

1 HB47
2 218588-2
3 By Representative Brown (K)
4 RFD: Boards, Agencies and Commissions
5 First Read: 11-JAN-22
6 PFD: 12/07/2021

1 definitions; and in connection therewith would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds within the meaning of Amendment 621
4 of the Constitution of Alabama of 1901, as amended by
5 Amendment 890, now appearing as Section 111.05 of the Official
6 Recompilation of the Constitution of Alabama of 1901, as
7 amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 34-13-1 and 34-13-20 of the Code
10 of Alabama 1975, are amended to read as follows:

11 "§34-13-1.

12 "(a) For purposes of this chapter, the following
13 terms shall have the following meanings:

14 "(1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY
15 SCIENCE. A school or college approved by the ~~Alabama~~ American
16 Board of Funeral Service ~~and Education,~~ or a successor
17 organization, which maintains a course of instruction of not
18 less than 48 calendar weeks or four academic quarters or
19 college terms and which gives a course of instruction in the
20 fundamental subjects ~~including, but not limited to, the~~
21 ~~following:~~

22 "~~a. Mortuary management and administration.~~

23 "~~b. Legal medicine and toxicology as it pertains to~~
24 ~~funeral directing.~~

25 "~~c. Public health, hygiene, and sanitary science.~~

26 "~~d. Mortuary science, to include embalming~~
27 ~~technique, in all its aspects; chemistry of embalming, color~~

1 ~~harmony, discoloration, its causes, effects, and treatment,~~
2 ~~treatment of special cases; restorative art; funeral~~
3 ~~management; and professional ethics.~~

4 ~~"e. Anatomy and physiology.~~

5 ~~"f. Chemistry, organic and inorganic.~~

6 ~~"g. Pathology.~~

7 ~~"h. Bacteriology.~~

8 ~~"i. Sanitation and hygiene.~~

9 ~~"j. Public health regulations.~~

10 ~~"k. Other related to funeral service and mortuary~~
11 ~~science education as approved by the American Board of Funeral~~
12 ~~Service Education, or a successor organization, and other~~
13 ~~courses of instruction in fundamental subjects as may be~~
14 ~~prescribed by the Alabama Board of Funeral Service.~~

15 "(2) ALKALINE HYDROLYSIS. The technical process that
16 reduces human remains to bone fragments using heat, water, and
17 chemical agents.

18 "(3) ALTERNATIVE CONTAINER. A nonmetal receptacle or
19 enclosure, without ornamentation or a fixed interior lining,
20 which is designed for the encasement of human remains and
21 which is made of cardboard, pressed-wood, composition
22 materials, with or without an outside covering, pouches of
23 canvas, or other materials.

24 "~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION.
25 ~~That funeral service educational organization which is an~~
26 ~~agency granted official recognition by the United States~~
27 ~~Secretary of Education and which is composed of members~~

1 ~~representing the American Association of College of Mortuary~~
2 ~~Science, the Conference of Funeral Service Examining Board of~~
3 ~~the United States, Inc., the National Association of Colleges~~
4 ~~of Mortuary Science, and the University Mortuary Science~~
5 ~~Education Association and which has as its object the~~
6 ~~furtherance of education in the field of funeral service and~~
7 ~~in fields necessary to, or allied with, the field of funeral~~
8 ~~service, and further to formulate standards of funeral service~~
9 ~~education and to grant accreditation to qualified schools and~~
10 ~~colleges of mortuary science and to do all things incidental~~
11 ~~to the foregoing~~ The national academic accreditation agency
12 for college and university programs in funeral service and
13 mortuary science education. The accrediting function of the
14 American Board of Funeral Service Education is recognized by
15 the United States Department of Education and the Council on
16 Higher Education Accreditation.

17 "(4)(5) APPRENTICE EMBALMER or EMBALMER'S
18 APPRENTICE. Any person engaged in the study of the art of
19 embalming under the instructions and supervision of a licensed
20 embalmer practicing in this state.

21 "(5)(6) APPRENTICE FUNERAL DIRECTOR or FUNERAL
22 DIRECTOR'S APPRENTICE. Any person operating under or in
23 association with a funeral director for the purpose of
24 learning the business or profession of funeral director, to
25 the end that he or she may become licensed under this chapter.

26 "(7) AT NEED. At the time of death or immediately
27 following death.

1 "~~(6)~~(8) AUTHORIZING AGENT. A person ~~at least 18~~
2 ~~years of age~~ who is at least the legal age of majority in this
3 state, except in the case of a surviving spouse or parent, who
4 is legally entitled to order the cremation or final
5 disposition of particular human remains.

6 "(9) BASIC SERVICES FEE. The fee for the
7 professional services of the funeral director and staff that
8 is added to the total cost of the funeral arrangements. The
9 term includes a charge for services performed in conducting
10 the arrangements conference, planning the funeral, securing
11 the necessary permits, preparing the notices, and coordinating
12 the cemetery or crematory arrangements.

13 "(10) BELOW-GROUND CRYPT. A preplaced enclosed
14 chamber, usually constructed of reinforced concrete, poured in
15 place or a precast unit installed in quantity, either
16 side-by-side or multiple depth, and covered by earth or sod
17 and known also as a lawn crypt or turf-top crypt.

18 "(11) BENEFICIARY. One who benefits from an act,
19 such as one for whom a preneed contract is entered into or the
20 successor-in-interest of a life insurance policy.

21 "~~(7)~~(12) BOARD. The Alabama Board of Funeral
22 Service.

23 "(13) BRANCH. Any person or entity that is part of a
24 common business enterprise that has a certificate of authority
25 issued pursuant to Article 5 and elects to operate under a
26 name other than that of the common business enterprise.

1 "(14) BURIAL. The placement of human remains in a
2 grave space or lawn crypt.

3 "~~(8)~~(15) CASH ADVANCE ITEMS. Any item of service or
4 merchandise described to a purchaser using the term cash
5 advance, accommodation, cash disbursement, or similar term. A
6 cash advance item is also any item obtained from a third party
7 and paid for by a funeral provider or a seller on behalf of a
8 purchaser. Cash advance items include, but are not limited to,
9 all of the following:

10 "a. Cemetery or crematory services.

11 "b. Pallbearers.

12 "c. Public, or other, transportation.

13 "d. Clergy honoraria.

14 "e. Flowers.

15 "f. Musicians or singers.

16 "g. Nurses.

17 "h. Obituary notices.

18 "i. Funeral programs.

19 "j. Gratuities.

20 "k. Death certificates.

21 "l. Outer burial containers.

22 "m. Cemetery plots.

23 "n. Escorts.

24 "~~(9)~~(16) CASKET. A rigid container that is designed
25 for the encasement of human remains, usually constructed of
26 wood, metal, or similar material, and ornamented and lined
27 with fabric.

1 "~~(10)~~(17) CEMETERY. A place established, maintained,
2 managed, operated, or improved and which is dedicated to and
3 used or intended to be used for the permanent interment of
4 human remains and their memorialization. It may be either land
5 or earth interment; a columbarium; a mausoleum for vault or
6 crypt entombment; a structure or place used or intended to be
7 used for the interment of cremated remains; cryogenic storage;
8 or any combination of one or more thereof.

9 "~~(11)~~(18) CEMETERY AUTHORITY. Any individual,
10 person, firm, profit or nonprofit corporation, trustee,
11 partnership, society, religious society, church association or
12 denomination, municipality, or other group or entity, however
13 organized, insofar as they or any of them may now or hereafter
14 establish, own, operate, lease, control, or manage one or more
15 cemeteries, burial parks, mausoleums, columbariums, or any
16 combination or variation thereof, or hold lands or structures
17 for burial grounds or burial purposes in this state and engage
18 in the operation of a cemetery, including any one or more of
19 the following: The care and maintenance of a cemetery; the
20 interment, entombment, and memorialization of the human dead
21 in a cemetery; the sale, installation, care, maintenance, or
22 any combination thereof, with respect of monuments, markers,
23 foundations, memorials, burial vaults, urns, crypts,
24 mausoleums, columbariums, flower vases, floral arrangements,
25 and other cemetery accessories, for installation or use within
26 a cemetery; and the supervision and conduct of funeral and
27 burial services within the bounds of the cemetery.

1 "(19) CEMETERY MERCHANDISE. Any personal property
2 offered for sale, contracted for sale, or sold for use in
3 connection with the burial, final disposition,
4 memorialization, interment, entombment, or inurnment of human
5 remains by a cemetery authority. The term specifically
6 includes, but is not limited to, the casket, the alternative
7 container, the outer burial container, and the memorial.

8 "(20) CEMETERY SERVICES. At need or preneed services
9 provided by a cemetery authority for interment, entombment,
10 inurnment, and installation of cemetery merchandise.

11 "(21) CERTIFICATE HOLDER. A funeral establishment,
12 cemetery authority, third-party seller, or any other person to
13 whom a valid certificate of authority to sell preneed
14 contracts has been granted by the board.

15 "(22) COLUMBARIUM. A structure or room or space in a
16 building or structure used or intended to be used for the
17 inurnment of cremated remains.

18 ~~"(12)~~ (23) CONVICTION. The entry of a plea of guilty
19 or a guilty verdict rendered by any court of competent
20 jurisdiction, excluding traffic violations.

21 ~~"(13)~~ (24) CREMATED REMAINS. Human remains recovered
22 after the completion of the cremation process, including
23 pulverization, which leaves only bone fragments reduced to
24 unidentifiable dimensions, and the residue of any foreign
25 materials that were cremated with the human remains.

26 "(25) CREMATED REMAINS CONTAINER. A receptacle in
27 which cremated remains are placed.

1 "~~(14)~~ (26) CREMATION. The technical irreversible
2 process, using heat, flames, or chemical agents, that reduces
3 human remains to bone fragments. The reduction takes place
4 through heat and evaporation. Cremation shall include the
5 processing, and may include the pulverization, of the bone
6 fragments. Cremation is a process and is a method of final
7 disposition.

8 "~~(15)~~ (27) CREMATIONIST. A person licensed by the
9 board to perform the procedure of cremation.

10 "~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel
11 used to reduce human remains to bone fragments.

12 "~~(17)~~ (29) CREMATION CONTAINER. The container in
13 which human remains are transported to a crematory, in which
14 human remains are placed in upon arrival at a crematory, or
15 for storage and placement in a cremation chamber for
16 cremation.

17 "~~(18)~~ (30) CREMATORY. A building or portion of a
18 building that houses a cremation chamber and that may house a
19 holding facility for purposes of cremation and as part of a
20 funeral establishment.

21 "(31) CREMATORY AUTHORITY. Any person who owns or
22 controls a crematory.

23 "(32) DEATH CERTIFICATE. A legal document containing
24 vital statistics pertaining to the life and death of the
25 deceased.

26 "(33) DECEASED or DECEDENT. One who is no longer
27 living.

1 "~~(19)~~(34) EMBALMER. Any person engaged or holding
2 himself or herself out as engaged in the business, practice,
3 science, or profession of embalming, whether on his or her own
4 behalf or in the employ of a registered and licensed funeral
5 director.

6 "~~(20)~~(35) EMBALMING. The practice, science, or
7 profession, as commonly practiced, of preserving,
8 disinfecting, and preparing by application of chemicals or
9 other effectual methods, human dead for burial, cremation, or
10 transportation.

11 "(36) ENCASEMENT. The placement of human remains in
12 a rigid container including, but not limited to, a casket or
13 urn.

14 "(37) ENDOWMENT CARE. The maintenance and repair of
15 all places in a cemetery, subject to the rules of the cemetery
16 authority. The term may also be referred to as endowed care,
17 perpetual care, improvement care, or permanent care.

18 "(38) ENDOWMENT CARE TRUST FUND. An irrevocable
19 trust fund set aside by law with a trustee, along with the
20 income therefrom, to provide for the endowment care of a
21 cemetery.

22 "(39) ENTOMBMENT. The act of placing human remains
23 in a mausoleum crypt.

24 "(40) FINAL DISPOSITION. The lawful disposal of
25 human remains whether by interment, cremation, or other
26 method.

1 "~~(21)~~(41) FUNERAL. A ceremony for celebrating,
2 sanctifying, or remembering the life of a person who has died.
3 A funeral may be divided into the following two parts:

4 "a. The funeral service, which may take place at a
5 funeral home, church, or other place.

6 "b. The committal service or final disposition,
7 which may take place by the grave, tomb, mausoleum, or
8 crematory where the body of the decedent is to be buried or
9 cremated.

10 "~~(22)~~(42) FUNERAL ARRANGEMENTS. The completing of
11 funeral service arrangements, cremation arrangements, and the
12 financial details of a funeral at the time of death. The term
13 includes the collection of vital statistic information, death
14 certificate information, obituary and funeral notice
15 completion, the completion of a statement of funeral goods and
16 services selected, organizing of funeral and memorial services
17 for families, and the ordering of cash advance items.

18 "(43) FUNERAL BENEFICIARY. The person or persons who
19 will receive the benefit of the funeral and cemetery goods and
20 services to be delivered under a preneed contract at the time
21 of his, her, or their death.

22 "~~(23)~~(44) FUNERAL DIRECTING. The practice of
23 directing or supervising funerals, the practice of preparing
24 dead human bodies for burial by means other than embalming, or
25 the preparation for the final disposition of dead human
26 bodies; the making of funeral arrangements or providing for
27 funeral services or the making of financial arrangements for

1 the rendering of these services; the provision or maintenance
2 of a place for the preparation for final disposition of dead
3 human bodies; or the use of the terms funeral director,
4 undertaker, mortician, funeral parlor, or any other term from
5 which can be implied the practice of funeral directing; or the
6 holding out to the public that one is a funeral director or
7 engaged in a practice described in this subdivision.

8 "~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be
9 licensed to practice the profession of funeral directing under
10 the laws of this state, who consults with the public, who
11 plans details of funeral services with members of the family
12 and minister or any other person responsible for such
13 planning, or who directs, is in charge, or apparent charge of,
14 and supervises funeral service in a funeral home, church, or
15 other place; who enters into the making, negotiation, or
16 completion of financial arrangements for funeral services, or
17 who uses in connection with the profession of funeral
18 directing the terms funeral director, undertaker, funeral
19 counselor, mortician, or any other term or picture or
20 combination thereof when considered in context in which used,
21 from which can be implied the practicing of the profession of
22 funeral directing or that the person using such term or
23 picture can be implied to be holding himself or herself out to
24 the public as being engaged in the profession of funeral
25 directing; and for all purposes under Alabama law, a funeral
26 director is considered a professional. For the purposes of

1 this chapter, the term does not include any cemetery
2 authority.

3 ~~"(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes
4 any funeral home or mortuary service located at a specific
5 street address where the profession of funeral directing,
6 embalming, or cremation is practiced in the care, planning,
7 and preparation for burial, cremation, or transportation of
8 human dead. A funeral establishment shall consist of and
9 maintain all of the following facilities:

10 "a. A preparation room equipped with sanitary
11 nonporous floor and walls, necessary drainage and ventilation,
12 and containing operating embalming equipment, necessary
13 approved tables, instruments, hot and cold running water,
14 containers or receptacles for soiled linen or clothing, and
15 supplies for the preparation and embalming of dead human
16 bodies for burial, cremation, and transportation.

17 "b. A display room containing a stock of adult
18 caskets and funeral supplies displayed in full size, cuts,
19 photographs, or electronic images. At no time shall less than
20 eight different adult size caskets be on the premises.

21 "c. At least one operating funeral coach or hearse
22 properly licensed and equipped for transporting human remains
23 in a casket or urn.

24 "d. If engaged in the practice of cremation, the
25 establishment shall satisfy all crematory requirements
26 provided in this chapter and have on site an adequate supply
27 of urns for display and sale.

1 "e. A room suitable for public viewing or other
2 funeral services that is ~~able to accommodate~~ a minimum of ~~100~~
3 ~~people~~ 1,000 square feet.

4 "f. An office for holding arrangement conferences
5 with relatives or authorizing agents.

6 "(47) FUNERAL SERVICE. At need or preneed services
7 provided by a funeral establishment in connection with funeral
8 directing, final disposition of human remains, or installation
9 of memorials.

10 "~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE.
11 ~~Caskets made of any material for use in the burial or~~
12 ~~transportation of human dead; outer receptacles, Any item~~
13 ~~offered for sale, contracted for sale, or sold for use in~~
14 ~~connection with funeral directing when sold by a funeral~~
15 ~~director, including, but not limited to, caskets, alternative~~
16 ~~containers, outer burial vaults and containers, urns, for~~
17 ~~cremated human remains, memorials, clothing used to dress~~
18 ~~human dead when sold by a funeral director,~~ and all equipment
19 and accouterments normally required for the preparation for
20 burial or funeral and other final disposition of human dead.

21 "(49) GRAVE SPACE. A space of ground in a cemetery
22 that is used or intended to be used for in-ground burial.

23 "~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or
24 shameful immorality or showing a moral indifference to the
25 opinions of the good and respectable members of the community
26 and to the just obligations of the position held by the
27 offender.

1 "~~(28)~~ (51) HOLDING ROOM. Either of the following:

2 "a. A room within a funeral establishment that
3 satisfies the requirements of a branch location as provided in
4 this chapter or board rule, for the retention of human remains
5 before final disposition.

6 "b. A room within a crematory facility, designated
7 for the retention of human remains before and after cremation,
8 that is not accessible to the public.

9 "(52) HUMAN REMAINS. The body of a decedent in any
10 stage of decomposition, including cremated remains.

11 "(53) INTERMENT. The final disposition of human
12 remains by burial, burial at sea, entombment, or inurnment.

13 "(54) INTERMENT RIGHT. The right to inter human
14 remains in a particular interment space in a cemetery.

15 "(55) INTERMENT SPACE. A space intended for the
16 final disposition of human remains including, but not limited
17 to, a grave space, mausoleum crypt, niche, and below-ground
18 crypt.

19 "(56) INURNMENT. The act of placing cremated remains
20 in a receptacle including, but not limited to, an urn and
21 depositing it in a niche.

22 "(57) LICENSEE. Any individual, firm, corporation,
23 partnership, joint venture, or limited liability company which
24 obtains a license, certificate, or registration in accordance
25 with this chapter.

26 "~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral
27 director and cremationist who has full charge, control, and

1 supervision of all activities involving cremation at a funeral
2 establishment or crematory.

3 "~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who
4 has full charge, control, and supervision of all activities
5 involving the preparation room and embalming.

6 "~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed
7 funeral director who has full charge, control, and supervision
8 of all activities involving funeral directing for a funeral
9 establishment.

10 "(61) MAUSOLEUM. A chamber or structure used or
11 intended to be used for entombment.

12 "(62) MAUSOLEUM CRYPT. A chamber of a mausoleum of
13 sufficient size for entombment of human remains.

14 "(63) MEMORIAL. Any product, other than a mausoleum
15 or columbarium, used for identifying an interment space or for
16 commemoration of the life, deeds, or career of some decedent
17 including, but not limited to, a monument, marker, niche
18 plate, urn garden plaque, crypt plate, cenotaph, marker bench,
19 and vase.

20 "(64) MEMORIAL RETAILER. Any person offering or
21 selling memorials at retail to the public.

22 "(65) MEMORIALIZATION. Any permanent system designed
23 to mark or record the names and other data pertaining to a
24 decedent.

25 "~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or
26 violent act, or any act involving theft, theft of services,
27 theft by deception, extortion, receiving stolen property,

1 identity theft, forgery, fraud, tampering with records,
2 bribery, perjury, or any similar act in any jurisdiction.

3 "~~(33)~~ (67) MORTUARY SCIENCE. The scientific,
4 professional, and practical aspects, with due consideration
5 given to accepted practices, covering the care, preparation
6 for burial, or transportation of dead human bodies, which
7 shall include the preservation and sanitation of the bodies
8 and restorative art and those aspects related to public
9 health, jurisprudence, and good business administration.

10 "~~(34)~~ (68) MORTUARY SERVICE. A location with a
11 specific street address where embalming or cremation, or both,
12 is practiced for a licensed funeral establishment and where no
13 services or merchandise are sold directly or at retail to the
14 public. A mortuary service shall consist of and maintain all
15 of the following facilities:

16 "a. A preparation room equipped with sanitary
17 nonporous floor and walls, operating embalming equipment, and
18 necessary drainage and ventilation and containing necessary
19 approved tables, instruments, hot and cold running water,
20 containers or receptacles for soiled linen or clothing, and
21 supplies for the preparation and embalming of dead human
22 bodies for burial, cremation, and transportation.

23 "b. At least one operating motor vehicle properly
24 licensed and equipped for transporting human remains in a
25 casket or urn.

1 "c. If engaged in the practice of cremation, the
2 establishment shall satisfy all requirements for a crematory
3 provided in this chapter.

4 "(69) NICHE. A space usually within a columbarium
5 used or intended to be used for inurnment of cremated remains.

6 "~~(35)~~ (70) OPERATOR. A person, corporation, firm,
7 legal representative, managing funeral director, general
8 manager, or other organization owning or operating a funeral
9 establishment or cemetery.

10 "(71) OUTER BURIAL CONTAINER. A container that is
11 designed for placement in the grave space around the casket or
12 the urn including, but not limited to, containers commonly
13 known as burial vaults, grave boxes, and grave liners.

14 "(72) PERSON. Any individual, firm, corporation,
15 partnership, joint venture, limited liability company,
16 association, trustee, government or governmental subdivision,
17 agency, or other entity, or any combination thereof.

18 "~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has
19 been actively and continuously engaged or employed in the
20 practice of embalming under the supervision of a licensed
21 embalmer for four consecutive years immediately preceding May
22 1, 1975, and has been issued a license as a practical embalmer
23 under the grandfather provisions of this chapter.

24 "(74) PREARRANGEMENT. The term applied to completing
25 the details for selection of merchandise or services on a
26 preneed basis, which may or may not include prefunding or
27 prepayment.

1 "(75) PREDEVELOPED. Designated areas or buildings
2 within a cemetery that have been mapped and planned for future
3 construction but are not yet completed.

4 "(76) PREDEVELOPED INTERMENT SPACE. An interment
5 space that is planned for future construction but is not yet
6 completed.

7 "(77) PREFUND. The term applied to completing the
8 financial details of a prearrangement, which include
9 prefunding or prepayment.

10 "(78) PRENEED. Any time prior to death.

11 "(79) PRENEED CONTRACT. A written contract to
12 purchase funeral merchandise, funeral services, cemetery
13 merchandise, or cemetery services from the seller on a preneed
14 basis.

15 "(80) PRENEED CONTRACT TRUST FUND. The funds
16 received pursuant to a preneed contract which are required by
17 law to be held in trust until the merchandise or services
18 purchased pursuant to the contract are delivered or provided
19 or until otherwise lawfully withdrawn.

20 "(81) PRENEED SALES AGENT. A person who is in the
21 business of selling preneed contracts.

22 ~~"(37)~~ (82) PROCESSING or PULVERIZATION. The reduction
23 of identifiable bone fragments after the completion of the
24 cremation process to unidentifiable bone fragments or
25 granulated particles by manual or mechanical means.

1 "(83) PROVIDER. The person, who may or may not be
2 the seller, who actually provides merchandise and services
3 under the terms of a preneed contract.

4 "(84) PURCHASE PRICE. The amount paid by the
5 purchaser for merchandise and services purchased under a
6 preneed contract, exclusive of finance charges, sales tax,
7 charges relating to interment rights, arrangement conference
8 fees, or charges for credit life insurance.

9 "(85) PURCHASER. The person who purchases a preneed
10 contract either on his or her behalf or on behalf of a
11 third-party beneficiary.

12 "(86) RELIGIOUS INSTITUTION. An organization formed
13 primarily for religious purposes which has applied and
14 qualified for exemption from federal income tax as an exempt
15 organization under Section 501(c)(3) of the Internal Revenue
16 Code of 1986, as amended.

17 "(87) SCATTERING. The lawful dispersion of cremated
18 remains.

19 "(88) SELLER. Any person offering or selling
20 merchandise or services on a preneed basis including, but not
21 limited to, funeral establishments, cemetery authorities,
22 crematory authorities, and memorial retailers.

23 "(89) SPECIAL CARE. Any care provided, or to be
24 provided, that is supplemental to, or in excess of, endowment
25 care, in accordance with the specific directions of any donor
26 of funds for those purposes.

1 "(90) SUCCESSOR-IN-INTEREST. A person who lawfully
2 follows another in ownership or control of property or rights.

3 "~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for
4 cremated remains, usually composed of cardboard, plastic, or
5 similar material, that can be closed in a manner that prevents
6 the leakage or spillage of the cremated remains or the
7 entrance of foreign material, and is a single container of
8 sufficient size to hold the cremated remains until an urn is
9 acquired or the cremated remains are scattered or buried.

10 "(92) THIRD-PARTY SELLER. Any person, who is not a
11 funeral establishment or a cemetery authority, engaged in the
12 sale of preneed funeral merchandise or cemetery merchandise.

13 "(93) TRUSTEE. Any person, state or national bank,
14 trust company, or federally insured savings and loan
15 association lawfully appointed as fiduciary over funds
16 deposited by one or more purchasers of a preneed contract or
17 deposited pursuant to an endowment care trust fund. The term
18 does not refer to a board of trustees.

19 "~~(39)~~ (94) URN. A receptacle designed to encase
20 cremated remains.

21 "(b) Nothing in this chapter shall require a funeral
22 director or funeral establishment to have or provide a chapel
23 or to restrict the conduct of funeral services from a church
24 or chapel.

25 "§34-13-20.

26 "(a) There is established the Alabama Board of
27 Funeral Service, consisting of nine members, each of whom

1 shall be citizens of the United States and residents of the
2 State of Alabama.

3 "(b) The appointing authorities shall coordinate
4 their appointments to assure board membership is inclusive and
5 reflects the racial, gender, geographic, urban/rural, and
6 economic diversity of the state.

7 "(c) Commencing on January 1, 2019, as the terms of
8 the members serving on the board on August 1, 2017, expire,
9 the membership of the board shall be reconstituted to consist
10 of seven professional members and two consumer members.

11 "(1) Each professional member of the board shall be
12 a citizen of the United States, a resident of Alabama, and
13 licensed and in good standing with the board as an embalmer or
14 funeral director at the time of appointment and during the
15 entire term of office. Professional members of the board shall
16 be appointed by the Governor pursuant to subsection (e). As
17 the terms of the members serving on the board on the effective
18 date of the act adding this sentence expire, the professional
19 membership of the board shall be appointed to reflect the
20 following:

21 "a. ~~Four~~ Three of the professional members of the
22 board shall hold a current license from the board to practice
23 embalming in the state, shall have been actively practicing
24 embalming in the state for the last 10 consecutive years
25 immediately preceding appointment, and shall be engaged in the
26 practice of embalming at the time of appointment to the board.

1 **"b. ~~Three~~ Four** of the professional members of the
2 board shall hold a current license from the board to practice
3 funeral directing in the state, shall have been actively
4 engaged in funeral directing in the state for the last 10
5 consecutive years immediately preceding appointment, and shall
6 be the operator of a funeral establishment in this state at
7 the time of appointment to the board. Two of these four
8 professional members shall also hold a current certificate of
9 authority to sell preneed services and merchandise.

10 "(2) Each consumer member of the board shall
11 represent the public in general and shall have been a citizen
12 of the United States and a resident of Alabama for the last 10
13 consecutive years immediately preceding appointment and during
14 the entire term of office. A consumer member of the board may
15 not have held, nor currently hold, a license or certification
16 issued by the board, be employed at any time by, or
17 professionally or financially associated with, the holder of a
18 license or certificate issued by the board, or be related
19 within the third degree of consanguinity or affinity to the
20 holder of a license or certificate issued by the board. One
21 consumer member of the board shall be appointed by the
22 Lieutenant Governor and one consumer member shall be appointed
23 by the Speaker of the House of Representatives pursuant to a
24 procedure adopted by rule of the board.

25 "(d) Commencing in October of 2018, and each October
26 thereafter of a year where at least one professional member
27 term on the board has expired, or is vacant for any reason,

1 all licensed funeral directors and licensed embalmers shall
2 meet in Montgomery, at a time and place fixed by the board,
3 for the purpose of nominating and submitting the names of
4 three licensed persons for each position on the board to the
5 Governor. The Governor shall promptly appoint one of the three
6 persons so nominated to serve as a professional member of the
7 board.

8 "(e) (1) Professional and consumer members of the
9 board shall serve staggered terms of four years each to
10 provide continuity of service on the board. If an appointment
11 is not made before the expiration of a term, the board member
12 then serving may continue to serve until a successor has been
13 appointed. A board member may not serve more than two full
14 consecutive terms on the board.

15 "(2) A board member who is appointed to fill a
16 vacancy which occurs before the expiration of the term of the
17 vacating member shall serve the remaining portion of the term
18 to which the former member was appointed. If a member is
19 appointed to fill an unexpired term of less than two years,
20 the time may not be counted toward the maximum eight years of
21 service.

22 "(3) Not more than one professional member of the
23 board may reside in the same district as created by Section
24 34-13-21.

25 "(4) At each meeting where nominations are made for
26 the professional members of the board, only one licensed

1 funeral director or licensed embalmer employed by the same
2 funeral establishment may vote.

3 "(f) (1) In accordance with applicable law, in
4 addition to a board member resigning from the board in
5 writing, a board member may be removed from the board for any
6 of the following grounds:

7 "a. The refusal or inability to perform board duties
8 in an efficient, responsible, or professional manner.

9 "b. The misuse of his or her position on the board
10 to obtain financial gain or seek personal advantage for
11 himself, herself, or another person.

12 "c. A final adjudication or determination of guilt
13 by any lawful authority of the board member or sanction of the
14 board member for the violation of any law the board determines
15 is substantially related to any practice governed by this
16 chapter.

17 "d. The revocation or suspension of the license of a
18 professional member of the board.

19 "(2) Any board member who fails to qualify after
20 appointment shall automatically become ineligible to serve as
21 a member of the board and a new member, properly qualified,
22 shall be appointed in the same manner as the original
23 appointment and shall serve the remainder of the term of the
24 vacating board member.

25 "(3) If a consumer board member fails to attend two
26 or more meetings within a year, without a valid excuse as
27 determined by the board, he or she shall be removed from the

1 board. A new consumer board member shall be appointed in the
2 same manner as the original appointment and shall serve the
3 remainder of the term.

4 Section 2. Sections 27-17A-1, 27-17A-3, and 27-17A-4
5 of the Code of Alabama 1975, are amended and renumbered as
6 Division 1 of Article 5 of Chapter 13 of Title 34, Code of
7 Alabama 1975, to read as follows:

8 "ARTICLE 5. Alabama Preneed Funeral and Cemetery Act
9 of 2022.

10 "Division 1. General Provisions.

11 "~~§27-17A-1.~~ §34-13-170.

12 "(a) This ~~chapter~~ article shall be known and may be
13 cited as the Alabama Preneed Funeral and Cemetery Act of 2022.

14 "(b) (1) The Alabama Board of Funeral Service
15 succeeds to and is vested with the powers, duties, and
16 functions of the Department of Insurance relating to the
17 regulation of endowment care, preneed sales contracts, and the
18 licensing of preneed sales agents.

19 "(2) All funds and records of the Department of
20 Insurance relating to the regulation of preneed sales
21 contracts, endowment care, and the licensing of preneed sales
22 agents are transferred to the board.

23 "(3) The status of any person properly licensed by
24 the Department of Insurance under the former Chapter 17A of
25 Title 27, on the effective date of the act adding this
26 subdivision, shall continue under the board.

1 "(4) The administrative rules of the Department of
2 Insurance existing on the effective date of the act adding
3 this subdivision shall remain in effect as administrative
4 rules of the board until added, amended, or repealed by the
5 board.

6 "(5) The existence and functioning of the Alabama
7 Preneed Funeral and Cemetery Act, created and functioning
8 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is
9 continued as the Alabama Preneed Funeral and Cemetery Act of
10 2022, under this article. All rights, duties, and obligations
11 existing in the name of the Department of Insurance, relating
12 to endowment care, preneed sales contracts, and preneed sales
13 agent licenses, shall continue under the board. Any reference
14 to the Department of Insurance in any existing law, contract,
15 or other instrument relating to endowment care, preneed sales
16 contracts, and preneed sales agent licenses, shall be deemed a
17 reference to the board.

18 "(6) The transfer of the regulation of preneed
19 contracts and the licensing of preneed sales agents from the
20 Department of Insurance to the board shall not affect the
21 rights of any person held before the effective date of the act
22 adding this subdivision, as those rights relate to any preneed
23 trust funds, endowment care trust funds, or any other funds
24 held in trust pursuant to the Alabama Preneed Funeral and
25 Cemetery Act.

26 ~~"§27-17A-3.~~ §34-13-171.

1 "(a) Nothing in this chapter shall be construed to
2 prohibit the funding of preneed contracts with multiple
3 insurance or annuity contracts. Life insurance and annuity
4 contracts used to fund preneed contracts shall conform with
5 ~~the provisions of this title~~ Title 27 as they relate to life
6 insurance and annuities and shall cover not less than the
7 initial retail price of the preneed contract.

8 "(b) The initial premium payment for a life
9 insurance policy or annuity contract shall be made payable to
10 the issuing insurance company and the preneed seller shall
11 remit the payment to the insurance company within 10 business
12 days after the insurance application is signed by the parties.
13 If a preneed contract provides for installment payments, each
14 premium payment shall be made payable to the insurance company
15 and, if collected by the preneed seller, shall be remitted to
16 the insurance company within 10 business days after receipt by
17 the preneed seller.

18 "(c) Nothing in this chapter shall prohibit a
19 seller, or any other person, from receiving commissions earned
20 and payable in regard to funding preneed contracts with life
21 insurance or annuity contracts, provided the seller or other
22 person holds a valid insurance producer license in this state
23 and is appointed by the insurance company paying the
24 commission.

25 "(d) A preneed seller may be identified as the
26 beneficiary or assignee of the death benefit proceeds of a
27 life insurance policy or annuity contract sold as a future

1 funding mechanism for a preneed contract, but may not be the
2 owner of the policy or annuity contract or exercise any
3 ownership rights in the policy or annuity. If the preneed
4 contract is cancelled before or after the death of the funeral
5 beneficiary, the preneed seller shall cancel and relinquish
6 any assignment of benefits or beneficiary status under the
7 policy or annuity contract, and deliver the policy or
8 contract, if in the custody of the preneed seller, to the
9 policy owner or his or her legal representative.

10 ~~§27-17A-4.~~ §34-13-172.

11 "Nothing in this chapter shall be construed to
12 prohibit cemetery authorities from selling funeral
13 merchandise, funeral establishments from selling cemetery
14 merchandise, or third-party sellers from selling either
15 funeral merchandise or cemetery merchandise, or both.
16 Provided, the required amount of the purchase price to be
17 placed into trust shall be governed by the appropriate section
18 of this chapter."

19 Section 3. Sections 27-17A-10, 27-17A-11,
20 27-17A-11.1, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15,
21 27-17A-16, 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20,
22 27-17A-21, 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of
23 the Code of Alabama 1975, are amended and renumbered as
24 Division 2 of Article 5 of Chapter 13 of Title 34, Code of
25 Alabama 1975, to read as follows:

26 "Division 2. Certificate of Authority.

27 ~~"§27-17A-10.~~ §34-13-190.

1 "(a) No person may sell a preneed contract without
2 first having a valid certificate of authority.

3 "(b) (1) No person may receive any funds for payment
4 on a preneed contract who does not hold a valid certificate of
5 authority.

6 "(2) Any preneed transaction in which a buyer pays
7 to the seller before need, in whole or in part, a purchase
8 price for funeral or cemetery merchandise and services, and in
9 which the seller is not obligated to deliver the contracted
10 for merchandise or to perform the services until need, in
11 whole or in part, shall be evidenced by a written preneed
12 contract satisfying the requirements of this chapter and
13 signed by the seller and the purchaser. No person may receive
14 or accept any form of consideration in such a transaction
15 without a fully signed written preneed contract. A transaction
16 not evidenced by a signed written preneed contract shall be
17 voidable at the election of the buyer and, if such election is
18 made, the seller shall refund to the buyer the entire amount
19 paid by the buyer together with interest thereon at the legal
20 rate within 30 days after notice to the seller.

21 "(3) The provisions of subdivision (1) do not apply
22 to the purchase of a life insurance policy or annuity, the
23 benefits of which are assigned to a funeral home ~~and/or~~ or
24 cemetery authority, or the benefits of which are to be paid to
25 a funeral home ~~and/or~~ or cemetery authority named as
26 beneficiary of the policy or annuity, as long as the purchaser
27 and funeral home ~~and/or~~ or cemetery authority acknowledge in

1 writing that no preneed contract is entered as a result of the
2 purchase or assignment of the life insurance policy or annuity
3 at the time the policy or annuity is purchased. Benefits from
4 a life insurance policy or annuity issued under this
5 subdivision shall only be paid to a funeral home ~~and/or~~ or
6 cemetery authority which provides funeral or cemetery
7 merchandise and services at the death of the insured whether
8 or not such funeral home ~~and/or~~ or cemetery has been named as
9 an assignee or the beneficiary of the policy or annuity. If
10 the amount of the policy or annuity proceeds shall exceed the
11 actual funeral costs at the time of need, ~~such~~ the excess
12 amount ~~must~~ shall be paid to a designated beneficiary, other
13 than a funeral home ~~and/or~~ or cemetery authority, or to the
14 estate of the insured or annuitant.

15 "(4) ~~The provisions of subdivision~~ Subdivision (1)
16 ~~do~~ does not apply to any legal reserve insurance company or to
17 any trust company or to any national or state bank or savings
18 and loan association having trust powers which company, bank,
19 or association receives any money in trust pursuant to the
20 sale of a preneed contract.

21 "(c) (1) No person may obtain a certificate of
22 authority under this ~~article~~ chapter for the preneed sale of
23 funeral services or cemetery services unless the person or its
24 agent, in the case of a corporate entity, holds a license as a
25 funeral director or a funeral establishment, or is a cemetery
26 authority. and qualifies as an applicant for a certificate of

1 authority pursuant to the following standards and
2 qualifications:

3 "a. The applicant shall be at least the legal age of
4 majority in this state.

5 "b. The applicant shall be in good standing with the
6 board.

7 "c. The applicant may not have any felony or
8 misdemeanor convictions that relate to any activity regulated
9 by this chapter or a crime involving moral turpitude, as
10 defined by this chapter.

11 "d. The applicant shall be of good moral character
12 and submit to a criminal history background check pursuant to
13 subdivision (2).

14 "(2) An applicant for a certificate of authority
15 shall submit to the board, on a form sworn to by the
16 applicant, his or her name, date of birth, Social Security
17 number, and two complete sets of fingerprints for completion
18 of a criminal history background check. The board shall submit
19 the fingerprints to the Alabama State Law Enforcement Agency
20 for a state criminal history background check. The
21 fingerprints shall be forwarded by the agency to the Federal
22 Bureau of Investigation for a national criminal history
23 background check. Costs associated with conducting a criminal
24 history background check shall be paid by the applicant. The
25 board shall keep information received pursuant to this
26 subdivision confidential, except that information received and
27 relied upon in denying the issuance of a certificate of

1 authority may be disclosed if necessary to support the denial.
2 All character information, including the information obtained
3 through the criminal history background checks, shall be
4 considered in licensure decisions to the extent permissible by
5 all applicable laws.

6 "(d) ~~The provisions of this~~ This section ~~do~~ does not
7 apply to a cemetery authority owned or operated by a
8 governmental agency or a religious institution or to those
9 cemeteries that do not charge fees or sell plots, interment
10 rights, or any related cemetery merchandise.

11 "~~§27-17A-11.~~ §34-13-191.

12 "(a) An application to the ~~commissioner~~ board for a
13 certificate of authority shall be accompanied by the statement
14 and other matters described in this section in the form
15 prescribed by the ~~commissioner~~ board. Annually thereafter,
16 ~~within six months after the end of its fiscal period, or~~
17 ~~within an extension of time therefor, as the commissioner~~
18 board for good cause may grant, the person authorized to
19 engage in the sale of preneed contracts shall file with the
20 ~~commissioner~~ board a full and true statement of his or her
21 financial condition, transactions, and affairs, prepared on a
22 basis as adopted by a rule of the ~~commissioner~~ board, as of
23 the preceding fiscal period or at such other time or times as
24 the ~~commissioner~~ board may provide by rule, together with
25 information and data which may be required by the ~~commissioner~~
26 board.

1 "(b) The statement shall include all of the
2 following:

3 "(1) The types of preneed contracts proposed to be
4 written and the type of funding ~~vehicle~~ vehicles to be used.

5 "(2) The name and address of the place of business
6 of the person offering to write preneed contracts.

7 "(3) Evidence that the person offering the statement
8 has the following qualifications:

9 "a. Has the ability to discharge his or her preneed
10 liabilities as they become due in the normal course of
11 business and has sufficient funds available during the
12 calendar year to perform his or her obligations under the
13 contract.

14 "b. Has complied with the trust requirements for the
15 funds received under contracts issued by himself or herself as
16 hereinafter described.

17 "c. Has disbursed interest, dividends, or accretions
18 earned by trust funds, in accordance with this ~~article~~ chapter
19 and rules ~~promulgated~~ adopted hereunder.

20 "d. Has complied with this chapter and any rules of
21 the ~~commissioner~~ board.

22 "(4) Any other information considered necessary by
23 the ~~commissioner~~ board to meet the ~~commissioner's~~ board's
24 responsibilities under this chapter.

25 "(c) If the person is an individual, the statement
26 shall be sworn by him or her; if a firm or association, by all

1 members thereof; or, if a corporation, by any officer of the
2 corporation.

3 "(d) (1) An application to the ~~commissioner~~ board for
4 an initial certificate of authority shall be accompanied by an
5 application fee, in an amount to be determined by the
6 ~~commissioner board~~, not to exceed ~~one hundred fifty dollars~~
7 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,
8 each annual application for renewal of a certificate of
9 authority shall be accompanied by the appropriate fee as
10 determined by the ~~commissioner board~~ not to exceed
11 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

12 "(2) Any person or entity that is part of a common
13 business enterprise that has a certificate of authority issued
14 pursuant to this ~~article~~ chapter and elects to operate under a
15 name other than that of the common business enterprise shall
16 submit an application on a form ~~adopted~~ prescribed by the
17 ~~commissioner board~~ to become a branch registrant. Upon the
18 approval of the ~~commissioner board~~ that the entity qualifies
19 to sell preneed contracts under this ~~article~~ chapter except
20 for the requirements of subparagraph 1. of paragraph a. of
21 subdivision (3) of subsection (b) and if the certificate
22 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,
23 a branch registration shall be issued. Each branch registrant
24 may operate under the certificate of authority of the common
25 business enterprise upon the payment of a fee established by
26 the ~~commissioner board~~ not to exceed ~~one hundred fifty dollars~~

1 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying
2 the application on ~~July~~ September 1 annually.

3 "(e) Upon the ~~commissioner~~ board being satisfied
4 that the statement and matters which may accompany ~~it~~ the
5 statement meet the requirements of this ~~article~~ chapter and of
6 its rules, the ~~commissioner~~ board shall issue or renew the
7 certificate of authority.

8 "(f) The certificate of authority shall expire
9 annually on ~~September~~ October 1, unless renewed, or at such
10 other time or times as the ~~commissioner~~ board may provide by
11 rule.

12 "(g) On or before ~~July 1~~ of a date adopted by the
13 board each year, the certificate holder shall file with the
14 ~~commissioner~~ board in the form prescribed by the ~~commissioner~~
15 board a full and true statement as to the activities of any
16 trust established by it pursuant to this ~~article~~ chapter for
17 the preceding calendar year.

18 "(h) In addition to any other penalty that may be
19 provided for under this ~~article~~ chapter, the ~~commissioner~~
20 board may levy a fine not to exceed fifty dollars (\$50) per
21 day for each day the certificate holder fails to file its
22 annual statement, and the ~~commissioner~~ board may levy a fine
23 not to exceed fifty dollars (\$50) per day for each day the
24 certificate holder fails to file the statement of activities
25 of the trust. Upon notice to the certificate holder by the
26 ~~commissioner~~ board that the certificate holder has failed to
27 file the annual statement or the statement of activities of

1 the trust, the certificate holder's authority to sell preneed
2 contracts shall cease while the default continues.

3 "(i) To facilitate uniformity in financial
4 statements and to facilitate analysis, the ~~commissioner~~ board
5 may by rule adopt a form for financial statements. The holder
6 of a certificate of authority may submit a written request to
7 the ~~commissioner~~ board to exempt the holder from filing
8 financial statements at renewal. The ~~commissioner~~ board may
9 waive the requirement for filing a financial statement at
10 renewal if all of the following are satisfied:

11 "(1) No valid complaint has been filed since the
12 last ~~examination~~ audit.

13 "(2) No administrative action against the preneed
14 entity has been instituted since the last ~~examination~~ audit.

15 "(3) The certificate holder certifies that all
16 outstanding preneed contracts written by the holder since
17 April 30, 2002, are fully funded in accordance with this
18 chapter.

19 "(4) The certificate holder certifies that it will
20 fully fund all preneed contracts with life insurance, annuity,
21 or will deposit 100 percent of all funds collected on all
22 preneed contracts in trust within 30 days after the end of the
23 calendar month in which the funds are collected.

24 "(5) The preneed entity has provided to the
25 ~~department~~ board in a timely manner all required and requested
26 records.

1 "(6) The preneed entity agrees to file ~~quarterly~~
2 reports of its preneed activity on a form ~~or,~~ in a format, and
3 as often as prescribed by the ~~commissioner~~ board.

4 "(j) The ~~commissioner~~ board may authorize the
5 transfer of certificates of authority and establish fees for
6 the transfer in an amount not to exceed ~~one hundred dollars~~
7 ~~(\$100)~~ one hundred thirty-two dollars (\$132). Upon receipt of
8 an application for transfer, the ~~commissioner~~ board may grant
9 a temporary certificate of authority to the proposed
10 transferee, based upon criteria established by the
11 ~~commissioner~~ board by rule, which criteria shall promote the
12 purposes of this ~~article~~ chapter in protecting the consumer. A
13 temporary certificate of authority shall expire 60 days after
14 issuance unless renewed by the ~~commissioner~~ board.

15 "~~§27-17A-11.1.~~ §34-13-192.

16 "(a) On a ~~semi-annual basis,~~ within 45 days after
17 ~~the end of each second calendar reporting period~~ or before
18 July 1, each year, the certificate holder shall file a report
19 of its preneed contract activity on a form or in a format
20 prescribed by the ~~commissioner~~ board. The information reported
21 shall include the total number of preneed contracts in force
22 at the end of the previous ~~reporting period~~ calendar year, the
23 total number of preneed contracts sold during the ~~reporting~~
24 ~~period~~ previous calendar year, the total number of preneed
25 contracts fulfilled during the ~~reporting period~~ previous
26 calendar year, the total number of preneed contracts in force
27 at the end of the ~~reporting period~~ previous calendar year, and

1 such other information as may be required by the ~~commissioner~~
2 board. The report shall be organized by type of funding
3 including, life insurance, annuity, trust, letter of credit,
4 or surety bond. The report shall also provide a certification
5 by the trustee of the amount of assets held by the trust at
6 the beginning of the reporting period and at the end of the
7 reporting period, together with the amount of deposits and
8 withdrawals during the reporting period. If a certificate
9 holder shall twice default in complying with the requirements
10 of this subsection, the ~~commissioner~~ board may require that
11 the certificate holder thereafter submit the report within 45
12 days after the end of each calendar quarter and shall continue
13 so reporting for a time to be determined by the ~~commissioner~~
14 board.

15 "(b) The certificate holder shall maintain a written
16 log of preneed sales. The log shall be on a form or in a
17 format prescribed by the ~~commissioner~~ board, shall detail all
18 information required by the ~~commissioner~~ board, and shall be
19 available for inspection at any time by the ~~commissioner~~
20 board.

21 "(c) Each cemetery authority shall maintain a
22 written log of the sale of cemetery interment rights. The log
23 shall be on a form or in a format prescribed by the
24 ~~commissioner~~ board and shall detail all information required
25 by the ~~commissioner~~ board.

26 "~~§27-17A-12.~~ §34-13-193.

1 "(a) Preneed contract forms and related forms shall
2 be filed with and approved by the ~~commissioner~~ board.

3 "(b) Specific disclosure regarding whether,
4 consistent with the requirements of this chapter, the
5 certificate holder is placing certain preneed funds received
6 with the contract in trust, in an annuity, or in insurance, is
7 required in the preneed contract.

8 "(c) Preneed contracts which have been submitted to
9 the ~~commissioner~~ board shall be deemed to have been approved
10 by the ~~commissioner~~ board in the event that the ~~commissioner~~
11 board fails to notify the certificate holder that approval has
12 been denied within 30 days following submission to the
13 ~~commissioner~~ board.

14 "(d) The board may maintain a statewide database of
15 preneed contracts reported to the board pursuant to subsection
16 (a). The board may make information in this database
17 searchable by the public by means of unique identifiers, or
18 any other means, that the board determines respects the
19 privacy of those involved while also protecting consumers from
20 financial waste by allowing families to determine if a
21 deceased loved one has an existing preneed contract. Any
22 preneed consumer who does not wish for his or her information
23 to appear in this searchable database may opt out by following
24 a process established by the board.

25 "~~§27-17A-13.~~ §34-13-194.

26 "(a) Except as provided in Sections ~~27-17A-3~~ and
27 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract

1 shall require the monies paid to the seller or trustee to be
2 placed in trust in accordance with ~~Article 3~~ Division 3, for
3 funeral merchandise and services sold by funeral
4 establishments or third party sellers, or ~~Article 4~~ Division
5 4, for cemetery merchandise and services sold by cemetery
6 authorities.

7 "(b) Although this chapter does not apply to preneed
8 contracts entered into prior to May 1, 2002, a preneed
9 provider which contends that a preneed trust fund which was in
10 effect prior to May 1, 2002, complies with this chapter with
11 respect to the contracts entered into prior to May 1, 2002,
12 may provide to the ~~commissioner~~ board documentary proof
13 thereof. Upon the ~~commissioner~~ board determining that
14 compliance has been established, the pre-existing preneed
15 trust fund assets may be merged with or into the trust fund
16 required under this chapter or continued as the trust fund and
17 that determination by the ~~commissioner~~ board shall be noted on
18 the certificate of authority, and thereafter all preneed
19 contracts covered by the trust fund, including those entered
20 into prior to May 1, 2002, shall be subject to this chapter.

21 "~~§27-17A-14.~~ §34-13-195.

22 "(a) As an alternative to the trust requirement of
23 Section ~~27-17A-13~~ 34-13-194, the details of which are set
24 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed
25 provider ~~may~~, with the prior approval of the ~~commissioner~~
26 board, may purchase a surety bond in an amount not less than
27 the aggregate value of outstanding liabilities on undelivered

1 preneed contracts for merchandise, services, and cash
2 advances. For the purposes of this section, the term
3 outstanding liabilities means the original retail amount of
4 services and cash advances and the actual cost to the entity
5 to provide the undelivered merchandise sold on each contract
6 written after April 30, 2002. The surety bond shall be in an
7 amount sufficient to cover the outstanding liability at the
8 time each contract is executed.

9 "(b) The bond shall be made payable to the State of
10 Alabama for the benefit of the ~~commissioner~~ board and of all
11 purchasers of preneed merchandise, services, and cash
12 advances. The bond shall be issued by an insurance company
13 licensed in the State of Alabama and authorized to issue
14 surety bonds and approved by the ~~commissioner~~ board.

15 "(c) The amount of the bond shall be based on a
16 report documenting the outstanding liabilities of the preneed
17 provider for the previous calendar quarter and the projected
18 liability for the immediately following quarter, shall be
19 prepared by the preneed provider using generally accepted
20 accounting principles, and shall be signed by the chief
21 executive officer or chief financial officer of the preneed
22 provider. The report shall be compiled as of the end of the
23 preneed provider's fiscal year and updated quarterly.

24 "(d) The amount of the bond shall be increased or
25 decreased as necessary to correlate with changes in the
26 outstanding liabilities. Further, the ~~commissioner~~ board may
27 order the bond to be increased as necessary to correlate with

1 changes in the outstanding liabilities of bonded contracts due
2 to increases in the consumer price index.

3 "(e) If the preneed provider fails to maintain a
4 bond pursuant to this section the preneed provider shall cease
5 the offering for sale and sale of preneed merchandise,
6 services, and cash advances as provided by this chapter or
7 rule of the board.

8 "(f) No surety bond used to comply with this section
9 shall be canceled or subject to cancellation unless at least
10 60 days' advance notice thereof, in writing, is filed with the
11 ~~commissioner~~ board, by the surety company. The cancellation of
12 the bond shall not relieve the obligation of the surety
13 company for claims arising out of contracts issued or
14 otherwise covered before cancellation of the bond. In the
15 event that notice of termination of the bond is filed with the
16 ~~commissioner~~ board, the certificate holder insured thereunder
17 ~~shall~~, within 30 days of the filing of the notice of
18 termination with the ~~commissioner~~ board, shall provide the
19 ~~commissioner~~ board with a replacement bond or with evidence
20 which is satisfactory to the ~~commissioner~~ board demonstrating
21 that ~~the provisions of~~ this chapter ~~have~~ has been fully
22 complied with. If within 30 days of filing of the notice of
23 termination with the ~~commissioner~~ board no replacement bond
24 acceptable to the ~~commissioner~~ board or no evidence
25 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~
26 ~~provisions of~~ this chapter ~~have~~ has been complied with is
27 filed with the ~~commissioner~~ board, the ~~commissioner~~ board

1 shall suspend the license of the certificate holder until the
2 certificate holder files a replacement bond acceptable to the
3 ~~commissioner~~ board or demonstrates to the satisfaction of the
4 ~~commissioner~~ board that it has complied with ~~the provisions of~~
5 this chapter.

6 "(g) Upon prior approval by the ~~commissioner~~ board,
7 the preneed provider may file with the ~~commissioner~~ board a
8 letter of credit in the amount of the outstanding liabilities
9 in lieu of a surety bond, in the form and subject to the terms
10 and conditions evidencing the financial responsibility of the
11 party or parties issuing the letter of credit, and otherwise,
12 as may be prescribed by the ~~commissioner~~ board.

13 "~~§27-17A-15. §34-13-196.~~

14 "(a) The ~~commissioner shall~~ board, as often as ~~he or~~
15 ~~she may deem~~ deemed necessary, ~~examine~~ shall audit the
16 business of any person writing, or holding himself or herself
17 out to be writing, preneed contracts under this chapter to the
18 extent applicable. The ~~examination~~ audit shall be made by
19 designated representatives employed or ~~examiners of the~~
20 ~~Department of Insurance~~ contracted by the board.

21 "(b) The written report of each ~~examination~~ audit,
22 when completed, shall be filed in the office of the
23 ~~commissioner~~ board and, when so filed, shall not constitute a
24 public record.

25 "(c) Any person being ~~examined~~ audited shall
26 produce, upon request, all records of the person. The
27 designated representative of the ~~commissioner~~ board may at any

1 time examine the records and affairs of the person, whether in
2 connection with a formal ~~examination~~ audit or not.

3 "(d) The ~~commissioner~~ board may waive the
4 ~~examination~~ audit requirements of this section if the
5 certificate holder submits audited financial statements.

6 "(e) The person ~~examined~~ audited shall pay the
7 ~~examination~~ audit expenses, travel expense, and per diem
8 subsistence allowance provided for examiners and incurred by
9 the ~~commissioner's~~ board's representatives or ~~examiners~~
10 auditors in connection with an ~~examination in accordance with~~
11 ~~Section 27-2-25~~ audit as prescribed by rule of the board.

12 "(f) Whenever any special audit of the premises,
13 facilities, books, or records of a licensee is necessary based
14 on the failure of the licensee to comply with this chapter or
15 rule adopted by the board, the board shall charge a fee based
16 on the cost of the special audit including, but not limited
17 to, the prorated compensation of board employees involved in
18 the special audit and any expenses incurred.

19 "(g) If the board finds that a certificate of
20 authority holder or licensee has failed to operate in
21 accordance with this chapter and, by their action, has created
22 a deficit of preneed funds entrusted to them by the consumer,
23 then the board may:

24 "(1) Bring an action for injunctive relief against
25 the responsible licensee or the holder of the certificate of
26 authority in the Circuit Court of Montgomery County.

1 "(2) Issue an emergency suspension of all licenses
2 held by the holder of the certificate of authority, and its
3 associated personnel, in accordance with the Administrative
4 Procedure Act.

5 "(3) Take any other disciplinary action authorized
6 by this chapter.

7 "~~§27-17A-16.~~ §34-13-197.

8 "(a) A certificate holder shall be considered
9 inactive upon the acceptance of the surrender of its license
10 by the ~~commissioner~~ board or upon the nonreceipt by the
11 ~~commissioner~~ board of the certificate of authority renewal
12 application and fees.

13 "(b) A certificate holder shall cease all preneed
14 sales to the public upon becoming inactive. The certificate
15 holder shall collect and deposit into trust all of the funds
16 paid toward preneed contracts sold prior to becoming inactive.

17 "(c) Any certificate holder desiring to surrender
18 its license to the ~~commissioner~~ board shall first do all of
19 the following:

20 "(1) File notice with the ~~commissioner~~ board.

21 "(2) Submit copies of its existing trust agreements.

22 "(3) Submit a sample copy of each type of preneed
23 contract sold.

24 "(4) Resolve to the ~~commissioner's~~ satisfaction of
25 the board all findings and violations resulting from the last
26 ~~examination~~ audit conducted.

1 "(5) Pay all outstanding fines and invoices due the
2 ~~commissioner~~ board.

3 "(6) Submit its current certificate of authority.

4 "(d) Upon receipt of the notice, the ~~commissioner~~
5 board shall review the certificate holder's trust funds, trust
6 agreements, and evidence of all outstanding preneed contracts.

7 "(e) After a review to the ~~commissioner's~~
8 satisfaction of the board, the ~~commissioner~~ board shall
9 terminate the certificate of authority by an order which shall
10 set forth the conditions of termination established by the
11 ~~commissioner~~ board to ensure that the preneed funds will be
12 available for their intended purpose.

13 "(f) The trust fund of the certificate holder shall
14 be held intact and in trust after the certificate holder has
15 become inactive, and the funds in that trust shall be
16 disbursed in accordance with the requirements of the written
17 contracts until the funds have been exhausted.

18 "(g) The ~~commissioner~~ board shall continue to have
19 jurisdiction over the inactive certificate holder as if the
20 certificate were active and to require the reports and inspect
21 the records as the ~~commissioner~~ board deems appropriate so
22 long as there are funds in trust or preneed contracts that are
23 not fulfilled.

24 "(h) ~~In addition to any other~~ Other terms of
25 revocation or suspension ordered pursuant to ~~Chapter 13 of~~
26 ~~Title 34, the provisions of this chapter may also~~ apply.

27 "~~§27-17A-17.~~ §34-13-198.

1 ~~"(a) Any dissolution or liquidation of a certificate~~
2 ~~holder shall be deemed to be the liquidation of an insurance~~
3 ~~company and shall be conducted under the supervision of the~~
4 ~~commissioner, who shall have all powers with respect thereto~~
5 ~~granted to the commissioner under Chapter 32 with respect to~~
6 ~~the liquidation of insurance companies.~~

7 ~~"(b) The commissioner may apply for an order~~
8 ~~directing the commissioner to liquidate a certificate holder~~
9 ~~upon any one or more grounds set out in Section 27-32-6 or~~
10 ~~when, in the commissioner's opinion, the continued operation~~
11 ~~of the certificate holder would be hazardous either to~~
12 ~~purchasers, beneficiaries, or to the people of this state.~~

13 "The board may fine and revoke, suspend, or place on
14 probation the certificate of authority and the establishment
15 license of a certificate holder on any of the following
16 grounds:

17 "(1) The certificate holder is impaired or
18 insolvent.

19 "(2) The certificate holder has refused to submit,
20 or has withheld, any of its books, records, accounts, or
21 affairs to audit by the board.

22 "(3) The certificate holder has concealed or removed
23 records or preneed assets, or both.

24 "(4) The certificate holder has failed to comply
25 with an order of the board.

26 "(5) The certificate holder has transferred, or
27 attempted to transfer, substantially its entire property or

1 business, or has entered into any transaction the effect of
2 which is to merge substantially its entire property or
3 business with that of any other certificate holder, person,
4 corporation, or entity without first having obtained the
5 written approval of the board.

6 "(6) The certificate holder has willfully violated
7 its articles of incorporation or any law of this state,
8 including any rule of the board.

9 "(7) The certificate holder has an officer,
10 director, or manager who has refused to be audited under oath
11 concerning the affairs of the certificate holder.

12 "(8) If the board determines that the continued
13 operation of the certificate holder would be hazardous to
14 purchasers, beneficiaries, or residents of this state.

15 ~~"§27-17A-18. §34-13-199.~~

16 "(a) All individuals who offer preneed contracts to
17 the public, or who execute preneed contracts on behalf of a
18 certificate holder, shall be registered with the ~~commissioner~~
19 board as preneed sales agents, pursuant to this ~~article~~
20 chapter.

21 "(b) All preneed sales agents and funeral directors
22 acting as preneed sales agents shall be affiliated with the
23 certificate holder that they are representing.

24 "(c) A certificate holder shall be responsible for
25 the activities of all preneed sales agents and all funeral
26 directors acting as preneed sales agents, who are affiliated
27 with the certificate holder and who perform any type of

1 preneed-related activity on behalf of the certificate holder.
2 In addition to the preneed sales agents and funeral directors
3 acting as preneed sales agents, each certificate holder shall
4 also be subject to discipline if its preneed sales agents or
5 funeral directors acting as preneed sales agents violate ~~any~~
6 ~~provision of this article~~ chapter.

7 "(d) A preneed sales agent and a funeral director
8 acting as a preneed sales agent ~~shall be authorized to~~ may
9 sell, offer, and execute preneed contracts on behalf of all
10 properly licensed entities owned or operated by the sponsoring
11 certificate holder.

12 "(e) An individual may begin ~~functioning~~ operating
13 as a preneed sales agent as soon as a completed application
14 for registration, as set forth in subsection (g), is ~~sent to~~
15 ~~the commissioner~~ approved by the board.

16 "(f) (1) The qualifications for a preneed sales agent
17 are as follows:

18 "~~(1)~~a. The applicant must be at least 18 years of
19 age.

20 "~~(2)~~b. The applicant must be in good standing with
21 the ~~commissioner~~ board.

22 "~~(3)~~c. The applicant ~~must~~ may not have any felony or
23 misdemeanor convictions that relate to any activity regulated
24 by this chapter or a crime involving moral turpitude, as
25 defined by this chapter.

1 "d. The applicant shall be of good moral character
2 and submit to a criminal history background check pursuant to
3 subdivision (2).

4 "(2) An applicant for licensure as a preneed sales
5 agent shall submit to the board, on a form sworn to by the
6 applicant, his or her name, date of birth, Social Security
7 number, and two complete sets of fingerprints for completion
8 of a criminal history background check. The board shall submit
9 the fingerprints to the Alabama State Law Enforcement Agency
10 for a state criminal history background check. The
11 fingerprints shall be forwarded by the agency to the Federal
12 Bureau of Investigation for a national criminal history
13 background check. Costs associated with conducting a criminal
14 history background check shall be paid by the applicant. The
15 board shall keep information received pursuant to this
16 subdivision confidential, except that information received and
17 relied upon in denying the issuance of a certificate of
18 authority may be disclosed if necessary to support the denial.
19 All character information, including the information obtained
20 through the criminal history background checks, shall be
21 considered in licensure decisions to the extent permissible by
22 all applicable laws.

23 "(g) An application for registration as a preneed
24 sales agent shall be submitted to the ~~commissioner~~ board with
25 an application fee determined by the ~~commissioner~~ board, but
26 not to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars
27 (\$33), by the certificate holder in a form that has been

1 prescribed by ~~commissioner~~ board rule ~~and approved by the~~
2 ~~commissioner~~. The application shall contain, at a minimum, all
3 of the following:

4 "(1) The name, address, Social Security number, and
5 date of birth of the applicant and any other information as
6 the ~~commissioner~~ board may reasonably require of the
7 applicant.

8 "(2) The name, address, and license number of the
9 sponsoring certificate holder.

10 "(3) A representation, signed by the applicant, that
11 the applicant meets the requirements set forth in subsection
12 (f).

13 "(4) A representation, signed by the certificate
14 holder, that the applicant is authorized to offer, sell, and
15 sign preneed contracts on behalf of the certificate holder,
16 and that the certificate holder has trained the applicant in
17 ~~the provisions of this article~~ chapter relating to preneed
18 sales, the provisions of the certificate holder's preneed
19 contract, and the nature of the merchandise, services, or
20 burial rights sold by the certificate holder.

21 "(5) A statement indicating whether the applicant
22 has any type of working or agency relationship with any other
23 certificate holder or insurance company.

24 "(h) An individual may be registered as a preneed
25 sales agent on behalf of more than one certificate holder,
26 provided that the individual has received the written consent
27 of all certificate holders.

1 "(i) A certificate holder who has registered a
2 preneed sales agent shall notify the ~~commissioner~~ board within
3 30 days after the individual's status as a preneed sales agent
4 has been terminated.

5 "(j) Upon receipt of an application that complies
6 with all of the requirements of subsection (g), the
7 ~~commissioner~~ board shall register the applicant. The
8 ~~commissioner shall by rule~~ board, in accordance with this
9 chapter, shall provide for annual renewal of registration upon
10 receipt of a renewal application and a renewal fee not to
11 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as
12 set by the ~~commissioner~~ board.

13 "~~§27-17A-19.~~ §34-13-200.

14 "No person shall engage in this state in any trade
15 practice which is addressed in the Alabama Deceptive Trade
16 Practices Act ~~(Section 8-19-1 et seq.)~~, Chapter 19 of Title 8,
17 or as determined pursuant to this chapter to be, an unfair
18 method of competition or an unfair or deceptive act or
19 practice.

20 "~~§27-17A-20.~~ §34-13-201.

21 "(a) Whenever the ~~commissioner~~ board has reason to
22 believe that any person has engaged, or is engaging, in this
23 state in any unfair method of competition or any unfair or
24 deceptive act or practice as defined in this ~~article~~ chapter,
25 or is engaging in the sale of preneed contracts without being
26 properly licensed as required by this ~~article~~ chapter, or is
27 otherwise acting in violation of this chapter, and that a

1 proceeding by the ~~commissioner~~ board in respect thereto would
2 be in the interest of the public, the ~~commissioner~~ board shall
3 institute a proceeding in accordance with this section.

4 "(b) A statement of charges, notice, or order or
5 other process under this chapter may be served by anyone duly
6 authorized by the ~~commissioner~~ board. Service may be made
7 either in the manner provided by law for service of process in
8 civil actions or by certifying and mailing a copy of the
9 statement to the person affected by the statement, notice, or
10 order or other process at his or her or its residence or
11 principal office or place of business. The verified return by
12 the person so serving the statement, notice, or order or other
13 process, setting forth the manner of the service, shall be
14 proof of the service; and the return postcard receipt for the
15 statement, notice, or order or other process, certified and
16 mailed as provided in this subsection, shall be proof of
17 service of the statement, notice, or order or other process.

18 "(c) The ~~commissioner~~ board shall conduct or cause
19 to have conducted a hearing in accordance with ~~Article 1 of~~
20 ~~Chapter 2~~ this chapter, and shall, during the conduct of the
21 hearing, have those powers necessary to enforce this chapter
22 and rules of the board; however, the penalties for failure to
23 comply with a subpoena or with an order directing discovery
24 shall be limited to a fine not to exceed one thousand dollars
25 (\$1,000) per violation. All evidence introduced and presented
26 in a hearing conducted under this chapter shall be deemed
27 public information.

1 "~~§27-17A-21.~~ §34-13-202.

2 "(a) If the ~~commissioner~~ board finds that one or
3 more grounds exist for the discretionary suspension or
4 revocation of a certificate of authority or establishment
5 license issued under this ~~article~~ chapter, the ~~commissioner~~
6 ~~may board~~, in lieu of the suspension or revocation, may impose
7 a fine upon the certificate holder in an amount not to exceed
8 one thousand dollars (\$1,000) for each nonwillful violation
9 and in an amount not to exceed ten thousand dollars (\$10,000)
10 for each willful violation.

11 "(b) The ~~commissioner~~ board may grant not more than
12 30 days from the date of the order for the payment of any
13 fine.

14 "~~§27-17A-22.~~ §34-13-203.

15 "(a) (1) A person who knowingly receives payments for
16 a preneed contract without having a valid certificate of
17 authority:

18 "a. Commits a Class B felony, ~~punishable as provided~~
19 ~~by law~~, as to each contract on which the payments collected
20 equal or exceed, in the aggregate, two thousand five hundred
21 dollars (\$2,500).

22 "b. Commits a Class C felony, ~~punishable as provided~~
23 ~~by law~~, as to each contract on which the payments collected
24 are between, in the aggregate, five hundred dollars (\$500) and
25 two thousand five hundred dollars (\$2,500).

26 "c. Commits a Class A misdemeanor, ~~punishable as~~
27 ~~provided by law~~, as to each contract on which the payments

1 collected do not exceed, in the aggregate, five hundred
2 dollars (\$500).

3 "(2) In addition to the criminal penalty imposed
4 under subdivision (1), upon conviction of an offense under
5 subdivision (1), a person may not thereafter obtain a
6 certificate of authority or register as a preneed sales agent.

7 "(b) (1) A person who willfully fails to timely
8 deposit the amount required to be so deposited under this
9 chapter in a preneed merchandise and services trust or
10 endowment care trust, or who knowingly receives payments for
11 or executes a preneed contract without having a valid license
12 as a preneed sales agent:

13 "a. Commits a Class B felony, ~~punishable as provided~~
14 ~~by law,~~ as to each contract on which the amount due for
15 deposit in trust equals or exceeds, in the aggregate, two
16 thousand five hundred dollars (\$2,500).

17 "b. Commits a Class C felony, ~~punishable as provided~~
18 ~~by law,~~ as to each contract on which the amount due for
19 deposit in trust is less than, in the aggregate, two thousand
20 five hundred dollars (\$2,500).

21 "(2) In addition to the criminal penalty imposed
22 under subdivision (1), upon conviction of an offense under
23 subdivision (1), the certificate of authority or preneed sales
24 agent registration held by the person shall be automatically
25 revoked and the person may not thereafter obtain a certificate
26 of authority or register as a preneed sales agent.

1 "(c) (1) A person who knowingly withdraws funds or
2 assets from a preneed merchandise and services trust or
3 endowment care trust in a manner or under circumstances not
4 authorized by this chapter or rule of the board:

5 "a. Commits a Class B felony, ~~punishable as provided~~
6 ~~by law~~, if the aggregate amount withdrawn in any single
7 transaction or series of related transactions equals or
8 exceeds two thousand five hundred dollars (\$2,500).

9 "b. Commits a Class C felony, ~~punishable as provided~~
10 ~~by law~~, if the aggregate amount withdrawn in any single
11 transaction or series of related transactions is less than two
12 thousand five hundred dollars (\$2,500).

13 "(2) In addition to the criminal penalty imposed
14 under subdivision (1), upon conviction of an offense under
15 subdivision (1), the certificate of authority or preneed sales
16 agent registration held by the person shall be automatically
17 revoked, and the person may not thereafter obtain a
18 certificate of authority or register as a preneed sales agent.

19 "(d) A person commits a Class C felony, ~~punishable~~
20 ~~as provided by law~~, if any of the following occur:

21 "(1) The person knowingly delivers to the
22 ~~commissioner~~ board any official form, report, record, data, or
23 other document required by the ~~commissioner~~ board containing a
24 false statement or false information concerning a matter
25 material to the ~~commissioner~~ board in the exercise of ~~his or~~
26 ~~her~~ its authority to administer and enforce this chapter.

1 "(2) Incident to, or during the course of, an
2 ~~examination~~ audit, inspection, investigation, or other inquiry
3 authorized by this chapter, the person knowingly makes
4 available to a representative of the ~~commissioner~~ board any
5 official form, report, record, data, or other document
6 required by the ~~commissioner~~ board containing a false
7 statement or false information concerning a matter material to
8 the purpose of the ~~examination~~ audit, inspection,
9 investigation, or inquiry.

10 "(3) With respect to the business records of a
11 person engaging in, or who has at any time engaged in, the
12 sale of a preneed contract, a person, with a purpose to use
13 deception as defined in subdivision (1) of Section 13A-8-1,
14 makes false entries in ~~such~~ the records or alters, erases,
15 obliterates, deletes, or removes a correct entry in ~~such~~ the
16 records, fails to make a correct entry in ~~such~~ the records, or
17 prevents the making of a correct entry, or causes the omission
18 of a correct entry in ~~such~~ the records.

19 "(e) Except as otherwise provided in this ~~section~~
20 chapter, the willful violation of this chapter is a Class A
21 misdemeanor, ~~punishable as provided by law.~~

22 "~~(f) The duties and authority of the insurance fraud~~
23 ~~unit created under Section 27-12A-40, including the powers of~~
24 ~~the unit's investigators, shall extend to investigations into~~
25 ~~violations of this section.~~

26 "~~§27-17A-23.~~ §34-13-204.

1 "The ~~commissioner~~ board, the Attorney General, or
2 any person may bring a civil action against a person or
3 company violating this chapter or rule of the board in
4 Montgomery County or the appropriate court of the county in
5 which the alleged violator resides or has his or her or its
6 principal place of business or in the county wherein the
7 alleged violation occurred. Upon adverse adjudication, the
8 defendant shall be liable for actual damages caused by the
9 violation. The court, as provided by common law, may award
10 punitive damages and may provide equitable relief as it deems
11 proper or necessary, including enjoining the defendant from
12 further violation of this chapter or rule of the board.

13 "~~§27-17A-24.~~ §34-13-205.

14 The provisions of this chapter are cumulative to
15 rights under the general civil and common law, and no action
16 of the ~~commissioner~~ board may abrogate the rights to damages
17 or other relief in any court.

18 "~~§27-17A-25.~~ §34-13-206.

19 "(a) All fees collected by the ~~commissioner~~ board
20 pursuant to this chapter shall be deposited into the ~~State~~
21 ~~Treasury to the credit of the Insurance Department Fund~~
22 Alabama State Funeral Service Fund.

23 "(b) All fines collected by the ~~commissioner~~ board
24 pursuant to this chapter shall be deposited into the ~~State~~
25 ~~Treasury to the credit of the State General Fund~~ Alabama State
26 Funeral Service Fund.

1 "(c) The ~~commissioner~~ board may use funds available
2 from any source including, but not limited to, grants,
3 appropriations, and gifts, for any purpose in the enforcement
4 of this chapter."

5 Section 4. Sections 27-17A-30, 27-17A-31, 27-17A-32,
6 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are
7 amended and renumbered as Division 3 of Article 5 of Chapter
8 13 of Title 34, Code of Alabama 1975, to read as follows:

9 "Division 3. Funeral Merchandise and Services Trust
10 Fund.

11 "~~§27-17A-30.~~ §34-13-230.

12 "To comply with the trust requirement of subsection
13 (a) of Section ~~27-17A-13~~ 34-13-194, all certificate holders
14 providing preneed contracts for funeral services or funeral
15 merchandise shall be subject to this ~~article~~ chapter.

16 "~~§27-17A-31.~~ §34-13-231.

17 "(a) Any person who is paid, collects, or receives
18 funds under a preneed contract for funeral services or funeral
19 merchandise to be funded by trust shall deposit in trust an
20 amount at least equal to the sum of 75 percent of the amount
21 collected on the purchase price for all funeral services and
22 funeral merchandise sold, transportation, and facilities
23 rented other than outer burial containers, 60 percent of the
24 amount collected on the purchase price for outer burial
25 containers, 110 percent of the wholesale cost of memorials
26 from the amount collected on the purchase price of memorials,

1 and 100 percent of the amount collected on the purchase price
2 for all cash advance items sold.

3 "(b) All deposits shall be made within 30 days after
4 the end of the calendar month in which the preneed contract is
5 paid in full, unless, prior to that time, all liabilities of
6 the seller under the preneed contract to deliver the specific
7 funeral merchandise or funeral services, or both, or the
8 specific cash advances, identified by the preneed provider as
9 properly allocated to the payment, have been satisfied, or the
10 preneed contract is validly cancelled.

11 "(c) The trustee shall take title to the property
12 conveyed to the trust for the purpose of investing,
13 protecting, and conserving it for the certificate holder;
14 collecting income; and distributing the principal and income
15 as prescribed in this ~~article~~ chapter.

16 "(d) The certificate holder is prohibited from
17 sharing in the discharge of these responsibilities, except
18 that the certificate holder may appoint an adviser to the
19 trustee or elect tax free investments. Nothing in this chapter
20 shall prohibit a trustee from electing the qualified funeral
21 trust option under the Internal Revenue Code.

22 "(e) The trust agreement shall be submitted to the
23 ~~commissioner~~ board for approval and filing.

24 "(f) The funds shall be held in trust, both as to
25 principal and income earned thereon, and shall remain intact,
26 except that the cost of the operation of the trust or trust

1 account authorized by this section may be deducted from the
2 income earned thereon.

3 "(g) The contract purchaser shall have no interest
4 whatsoever in, or power whatsoever over, funds deposited in
5 trust pursuant to this section.

6 "(h) In no event may ~~such~~ the funds be loaned to a
7 certificate holder, an affiliate of a certificate holder, or
8 any person directly or indirectly engaged in the burial,
9 funeral home, or cemetery business. Furthermore, the
10 certificate holder's interest in the trust shall not be
11 pledged as collateral for any loans, debts, or liabilities of
12 the certificate holder and shall not be transferred to any
13 person without the prior written approval from the
14 ~~commissioner~~ board and the trustee. Even though the
15 certificate holder shall be deemed and treated as the settlor
16 and beneficiary of the trust for all purposes, all of the
17 trust funds are exempt from all claims of creditors of the
18 certificate holder except as to the claims of the contract
19 purchaser, his or her representative, or the ~~commissioner~~
20 board.

21 "(i) For all preneed contracts written or entered
22 into on or after January 1, 2015, all required deposits in
23 trust shall commence not later than 30 days after the end of
24 the calendar month in which the sum of the monies collected on
25 the preneed contract exceeds the amount that is not required
26 to be deposited in trust as determined under subsection (a)
27 unless, prior to that time, all liabilities of the preneed

1 seller under the preneed contract have been satisfied, or the
2 preneed contract is validly cancelled. Further required
3 deposits on the contract shall thereafter be made not later
4 than 30 days after the end of the calendar month in which each
5 contract payment is collected by the seller.

6 ~~"§27-17A-32. §34-13-232.~~

7 "(a) If amounts paid by the purchaser under a
8 preneed contract for funeral merchandise have previously been
9 deposited in trust, the seller may withdraw the principal
10 amount and trust appreciation attributable to the delivered
11 item at such time as the funeral merchandise is delivered or
12 installed or, if comprised of materials designed to withstand
13 prolonged, protected storage without deterioration, the
14 merchandise is placed in storage with a responsible third
15 party bonded and insured for the wholesale value thereof and
16 evidenced by a receipt specifically identifying the item, the
17 specific preneed contract, the location of the item, and the
18 identity and address of the bonding and insuring parties. For
19 purposes of this subsection only, caskets and alternative
20 containers may not be held in storage by the seller or a third
21 party storage facility prior to the death of the funeral
22 beneficiary.

23 "(b) The trustee shall make regular valuations of
24 the assets it holds in trust and provide a report of the
25 valuations to the certificate holder at least quarterly. At
26 all times, the certificate holder shall be able to determine
27 the amount held in trust attributable to each contract holder.

1 For all contracts effective on or after January 1, 2015, the
2 determination shall be based upon the fair market value of the
3 trust at the time and the proportionate share of the fair
4 market value attributable to each contract holder. For all
5 contracts in effect before January 1, 2015, the valuation of
6 each contract may be calculated using any valuation method
7 that had been previously approved by the ~~commissioner or the~~
8 ~~department~~ Commissioner or the Department of Insurance before
9 January 1, 2015. Any person who withdraws appreciation in the
10 value of trust, other than the pro rata portion of ~~such the~~
11 appreciation which may be withdrawn upon the death of a
12 contract's funeral beneficiary or upon cancellation of a
13 preneed contract, shall be required to make additional
14 deposits from his or her own funds to restore the aggregate
15 value of assets to the value of funds deposited in trust, but
16 excluding from the funds deposited those funds paid out upon
17 preneed contracts which the person has fully performed or
18 which have been otherwise withdrawn, as provided in this
19 ~~article~~ chapter. The certificate holder shall be liable to
20 third parties to the extent that income from the trust is not
21 sufficient to pay the expenses of the trust.

22 "(c) The trustee of the trust established pursuant
23 to this ~~article~~ chapter shall have all of the following
24 powers:

25 "(1) Make investments and exercise necessary
26 investment powers, provided that the ~~commissioner~~ board may by

1 order require the trustee to liquidate or dispose of any
2 investment within 30 days after the order.

3 "(2) Commingle the property of the trust with the
4 property of any other preneed funeral, preneed cemetery, or
5 endowment care trust established pursuant to this ~~article~~
6 chapter and make corresponding allocations and divisions of
7 assets, liabilities, income, and expenses.

8 "(d) Notwithstanding the provisions of Section
9 19-3-125, the trustee ~~may~~, subject to compliance with the
10 requirements set forth below, may invest any portion or all of
11 the funds received under preneed contracts and deposited in
12 trust in life insurance contracts or annuities issued on the
13 lives of preneed contract purchasers or preneed contract
14 beneficiaries, hereinafter, the insured or annuitant, without
15 any obligation to cover at a minimum the retail amount of the
16 preneed contract at the time of purchase of the life insurance
17 contracts or annuities as set forth in Section ~~27-17A-3~~
18 34-13-171.

19 "(1) Trust funds shall not be invested by the
20 trustee in life insurance contracts or annuities unless the
21 following requirements are met:

22 "a. The company issuing the life insurance contracts
23 or annuities is licensed by the Department of Insurance and
24 the insurance producer or annuity seller is properly licensed
25 within its domiciliary jurisdiction.

1 "b. Prior to the investment, the insured or
2 annuitant consents, in writing, to the investment in life
3 insurance contracts or annuities.

4 "c. For life insurance contracts or annuities issued
5 prior to May 6, 2008, and currently in force, such contracts
6 shall be construed to have been an authorized investment by
7 the trustee under this chapter if the insured or annuitant is
8 notified in writing of the existence of any such contract and
9 provided with a copy of the contract.

10 " (2) Upon request, the insured or annuitant shall be
11 provided with a copy of any life insurance contract or annuity
12 issued to a preneed trustee at no expense to the insured or
13 annuitant.

14 " (3) Any life insurance contract or annuity issued
15 in accordance with this subsection and otherwise in compliance
16 therewith shall be valid and in full force according to the
17 terms and conditions thereof.

18 " (4) A trustee that invests all or any portion of
19 the funds received under preneed contracts and deposited in
20 trust in life insurance contracts or annuities issued by one
21 company licensed by the ~~department~~ State Department of
22 Insurance shall be considered to satisfy the standards and
23 requirements of Section 19-3-120.2 and Chapter 3B of Title 19.

24 " (5) It is the intention of the Legislature that
25 this subsection shall be retroactive and shall apply to all
26 life insurance contracts or annuities issued prior to May 6,
27 2008.

1 "~~§27-17A-33.~~ §34-13-233.

2 "(a) A purchaser, by providing written notice to the
3 certificate holder, may cancel a preneed contract within 30
4 days of the date that the contract was executed provided that
5 the funeral merchandise and funeral services have not yet been
6 used. Upon providing the notice, the purchaser shall be
7 entitled to a complete refund of the amount paid, except for
8 the amount allocable to any funeral merchandise or funeral
9 services that have been used, and shall be released from all
10 obligations under the contract. This subsection shall apply to
11 all items that are purchased as part of a preneed contract.

12 "(b) After 30 days from the date the preneed
13 contract was executed, a purchaser, by providing written
14 notice to the certificate holder, may cancel the funeral
15 services, funeral merchandise, facilities, and cash advance
16 items portions of a preneed contract at any time, and shall be
17 entitled to the refund defined in the preneed contract
18 allocable to those items. Any accumulated earnings allocable
19 to the preneed contract shall be paid to the certificate
20 holder upon the cancellation.

21 "(c) Upon breach of contract or failure of the
22 certificate holder to provide funeral merchandise or services
23 under a preneed contract, the contract purchaser shall be
24 entitled to a refund of 100 percent of all money paid on the
25 contract. The refund shall be made within 30 days after
26 receipt by the certificate holder of the contract purchaser's
27 written request for refund.

1 "(d) If a purchaser is 90 days past due in making
2 payments on a preneed contract, the contract shall be
3 considered to be in default, and the certificate holder shall
4 be entitled to cancel the contract and withdraw all funds in
5 trust. Upon making the withdrawal, the certificate holder
6 shall refund to the purchaser the amount defined in the
7 preneed contract in the event of default of the purchaser,
8 provided that the certificate holder has provided the
9 purchaser with 30 days' written notice of its intention to
10 exercise any of its rights under this provision.

11 "(e) All preneed contracts are cancelable and
12 revocable as provided in this section during the lifetime of
13 the purchaser, provided that a preneed contract does not
14 restrict any contract purchaser who is a qualified applicant
15 for, or a recipient of, supplemental security income,
16 temporary cash assistance, or Medicaid from making his or her
17 contract irrevocable.

18 "(f) In the event that the preneed contract is made
19 irrevocable pursuant to subsection (e), ~~the purchaser or the~~
20 authorizing agent shall have the right to appoint a provider
21 other than the seller of the preneed contract. In the event
22 that a provider is appointed pursuant to this subsection, the
23 seller shall transfer to the appointed provider the amount
24 paid by the purchaser to the seller and those amounts
25 deposited into trust, less a reasonable transfer fee
26 determined by the ~~seller~~ board. In the event the preneed
27 contract was funded by an insurance or annuity policy, the

1 seller shall cancel and relinquish any assignment of benefits
2 or beneficiary status under the policy or annuity contract,
3 and deliver the policy, if in the custody of the preneed
4 seller, to the policy owner or his or her legal
5 representative, and the seller may collect a reasonable
6 transfer fee as determined by rule of the board. No transfer
7 hereunder shall occur without the acceptance of the appointed
8 provider.

9 "(g) All refunds required to be made under this
10 section to a purchaser who has canceled a contract must be
11 made within 30 days after the date the written notice of
12 cancellation is received by the certificate holder.

13 ~~"§27-17A-34.~~ §34-13-234.

14 "(a) Disbursement of funds discharging any preneed
15 contract for funeral services or funeral merchandise fulfilled
16 after May 1, 2002, shall be made by the trustee to the
17 certificate holder upon receipt by the trustee of a
18 certification of the certificate holder that the preneed
19 contract has been performed in whole or in part or the preneed
20 contract has been cancelled. Before the trustee may disburse
21 any trust funds, the certificate holder shall provide to the
22 trustee a death certificate or other valid proof of death, a
23 letter from the preneed contract holder cancelling the preneed
24 contract or valid proof the contract has been cancelled in
25 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof
26 the merchandise has been delivered and installed, and services
27 have been performed. Any trustee accepting preneed contract

1 proceeds under this ~~article~~ chapter may rely upon the
2 certification of the certificate holder accompanied by the
3 required proof, and shall not be liable to anyone for such
4 reliance. If the contract is only partially performed, the
5 disbursement shall only cover that portion of the contract
6 performed. In the event of any contract default by the
7 contract purchaser, or in the event that the funeral
8 merchandise or funeral service contracted for is not provided,
9 the trustee shall return, within 30 days after its receipt of
10 a written request therefor, 100 percent of the funds deposited
11 into the trust on the contract and the income and accretion
12 thereon to the certificate holder or to its assigns, subject
13 to Section ~~27-17A-33~~ 34-13-233.

14 "(b) For all contracts effective on or after January
15 1, 2015, the amount that may be withdrawn from the trust upon
16 fulfillment or cancellation of any particular preneed contract
17 may not exceed the amount attributable to that preneed
18 contract in proportion to the total amount held in trust for
19 all preneed contracts as of the date of withdrawal. For all
20 contracts in effect before January 1, 2015, the valuation of
21 each contract and the amount that may be withdrawn from the
22 trust may be calculated using any valuation method that had
23 been approved by the ~~commissioner or the department~~
24 Commissioner or the Department of Insurance before January 1,
25 2015."

26 Section 5. Sections 27-17A-40, 27-17A-41, 27-17A-42,
27 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,

1 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,
2 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of
3 the Code of Alabama 1975, are amended and renumbered as
4 Division 4 of Article 5 of Chapter 13 of Title 34, Code of
5 Alabama 1975, to read as follows:

6 "Division 4. Cemetery Merchandise and Services Trust
7 Fund.

8 ~~"§27-17A-40.~~ §34-13-260.

9 "To comply with the trust requirement of subsection
10 (a) of Section ~~27-17A-13~~ 34-13-194, all certificate holders
11 who are cemetery authorities providing preneed contracts for
12 cemetery services or cemetery merchandise shall be subject to
13 this ~~article~~ chapter.

14 ~~"§27-17A-41.~~ §34-13-261.

15 "(a) Any person who receives or collects any funds
16 on account of a preneed contract in this state for cemetery
17 services or cemetery merchandise, or both, entered into after
18 May 1, 2002, shall have the obligation to pay over and
19 contribute into a trust fund as hereinafter described, those
20 amounts or proportions of the funds as hereinafter provided.

21 "(b) Whether or not the preneed contract provides
22 for cemetery merchandise or cemetery services, or any
23 combination thereof, the trust fund shall be referred to in
24 this section as the Cemetery Merchandise and Services Trust
25 Fund.

1 "(c) The trustee of the Cemetery Merchandise and
2 Services Trust Fund shall be qualified as such within the
3 definition of the trustee.

4 "(d) The trustee shall take title to the property
5 conveyed to the Cemetery Merchandise and Services Trust Fund
6 subject to this section.

7 "(e) The contract purchaser shall have no interest
8 whatsoever in, or power whatsoever over, the funds deposited
9 in the Cemetery Merchandise and Services Trust Fund.

10 "(f) The party contracting to deliver the cemetery
11 merchandise or cemetery services or cash advances, whether or
12 not a preneed provider, shall be referred to in this section
13 as the "seller."

14 "(g) The seller shall be the beneficiary of the
15 Cemetery Merchandise and Services Trust Fund.

16 "~~§27-17A-42.~~ §34-13-262.

17 "(a) The obligation of the seller under a preneed
18 contract shall be to make contributions into the Cemetery
19 Merchandise and Services Trust Fund in accordance with the
20 following formulae:

21 "(1) With respect to all cemetery merchandise, 110
22 percent of wholesale cost.

23 "(2) With respect to outer burial containers, 60
24 percent of the purchase price specified in the preneed
25 contract.

26 "(3) With respect to cemetery services, 60 percent
27 of the purchase price specified in the preneed contract.

1 "(4) With respect to all cash advance items sold,
2 100 percent of the purchase price specified for the same in
3 the preneed contract.

4 "(5) With respect to caskets, 75 percent of the
5 purchase price.

6 "(b) All contributions shall be made within 30 days
7 after the end of the calendar month in which the preneed
8 contract is paid in full, unless, prior to that time, all
9 liabilities of the seller under the preneed contract to
10 deliver the specific cemetery merchandise or cemetery
11 services, or both, or the specific cash advances, identified
12 by the preneed provider as properly allocated to the payment,
13 have been satisfied, or the preneed contract is validly
14 cancelled.

15 "(c) For all preneed contracts entered into on or
16 after January 1, 2015, all contributions shall be made not
17 later than 30 days after the end of the calendar month in
18 which the sum of the monies collected on the preneed contract
19 exceeds the amount that is not required to be contributed as
20 determined under subsection (a), unless, prior to that time,
21 all liabilities of the seller under the preneed contract have
22 been satisfied, or the preneed contract is validly cancelled.
23 Further required trust contributions on the contract shall
24 thereafter be made not later than 30 days after the end of the
25 calendar month in which each contract payment is collected by
26 the seller.

1 "(d) The trustee shall invest and reinvest the
2 Cemetery Merchandise and Services Trust Fund.

3 "(e) The trustee shall make regular evaluations of
4 the fair market value of assets held in and liabilities, if
5 any, of the Cemetery Merchandise and Services Trust Fund and
6 provide a report of the evaluations to the seller at least
7 quarterly. Upon receipt of each quarterly report, the seller
8 may submit to the trustee a written and detailed analysis
9 concerning the balance of funds in the Cemetery Merchandise
10 and Services Trust Fund, certified under oath as being true
11 and correct upon information and belief by a responsible
12 officer of the seller.

13 "(f) While the obligation of the seller to make
14 contributions to the Cemetery Merchandise and Services Trust
15 Fund is set forth in this section, the obligation of the
16 seller at the time of making certain withdrawals from the
17 Cemetery Merchandise and Services Trust Fund as herein
18 provided for shall be calculated with respect to the current
19 wholesale cost of cemetery merchandise and current retail
20 price of cemetery services and cash advances at the time of
21 withdrawal. If the fair market value as reported by the
22 trustee exceeds 110 percent of the total of the following, the
23 seller shall be entitled to withdraw and retain from the
24 merchandise trust fund, the excess funds therein: 110 percent
25 of the current wholesale cost of the liability to deliver all
26 cemetery merchandise, 60 percent of the current retail price
27 for all cemetery services, 60 percent of the current retail

1 price of outer burial containers, 75 percent of the current
2 retail price of caskets, and 100 percent of the current retail
3 price of all cash advances, for the total of all preneed
4 contracts for which the purchasers have paid in full, all
5 calculated as of the time of withdrawal; and concerning the
6 total of all preneed contracts for which the purchasers have
7 not paid in full, 25 percent of the total of the following:
8 110 percent of the current wholesale cost of the liability to
9 deliver all cemetery merchandise, 60 percent of the current
10 retail price for all cemetery services, and 100 percent of the
11 current retail price of all cash advances, all calculated as
12 of the time of withdrawal.

13 "(g) At least annually the seller shall make the
14 aforesaid analysis and certification and provide the same to
15 the trustee. If the certification discloses that the fair
16 market value of the Cemetery Merchandise and Services Trust
17 Fund is less than 100 percent of the aggregate calculated
18 amount the seller shall from its own funds contribute to the
19 Cemetery Merchandise and Services Trust Fund within the 12
20 months succeeding the annual computation the amount necessary
21 to restore the trust fund to an amount equal to not less than
22 100 percent of the aggregate amount so calculated.

23 "~~§27-17A-43.~~ §34-13-263.

24 "(a) Upon cancellation of a preneed contract by
25 mutual agreement between the seller and purchaser, or upon
26 unilateral cancellation of a preneed contract by the seller by
27 reason of default on the part of the purchaser, or other valid

1 cancellation by reason of transfers to another seller or
2 otherwise, the seller ~~may~~, upon submission of a certification
3 under oath by a responsible officer of the seller to the
4 trustee, may withdraw from the Cemetery Merchandise and
5 Services Trust Fund and retain an amount equal to the amount
6 of all funds contributed to the trust fund with respect to the
7 preneed contract. Any trustee accepting preneed contract
8 proceeds under this ~~article~~ chapter may rely on the seller's
9 certification under oath as required herein to be made, and
10 shall not be liable to anyone for such reliance.

11 "(b) At such time as the seller undertakes to
12 perform its obligations under a preneed contract by delivery
13 or installation, or both, of cemetery merchandise and the
14 provision of cemetery services and disbursement on account of
15 cash advances, or otherwise, upon certification to the trustee
16 under oath by a responsible officer of the seller that the
17 obligations of the seller under the contract have been
18 completely fulfilled, the seller may withdraw from the
19 Cemetery Merchandise and Services Trust Fund and retain an
20 amount equal to the current wholesale cost to the fund with
21 respect to the preneed contract.

22 "(c) At such time as the seller has fulfilled all of
23 its obligations under all preneed contracts with respect to
24 which funds have been contributed to the trust fund, and
25 certification under oath to the trustee by a responsible
26 officer of the seller of those facts, the seller may withdraw

1 from the trust fund and retain all of the remaining assets
2 thereof.

3 ~~"§27-17A-44.~~ §34-13-264.

4 "If the amounts paid by the purchaser under a
5 preneed contract for cemetery merchandise have previously been
6 deposited in trust, the seller may withdraw the principal
7 amount there, at such time as the cemetery merchandise is
8 delivered or installed or, if comprised of materials designed
9 to withstand prolonged, protected storage without
10 deterioration, the merchandise is placed in storage with a
11 responsible third party bonded and insured for the wholesale
12 value thereof and evidenced by a receipt specifically
13 identifying the item, the specific preneed contract, the
14 location of the item, and the identity and address of the
15 bonding and insuring parties. For purposes of this section
16 only, caskets and alternative containers may not be held in
17 storage by the seller or a third party storage facility prior
18 to the death of the funeral beneficiary.

19 ~~"§27-17A-45.~~ §34-13-265.

20 "An endowment care fund and all payments or
21 contributions to it are expressly permitted as and for
22 charitable and eleemosynary purposes. No payment, gift, grant,
23 bequest, or other contribution for endowment care is invalid
24 by reason of any indefiniteness or uncertainty of the persons
25 designated as beneficiaries in the instruments creating the
26 fund, nor is the fund or any contributions to it invalid as

1 violating any law against perpetuities, or the suspension of
2 the power of alienation of title to property.

3 ~~"§27-17A-46. §34-13-266.~~

4 "Any cemetery now existing or hereafter established,
5 excluding those operated by governmental agencies or religious
6 institutions, ~~shall be~~ may be qualified as an endowment care
7 cemetery, except those cemeteries which do not charge fees or
8 sell plots, interment rights, or any related cemetery
9 merchandise.

10 ~~"§27-17A-47. §34-13-267.~~

11 "(a) Every cemetery authority operating an endowment
12 care cemetery shall establish an endowment care fund which
13 shall be placed with and held by a bank, trust company,
14 savings and loan association, or other financial institution
15 authorized to provide trust services under Title 5, as
16 amended, or under the applicable laws of the United States or
17 any other state, or a board of trustees, consisting of at
18 least three members, who shall reside in the State of Alabama,
19 one of whom is engaged in outside cemetery management, and
20 each of whom shall be bonded to honestly perform the duties of
21 trustee under a formal trust agreement.

22 "(b) Except as specifically provided in this
23 subsection, commencing on July 1, 2014, a person serving on a
24 board of trustees or cemetery authority may not also serve as
25 a trustee of an endowment care fund for the cemetery
26 authority. A board of trustees in existence on July 1, 2014,
27 may continue to serve as the trustee of an endowment care fund

1 if the board of trustees otherwise complies with this
2 subsection. Unless exempted by the ~~commissioner~~ board pursuant
3 to this subsection, on or before January 1, 2015, each member
4 of a board of trustees in existence on July 1, 2014, shall
5 furnish the bond required by subsection (a) in the greater of
6 one hundred thousand dollars (\$100,000) or the amount in each
7 endowment care fund for which the board of trustees acts as
8 trustee as of December 31, 2014. Thereafter, the amount of the
9 bonds shall be increased on January 1 of each succeeding year
10 to equal the amount in each endowment care fund as of the
11 immediately preceding December 31. The ~~commissioner~~ board
12 shall exempt a board of trustees from the bond requirement if
13 the board of trustees provides to the ~~commissioner~~ board an
14 annual audit report that satisfies all of the following
15 criteria:

16 "(1) The report is prepared by a certified public
17 accountant authorized to practice in Alabama.

18 "(2) The report evidences that the review made the
19 subject of the report by the accountant encompasses each
20 endowment care fund for which the board of trustees acts as
21 trustee.

22 "(3) The report notes relating to the endowment care
23 fund or funds are in a form that is reasonably acceptable to
24 the ~~commissioner~~ board.

25 "(4) The report does not evidence any material
26 violation of or noncompliance with this chapter relating to an
27 endowment care fund.

1 "(c) The corporate trustee or board of trustees
2 shall be referred to as a qualified trustee. Unless otherwise
3 specified in this ~~article~~ chapter or in the terms of the trust
4 instrument, the trustee of any trust established under or
5 pursuant to this ~~article~~ chapter shall have all powers granted
6 to trustees under Article 14 of Chapter 3 of Title 19. The
7 incorporation herein of such powers shall not be deemed to
8 imply any duties of trustees of trusts established under or
9 pursuant to this ~~article~~ chapter not expressly delineated in
10 this ~~article~~ chapter.

11 "(d) The cemetery authority may employ a person to
12 advise the trustee in the management of the fund.

13 "(e) The cemetery authority may enter into a
14 contract with the qualified trustee for the management and
15 investment of the endowment care fund, which contract may
16 provide for the payment of income from the fund of reasonable
17 fees or commissions to the trustee, and its reasonable
18 expenses for administering the trust.

19 "(f) As often as ~~he or she~~ the board may deem
20 necessary, the ~~commissioner~~ board may ~~examine~~ audit the
21 records or facilities, or both, of any cemetery authority
22 operating an endowment care cemetery.

23 "~~§27-17A-48.~~ §34-13-268.

24 "(a) Each cemetery authority shall comply with this
25 chapter and maintain at each place of business a list of the
26 names and addresses of its owners and directors, which shall
27 be available to the public.

1 "(b) Each cemetery authority shall maintain a record
2 of all ~~property~~ interment space owners by name and last known
3 address with a description of merchandise and location of
4 burial lots, crypts, or niches and the records shall be on a
5 form or in a format prescribed by the board and shall detail
6 all information required by the board. A plat map shall be
7 maintained for each cemetery location at the cemetery business
8 office. A book or file shall be kept as to the date, location
9 by lot, and space number of each person interred or entombed
10 in the cemetery. A written copy of the cemetery rules and
11 regulations shall be maintained at each location and made
12 available to the public upon request.

13 "~~§27-17A-49.~~ §34-13-269.

14 "(a) From the sale price of each plot, crypt, or
15 niche sold by the cemetery authority, of an endowment care
16 cemetery, it shall pay an amount, not less than as determined
17 in accordance with the following schedule, to the trustee of
18 the endowment care fund, which payment shall be paid over to
19 the trustee not more than four months after the close of the
20 month in which the total or final payment on the sale has been
21 received:

22 "(1) Fifteen percent of the sale price of each grave
23 or lawn crypt space.

24 "(2) Five percent of the sale price of each
25 mausoleum crypt or niche.

26 "(3) The amount received for special care funds,
27 gifts, grants, contribution devises, or bequests made with

1 respect to the separate or special care of a particular lot,
2 grave, crypt, niche, mausoleum, monument, or marker or that of
3 a particular family, as distinguished from the general endowed
4 care of a cemetery or of a garden.

5 "(b) In addition to subsection (a), a cemetery
6 authority may receive, and transfer to the trustee, as a part
7 of or incident to the endowment care fund, any property, real,
8 personal, or mixed, bequeathed, devised, given, or otherwise
9 contributed to it for endowment care purposes. Any contractual
10 endowment care deposits shall fall under this ~~article~~ chapter.

11 "(c) Any cemetery authority which is organized and
12 engaged in business prior to May 1, 2002, shall qualify as an
13 endowment care cemetery if the following occur:

14 "(1) Not already placed, it shall within 90 days of
15 May 1, 2002, have placed the entire principal of any endowment
16 care fund in its possession, custody, or control, into the
17 hands of a qualified trustee designated by it, to be
18 administered as set forth in this ~~article~~ chapter; and
19 principal of its endowment care fund, or the aggregate
20 principal of its endowment care funds, if more than one, shall
21 have a fair market value on either May 1, 2002, or on the date
22 of transfer to the trustee of not less than twenty-five
23 thousand dollars (\$25,000); or it shall substitute 25 percent
24 for each percentage of each sale for the next five years or
25 five thousand dollars (\$5,000) per year, whichever is greater,
26 until the balance of twenty-five thousand dollars (\$25,000) is
27 reached. In such case, the entire amount of twenty-five

1 thousand dollars (\$25,000) shall be paid into the fund before
2 the end of the fifth year, and no interest may be removed from
3 the fund until the twenty-five thousand dollars (\$25,000)
4 minimum has been reached.

5 "(2) It shall at all times after May 1, 2002, comply
6 with the minimum requirements for payments to the trustee for
7 endowment care.

8 "(d) Any cemetery authority organizing a cemetery
9 after May 1, 2002, whether it be by incorporation,
10 association, individually, or by any other means, or having
11 its first burial after May 1, 2002, before disposing of any
12 burial lot or right or making any sale thereof or making its
13 first burial, or both, shall cause to be deposited with a
14 qualified trustee, in cash, the sum of twenty-five thousand
15 dollars (\$25,000) in the endowment care fund.

16 "(e) When a cemetery authority has placed with a
17 trustee, pursuant to this ~~article~~ chapter, a sum of money in
18 excess of the aggregate which would be required only under
19 subsection (a), the cemetery authority shall not be required
20 under this ~~article~~ chapter to make further payments to the
21 trustee until such time thereafter as, taking into account all
22 sales of plots, crypts, and niches in the cemetery property
23 since the first of the sales, the aggregate of payments to the
24 trustee if made in accordance with subsection (a) would equal
25 the applicable minimum amount paid to the trustee under
26 subdivision (1) of subsection (c), or subsection (d) ~~of this~~
27 ~~section~~.

1 "(f) Any deposit previously made, or represented to
2 be made to an existing endowment care fund which exceeds 10
3 percent of the gross selling price of all plots, crypts, and
4 niches sold since representation of endowment care shall be
5 made a permanent part of the endowment care fund and
6 transferred to the qualified trustee under this ~~article~~
7 chapter.

8 "~~§27-17A-50.~~ §34-13-270.

9 "(a) No cemetery authority may directly or
10 indirectly require or direct the investment, reinvestment, or
11 retention by a qualified trustee of any part of an endowment
12 care trust in any asset or business in which the cemetery
13 authority or any officer, director, owner, partner, or
14 employee of the cemetery authority has a financial interest.
15 Nothing contained in this subsection shall prevent the
16 trustee, subject to the provisions regarding investment and
17 reinvestment of the trust estate as are contained in the
18 governing instrument creating the trust, from investing,
19 reinvesting, or retaining any asset or business in which the
20 cemetery authority or any officer, director, owner, partner,
21 or employee of the cemetery authority has an insubstantial or
22 nonmaterial financial interest, provided that the trustee, in
23 the exercise of the trustee's discretion, deems the
24 investment, reinvestment, or retention to be for the best
25 interest of the trust estate.

26 "(b) The net income from the endowment care fund, to
27 the extent that the same is distributed from the fund, shall

1 be used exclusively for covering the costs of endowment care
2 of the cemetery.

3 "(c) For the purposes of this section, net income
4 does not include realized or unrealized capital gains or
5 losses. All realized capital gains and losses shall be
6 recorded to corpus, which is the sum of deposits made by a
7 cemetery authority into an endowment care fund, pursuant to
8 Section ~~27-17A-49~~ 34-13-269, and all realized capital gains or
9 losses. Capital gains taxes, if any, may be paid from the
10 corpus. Unrealized capital gains and losses, if any, shall be
11 recorded as an adjustment to the fair market value of the
12 endowment care fund.

13 "~~§27-17A-51.~~ §34-13-271.

14 "The trustee shall not be required to inquire into
15 the propriety of the expenditures made by the cemetery
16 authority in connection with endowment care of the cemetery,
17 and it shall not be held responsible in any manner whatsoever
18 for and on account of payments of the income from the
19 endowment care fund made to the cemetery authority.

20 "~~§27-17A-52.~~ §34-13-272.

21 "The trustee ~~shall~~, not less than annually, shall
22 file with the cemetery authority an account which shall
23 include a complete disclosure of all activity since the
24 previous account and a statement detailing fund investments.

25 "~~§27-17A-53.~~ §34-13-273.

26 "To the extent that any endowment care trust
27 existing on May 1, 2002, includes investments or assets, the

1 retention of which the trustee in the free exercise of its
2 discretion deems not in the best interest of the trust estate,
3 the trustee shall dispose of the investments or assets as soon
4 as practicable without undue sacrifice to the trust estate,
5 and in any event within two years after May 1, 2002.

6 ~~"§27-17A-54. §34-13-274.~~

7 "An annual report of the endowment care fund shall
8 be made to the ~~commissioner~~ board by each cemetery authority
9 within 90 days of the close of each calendar year. This report
10 shall include the qualified trustee's name or names, the bond
11 numbers if individual trustees or the name and address of the
12 financial institution in which the fund is maintained, and the
13 affidavit of the cemetery authority affirming compliance with
14 this ~~article~~ chapter. Prior to the sale or transfer of a
15 cemetery, the cemetery authority shall report and document to
16 the ~~commissioner~~ board that the endowment care fund is
17 currently funded in accordance with this ~~article~~ chapter.

18 ~~"§27-17A-55. §34-13-275.~~

19 "A cemetery authority shall start construction of
20 that section of a mausoleum or bank of below-ground crypts in
21 which sales, contracts for sale, reservations for sale, or
22 agreements for sale are being made, within five years after
23 the date of the first sale or when 75 percent of the mausoleum
24 or below-ground crypts have been sold and the purchase price
25 has been received, whichever occurs first. The construction
26 shall be completed within six years after the date of the
27 first sale made. Extensions for completion, not to exceed one

1 year, may be granted by the ~~commissioner~~ board for good cause
2 shown. If the units have not been completely constructed at
3 the time of need or the time specified herein, unless
4 otherwise specified in the preneed contract, all monies paid
5 shall be refunded upon request, plus interest earned thereon
6 if deposited by the cemetery authority in an escrow or trust
7 fund, and if not so deposited in an escrow or trust fund
8 earning interest, then plus interest in an amount equal to the
9 interest or discount which would have been earned thereon had
10 the funds been invested in United States Treasury Bills having
11 a 90-day maturity.

12 ~~"§27-17A-56. §34-13-276.~~

13 "(a) Each cemetery authority shall adopt rules.

14 Cemetery rules and regulations are adopted for the mutual
15 protection of the cemetery owners and the owners of interment
16 rights in the cemetery. All owners of interment rights and
17 other persons within the cemetery shall be subject to these
18 rules and regulations as they now exist and as they may be
19 amended or altered by the cemetery. The cemetery authority ~~has~~
20 ~~the right to~~ may enforce these rules and regulations. ~~The~~
21 ~~cemetery authority expressly reserves the right~~ and, at any
22 time and without prior notice to any owners, ~~to~~ may adopt new
23 rules and regulations or ~~to~~ amend, modify, or repeal any
24 ~~section, paragraph, or sentence of these~~ rules and
25 regulations.

26 "(b) This section shall not apply to the officers,
27 directors, shareholders, partners, employees, agents, or

1 representatives of a cemetery authority who intentionally
2 commit an act of vandalism or other illegal act.

3 "~~§27-17A-57.~~ §34-13-277.

4 "The ~~commissioner~~ board shall have the same
5 jurisdiction over funeral establishments, funeral directors,
6 cemetery authorities, or third party sellers who sell preneed
7 contracts without a preneed certificate of authority as ~~he or~~
8 ~~she~~ the board has over those preneed sellers who possess a
9 preneed certificate of authority."

10 Section 6. Beginning with the 2022 fiscal year, the
11 Department of Insurance may transfer to the Alabama Board of
12 Funeral Service quarterly, for deposit by the board into the
13 Alabama State Funeral Service Fund, the total amount of three
14 hundred thousand dollars (\$300,000) per fiscal year, to defray
15 costs associated with the administration and operation of the
16 Alabama Preneed Funeral and Cemetery Act of 2022 by the board.
17 Unless extended by an act of the Legislature, this section
18 shall be repealed at the end of the 2025 fiscal year.

19 Section 7. All laws or parts of laws which conflict
20 with this act are repealed, and specifically, Section
21 27-17A-2, Code of Alabama 1975, relating to definitions as now
22 appearing in Section 34-13-1, Code of Alabama 1975, is
23 repealed.

24 Section 8. Although this bill would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds, the bill is excluded from further
27 requirements and application under Amendment 621, as amended

1 by Amendment 890, now appearing as Section 111.05 of the
2 Official ReCompilation of the Constitution of Alabama of 1901,
3 as amended, because the bill defines a new crime or amends the
4 definition of an existing crime.

5 Section 9. This act shall become effective on the
6 first day of the first month following its passage and
7 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Boards, Agencies
and Commissions..... 11-JAN-22

Read for the second time and placed
on the calendar 2 amendments 16-FEB-22

Read for the third time and passed
as amended..... 17-MAR-22

Yeas 89, Nays 5, Abstains 4

Jeff Woodard
Clerk