

HB81 INTRODUCED



1 7GGL22-1
2 By Representative Clouse
3 RFD: Insurance
4 First Read: 07-Mar-23
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SYNOPSIS:

Under existing law, the Alabama Board of Funeral Service licenses and regulates funeral establishments, funeral directors, and embalmers.

This bill would provide further for definitions and the membership of the board.

This bill would also establish the Alabama Preneed Funeral and Cemetery Act of 2023 and would transfer the regulation of preneed contracts pursuant to the Preneed Funeral and Cemetery Act from the Commissioner and the Department of Insurance to the board.

This bill would authorize the Department of Insurance to temporarily transfer certain funds to the Alabama Board of Funeral Service to defray costs associated with the administration and operation of the Alabama Preneed Funeral and Cemetery Act of 2023.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or



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29 provides a local source of revenue, to the entity for
30 the purpose.

31 The purpose or effect of this bill would be to
32 require a new or increased expenditure of local funds
33 within the meaning of the amendment. However, the bill
34 does not require approval of a local governmental
35 entity or enactment by a 2/3 vote to become effective
36 because it comes within one of the specified exceptions
37 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Relating to the Alabama Board of Funeral Service; to
45 amend Section 34-13-1, as amended by Act 2022-339, 2022
46 Regular Session, Sections 34-13-20, 34-13-21, and 34-13-22,
47 Sections 34-13-23 and 34-13-27, as amended by Act 2022-339,
48 2022 Regular Session, Code of Alabama 1975, to rename the
49 Alabama Board of Funeral Service as the Alabama Board of
50 Funeral Services and to provide further for definitions and
51 the membership of the board; to add Article 5 to Chapter 13,
52 Title 34, Code of Alabama 1975, by amending and renumbering
53 Sections 27-17A-1, 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25,
54 inclusive, 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to
55 27-17A-57, inclusive, as Sections 34-13-170 to 34-13-172,
56 inclusive, 34-13-190 to 34-13-206, inclusive, 34-13-230 to



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57 34-13-234, inclusive, and 34-13-260 to 34-13-277, inclusive,
58 Code of Alabama 1975; to establish the Alabama Preneed Funeral
59 and Cemetery Act of 2023; to transfer the existing Preneed
60 Funeral and Cemetery Act, and the regulation of preneed
61 contracts, from the Commissioner and Department of Insurance
62 to the Alabama Board of Funeral Service; to authorize the
63 Department of Insurance to temporarily transfer certain funds
64 to the board to defray costs associated with the
65 administration and operation of the Alabama Preneed Funeral
66 and Cemetery Act of 2023; and in connection therewith would
67 have as its purpose or effect the requirement of a new or
68 increased expenditure of local funds within the meaning of
69 Section 111.05 of the Constitution of Alabama of 2022.

70 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

71 Section 1. Sections 34-13-1, as amended by Act
72 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21,
73 and 34-13-22, and Sections 34-13-23 and 34-13-27, as amended
74 by Act 2022-339, 2022 Regular Session, of the Code of Alabama
75 1975, are amended to read as follows:

76 "§34-13-1

77 (a) For purposes of this chapter, the following terms
78 have the following meanings:

79 (1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY SCIENCE. A
80 school or college approved by the American Board of Funeral
81 Service Education, or a successor organization, which
82 maintains a course of instruction of not less than 48 calendar
83 weeks or four academic quarters or college terms and which
84 gives a course of instruction in the fundamental subjects



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85 related to funeral service and mortuary science education as
86 approved by the American Board of Funeral Service Education,
87 or a successor organization, and other courses of instruction
88 in fundamental subjects as may be prescribed by the Alabama
89 Board of Funeral Service.

90 (2) ALKALINE HYDROLYSIS. The technical process that
91 reduces human remains to bone fragments using heat, water, and
92 chemical agents.

93 (3) ALTERNATIVE CONTAINER. A nonmetal receptacle or
94 enclosure, without ornamentation or a fixed interior lining,
95 which is designed for the encasement of human remains and
96 which is made of cardboard, pressed-wood, composition
97 materials, with or without an outside covering, pouches of
98 canvas, or other materials.

99 ~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION. The
100 national academic accreditation agency for college and
101 university programs in funeral service and mortuary science
102 education. The accrediting function of the American Board of
103 Funeral Service Education is recognized by the United States
104 Department of Education and the Council on Higher Education
105 Accreditation.

106 ~~(4)~~ (5) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.
107 Any person engaged in the study of the art of embalming under
108 the instructions and supervision of a licensed embalmer
109 practicing in this state.

110 ~~(5)~~ (6) APPRENTICE FUNERAL DIRECTOR or FUNERAL
111 DIRECTOR'S APPRENTICE. Any person operating under or in
112 association with a funeral director for the purpose of



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113 learning the business or profession of funeral director, to
114 the end that he or she may become licensed under this chapter.

115 (7) AT NEED. At the time of death or immediately
116 following death.

117 ~~(6)~~ (8) AUTHORIZING AGENT. A person at least 18 years of
118 age, except in the case of a surviving spouse or parent, who
119 is legally entitled to order the cremation or final
120 disposition of particular human remains.

121 (9) BASIC SERVICES FEE. The fee for the professional
122 services of the funeral director and staff that is added to
123 the total cost of the funeral arrangements. The term includes
124 a charge for services performed in conducting the arrangements
125 conference, planning the funeral, securing the necessary
126 permits, preparing the notices, and coordinating the cemetery
127 or crematory arrangements.

128 (10) BELOW-GROUND CRYPT. A preplaced enclosed chamber,
129 usually constructed of reinforced concrete, poured in place or
130 a precast unit installed in quantity, either side-by-side or
131 multiple depth, and covered by earth or sod and known also as
132 a lawn crypt or turf-top crypt.

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

136 ~~(7)~~ (12) BOARD. The Alabama Board of Funeral Service.

137 (13) BRANCH. Any person or entity that is part of a
138 common business enterprise that has a certificate of authority
139 issued pursuant to Article 5 and elects to operate under a
140 name other than that of the common business enterprise.



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141 (14) BURIAL. The placement of human remains in a grave
142 space or lawn crypt.

143 ~~(8)~~ (15) CASH ADVANCE ITEMS. Any item of service or
144 merchandise described to a purchaser using the term cash
145 advance, accommodation, cash disbursement, or similar term. A
146 cash advance item is also any item obtained from a third party
147 and paid for by a funeral provider on behalf of a purchaser.
148 Cash advance items include, but are not limited to, all of the
149 following:

- 150 a. Cemetery or crematory services.
- 151 b. Pallbearers.
- 152 c. Public or other transportation.
- 153 d. Clergy honoraria.
- 154 e. Flowers.
- 155 f. Musicians or singers.
- 156 g. Nurses.
- 157 h. Obituary notices.
- 158 i. Funeral programs.
- 159 j. Gratuities.
- 160 k. Death certificates.
- 161 l. Outer burial containers.
- 162 m. Cemetery plots.
- 163 n. Escorts.

164 ~~(9)~~ (16) CASKET. A rigid container designed for the
165 encasement of human remains which is usually constructed of
166 wood, metal, or similar material and ornamented and lined with
167 fabric.

168 ~~(10)~~ (17) CEMETERY. A place established, maintained,



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169 managed, operated, or improved which is dedicated to and used
170 or intended to be used for the permanent interment of human
171 remains and their memorialization. It may be either land or
172 earth interment; a columbarium; a mausoleum for vault or crypt
173 entombment; a structure or place used or intended to be used
174 for the interment of cremated remains; cryogenic storage; or
175 any combination of one or more thereof.

176 ~~(11)~~ (18) CEMETERY AUTHORITY. Any individual, person,
177 firm, profit or nonprofit corporation, trustee, partnership,
178 society, religious society, church association or
179 denomination, municipality, or other group or entity, however
180 organized, insofar as they or any of them may now or hereafter
181 establish, own, operate, lease, control, or manage one or more
182 cemeteries, burial parks, mausoleums, columbariums, or any
183 combination or variation thereof, or hold lands or structures
184 for burial grounds or burial purposes in this state and engage
185 in the operation of a cemetery, including any one or more of
186 the following: The care and maintenance of a cemetery; the
187 interment, entombment, and memorialization of the human dead
188 in a cemetery; the sale, installation, care, maintenance, or
189 any combination thereof, with respect of monuments, markers,
190 foundations, memorials, burial vaults, urns, crypts,
191 mausoleums, columbariums, flower vases, floral arrangements,
192 and other cemetery accessories for installation or use within
193 a cemetery; and the supervision and conduct of funeral and
194 burial services within the bounds of the cemetery.

195 (19) CEMETERY MERCHANDISE. Any personal property
196 offered for sale, contracted for sale, or sold for use in



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197 connection with the burial, final disposition,
198 memorialization, interment, entombment, or inurnment of human
199 remains by a cemetery authority. The term specifically
200 includes, but is not limited to, the casket, the alternative
201 container, the outer burial container, and the memorial.

202 (20) CEMETERY SERVICES. At need or preneed services
203 provided by a cemetery authority for interment, entombment,
204 inurnment, and installation of cemetery merchandise.

205 (21) CERTIFICATE HOLDER. A funeral establishment,
206 cemetery authority, third-party seller, or any other person to
207 whom a valid certificate of authority to sell preneed
208 contracts has been granted by the board.

209 (22) COLUMBARIUM. A structure or room or space in a
210 building or structure used or intended to be used for the
211 inurnment of cremated remains.

212 ~~(12)~~ (23) CONVICTION. The entry of a plea of guilty or a
213 guilty verdict rendered by any court of competent
214 jurisdiction, excluding traffic violations.

215 ~~(13)~~ (24) CREMATED REMAINS. Human remains recovered
216 after the completion of the cremation process, including
217 pulverization, which leaves only bone fragments reduced to
218 unidentifiable dimensions, and the residue of any foreign
219 materials that were cremated with the human remains.

220 (25) CREMATED REMAINS CONTAINER. A receptacle in which
221 cremated remains are placed.

222 ~~(14)~~ (26) CREMATION. The technical irreversible process,
223 using heat, flames, or chemical agents, that reduces human
224 remains to bone fragments. The reduction takes place through



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225 heat and evaporation. Cremation shall include the processing,
226 and may include the pulverization, of the bone fragments.

227 Cremation is a process and is a method of final disposition.

228 ~~(15)~~ (27) CREMATIONIST. A person licensed by the board
229 to perform the procedure of cremation.

230 ~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel used
231 to reduce human remains to bone fragments.

232 ~~(17)~~ (29) CREMATION CONTAINER. The container in which
233 human remains are transported to a crematory, in which human
234 remains are placed upon arrival at a crematory, or for storage
235 and placement in a cremation chamber for cremation.

236 ~~(18)~~ (30) CREMATORY. A building or portion of a building
237 that houses a cremation chamber and that may house a holding
238 facility for purposes of cremation and as part of a funeral
239 establishment.

240 (31) CREMATORY AUTHORITY. Any person who owns or
241 controls a crematory.

242 (32) DEATH CERTIFICATE. A legal document containing
243 vital statistics pertaining to the life and death of the
244 deceased.

245 (33) DECEASED or DECEDENT. One who is no longer living.

246 ~~(19)~~ (34) EMBALMER. Any person engaged, or holding
247 himself or herself out as engaged, in the business, practice,
248 science, or profession of embalming, whether on his or her own
249 behalf or in the employ of a registered and licensed funeral
250 director.

251 ~~(20)~~ (35) EMBALMING. The practice, science, or
252 profession, as commonly practiced, of preserving,



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253 disinfecting, and preparing by application of chemicals or
254 other effectual methods, human dead for burial, cremation, or
255 transportation.

256 (36) ENCASEMENT. The placement of human remains in a
257 rigid container including, but not limited to, a casket or
258 urn.

259 (37) ENDOWMENT CARE. The maintenance and repair of all
260 places in a cemetery, subject to the rules of the cemetery
261 authority. The term may also be referred to as endowed care,
262 perpetual care, improvement care, or permanent care.

263 (38) ENDOWMENT CARE TRUST FUND. An irrevocable trust
264 fund set aside by law with a trustee, along with the income
265 therefrom, to provide for the endowment care of a cemetery.

266 (39) ENTOMBMENT. The act of placing human remains in a
267 mausoleum crypt.

268 (40) FINAL DISPOSITION. The lawful disposal of human
269 remains whether by interment, cremation, or other method.

270 ~~(21)~~ (41) FUNERAL. A ceremony for celebrating,
271 sanctifying, or remembering the life of a person who has died.
272 A funeral may be divided into the following two parts:

273 a. The funeral service, which may take place at a
274 funeral home, church, or other place.

275 b. The committal service or disposition, which may take
276 place by the grave, tomb, mausoleum, or crematory where the
277 body of the decedent is to be buried or cremated.

278 ~~(22)~~ (42) FUNERAL ARRANGEMENTS. The completing of
279 funeral service arrangements, cremation arrangements, and the
280 financial details of a funeral at the time of death. The term



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281 includes the collection of vital statistic information, death
282 certificate information, obituary and funeral notice
283 completion, the completion of a statement of funeral goods and
284 services selected, organizing of funeral and memorial services
285 for families, and the ordering of cash advance items.

286 (43) FUNERAL BENEFICIARY. The person or persons who
287 will receive the benefit of the funeral and cemetery goods and
288 services to be delivered under a preneed contract at the time
289 of his, her, or their death.

290 ~~(23)~~ (44) FUNERAL DIRECTING. The practice of directing
291 or supervising funerals, the practice of preparing dead human
292 bodies for burial by means other than embalming, or the
293 preparation for the final disposition of dead human bodies;
294 the making of funeral arrangements or providing for funeral
295 services or the making of financial arrangements for the
296 rendering of these services; the provision or maintenance of a
297 place for the preparation for final disposition of dead human
298 bodies; the use of the terms funeral director, undertaker,
299 mortician, funeral parlor, or any other term from which can be
300 implied the practice of funeral directing; or the holding out
301 to the public that one is a funeral director or engaged in a
302 practice described in this subdivision.

303 ~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be
304 licensed to practice the profession of funeral directing under
305 the laws of this state, who consults with the public, who
306 plans details of funeral services with members of the family
307 and minister or any other person responsible for such
308 planning, or who directs, is in charge, or apparent charge of,



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309 and supervises funeral service in a funeral home, church, or
310 other place; who enters into the making, negotiation, or
311 completion of financial arrangements for funeral services, or
312 who uses in connection with the profession of funeral
313 directing the terms funeral director, undertaker, funeral
314 counselor, mortician, or any other term or picture or
315 combination thereof when considered in context in which used,
316 from which can be implied the practicing of the profession of
317 funeral directing or that the person using such term or
318 picture can be implied to be holding himself or herself out to
319 the public as being engaged in the profession of funeral
320 directing; and for all purposes under Alabama law, a funeral
321 director is considered a professional. For the purposes of
322 this chapter, the term does not include any cemetery
323 authority.

324 ~~(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes any
325 funeral home or mortuary service located at a specific street
326 address where the profession of funeral directing, embalming,
327 or cremation is practiced in the care, planning, and
328 preparation for burial, cremation, or transportation of human
329 dead. A funeral establishment shall consist of and maintain
330 all of the following facilities:

331 a. A preparation room equipped with sanitary nonporous
332 floor and wall and necessary drainage and ventilation, and
333 containing operating embalming equipment, necessary approved
334 tables, instruments, hot and cold running water, containers or
335 receptacles for soiled linen or clothing, and supplies for the
336 preparation and embalming of dead human bodies for burial,



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337 cremation, and transportation.

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

342 c. At least one operating funeral coach or hearse
343 properly licensed and equipped for transporting human remains
344 in a casket or urn.

345 d. If engaged in the practice of cremation, the
346 establishment shall satisfy all crematory requirements
347 provided in this chapter and have on site an adequate supply
348 of urns for display and sale.

349 e. A room suitable for public viewing or other funeral
350 services that is a minimum of 1,000 square feet.

351 f. An office for holding arrangement conferences with
352 relatives or authorizing agents.

353 (47) FUNERAL SERVICE. At need or preneed services
354 provided by a funeral establishment in connection with funeral
355 directing, final disposition of human remains, or installation
356 of memorials.

357 ~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE. Any
358 item offered for sale, contracted for sale, or sold for use in
359 connection with funeral directing or funeral services when
360 sold by a funeral director including, but not limited to,
361 caskets, alternative containers, outer burial containers,
362 urns, memorials, clothing used to dress human dead when sold
363 by a funeral director, and all equipment and accoutrements
364 normally required for the preparation for burial or funeral



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365 and other disposition of human dead.

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

368 ~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or
369 shameful immorality or showing a moral indifference to the
370 opinions of the good and respectable members of the community
371 and to the just obligations of the position held by the
372 offender.

373 ~~(28)~~ (51) HOLDING ROOM. Either of the following:

374 a. A room within a funeral establishment that satisfies
375 the requirements of a branch location as provided in this
376 chapter or board rule, for the retention of human remains
377 before final disposition.

378 b. A room within a crematory facility, designated for
379 the retention of human remains before and after cremation,
380 that is not accessible to the public.

381 (52) HUMAN REMAINS. The body of a decedent in any stage
382 of decomposition, including cremated remains.

383 (53) INTERMENT. The final disposition of human remains
384 by burial, burial at sea, entombment, or inurnment.

385 (54) INTERMENT RIGHT. The right to inter human remains
386 in a particular interment space in a cemetery.

387 (55) INTERMENT SPACE. A space intended for the final
388 disposition of human remains including, but not limited to, a
389 grave space, mausoleum crypt, niche, and below-ground crypt.

390 (56) INURNMENT. The act of placing cremated remains in
391 a receptacle including, but not limited to, an urn and
392 depositing it in a niche.



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393 (57) LICENSEE. Any individual, firm, corporation,
394 partnership, joint venture, or limited liability company which
395 obtains a license, certificate, or registration in accordance
396 with this chapter.

397 ~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral
398 director and cremationist who has full charge, control, and
399 supervision of all activities involving cremation at a funeral
400 establishment or crematory.

401 ~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who has
402 full charge, control, and supervision of all activities
403 involving the preparation room and embalming.

404 ~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed funeral
405 director who has full charge, control, and supervision of all
406 activities involving funeral directing for a funeral
407 establishment.

408 (61) MAUSOLEUM. A chamber or structure used or intended
409 to be used for entombment.

410 (62) MAUSOLEUM CRYPT. A chamber of a mausoleum of
411 sufficient size for entombment of human remains.

412 (63) MEMORIAL. Any product, other than a mausoleum or
413 columbarium, used for identifying an interment space or for
414 commemoration of the life, deeds, or career of some decedent
415 including, but not limited to, a monument, marker, niche
416 plate, urn garden plaque, crypt plate, cenotaph, marker bench,
417 and vase.

418 (64) MEMORIAL RETAILER. Any person offering or selling
419 memorials at retail to the public.

420 (65) MEMORIALIZATION. Any permanent system designed to



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421 mark or record the names and other data pertaining to a
422 decedent.

423 ~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or
424 violent act, or any act involving theft, theft of services,
425 theft by deception, extortion, receiving stolen property,
426 identity theft, forgery, fraud, tampering with records,
427 bribery, perjury, or any similar act in any jurisdiction.

428 ~~(33)~~ (67) MORTUARY SCIENCE. The scientific,
429 professional, and practical aspects, with due consideration
430 given to accepted practices, covering the care, preparation
431 for burial, or transportation of dead human bodies, which
432 shall include the preservation and sanitation of the bodies
433 and restorative art and those aspects related to public
434 health, jurisprudence, and good business administration.

435 ~~(34)~~ (68) MORTUARY SERVICE. A location with a specific
436 street address where embalming or cremation, or both, is
437 practiced for a licensed funeral establishment and where no
438 services or merchandise are sold directly or at retail to the
439 public. A mortuary service shall consist of and maintain all
440 of the following facilities:

441 a. A preparation room equipped with sanitary nonporous
442 floor and walls, operating embalming equipment, and necessary
443 drainage and ventilation and containing necessary approved
444 tables, instruments, hot and cold running water, containers or
445 receptacles for soiled linen or clothing, and supplies for the
446 preparation and embalming of dead human bodies for burial,
447 cremation, and transportation.

448 b. At least one operating motor vehicle properly



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449 licensed and equipped for transporting human remains in a
450 casket or urn.

451 c. If engaged in the practice of cremation, the
452 establishment shall satisfy all requirements for a crematory
453 provided in this chapter.

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

456 ~~(35)~~ (70) OPERATOR. A person, corporation, firm, legal
457 representative, managing funeral director, general manager, or
458 other organization owning or operating a funeral establishment
459 or cemetery.

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

464 (72) PERSON. Any individual, firm, corporation,
465 partnership, joint venture, limited liability company,
466 association, trustee, government or governmental subdivision,
467 agency, or other entity, or any combination thereof.

468 ~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has been
469 actively and continuously engaged or employed in the practice
470 of embalming under the supervision of a licensed embalmer for
471 four consecutive years immediately preceding May 1, 1975, and
472 has been issued a license as a practical embalmer under the
473 grandfather provisions of this chapter.

474 (74) PREARRANGEMENT. The term applied to completing the
475 details for selection of merchandise or services on a preneed
476 basis, which may or may not include prefunding or prepayment.



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477 (75) PREDEVELOPED. Designated areas or buildings within
478 a cemetery that have been mapped and planned for future
479 construction but are not yet completed.

480 (76) PREDEVELOPED INTERMENT SPACE. An interment space
481 that is planned for future construction but is not yet
482 completed.

483 (77) PREFUND. The term applied to completing the
484 financial details of a prearrangement, which include
485 prefunding or prepayment.

486 (78) PRENEED. Any time prior to death.

487 (79) PRENEED CONTRACT. A written contract to purchase
488 funeral merchandise, funeral services, cemetery merchandise,
489 or cemetery services from the seller on a preneed basis.

490 (80) PRENEED CONTRACT TRUST FUND. The funds received
491 pursuant to a preneed contract which are required by law to be
492 held in trust until the merchandise or services purchased
493 pursuant to the contract are delivered or provided or until
494 otherwise lawfully withdrawn.

495 (81) PRENEED SALES AGENT. A person who is in the
496 business of selling preneed contracts.

497 ~~(37)~~ (82) PROCESSING or PULVERIZATION. The reduction of
498 identifiable bone fragments after the completion of the
499 cremation process to unidentifiable bone fragments or
500 granulated particles by manual or mechanical means.

501 (83) PROVIDER. The person, who may or may not be the
502 seller, who actually provides merchandise and services under
503 the terms of a preneed contract.

504 (84) PURCHASE PRICE. The amount paid by the purchaser



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505 for merchandise and services purchased under a preneed
506 contract, exclusive of finance charges, sales tax, charges
507 relating to interment rights, arrangement conference fees, or
508 charges for credit life insurance.

509 (85) PURCHASER. The person who purchases a preneed
510 contract either on his or her behalf or on behalf of a
511 third-party beneficiary.

512 (86) RELIGIOUS INSTITUTION. An organization formed
513 primarily for religious purposes which has applied and
514 qualified for exemption from federal income tax as an exempt
515 organization under Section 501(c)(3) of the Internal Revenue
516 Code of 1986, as amended.

517 (87) SCATTERING. The lawful dispersion of cremated
518 remains.

519 (88) SELLER. Any person offering or selling merchandise
520 or services on a preneed basis including, but not limited to,
521 funeral establishments, cemetery authorities, crematory
522 authorities, and memorial retailers.

523 (89) SPECIAL CARE. Any care provided, or to be
524 provided, that is supplemental to, or in excess of, endowment
525 care, in accordance with the specific directions of any donor
526 of funds for those purposes.

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

529 ~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for cremated
530 remains, usually composed of cardboard, plastic, or similar
531 material, that can be closed in a manner that prevents the
532 leakage or spillage of the cremated remains or the entrance of



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533 foreign material, and is a single container of sufficient size
534 to hold the cremated remains until an urn is acquired or the
535 cremated remains are scattered or buried.

536 (92) THIRD-PARTY SELLER. Any person, who is not a
537 funeral establishment or a cemetery authority, engaged in the
538 sale of preneed funeral merchandise or cemetery merchandise.

539 (93) TRUSTEE. Any person, state or national bank, trust
540 company, or federally insured savings and loan association
541 lawfully appointed as fiduciary over funds deposited by one or
542 more purchasers of a preneed contract or deposited pursuant to
543 an endowment care trust fund. The term does not refer to a
544 board of trustees.

545 ~~(39)~~ (94) URN. A receptacle designed to encase cremated
546 remains.

547 (b) Nothing in this chapter shall require a funeral
548 director or funeral establishment to have or provide a chapel
549 or to restrict the conduct of funeral services from a church
550 or chapel."

551 "§34-13-20

552 (a) There is established the Alabama Board of Funeral
553 ~~Service~~ Services, consisting of ~~nine~~ 14 members, each of whom
554 shall be citizens of the United States and residents of the
555 State of Alabama. The membership of the board shall be divided
556 into two distinct divisions, the funeral division and the
557 preneed division, with each division having jurisdiction over
558 their respective areas of service.

559 (b) The appointing authorities shall coordinate their
560 appointments to assure board membership is inclusive and



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561 reflects the racial, gender, geographic, ~~urban/rural~~ urban,
562 rural, and economic diversity of the state.

563 (c) (1) Commencing on January 1, 2019, as the terms of
564 the members serving on the board on August 1, 2017, expire,
565 the membership of the funeral division of the board shall be
566 reconstituted to consist of seven professional members and two
567 consumer members.

568 ~~(1)~~ Each professional member of the funeral division of
569 the board shall be a citizen of the United States, a resident
570 of Alabama, and licensed and in good standing with the board
571 as an embalmer or funeral director at the time of appointment
572 and during the entire term of office. Professional members of
573 the board shall be appointed by the Governor pursuant to
574 subsection (e). As the terms of the members serving on the
575 board on October 1, 2023, expire, the professional membership
576 of the board shall be appointed to reflect the following:

577 a. ~~Four~~ Three of the professional members of the board
578 shall hold a current license from the board to practice
579 embalming in the state, shall have been actively practicing
580 embalming in the state for the last 10 consecutive years
581 immediately preceding appointment, and shall be engaged in the
582 practice of embalming at the time of appointment to the board.

583 b. ~~Three~~ Four of the professional members of the board
584 shall hold a current license from the board to practice
585 funeral directing in the state, shall have been actively
586 engaged in funeral directing in the state for the last 10
587 consecutive years immediately preceding appointment, and shall
588 be the operator of a funeral establishment in this state at



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589 the time of appointment to the board.

590 (2) Commencing on October 1, 2023, the preneed division
591 of the board shall be created to consist of four professional
592 members and one consumer member. Two professional members
593 shall be licensed funeral directors and two professional
594 members shall be licensed preneed sales agents employed by a
595 cemetery. Each professional member of the preneed division of
596 the board shall hold a current license from the board to
597 practice as a preneed sales agent, shall have been actively
598 engaged in preneed sales in the state for the last five
599 consecutive years immediately preceding appointment, and shall
600 be employed by a certificate of authority license holder in
601 this state at the time of appointment to the board. Two of
602 these professional members shall also hold a current
603 certificate of authority to sell preneed services and
604 merchandise. The initial appointment of two of the preneed
605 sales agents appointed pursuant to this paragraph shall expire
606 on December 31, 2025, and for the other two, shall expire on
607 December 31, 2026. Thereafter, the preneed sales agent members
608 shall serve pursuant to subsection (e). Professional members
609 of the board shall be appointed by the Governor pursuant to
610 subsection (e).

611 ~~(2)~~ (3) Each consumer member of the board shall
612 represent the public in general and shall have been a citizen
613 of the United States and a resident of Alabama for the last 10
614 consecutive years immediately preceding appointment and during
615 the entire term of office. A consumer member of the board may
616 not have held, nor currently hold, a license or certification



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617 issued by the board, be employed at any time by, or
618 professionally or financially associated with, the holder of a
619 license or certificate issued by the board, or be related
620 within the third degree of consanguinity or affinity to the
621 holder of a license or certificate issued by the board. ~~One~~
622 Two consumer ~~member~~ members of the board shall be appointed by
623 the Lieutenant Governor and one consumer member shall be
624 appointed by the Speaker of the House of Representatives
625 pursuant to a procedure adopted by rule of the board.

626 (d) Commencing in October of 2018, and each October
627 thereafter of a year where at least one professional member
628 term on either division of the board has expired, ~~or is vacant~~
629 ~~for any reason,~~ all licensed funeral directors and licensed
630 embalmers for a funeral division member, and all licensed
631 preneed sales agents for a preneed division member, shall meet
632 in Montgomery, at a time and place fixed by the respective
633 division of the board, for the purpose of nominating and
634 submitting the names of three licensed persons for each
635 position on the board to the Governor. The Governor shall
636 promptly appoint one of the three persons so nominated to
637 serve as a professional member of the board.

638 (e) (1) Professional and consumer members of the board
639 shall serve staggered terms of four years each to provide
640 continuity of service on the board. If an appointment is not
641 made before the expiration of a term, the board member then
642 serving may continue to serve until a successor has been
643 appointed. A board member may not serve more than two full
644 consecutive terms on the board.



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645 (2) ~~A board member who is appointed to fill a vacancy~~
646 ~~which occurs before the expiration of the term of the vacating~~
647 ~~member shall serve the remaining portion of the term to which~~
648 ~~the former member was appointed.~~ A vacancy on the board for
649 any reason shall be filled by appointment of the Governor for
650 the unexpired term. The appointee shall serve until his or her
651 successor is nominated and appointed pursuant to subsection
652 (d). If a member is appointed to fill an unexpired term of
653 less than two years, the time may not be counted toward the
654 maximum eight years of service.

655 (3) ~~Not more than~~ Only one professional funeral
656 division member and one professional preneed division member
657 ~~of the board~~ a division may reside in ~~the same~~ each district
658 ~~as~~ created by Section 34-13-21.

659 (4) At each meeting where nominations are made for the
660 professional members of the funeral division of the board,
661 only one licensed funeral director or licensed embalmer
662 employed by the same funeral establishment may vote. At each
663 meeting where nominations are made for the professional
664 members of the preneed division of the board, only one
665 licensed preneed sales agent employed by the same certificate
666 of authority license may vote.

667 (f) (1) In accordance with applicable law, in addition
668 to a board member resigning from the board in writing, a board
669 member may be removed from the board for any of the following
670 grounds:

671 a. The refusal or inability to perform board duties in
672 an efficient, responsible, or professional manner.



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673 b. The misuse of his or her position on the board to
674 obtain financial gain or seek personal advantage for himself,
675 herself, or another person.

676 c. A final adjudication or determination of guilt by
677 any lawful authority of the board member or sanction of the
678 board member for the violation of any law the board determines
679 is substantially related to any practice governed by this
680 chapter.

681 d. The revocation or suspension of the license of a
682 professional member of the board.

683 (2) Any board member who fails to qualify after
684 appointment shall automatically become ineligible to serve as
685 a member of the board and a new member, properly qualified,
686 shall be appointed in the same manner as the original
687 appointment and shall serve the remainder of the term of the
688 vacating board member.

689 (3) If a consumer board member fails to attend two or
690 more meetings within a year, without a valid excuse as
691 determined by the board, he or she shall be removed from the
692 board. A new consumer board member shall be appointed in the
693 same manner as the original appointment and shall serve the
694 remainder of the term.

695 (g) (1) The status of any person or entity properly
696 licensed by the Alabama Board of Funeral Service on the
697 effective date of this act shall continue under the Alabama
698 Board of Funeral Services.

699 (2) All the rights, duties, property, real or personal,
700 and all other effects existing in the name of the Alabama



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701 Board of Funeral Service shall be transferred to the Alabama
702 Board of Funeral Services. Any reference to the Alabama Board
703 of Funeral Service in any existing law, contract, or other
704 instrument, shall be deemed a reference to the Alabama Board
705 of Funeral Services.

706 (3) A reasonable transition period for the name change
707 shall be allowed to permit an orderly and cost-effective
708 transition, relating particularly to the use of equipment and
709 supplies, all letterhead, business cards, forms, and any other
710 materials in use by the board containing the name Alabama
711 Board of Funeral Service shall continue to be used by the
712 Alabama Board of Funeral Services until the supplies are
713 exhausted. Replacement supplies shall contain the name of the
714 Alabama Board of Funeral Services.

715 (4) The Code Commissioner, pursuant to Section 29-7-8,
716 at times determined appropriate, shall implement this
717 statutory name change in applicable sections of this code."

718 "§34-13-21

719 There are created, for the purpose of this chapter,
720 seven geographical districts which shall be identical with the
721 seven congressional districts as fixed and established by
722 Section 17-14-70, as may be amended. It is the purpose and
723 intention of this section to provide that not more than one
724 professional member of each division of the board shall be
725 selected from each district and that three nominees to the
726 Governor for appointment to the board shall be made from each
727 district. The ~~two~~ three consumer members of the board may not
728 reside in the same congressional district."



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729 "§34-13-22

730 (a) The Alabama Board of Funeral-Service Services shall
731 hold not less than one joint meeting of both divisions
732 quarterly, ~~such meeting~~ for the purpose of reviewing
733 financial, budgetary, and employment matters. The quarterly
734 meetings to be held at ~~such a~~ time and place as the board may
735 determine after notice of ~~such the~~ meeting has been given in
736 the manner prescribed herein at least 15 days prior to ~~such~~
737 the meeting. The board may hold ~~such~~ other meetings as ~~it the~~
738 board may deem necessary. A majority of the appointed members
739 shall constitute a quorum authorized to transact general
740 business in the name of the board. ~~The board shall not meet on~~
741 ~~the premises of any embalming school or college of mortuary~~
742 ~~science; and, if any such meeting is held, all the proceedings~~
743 ~~of such meeting shall be void~~ Upon the executive director
744 -serving on the effective date of the act amending this
745 subsection leaving office, two-thirds of the appointed members
746 shall constitute a quorum for the purposes of selecting an
747 executive director and establishing fees.

748 (b) Additionally, each division of the board shall hold
749 at least one division meeting quarterly."

750 "§34-13-23

751 (a) (1) The board ~~appointed under this chapter and each~~
752 ~~successor thereto may~~ shall select from its own membership a
753 chair and to adopt rules for the transaction of its business
754 and for the betterment and promotion of the standards of
755 service and practice to be followed in the death care industry
756 in the State of Alabama as the board may deem expedient and



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757 consistent with the laws of this state and for the public
758 good.

759 (2) The chair shall preside at all meetings of the
760 board unless otherwise ordered, and he or she shall exercise
761 and perform all duties and functions incident to the office of
762 chair.

763 (3) The board may also select from its own membership a
764 vice chair, a secretary, and a treasurer. No two offices shall
765 be held by the same person.

766 (b) The treasurer shall give bond to the State of
767 Alabama in the sum of ten thousand dollars (\$10,000), and any
768 premium payable for the bond shall be paid from the funds of
769 the board. The bond shall be deposited with the Treasurer of
770 the State of Alabama.

771 (c) A board member shall be reimbursed for necessary
772 travel expenses, per diem, and the necessary expenses incident
773 to his or her attendance upon the business of the board, and,
774 in addition thereto, shall receive compensation in the amount
775 of seventy-five dollars (\$75) for every day not to exceed 20
776 days per year actually spent by the member upon the business
777 of the board. The board may employ in the unclassified service
778 an executive director and up to four associate executive
779 directors who shall each receive and be paid an annual salary
780 to be fixed by the board pursuant to Section 36-6-6. The
781 salary shall be paid on a semimonthly basis. In addition, the
782 executive director and associate executive directors shall
783 each receive his or her necessary travel and other incidental
784 expenses as are incurred in the performance of duties, and all



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785 expenses, per diem, and compensation shall be paid out of the
786 receipts of the board. At no time shall the operation of the
787 board be an expense to the state.

788 (d) The executive director of the board shall have
789 complete supervision and be held responsible for the direction
790 of the office of the board, shall have supervision over
791 employees, field inspections, audits, and enforcement of this
792 chapter, and shall be responsible and answerable to the board.
793 The associate executive directors shall assist the executive
794 director and perform such other duties as may be assigned to
795 him or her by the executive director.

796 (e) The executive director shall keep a record in which
797 shall be registered the name and business address of every
798 person to whom licenses have been granted in accordance with
799 this chapter, the number and date of the license and the date
800 of each renewal. Upon request to do so, the executive director
801 shall supply a list of all persons and establishments holding
802 a license under this chapter, then in force, giving the names
803 of the persons, their business addresses, and the numbers of
804 their licenses.

805 (f) It shall be the duty of the executive director to
806 prepare under the direction of the board and cause to be
807 printed all forms required by this chapter to be prescribed by
808 the board. All notices required to be mailed by this chapter
809 shall be directed to the last known address of the party to
810 whom the notice is sent.

811 (g) The executive director shall serve at the pleasure
812 of the board and shall perform duties as may be necessary for



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813 the proper functioning of the board as the board may determine
814 or as may be prescribed in this chapter. During the employment
815 of the executive director, he or she may not be employed by
816 any funeral establishment.

817 (h) All fees and fines received under this chapter
818 shall be paid into a special fund in the State Treasury to be
819 known as the Alabama State Funeral Service Fund, which is
820 hereby created, for the necessary and proper expenses of the
821 board, and for a reasonable reserve for future use by the
822 board. All monies in the fund are hereby appropriated, as a
823 continuing appropriation, to the board to be used for carrying
824 out this chapter. Commencing on October 1, 2023, the name of
825 the fund shall be changed to the Alabama Board of Funeral
826 Services Fund.

827 (i) Each member of the board, the executive director,
828 the associate executive directors, designated employees, and
829 independent contractors of the board appropriately identified
830 are authorized at any given time to enter the office,
831 premises, establishment, or place of business where any
832 practice or activity regulated by this chapter is carried on,
833 or advertised as being carried on, to investigate complaints
834 or perform audits or inspections. Each on-site inspection
835 shall include an inspection of the license, certification, and
836 registration of each licensee and apprentice trainee operating
837 therein.

838 (j) All members of the board or designated employees of
839 the board may serve and execute any process issued by any
840 court under this chapter and execute any papers, orders, or



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841 process issued by the board or any officer or member of the
842 board under this chapter.

843 (k) The board may employ clerical assistants and
844 employees as necessary to carry out this chapter, and the
845 terms and conditions of employment shall be determined by the
846 board. The board may establish and equip an office from which
847 this chapter may be carried out.

848 (l) (1) The board may acquire and hold, in its own name,
849 real property by purchase, gift, lease, lease with the option
850 to purchase, or other lawful means, except eminent domain,
851 which real property may be used by the board to carry out its
852 responsibilities. The board may also transfer, sell, convey,
853 or cause to be conveyed real property and any improvements
854 thereon, subject to the requirements of this section. In
855 purchasing any real property, maintaining real property, or
856 making improvements thereto, the board may expend any funds
857 contained in the Funeral Board Property Acquisition Fund
858 established in subdivision (2), and any obligations created in
859 connection with the purchase or improvement of the real
860 property shall not create debts, obligations, or liabilities
861 of the state. As used in this subsection, real property shall
862 include land, lots, and all things and interests, including
863 leasehold interests, pertaining thereto, and all other things
864 annexed or attached to the land which would pass to a vendee
865 by conveyance of the land or lot, including mineral, gas, and
866 oil interests. All sales or leases made by the board of any
867 real property owned or held by the board shall be subject to
868 the requirements of Article 3, Chapter 15, Title 9.



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869 Notwithstanding the foregoing, the proceeds from the sale of
870 real property owned by the board which are distributed
871 pursuant to Section 9-15-83 shall be paid to the board and
872 deposited into the property acquisition fund.

873 (2) There is established the Funeral Board Property
874 Acquisition Fund within the State Treasury. Any funds received
875 by the board pursuant to this section shall be deposited into
876 the property acquisition fund and shall be held by the board
877 in trust for carrying out the purposes of the property
878 acquisition fund. Amounts in the property acquisition fund
879 shall be budgeted and allotted in accordance with Sections
880 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.
881 Not later than May 1, 2022, the executive director shall
882 transfer from the Alabama State Funeral Service Fund to the
883 property acquisition fund an amount determined by vote of the
884 board for the purchase of real property. Thereafter, the board
885 shall annually, during the month of October, transfer an
886 amount between two percent and seven percent of the receipts
887 of the board from the previous fiscal year to the property
888 acquisition fund.

889 (3) At the end of each fiscal year, any unencumbered
890 and unexpended balance in the property acquisition fund shall
891 not revert to the State General Fund but shall carry over to
892 the next fiscal year."

893 "§34-13-27

894 (a) The board shall adopt a common seal, which may be
895 altered as often as the board may desire, and the funeral
896 division of the board may adopt and enforce, for the



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897 protection of the public health, safety, and welfare,
898 reasonable rules relating to all of the following:

899 (1) The practice of the profession of embalming,
900 including, but not limited to, solicitation of business.

901 (2) The practice of the profession of funeral
902 directing, including, but not limited to, solicitation of
903 business.

904 (3) The sanitary condition and physical facilities of
905 funeral homes, mortuaries, and funeral establishments where
906 the profession of embalming and funeral directing is carried
907 on, with particular regard to plumbing, sewage, disinfecting,
908 ventilation, and equipment.

909 (4) Carrying out generally the various provisions of
910 this chapter for the protection of the peace, health, safety,
911 and welfare of the public.

912 (5) Carrying out a program for training of apprentice
913 embalmers and apprentice funeral directors.

914 (6) The sale of goods, services, and merchandise and
915 the operation of entities and establishments regulated by the
916 board.

917 (b) The preneed division of the board may adopt and
918 enforce, for the protection of the public health, safety, and
919 welfare, reasonable rules relating to the sale of preneed
920 funeral merchandise and services."

921 Section 2. The following heading is added to Division
922 1, commencing with Section 34-13-170, of Article 5, Chapter
923 13, Title 34, Code of Alabama 1975:

924 "Article 5. Alabama Preneed Funeral and Cemetery Act of



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925 2023.

926 "Division 1. General Provisions."

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

931 "~~§27-17A-1~~§34-13-170

932 (a) This ~~chapter~~ article shall be known and may be
933 cited as the Alabama Preneed Funeral and Cemetery Act of 2023.

934 (b) (1) The Alabama Board of Funeral Services succeeds
935 to and is vested with the powers, duties, and functions of the
936 Department of Insurance relating to the regulation of
937 endowment care, preneed sales contracts, and the licensing of
938 preneed sales agents.

939 (2) All records of the Department of Insurance relating
940 to the regulation of preneed sales contracts, endowment care,
941 and the licensing of preneed sales agents are transferred to
942 the board.

943 (3) The status of any person properly licensed by the
944 Department of Insurance under the former Chapter 17A of Title
945 27, on the effective date of the act adding this subdivision,
946 shall continue under the board.

947 (4) The administrative rules of the Department of
948 Insurance existing on the effective date of the act adding
949 this subdivision shall remain in effect as administrative
950 rules of the board until added, amended, or repealed by the
951 board.

952 (5) The existence and functioning of the Alabama



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953 Preneed Funeral and Cemetery Act, created and functioning
954 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is
955 continued as the Alabama Preneed Funeral and Cemetery Act of
956 2023, under this article. All rights, duties, and obligations
957 existing in the name of the Department of Insurance, relating
958 to endowment care, preneed sales contracts, and preneed sales
959 agent licenses, shall continue under the board. Any reference
960 to the Department of Insurance in any existing law, contract,
961 or other instrument relating to endowment care, preneed sales
962 contracts, and preneed sales agent licenses, shall be deemed a
963 reference to the board.

964 (6) The transfer of the regulation of preneed contracts
965 and the licensing of preneed sales agents from the Department
966 of Insurance to the board shall not affect the rights of any
967 person held before the effective date of the act adding this
968 subdivision, as those rights relate to any preneed trust
969 funds, endowment care trust funds, or any other funds held in
970 trust pursuant to the Alabama Preneed Funeral and Cemetery
971 Act."

972 ~~"§27-17A-3~~§34-13-171

973 (a) Nothing in this chapter shall be construed to
974 prohibit the funding of preneed contracts with multiple
975 insurance or annuity contracts. Life insurance and annuity
976 contracts used to fund preneed contracts shall conform with
977 ~~the provisions of this title~~ Title 27 as they relate to life
978 insurance and annuities and shall cover not less than the
979 initial retail price of the preneed contract.

980 (b) The initial premium payment for a life insurance



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981 policy or annuity contract shall be made payable to the
982 issuing insurance company and the preneed seller shall remit
983 the payment to the insurance company within 10 business days
984 after the insurance application is signed by the parties. If a
985 preneed contract provides for installment payments, each
986 premium payment shall be made payable to the insurance company
987 and, if collected by the preneed seller, shall be remitted to
988 the insurance company within 10 business days after receipt by
989 the preneed seller.

990 (c) Nothing in this chapter shall prohibit a seller, or
991 any other person, from receiving commissions earned and
992 payable in regard to funding preneed contracts with life
993 insurance or annuity contracts, provided the seller or other
994 person holds a valid insurance producer license in this state
995 and is appointed by the insurance company paying the
996 commission.

997 (d) A preneed seller may be identified as the
998 beneficiary or assignee of the death benefit proceeds of a
999 life insurance policy or annuity contract sold as a future
1000 funding mechanism for a preneed contract, but may not be the
1001 owner of the policy or annuity contract or exercise any
1002 ownership rights in the policy or annuity. If the preneed
1003 contract is cancelled before or after the death of the funeral
1004 beneficiary, the preneed seller shall cancel and relinquish
1005 any assignment of benefits or beneficiary status under the
1006 policy or annuity contract, and deliver the policy or
1007 contract, if in the custody of the preneed seller, to the
1008 policy owner or his or her legal representative."



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1009 "~~§27-17A-4~~§34-13-172

1010 Nothing in this chapter shall be construed to prohibit
1011 cemetery authorities from selling funeral merchandise, funeral
1012 establishments from selling cemetery merchandise, or
1013 third-party sellers from selling either funeral merchandise or
1014 cemetery merchandise, or both. Provided, the required amount
1015 of the purchase price to be placed into trust shall be
1016 governed by the appropriate section of this chapter."

1017 Section 4. The following heading is added to Division
1018 2, commencing with Section 34-13-190, of Article 5, Chapter
1019 13, Title 34, Code of Alabama 1975:

1020 "Division 2. Certificate of Authority."

1021 Section 5. Sections 27-17A-10, 27-17A-11, 27-17A-11.1,
1022 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-16,
1023 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20, 27-17A-21,
1024 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of the Code of
1025 Alabama 1975, are amended and renumbered as Division 2 of
1026 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to
1027 read as follows:

1028 "~~§27-17A-10~~§34-13-190

1029 (a) No person may sell a preneed contract without first
1030 having a valid certificate of authority.

1031 (b) (1) No person may receive any funds for payment on a
1032 preneed contract who does not hold a valid certificate of
1033 authority.

1034 (2) Any preneed transaction in which a buyer pays to
1035 the seller before need, in whole or in part, a purchase price
1036 for funeral or cemetery merchandise and services, and in which



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1037 the seller is not obligated to deliver the contracted for
1038 merchandise or to perform the services until need, in whole or
1039 in part, shall be evidenced by a written preneed contract
1040 satisfying the requirements of this chapter and signed by the
1041 seller and the purchaser. No person may receive or accept any
1042 form of consideration in such a transaction without a fully
1043 signed written preneed contract. A transaction not evidenced
1044 by a signed written preneed contract shall be voidable at the
1045 election of the buyer and, if such election is made, the
1046 seller shall refund to the buyer the entire amount paid by the
1047 buyer together with interest thereon at the legal rate within
1048 30 days after notice to the seller.

1049 (3) The provisions of subdivision (1) do not apply to
1050 the purchase of a life insurance policy or annuity, the
1051 benefits of which are assigned to a funeral home ~~and/or~~ or
1052 cemetery authority, or the benefits of which are to be paid to
1053 a funeral home ~~and/or~~ or cemetery authority named as
1054 beneficiary of the policy or annuity, as long as the purchaser
1055 and funeral home ~~and/or~~ or cemetery authority acknowledge in
1056 writing that no preneed contract is entered as a result of the
1057 purchase or assignment of the life insurance policy or annuity
1058 at the time the policy or annuity is purchased. Benefits from
1059 a life insurance policy or annuity issued under this
1060 subdivision shall only be paid to a funeral home ~~and/or~~ or
1061 cemetery authority which provides funeral or cemetery
1062 merchandise and services at the death of the insured whether
1063 or not such funeral home ~~and/or~~ or cemetery has been named as
1064 an assignee or the beneficiary of the policy or annuity. If



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1065 the amount of the policy or annuity proceeds shall exceed the
1066 actual funeral costs at the time of need, ~~such~~ the excess
1067 amount ~~must~~ shall be paid to a designated beneficiary, other
1068 than a funeral home ~~and/or~~ or cemetery authority, or to the
1069 estate of the insured or annuitant.

1070 (4) ~~The provisions of subdivision~~ Subdivision (1) ~~do~~
1071 does not apply to any legal reserve insurance company or to
1072 any trust company or to any national or state bank or savings
1073 and loan association having trust powers which company, bank,
1074 or association receives any money in trust pursuant to the
1075 sale of a preneed contract.

1076 (c) (1) No person may obtain a certificate of authority
1077 under this ~~article~~ chapter for the preneed sale of funeral
1078 services or cemetery services unless the person or its agent,
1079 in the case of a corporate entity, holds a license as a
1080 funeral director or a funeral establishment, or is a cemetery
1081 authority ~~and qualifies as an applicant for a certificate of~~
1082 authority pursuant to the following standards and
1083 qualifications:

1084 a. The applicant shall be at least the legal age of
1085 majority in this state.

1086 b. The applicant shall be in good standing with the
1087 board.

1088 c. The applicant may not have any felony or misdemeanor
1089 convictions that relate to any activity regulated by this
1090 chapter or a crime involving moral turpitude, as defined by
1091 this chapter.

1092 d. The applicant shall be of good moral character and



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1093 submit to a criminal history background check pursuant to
1094 subdivision (2).

1095 (2) An applicant for a certificate of authority shall
1096 submit to the board, on a form sworn to by the applicant, his
1097 or her name, date of birth, Social Security number, and two
1098 complete sets of fingerprints for completion of a criminal
1099 history background check. The board shall submit the
1100 fingerprints to the Alabama State Law Enforcement Agency for a
1101 state criminal history background check. The fingerprints
1102 shall be forwarded by the agency to the Federal Bureau of
1103 Investigation for a national criminal history background
1104 check. Costs associated with conducting a criminal history
1105 background check shall be paid by the applicant. The board
1106 shall keep information received pursuant to this subdivision
1107 confidential, except that information received and relied upon
1108 in denying the issuance of a certificate of authority may be
1109 disclosed if necessary to support the denial. All character
1110 information, including the information obtained through the
1111 criminal history background checks, shall be considered in
1112 licensure decisions to the extent permissible by all
1113 applicable laws.

1114 (d) ~~The provisions of this~~ This section ~~do~~ does not
1115 apply to a cemetery authority owned or operated by a
1116 governmental agency or a religious institution or to those
1117 cemeteries that do not charge fees or sell plots, interment
1118 rights, or any related cemetery merchandise."

1119 "~~§27-17A-11~~ §34-13-191

1120 (a) An application to the ~~commissioner~~ board for a



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1121 certificate of authority shall be accompanied by the statement
1122 and other matters described in this section in the form
1123 prescribed by the ~~commissioner~~ board. Annually thereafter,
1124 ~~within six months after the end of its fiscal period,~~ or
1125 within an extension of time therefor, as the ~~commissioner~~
1126 board for good cause may grant, the person authorized to
1127 engage in the sale of preneed contracts shall file with the
1128 ~~commissioner~~ board a full and true statement of his or her
1129 financial condition, transactions, and affairs, prepared on a
1130 basis as adopted by a rule of the ~~commissioner~~ board, as of
1131 the preceding fiscal period or at such other time or times as
1132 the ~~commissioner~~ board may provide by rule, together with
1133 information and data which may be required by the ~~commissioner~~
1134 board.

1135 (b) The statement shall include all of the following:

1136 (1) The types of preneed contracts proposed to be
1137 written and the type of funding ~~vehicle~~ vehicles to be used.

1138 (2) The name and address of the place of business of
1139 the person offering to write preneed contracts.

1140 (3) Evidence that the person offering the statement has
1141 the following qualifications:

1142 a. Has the ability to discharge his or her preneed
1143 liabilities as they become due in the normal course of
1144 business and has sufficient funds available during the
1145 calendar year to perform his or her obligations under the
1146 contract.

1147 b. Has complied with the trust requirements for the
1148 funds received under contracts issued by himself or herself as



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1149 hereinafter described.

1150 c. Has disbursed interest, dividends, or accretions
1151 earned by trust funds, in accordance with this ~~article~~ chapter
1152 and rules ~~promulgated~~ adopted hereunder.

1153 d. Has complied with this chapter and any rules of the
1154 ~~commissioner~~ board.

1155 (4) Any other information considered necessary by the
1156 ~~commissioner~~ board to meet the ~~commissioner's~~ board's
1157 responsibilities under this chapter.

1158 (c) If the person is an individual, the statement shall
1159 be sworn by him or her; if a firm or association, by all
1160 members thereof; or, if a corporation, by any officer of the
1161 corporation.

1162 (d) (1) An application to the ~~commissioner~~ board for an
1163 initial certificate of authority shall be accompanied by an
1164 application fee in an amount to be determined by the
1165 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~
1166 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,
1167 each annual application for renewal of a certificate of
1168 authority shall be accompanied by the appropriate fee as
1169 determined by the ~~commissioner~~ board not to exceed
1170 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

1171 (2) Any person or entity that is part of a common
1172 business enterprise that has a certificate of authority issued
1173 pursuant to this ~~article~~ chapter and elects to operate under a
1174 name other than that of the common business enterprise shall
1175 submit an application on a form ~~adopted~~ prescribed by the
1176 ~~commissioner~~ board to become a branch registrant. Upon the



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1177 approval of the ~~commissioner~~ board that the entity qualifies
1178 to sell preneed contracts under this ~~article~~ chapter except
1179 for the requirements of subparagraph 1., of paragraph a. of
1180 subdivision (3) of subsection (b) and if the certificate
1181 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,
1182 a branch registration shall be issued. Each branch registrant
1183 may operate under the certificate of authority of the common
1184 business enterprise upon the payment of a fee established by
1185 the ~~commissioner~~ board not to exceed ~~one hundred fifty dollars~~
1186 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying
1187 the application on ~~July~~ September 1 annually.

1188 (e) Upon the ~~commissioner~~ board being satisfied that
1189 the statement and matters which may accompany ~~it~~ the statement
1190 meet the requirements of this ~~article~~ chapter and of its
1191 rules, the ~~commissioner~~ board shall issue or renew the
1192 certificate of authority.

1193 (f) The certificate of authority shall expire annually
1194 on ~~September~~ October 1, unless renewed, or at such other time
1195 or times as the ~~commissioner~~ board may provide by rule.

1196 (g) On or before ~~July 1 of~~ a date adopted by the board
1197 each year, the certificate holder shall file with the
1198 ~~commissioner~~ board in the form prescribed by the ~~commissioner~~
1199 board a full and true statement as to the activities of any
1200 trust established by it pursuant to this ~~article~~ chapter for
1201 the preceding calendar year.

1202 (h) In addition to any other penalty that may be
1203 provided for under this ~~article~~ chapter, the ~~commissioner~~
1204 board may levy a fine not to exceed fifty dollars (\$50) per



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1205 day for each day the certificate holder fails to file its
1206 annual statement, and the ~~commissioner~~ board may levy a fine
1207 not to exceed fifty dollars (\$50) per day for each day the
1208 certificate holder fails to file the statement of activities
1209 of the trust. Upon notice to the certificate holder by the
1210 ~~commissioner~~ board that the certificate holder has failed to
1211 file the annual statement or the statement of activities of
1212 the trust, the certificate holder's authority to sell preneed
1213 contracts shall cease while the default continues.

1214 (i) To facilitate uniformity in financial statements
1215 and to facilitate analysis, the ~~commissioner~~ board may by rule
1216 adopt a form for financial statements. The holder of a
1217 certificate of authority may submit a written request to the
1218 ~~commissioner~~ board to exempt the holder from filing financial
1219 statements at renewal. The ~~commissioner~~ board may waive the
1220 requirement for filing a financial statement at renewal if all
1221 of the following are satisfied:

1222 (1) No valid complaint has been filed since the last
1223 ~~examination~~ audit.

1224 (2) No administrative action against the preneed entity
1225 has been instituted since the last ~~examination~~ audit.

1226 (3) The certificate holder certifies that all
1227 outstanding preneed contracts written by the holder since
1228 April 30, 2002, are fully funded in accordance with this
1229 chapter.

1230 (4) The certificate holder certifies that it will fully
1231 fund all preneed contracts with life insurance, annuity, or
1232 will deposit 100 percent of all funds collected on all preneed



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1233 contracts in trust within 30 days after the end of the
1234 calendar month in which the funds are collected.

1235 (5) The preneed entity has provided to the ~~department~~
1236 board in a timely manner all required and requested records.

1237 (6) The preneed entity agrees to file ~~quarterly~~ reports
1238 of its preneed activity on a form ~~or,~~ in a format, and as
1239 often as prescribed by the ~~commissioner~~ board.

1240 (j) The ~~commissioner~~ board may authorize the transfer
1241 of certificates of authority and establish fees for the
1242 transfer in an amount not to exceed ~~one hundred dollars (\$100)~~
1243 one hundred thirty-two dollars (\$132). Upon receipt of an
1244 application for transfer, the ~~commissioner~~ board may grant a
1245 temporary certificate of authority to the proposed transferee,
1246 based upon criteria established by the ~~commissioner~~ board by
1247 rule, which criteria shall promote the purposes of this
1248 ~~article~~ chapter in protecting the consumer. A temporary
1249 certificate of authority shall expire 60 days after issuance
1250 unless renewed by the ~~commissioner~~ board."

1251 "~~§27-17A-11.1~~ §34-13-192

1252 (a) On ~~a semi-annual basis, within 45 days after the~~
1253 ~~end of each second calendar reporting period~~ or before July 1,
1254 each year, the certificate holder shall file a report of its
1255 preneed contract activity on a form or in a format prescribed
1256 by the ~~commissioner~~ board. The information reported shall
1257 include the total number of preneed contracts in force at the
1258 end of the previous ~~reporting period~~ calendar year, the total
1259 number of preneed contracts sold during the ~~reporting period~~
1260 previous calendar year, the total number of preneed contracts



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1261 fulfilled during the ~~reporting period~~ previous calendar year,
1262 the total number of preneed contracts in force at the end of
1263 the ~~reporting period~~ previous calendar year, and such other
1264 information as may be required by the ~~commissioner~~ board. The
1265 report shall be organized by type of funding including, life
1266 insurance, annuity, trust, letter of credit, or surety bond.
1267 The report shall also provide a certification by the trustee
1268 of the amount of assets held by the trust at the beginning of
1269 the reporting period and at the end of the reporting period,
1270 together with the amount of deposits and withdrawals during
1271 the reporting period. If a certificate holder shall twice
1272 default in complying with the requirements of this subsection,
1273 the ~~commissioner~~ board may require that the certificate holder
1274 thereafter submit the report within 45 days after the end of
1275 each calendar quarter and shall continue so reporting for a
1276 time to be determined by the ~~commissioner~~ board.

1277 (b) The certificate holder shall maintain a written log
1278 of preneed sales. The log shall be on a form or in a format
1279 prescribed by the ~~commissioner~~ board, shall detail all
1280 information required by the ~~commissioner~~ board, and shall be
1281 available for inspection at any time by the ~~commissioner~~
1282 board.

1283 (c) Each cemetery authority shall maintain a written
1284 log of the sale of cemetery interment rights. The log shall be
1285 on a form or in a format prescribed by the ~~commissioner~~ board
1286 and shall detail all information required by the ~~commissioner~~
1287 board.

1288 (d) The board may maintain a statewide database of



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1289 preneed contracts reported to the board pursuant to subsection
1290 (a). The board may make information in this database
1291 searchable by the public by means of unique identifiers, or
1292 any other means, that the board determines respects the
1293 privacy of those involved while also protecting consumers from
1294 financial waste by allowing families to determine if a
1295 deceased loved one has an existing preneed contract. Any
1296 preneed consumer who does not wish for his or her information
1297 to appear in this searchable database may opt out by following
1298 a process established by the board."

1299 ~~"§27-17A-12~~ §34-13-193

1300 (a) Preneed contract forms and related forms shall be
1301 filed with and approved by the ~~commissioner~~ board.

1302 (b) Specific disclosure regarding whether, consistent
1303 with the requirements of this chapter, the certificate holder
1304 is placing certain preneed funds received with the contract in
1305 trust, in an annuity, or in insurance, is required in the
1306 preneed contract.

1307 (c) Preneed contracts which have been submitted to the
1308 ~~commissioner~~ board shall be deemed to have been approved by
1309 the ~~commissioner~~ board in the event that the ~~commissioner~~
1310 board fails to notify the certificate holder that approval has
1311 been denied within 30 days following submission to the
1312 ~~commissioner~~ board."

1313 ~~"§27-17A-13~~ §34-13-194

1314 (a) Except as provided in Sections ~~27-17A-3 and~~
1315 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract
1316 shall require the monies paid to the seller or trustee to be



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1317 placed in trust in accordance with ~~Article 3~~ Division 3, for
1318 funeral merchandise and services sold by funeral
1319 establishments or third party sellers, or ~~Article 4~~ Division
1320 4, for cemetery merchandise and services sold by cemetery
1321 authorities.

1322 (b) Although this chapter does not apply to preneed
1323 contracts entered into prior to May 1, 2002, a preneed
1324 provider which contends that a preneed trust fund which was in
1325 effect prior to May 1, 2002, complies with this chapter with
1326 respect to the contracts entered into prior to May 1, 2002,
1327 may provide to the ~~commissioner~~ board documentary proof
1328 thereof. Upon the ~~commissioner~~ board determining that
1329 compliance has been established, the pre-existing preneed
1330 trust fund assets may be merged with or into the trust fund
1331 required under this chapter or continued as the trust fund and
1332 that determination by the ~~commissioner~~ board shall be noted on
1333 the certificate of authority, and thereafter all preneed
1334 contracts covered by the trust fund, including those entered
1335 into prior to May 1, 2002, shall be subject to this chapter."

1336 "~~§27-17A-14~~§34-13-195

1337 (a) As an alternative to the trust requirement of
1338 Section ~~27-17A-13~~ 34-13-194, the details of which are set
1339 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed
1340 provider ~~may~~, with the prior approval of the ~~commissioner~~
1341 board, may purchase a surety bond in an amount not less than
1342 the aggregate value of outstanding liabilities on undelivered
1343 preneed contracts for merchandise, services, and cash
1344 advances. For the purposes of this section, the term



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1345 outstanding liabilities means the original retail amount of
1346 services and cash advances and the actual cost to the entity
1347 to provide the undelivered merchandise sold on each contract
1348 written after April 30, 2002. The surety bond shall be in an
1349 amount sufficient to cover the outstanding liability at the
1350 time each contract is executed.

1351 (b) The bond shall be made payable to the State of
1352 Alabama for the benefit of the ~~commissioner~~ board and of all
1353 purchasers of preneed merchandise, services, and cash
1354 advances. The bond shall be issued by an insurance company
1355 licensed in the State of Alabama and authorized to issue
1356 surety bonds and approved by the ~~commissioner~~ board.

1357 (c) The amount of the bond shall be based on a report
1358 documenting the outstanding liabilities of the preneed
1359 provider for the previous calendar quarter and the projected
1360 liability for the immediately following quarter, shall be
1361 prepared by the preneed provider using generally accepted
1362 accounting principles, and shall be signed by the chief
1363 executive officer or chief financial officer of the preneed
1364 provider. The report shall be compiled as of the end of the
1365 preneed provider's fiscal year and updated quarterly.

1366 (d) The amount of the bond shall be increased or
1367 decreased as necessary to correlate with changes in the
1368 outstanding liabilities. Further, the ~~commissioner~~ board may
1369 order the bond to be increased as necessary to correlate with
1370 changes in the outstanding liabilities of bonded contracts due
1371 to increases in the consumer price index.

1372 (e) If the preneed provider fails to maintain a bond



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1373 pursuant to this section the preneed provider shall cease the
1374 offering for sale and sale of preneed merchandise, services,
1375 and cash advances as provided by rule of the board.

1376 (f) No surety bond used to comply with this section
1377 shall be canceled or subject to cancellation unless at least
1378 60 days' advance notice thereof, in writing, is filed with the
1379 ~~commissioner,~~ board by the surety company. The cancellation of
1380 the bond shall not relieve the obligation of the surety
1381 company for claims arising out of contracts issued or
1382 otherwise covered before cancellation of the bond. In the
1383 event that notice of termination of the bond is filed with the
1384 ~~commissioner~~ board, the certificate holder insured thereunder
1385 ~~shall~~, within 30 days of the filing of the notice of
1386 termination with the ~~commissioner~~ board, shall provide the
1387 ~~commissioner~~ board with a replacement bond or with evidence
1388 which is satisfactory to the ~~commissioner~~ board demonstrating
1389 that ~~the provisions of~~ this chapter ~~have~~ has been fully
1390 complied with. If within 30 days of filing of the notice of
1391 termination with the ~~commissioner~~ board no replacement bond
1392 acceptable to the ~~commissioner~~ board or no evidence
1393 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~
1394 ~~provisions of~~ this chapter ~~have~~ has been complied with is
1395 filed with the ~~commissioner~~ board, the ~~commissioner~~ board
1396 shall suspend the license of the certificate holder until the
1397 certificate holder files a replacement bond acceptable to the
1398 ~~commissioner~~ board or demonstrates to the satisfaction of the
1399 ~~commissioner~~ board that it has complied with ~~the provisions of~~
1400 this chapter.



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1401 (g) Upon prior approval by the ~~commissioner~~ board, the
1402 preneed provider may file with the ~~commissioner~~ board a letter
1403 of credit in the amount of the outstanding liabilities in lieu
1404 of a surety bond, in the form and subject to the terms and
1405 conditions evidencing the financial responsibility of the
1406 party or parties issuing the letter of credit, and otherwise,
1407 as may be prescribed by the ~~commissioner~~ board."

1408 "~~§27-17A-15~~§34-13-196

1409 (a) The ~~commissioner shall~~ board, as often as ~~he or she~~
1410 ~~may deem~~ deemed necessary, ~~examine~~ shall audit the business of
1411 any person writing, or holding himself or herself out to be
1412 writing, preneed contracts under this chapter to the extent
1413 applicable. The ~~examination~~ audit shall be made by designated
1414 representatives employed or ~~examiners of the Department of~~
1415 ~~Insurance~~ contracted by the board.

1416 (b) The written report of each ~~examination~~ audit, when
1417 completed, shall be filed in the office of the ~~commissioner~~
1418 board and, when so filed, shall not constitute a public
1419 record.

1420 (c) Any person being ~~examined~~ audited shall produce,
1421 upon request, all records of the person. The designated
1422 representative of the ~~commissioner~~ board may at any time
1423 examine the records and affairs of the person, whether in
1424 connection with a formal ~~examination~~ audit or not.

1425 (d) The ~~commissioner may~~ board shall waive the
1426 ~~examination~~ audit requirements of this section if the
1427 certificate holder submits audited financial statements. Upon
1428 receipt of a verifiable complaint, the board may perform a



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1429 target market conduct audit as a part of an investigation.

1430 (e) The person ~~examined~~ audited shall pay the
1431 ~~examination~~ audit expenses, travel expense, and per diem
1432 subsistence allowance provided for examiners and incurred by
1433 the ~~commissioner's board's~~ representatives or ~~examiners~~
1434 auditors in connection with an ~~examination in accordance with~~
1435 ~~Section 27-2-25~~ audit as prescribed by rule of the board.

1436 (f) Whenever any special audit of the premises,
1437 facilities, books, or records of a licensee is necessary based
1438 on the failure of the licensee to comply with this chapter or
1439 rule adopted by the board, the board shall charge a fee based
1440 on the cost of the special audit including, but not limited
1441 to, the prorated compensation of board employees involved in
1442 the special audit and any expenses incurred.

1443 (g) If the board finds that a certificate of authority
1444 holder or licensee has failed to operate in accordance with
1445 this chapter and, by their action, has created a deficit of
1446 preneed funds entrusted to them by the consumer, then the
1447 board may:

1448 (1) Bring an action for injunctive relief against the
1449 responsible licensee or the holder of the certificate of
1450 authority in the Circuit Court of Montgomery County.

1451 (2) Issue an emergency suspension of all licenses held
1452 by the holder of the certificate of authority, and its
1453 associated personnel, in accordance with the Administrative
1454 Procedure Act.

1455 (3) Take any other disciplinary action authorized by
1456 this chapter."



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1457 "~~§27-17A-16~~§34-13-197

1458 (a) A certificate holder shall be considered inactive
1459 upon the acceptance of the surrender of its license by the
1460 ~~commissioner~~ board or upon the nonreceipt by the ~~commissioner~~
1461 board of the certificate of authority renewal application and
1462 fees.

1463 (b) A certificate holder shall cease all preneed sales
1464 to the public upon becoming inactive. The certificate holder
1465 shall collect and deposit into trust all of the funds paid
1466 toward preneed contracts sold prior to becoming inactive.

1467 (c) Any certificate holder desiring to surrender its
1468 license to the ~~commissioner~~ board shall first do all of the
1469 following:

1470 (1) File notice with the ~~commissioner~~ board.

1471 (2) Submit copies of its existing trust agreements.

1472 (3) Submit a sample copy of each type of preneed
1473 contract sold.

1474 (4) Resolve to the ~~commissioner's~~ satisfaction of the
1475 board all findings and violations resulting from the last
1476 ~~examination~~ audit conducted.

1477 (5) Pay all outstanding fines and invoices due the
1478 ~~commissioner~~ board.

1479 (6) Submit its current certificate of authority.

1480 (d) Upon receipt of the notice, the ~~commissioner~~ board
1481 shall review the certificate holder's trust funds, trust
1482 agreements, and evidence of all outstanding preneed contracts.

1483 (e) After a review to the ~~commissioner's~~ satisfaction
1484 of the board, the ~~commissioner~~ board shall terminate the



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1485 certificate of authority by an order which shall set forth the
1486 conditions of termination established by the ~~commissioner~~
1487 board to ensure that the preneed funds will be available for
1488 their intended purpose.

1489 (f) The trust fund of the certificate holder shall be
1490 held intact and in trust after the certificate holder has
1491 become inactive, and the funds in that trust shall be
1492 disbursed in accordance with the requirements of the written
1493 contracts until the funds have been exhausted.

1494 (g) The ~~commissioner~~ board shall continue to have
1495 jurisdiction over the inactive certificate holder as if the
1496 certificate were active and to require the reports and inspect
1497 the records as the ~~commissioner~~ board deems appropriate so
1498 long as there are funds in trust or preneed contracts that are
1499 not fulfilled.

1500 (h) ~~In addition to any other~~ Other terms of revocation
1501 or suspension ordered pursuant to ~~Chapter 13 of Title 34, the~~
1502 ~~provisions of~~ this chapter may ~~also~~ apply.--"

1503 "~~§27-17A-17~~§34-13-198

1504 ~~(a) Any dissolution or liquidation of a certificate~~
1505 ~~holder shall be deemed to be the liquidation of an insurance~~
1506 ~~company and shall be conducted under the supervision of the~~
1507 ~~commissioner, who shall have all powers with respect thereto~~
1508 ~~granted to the commissioner under Chapter 32 with respect to~~
1509 ~~the liquidation of insurance companies.~~

1510 ~~(b) The commissioner may apply for an order directing~~
1511 ~~the commissioner to liquidate a certificate holder upon any~~
1512 ~~one or more grounds set out in Section 27-32-6 or when, in the~~



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1513 ~~commissioner's opinion, the continued operation of the~~
1514 ~~certificate holder would be hazardous either to purchasers,~~
1515 ~~beneficiaries, or to the people of this state.~~

1516 The board may fine and revoke, suspend, or place on
1517 probation the certificate of authority and the establishment
1518 license of a certificate holder on any of the following
1519 grounds:

1520 (1) The certificate holder is impaired or insolvent.

1521 (2) The certificate holder has refused to submit, or
1522 has withheld, any of its books, records, accounts, or affairs
1523 to audit by the board.

1524 (3) The certificate holder has concealed or removed
1525 records or preneed assets, or both.

1526 (4) The certificate holder has failed to comply with an
1527 order of the board.

1528 (5) The certificate holder has transferred, or
1529 attempted to transfer, substantially its entire property or
1530 business, or has entered into any transaction the effect of
1531 which is to merge substantially its entire property or
1532 business with that of any other certificate holder, person,
1533 corporation, or entity without first having obtained the
1534 written approval of the board.

1535 (6) The certificate holder has willfully violated its
1536 articles of incorporation or any law of this state, including
1537 any rule of the board.

1538 (7) The certificate holder has an officer, director, or
1539 manager who has refused to be audited under oath concerning
1540 the affairs of the certificate holder.



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1541 (8) If the board determines that the continued
1542 operation of the certificate holder would be hazardous to
1543 purchasers, beneficiaries, or residents of this state."

1544 "~~§27-17A-18~~§34-13-199

1545 (a) All individuals who offer preneed contracts to the
1546 public, or who execute preneed contracts on behalf of a
1547 certificate holder, shall be registered with the ~~commissioner~~
1548 board as preneed sales agents, pursuant to this ~~article~~
1549 chapter.

1550 (b) All preneed sales agents and funeral directors
1551 acting as preneed sales agents shall be affiliated with the
1552 certificate holder that they are representing.

1553 (c) A certificate holder shall be responsible for the
1554 activities of all preneed sales agents and all funeral
1555 directors acting as preneed sales agents, who are affiliated
1556 with the certificate holder and who perform any type of
1557 preneed-related activity on behalf of the certificate holder.
1558 In addition to the preneed sales agents and funeral directors
1559 acting as preneed sales agents, each certificate holder shall
1560 also be subject to discipline if its preneed sales agents or
1561 funeral directors acting as preneed sales agents violate ~~any~~
1562 ~~provision of~~ this ~~article~~ chapter.

1563 (d) A preneed sales agent and a funeral director acting
1564 as a preneed sales agent ~~shall be authorized to~~ may sell,
1565 offer, and execute preneed contracts on behalf of all properly
1566 licensed entities owned or operated by the sponsoring
1567 certificate holder.

1568 (e) An individual may begin ~~functioning~~ operating as a



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1569 preneed sales agent as soon as a completed application for
1570 registration, as set forth in subsection (g), is ~~sent to the~~
1571 ~~commissioner~~ approved by the board.

1572 (f) (1) The qualifications for a preneed sales agent are
1573 as follows:

1574 ~~(1)~~ a. The applicant must be at least 18 years of age.

1575 ~~(2)~~ b. The applicant must be in good standing with the
1576 ~~commissioner~~ board.

1577 ~~(3)~~ c. The applicant ~~must~~ may not have any felony or
1578 misdemeanor convictions that relate to any activity regulated
1579 by this chapter or a crime involving moral turpitude, as
1580 defined by this chapter.

1581 d. The applicant shall be of good moral character and
1582 submit to a criminal history background check pursuant to
1583 subdivision (2).

1584 (2) An applicant for licensure as a preneed sales agent
1585 shall submit to the board, on a form sworn to by the
1586 applicant, his or her name, date of birth, Social Security
1587 number, and two complete sets of fingerprints for completion
1588 of a criminal history background check. The board shall submit
1589 the fingerprints to the Alabama State Law Enforcement Agency
1590 for a state criminal history background check. The
1591 fingerprints shall be forwarded by the agency to the Federal
1592 Bureau of Investigation for a national criminal history
1593 background check. Costs associated with conducting a criminal
1594 history background check shall be paid by the applicant. The
1595 board shall keep information received pursuant to this
1596 subdivision confidential, except that information received and



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1597 relied upon in denying the issuance of a certificate of
1598 authority may be disclosed if necessary to support the denial.
1599 All character information, including the information obtained
1600 through the criminal history background checks, shall be
1601 considered in licensure decisions to the extent permissible by
1602 all applicable laws.

1603 (g) An application for registration as a preneed sales
1604 agent shall be submitted to the ~~commissioner~~ board with an
1605 application fee determined by the ~~commissioner~~ board, but not
1606 to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars
1607 (\$33), by the certificate holder in a form that has been
1608 prescribed by ~~commissioner~~ board rule ~~and approved by the~~
1609 ~~commissioner~~. The application shall contain, at a minimum, all
1610 of the following:

1611 (1) The name, address, Social Security number, and date
1612 of birth of the applicant and any other information as the
1613 ~~commissioner~~ board may reasonably require of the applicant.

1614 (2) The name, address, and license number of the
1615 sponsoring certificate holder.

1616 (3) A representation, signed by the applicant, that the
1617 applicant meets the requirements set forth in subsection (f).

1618 (4) A representation, signed by the certificate holder,
1619 that the applicant is authorized to offer, sell, and sign
1620 preneed contracts on behalf of the certificate holder, and
1621 that the certificate holder has trained the applicant in ~~the~~
1622 ~~provisions of~~ this ~~article~~ chapter relating to preneed sales,
1623 the provisions of the certificate holder's preneed contract,
1624 and the nature of the merchandise, services, or burial rights



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1625 sold by the certificate holder.

1626 (5) A statement indicating whether the applicant has
1627 any type of working or agency relationship with any other
1628 certificate holder or insurance company.

1629 (h) An individual may be registered as a preneed sales
1630 agent on behalf of more than one certificate holder, provided
1631 that the individual has received the written consent of all
1632 certificate holders.

1633 (i) A certificate holder who has registered a preneed
1634 sales agent shall notify the ~~commissioner~~ board within 30 days
1635 after the individual's status as a preneed sales agent has
1636 been terminated.

1637 (j) Upon receipt of an application that complies with
1638 all of the requirements of subsection (g), the ~~commissioner~~
1639 board shall register the applicant. The ~~commissioner shall by~~
1640 rule board, in accordance with this chapter, shall provide for
1641 annual renewal of registration upon receipt of a renewal
1642 application and a renewal fee not to exceed ~~twenty-five~~
1643 ~~dollars (\$25)~~ thirty-three dollars (\$33) as set by the
1644 ~~commissioner~~ board."

1645 "~~§27-17A-19~~§34-13-200

1646 No person shall engage in this state in any trade
1647 practice which is addressed in the Alabama Deceptive Trade
1648 Practices Act ~~(Section 8-19-1 et seq.)~~ Chapter 19 of Title 8,
1649 or as determined pursuant to this chapter to be, an unfair
1650 method of competition or an unfair or deceptive act or
1651 practice."

1652 "~~§27-17A-20~~§34-13-201



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1653 (a) Whenever the ~~commissioner~~ board has reason to
1654 believe that any person has engaged, or is engaging, in this
1655 state in any unfair method of competition or any unfair or
1656 deceptive act or practice as defined in this ~~article~~ chapter,
1657 or is engaging in the sale of preneed contracts without being
1658 properly licensed as required by this ~~article~~ chapter, or is
1659 otherwise acting in violation of this chapter, and that a
1660 proceeding by the ~~commissioner~~ board in respect thereto would
1661 be in the interest of the public, the ~~commissioner~~ board shall
1662 institute a proceeding in accordance with this section.

1663 (b) A statement of charges, notice, or order or other
1664 process under this chapter may be served by anyone duly
1665 authorized by the ~~commissioner~~ board. Service may be made
1666 either in the manner provided by law for service of process in
1667 civil actions or by certifying and mailing a copy of the
1668 statement to the person affected by the statement, notice, or
1669 order or other process at his or her or its residence or
1670 principal office or place of business. The verified return by
1671 the person so serving the statement, notice, or order or other
1672 process, setting forth the manner of the service, shall be
1673 proof of the service; and the return postcard receipt for the
1674 statement, notice, or order or other process, certified and
1675 mailed as provided in this subsection, shall be proof of
1676 service of the statement, notice, or order or other process.

1677 (c) The ~~commissioner~~ board shall conduct or cause to
1678 have conducted a hearing in accordance with ~~Article 1 of~~
1679 ~~Chapter 2~~ this chapter, and shall, during the conduct of the
1680 hearing, have those powers necessary to enforce this chapter



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1681 and rules of the board; however, the penalties for failure to
1682 comply with a subpoena or with an order directing discovery
1683 shall be limited to a fine not to exceed one thousand dollars
1684 (\$1,000) per violation. All evidence introduced and presented
1685 in a hearing conducted under this chapter shall be deemed
1686 public information."

1687 "~~§27-17A-21~~§34-13-202

1688 (a) If the ~~commissioner~~ board finds that one or more
1689 grounds exist for the discretionary suspension or revocation
1690 of a certificate of authority or establishment license issued
1691 under this ~~article~~ chapter, the ~~commissioner may~~ board, in
1692 lieu of the suspension or revocation, may impose a fine upon
1693 the certificate holder in an amount not to exceed one thousand
1694 dollars (\$1,000) for each nonwillful violation and in an
1695 amount not to exceed ten thousand dollars (\$10,000) for each
1696 willful violation.

1697 (b) The ~~commissioner~~ board may grant not more than 30
1698 days from the date of the order for the payment of any fine."

1699 "~~§27-17A-22~~§34-13-203

1700 (a) (1) A person who knowingly receives payments for a
1701 preneed contract without having a valid certificate of
1702 authority:

1703 a. Commits a Class B felony, ~~punishable as provided by~~
1704 ~~law~~, as to each contract on which the payments collected equal
1705 or exceed, in the aggregate, two thousand five hundred dollars
1706 (\$2,500).

1707 b. Commits a Class C felony, ~~punishable as provided by~~
1708 ~~law~~, as to each contract on which the payments collected are



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1709 between, in the aggregate, five hundred dollars (\$500) and two
1710 thousand five hundred dollars (\$2,500).

1711 c. Commits a Class A misdemeanor, ~~punishable as~~
1712 ~~provided by law,~~ as to each contract on which the payments
1713 collected do not exceed, in the aggregate, five hundred
1714 dollars (\$500).

1715 (2) In addition to the criminal penalty imposed under
1716 subdivision (1), upon conviction of an offense under
1717 subdivision (1), a person may not thereafter obtain a
1718 certificate of authority or register as a preneed sales agent.

1719 (b) (1) A person who willfully fails to timely deposit
1720 the amount required to be so deposited under this chapter in a
1721 preneed merchandise and services trust or endowment care
1722 trust:

1723 a. Commits a Class B felony, ~~punishable as provided by~~
1724 ~~law,~~ as to each contract on which the amount due for deposit
1725 in trust equals or exceeds, in the aggregate, two thousand
1726 five hundred dollars (\$2,500).

1727 b. Commits a Class C felony, ~~punishable as provided by~~
1728 ~~law,~~ as to each contract on which the amount due for deposit
1729 in trust is less than, in the aggregate, two thousand five
1730 hundred dollars (\$2,500).

1731 (2) In addition to the criminal penalty imposed under
1732 subdivision (1), upon conviction of an offense under
1733 subdivision (1), the certificate of authority or preneed sales
1734 agent registration held by the person shall be automatically
1735 revoked and the person may not thereafter obtain a certificate
1736 of authority or register as a preneed sales agent.



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1737 (c) (1) A person who knowingly withdraws funds or assets
1738 from a preneed merchandise and services trust or endowment
1739 care trust in a manner or under circumstances not authorized
1740 by this chapter or rule of the board:

1741 a. Commits a Class B felony, ~~punishable as provided by~~
1742 ~~law~~, if the aggregate amount withdrawn in any single
1743 transaction or series of related transactions equals or
1744 exceeds two thousand five hundred dollars (\$2,500).

1745 b. Commits a Class C felony, ~~punishable as provided by~~
1746 ~~law~~, if the aggregate amount withdrawn in any single
1747 transaction or series of related transactions is less than two
1748 thousand five hundred dollars (\$2,500).

1749 (2) In addition to the criminal penalty imposed under
1750 subdivision (1), upon conviction of an offense under
1751 subdivision (1), the certificate of authority or preneed sales
1752 agent registration held by the person shall be automatically
1753 revoked and the person may not thereafter obtain a certificate
1754 of authority or register as a preneed sales agent.

1755 (d) A person commits a Class C felony, ~~punishable as~~
1756 ~~provided by law~~, if any of the following occur:

1757 (1) The person knowingly delivers to the ~~commissioner~~
1758 board any official form, report, record, data, or other
1759 document required by the ~~commissioner~~ board containing a false
1760 statement or false information concerning a matter material to
1761 the ~~commissioner~~ board in the exercise of ~~his or her~~ its
1762 authority to administer and enforce this chapter.

1763 (2) Incident to, or during the course of, an
1764 ~~examination~~ audit, inspection, investigation, or other inquiry



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1765 authorized by this chapter, the person knowingly makes
1766 available to a representative of the ~~commissioner~~ board any
1767 official form, report, record, data, or other document
1768 required by the ~~commissioner~~ board containing a false
1769 statement or false information concerning a matter material to
1770 the purpose of the ~~examination~~ audit, inspection,
1771 investigation, or inquiry.

1772 (3) With respect to the business records of a person
1773 engaging in, or who has at any time engaged in, the sale of a
1774 preneed contract, a person, with a purpose to use deception as
1775 defined in subdivision (1) of Section 13A-8-1, makes false
1776 entries in ~~such~~ the records or alters, erases, obliterates,
1777 deletes, or removes a correct entry in ~~such~~ the records, fails
1778 to make a correct entry in ~~such~~ the records, or prevents the
1779 making of a correct entry, or causes the omission of a correct
1780 entry in ~~such~~ the records.

1781 (e) Except as otherwise provided in this ~~section~~
1782 chapter, the willful violation of this chapter is a Class A
1783 misdemeanor, ~~punishable as provided by law.~~

1784 ~~(f) The duties and authority of the insurance fraud~~
1785 ~~unit created under Section 27-12A-40, including the powers of~~
1786 ~~the unit's investigators, shall extend to investigations into~~
1787 ~~violations of this section."~~

1788 "~~§27-17A-23~~ §34-13-204

1789 The ~~commissioner~~ board, the Attorney General, or any
1790 person may bring a civil action against a person or company
1791 violating this chapter or rule of the board in Montgomery
1792 County or the appropriate court of the county in which the



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1793 alleged violator resides or has his or her or its principal
1794 place of business or in the county wherein the alleged
1795 violation occurred. Upon adverse adjudication, the defendant
1796 shall be liable for actual damages caused by the violation.
1797 The court, as provided by common law, may award punitive
1798 damages and may provide equitable relief as it deems proper or
1799 necessary, including enjoining the defendant from further
1800 violation of this chapter or rule of the board."

1801 "~~§27-17A-24~~§34-13-205

1802 The provisions of this chapter are cumulative to rights
1803 under the general civil and common law, and no action of the
1804 ~~commissioner board~~ may abrogate the rights to damages or other
1805 relief in any court."

1806 "~~§27-17A-25~~§34-13-206

1807 (a) All fees collected by the ~~commissioner board~~
1808 pursuant to this chapter shall be deposited into the ~~State~~
1809 ~~Treasury to the credit of the Insurance Department~~ Alabama
1810 State Funeral Service Fund.

1811 (b) All fines collected by the ~~commissioner board~~
1812 pursuant to this chapter shall be deposited into the ~~State~~
1813 ~~Treasury to the credit of the State General~~ Alabama State
1814 Funeral Service Fund.

1815 (c) The ~~commissioner board~~ may use funds available from
1816 any source including, but not limited to, grants,
1817 appropriations, and gifts, for any purpose in the enforcement
1818 of this chapter."

1819 Section 6. The following heading is added to Division
1820 3, commencing with Section 34-13-230, of Article 5, Chapter



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1821 13, Title 34, Code of Alabama 1975:

1822 "Division 3. Funeral Merchandise and Services Trust
1823 Fund."

1824 Section 7. Sections 27-17A-30, 27-17A-31, 27-17A-32,
1825 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are
1826 amended and renumbered as Division 3 of Article 5 of Chapter
1827 13 of Title 34, Code of Alabama 1975, to read as follows:

1828 "~~§27-17A-30~~§34-13-230

1829 To comply with the trust requirement of subsection (a)
1830 of Section ~~27-17A-13~~ 34-13-194, all certificate holders
1831 providing preneed contracts for funeral services or funeral
1832 merchandise shall be subject to this ~~article~~ chapter."

1833 "~~§27-17A-31~~§34-13-231

1834 (a) Any person who is paid, collects, or receives funds
1835 under a preneed contract for funeral services or funeral
1836 merchandise to be funded by trust shall deposit in trust an
1837 amount at least equal to the sum of 75 percent of the amount
1838 collected on the purchase price for all funeral services and
1839 funeral merchandise sold, transportation, and facilities
1840 rented other than outer burial containers, 60 percent of the
1841 amount collected on the purchase price for outer burial
1842 containers, 110 percent of the wholesale cost of memorials
1843 from the amount collected on the purchase price of memorials,
1844 and 100 percent of the amount collected on the purchase price
1845 for all cash advance items sold.

1846 (b) All deposits shall be made within 30 days after the
1847 end of the calendar month in which the preneed contract is
1848 paid in full, unless, prior to that time, all liabilities of



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1849 the seller under the preneed contract to deliver the specific
1850 funeral merchandise or funeral services, or both, or the
1851 specific cash advances, identified by the preneed provider as
1852 properly allocated to the payment, have been satisfied, or the
1853 preneed contract is validly cancelled.

1854 (c) The trustee shall take title to the property
1855 conveyed to the trust for the purpose of investing,
1856 protecting, and conserving it for the certificate holder;
1857 collecting income; and distributing the principal and income
1858 as prescribed in this ~~article~~ chapter.

1859 (d) The certificate holder is prohibited from sharing
1860 in the discharge of these responsibilities, except that the
1861 certificate holder may appoint an adviser to the trustee or
1862 elect tax free investments. Nothing in this chapter shall
1863 prohibit a trustee from electing the qualified funeral trust
1864 option under the Internal Revenue Code.

1865 (e) The trust agreement shall be submitted to the
1866 ~~commissioner~~ board for approval and filing.

1867 (f) The funds shall be held in trust, both as to
1868 principal and income earned thereon, and shall remain intact,
1869 except that the cost of the operation of the trust or trust
1870 account authorized by this section may be deducted from the
1871 income earned thereon.

1872 (g) The contract purchaser shall have no interest
1873 whatsoever in, or power whatsoever over, funds deposited in
1874 trust pursuant to this section.

1875 (h) In no event may ~~such~~ the funds be loaned to a
1876 certificate holder, an affiliate of a certificate holder, or



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1877 any person directly or indirectly engaged in the burial,
1878 funeral home, or cemetery business. Furthermore, the
1879 certificate holder's interest in the trust shall not be
1880 pledged as collateral for any loans, debts, or liabilities of
1881 the certificate holder and shall not be transferred to any
1882 person without the prior written approval from the
1883 ~~commissioner~~ board and the trustee. Even though the
1884 certificate holder shall be deemed and treated as the settlor
1885 and beneficiary of the trust for all purposes, all of the
1886 trust funds are exempt from all claims of creditors of the
1887 certificate holder except as to the claims of the contract
1888 purchaser, his or her representative, or the ~~commissioner~~
1889 board.

1890 (i) For all preneed contracts written or entered into
1891 on or after January 1, 2015, all required deposits in trust
1892 shall commence not later than 30 days after the end of the
1893 calendar month in which the sum of the monies collected on the
1894 preneed contract exceeds the amount that is not required to be
1895 deposited in trust as determined under subsection (a) unless,
1896 prior to that time, all liabilities of the preneed seller
1897 under the preneed contract have been satisfied, or the preneed
1898 contract is validly cancelled. Further required deposits on
1899 the contract shall thereafter be made not later than 30 days
1900 after the end of the calendar month in which each contract
1901 payment is collected by the seller."

1902 "~~§27-17A-32~~ §34-13-232

1903 (a) If amounts paid by the purchaser under a preneed
1904 contract for funeral merchandise have previously been



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1905 deposited in trust, the seller may withdraw the principal
1906 amount and trust appreciation attributable to the delivered
1907 item at such time as the funeral merchandise is delivered or
1908 installed or, if comprised of materials designed to withstand
1909 prolonged, protected storage without deterioration, the
1910 merchandise is placed in storage with a responsible third
1911 party bonded and insured for the wholesale value thereof and
1912 evidenced by a receipt specifically identifying the item, the
1913 specific preneed contract, the location of the item, and the
1914 identity and address of the bonding and insuring parties. For
1915 purposes of this subsection only, caskets and alternative
1916 containers may not be held in storage by the seller or a third
1917 party storage facility prior to the death of the funeral
1918 beneficiary.

1919 (b) The trustee shall make regular valuations of the
1920 assets it holds in trust and provide a report of the
1921 valuations to the certificate holder at least quarterly. At
1922 all times, the certificate holder shall be able to determine
1923 the amount held in trust attributable to each contract holder.
1924 For all contracts effective on or after January 1, 2015, the
1925 determination shall be based upon the fair market value of the
1926 trust at the time and the proportionate share of the fair
1927 market value attributable to each contract holder. For all
1928 contracts in effect before January 1, 2015, the valuation of
1929 each contract may be calculated using any valuation method
1930 that had been previously approved by the ~~commissioner or the~~
1931 ~~department~~ Commissioner or the Department of Insurance before
1932 January 1, 2015. Any person who withdraws appreciation in the



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1933 value of trust, other than the pro rata portion of ~~such~~ the
1934 appreciation which may be withdrawn upon the death of a
1935 contract's funeral beneficiary or upon cancellation of a
1936 preneed contract, shall be required to make additional
1937 deposits from his or her own funds to restore the aggregate
1938 value of assets to the value of funds deposited in trust, but
1939 excluding from the funds deposited those funds paid out upon
1940 preneed contracts which the person has fully performed or
1941 which have been otherwise withdrawn, as provided in this
1942 ~~article~~ chapter. The certificate holder shall be liable to
1943 third parties to the extent that income from the trust is not
1944 sufficient to pay the expenses of the trust.

1945 (c) The trustee of the trust established pursuant to
1946 this ~~article~~ chapter shall have all of the following powers:

1947 (1) Make investments and exercise necessary investment
1948 powers, provided that the ~~commissioner~~ board may by order
1949 require the trustee to liquidate or dispose of any investment
1950 within 30 days after the order.

1951 (2) Commingle the property of the trust with the
1952 property of any other preneed funeral, preneed cemetery, or
1953 endowment care trust established pursuant to this ~~article~~
1954 chapter and make corresponding allocations and divisions of
1955 assets, liabilities, income, and expenses.

1956 (d) Notwithstanding the provisions of Section 19-3-125,
1957 the trustee ~~may~~, subject to compliance with the requirements
1958 set forth below, may invest any portion or all of the funds
1959 received under preneed contracts and deposited in trust in
1960 life insurance contracts or annuities issued on the lives of



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1961 preneed contract purchasers or preneed contract beneficiaries,
1962 hereinafter, the insured or annuitant, without any obligation
1963 to cover at a minimum the retail amount of the preneed
1964 contract at the time of purchase of the life insurance
1965 contracts or annuities as set forth in Section ~~27-17A-3~~
1966 [34-13-171](#).

1967 (1) Trust funds shall not be invested by the trustee in
1968 life insurance contracts or annuities unless the following
1969 requirements are met:

1970 a. The company issuing the life insurance contracts or
1971 annuities is licensed by the Department of Insurance and the
1972 insurance producer or annuity seller is properly licensed
1973 within its domiciliary jurisdiction.

1974 b. Prior to the investment, the insured or annuitant
1975 consents, in writing, to the investment in life insurance
1976 contracts or annuities.

1977 c. For life insurance contracts or annuities issued
1978 prior to May 6, 2008, and currently in force, such contracts
1979 shall be construed to have been an authorized investment by
1980 the trustee under this chapter if the insured or annuitant is
1981 notified in writing of the existence of any such contract and
1982 provided with a copy of the contract.

1983 (2) Upon request, the insured or annuitant shall be
1984 provided with a copy of any life insurance contract or annuity
1985 issued to a preneed trustee at no expense to the insured or
1986 annuitant.

1987 (3) Any life insurance contract or annuity issued in
1988 accordance with this subsection and otherwise in compliance



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1989 therewith shall be valid and in full force according to the
1990 terms and conditions thereof.

1991 (4) A trustee that invests all or any portion of the
1992 funds received under preneed contracts and deposited in trust
1993 in life insurance contracts or annuities issued by one company
1994 licensed by the ~~department~~ State Department of Insurance shall
1995 be considered to satisfy the standards and requirements of
1996 Section 19-3-120.2 and Chapter 3B of Title 19.

1997 (5) It is the intention of the Legislature that this
1998 subsection shall be retroactive and shall apply to all life
1999 insurance contracts or annuities issued prior to May 6, 2008."

2000 "~~§27-17A-33~~ §34-13-233

2001 (a) A purchaser, by providing written notice to the
2002 certificate holder, may cancel a preneed contract within 30
2003 days of the date that the contract was executed provided that
2004 the funeral merchandise and funeral services have not yet been
2005 used. Upon providing the notice, the purchaser shall be
2006 entitled to a complete refund of the amount paid, except for
2007 the amount allocable to any funeral merchandise or funeral
2008 services that have been used, and shall be released from all
2009 obligations under the contract. This subsection shall apply to
2010 all items that are purchased as part of a preneed contract.

2011 (b) After 30 days from the date the preneed contract
2012 was executed, a purchaser, by providing written notice to the
2013 certificate holder, may cancel the funeral services, funeral
2014 merchandise, facilities, and cash advance items portions of a
2015 preneed contract at any time, and shall be entitled to the
2016 refund defined in the preneed contract allocable to those



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2017 items. Any accumulated earnings allocable to the preneed
2018 contract shall be paid to the certificate holder upon the
2019 cancellation.

2020 (c) Upon breach of contract or failure of the
2021 certificate holder to provide funeral merchandise or services
2022 under a preneed contract, the contract purchaser shall be
2023 entitled to a refund of 100 percent of all money paid on the
2024 contract. The refund shall be made within 30 days after
2025 receipt by the certificate holder of the contract purchaser's
2026 written request for refund.

2027 (d) If a purchaser is 90 days past due in making
2028 payments on a preneed contract, the contract shall be
2029 considered to be in default, and the certificate holder shall
2030 be entitled to cancel the contract and withdraw all funds in
2031 trust. Upon making the withdrawal, the certificate holder
2032 shall refund to the purchaser the amount defined in the
2033 preneed contract in the event of default of the purchaser,
2034 provided that the certificate holder has provided the
2035 purchaser with 30 days' written notice of its intention to
2036 exercise any of its rights under this provision.

2037 (e) All preneed contracts are cancelable and revocable
2038 as provided in this section during the lifetime of the
2039 purchaser, provided that a preneed contract does not restrict
2040 any contract purchaser who is a qualified applicant for, or a
2041 recipient of, supplemental security income, temporary cash
2042 assistance, or Medicaid from making his or her contract
2043 irrevocable.

2044 (f) In the event that the preneed contract is made



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2045 irrevocable pursuant to subsection (e), ~~the purchaser or~~ the
2046 authorizing agent shall have the right to appoint a provider
2047 other than the seller of the preneed contract. In the event
2048 that a provider is appointed pursuant to this subsection, the
2049 seller shall transfer to the appointed provider the amount
2050 paid by the purchaser to the seller and those amounts
2051 deposited into trust, less a reasonable transfer fee
2052 determined by the ~~seller~~ board. In the event the preneed
2053 contract was funded by an insurance or annuity policy, the
2054 seller shall cancel and relinquish any assignment of benefits
2055 or beneficiary status under the policy or annuity contract,
2056 and deliver the policy, if in the custody of the preneed
2057 seller, to the policy owner or his or her legal
2058 representative, and the seller may collect a reasonable
2059 transfer fee as determined by rule of the board. No transfer
2060 hereunder shall occur without the acceptance of the appointed
2061 provider.

2062 (g) All refunds required to be made under this section
2063 to a purchaser who has canceled a contract must be made within
2064 30 days after the date the written notice of cancellation is
2065 received by the certificate holder."

2066 "~~§27-17A-34~~§34-13-234

2067 (a) Disbursement of funds discharging any preneed
2068 contract for funeral services or funeral merchandise fulfilled
2069 after May 1, 2002, shall be made by the trustee to the
2070 certificate holder upon receipt by the trustee of a
2071 certification of the certificate holder that the preneed
2072 contract has been performed in whole or in part or the preneed



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2073 contract has been cancelled. Before the trustee may disburse
2074 any trust funds, the certificate holder shall provide to the
2075 trustee a death certificate or other valid proof of death, a
2076 letter from the preneed contract holder cancelling the preneed
2077 contract or valid proof the contract has been cancelled in
2078 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof
2079 the merchandise has been delivered and installed, and services
2080 have been performed. Any trustee accepting preneed contract
2081 proceeds under this ~~article~~ chapter may rely upon the
2082 certification of the certificate holder accompanied by the
2083 required proof, and shall not be liable to anyone for such
2084 reliance. If the contract is only partially performed, the
2085 disbursement shall only cover that portion of the contract
2086 performed. In the event of any contract default by the
2087 contract purchaser, or in the event that the funeral
2088 merchandise or funeral service contracted for is not provided,
2089 the trustee shall return, within 30 days after its receipt of
2090 a written request therefor, 100 percent of the funds deposited
2091 into the trust on the contract and the income and accretion
2092 thereon to the certificate holder or to its assigns, subject
2093 to Section ~~27-17A-33~~ 34-13-233.

2094 (b) For all contracts effective on or after January 1,
2095 2015, the amount that may be withdrawn from the trust upon
2096 fulfillment or cancellation of any particular preneed contract
2097 may not exceed the amount attributable to that preneed
2098 contract in proportion to the total amount held in trust for
2099 all preneed contracts as of the date of withdrawal. For all
2100 contracts in effect before January 1, 2015, the valuation of



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2101 each contract and the amount that may be withdrawn from the
2102 trust may be calculated using any valuation method that had
2103 been approved by the ~~commissioner or the department~~
2104 Commissioner or the Department of Insurance before January 1,
2105 2015."

2106 Section 8. The following heading is added to Division
2107 4, commencing with Section 34-13-260, of Article 5, Chapter
2108 13, Title 34, Code of Alabama 1975:

2109 "Division 4. Cemetery Merchandise and Services Trust
2110 Fund."

2111 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,
2112 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,
2113 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,
2114 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of
2115 the Code of Alabama 1975, are amended and renumbered as
2116 Division 4 of Article 5 of Chapter 13 of Title 34, Code of
2117 Alabama 1975, to read as follows:

2118 "~~§27-17A-40~~§34-13-260

2119 To comply with the trust requirement of subsection (a)
2120 of Section ~~27-17A-13~~ 34-13-194, all certificate holders who
2121 are cemetery authorities providing preneed contracts for
2122 cemetery services or cemetery merchandise shall be subject to
2123 this ~~article~~ chapter."

2124 "~~§27-17A-41~~§34-13-261

2125 (a) Any person who receives or collects any funds on
2126 account of a preneed contract in this state for cemetery
2127 services or cemetery merchandise, or both, entered into after
2128 May 1, 2002, shall have the obligation to pay over and



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2129 contribute into a trust fund as hereinafter described, those
2130 amounts or proportions of the funds as hereinafter provided.

2131 (b) Whether or not the preneed contract provides for
2132 cemetery merchandise or cemetery services, or any combination
2133 thereof, the trust fund shall be referred to in this section
2134 as the Cemetery Merchandise and Services Trust Fund.

2135 (c) The trustee of the Cemetery Merchandise and
2136 Services Trust Fund shall be qualified as such within the
2137 definition of the trustee.

2138 (d) The trustee shall take title to the property
2139 conveyed to the Cemetery Merchandise and Services Trust Fund
2140 subject to this section.

2141 (e) The contract purchaser shall have no interest
2142 whatsoever in, or power whatsoever over, the funds deposited
2143 in the Cemetery Merchandise and Services Trust Fund.

2144 (f) The party contracting to deliver the cemetery
2145 merchandise or cemetery services or cash advances, whether or
2146 not a preneed provider, shall be referred to in this section
2147 as the "seller."

2148 (g) The seller shall be the beneficiary of the Cemetery
2149 Merchandise and Services Trust Fund."

2150 "~~§27-17A-42~~§34-13-262

2151 (a) The obligation of the seller under a preneed
2152 contract shall be to make contributions into the Cemetery
2153 Merchandise and Services Trust Fund in accordance with the
2154 following formulae:

2155 (1) With respect to all cemetery merchandise, 110
2156 percent of wholesale cost.



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2157 (2) With respect to outer burial containers, 60 percent
2158 of the purchase price specified in the preneed contract.

2159 (3) With respect to cemetery services, 60 percent of
2160 the purchase price specified in the preneed contract.

2161 (4) With respect to all cash advance items sold, 100
2162 percent of the purchase price specified for the same in the
2163 preneed contract.

2164 (5) With respect to caskets, 75 percent of the purchase
2165 price.

2166 (b) All contributions shall be made within 30 days
2167 after the end of the calendar month in which the preneed
2168 contract is paid in full, unless, prior to that time, all
2169 liabilities of the seller under the preneed contract to
2170 deliver the specific cemetery merchandise or cemetery
2171 services, or both, or the specific cash advances, identified
2172 by the preneed provider as properly allocated to the payment,
2173 have been satisfied, or the preneed contract is validly
2174 cancelled.

2175 (c) For all preneed contracts entered into on or after
2176 January 1, 2015, all contributions shall be made not later
2177 than 30 days after the end of the calendar month in which the
2178 sum of the monies collected on the preneed contract exceeds
2179 the amount that is not required to be contributed as
2180 determined under subsection (a), unless, prior to that time,
2181 all liabilities of the seller under the preneed contract have
2182 been satisfied, or the preneed contract is validly cancelled.
2183 Further required trust contributions on the contract shall
2184 thereafter be made not later than 30 days after the end of the



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2185 calendar month in which each contract payment is collected by
2186 the seller.

2187 (d) The trustee shall invest and reinvest the Cemetery
2188 Merchandise and Services Trust Fund.

2189 (e) The trustee shall make regular evaluations of the
2190 fair market value of assets held in and liabilities, if any,
2191 of the Cemetery Merchandise and Services Trust Fund and
2192 provide a report of the evaluations to the seller at least
2193 quarterly. Upon receipt of each quarterly report, the seller
2194 may submit to the trustee a written and detailed analysis
2195 concerning the balance of funds in the Cemetery Merchandise
2196 and Services Trust Fund, certified under oath as being true
2197 and correct upon information and belief by a responsible
2198 officer of the seller.

2199 (f) While the obligation of the seller to make
2200 contributions to the Cemetery Merchandise and Services Trust
2201 Fund is set forth in this section, the obligation of the
2202 seller at the time of making certain withdrawals from the
2203 Cemetery Merchandise and Services Trust Fund as herein
2204 provided for shall be calculated with respect to the current
2205 wholesale cost of cemetery merchandise and current retail
2206 price of cemetery services and cash advances at the time of
2207 withdrawal. If the fair market value as reported by the
2208 trustee exceeds 110 percent of the total of the following, the
2209 seller shall be entitled to withdraw and retain from the
2210 merchandise trust fund, the excess funds therein: 110 percent
2211 of the current wholesale cost of the liability to deliver all
2212 cemetery merchandise, 60 percent of the current retail price



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2213 for all cemetery services, 60 percent of the current retail
2214 price of outer burial containers, 75 percent of the current
2215 retail price of caskets, and 100 percent of the current retail
2216 price of all cash advances, for the total of all preneed
2217 contracts for which the purchasers have paid in full, all
2218 calculated as of the time of withdrawal; and concerning the
2219 total of all preneed contracts for which the purchasers have
2220 not paid in full, 25 percent of the total of the following:
2221 110 percent of the current wholesale cost of the liability to
2222 deliver all cemetery merchandise, 60 percent of the current
2223 retail price for all cemetery services, and 100 percent of the
2224 current retail price of all cash advances, all calculated as
2225 of the time of withdrawal.

2226 (g) At least annually the seller shall make the
2227 aforesaid analysis and certification and provide the same to
2228 the trustee. If the certification discloses that the fair
2229 market value of the Cemetery Merchandise and Services Trust
2230 Fund is less than 100 percent of the aggregate calculated
2231 amount the seller shall from its own funds contribute to the
2232 Cemetery Merchandise and Services Trust Fund within the 12
2233 months succeeding the annual computation the amount necessary
2234 to restore the trust fund to an amount equal to not less than
2235 100 percent of the aggregate amount so calculated."

2236 "~~§27-17A-43~~§34-13-263

2237 (a) Upon cancellation of a preneed contract by mutual
2238 agreement between the seller and purchaser, or upon unilateral
2239 cancellation of a preneed contract by the seller by reason of
2240 default on the part of the purchaser, or other valid



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2241 cancellation by reason of transfers to another seller or
2242 otherwise, the seller ~~may~~, upon submission of a certification
2243 under oath by a responsible officer of the seller to the
2244 trustee, may withdraw from the Cemetery Merchandise and
2245 Services Trust Fund and retain an amount equal to the amount
2246 of all funds contributed to the trust fund with respect to the
2247 preneed contract. Any trustee accepting preneed contract
2248 proceeds under this ~~article~~ chapter may rely on the seller's
2249 certification under oath as required herein to be made, and
2250 shall not be liable to anyone for such reliance.

2251 (b) At such time as the seller undertakes to perform
2252 its obligations under a preneed contract by delivery or
2253 installation, or both, of cemetery merchandise and the
2254 provision of cemetery services and disbursement on account of
2255 cash advances, or otherwise, upon certification to the trustee
2256 under oath by a responsible officer of the seller that the
2257 obligations of the seller under the contract have been
2258 completely fulfilled, the seller may withdraw from the
2259 Cemetery Merchandise and Services Trust Fund and retain an
2260 amount equal to the current wholesale cost to the fund with
2261 respect to the preneed contract.

2262 (c) At such time as the seller has fulfilled all of its
2263 obligations under all preneed contracts with respect to which
2264 funds have been contributed to the trust fund, and
2265 certification under oath to the trustee by a responsible
2266 officer of the seller of those facts, the seller may withdraw
2267 from the trust fund and retain all of the remaining assets
2268 thereof."



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2269 "~~§27-17A-44~~§34-13-264

2270 If the amounts paid by the purchaser under a preneed
2271 contract for cemetery merchandise have previously been
2272 deposited in trust, the seller may withdraw the principal
2273 amount there, at such time as the cemetery merchandise is
2274 delivered or installed or, if comprised of materials designed
2275 to withstand prolonged, protected storage without
2276 deterioration, the merchandise is placed in storage with a
2277 responsible third party bonded and insured for the wholesale
2278 value thereof and evidenced by a receipt specifically
2279 identifying the item, the specific preneed contract, the
2280 location of the item, and the identity and address of the
2281 bonding and insuring parties. For purposes of this section
2282 only, caskets and alternative containers may not be held in
2283 storage by the seller or a third party storage facility prior
2284 to the death of the funeral beneficiary."

2285 "~~§27-17A-45~~§34-13-265

2286 An endowment care fund and all payments or
2287 contributions to it are expressly permitted as and for
2288 charitable and eleemosynary purposes. No payment, gift, grant,
2289 bequest, or other contribution for endowment care is invalid
2290 by reason of any indefiniteness or uncertainty of the persons
2291 designated as beneficiaries in the instruments creating the
2292 fund, nor is the fund or any contributions to it invalid as
2293 violating any law against perpetuities, or the suspension of
2294 the power of alienation of title to property."

2295 "~~§27-17A-46~~§34-13-266

2296 Any cemetery now existing or hereafter established,



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2297 excluding those operated by governmental agencies or religious
2298 institutions, ~~shall be~~ may be qualified as an endowment care
2299 cemetery, except those cemeteries which do not charge fees or
2300 sell plots, interment rights, or any related cemetery."

2301 "~~§27-17A-47~~§34-13-267

2302 (a) Every cemetery authority operating an endowment
2303 care cemetery shall establish an endowment care fund which
2304 shall be placed with and held by a bank, trust company,
2305 savings and loan association, or other financial institution
2306 authorized to provide trust services under Title 5, as
2307 amended, or under the applicable laws of the United States or
2308 any other state, or a board of trustees, consisting of at
2309 least three members, who shall reside in the State of Alabama,
2310 one of whom is engaged in outside cemetery management, and
2311 each of whom shall be bonded to honestly perform the duties of
2312 trustee under a formal trust agreement.

2313 (b) Except as specifically provided in this subsection,
2314 commencing on July 1, 2014, a person serving on a board of
2315 trustees or cemetery authority may not also serve as a trustee
2316 of an endowment care fund for the cemetery authority. A board
2317 of trustees in existence on July 1, 2014, may continue to
2318 serve as the trustee of an endowment care fund if the board of
2319 trustees otherwise complies with this subsection. Unless
2320 exempted by the ~~commissioner~~ board pursuant to this
2321 subsection, on or before January 1, 2015, each member of a
2322 board of trustees in existence on July 1, 2014, shall furnish
2323 the bond required by subsection (a) in the greater of one
2324 hundred thousand dollars (\$100,000) or the amount in each



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2325 endowment care fund for which the board of trustees acts as
2326 trustee as of December 31, 2014. Thereafter, the amount of the
2327 bonds shall be increased on January 1 of each succeeding year
2328 to equal the amount in each endowment care fund as of the
2329 immediately preceding December 31. The ~~commissioner~~ board
2330 shall exempt a board of trustees from the bond requirement if
2331 the board of trustees provides to the ~~commissioner~~ board an
2332 annual audit report that satisfies all of the following
2333 criteria:

2334 (1) The report is prepared by a certified public
2335 accountant authorized to practice in Alabama.

2336 (2) The report evidences that the review made the
2337 subject of the report by the accountant encompasses each
2338 endowment care fund for which the board of trustees acts as
2339 trustee.

2340 (3) The report notes relating to the endowment care
2341 fund or funds are in a form that is reasonably acceptable to
2342 the ~~commissioner~~ board.

2343 (4) The report does not evidence any material violation
2344 of or noncompliance with this chapter relating to an endowment
2345 care fund.

2346 (c) The corporate trustee or board of trustees shall be
2347 referred to as a qualified trustee. Unless otherwise specified
2348 in this ~~article~~ chapter or in the terms of the trust
2349 instrument, the trustee of any trust established under or
2350 pursuant to this ~~article~~ chapter shall have all powers granted
2351 to trustees under Article 14 of Chapter 3 of Title 19. The
2352 incorporation herein of such powers shall not be deemed to



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2353 imply any duties of trustees of trusts established under or
2354 pursuant to this ~~article~~ chapter not expressly delineated in
2355 this ~~article~~ chapter.

2356 (d) The cemetery authority may employ a person to
2357 advise the trustee in the management of the fund.

2358 (e) The cemetery authority may enter into a contract
2359 with the qualified trustee for the management and investment
2360 of the endowment care fund, which contract may provide for the
2361 payment of income from the fund of reasonable fees or
2362 commissions to the trustee, and its reasonable expenses for
2363 administering the trust.

2364 (f) As often as ~~he or she~~ the board may deem necessary,
2365 the ~~commissioner~~ board may ~~examine~~ audit the records or
2366 facilities, or both, of any cemetery authority operating an
2367 endowment care cemetery."

2368 "~~§27-17A-48~~ §34-13-268

2369 (a) Each cemetery authority shall comply with this
2370 chapter and maintain at each place of business a list of the
2371 names and addresses of its owners and directors, which shall
2372 be available to the public.

2373 (b) Each cemetery authority shall maintain a record of
2374 all ~~property~~ interment space owners by name and last known
2375 address with a description of merchandise and location of
2376 burial lots, crypts, or niches and the records shall be on a
2377 form or in a format prescribed by the board and shall detail
2378 all information required by the board. A plat map shall be
2379 maintained for each cemetery location at the cemetery business
2380 office. A book or file shall be kept as to the date, location



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2381 by lot, and space number of each person interred or entombed
2382 in the cemetery. A written copy of the cemetery rules and
2383 regulations shall be maintained at each location and made
2384 available to the public upon request.—"

2385 "~~§27-17A-49~~§34-13-269

2386 (a) From the sale price of each plot, crypt, or niche
2387 sold by the cemetery authority, of an endowment care cemetery,
2388 it shall pay an amount, not less than as determined in
2389 accordance with the following schedule, to the trustee of the
2390 endowment care fund, which payment shall be paid over to the
2391 trustee not more than four months after the close of the month
2392 in which the total or final payment on the sale has been
2393 received:

2394 (1) Fifteen percent of the sale price of each grave or
2395 lawn crypt space.

2396 (2) Five percent of the sale price of each mausoleum
2397 crypt or niche.

2398 (3) The amount received for special care funds, gifts,
2399 grants, contribution devises, or bequests made with respect to
2400 the separate or special care of a particular lot, grave,
2401 crypt, niche, mausoleum, monument, or marker or that of a
2402 particular family, as distinguished from the general endowed
2403 care of a cemetery or of a garden.

2404 (b) In addition to subsection (a), a cemetery authority
2405 may receive, and transfer to the trustee, as a part of or
2406 incident to the endowment care fund, any property, real,
2407 personal, or mixed, bequeathed, devised, given, or otherwise
2408 contributed to it for endowment care purposes. Any contractual



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2409 endowment care deposits shall fall under this ~~article~~ chapter.

2410 (c) Any cemetery authority which is organized and
2411 engaged in business prior to May 1, 2002, shall qualify as an
2412 endowment care cemetery if the following occur:

2413 (1) Not already placed, it shall within 90 days of May
2414 1, 2002, have placed the entire principal of any endowment
2415 care fund in its possession, custody, or control, into the
2416 hands of a qualified trustee designated by it, to be
2417 administered as set forth in this ~~article~~ chapter; and
2418 principal of its endowment care fund, or the aggregate
2419 principal of its endowment care funds, if more than one, shall
2420 have a fair market value on either May 1, 2002, or on the date
2421 of transfer to the trustee of not less than twenty-five
2422 thousand dollars (\$25,000); or it shall substitute 25 percent
2423 for each percentage of each sale for the next five years or
2424 five thousand dollars (\$5,000) per year, whichever is greater,
2425 until the balance of twenty-five thousand dollars (\$25,000) is
2426 reached. In such case, the entire amount of twenty-five
2427 thousand dollars (\$25,000) shall be paid into the fund before
2428 the end of the fifth year, and no interest may be removed from
2429 the fund until the twenty-five thousand dollars (\$25,000)
2430 minimum has been reached.

2431 (2) It shall at all times after May 1, 2002, comply
2432 with the minimum requirements for payments to the trustee for
2433 endowment care.

2434 (d) Any cemetery authority organizing a cemetery after
2435 May 1, 2002, whether it be by incorporation, association,
2436 individually, or by any other means, or having its first



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2437 burial after May 1, 2002, before disposing of any burial lot
2438 or right or making any sale thereof or making its first
2439 burial, or both, shall cause to be deposited with a qualified
2440 trustee, in cash, the sum of twenty-five thousand dollars
2441 (\$25,000) in the endowment care fund.

2442 (e) When a cemetery authority has placed with a
2443 trustee, pursuant to this ~~article~~ chapter, a sum of money in
2444 excess of the aggregate which would be required only under
2445 subsection (a), the cemetery authority shall not be required
2446 under this ~~article~~ chapter to make further payments to the
2447 trustee until such time thereafter as, taking into account all
2448 sales of plots, crypts, and niches in the cemetery property
2449 since the first of the sales, the aggregate of payments to the
2450 trustee if made in accordance with subsection (a) would equal
2451 the applicable minimum amount paid to the trustee under
2452 subdivision (1) of subsection (c), or subsection (d) ~~of this~~
2453 ~~section~~.

2454 (f) Any deposit previously made, or represented to be
2455 made to an existing endowment care fund which exceeds 10
2456 percent of the gross selling price of all plots, crypts, and
2457 niches sold since representation of endowment care shall be
2458 made a permanent part of the endowment care fund and
2459 transferred to the qualified trustee under this ~~article~~
2460 chapter."

2461 "~~§27-17A-50~~§34-13-270

2462 (a) No cemetery authority may directly or indirectly
2463 require or direct the investment, reinvestment, or retention
2464 by a qualified trustee of any part of an endowment care trust



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2465 in any asset or business in which the cemetery authority or
2466 any officer, director, owner, partner, or employee of the
2467 cemetery authority has a financial interest. Nothing contained
2468 in this subsection shall prevent the trustee, subject to the
2469 provisions regarding investment and reinvestment of the trust
2470 estate as are contained in the governing instrument creating
2471 the trust, from investing, reinvesting, or retaining any asset
2472 or business in which the cemetery authority or any officer,
2473 director, owner, partner, or employee of the cemetery
2474 authority has an insubstantial or nonmaterial financial
2475 interest, provided that the trustee, in the exercise of the
2476 trustee's discretion, deems the investment, reinvestment, or
2477 retention to be for the best interest of the trust estate.

2478 (b) The net income from the endowment care fund, to the
2479 extent that the same is distributed from the fund, shall be
2480 used exclusively for covering the costs of endowment care of
2481 the cemetery.

2482 (c) For the purposes of this section, net income does
2483 not include realized or unrealized capital gains or losses.
2484 All realized capital gains and losses shall be recorded to
2485 corpus, which is the sum of deposits made by a cemetery
2486 authority into an endowment care fund, pursuant to Section
2487 ~~27-17A-49~~ 34-13-269, and all realized capital gains or losses.
2488 Capital gains taxes, if any, may be paid from the corpus.
2489 Unrealized capital gains and losses, if any, shall be recorded
2490 as an adjustment to the fair market value of the endowment
2491 care fund."

2492 "~~§27-17A-51~~ §34-13-271



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2493 The trustee shall not be required to inquire into the
2494 propriety of the expenditures made by the cemetery authority
2495 in connection with endowment care of the cemetery, and it
2496 shall not be held responsible in any manner whatsoever for and
2497 on account of payments of the income from the endowment care
2498 fund made to the cemetery authority."

2499 "~~§27-17A-52~~§34-13-272

2500 The trustee ~~shall~~, not less than annually, shall file
2501 with the cemetery authority an account which shall include a
2502 complete disclosure of all activity since the previous account
2503 and a statement detailing fund investments."

2504 "~~§27-17A-53~~§34-13-273

2505 To the extent that any endowment care trust existing on
2506 May 1, 2002, includes investments or assets, the retention of
2507 which the trustee in the free exercise of its discretion deems
2508 not in the best interest of the trust estate, the trustee
2509 shall dispose of the investments or assets as soon as
2510 practicable without undue sacrifice to the trust estate, and
2511 in any event within two years after May 1, 2002."

2512 "~~§27-17A-54~~§34-13-274

2513 An annual report of the endowment care fund shall be
2514 made to the ~~commissioner~~ board by each cemetery authority
2515 within 90 days of the close of each calendar year. This report
2516 shall include the qualified trustee's name or names, the bond
2517 numbers if individual trustees or the name and address of the
2518 financial institution in which the fund is maintained, and the
2519 affidavit of the cemetery authority affirming compliance with
2520 this ~~article~~ chapter. Prior to the sale or transfer of a



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2521 cemetery, the cemetery authority shall report and document to
2522 the ~~commissioner~~ board that the endowment care fund is
2523 currently funded in accordance with this ~~article~~ chapter."

2524 "~~§27-17A-55~~§34-13-275

2525 A cemetery authority shall start construction of that
2526 section of a mausoleum or bank of below-ground crypts in which
2527 sales, contracts for sale, reservations for sale, or
2528 agreements for sale are being made, within five years after
2529 the date of the first sale or when 75 percent of the mausoleum
2530 or below-ground crypts have been sold and the purchase price
2531 has been received, whichever occurs first. The construction
2532 shall be completed within six years after the date of the
2533 first sale made. Extensions for completion, not to exceed one
2534 year, may be granted by the ~~commissioner~~ board for good cause
2535 shown. If the units have not been completely constructed at
2536 the time of need or the time specified herein, unless
2537 otherwise specified in the preneed contract, all monies paid
2538 shall be refunded upon request, plus interest earned thereon
2539 if deposited by the cemetery authority in an escrow or trust
2540 fund, and if not so deposited in an escrow or trust fund
2541 earning interest, then plus interest in an amount equal to the
2542 interest or discount which would have been earned thereon had
2543 the funds been invested in United States Treasury Bills having
2544 a 90-day maturity."

2545 "~~§27-17A-56~~§34-13-276

2546 (a) ~~Cemetery~~ Each cemetery shall adopt rules and
2547 regulations ~~are adopted~~ for the mutual protection of the
2548 cemetery owners and the owners of interment rights in the



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2549 cemetery. All owners of interment rights and other persons
2550 within the cemetery shall be subject to these rules and
2551 regulations as they now exist and as they may be amended or
2552 altered by the cemetery. The cemetery authority ~~has the right~~
2553 ~~to~~ shall enforce these rules and regulations. ~~The cemetery~~
2554 ~~authority expressly reserves the right~~ and, at any time and
2555 without prior notice to any owners, ~~to~~ may adopt new rules and
2556 regulations or to amend, modify, or repeal any ~~section,~~
2557 ~~paragraph, or sentence of these~~ rules and regulations.

2558 (b) This section shall not apply to the officers,
2559 directors, shareholders, partners, employees, agents, or
2560 representatives of a cemetery authority who intentionally
2561 commit an act of vandalism or other illegal act. -"

2562 "~~§27-17A-57~~ §34-13-277

2563 The ~~commissioner~~ board shall have the same jurisdiction
2564 over funeral establishments, funeral directors, cemetery
2565 authorities, or third party sellers who sell preneed contracts
2566 without a preneed certificate of authority as ~~he or she~~ the
2567 board has over those preneed sellers who possess a preneed
2568 certificate of authority."

2569 Section 10. Beginning with the 2024 fiscal year, the
2570 Department of Insurance may transfer to the Alabama Board of
2571 Funeral Service and Cemetery Service quarterly, for deposit by
2572 the board into the Alabama Board of Funeral Service and
2573 Cemetery Service Fund, the total amount of three hundred
2574 thousand dollars (\$300,000) per fiscal year, to defray costs
2575 associated with the administration and operation of the
2576 Alabama Preneed Funeral and Cemetery Act of 2023 by the board.



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2577 Unless extended by an act of the Legislature, this section
2578 shall be repealed at the end of the 2027 fiscal year.

2579 Section 11. Although this bill would have as its
2580 purpose or effect the requirement of a new or increased
2581 expenditure of local funds, the bill is excluded from further
2582 requirements and application under Section 111.05 of the
2583 Constitution of Alabama of 2022, because the bill defines a
2584 new crime or amends the definition of an existing crime.

2585 Section 12. This act shall become effective on the
2586 October 1, 2023, following its passage and approval by the
2587 Governor, or its otherwise becoming law.