(a) The training requirements, including inservice training requirements, for employees of a contractor that assumes the responsibility for the operation and maintenance of a private correctional facility must meet or exceed the requirements for similar employees of the department or the training requirements mandated for accreditation by the American Correctional Association, whichever of those requirements are the more demanding. All employee training expenses are the responsibility of the contractor.

(b) Employees of a contractor who are responsible for the supervision of inmates shall have the same legal authority to rely on nondeadly and deadly force as do similar employees of the department.

957.06 Powers and duties not delegable to contractor.—A contract entered into under this chapter does not authorize, allow, or imply a delegation of authority to the contractor to:

(1) Classify inmates or place inmates in less restrictive or more restrictive custody.

(2) Transfer an inmate, although the contractor may request in writing that the department either transfer the inmate or provide in writing

to the commission valid reasons for the failure to do so. The commission shall formulate guidelines for the transfer of inmates between public and private correctional facilities for disciplinary reasons.

(3) Formulate rules of inmate behavior, violations of which may subject inmates to sanctions, except to the extent that those rules are accepted by the commission.

(4) Take any disciplinary action against an inmate.

(5) Grant, deny, or revoke sentence credits.

(6) Recommend that the Parole Commission either deny or grant parole; however, the contractor may submit to the Parole Commission written reports that have been prepared in the ordinary course of business and shall respond to any written requests for information received from the Parole Commission.

(7) Develop and implement procedures for calculating sentence credits or inmate release and parole eligibility dates.

(8) Develop and implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the commission.

(9) Determine inmate eligibility for any form of conditional, temporary, or permanent release from a correctional facility.

957.07 Cost saving requirements.—The commission may not enter into a contract or series of contracts for the designing, financing, acquiring, leasing, constructing, and operating of a private correctional facility unless the commission determines that the contract or series of contracts in total for the facility will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility. Such cost savings as determined by the commission must be based upon the actual costs associated with the construction and operation of similar facilities or services as certified to the commission by the Auditor General. In certifying the actual costs for the determination of the cost savings required by this section, the Auditor General shall calculate all of the cost components that determine the inmate per diem in correctional facilities of a substantially similar size and type that are operated by the department, including all administrative costs associated with central administration. Services that are provided to the department by other governmental agencies at no direct cost to the department shall be assigned an equivalent cost and included in the per diem. Reasonable projections of payments of any kind to the state or any political subdivision thereof for which the private entity would be liable because of its status as private rather than a public entity, including, but not limited to, corporate income and sales tax payments, shall be included as cost savings in all such determinations. In addition, the costs associated with the appointment and activities of each contract monitor shall be included in such determination. The Auditor General shall provide a report detailing the state cost to design, finance, acquire, lease, construct, and operate a facility similar to the private correctional facility on a per diem basis. This report shall be provided to the commission in sufficient time that it may be included in the request for proposals.

957.08 Capacity requirements.—The department shall transfer and assign prisoners, at a rate to be determined by the commission, to each private correctional facility opened pursuant to this chapter in an amount not less than 90 percent or more than 100 percent of the capacity of the facility pursuant to the contract with the commission. The prisoners transferred by the department shall represent a cross section of the general inmate population, based on the grade of custody or the offense of conviction, at the most comparable facility operated by the department.

957.09 Applicability of chapter to other provisions of law.—

(1)(a) Any offense that, if committed at a state correctional facility, would be a crime shall be a crime if committed by or with regard to inmates at private correctional facilities operated pursuant to a contract entered into under this chapter.

(b) All laws relating to commutation of sentences, release and parole eligibility, and the award of sentence credits shall apply to inmates incarcerated in a private correctional facility operated pursuant to a contract entered into under this chapter.

(2) The provisions of this chapter are supplemental to the provisions of ss. 944.105 and 944.710-944.719. However, in any conflict between a provision of this chapter and a provision of such other sections, the provision of this chapter shall prevail.

(3) The provisions of law governing the participation of minority business enterprises are applicable to this chapter.

957.11 Evaluation of costs and benefits of contracts.—The Auditor General shall develop and implement an evaluation of the costs and benefits of each contract entered into under this chapter. This evaluation must include a comparison of the costs and benefits of constructing and operating prisons by the state versus by private contractors. The Auditor General shall also evaluate the performance of the private contractor at the end of the term of each management contract and make recommendations to the Speaker of the House of Representatives and the President of the Senate on whether to continue the contract.

957.12 Prohibition on contact.—A bidder or potential bidder is not permitted to have any contact with any member or employee of or consultant to the commission from the time a request for proposals for a private correctional facility is issued until the time a contract for such facility is awarded, except if such contact is in writing or in a meeting for which notice was provided in the Florida Administrative Weekly.

Section 41. In order to expedite the resolution of the current prison overcrowding crisis, the Correctional Privatization Commission shall expedite the contracting process for the first two private correctional facilities in fiscal year 1993-1994. These first two facilities shall be designed to have a minimum capacity of 750 beds each and to house medium-security inmates. All buildings of the facilities must be of durable permanent construction, and all building materials used must be in accordance with uniform building code requirements. The commission shall issue a request for proposals no later than October 1, 1993; bids shall be due to the commission no later than December 1, 1993; and contracts shall be awarded by the commission no later than December 15, 1993, and must be executed no later than January 1, 1994. The contracts shall stipulate that the facilities must be operating and ready to accept and house state prisoners no later than March 1, 1995. The dates established pursuant to this section shall be tolled during the pendency of any bid protest proceeding filed pursuant to any proceedings under chapter 120, Florida Statutes, including any appeal. At the conclusion of any bid protest or appeal thereof, the commission shall establish a schedule to replace the schedule established in this section. Such schedule shall allow the same number of days for each event under this section as is provided pursuant to this section and shall resume from the time at which any bid protest and any appeal thereof was filed.

Section 42. Not later than 45 days after this act becomes a law, the Governor shall appoint the initial members of the Correctional Privatization Commission created by this act, and the first meeting of the commission shall occur not later than 10 days after those appointments are made.

Section 43. Amendments to sections of the Florida Statutes enacted by this act shall not operate to repeal or otherwise negate amendments to the same sections which may have been enacted at the 1993 Regular Session of the Florida Legislature and which are not indicated herein, and full effect shall be given to each, if that is possible. If provisions of this act are in direct conflict with amendments enacted at the 1993 Regular Session of the Legislature, the provisions of this act shall control.

Section 44. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, line 1, strike the entire title and insert: A bill to be entitled An act relating to criminal justice; creating the "Safe Streets Initiative of 1994"; providing legislative intent; amending s. 775.084, F.S.; revising criteria for habitual felony offenders; stating that all cross references to s. 775.084, F.S., are general cross references; clarifying that provisions of s. 947.1405, F.S., apply to persons sentenced as habitual offenders; amending s. 777.04, F.S.; providing for scoring criminal attempt, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; requiring a net zero sum impact for increases or additions in criminal penalties; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory maximum sentence; amending ss. 924.06, 924.07, and 958.04, F.S., relating to

appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; creating s. 921.0011, F.S.; providing definitions; creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; providing multipliers for drug trafficking and Law Enforcement Protection Act violation; providing additional points for possession of a firearm or destructive device in certain circumstances; creating s. 921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; requiring the Sentencing Commission to adopt procedures for implementing revised sentencing guidelines; providing timeframes for the new scoresheets; amending ss. 775.0823, 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, and 893.20, F.S., relating to violent offenses committed against certain law enforcement officials, unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; revising elements of certain offenses; deleting certain provisions relating to mandatory minimum sentences and certain release mechanisms, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; prohibiting the granting of basic gain-time for offenses committed after a specified date; modifying the granting of incentive gain-time; amending s. 947.146, F.S.; providing that an inmate may not receive control release award allotments before he is statutorily eligible for control release or before the date his advanceable control release date is established; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; excluding certain persons from control release consideration; providing for the Control Release Authority to establish a control release date for offenders whose release has been revoked; providing additional circumstances under which the authority may extend, advance, or postpone an inmate's control release date; providing circumstances under which the authority may vacate a grant of control release; increasing the threshold capacity of the correctional system above which inmates will be given control release; providing that certain offenders who are eligible for control release may be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; providing for the emergency control release of prisoners; increasing the threshold capacity of the correctional system above which inmates will be granted emergency control release; providing emergency control release dates for certain parole ineligible inmates; requiring the Control Release Authority to develop uniform procedures for awarding control release to certain habitual offenders; providing for future abrogation of certain amendments to s. 947.146, F.S.; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; providing directives to the Division of Statutory Revision; amending s. 944.405, F.S.; providing for issuance of warrants to retake offenders who are ineligible for release and have been erroneously released; creating s. 944.278, F.S.; providing for cancellation of administrative gain-time and provisional credits; preserving supervision for provisional releases; providing intent to fund future corrections; repealing section 33 of chapter 93-185; providing for contracting for jail beds; providing for transfer of certain prisoners to federal jurisdiction upon emergency; creating chapter 957, F.S., the Correctional Privatization Commission Act; providing definitions; creating the commission and providing for its membership, organization, meetings, and duties; providing requirements for contracts, contractors, cost savings, and inmate capacity; providing limitations; providing powers and duties not delegable to contractors; providing applicability of chapter to other provisions of law; providing for evaluation of costs and benefits of contracts; prohibiting certain contact; expediting the process for the first two facilities; providing for legislative adoption and implementation of revisions to sentencing guidelines promulgated by the Florida Supreme Court in accordance with s. 921.001, F.S.; providing effective dates.

The Conference Committee Report was read and on motion by Senator Wexler was adopted. **SB 26-B** passed as recommended and the action of the Senate was certified to the House. The vote on passage was:

## REPORTS OF COMMITTEES

The Committee on International Trade, Economic Development and Tourism recommends a committee substitute for the following: SB 64-B

**The bill with committee substitute attached was placed on the calendar.**

May 26, 1993

The Committee on Rules and Calendar respectfully recommends a revision of the Senate Rules attached hereto and by reference made a part of this Committee Report.

*Toni Jennings*  
Chairman

**Senate Rule 1.444** is created to read:

**1.444—Legislative records; maintenance, control, destruction, disposal, and disposition**

Public records, not exempted from public disclosure, may be inspected by any person desiring to do so at reasonable times, under reasonable conditions, and under supervision of the person who has custody of the records, or that person's designee.

The following standing committee, standing subcommittee and select committee public records, not exempted from disclosure, shall be retained by each staff director until biennially transferred to the Division of Library and Information Services of the Department of State via the Legislative Library Division of the Joint Legislative Management Committee: copies of bills, amendments, vote sheets, staff analyses, and fiscal notes; meeting files including agendas and appearance cards; files relating to assigned projects; final staff reports submitted to subcommittees or committees; final reports submitted by subcommittees or committees; correspondence sent or received; and audio recordings of committee meetings. At the time of transfer, the actual correspondence to be sent to the Department of State shall consist only of correspondence which relates to other committee public records required by this rule to be transferred. Records not transferred may be otherwise disposed of or destroyed.

Except for records specifically required by law or Senate Rule to be filed or retained, district office records and constituents records may be retained by the district office until those records become obsolete, at which point they may be otherwise disposed of or destroyed.

Public records, not exempted from public disclosure, created or received by the President, President Pro Tempore, Secretary of the Senate or Sergeant at Arms shall be retained by that officer as specifically required by law or Senate rule until transferred to the Division of Library and Information Services of the Department of State via the Legislative Library Division of the Joint Legislative Management Committee. Records not transferred may be otherwise disposed of or destroyed.

The Secretary shall, with the approval of the President, establish a reasonable fee for copies of public legislative records not exempted from public disclosure. Such fees shall be based upon the actual cost of duplication of the record and shall include the material and supplies used to duplicate the record but not the labor cost or overhead cost associated with such duplication. If the nature or volume of records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by employees of the Senate, a special service charge in addition to the actual cost of duplication may be imposed. Such a special service charge shall be reasonable and based on the cost incurred for the extensive use of information technology resources or the labor cost of employees providing the service that is actually incurred by the Senate or attributable to the Senate for the clerical and supervisory assistance required. However, when obtained from the Office of the Secretary, a standing committee, standing subcommittee or select committee, there shall be no charge for a single copy of a bill other than a general appropriations bill, or for a single copy of any other public record required by law or Senate rule to be created.

Once the retention period for a public record, not exempted from public disclosure, has expired, the public record may be otherwise disposed of or destroyed. A public record need not be retained if it is pub-

lished or retained by another legislative office. Only one (1) copy of a public record need be retained, additional copies of that record may be destroyed at any time. In the case of mass mailings, only one (1) representative copy of the mailing, or an abstract, need be retained.

For the purpose of this rule, a member's district office shall include the offices each member retains for the transaction of official legislative business in his or her respective district and the offices located in the Senate Office Building or the Capitol in Tallahassee assigned to each member.

*Senate Rule 1.442 is hereby repealed.*

### Consideration of Amendments to Rules Committee Report

The Committee on Rules and Calendar recommended the following amendment to proposed Rule 1.444 which was moved by Senator Jennings:

Insert on page 4 at end of paragraph:

The following public records are exempt from inspection and copying:

Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.

A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.

A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.

Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.

Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any person to whom reference is made in such records, and who was a witness or the subject of the inquiry.

Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.

Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.

Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch that created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each

house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.

For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.

Senator Jennings moved the following amendment to the amendment to proposed Rule 1.444 which was adopted:

On page 2, replace the second paragraph from the bottom which begins, "Portions of . . .

and insert:

Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.

On motion by Senator Jennings, the amendment by the Committee on Rules and Calendar to proposed Rule 1.444, as amended, was adopted.

On motion by Senator Jennings, the report of the Committee on Rules and Calendar as amended was adopted.

## INTRODUCTION AND REFERENCE OF BILL

### FIRST READING

By Senator Hargrett—

**SB 64-B**—A bill to be entitled An act relating to economic development; amending s. 62 of ch. 93-187, Laws of Florida; abrogating the future repeal of portions of the Florida Development Finance Corporation Act of 1993; providing for legislative review and establishing guidelines in case of future repeal of the act or abolition of the corporation; providing an effective date.

—was referred to the Committee on International Trade, Economic Development and Tourism.

## COMMITTEE SUBSTITUTES

### FIRST READING

By the Committee on International Trade, Economic Development and Tourism; and Senators Hargrett and Grant—

**CS for SB 64-B**—A bill to be entitled An act relating to economic development; amending s. 62 of ch. 93-187, Laws of Florida; abrogating the future repeal of portions of the Florida Development Finance Corporation Act of 1993; providing for legislative review; providing an effective date.

## MESSAGES FROM THE HOUSE OF REPRESENTATIVES

### FIRST READING

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has passed HB 95-B, HB 103-B and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

By Representative Reddick—

**HB 95-B**—A bill to be entitled An act relating to economic development; amending s. 62 of ch. 93-187, Laws of Florida; abrogating the future repeal of portions of the Florida Development Finance Corporation Act of 1993; providing for legislative review of the corporation; providing an effective date.

—was referred to the Committee on International Trade, Economic Development and Tourism.

By Representative Mackenzie and others—

**HB 103-B**—A bill to be entitled An act relating to corrections; amending s. 20.315, F.S., creating the Florida Corrections Commission; providing for its duties and responsibilities; providing for review and evaluation of the state correctional system by the commission; providing for recommendations to the Governor and Legislature; limiting the scope of the commission; providing an effective date.

—was referred to the Committees on Corrections, Probation and Parole; Governmental Operations; Appropriations; and Rules and Calendar.

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote, passed as amended HB 3-B and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

By Representative Bainter—

**HB 3-B**—A bill to be entitled An act relating to ad valorem tax exemptions; amending s. 196.081, F.S.; revising procedures and requirements for qualifying for the homestead exemption for totally and permanently disabled veterans; revising provisions which specify conditions under which the exemption carries over to the benefit of the surviving spouse; providing an effective date.

On motion by Senator McKay, by the required constitutional two-thirds vote of the Senate, **HB 3-B** was admitted for introduction and referred to the Committee on Finance, Taxation and Claims.

On motions by Senator McKay, by two-thirds vote **HB 3-B** was withdrawn from the Committee on Finance, Taxation and Claims and by unanimous consent taken up instanter.

On motions by Senator McKay, by two-thirds vote **HB 3-B** was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34    Nays—2

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote, passed HB 19-B and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

By Representative Healey—

**HB 19-B**—A bill to be entitled An act relating to appropriations; providing moneys from the Public Education Capital Outlay and Debt Service Trust Fund for the annual period beginning July 1, 1993, and ending June 30, 1994, for capital outlay, buildings, and other improvements; providing an effective date.

On motion by Senator Dudley, by the required constitutional two-thirds vote of the Senate, **HB 19-B** was admitted for introduction and referred to the Committee on Appropriations.

On motions by Senator Scott, by two-thirds vote **HB 19-B** was withdrawn from the Committee on Appropriations and by unanimous consent taken up instanter.

On motions by Senator Dudley, by two-thirds vote **HB 19-B** was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—4

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has passed as amended **HB 89-B** and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

By the Committee on Insurance and Representative Cosgrove and others—

**HB 89-B**—A bill to be entitled An act relating to insurance; providing findings and intent; imposing a moratorium on cancellation or non-renewal of certain insurance policies; providing for exceptions; providing retroactivity; providing penalties; providing for future repeal; creating the Study Commission on Property Insurance and Reinsurance; providing findings; providing for appointment of members; specifying duties of the Executive Office of the Governor and the Department of Insurance; providing for expenses; requiring a report; amending s. 627.351, F.S.; revising provisions relating to eligibility for coverage under the wind-storm insurance risk apportionment plan; providing for additional members of the board of the Residential Property and Casualty Joint Underwriting Association; amending s. 627.707, F.S.; saving provisions relating to investigation of sinkhole losses from scheduled repeal; prohibiting non-renewals of property insurance policies in specified circumstances; amending s. 628.371, F.S.; revising requirements for the payment of dividends by domestic stock insurers; amending s. 631.57, F.S.; specifying obligations of the Florida Insurance Guaranty Association with respect to homeowner's association policies; providing an appropriation; providing an effective date.

—was referred to the Committee on Commerce.

On motions by Senator Grant, by two-thirds vote **HB 89-B** was withdrawn from the Committee on Commerce and by unanimous consent taken up instanter.

On motions by Senator Grant, by two-thirds vote **HB 89-B** was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

**RETURNING MESSAGES ON SENATE BILLS**

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for **SB 8-B** and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

**CS for SB 8-B**—A bill to be entitled An act making supplemental appropriations; providing or adjusting moneys from the named funds for the annual periods beginning July 1, 1992, and ending June 30, 1993, and beginning July 1, 1993 and ending June 30, 1994, to pay salaries, and other expenses, capital outlay - buildings and other improvements, and for other specified purposes of the various agencies of State government; supplementing or adjusting appropriations as provided in Chapters 92-293 and 93-184, Laws of Florida, providing effective dates.

**House Amendment 1 (with Title Amendment)**—Strike everything after the enacting clause and insert:

SECTION 1A - OPERATING

The moneys contained herein are appropriated from the named funds for the 1992-93 and 1993-94 Fiscal Years to the State agency indicated, as amounts to be used to pay the salaries and other operational expenditures of the named agencies, and are supplements or adjustments to moneys appropriated in Chapters 92-293 and 93-184, Laws of Florida.

SPECIFIC APPROPRIATION

ADMINISTERED FUNDS

1	LUMP SUM		
	VIOLENT CRIME EMERGENCY FUND		
	FROM GENERAL REVENUE FUND . . . . .		1,000,000

Funds in Specific Appropriation 1 are provided to implement the provisions of Section 3 of Chapter 93-204, Laws of Florida.

CORRECTIONS, DEPARTMENT OF

ASSISTANT SECRETARY FOR HEALTH SERVICES

2	SALARIES AND BENEFITS	POSITIONS	58
	FROM GENERAL REVENUE FUND . . . . .		769,702
3	EXPENSES		
	FROM GENERAL REVENUE FUND . . . . .		875,867
4	OPERATING CAPITAL OUTLAY		
	FROM GENERAL REVENUE FUND . . . . .		105,154
5	SPECIAL CATEGORIES		
	COMMUNITY HOSPITAL COSTS		
	FROM GENERAL REVENUE FUND . . . . .		464,867

CORRECTIONAL EDUCATION SCHOOL AUTHORITY

5A	LUMP SUM		
	ENHANCEMENT OF CORRECTIONAL EDUCATION PROGRAMS		
	FROM GENERAL REVENUE FUND . . . . .		2,000,000

From the funds in Specific Appropriation 5A, \$2,000,000 lump sum shall be used to staff mandatory literacy programs at five institutions targeting youthful offenders.

OFFICE OF THE ASSISTANT SECRETARY FOR OPERATIONS

MAJOR INSTITUTIONS

6	SALARIES AND BENEFITS	POSITIONS	422
	FROM GENERAL REVENUE FUND . . . . .		6,767,945
7	EXPENSES		
	FROM GENERAL REVENUE FUND . . . . .		2,223,698
From the funds in Specific Appropriation 7, \$25,000 from the General Revenue Fund is to be used by the department to establish a rehabilitative program for female offenders who are victims of spouse abuse.			
8	OPERATING CAPITAL OUTLAY		
	FROM GENERAL REVENUE FUND . . . . .		243,648
9	FOOD PRODUCTS		
	FROM GENERAL REVENUE FUND . . . . .		1,103,719
10	SPECIAL CATEGORIES		
	CONTRACT DRUG ABUSE SERVICES		
	FROM GENERAL REVENUE FUND . . . . .		3,700,000

PROBATION AND PAROLE SERVICES

11	SALARIES AND BENEFITS	POSITIONS	65
	FROM GENERAL REVENUE FUND . . . . .		1,000,000
12	EXPENSES		
	FROM GENERAL REVENUE FUND . . . . .		500,000
12A	LUMP SUM		
	CONTRACTED COMMUNITY BASED INTENSIVE DAY TREATMENT		
	FROM GENERAL REVENUE FUND . . . . .		2,000,000

The Department of Corrections shall contract with community based providers to provide intensive day treatment services which, at least partially, shall be provided by minority entities which are controlled by minority persons as defined in s. 288.703, F.S.

13	SPECIAL CATEGORIES		
	GRANTS AND AIDS - CONTRACTED DRUG		

SECTION 1A  
SPECIFIC  
APPROPRIATION

TREATMENT/REHABILITATION PROGRAMS  
FROM GENERAL REVENUE FUND . . . . . 300,000

Funds in Specific Appropriation 13, are for a maximum of 50 non-secure drug treatment beds at an average per diem of \$32 per day.

HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF  
DISTRICT SERVICES

ALCOHOL, DRUG ABUSE AND MENTAL HEALTH SERVICES

14 SPECIAL CATEGORIES  
PURCHASE OF THERAPEUTIC SERVICES FOR CHILDREN  
FROM GENERAL REVENUE FUND . . . . . 8,000,000

Funds in Specific Appropriation 14, are for the purchase of assessments and specific, individualized therapeutic and early intervention services appropriate for children who are victims of abuse. These funds may also serve the treatment needs of their families as well.

DELINQUENCY SERVICES

From the funds in Specific Appropriations 15 through 18 and Specific Appropriation 20, \$2,347,628 and 66 positions are provided for increased staffing of the Pinellas and Leon County Detention Centers.

15 SALARIES AND BENEFITS POSITIONS 66  
FROM GENERAL REVENUE FUND . . . . . 1,568,554  
16 EXPENSES  
FROM GENERAL REVENUE FUND . . . . . 102,506  
17 OPERATING CAPITAL OUTLAY  
FROM GENERAL REVENUE FUND . . . . . 139,144  
18 FOOD PRODUCTS  
FROM GENERAL REVENUE FUND . . . . . 73,776  
19 LUMP SUM  
JUVENILE JUSTICE REFORM  
FROM GENERAL REVENUE FUND . . . . . 18,189,650

Funds in Specific Appropriation 19, are to be used as follows: \$1,533,000 for the operation of Boot Camps; \$1,212,000 for the operation of two additional Juvenile Assessment Centers as modeled in Hillsborough County; \$1,606,000 for two 20 bed Junior Serious Habitual Offender Programs; \$5,548,000 for two Serious/Chronic Offender Continuum programs of up to 80 beds each; \$4,927,000 for intensive day treatment; and \$3,363,650 for aftercare and case management services.

From the funds provided in Specific Appropriation 19, for residential placements, the department may substitute these beds for Juvenile Justice Reform beds that were funded in prior year appropriations but which have not been brought in line as of July 1, 1993. These substitutions shall be made on a bed for bed basis within the same commitment level. If these substitutions are made and funds are reallocated from prior bed appropriations, such reallocated funds must be used for delinquency prevention and diversion programs. Any funds reallocated pursuant to this proviso shall be reported to the chairmen of the Senate and House Appropriations committees and to the Commission on Juvenile Justice.

20 SPECIAL CATEGORIES  
GRANTS AND AIDS - CONTRACTED SERVICES  
FROM GENERAL REVENUE FUND . . . . . 463,648

ENTITLEMENT BENEFITS AND SERVICES

ECONOMIC SERVICES

21 LUMP SUM  
1992-93 REVISED SOCIAL SERVICES ESTIMATES

SECTION 1A  
SPECIFIC  
APPROPRIATION

FROM GENERAL REVENUE FUND . . . . . -14,657,788  
FROM DIRECT ASSISTANCE TRUST FUND . . . . . -17,937,033

22 LUMP SUM  
1993-94 REVISED SOCIAL SERVICES ESTIMATES  
FROM GENERAL REVENUE FUND . . . . . -61,589,251  
FROM DIRECT ASSISTANCE TRUST FUND . . . . . -71,987,365

MEDICAID SERVICES

23 LUMP SUM  
1992-93 REVISED SOCIAL SERVICES ESTIMATES  
FROM GENERAL REVENUE FUND . . . . . -15,010,901  
FROM MEDICAL CARE TRUST FUND . . . . . -68,519,217  
FROM SPECIAL GRANTS TRUST FUND . . . . . -614,258

24 LUMP SUM  
1993-94 REVISED SOCIAL SERVICES ESTIMATES  
FROM GENERAL REVENUE FUND . . . . . -62,102,898  
FROM MEDICAL CARE TRUST FUND . . . . . -74,981,905  
FROM PUBLIC MEDICAL ASSISTANCE TRUST FUND . . . . . 4,365,047

LAW ENFORCEMENT, DEPARTMENT OF

CRIMINAL INVESTIGATIONS, DIVISION OF

25 SALARIES AND BENEFITS POSITIONS 10  
FROM GENERAL REVENUE FUND . . . . . 292,767

26 EXPENSES  
FROM GENERAL REVENUE FUND . . . . . 136,518

27 OPERATING CAPITAL OUTLAY  
FROM GENERAL REVENUE FUND . . . . . 142,526

28 SPECIAL CATEGORIES  
SALARY INCENTIVE PAYMENTS  
FROM GENERAL REVENUE FUND . . . . . 9,360

PAROLE COMMISSION

29 LUMP SUM  
REVIEW STATUS POPULATION PURSUANT TO SENTENCING REFORM  
FROM GENERAL REVENUE FUND . . . . . 50,000

TOTAL OF SECTION 1A POSITIONS 621  
FROM GENERAL REVENUE FUND . . . . . -101,137,769  
FROM TRUST FUNDS . . . . . -229,674,731  
TOTAL ALL FUNDS . . . . . -330,812,500

SECTION 1C - NON-OPERATING TRANSFERS TO OTHER STATE AGENCIES

The moneys contained herein are appropriated from the named funds to the state agencies indicated, as amounts to be transferred between state agencies as per appropriated agreement.

HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF

ENTITLEMENT BENEFITS AND SERVICES

MEDICAID SERVICES

30 LUMP SUM  
1993-94 REVISED SOCIAL SERVICES ESTIMATES  
FROM GENERAL REVENUE FUND . . . . . -19,359,414

TOTAL OF SECTION 1C  
FROM GENERAL REVENUE FUND . . . . . -19,359,414  
TOTAL ALL FUNDS . . . . . -19,359,414

SECTION 2B - AGENCY MANAGED CONSTRUCTION

The moneys contained herein are appropriated from the named funds to the state agencies indicated, as amounts for fixed capital outlay.

CORRECTIONS, DEPARTMENT OF

ASSISTANT SECRETARY FOR HEALTH SERVICES

31 FIXED CAPITAL OUTLAY

SECTION 2B  
SPECIFIC  
APPROPRIATION

MENTAL HEALTH FACILITIES	
FROM GENERAL REVENUE FUND . . . . .	3,100,000
OFFICE OF THE ASSISTANT SECRETARY FOR OPERATIONS	
MAJOR INSTITUTIONS	
32 FIXED CAPITAL OUTLAY	
PLANNING/SITE ACQUISITION/ENVIRONMENTAL	
FROM GENERAL REVENUE FUND . . . . .	5,000,000

Funds provided in Specific Appropriation 32, are to be used for planning and site acquisition for additional facilities; and for acquisition of environmental treatment facilities for existing facilities in order to increase future bed capacity.

The Department of Corrections shall contract with an independent engineering firm to study the feasibility of either refurbishing or demolishing the "Rock" at Union Correctional Institution.

32A FIXED CAPITAL OUTLAY	
PRIVATIZATION/ADDITIONAL CAPACITY	
FROM GENERAL REVENUE FUND . . . . .	300,000

Funds in Specific Appropriation 32A are contingent upon passage of CS/HB 45B or similar legislation becoming law.

33 FIXED CAPITAL OUTLAY	
PLANNING FOR NEW INSTITUTIONS	
FROM GENERAL REVENUE FUND . . . . .	-750,000

34 FIXED CAPITAL OUTLAY	
REPLACEMENT OF AVON PARK CORRECTIONAL	
INSTITUTION	
FROM GENERAL REVENUE FUND . . . . .	4,900,000

35 FIXED CAPITAL OUTLAY	
FACILITIES PROVIDING ADDITIONAL CAPACITY	
FROM GENERAL REVENUE FUND . . . . .	89,122,067

Funds are provided in Specific Appropriations 34 and 35, to construct the following: three combination institutions (938 beds each); additional dormitories at Avon Park Correctional Institution (384 beds), one additional dorm (128 beds) each at Century Correctional Institution, Calhoun Correctional Institution, Holmes Correctional Institution and Brooksville Drug Treatment Center, two additional dorms (256 beds) at Hardee Correctional Institution, six work camps (256 beds each), and one additional single cell unit (149 beds) each at Lake Correctional Institution, Mayo Correctional Institution, New River Correctional Institution and Sumter Correctional Institution.

Sites for facilities in Hillsborough County, Escambia County, Taylor County, Washington County, Holmes County, and Liberty County shall be given first priority for the above undesignated facilities unless the Department determines and documents that no site meeting the established siting criteria of the Department is available in the above listed counties.

PROBATION AND PAROLE SERVICES

36 FIXED CAPITAL OUTLAY	
DIVERSION CENTERS	
FROM GENERAL REVENUE FUND . . . . .	2,867,321

Funds provided in Specific Appropriation 36, from the General Revenue Fund are to be used for purchase and/or construction of residential facilities in each of the five Department of Corrections' regions for housing probationers.

HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF

DISTRICT SERVICES

DELINQUENCY SERVICES

37 FIXED CAPITAL OUTLAY	
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SECTION 2B  
SPECIFIC  
APPROPRIATION

PURCHASE OF SERIOUS CHRONIC OFFENDER	
FACILITIES	
FROM GENERAL REVENUE FUND . . . . .	6,400,000
38 FIXED CAPITAL OUTLAY	
CONSTRUCTION OF TWO JUNIOR SHOP FACILITIES	
FROM GENERAL REVENUE FUND . . . . .	2,880,000
39 FIXED CAPITAL OUTLAY	
CONSTRUCTION OF BOOT CAMPS	
FROM GENERAL REVENUE FUND . . . . .	4,320,000
TOTAL OF SECTION 2B	
FROM GENERAL REVENUE FUND . . . . .	118,139,388
TOTAL ALL FUNDS . . . . .	
	118,139,388

Section 3. Any section of this act, or any Appropriation herein contained, if found to be invalid or vetoed by the Governor without overriding action by the Legislature shall in no way affect other Sections or Specific Appropriations contained in this act.

Section 4. With the exception of Specific Appropriations 21 and 23, which shall take effect upon becoming law, this act shall take effect July 1, 1993, or upon becoming law, whichever occurs later; however, if this act becomes law after July 1, 1993, then it shall operate retroactively to July 1, 1993.

TOTAL THIS GENERAL APPROPRIATION ACT	POSITIONS	621
FROM GENERAL REVENUE FUND . . . . .		-2,357,795
FROM TRUST FUNDS . . . . .		-229,674,731
TOTAL ALL FUNDS . . . . .		-232,032,526

And the title is amended as follows:

Strike everything before the enacting clause and insert: A bill to be entitled An act making supplemental appropriations; providing or adjusting moneys from the named funds for the annual periods beginning July 1, 1992, and ending June 30, 1993, and beginning July 1, 1993 and ending June 30, 1994, to pay salaries, and other expenses, capital outlay - buildings and other improvements, and for other specified purposes of the various agencies of State government; supplementing or adjusting appropriations as provided in Chapters 92-293 and 93-184, Laws of Florida, providing effective dates.

On motion by Senator Scott, the Senate concurred in the House amendment.

CS for SB 8-B passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—5

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 10-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 10-B—A bill to be entitled An act relating to license plates; amending s. 320.06, F.S.; removing the county name from license plates and replacing it with the words "The Sunshine State"; providing that a license plate issued for a for-hire motor vehicle may not contain any distinguishing character or designation that identifies the vehicle as a for-hire motor vehicle; requiring the replacement of certain license plates previously issued with such distinguishing character or designation; prohibiting the display of any indicia of ownership on a rental motor vehicle; providing a penalty; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 1, line 18, strike everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (3) of section 320.06, Florida Statutes, as amended by section 63 of chapter 93-120, Laws of Florida, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(3)(a) Registration license plates shall be of metal specially treated with a retroreflective material, as specified by the department. The registration license plate is designed to increase nighttime visibility and legibility and shall be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers shall be treated with a retroreflective material, shall be of such size as specified by the department, and shall adhere to the license plate. The registration license plate shall be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate shall also be imprinted with the word "Florida" at the top and the name of the county in which it is sold at the bottom, except that apportioned license plates shall have the word "Apportioned" at the bottom ~~and in place of the county name.~~ license plates issued for vehicles taxed under the provisions of s. 320.08(3)(d), (4)(m) or (n), (5)(b), (c), or (d), (12), or (14) shall ~~have been imprinted with the word "Florida" at the top and the word "Restricted" at the bottom.~~ A license plate ~~plates~~ issued for a vehicle ~~vehicles~~ taxed under s. 320.08(6) ~~may not be assigned a registration license number, or be issued with any other distinctive character or designation, that distinguishes the motor vehicle as a for-hire motor vehicle shall be imprinted with the word "Florida" at the top and the word "Lease" at the bottom.~~

Section 2. Any license plate that is in use on a motor vehicle owned by a rental car agency and that contains a character or designation that identifies the motor vehicle as a for-hire motor vehicle must be replaced by July 31, 1993. Any license plate that is in use on any other motor vehicle and that contains a character or designation that identifies the motor vehicle as a for-hire motor vehicle may be replaced by the registered owner at any time during the useful life of the license plate. Notwithstanding section 320.06, Florida Statutes, as amended, the replacement fee for a license plate issued under this section is \$2. In addition to this fee, all other applicable taxes and fees must be paid, including the annual replacement fee.

Section 3. (1) Effective September 1, 1993, a rental car company may not rent in this state any for-hire vehicle, other than vehicles designed to transport cargo, that has affixed to its exterior any bumper stickers, insignias, or advertising that identifies the vehicle as a rental vehicle.

(2) As used in this section, the term:

(a) "Bumper stickers, insignias, or advertising" does not include:

1. Any emblem of no more than two colors which is less than 2 inches by 4 inches, which is placed on the rental car for inventory purposes only, and which does not display the name or logo of the rental car company; or

2. Any license required by the law of the state in which the vehicle is registered.

(b) "Rent in this state" means to sign a rental contract in this state or to deliver a car to a renter in this state.

(3) A rental car company that leases a motor vehicle that is found to be in violation of this section shall be punished by a fine of \$500 per occurrence.

Section 4. This act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, strike the entire title and insert: A bill to be entitled An act relating to license plates; amending s. 320.06, F.S.; providing that a license plate issued for a for-hire motor vehicle may not contain any distinguishing character or designation that identifies the vehicle as a for-hire motor vehicle; requiring the replacement of certain license plates previously issued with such distinguishing character or designation; prohibiting rental car companies from renting certain for-hire vehicles; prohibiting definitions; providing a penalty; providing an effective date.

On motion by Senator Forman, the Senate concurred in the House amendment.

**SB 10-B** passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—37      Nays—None

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives returns, as requested, SB 20-B.

*John B. Phelps, Clerk*

#### RECONSIDERATION

On motion by Senator Diaz-Balart, the Senate reconsidered the vote by which—

**SB 20-B**—A bill to be entitled An act relating to legislative and public records; creating s. 11.0431, F.S., providing legislative intent, specifying public records of the legislative branch that are exempt from public disclosure, providing that certain records become public after a specified period, and defining public record; amending s. 11.26, F.S., relating to legislative employees, to conform; reenacting ss. 119.012 and 119.083(1)(a), F.S., relating to records associated with payment of dues and membership contributions by agencies and copyright of data processing software created by agencies to incorporate the amendment to s. 119.011, F.S., in references thereto; amending s. 119.07, F.S., providing an exemption from public records requirements for records relating to certain allegations of employment discrimination, certain medical information relating to agency officers and employees, and certain information relating to active investigations; amending s. 119.011, F.S., to include the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel within the meaning of "agency" for purposes of the public records law; amending s. 943.03, F.S., providing an exemption from public records requirements for records relating to certain investigations by the Department of Law Enforcement at the direction of the Governor, and providing for subsequent review and repeal; providing an effective date.

—passed as amended this day.

On motion by Senator Diaz-Balart, by two-thirds vote the Senate reconsidered the vote by which **SB 20-B** was read the third time.

Senator Diaz-Balart moved the following amendment which was adopted:

**Amendment 8 (with Title Amendment)**—On page 8, between lines 14 and 15, insert:

Section 6. Section 14.28, Florida Statutes, is created to read:

14.28 Executive clemency.—All records developed or received by any state entity relating to a Board of Executive Clemency investigation shall be exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 27, after the semicolon (;) insert: creating s. 14.28, F.S.; providing an exemption from public records requirements for records relating to Board of Executive Clemency investigations;

On motion by Senator Diaz-Balart, by two-thirds vote **SB 20-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—29      Nays—5

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has refused to return, as requested, CS for SB 42-B.

*John B. Phelps, Clerk*

**CS for SB 42-B**—A bill to be entitled An act relating to criminal justice and corrections; creating the Task Force for Review of the Criminal Justice and Corrections Systems; providing for the composition of the task force; providing for the term of the task force; providing for organization and compensation; providing for powers and duties; providing an appropriation; creating ch. 957, F.S., the Correctional Privatization Commission Act; providing definitions; creating the commission and providing for its membership, organization, meetings, and duties; providing requirements for contracts, contractors, cost savings, and inmate capacity; providing limitations; providing powers and duties not delegable to contractors; providing applicability of chapter to other provisions of law; providing for evaluation of costs and benefits of contracts; expediting the process for the first two facilities; amending s. 119.07, F.S.; clarifying the exemption from public records requirements for personal information relating to correctional and correctional probation officers; providing an effective date.

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has passed CS for SB 42-B, with amendments, and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

**CS for SB 42-B**—A bill to be entitled An act relating to criminal justice and corrections; creating the Task Force for Review of the Criminal Justice and Corrections Systems; providing for the composition of the task force; providing for the term of the task force; providing for organization and compensation; providing for powers and duties; providing an appropriation; creating ch. 957, F.S., the Correctional Privatization Commission Act; providing definitions; creating the commission and providing for its membership, organization, meetings, and duties; providing requirements for contracts, contractors, cost savings, and inmate capacity; providing limitations; providing powers and duties not delegable to contractors; providing applicability of chapter to other provisions of law; providing for evaluation of costs and benefits of contracts; expediting the process for the first two facilities; amending s. 119.07, F.S.; clarifying the exemption from public records requirements for personal information relating to correctional and correctional probation officers; providing an effective date.

**House Amendment 1 (with Title Amendment)**—On page 9, line 20, after the period (.) insert:

Section 3. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, 1992 Supplement, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles, the Division of Law Enforcement of the Game and Fresh Water Fish Commission, and the Division of Law Enforcement of the Department of Natural Resources, and law enforcement officers of the Department of Transportation each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle. University police officers shall have authority to enforce all of the traffic laws of this state only when such violations occur on any property or facilities which are under the guidance, supervision, regulation, or control of the State University System, except that traffic laws may be enforced off campus when hot pursuit originates on campus.

2. An agency of the state as described in subparagraph 1. is prohibited from establishing a traffic citation quota. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

3. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work performance standards. Such work performance standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the semicolon (;) insert: amending s. 316.640, F.S.; clarifying traffic enforcement powers of certain law enforcement officers;

**House Amendment 2 (with Title Amendment)**—On page 18, between lines 12 and 13, insert:

Section 5. Subsection (4) of section 119.011, Florida Statutes, is amended to read:

119.011 Definitions.—For the purpose of this chapter:

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. *The term also includes the Department of Corrections.*

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 21, after the semicolon (;) insert: amending s. 119.011, F.S.; expanding the definition of "criminal justice agency";

**House Amendment 3 (with Title Amendment)**—On page 1, line 30, strike everything after the enacting clause and insert:

Section 1. (1) There is created within the Office of the Attorney General the Task Force for Review of the Criminal Justice and Corrections Systems. The task force shall be composed of the following persons to be appointed by the Governor: two retired justices of the Florida Supreme Court, two active judges of the District Courts of Appeal, two active judges of the circuit court, the Chancellor of the State University System, one state attorney, one victims' rights advocate, one member of the Parole Commission, and one public defender. At least two members of the task force must be minority persons as defined in section 288.703(3), Florida Statutes.

(2) The task force members shall serve from July 1, 1993, until the adjournment sine die of the regular legislative session held in 1995.

(3) The task force shall elect one of its members as chairperson.

(4) The members of the task force shall serve without compensation, but shall be reimbursed for per diem and travel expenses while engaged in task force duties, as provided in section 112.061, Florida Statutes.

(5) The task force shall:

(a) Examine the relevant common law, constitutional provisions, and statutes of this state and current judicial decisions with respect to sentencing and release of criminal offenders; the correctional system, including parole and probation; and other relevant criminal justice issues. The examination shall include a review of sentencing under the habitual offender statute, section 775.084, Florida Statutes, and whether such sentencing is being applied in a racially nondiscriminatory manner.

(b) Conduct such surveys and research into the criminal justice and corrections laws of Florida or other states and nations as may be necessary.

(c) Examine the need for prison beds and correctional alternatives and prepare a proposal for the Legislature's consideration of a 5-year corrections plan which includes a methodology for the continuous revision of the plan to meet current needs and for the operation of the appropriations process to provide sufficient funding for construction and operation expenses.

(d) Initiate, supervise, and complete a review of the operation of the criminal justice system and corrections system of this state. This review shall include an evaluation of the management practices of these systems and give emphasis to examining the efficiency of the operation of the systems. Receive reports of other working groups and make recommendations regarding the possible revision of the criminal code, including the classification and definitions of offenses, and the assessment, collection, and distribution of criminal fees and costs. The task force shall consult with persons experienced in law enforcement, in the criminal justice system including the judicial system, and in the operation of the corrections system in this state and with persons who have such experience in other states. The task force may, but is not limited to, review the following:

1. Examine the siting procedures employed by the Department of Corrections and determine if those procedures are adequate, including, but not limited to, addressing issues relating to modifying local zoning and comprehensive plans to permit the construction of correctional facilities. If those procedures are not adequate, the task force may propose alternative measures and/or entities to accomplish institutional siting, including, but not limited to, transfer of those responsibilities to the Department of Management Services and exploration of the feasibility of authorizing eminent domain authority to the siting agency to expedite facility siting.

2. Examine all possible alternatives to imprisonment, including: probation/diversionary programs, drug and alcohol treatment programs, probation and restitution centers, community control, house arrest, electronic monitoring, half-way houses, reinstatement of parole, control release, gain-time, community service programs, pretrial intervention programs, restitution, local work programs, restriction of nonessential freedoms, vocational/educational programs, boot camp programs, and innovative programs.

3. Examine and evaluate the parole and probation system including: an evaluation of staffing for all types of probation and community control and the possibility of creating a separate agency for parole and probation services, either as an arm of the court system or under the Parole Commission.

4. Examine and evaluate the drug treatment programs, including: obstacles to restoring drug offenders to productive participation in society and the effect on and costs to society of not treating alcohol/drug offenders.

5. Examine and evaluate high-technology and other innovative correctional operations systems.

6. Examine and evaluate the effectiveness of the system currently in use by the Department of Corrections for the utilization of facilities, including the assignment of inmate housing and the use of classification conducted at the local level.

7. Examine privatization of part or all of the institutional system, focusing on both the positive and negative aspects of shifting correctional responsibilities to private industry. This examination should include: the issues of institutional uniformity; the cost benefit or savings to be achieved through privatization; issues of institutional versus centralized control; liability issues; partial privatization of some services, such as medical, educational, and drug treatment services; public records issues; and all other legal aspects of privatization.

8. Examine and evaluate the theory of criminal behavior and the punishment, deterrent, corrective, and rehabilitative aspects of a corrections system and the ramifications of recidivism in the Florida prison system. This examination should include: educational and vocational training, job placement, the ability of inmates to obtain gainful employment upon release, inmate idleness, transitional services and cognitive training of inmates, and measurable objectives by which to determine the effectiveness and usefulness of those programs in the rehabilitation process.

9. Examine and evaluate the concept of transferring community corrections and work centers to counties to foster more local involvement with the rehabilitation of offenders.

10. Examine and evaluate the prison construction methods and costs utilized by the Department of Corrections, from architectural building design through construction completion.

11. Examine the expansion and improvement of the prison system capacity to make available as many beds as possible and evaluate the prison bedspace calculation methods used by the Department of Corrections.

12. Examine decisions interpreting the Eighth Amendment to the Constitution of the United States as it is applied to other jurisdictions, including any overcrowding release mechanisms.

13. Examine and evaluate those factors that tend to generate criminal activity, including, but not limited to, the failure to achieve certain educational levels, lack of employment opportunities, inadequate housing, and single-parent families.

(e) Recommend changes in the criminal law, including changes in sentencing and the release of criminal offenders; in the correctional laws, including the parole and probation laws; in the laws regulating the operation of the Department of Corrections; and in any other relevant statutes.

(f) Examine the possible establishment of a prison construction and operations fund that has a funding source dedicated to such purposes.

(g) Submit to the Legislature, on or before January 15, 1994, a proposal that defines the powers, mission, and method of appointment of the Florida Corrections Commission, which is created effective July 1, 1994. The commission shall function in a manner similar to that provided for the Department of Transportation in section 20.23(2)(a)(1), Florida Statutes.

(h) Make recommendations regarding juvenile offenders who have been sentenced as adults, including those sentenced to the adult correctional system or placed on probation or parole.

(i) Study the effects of the state's assuming the full costs of county and circuit courts, including the requirement that local funds now being used for those activities be used for criminal justice purposes, including, but not limited to, the employment of additional police officers to provide enhanced surveillance of at-risk neighborhoods to eliminate the visible presence of violent and repetitive crime in targeted neighborhoods that suffer from ongoing illegal and immoral activities.

(j) Study ways to improve policing strategies to provide continuous surveillance enhancement.

(k) Provide research to identify policing strategies that work, and communicate those strategies to local governments for their choice.

(l) Make such additional recommendations that the task force considers appropriate.

(6) The task force has the power to subpoena, audit, and investigate. The task force may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the task force or to the exercise of its powers. In the case of a refusal to obey a subpoena issued to any person, the task force may make an application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the task force and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt. Witnesses shall be paid mileage and witness fees as authorized in civil cases.

(7) The actions, investigations, proceedings, and records of the task force are exempt from the provisions of chapter 120, Florida Statutes. Such actions, investigations, proceedings, and records shall not be subject to discovery or introduction into evidence in any civil action arising out of matters that are the subject of evaluation and review of the task force. No person who was in attendance at a meeting of the task force shall be permitted or required to testify in any such action or proceeding as to any evidence or other matters produced or presented during the proceeding of the task force or as to any findings, recommendations, evaluations, opinions, or other actions of the task force or any members thereof.

(8) The task force may procure information and assistance from any officer or agency of the state or any subdivision thereof. All such officers and agencies must give the task force all relevant information and reasonable assistance on any matters of research within their knowledge and control.

(9) The task force may appoint an executive director, who shall serve at the pleasure of the task force, and may hire additional staff. The task force shall fix the compensation of the executive director and all other persons within the amount appropriated for the task force. The provisions of chapter 110, Florida Statutes, shall not apply to personnel of the task force.

(10) The task force may procure temporary and intermittent professional services and render compensation therefor within the amount appropriated for the work of the task force. It may also contract for such services with colleges, universities, schools of law, or other research institutions or individuals and may cooperate generally with any association, institution, foundation, or corporation.

(11) The task force shall submit to the Legislature its recommendations for changes to corrections and criminal laws. The task force may also forward to the Legislature studies and recommendations of others without endorsing those studies or recommendations. An interim report of the task force shall be presented to the Legislature by January 15, 1994. The final report of the task force shall be presented to the Legislature by January 15, 1995.

Section 2. From the moneys appropriated to the Department of Corrections for planning, site acquisition, and environmental treatment facilities under Committee Substitute for Senate Bill 8-B on May 24, 1993, or similar legislation making supplemental appropriations for Fiscal Year 1993-1994, up to \$500,000 shall be used to implement the provisions of this act relating to the Task Force for Review of the Criminal Justice and Corrections Systems.

Section 3. Paragraph (k) of subsection (3) of section 119.07, Florida Statutes, as amended by section 1 of chapter 93-87, Laws of Florida, is amended to read:

119.07 Inspection and examination of records; exemptions.—

(3)

(k)1. The home addresses, telephone numbers, *social security numbers*, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, and personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; the home addresses, telephone numbers, *social security numbers*, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from the provisions of subsection (1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1). These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

2. An agency that is the custodian of the personal information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, or judge specified in subparagraph 1. shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency.

Section 4. This act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, lines 9-21, strike all of said lines and insert: providing an appropriation; amending s.

**House Amendment 1 (with Title Amendment) to House Amendment 3**—On page 10, between lines 9 and 10, insert:

Section 4. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, 1992 Supplement, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles, the Division of Law Enforcement of the Game and Fresh Water Fish Commission, and the Division of Law Enforcement of the Department of Natural Resources, and law enforcement officers of the Department of Transportation each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle. University police officers shall have authority to enforce all of the traffic laws of this state only when such violations occur on any property or facilities which are under the guidance, supervision, regulation, or control of the State University System, except that traffic laws may be enforced off campus when hot pursuit originates on campus.

2. An agency of the state as described in subparagraph 1. is prohibited from establishing a traffic citation quota. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

3. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work performance standards. Such work performance standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the semicolon (;) insert: amending s. 316.640, F.S.; clarifying traffic enforcement powers of certain law enforcement officers;

**House Amendment 2 (with Title Amendment) to House Amendment 3**—On page 10, between lines 9 and 10, insert:

Section 5. Subsection (4) of section 119.011, Florida Statutes, is amended to read:

119.011 Definitions.—For the purpose of this chapter:

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. *The term also includes the Department of Corrections.*

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the semicolon (;) insert: amending s. 119.011, F.S.; expanding the definition of "criminal justice agency";

On motions by Senator Thomas, the Senate concurred in the House amendments.

**CS for SB 42-B** passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—37 Nays—None

**RETURNING MESSAGES—FINAL ACTION**

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote and passed CS for SB's 14-B, 16-B and 18-B, SB 20-B; and adopted SM 4-B.

*John B. Phelps, Clerk*

The bills contained in the foregoing message were ordered enrolled.

*The Honorable Ander Crenshaw, President*

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed SB 26-B as amended by the Conference Committee Report.

*John B. Phelps, Clerk*

The bill contained in the foregoing message was ordered engrossed and then enrolled.

Jones	McKay	Thomas	Williams
Kirkpatrick	Scott	Turner	
Kiser	Siegel	Weinstein	
Kurth	Sullivan	Wexler	
Nays—5			
Boczar	Johnson	Silver	
Holzendorf	Meadows		

**ROLL CALLS ON SENATE BILLS**

**CS for SB 8-B—Amendment 1A**

Yeas—20			
Boczar	Forman	Johnson	Sullivan
Casas	Grogan	Jones	Thomas
Crist	Hargrett	Kirkpatrick	Turner
Diaz-Balart	Holzendorf	Meadows	Weinstein
Dyer	Jenne	Silver	Wexler
Nays—11			
Mr. President	Grant	Kiser	Scott
Beard	Harden	Kurth	Williams
Dudley	Jennings	McKay	

Vote after roll call:

Yea—Childers

**CS for SB 8-B—Motion**

Yeas—25			
Mr. President	Dantzler	Jones	Sullivan
Bankhead	Diaz-Balart	Kirkpatrick	Weinstein
Beard	Dudley	Kiser	Wexler
Brown-Waite	Grant	Kurth	Williams
Burt	Gutman	McKay	
Casas	Harden	Scott	
Crist	Jennings	Siegel	
Nays—12			
Boczar	Grogan	Jenne	Silver
Dyer	Hargrett	Johnson	Thomas
Forman	Holzendorf	Meadows	Turner

Vote after roll call:

Yea—Childers

**CS for SB 8-B**

Yeas—36			
Mr. President	Dantzler	Hargrett	McKay
Bankhead	Diaz-Balart	Holzendorf	Meadows
Beard	Dudley	Jenne	Scott
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Forman	Johnson	Thomas
Burt	Grant	Jones	Turner
Casas	Grogan	Kirkpatrick	Weinstein
Childers	Gutman	Kiser	Wexler
Crist	Harden	Kurth	Williams
Nays—1			
Silver			

**CS for SB 8-B—Final Passage**

Yeas—33			
Mr. President	Casas	Dudley	Gutman
Bankhead	Childers	Dyer	Harden
Beard	Crist	Forman	Hargrett
Brown-Waite	Dantzler	Grant	Jenne
Burt	Diaz-Balart	Grogan	Jennings

**SB 10-B**

Yeas—37			
Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	
Nays—None			

**CS for SB's 14-B, 16-B and 18-B**

Yeas—37			
Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dyer	Johnson	Sullivan
Beard	Forman	Jones	Thomas
Boczar	Grant	Kirkpatrick	Turner
Brown-Waite	Grogan	Kiser	Weinstein
Burt	Gutman	Kurth	Wexler
Casas	Harden	McKay	Williams
Childers	Hargrett	Meadows	
Crist	Holzendorf	Scott	
Dantzler	Jenne	Siegel	
Nays—None			

**SB 20-B**

Yeas—31			
Mr. President	Forman	Jones	Silver
Bankhead	Grant	Kirkpatrick	Sullivan
Beard	Gutman	Kiser	Thomas
Casas	Harden	Kurth	Turner
Childers	Hargrett	McKay	Weinstein
Dantzler	Holzendorf	Meadows	Wexler
Diaz-Balart	Jenne	Scott	Williams
Dyer	Jennings	Siegel	
Nays—6			
Boczar	Burt	Grogan	
Brown-Waite	Crist	Johnson	

**SB 20-B—After Reconsideration**

Yeas—29			
Mr. President	Dyer	Jones	Silver
Bankhead	Forman	Kirkpatrick	Sullivan
Beard	Grant	Kiser	Weinstein
Boczar	Gutman	Kurth	Wexler
Brown-Waite	Harden	McKay	Williams
Casas	Jenne	Meadows	
Dantzler	Jennings	Scott	
Diaz-Balart	Johnson	Siegel	
Nays—5			
Burt	Dudley	Holzendorf	
Crist	Grogan		

Vote after roll call:

Yea—Childers

Yea to Nay—Johnson

**SB 52-B**

Yeas—36

Mr. President	Dantzler	Holzen	Meadows
Bankhead	Diaz-Balart	Jenne	Siegel
Beard	Dyer	Jennings	Silver
Boczar	Forman	Johnson	Sullivan
Brown-Waite	Grant	Jones	Thomas
Burt	Grogan	Kirkpatrick	Turner
Casas	Gutman	Kiser	Weinstein
Childers	Harden	Kurth	Wexler
Crist	Hargrett	McKay	Williams

Nays—None

**SB 26-B  
Conference Committee Report**

Yeas—31

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Sullivan
Brown-Waite	Forman	Jones	Thomas
Burt	Grant	Kirkpatrick	Weinstein
Casas	Gutman	Kiser	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	

Nays—6

Boczar	Grogan	Silver
Childers	Kurth	Turner

**SB 34-B—Motion**

Yeas—20

Boczar	Crist	Holzen	Meadows
Brown-Waite	Diaz-Balart	Johnson	Siegel
Burt	Dyer	Jones	Silver
Casas	Grogan	Kiser	Thomas
Childers	Hargrett	Kurth	Turner

Nays—9

Mr. President	Grant	McKay
Bankhead	Harden	Sullivan
Beard	Jennings	Williams

Vote after roll call:

Yea—Kirkpatrick

**SB 34-B—Motion**

Yeas—21

Boczar	Forman	Jones	Thomas
Brown-Waite	Grogan	Kirkpatrick	Turner
Childers	Hargrett	Kiser	Weinstein
Crist	Holzen	Kurth	
Diaz-Balart	Jenne	Meadows	
Dyer	Johnson	Silver	

Nays—11

Mr. President	Grant	Jennings	Siegel
Beard	Gutman	McKay	Williams
Dudley	Harden	Scott	

**CS for SB 42-B**

Yeas—37

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

Nays—None

**SB 58-B**

Yeas—29

Mr. President	Diaz-Balart	Hargrett	Sullivan
Bankhead	Dudley	Jenne	Thomas
Beard	Dyer	Jennings	Turner
Boczar	Forman	Jones	Weinstein
Brown-Waite	Grant	Kurth	Williams
Casas	Grogan	McKay	
Childers	Gutman	Scott	
Crist	Harden	Silver	

Nays—3

Holzen	Johnson	Kiser
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**ROLL CALLS ON HOUSE BILLS**

**HB 3-B**

Yeas—34

Mr. President	Dantzler	Jenne	Siegel
Bankhead	Diaz-Balart	Jennings	Sullivan
Beard	Dudley	Johnson	Thomas
Boczar	Dyer	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	

Nays—2

Forman	Holzen
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Vote after roll call:

Nay to Yea—Forman

**HB 19-B**

Yeas—33

Mr. President	Dudley	Jones	Sullivan
Bankhead	Dyer	Kirkpatrick	Thomas
Beard	Forman	Kiser	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	
Diaz-Balart	Jennings	Silver	

Nays—4

Boczar	Brown-Waite	Grogan	Holzen
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## CS for HB 47-B—Motion

Yeas—15

Boczar	Dyer	Jenne
Brown-Waite	Grogan	Johnson
Childers	Hargrett	Jones
Crist	Holzendorf	Kiser

Nays—10

Mr. President	Harden	Scott
Beard	Jennings	Siegel
Dudley	McKay	Sullivan

Vote after roll call:

Yea—Weinstein

## HB 75-B

Yeas—21

Mr. President	Diaz-Balart	Harden	Thomas
Beard	Dudley	Jennings	Weinstein
Brown-Waite	Dyer	Kirkpatrick	Williams
Casas	Forman	Kurth	
Childers	Grant	McKay	
Crist	Gutman	Scott	

Nays—9

Boczar	Holzendorf	Jones
Grogan	Jenne	Silver
Hargrett	Johnson	Turner

## HB 89-B

Yeas—37

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

Nays—None

## HB 95-B

Yeas—37

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Grogan	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

Nays—None

## VOTES RECORDED AFTER ROLL CALL

On motion by Senator Kirkpatrick, by unanimous consent of the Senate, he was recorded as voting "yea" on the motion on **SB 34-B**.

On motion by Senator Johnson, by unanimous consent of the Senate, she was recorded as changing her vote from "yea" to "nay" after the reconsideration of **SB 20-B**.

On motion by Senator Childers, by unanimous consent of the Senate, he was recorded as voting "yea" on the following: **SB 20-B**, after reconsideration; **Amendment 1-A** on **CS for SB 8-B**; and the motion on **CS for SB 8-B**.

On motion by Senator Weinstein, by unanimous consent of the Senate, he was recorded as voting "yea" on the motion on **CS for HB 47-B**.

On motion by Senator Forman, by unanimous consent of the Senate, he was recorded as changing his vote from "nay" to "yea" on **HB 3-B**.

## CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 26 was corrected and approved.

## ADJOURNMENT

On motion by Senator Jennings, the Senate in Special Session adjourned sine die at 2:18 a.m., Friday, May 28.