

SB131 ENGROSSED



1 D78YTH-2
2 By Senators Figures, Gudger, Jones, Hatcher, Williams,
3 Sessions, Scofield, Butler, Barfoot, Singleton, Shelnut,tt,
4 Smitherman
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 22-Mar-23
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A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Board of Funeral Service; to amend Section 34-13-1, as amended by Act 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21, and 34-13-22, Sections 34-13-23 and 34-13-27, as amended by Act 2022-339, 2022 Regular Session, Code of Alabama 1975, to rename the Alabama Board of Funeral Service as the Alabama Board of Funeral Services and to provide further for definitions and the membership of the board; to add Article 5 to Chapter 13, Title 34, Code of Alabama 1975, by amending and renumbering Sections 27-17A-1, 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25, inclusive, 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to 27-17A-57, inclusive, as Sections 34-13-170 to 34-13-172, inclusive, 34-13-190 to 34-13-206, inclusive, 34-13-230 to 34-13-234, inclusive, and 34-13-260 to 34-13-277, inclusive, Code of Alabama 1975; to establish the Alabama Preneed Funeral and Cemetery Act of 2023; to transfer the existing Preneed Funeral and Cemetery Act, and the regulation of preneed contracts, from the Commissioner and Department of Insurance to the Alabama Board of Funeral Service; to authorize the



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29 Department of Insurance to temporarily transfer certain funds
30 to the board to defray costs associated with the
31 administration and operation of the Alabama Preneed Funeral
32 and Cemetery Act of 2023; and in connection therewith would
33 have as its purpose or effect the requirement of a new or
34 increased expenditure of local funds within the meaning of
35 Section 111.05 of the Constitution of Alabama of 2022.

36 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

37 Section 1. Sections 34-13-1, as amended by Act
38 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21,
39 and 34-13-22, and Sections 34-13-23 and 34-13-27, as amended
40 by Act 2022-339, 2022 Regular Session, of the Code of Alabama
41 1975, are amended to read as follows:

42 "§34-13-1

43 (a) For purposes of this chapter, the following terms
44 have the following meanings:

45 (1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY SCIENCE. A
46 school or college approved by the American Board of Funeral
47 Service Education, or a successor organization, which
48 maintains a course of instruction of not less than 48 calendar
49 weeks or four academic quarters or college terms and which
50 gives a course of instruction in the fundamental subjects
51 related to funeral service and mortuary science education as
52 approved by the American Board of Funeral Service Education,
53 or a successor organization, and other courses of instruction
54 in fundamental subjects as may be prescribed by the Alabama
55 Board of Funeral Service.

56 (2) ALKALINE HYDROLYSIS. The technical process that



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57 reduces human remains to bone fragments using heat, water, and
58 chemical agents.

59 (3) ALTERNATIVE CONTAINER. A nonmetal receptacle or
60 enclosure, without ornamentation or a fixed interior lining,
61 which is designed for the encasement of human remains and
62 which is made of cardboard, pressed-wood, composition
63 materials, with or without an outside covering, pouches of
64 canvas, or other materials.

65 ~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION. The
66 national academic accreditation agency for college and
67 university programs in funeral service and mortuary science
68 education. The accrediting function of the American Board of
69 Funeral Service Education is recognized by the United States
70 Department of Education and the Council on Higher Education
71 Accreditation.

72 ~~(4)~~ (5) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.
73 Any person engaged in the study of the art of embalming under
74 the instructions and supervision of a licensed embalmer
75 practicing in this state.

76 ~~(5)~~ (6) APPRENTICE FUNERAL DIRECTOR or FUNERAL
77 DIRECTOR'S APPRENTICE. Any person operating under or in
78 association with a funeral director for the purpose of
79 learning the business or profession of funeral director, to
80 the end that he or she may become licensed under this chapter.

81 (7) AT NEED. At the time of death or immediately
82 following death.

83 ~~(6)~~ (8) AUTHORIZING AGENT. A person at least 18 years of
84 age, except in the case of a surviving spouse or parent, who



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85 is legally entitled to order the cremation or final
86 disposition of particular human remains.

87 (9) BASIC SERVICES FEE. The fee for the professional
88 services of the funeral director and staff that is added to
89 the total cost of the funeral arrangements. The term includes
90 a charge for services performed in conducting the arrangements
91 conference, planning the funeral, securing the necessary
92 permits, preparing the notices, and coordinating the cemetery
93 or crematory arrangements.

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

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

102 ~~(7)~~ (12) BOARD. The Alabama Board of Funeral Service.

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

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

109 ~~(8)~~ (15) CASH ADVANCE ITEMS. Any item of service or
110 merchandise described to a purchaser using the term cash
111 advance, accommodation, cash disbursement, or similar term. A
112 cash advance item is also any item obtained from a third party



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113 and paid for by a funeral provider on behalf of a purchaser.
114 Cash advance items include, but are not limited to, all of the
115 following:

- 116 a. Cemetery or crematory services.
- 117 b. Pallbearers.
- 118 c. Public or other transportation.
- 119 d. Clergy honoraria.
- 120 e. Flowers.
- 121 f. Musicians or singers.
- 122 g. Nurses.
- 123 h. Obituary notices.
- 124 i. Funeral programs.
- 125 j. Gratuities.
- 126 k. Death certificates.
- 127 l. Outer burial containers.
- 128 m. Cemetery plots.
- 129 n. Escorts.

130 ~~(9)~~ (16) CASKET. A rigid container designed for the
131 encasement of human remains which is usually constructed of
132 wood, metal, or similar material and ornamented and lined with
133 fabric.

134 ~~(10)~~ (17) CEMETERY. A place established, maintained,
135 managed, operated, or improved which is dedicated to and used
136 or intended to be used for the permanent interment of human
137 remains and their memorialization. It may be either land or
138 earth interment; a columbarium; a mausoleum for vault or crypt
139 entombment; a structure or place used or intended to be used
140 for the interment of cremated remains; cryogenic storage; or



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141 any combination of one or more thereof.

142 ~~(11)~~ (18) CEMETERY AUTHORITY. Any individual, person,
143 firm, profit or nonprofit corporation, trustee, partnership,
144 society, religious society, church association or
145 denomination, municipality, or other group or entity, however
146 organized, insofar as they or any of them may now or hereafter
147 establish, own, operate, lease, control, or manage one or more
148 cemeteries, burial parks, mausoleums, columbariums, or any
149 combination or variation thereof, or hold lands or structures
150 for burial grounds or burial purposes in this state and engage
151 in the operation of a cemetery, including any one or more of
152 the following: The care and maintenance of a cemetery; the
153 interment, entombment, and memorialization of the human dead
154 in a cemetery; the sale, installation, care, maintenance, or
155 any combination thereof, with respect of monuments, markers,
156 foundations, memorials, burial vaults, urns, crypts,
157 mausoleums, columbariums, flower vases, floral arrangements,
158 and other cemetery accessories for installation or use within
159 a cemetery; and the supervision and conduct of funeral and
160 burial services within the bounds of the cemetery.

161 (19) CEMETERY MERCHANDISE. Any property offered for
162 sale, contracted for sale, or sold for use in connection with
163 the burial, final disposition, memorialization, interment,
164 entombment, or inurnment of human remains by a cemetery
165 authority. The term specifically includes, but is not limited
166 to, the casket, the alternative container, the outer burial
167 container, and the memorial, ~~and interment rights.~~

168 (20) CEMETERY SERVICES. At need or preneed services



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169 provided by a cemetery authority for interment, entombment,
170 inurnment, and installation of cemetery merchandise.

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

175 (22) COLUMBARIUM. A structure or room or space in a
176 building or structure used or intended to be used for the
177 inurnment of cremated remains.

178 ~~(12)~~ (23) CONVICTION. The entry of a plea of guilty or a
179 guilty verdict rendered by any court of competent
180 jurisdiction, excluding traffic violations.

181 ~~(13)~~ (24) CREMATED REMAINS. Human remains recovered
182 after the completion of the cremation process, including
183 pulverization, which leaves only bone fragments reduced to
184 unidentifiable dimensions, and the residue of any foreign
185 materials that were cremated with the human remains.

186 (25) CREMATED REMAINS CONTAINER. A receptacle in which
187 cremated remains are placed.

188 ~~(14)~~ (26) CREMATION. The technical irreversible process,
189 using heat, flames, or chemical agents, that reduces human
190 remains to bone fragments. The reduction takes place through
191 heat and evaporation. Cremation shall include the processing,
192 and may include the pulverization, of the bone fragments.
193 Cremation is a process and is a method of final disposition.

194 ~~(15)~~ (27) CREMATIONIST. A person licensed by the board
195 to perform the procedure of cremation.

196 ~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel used



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197 to reduce human remains to bone fragments.

198 ~~(17)~~ (29) CREMATION CONTAINER. The container in which
199 human remains are transported to a crematory, in which human
200 remains are placed upon arrival at a crematory, or for storage
201 and placement in a cremation chamber for cremation.

202 ~~(18)~~ (30) CREMATORY. A building or portion of a building
203 that houses a cremation chamber and that may house a holding
204 facility for purposes of cremation and as part of a funeral
205 establishment.

206 (31) CREMATORY AUTHORITY. Any person who owns or
207 controls a crematory.

208 (32) DEATH CERTIFICATE. A legal document containing
209 vital statistics pertaining to the life and death of the
210 deceased.

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

212 ~~(19)~~ (34) EMBALMER. Any person engaged, or holding
213 himself or herself out as engaged, in the business, practice,
214 science, or profession of embalming, whether on his or her own
215 behalf or in the employ of a registered and licensed funeral
216 director.

217 ~~(20)~~ (35) EMBALMING. The practice, science, or
218 profession, as commonly practiced, of preserving,
219 disinfecting, and preparing by application of chemicals or
220 other effectual methods, human dead for burial, cremation, or
221 transportation.

222 (36) ENCASEMENT. The placement of human remains in a
223 rigid container including, but not limited to, a casket or
224 urn.



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

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

232 (39) ENTOMBMENT. The act of placing human remains in a
233 mausoleum crypt.

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

236 ~~(21)~~ (41) FUNERAL. A ceremony for celebrating,
237 sanctifying, or remembering the life of a person who has died.
238 A funeral may be divided into the following two parts:

239 a. The funeral service, which may take place at a
240 funeral home, church, or other place.

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

244 ~~(22)~~ (42) FUNERAL ARRANGEMENTS. The completing of
245 funeral service arrangements, cremation arrangements, and the
246 financial details of a funeral at the time of death. The term
247 includes the collection of vital statistic information, death
248 certificate information, obituary and funeral notice
249 completion, the completion of a statement of funeral goods and
250 services selected, organizing of funeral and memorial services
251 for families, and the ordering of cash advance items.

252 (43) FUNERAL BENEFICIARY. The person or persons who



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253 will receive the benefit of the funeral and cemetery goods and
254 services to be delivered under a preneed contract at the time
255 of his, her, or their death.

256 ~~(23)~~ (44) FUNERAL DIRECTING. The practice of directing
257 or supervising funerals, the practice of preparing dead human
258 bodies for burial by means other than embalming, or the
259 preparation for the final disposition of dead human bodies;
260 the making of funeral arrangements or providing for funeral
261 services or the making of financial arrangements for the
262 rendering of these services; the provision or maintenance of a
263 place for the preparation for final disposition of dead human
264 bodies; the use of the terms funeral director, undertaker,
265 mortician, funeral parlor, or any other term from which can be
266 implied the practice of funeral directing; or the holding out
267 to the public that one is a funeral director or engaged in a
268 practice described in this subdivision.

269 ~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be
270 licensed to practice the profession of funeral directing under
271 the laws of this state, who consults with the public, who
272 plans details of funeral services with members of the family
273 and minister or any other person responsible for such
274 planning, or who directs, is in charge, or apparent charge of,
275 and supervises funeral service in a funeral home, church, or
276 other place; who enters into the making, negotiation, or
277 completion of financial arrangements for funeral services, or
278 who uses in connection with the profession of funeral
279 directing the terms funeral director, undertaker, funeral
280 counselor, mortician, or any other term or picture or



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281 combination thereof when considered in context in which used,
282 from which can be implied the practicing of the profession of
283 funeral directing or that the person using such term or
284 picture can be implied to be holding himself or herself out to
285 the public as being engaged in the profession of funeral
286 directing; and for all purposes under Alabama law, a funeral
287 director is considered a professional. For the purposes of
288 this chapter, the term does not include any cemetery
289 authority.

290 ~~(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes any
291 funeral home or mortuary service located at a specific street
292 address where the profession of funeral directing, embalming,
293 or cremation is practiced in the care, planning, and
294 preparation for burial, cremation, or transportation of human
295 dead. A funeral establishment shall consist of and maintain
296 all of the following facilities:

297 a. A preparation room equipped with sanitary nonporous
298 floor and wall and necessary drainage and ventilation, and
299 containing operating embalming equipment, necessary approved
300 tables, instruments, hot and cold running water, containers or
301 receptacles for soiled linen or clothing, and supplies for the
302 preparation and embalming of dead human bodies for burial,
303 cremation, and transportation.

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

308 c. At least one operating funeral coach or hearse



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309 properly licensed and equipped for transporting human remains
310 in a casket or urn.

311 d. If engaged in the practice of cremation, the
312 establishment shall satisfy all crematory requirements
313 provided in this chapter and have on site an adequate supply
314 of urns for display and sale.

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

317 f. An office for holding arrangement conferences with
318 relatives or authorizing agents.

319 (47) FUNERAL SERVICE. At need or preneed services
320 provided by a funeral establishment in connection with funeral
321 directing, final disposition of human remains, or installation
322 of memorials.

323 ~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE. Any
324 item offered for sale, contracted for sale, or sold for use in
325 connection with funeral directing or funeral services when
326 sold by a funeral director including, but not limited to,
327 caskets, alternative containers, outer burial containers,
328 urns, memorials, clothing used to dress human dead when sold
329 by a funeral director, and all equipment and accoutrements
330 normally required for the preparation for burial or funeral
331 and other disposition of human dead.

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

334 ~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or
335 shameful immorality or showing a moral indifference to the
336 opinions of the good and respectable members of the community



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337 and to the just obligations of the position held by the
338 offender.

339 ~~(28)~~ (51) HOLDING ROOM. Either of the following:

340 a. A room within a funeral establishment that satisfies
341 the requirements of a branch location as provided in this
342 chapter or board rule, for the retention of human remains
343 before final disposition.

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

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

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

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

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

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

359 (57) LICENSEE. Any individual, firm, corporation,
360 partnership, joint venture, or limited liability company which
361 obtains a license, certificate, or registration in accordance
362 with this chapter.

363 ~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral
364 director and cremationist who has full charge, control, and



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365 supervision of all activities involving cremation at a funeral
366 establishment or crematory.

367 ~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who has
368 full charge, control, and supervision of all activities
369 involving the preparation room and embalming.

370 ~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed funeral
371 director who has full charge, control, and supervision of all
372 activities involving funeral directing for a funeral
373 establishment.

374 (61) MAUSOLEUM. A chamber or structure used or intended
375 to be used for entombment.

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

378 (63) MEMORIAL. Any product, other than a mausoleum or
379 columbarium, used for identifying an interment space or for
380 commemoration of the life, deeds, or career of some decedent
381 including, but not limited to, a monument, marker, niche
382 plate, urn garden plaque, crypt plate, cenotaph, marker bench,
383 and vase.

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

386 (65) MEMORIALIZATION. Any permanent system designed to
387 mark or record the names and other data pertaining to a
388 decedent.

389 ~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or
390 violent act, or any act involving theft, theft of services,
391 theft by deception, extortion, receiving stolen property,
392 identity theft, forgery, fraud, tampering with records,



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393 bribery, perjury, or any similar act in any jurisdiction.

394 ~~(33)~~ (67) MORTUARY SCIENCE. The scientific,
395 professional, and practical aspects, with due consideration
396 given to accepted practices, covering the care, preparation
397 for burial, or transportation of dead human bodies, which
398 shall include the preservation and sanitation of the bodies
399 and restorative art and those aspects related to public
400 health, jurisprudence, and good business administration.

401 ~~(34)~~ (68) MORTUARY SERVICE. A location with a specific
402 street address where embalming or cremation, or both, is
403 practiced for a licensed funeral establishment and where no
404 services or merchandise are sold directly or at retail to the
405 public. A mortuary service shall consist of and maintain all
406 of the following facilities:

407 a. A preparation room equipped with sanitary nonporous
408 floor and walls, operating embalming equipment, and necessary
409 drainage and ventilation and containing necessary approved
410 tables, instruments, hot and cold running water, containers or
411 receptacles for soiled linen or clothing, and supplies for the
412 preparation and embalming of dead human bodies for burial,
413 cremation, and transportation.

414 b. At least one operating motor vehicle properly
415 licensed and equipped for transporting human remains in a
416 casket or urn.

417 c. If engaged in the practice of cremation, the
418 establishment shall satisfy all requirements for a crematory
419 provided in this chapter.

420 (69) NICHE. A space usually within a columbarium used



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421 or intended to be used for inurnment of cremated remains.

422 ~~(35)~~ (70) OPERATOR. A person, corporation, firm, legal
423 representative, managing funeral director, general manager, or
424 other organization owning or operating a funeral establishment
425 or cemetery.

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

430 (72) PERSON. Any individual, firm, corporation,
431 partnership, joint venture, limited liability company,
432 association, trustee, government or governmental subdivision,
433 agency, or other entity, or any combination thereof.

434 ~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has been
435 actively and continuously engaged or employed in the practice
436 of embalming under the supervision of a licensed embalmer for
437 four consecutive years immediately preceding May 1, 1975, and
438 has been issued a license as a practical embalmer under the
439 grandfather provisions of this chapter.

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

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

446 (76) PREDEVELOPED INTERMENT SPACE. An interment space
447 that is planned for future construction but is not yet
448 completed.



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449 (77) PREFUND. The term applied to completing the
450 financial details of a prearrangement, which include
451 prefunding or prepayment.

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

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

456 (80) PRENEED CONTRACT TRUST FUND. The funds received
457 pursuant to a preneed contract which are required by law to be
458 held in trust until the merchandise or services purchased
459 pursuant to the contract are delivered or provided or until
460 otherwise lawfully withdrawn.

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

463 ~~(37)~~ (82) PROCESSING or PULVERIZATION. The reduction of
464 identifiable bone fragments after the completion of the
465 cremation process to unidentifiable bone fragments or
466 granulated particles by manual or mechanical means.

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

470 (84) PURCHASE PRICE. The amount paid by the purchaser
471 for merchandise and services purchased under a preneed
472 contract, exclusive of finance charges, sales tax, charges
473 relating to interment rights, arrangement conference fees, or
474 charges for credit life insurance.

475 (85) PURCHASER. The person who purchases a preneed
476 contract either on his or her behalf or on behalf of a

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477 third-party beneficiary.

478 (86) RELIGIOUS INSTITUTION. An organization formed
479 primarily for religious purposes which has applied and
480 qualified for exemption from federal income tax as an exempt
481 organization under Section 501(c)(3) of the Internal Revenue
482 Code of 1986, as amended.

483 (87) SCATTERING. The lawful dispersion of cremated
484 remains.

485 (88) SELLER. Any person offering or selling merchandise
486 or services on a preneed basis including, but not limited to,
487 funeral establishments, cemetery authorities, crematory
488 authorities, and memorial retailers.

489 (89) SPECIAL CARE. Any care provided, or to be
490 provided, that is supplemental to, or in excess of, endowment
491 care, in accordance with the specific directions of any donor
492 of funds for those purposes.

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

495 ~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for cremated
496 remains, usually composed of cardboard, plastic, or similar
497 material, that can be closed in a manner that prevents the
498 leakage or spillage of the cremated remains or the entrance of
499 foreign material, and is a single container of sufficient size
500 to hold the cremated remains until an urn is acquired or the
501 cremated remains are scattered or buried.

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



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

511 ~~(39)~~ (94) URN. A receptacle designed to encase cremated
512 remains.

513 (b) Nothing in this chapter shall require a funeral
514 director or funeral establishment to have or provide a chapel
515 or to restrict the conduct of funeral services from a church
516 or chapel."

517 "§34-13-20

518 (a) There is established the Alabama Board of Funeral
519 ~~Service~~ Services, consisting of ~~nine~~ 14 members, each of whom
520 shall be citizens of the United States and residents of the
521 State of Alabama. The membership of the board shall be divided
522 into two distinct divisions, the funeral division and the
523 preneed division, with each division having jurisdiction over
524 their respective areas of service.

525 (b) The appointing authorities shall coordinate their
526 appointments to assure board membership is inclusive and
527 reflects the racial, gender, geographic, ~~urban/rural~~ urban,
528 rural, and economic diversity of the state.

529 (c) (1) Commencing on January 1, 2019, as the terms of
530 the members serving on the board on August 1, 2017, expire,
531 the membership of the funeral division of the board shall be
532 reconstituted to consist of seven professional members and two



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533 consumer members.

534 ~~(1)~~ Each professional member of the funeral division of
535 the board shall be a citizen of the United States, a resident
536 of Alabama, and licensed and in good standing with the board
537 as an embalmer or funeral director at the time of appointment
538 and during the entire term of office. Professional members of
539 the board shall be appointed by the Governor pursuant to
540 subsection (e). As the terms of the members serving on the
541 board on October 1, 2023, expire, the professional membership
542 of the board shall be appointed to reflect the following:

543 a. ~~Four~~ Three of the professional members of the board
544 shall hold a current license from the board to practice
545 embalming in the state, shall have been actively practicing
546 embalming in the state for the last 10 consecutive years
547 immediately preceding appointment, and shall be engaged in the
548 practice of embalming at the time of appointment to the board.

549 b. ~~Three~~ Four of the professional members of the board
550 shall hold a current license from the board to practice
551 funeral directing in the state, shall have been actively
552 engaged in funeral directing in the state for the last 10
553 consecutive years immediately preceding appointment, and shall
554 be the operator of a funeral establishment in this state at
555 the time of appointment to the board.

556 (2) Commencing on October 1, 2023, the preneed division
557 of the board shall be created to consist of four professional
558 members and one consumer member. Two professional members
559 shall be licensed funeral directors and two professional
560 members shall be licensed preneed sales agents employed by a



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561 cemetery. Each professional member of the preneed division of
562 the board shall hold a current license from the board to
563 practice as a preneed sales agent, shall have been actively
564 engaged in preneed sales or direct management of preneed sales
565 in the state for the last five consecutive years immediately
566 preceding appointment, and shall be employed by a certificate
567 of authority license holder in this state at the time of
568 appointment to the board. Two of these professional members
569 shall also hold a current certificate of authority to sell
570 preneed services and merchandise. The initial appointment of
571 two of the preneed sales agents appointed pursuant to this
572 paragraph shall expire on December 31, 2025, and for the other
573 two, shall expire on December 31, 2026. Thereafter, the
574 preneed sales agent members shall serve pursuant to subsection
575 (e). Professional members of the board shall be appointed by
576 the Governor pursuant to subsection (e).

577 ~~(2)~~ (3) Each consumer member of the board shall
578 represent the public in general and shall have been a citizen
579 of the United States and a resident of Alabama for the last 10
580 consecutive years immediately preceding appointment and during
581 the entire term of office. A consumer member of the board may
582 not have held, nor currently hold, a license or certification
583 issued by the board, be employed at any time by, or
584 professionally or financially associated with, the holder of a
585 license or certificate issued by the board, or be related
586 within the third degree of consanguinity or affinity to the
587 holder of a license or certificate issued by the board. ~~One~~
588 Two consumer ~~member~~ members of the board shall be appointed by



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589 the Lieutenant Governor and one consumer member shall be
590 appointed by the Speaker of the House of Representatives
591 pursuant to a procedure adopted by rule of the board.

592 (d) Commencing in October of 2018, and each October
593 thereafter of a year where at least one professional member
594 term on either division of the board has expired, ~~or is vacant~~
595 ~~for any reason,~~ all licensed funeral directors and licensed
596 embalmers for a funeral division member, and all licensed
597 preneed sales agents for a preneed division member, shall meet
598 in Montgomery, at a time and place fixed by the respective
599 division of the board, for the purpose of nominating and
600 submitting the names of three licensed persons for each
601 position on the board to the Governor. The Governor shall
602 promptly appoint one of the three persons so nominated to
603 serve as a professional member of the board.

604 (e) (1) Professional and consumer members of the board
605 shall serve staggered terms of four years each to provide
606 continuity of service on the board. If an appointment is not
607 made before the expiration of a term, the board member then
608 serving may continue to serve until a successor has been
609 appointed. A board member may not serve more than two full
610 consecutive terms on the board.

611 (2) ~~A board member who is appointed to fill a vacancy~~
612 ~~which occurs before the expiration of the term of the vacating~~
613 ~~member shall serve the remaining portion of the term to which~~
614 ~~the former member was appointed.~~ A vacancy on the board for
615 any reason shall be filled by appointment of the Governor for
616 the unexpired term. The appointee shall serve until his or her



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617 successor is nominated and appointed pursuant to subsection
618 (d). If a member is appointed to fill an unexpired term of
619 less than two years, the time may not be counted toward the
620 maximum eight years of service.

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

625 (4) At each meeting where nominations are made for the
626 professional members of the funeral division of the board,
627 only one licensed funeral director or licensed embalmer
628 employed by the same funeral establishment may vote. At each
629 meeting where nominations are made for the professional
630 members of the preneed division of the board, only one
631 licensed preneed sales agent employed by the same certificate
632 of authority holder may vote.

633 (f) (1) In accordance with applicable law, in addition
634 to a board member resigning from the board in writing, a board
635 member may be removed from the board for any of the following
636 grounds:

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

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

642 c. A final adjudication or determination of guilt by
643 any lawful authority of the board member or sanction of the
644 board member for the violation of any law the board determines



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645 is substantially related to any practice governed by this
646 chapter.

647 d. The revocation or suspension of the license of a
648 professional member of the board.

649 (2) Any board member who fails to qualify after
650 appointment shall automatically become ineligible to serve as
651 a member of the board and a new member, properly qualified,
652 shall be appointed in the same manner as the original
653 appointment and shall serve the remainder of the term of the
654 vacating board member.

655 (3) If a consumer board member fails to attend two or
656 more meetings within a year, without a valid excuse as
657 determined by the board, he or she shall be removed from the
658 board. A new consumer board member shall be appointed in the
659 same manner as the original appointment and shall serve the
660 remainder of the term.

661 (g) (1) The status of any person or entity properly
662 licensed by the Alabama Board of Funeral Service on the
663 effective date of this act shall continue under the Alabama
664 Board of Funeral Services.

665 (2) All the rights, duties, property, real or personal,
666 and all other effects existing in the name of the Alabama
667 Board of Funeral Service shall be transferred to the Alabama
668 Board of Funeral Services. Any reference to the Alabama Board
669 of Funeral Service in any existing law, contract, or other
670 instrument, shall be deemed a reference to the Alabama Board
671 of Funeral Services.

672 (3) A reasonable transition period for the name change



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673 shall be allowed to permit an orderly and cost-effective
674 transition, relating particularly to the use of equipment and
675 supplies, all letterhead, business cards, forms, and any other
676 materials in use by the board containing the name Alabama
677 Board of Funeral Service shall continue to be used by the
678 Alabama Board of Funeral Services until the supplies are
679 exhausted. Replacement supplies shall contain the name of the
680 Alabama Board of Funeral Services.

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

684 "§34-13-21

685 There are created, for the purpose of this chapter,
686 seven geographical districts which shall be identical with the
687 seven congressional districts as fixed and established by
688 Section 17-14-70, as may be amended. It is the purpose and
689 intention of this section to provide that not more than one
690 professional member of each division of the board shall be
691 selected from each district and that three nominees to the
692 Governor for appointment to the board shall be made from each
693 district. The ~~two~~ three consumer members of the board may not
694 reside in the same congressional district."

695 "§34-13-22

696 (a) The Alabama Board of Funeral-Service Services shall
697 hold not less than one joint meeting of both divisions
698 quarterly, ~~such meeting~~ for the purpose of reviewing
699 financial, budgetary, and employment matters. The quarterly
700 meetings to be held at ~~such~~ a time and place as the board may



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701 determine after notice of ~~such~~ the meeting has been given in
702 the manner prescribed herein at least 15 days prior to ~~such~~
703 the meeting. The board may hold ~~such~~ other meetings as ~~it~~ the
704 board may deem necessary. A majority of the appointed members
705 shall constitute a quorum authorized to transact general
706 business in the name of the board. ~~The board shall not meet on~~
707 ~~the premises of any embalming school or college of mortuary~~
708 ~~science; and, if any such meeting is held, all the proceedings~~
709 ~~of such meeting shall be void~~ Upon the executive director
710 -serving on the effective date of the act amending this
711 subsection leaving office, two-thirds of the appointed members
712 of each division shall constitute a quorum for the purposes of
713 selecting an executive director and establishing fees.

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

716 "§34-13-23

717 (a) (1) The board ~~appointed under this chapter and each~~
718 ~~successor thereto may~~ shall select from its own membership a
719 chair and to adopt rules for the transaction of its business
720 and for the betterment and promotion of the standards of
721 service and practice to be followed in the death care industry
722 in the State of Alabama as the board may deem expedient and
723 consistent with the laws of this state and for the public
724 good.

725 (2) The chair shall preside at all meetings of the
726 board unless otherwise ordered, and he or she shall exercise
727 and perform all duties and functions incident to the office of
728 chair.



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

732 (b) The treasurer shall give bond to the State of
733 Alabama in the sum of ten thousand dollars (\$10,000), and any
734 premium payable for the bond shall be paid from the funds of
735 the board. The bond shall be deposited with the Treasurer of
736 the State of Alabama.

737 (c) A board member shall be reimbursed for necessary
738 travel expenses, per diem, and the necessary expenses incident
739 to his or her attendance upon the business of the board, and,
740 in addition thereto, shall receive compensation in the amount
741 of seventy-five dollars (\$75) for every day not to exceed 20
742 days per year actually spent by the member upon the business
743 of the board. The board may employ in the unclassified service
744 an executive director and up to four associate executive
745 directors who shall each receive and be paid an annual salary
746 to be fixed by the board pursuant to Section 36-6-6. The
747 salary shall be paid on a semimonthly basis. In addition, the
748 executive director and associate executive directors shall
749 each receive his or her necessary travel and other incidental
750 expenses as are incurred in the performance of duties, and all
751 expenses, per diem, and compensation shall be paid out of the
752 receipts of the board. At no time shall the operation of the
753 board be an expense to the state.

754 (d) The executive director of the board shall have
755 complete supervision and be held responsible for the direction
756 of the office of the board, shall have supervision over



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757 employees, field inspections, ~~audits~~ examinations, and
758 enforcement of this chapter, and shall be responsible and
759 answerable to the board. The associate executive directors
760 shall assist the executive director and perform such other
761 duties as may be assigned to him or her by the executive
762 director.

763 (e) The executive director shall keep a record in which
764 shall be registered the name and business address of every
765 person to whom licenses have been granted in accordance with
766 this chapter, the number and date of the license and the date
767 of each renewal. Upon request to do so, the executive director
768 shall supply a list of all persons and establishments holding
769 a license under this chapter, then in force, giving the names
770 of the persons, their business addresses, and the numbers of
771 their licenses.

772 (f) It shall be the duty of the executive director to
773 prepare under the direction of the board and cause to be
774 printed all forms required by this chapter to be prescribed by
775 the board. All notices required to be mailed by this chapter
776 shall be directed to the last known address of the party to
777 whom the notice is sent.

778 (g) The executive director shall serve at the pleasure
779 of the board and shall perform duties as may be necessary for
780 the proper functioning of the board as the board may determine
781 or as may be prescribed in this chapter. During the employment
782 of the executive director, he or she may not be employed by
783 any funeral establishment.

784 (h) All fees and fines received under this chapter



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785 shall be paid into a special fund in the State Treasury to be
786 known as the Alabama State Funeral Service Fund, which is
787 hereby created, for the necessary and proper expenses of the
788 board, and for a reasonable reserve for future use by the
789 board. All monies in the fund are hereby appropriated, as a
790 continuing appropriation, to the board to be used for carrying
791 out this chapter. Commencing on October 1, 2023, the name of
792 the fund shall be changed to the Alabama Board of Funeral
793 Services Fund.

794 (i) Each member of the board, the executive director,
795 the associate executive directors, designated employees, and
796 independent contractors of the board appropriately identified
797 are authorized at any given time to enter the office,
798 premises, establishment, or place of business where any
799 practice or activity regulated by this chapter is carried on,
800 or advertised as being carried on, to investigate complaints
801 or perform ~~audits~~ examinations or inspections. Each on-site
802 inspection shall include an inspection of the license,
803 certification, and registration of each licensee and
804 apprentice trainee operating therein.

805 (j) All members of the board or designated employees of
806 the board may serve and execute any process issued by any
807 court under this chapter and execute any papers, orders, or
808 process issued by the board or any officer or member of the
809 board under this chapter.

810 (k) The board may employ clerical assistants and
811 employees as necessary to carry out this chapter, and the
812 terms and conditions of employment shall be determined by the



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813 board. The board may establish and equip an office from which
814 this chapter may be carried out.

815 (1) (1) The board may acquire and hold, in its own name,
816 real property by purchase, gift, lease, lease with the option
817 to purchase, or other lawful means, except eminent domain,
818 which real property may be used by the board to carry out its
819 responsibilities. The board may also transfer, sell, convey,
820 or cause to be conveyed real property and any improvements
821 thereon, subject to the requirements of this section. In
822 purchasing any real property, maintaining real property, or
823 making improvements thereto, the board may expend any funds
824 contained in the Funeral Board Property Acquisition Fund
825 established in subdivision (2), and any obligations created in
826 connection with the purchase or improvement of the real
827 property shall not create debts, obligations, or liabilities
828 of the state. As used in this subsection, real property shall
829 include land, lots, and all things and interests, including
830 leasehold interests, pertaining thereto, and all other things
831 annexed or attached to the land which would pass to a vendee
832 by conveyance of the land or lot, including mineral, gas, and
833 oil interests. All sales or leases made by the board of any
834 real property owned or held by the board shall be subject to
835 the requirements of Article 3, Chapter 15, Title 9.
836 Notwithstanding the foregoing, the proceeds from the sale of
837 real property owned by the board which are distributed
838 pursuant to Section 9-15-83 shall be paid to the board and
839 deposited into the property acquisition fund.

840 (2) There is established the Funeral Board Property



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841 Acquisition Fund within the State Treasury. Any funds received
842 by the board pursuant to this section shall be deposited into
843 the property acquisition fund and shall be held by the board
844 in trust for carrying out the purposes of the property
845 acquisition fund. Amounts in the property acquisition fund
846 shall be budgeted and allotted in accordance with Sections
847 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.
848 Not later than May 1, 2022, the executive director shall
849 transfer from the Alabama State Funeral Service Fund to the
850 property acquisition fund an amount determined by vote of the
851 board for the purchase of real property. Thereafter, the board
852 shall annually, during the month of October, transfer an
853 amount between two percent and seven percent of the receipts
854 of the board from the previous fiscal year to the property
855 acquisition fund.

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

860 "§34-13-27

861 (a) The board shall adopt a common seal, which may be
862 altered as often as the board may desire, and the funeral
863 division of the board may adopt and enforce, for the
864 protection of the public health, safety, and welfare,
865 reasonable rules relating to all of the following:

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

868 (2) The practice of the profession of funeral



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869 directing, including, but not limited to, solicitation of
870 business.

871 (3) The sanitary condition and physical facilities of
872 funeral homes, mortuaries, and funeral establishments where
873 the profession of embalming and funeral directing is carried
874 on, with particular regard to plumbing, sewage, disinfecting,
875 ventilation, and equipment.

876 (4) Carrying out generally the various provisions of
877 this chapter for the protection of the peace, health, safety,
878 and welfare of the public.

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

881 (6) The sale of goods, services, and merchandise and
882 the operation of entities and establishments regulated by the
883 board.

884 (b) The preneed division of the board may adopt and
885 enforce, for the protection of the public health, safety, and
886 welfare, reasonable rules relating to the sale of preneed
887 merchandise and services."

888 Section 2. The following heading is added to Division
889 1, commencing with Section 34-13-170, of Article 5, Chapter
890 13, Title 34, Code of Alabama 1975:

891 "Article 5. Alabama Preneed Funeral and Cemetery Act of
892 2023.

893 "Division 1. General Provisions."

894 Section 3. Sections 27-17A-1, 27-17A-3, and 27-17A-4 of
895 the Code of Alabama 1975, are amended and renumbered as
896 Division 1 of Article 5 of Chapter 13 of Title 34, Code of



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897 Alabama 1975, to read as follows:

898 "~~§27-17A-1~~§34-13-170

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

901 (b) (1) The Alabama Board of Funeral Services succeeds
902 to and is vested with the powers, duties, and functions of the
903 Department of Insurance relating to the regulation of
904 endowment care, preneed sales contracts, and the licensing of
905 preneed sales agents.

906 (2) All records of the Department of Insurance relating
907 to the regulation of preneed sales contracts, endowment care,
908 and the licensing of preneed sales agents are transferred to
909 the board.

910 (3) The status of any person properly licensed by the
911 Department of Insurance under the former Chapter 17A of Title
912 27, on the effective date of the act adding this subdivision,
913 shall continue under the board.

914 (4) The administrative rules of the Department of
915 Insurance existing on the effective date of the act adding
916 this subdivision shall remain in effect as administrative
917 rules of the board until added, amended, or repealed by the
918 board.

919 (5) The existence and functioning of the Alabama
920 Preneed Funeral and Cemetery Act, created and functioning
921 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is
922 continued as the Alabama Preneed Funeral and Cemetery Act of
923 2023, under this article. All rights, duties, and obligations
924 existing in the name of the Department of Insurance, relating



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925 to endowment care, preneed sales contracts, and preneed sales
926 agent licenses, shall continue under the board. Any reference
927 to the Department of Insurance in any existing law, contract,
928 or other instrument relating to endowment care, preneed sales
929 contracts, and preneed sales agent licenses, shall be deemed a
930 reference to the board.

931 (6) The transfer of the regulation of preneed contracts
932 and the licensing of preneed sales agents from the Department
933 of Insurance to the board shall not affect the rights of any
934 person held before the effective date of the act adding this
935 subdivision, as those rights relate to any preneed trust
936 funds, endowment care trust funds, or any other funds held in
937 trust pursuant to the Alabama Preneed Funeral and Cemetery
938 Act."

939 ~~"§27-17A-3~~§34-13-171

940 (a) Nothing in this chapter shall be construed to
941 prohibit the funding of preneed contracts with multiple
942 insurance or annuity contracts. Life insurance and annuity
943 contracts used to fund preneed contracts shall conform with
944 ~~the provisions of this title~~ Title 27 as they relate to life
945 insurance and annuities and shall cover not less than the
946 initial retail price of the preneed contract.

947 (b) The initial premium payment for a life insurance
948 policy or annuity contract shall be made payable to the
949 issuing insurance company and the preneed seller shall remit
950 the payment to the insurance company within 10 business days
951 after the insurance application is signed by the parties. If a
952 preneed contract provides for installment payments, each



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953 premium payment shall be made payable to the insurance company
954 and, if collected by the preneed seller, shall be remitted to
955 the insurance company within 10 business days after receipt by
956 the preneed seller.

957 (c) Nothing in this chapter shall prohibit a seller, or
958 any other person, from receiving commissions earned and
959 payable in regard to funding preneed contracts with life
960 insurance or annuity contracts, provided the seller or other
961 person holds a valid insurance producer license in this state
962 and is appointed by the insurance company paying the
963 commission.

964 (d) A preneed seller may be identified as the
965 beneficiary or assignee of the death benefit proceeds of a
966 life insurance policy or annuity contract sold as a future
967 funding mechanism for a preneed contract, but may not be the
968 owner of the policy or annuity contract or exercise any
969 ownership rights in the policy or annuity. If the preneed
970 contract is cancelled before or after the death of the funeral
971 beneficiary, the preneed seller shall cancel and relinquish
972 any assignment of benefits or beneficiary status under the
973 policy or annuity contract, and deliver the policy or
974 contract, if in the custody of the preneed seller, to the
975 policy owner or his or her legal representative."

976 "~~§27-17A-4~~§34-13-172

977 Nothing in this chapter shall be construed to prohibit
978 cemetery authorities from selling funeral merchandise, funeral
979 establishments from selling cemetery merchandise, or
980 third-party sellers from selling either funeral merchandise or



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981 cemetery merchandise, or both. Provided, the required amount
982 of the purchase price to be placed into trust shall be
983 governed by the appropriate section of this chapter."

984 Section 4. The following heading is added to Division
985 2, commencing with Section 34-13-190, of Article 5, Chapter
986 13, Title 34, Code of Alabama 1975:

987 "Division 2. Certificate of Authority."

988 Section 5. Sections 27-17A-10, 27-17A-11, 27-17A-11.1,
989 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-16,
990 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20, 27-17A-21,
991 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of the Code of
992 Alabama 1975, are amended and renumbered as Division 2 of
993 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to
994 read as follows:

995 "~~§27-17A-10~~§34-13-190

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

998 (b) (1) No person may receive any funds for payment on a
999 preneed contract who does not hold a valid certificate of
1000 authority.

1001 (2) Any preneed transaction in which a buyer pays to
1002 the seller before need, in whole or in part, a purchase price
1003 for funeral or cemetery merchandise and services, and in which
1004 the seller is not obligated to deliver the contracted for
1005 merchandise or to perform the services until need, in whole or
1006 in part, shall be evidenced by a written preneed contract
1007 satisfying the requirements of this chapter and signed by the
1008 seller and the purchaser. No person may receive or accept any



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1009 form of consideration in such a transaction without a fully
1010 signed written preneed contract. A transaction not evidenced
1011 by a signed written preneed contract shall be voidable at the
1012 election of the buyer and, if such election is made, the
1013 seller shall refund to the buyer the entire amount paid by the
1014 buyer together with interest thereon at the legal rate within
1015 30 days after notice to the seller.

1016 (3) The provisions of subdivision (1) do not apply to
1017 the purchase of a life insurance policy or annuity, the
1018 benefits of which are assigned to a funeral home ~~and/or~~ or
1019 cemetery authority, or the benefits of which are to be paid to
1020 a funeral home ~~and/or~~ or cemetery authority named as
1021 beneficiary of the policy or annuity, as long as the purchaser
1022 and funeral home ~~and/or~~ or cemetery authority acknowledge in
1023 writing that no preneed contract is entered as a result of the
1024 purchase or assignment of the life insurance policy or annuity
1025 at the time the policy or annuity is purchased. Benefits from
1026 a life insurance policy or annuity issued under this
1027 subdivision shall only be paid to a funeral home ~~and/or~~ or
1028 cemetery authority which provides funeral or cemetery
1029 merchandise and services at the death of the insured whether
1030 or not such funeral home ~~and/or~~ or cemetery has been named as
1031 an assignee or the beneficiary of the policy or annuity. If
1032 the amount of the policy or annuity proceeds shall exceed the
1033 actual funeral costs at the time of need, ~~such~~ the excess
1034 amount ~~must~~ shall be paid to a designated beneficiary, other
1035 than a funeral home ~~and/or~~ or cemetery authority, or to the
1036 estate of the insured or annuitant.



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1037 (4) ~~The provisions of subdivision~~ Subdivision (1) ~~de~~
1038 does not apply to any legal reserve insurance company or to
1039 any trust company or to any national or state bank or savings
1040 and loan association having trust powers which company, bank,
1041 or association receives any money in trust pursuant to the
1042 sale of a preneed contract.

1043 (c) (1) No person may obtain a certificate of authority
1044 under this ~~article~~ chapter for the preneed sale of funeral
1045 services or cemetery services unless the person or its agent,
1046 in the case of a corporate entity, holds a license as a
1047 funeral director or a funeral establishment, or is a cemetery
1048 authority ~~and qualifies as an applicant for a certificate of~~
1049 authority pursuant to the following standards and
1050 qualifications:

1051 a. The applicant shall be at least the legal age of
1052 majority in this state.

1053 b. The applicant shall be in good standing with the
1054 board.

1055 c. The applicant may not have any felony or misdemeanor
1056 convictions that relate to any activity regulated by this
1057 chapter or a crime involving moral turpitude, as defined by
1058 this chapter.

1059 d. The applicant shall be of good moral character and
1060 submit to a criminal history background check pursuant to
1061 subdivision (2).

1062 (2) An applicant for a certificate of authority shall
1063 submit to the board, on a form sworn to by the applicant, his
1064 or her name, date of birth, Social Security number, and two



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1065 complete sets of fingerprints for completion of a criminal
1066 history background check. The board shall submit the
1067 fingerprints to the Alabama State Law Enforcement Agency for a
1068 state criminal history background check. The fingerprints
1069 shall be forwarded by the agency to the Federal Bureau of
1070 Investigation for a national criminal history background
1071 check. Costs associated with conducting a criminal history
1072 background check shall be paid by the applicant. The board
1073 shall keep information received pursuant to this subdivision
1074 confidential, except that information received and relied upon
1075 in denying the issuance of a certificate of authority may be
1076 disclosed if necessary to support the denial. All character
1077 information, including the information obtained through the
1078 criminal history background checks, shall be considered in
1079 licensure decisions to the extent permissible by all
1080 applicable laws.

1081 (d) ~~The provisions of this~~ This section ~~do~~ does not
1082 apply to a cemetery authority owned or operated by a
1083 governmental agency or a religious institution or to those
1084 cemeteries that do not charge fees or sell plots, interment
1085 rights, or any related cemetery merchandise."

1086 "~~§27-17A-11~~ §34-13-191

1087 (a) An application to the ~~commissioner~~ board for a
1088 certificate of authority shall be accompanied by the statement
1089 and other matters described in this section in the form
1090 prescribed by the ~~commissioner~~ board. Annually thereafter,
1091 ~~within six months after the end of its fiscal period,~~ or
1092 within an extension of time therefor, as the ~~commissioner~~



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1093 board for good cause may grant, the person authorized to
1094 engage in the sale of preneed contracts shall file with the
1095 ~~commissioner~~ board a full and true statement of his or her
1096 financial condition, transactions, and affairs, prepared on a
1097 basis as adopted by a rule of the ~~commissioner~~ board, as of
1098 the preceding fiscal period or at such other time or times as
1099 the ~~commissioner~~ board may provide by rule, together with
1100 information and data which may be required by the ~~commissioner~~
1101 board.

1102 (b) The statement shall include all of the following:

1103 (1) The types of preneed contracts proposed to be
1104 written and the type of funding ~~vehiele~~ vehicles to be used.

1105 (2) The name and address of the place of business of
1106 the person offering to write preneed contracts.

1107 (3) Evidence that the person offering the statement has
1108 the following qualifications:

1109 a. Has the ability to discharge his or her preneed
1110 liabilities as they become due in the normal course of
1111 business and has sufficient funds available during the
1112 calendar year to perform his or her obligations under the
1113 contract.

1114 b. Has complied with the trust requirements for the
1115 funds received under contracts issued by himself or herself as
1116 hereinafter described.

1117 c. Has disbursed interest, dividends, or accretions
1118 earned by trust funds, in accordance with this ~~article~~ chapter
1119 and rules ~~promulgated~~ adopted hereunder.

1120 d. Has complied with this chapter and any rules of the



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1121 ~~commissioner~~ board.

1122 (4) Any other information considered necessary by the
1123 ~~commissioner~~ board to meet the ~~commissioner's~~ board's
1124 responsibilities under this chapter.

1125 (c) If the person is an individual, the statement shall
1126 be sworn by him or her; if a firm or association, by all
1127 members thereof; or, if a corporation, by any officer of the
1128 corporation.

1129 (d) (1) An application to the ~~commissioner~~ board for an
1130 initial certificate of authority shall be accompanied by an
1131 application fee in an amount to be determined by the
1132 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~
1133 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,
1134 each annual application for renewal of a certificate of
1135 authority shall be accompanied by the appropriate fee as
1136 determined by the ~~commissioner~~ board not to exceed
1137 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

1138 (2) Any person or entity that is part of a common
1139 business enterprise that has a certificate of authority issued
1140 pursuant to this ~~article~~ chapter and elects to operate under a
1141 name other than that of the common business enterprise shall
1142 submit an application on a form ~~adopted~~ prescribed by the
1143 ~~commissioner~~ board to become a branch registrant. Upon the
1144 approval of the ~~commissioner~~ board that the entity qualifies
1145 to sell preneed contracts under this ~~article~~ chapter except
1146 for the requirements of subparagraph 1., of paragraph a. of
1147 subdivision (3) of subsection (b) and if the certificate
1148 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,



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1149 a branch registration shall be issued. Each branch registrant
1150 may operate under the certificate of authority of the common
1151 business enterprise upon the payment of a fee established by
1152 the ~~commissioner board~~ not to exceed ~~one hundred fifty dollars~~
1153 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying
1154 the application on ~~July~~ September 1 annually.

1155 (e) Upon the ~~commissioner board~~ being satisfied that
1156 the statement and matters which may accompany ~~it~~ the statement
1157 meet the requirements of this ~~article~~ chapter and of its
1158 rules, the ~~commissioner board~~ shall issue or renew the
1159 certificate of authority.

1160 (f) The certificate of authority shall expire annually
1161 on ~~September~~ October 1, unless renewed, or at such other time
1162 or times as the ~~commissioner board~~ may provide by rule.

1163 (g) On or before ~~July 1~~ of a date adopted by the board
1164 each year, the certificate holder shall file with the
1165 ~~commissioner board~~ in the form prescribed by the ~~commissioner~~
1166 board a full and true statement as to the activities of any
1167 trust established by it pursuant to this ~~article~~ chapter for
1168 the preceding calendar year.

1169 (h) In addition to any other penalty that may be
1170 provided for under this ~~article~~ chapter, the ~~commissioner~~
1171 board may levy a fine not to exceed fifty dollars (\$50) per
1172 day for each day the certificate holder fails to file its
1173 annual statement, and the ~~commissioner board~~ may levy a fine
1174 not to exceed fifty dollars (\$50) per day for each day the
1175 certificate holder fails to file the statement of activities
1176 of the trust. Upon notice to the certificate holder by the



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1177 ~~commissioner~~ board that the certificate holder has failed to
1178 file the annual statement or the statement of activities of
1179 the trust, the certificate holder's authority to sell preneed
1180 contracts shall cease while the default continues.

1181 (i) To facilitate uniformity in financial statements
1182 and to facilitate analysis, the ~~commissioner~~ board may by rule
1183 adopt a form for financial statements. The holder of a
1184 certificate of authority may submit a written request to the
1185 ~~commissioner~~ board to exempt the holder from filing financial
1186 statements at renewal. The ~~commissioner~~ board may waive the
1187 requirement for filing a financial statement at renewal if all
1188 of the following are satisfied:

1189 (1) No valid complaint has been filed since the last
1190 ~~examination~~ audit.

1191 (2) No administrative action against the preneed entity
1192 has been instituted since the last ~~examination~~ audit.

1193 (3) The certificate holder certifies that all
1194 outstanding preneed contracts written by the holder since
1195 April 30, 2002, are fully funded in accordance with this
1196 chapter.

1197 (4) The certificate holder certifies that it will fully
1198 fund all preneed contracts with life insurance, annuity, or
1199 will deposit 100 percent of all funds collected on all preneed
1200 contracts in trust within 30 days after the end of the
1201 calendar month in which the funds are collected.

1202 (5) The preneed entity has provided to the ~~department~~
1203 board in a timely manner all required and requested records.

1204 (6) The preneed entity agrees to file ~~quarterly~~ reports



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1205 of its preneed activity on a form ~~or~~, in a format, and as
1206 often as prescribed by the ~~commissioner~~ board.

1207 (j) The ~~commissioner~~ board may authorize the transfer
1208 of certificates of authority and establish fees for the
1209 transfer in an amount not to exceed ~~one hundred dollars (\$100)~~
1210 one hundred thirty-two dollars (\$132). Upon receipt of an
1211 application for transfer, the ~~commissioner~~ board may grant a
1212 temporary certificate of authority to the proposed transferee,
1213 based upon criteria established by the ~~commissioner~~ board by
1214 rule, which criteria shall promote the purposes of this
1215 ~~article~~ chapter in protecting the consumer. A temporary
1216 certificate of authority shall expire 60 days after issuance
1217 unless renewed by the ~~commissioner~~ board."

1218 "~~§27-17A-11.1~~§34-13-192

1219 (a) On ~~a semi-annual basis, within 45 days after the~~
1220 ~~end of each second calendar reporting period~~ or before July 1,
1221 each year, the certificate holder shall file a report of its
1222 preneed contract activity on a form or in a format prescribed
1223 by the ~~commissioner~~ board. The information reported shall
1224 include the total number of preneed contracts in force at the
1225 end of the previous ~~reporting period~~ calendar year, the total
1226 number of preneed contracts sold during the ~~reporting period~~
1227 previous calendar year, the total number of preneed contracts
1228 fulfilled during the ~~reporting period~~ previous calendar year,
1229 the total number of preneed contracts in force at the end of
1230 the ~~reporting period~~ previous calendar year, and such other
1231 information as may be required by the ~~commissioner~~ board. The
1232 report shall be organized by type of funding including, life



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1233 insurance, annuity, trust, letter of credit, or surety bond.
1234 The report shall also provide a certification by the trustee
1235 of the amount of assets held by the trust at the beginning of
1236 the reporting period and at the end of the reporting period,
1237 together with the amount of deposits and withdrawals during
1238 the reporting period. If a certificate holder shall twice
1239 default in complying with the requirements of this subsection,
1240 the ~~commissioner~~ board may require that the certificate holder
1241 thereafter submit the report within 45 days after the end of
1242 each calendar quarter and shall continue so reporting for a
1243 time to be determined by the ~~commissioner~~ board.

1244 (b) The certificate holder shall maintain a written log
1245 of preneed sales. The log shall be on a form or in a format
1246 prescribed by the ~~commissioner~~ board, shall detail all
1247 information required by the ~~commissioner~~ board, and shall be
1248 available for inspection at any time by the ~~commissioner~~
1249 board.

1250 (c) Each cemetery authority shall maintain a written
1251 log of the sale of cemetery interment rights. The log shall be
1252 on a form or in a format prescribed by the ~~commissioner~~ board
1253 and shall detail all information required by the ~~commissioner~~
1254 board.

1255 (d) The board may maintain a statewide database of
1256 preneed contracts reported to the board pursuant to subsection
1257 (a). The board may make information in this database
1258 searchable by the public by means of unique identifiers, or
1259 any other means, that the board determines respects the
1260 privacy of those involved while also protecting consumers from



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1261 financial waste by allowing families to determine if a
1262 deceased loved one has an existing preneed contract. Any
1263 preneed consumer who does not wish for his or her information
1264 to appear in this searchable database may opt out by following
1265 a process established by the board."

1266 "~~§27-17A-12~~§34-13-193

1267 (a) Preneed contract forms and related forms shall be
1268 filed with and approved by the ~~commissioner~~ board.

1269 (b) Specific disclosure regarding whether, consistent
1270 with the requirements of this chapter, the certificate holder
1271 is placing certain preneed funds received with the contract in
1272 trust, in an annuity, or in insurance, is required in the
1273 preneed contract.

1274 (c) Preneed contracts which have been submitted to the
1275 ~~commissioner~~ board shall be deemed to have been approved by
1276 the ~~commissioner~~ board in the event that the ~~commissioner~~
1277 board fails to notify the certificate holder that approval has
1278 been denied within 30 days following submission to the
1279 ~~commissioner~~ board."

1280 "~~§27-17A-13~~§34-13-194

1281 (a) Except as provided in Sections ~~27-17A-3 and~~
1282 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract
1283 shall require the monies paid to the seller or trustee to be
1284 placed in trust in accordance with ~~Article 3~~ Division 3, for
1285 funeral merchandise and services sold by funeral
1286 establishments or third party sellers, or ~~Article 4~~ Division
1287 4, for cemetery merchandise and services sold by cemetery
1288 authorities.



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1289 (b) Although this chapter does not apply to preneed
1290 contracts entered into prior to May 1, 2002, a preneed
1291 provider which contends that a preneed trust fund which was in
1292 effect prior to May 1, 2002, complies with this chapter with
1293 respect to the contracts entered into prior to May 1, 2002,
1294 may provide to the ~~commissioner~~ board documentary proof
1295 thereof. Upon the ~~commissioner~~ board determining that
1296 compliance has been established, the pre-existing preneed
1297 trust fund assets may be merged with or into the trust fund
1298 required under this chapter or continued as the trust fund and
1299 that determination by the ~~commissioner~~ board shall be noted on
1300 the certificate of authority, and thereafter all preneed
1301 contracts covered by the trust fund, including those entered
1302 into prior to May 1, 2002, shall be subject to this chapter."

1303 "~~§27-17A-14~~ §34-13-195

1304 (a) As an alternative to the trust requirement of
1305 Section ~~27-17A-13~~ 34-13-194, the details of which are set
1306 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed
1307 provider ~~may~~, with the prior approval of the ~~commissioner~~
1308 board, may purchase a surety bond in an amount not less than
1309 the aggregate value of outstanding liabilities on undelivered
1310 preneed contracts for merchandise, services, and cash
1311 advances. For the purposes of this section, the term
1312 outstanding liabilities means the original retail amount of
1313 services and cash advances and the actual cost to the entity
1314 to provide the undelivered merchandise sold on each contract
1315 written after April 30, 2002. The surety bond shall be in an
1316 amount sufficient to cover the outstanding liability at the



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1317 time each contract is executed.

1318 (b) The bond shall be made payable to the State of
1319 Alabama for the benefit of the ~~commissioner~~ board and of all
1320 purchasers of preneed merchandise, services, and cash
1321 advances. The bond shall be issued by an insurance company
1322 licensed in the State of Alabama and authorized to issue
1323 surety bonds and approved by the ~~commissioner~~ board.

1324 (c) The amount of the bond shall be based on a report
1325 documenting the outstanding liabilities of the preneed
1326 provider for the previous calendar quarter and the projected
1327 liability for the immediately following quarter, shall be
1328 prepared by the preneed provider using generally accepted
1329 accounting principles, and shall be signed by the chief
1330 executive officer or chief financial officer of the preneed
1331 provider. The report shall be compiled as of the end of the
1332 preneed provider's fiscal year and updated quarterly.

1333 (d) The amount of the bond shall be increased or
1334 decreased as necessary to correlate with changes in the
1335 outstanding liabilities. Further, the ~~commissioner~~ board may
1336 order the bond to be increased as necessary to correlate with
1337 changes in the outstanding liabilities of bonded contracts due
1338 to increases in the consumer price index.

1339 (e) If the preneed provider fails to maintain a bond
1340 pursuant to this section the preneed provider shall cease the
1341 offering for sale and sale of preneed merchandise, services,
1342 and cash advances as provided by rule of the board.

1343 (f) No surety bond used to comply with this section
1344 shall be canceled or subject to cancellation unless at least



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1345 60 days' advance notice thereof, in writing, is filed with the
1346 ~~commissioner~~, board by the surety company. The cancellation of
1347 the bond shall not relieve the obligation of the surety
1348 company for claims arising out of contracts issued or
1349 otherwise covered before cancellation of the bond. In the
1350 event that notice of termination of the bond is filed with the
1351 ~~commissioner~~ board, the certificate holder insured thereunder
1352 ~~shall~~, within 30 days of the filing of the notice of
1353 termination with the ~~commissioner~~ board, shall provide the
1354 ~~commissioner~~ board with a replacement bond or with evidence
1355 which is satisfactory to the ~~commissioner~~ board demonstrating
1356 that ~~the provisions of~~ this chapter ~~have~~ has been fully
1357 complied with. If within 30 days of filing of the notice of
1358 termination with the ~~commissioner~~ board no replacement bond
1359 acceptable to the ~~commissioner~~ board or no evidence
1360 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~
1361 ~~provisions of~~ this chapter ~~have~~ has been complied with is
1362 filed with the ~~commissioner~~ board, the ~~commissioner~~ board
1363 shall suspend the license of the certificate holder until the
1364 certificate holder files a replacement bond acceptable to the
1365 ~~commissioner~~ board or demonstrates to the satisfaction of the
1366 ~~commissioner~~ board that it has complied with ~~the provisions of~~
1367 this chapter.

1368 (g) Upon prior approval by the ~~commissioner~~ board, the
1369 preneed provider may file with the ~~commissioner~~ board a letter
1370 of credit in the amount of the outstanding liabilities in lieu
1371 of a surety bond, in the form and subject to the terms and
1372 conditions evidencing the financial responsibility of the



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1373 party or parties issuing the letter of credit, and otherwise,
1374 as may be prescribed by the ~~commissioner~~ board."

1375 "~~§27-17A-15~~§34-13-196

1376 (a) The ~~commissioner shall~~ board, as often as ~~he or she~~
1377 ~~may deem~~ deemed necessary, ~~examine shall examine~~ the business
1378 of any person writing, or holding himself or herself out to be
1379 writing, preneed contracts under this chapter to the extent
1380 applicable. The examination shall be made by designated
1381 representatives employed or ~~examiners of the Department of~~
1382 ~~Insurance~~ contracted by the board.

1383 (b) The written report of each examination, when
1384 completed, shall be filed in the office of the ~~commissioner~~
1385 board and, when so filed, shall not constitute a public
1386 record.

1387 (c) Any person being examined shall produce, upon
1388 request, all records of the person. The designated
1389 representative of the ~~commissioner~~ board may at any time
1390 examine the records and affairs of the person, whether in
1391 connection with a formal examination or not.

1392 (d) The ~~commissioner may~~ board shall waive the
1393 examination requirements of this section if the certificate
1394 holder submits audited financial statements. Upon receipt of a
1395 verifiable complaint, the board may perform a target market
1396 conduct examination as a part of an investigation.

1397 (e) The person examined shall pay the examination
1398 expenses, travel expense, and per diem subsistence allowance
1399 provided for examiners and incurred by the ~~commissioner's~~
1400 board's representatives or examiners in connection with an

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1401 examination ~~in accordance with Section 27-2-25~~ as prescribed
1402 by rule of the board.

1403 (f) Whenever any special examination of the premises,
1404 facilities, books, or records of a licensee is necessary based
1405 on the failure of the licensee to comply with this chapter or
1406 rule adopted by the board, the board shall charge a fee based
1407 on the cost of the special examination including, but not
1408 limited to, the prorated compensation of board employees
1409 involved in the special examination and any expenses incurred.

1410 (g) If the board finds that a certificate of authority
1411 holder or licensee has failed to operate in accordance with
1412 this chapter and, by their action, has created a deficit of
1413 preneed funds entrusted to them by the consumer, then the
1414 board may:

1415 (1) Bring an action for injunctive relief against the
1416 responsible licensee or the holder of the certificate of
1417 authority in the Circuit Court of Montgomery County.

1418 (2) Issue an emergency suspension of all licenses held
1419 by the holder of the certificate of authority, and its
1420 associated personnel, in accordance with the Administrative
1421 Procedure Act.

1422 (3) Take any other disciplinary action authorized by
1423 this chapter."

1424 ~~"§27-17A-16~~ §34-13-197

1425 (a) A certificate holder shall be considered inactive
1426 upon the acceptance of the surrender of its license by the
1427 ~~commissioner~~ board or upon the nonreceipt by the ~~commissioner~~
1428 board of the certificate of authority renewal application and



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1429 fees.

1430 (b) A certificate holder shall cease all preneed sales
1431 to the public upon becoming inactive. The certificate holder
1432 shall collect and deposit into trust all of the funds paid
1433 toward preneed contracts sold prior to becoming inactive.

1434 (c) Any certificate holder desiring to surrender its
1435 license to the ~~commissioner~~ board shall first do all of the
1436 following:

1437 (1) File notice with the ~~commissioner~~ board.

1438 (2) Submit copies of its existing trust agreements.

1439 (3) Submit a sample copy of each type of preneed
1440 contract sold.

1441 (4) Resolve to the ~~commissioner's~~ satisfaction of the
1442 board all findings and violations resulting from the last
1443 examination conducted.

1444 (5) Pay all outstanding fines and invoices due the
1445 ~~commissioner~~ board.

1446 (6) Submit its current certificate of authority.

1447 (d) Upon receipt of the notice, the ~~commissioner~~ board
1448 shall review the certificate holder's trust funds, trust
1449 agreements, and evidence of all outstanding preneed contracts.

1450 (e) After a review to the ~~commissioner's~~ satisfaction
1451 of the board, the ~~commissioner~~ board shall terminate the
1452 certificate of authority by an order which shall set forth the
1453 conditions of termination established by the ~~commissioner~~
1454 board to ensure that the preneed funds will be available for
1455 their intended purpose.

1456 (f) The trust fund of the certificate holder shall be



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1457 held intact and in trust after the certificate holder has
1458 become inactive, and the funds in that trust shall be
1459 disbursed in accordance with the requirements of the written
1460 contracts until the funds have been exhausted.

1461 (g) The ~~commissioner~~ board shall continue to have
1462 jurisdiction over the inactive certificate holder as if the
1463 certificate were active and to require the reports and inspect
1464 the records as the ~~commissioner~~ board deems appropriate so
1465 long as there are funds in trust or preneed contracts that are
1466 not fulfilled.

1467 (h) ~~In addition to any other~~ Other terms of revocation
1468 or suspension ordered pursuant to ~~Chapter 13 of Title 34, the~~
1469 ~~provisions of~~ this chapter may ~~also~~ apply. -"

1470 "~~§27-17A-17~~ §34-13-198

1471 ~~(a) Any dissolution or liquidation of a certificate~~
1472 ~~holder shall be deemed to be the liquidation of an insurance~~
1473 ~~company and shall be conducted under the supervision of the~~
1474 ~~commissioner, who shall have all powers with respect thereto~~
1475 ~~granted to the commissioner under Chapter 32 with respect to~~
1476 ~~the liquidation of insurance companies.~~

1477 ~~(b) The commissioner may apply for an order directing~~
1478 ~~the commissioner to liquidate a certificate holder upon any~~
1479 ~~one or more grounds set out in Section 27-32-6 or when, in the~~
1480 ~~commissioner's opinion, the continued operation of the~~
1481 ~~certificate holder would be hazardous either to purchasers,~~
1482 ~~beneficiaries, or to the people of this state.~~

1483 The board may fine and revoke, suspend, or place on
1484 probation the certificate of authority and the establishment

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1485 license of a certificate holder on any of the following
1486 grounds:

1487 (1) The certificate holder is impaired or insolvent.

1488 (2) The certificate holder has refused to submit, or
1489 has withheld, any of its books, records, accounts, or affairs
1490 to examination by the board.

1491 (3) The certificate holder has concealed or removed
1492 records or preneed assets, or both.

1493 (4) The certificate holder has failed to comply with an
1494 order of the board.

1495 (5) The certificate holder has transferred, or
1496 attempted to transfer, substantially its entire property or
1497 business, or has entered into any transaction the effect of
1498 which is to merge substantially its entire property or
1499 business with that of any other certificate holder, person,
1500 corporation, or entity without first having obtained the
1501 written approval of the board.

1502 (6) The certificate holder has willfully violated its
1503 articles of incorporation or any law of this state, including
1504 any rule of the board.

1505 (7) The certificate holder has an officer, director, or
1506 manager who has refused to be examined under oath concerning
1507 the affairs of the certificate holder.

1508 (8) If the board determines that the continued preneed
1509 sales of the certificate holder would be hazardous to
1510 purchasers, beneficiaries, or residents of this state."

1511 ~~"§27-17A-18~~§34-13-199

1512 (a) All individuals who offer preneed contracts to the



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1513 public, or who execute preneed contracts on behalf of a
1514 certificate holder, shall be registered with the ~~commissioner~~
1515 board as preneed sales agents, pursuant to this ~~article~~
1516 chapter.

1517 (b) All preneed sales agents and funeral directors
1518 acting as preneed sales agents shall be affiliated with the
1519 certificate holder that they are representing.

1520 (c) A certificate holder shall be responsible for the
1521 activities of all preneed sales agents and all funeral
1522 directors acting as preneed sales agents, who are affiliated
1523 with the certificate holder and who perform any type of
1524 preneed-related activity on behalf of the certificate holder.
1525 In addition to the preneed sales agents and funeral directors
1526 acting as preneed sales agents, each certificate holder shall
1527 also be subject to discipline if its preneed sales agents or
1528 funeral directors acting as preneed sales agents violate ~~any~~
1529 ~~provision of~~ this ~~article~~ chapter.

1530 (d) A preneed sales agent and a funeral director acting
1531 as a preneed sales agent ~~shall be authorized to~~ may sell,
1532 offer, and execute preneed contracts on behalf of all properly
1533 licensed entities owned or operated by the sponsoring
1534 certificate holder.

1535 (e) An individual may begin ~~functioning~~ operating as a
1536 preneed sales agent as soon as a completed application for
1537 registration, as set forth in subsection (g), is ~~sent to the~~
1538 ~~commissioner~~ approved by the board.

1539 (f) (1) The qualifications for a preneed sales agent are
1540 as follows:



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1541 ~~(1)~~a. The applicant must be at least 18 years of age.

1542 ~~(2)~~b. The applicant must be in good standing with the
1543 ~~commissioner~~ board.

1544 ~~(3)~~c. The applicant ~~must~~ may not have any felony or
1545 misdemeanor convictions that relate to any activity regulated
1546 by this chapter or a crime involving moral turpitude, as
1547 defined by this chapter.

1548 d. The applicant shall be of good moral character and
1549 submit to a criminal history background check pursuant to
1550 subdivision (2).

1551 (2) An applicant for licensure as a preneed sales agent
1552 shall submit to the board, on a form sworn to by the
1553 applicant, his or her name, date of birth, Social Security
1554 number, and two complete sets of fingerprints for completion
1555 of a criminal history background check. The board shall submit
1556 the fingerprints to the Alabama State Law Enforcement Agency
1557 for a state criminal history background check. The
1558 fingerprints shall be forwarded by the agency to the Federal
1559 Bureau of Investigation for a national criminal history
1560 background check. Costs associated with conducting a criminal
1561 history background check shall be paid by the applicant. The
1562 board shall keep information received pursuant to this
1563 subdivision confidential, except that information received and
1564 relied upon in denying the issuance of a certificate of
1565 authority may be disclosed if necessary to support the denial.
1566 All character information, including the information obtained
1567 through the criminal history background checks, shall be
1568 considered in licensure decisions to the extent permissible by



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1569 all applicable laws.

1570 (g) An application for registration as a preneed sales
1571 agent shall be submitted to the ~~commissioner~~ board with an
1572 application fee determined by the ~~commissioner~~ board, but not
1573 to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars
1574 (\$33), by the certificate holder in a form that has been
1575 prescribed by ~~commissioner~~ board rule ~~and approved by the~~
1576 ~~commissioner~~. The application shall contain, at a minimum, all
1577 of the following:

1578 (1) The name, address, Social Security number, and date
1579 of birth of the applicant and any other information as the
1580 ~~commissioner~~ board may reasonably require of the applicant.

1581 (2) The name, address, and license number of the
1582 sponsoring certificate holder.

1583 (3) A representation, signed by the applicant, that the
1584 applicant meets the requirements set forth in subsection (f).

1585 (4) A representation, signed by the certificate holder,
1586 that the applicant is authorized to offer, sell, and sign
1587 preneed contracts on behalf of the certificate holder, and
1588 that the certificate holder has trained the applicant in ~~the~~
1589 ~~provisions of this article~~ chapter relating to preneed sales,
1590 the provisions of the certificate holder's preneed contract,
1591 and the nature of the merchandise, services, or burial rights
1592 sold by the certificate holder.

1593 (5) A statement indicating whether the applicant has
1594 any type of working or agency relationship with any other
1595 certificate holder or insurance company.

1596 (h) An individual may be registered as a preneed sales



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1597 agent on behalf of more than one certificate holder, provided
1598 that the individual has received the written consent of all
1599 certificate holders.

1600 (i) A certificate holder who has registered a preneed
1601 sales agent shall notify the ~~commissioner~~ board within 30 days
1602 after the individual's status as a preneed sales agent has
1603 been terminated.

1604 (j) Upon ~~receipt~~ approval of an application that
1605 complies with all of the requirements of subsection (g), the
1606 ~~commissioner~~ board shall register the applicant. The
1607 ~~commissioner shall by rule~~ board, in accordance with this
1608 chapter, shall provide for annual renewal of registration upon
1609 receipt of a renewal application and a renewal fee not to
1610 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as
1611 set by the ~~commissioner~~ board."

1612 "~~§27-17A-19~~§34-13-200

1613 No person shall engage in this state in any trade
1614 practice which is addressed in the Alabama Deceptive Trade
1615 Practices Act ~~(Section 8-19-1 et seq.)~~ Chapter 19 of Title 8,
1616 or as determined pursuant to this chapter to be, an unfair
1617 method of competition or an unfair or deceptive act or
1618 practice."

1619 "~~§27-17A-20~~§34-13-201

1620 (a) Whenever the ~~commissioner~~ board has reason to
1621 believe that any person has engaged, or is engaging, in this
1622 state in any unfair method of competition or any unfair or
1623 deceptive act or practice as defined in this ~~article~~ chapter,
1624 or is engaging in the sale of preneed contracts without being



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1625 properly licensed as required by this ~~article~~ chapter, or is
1626 otherwise acting in violation of this chapter, and that a
1627 proceeding by the ~~commissioner~~ board in respect thereto would
1628 be in the interest of the public, the ~~commissioner~~ board shall
1629 institute a proceeding in accordance with this section.

1630 (b) A statement of charges, notice, or order or other
1631 process under this chapter may be served by anyone duly
1632 authorized by the ~~commissioner~~ board. Service may be made
1633 either in the manner provided by law for service of process in
1634 civil actions or by certifying and mailing a copy of the
1635 statement to the person affected by the statement, notice, or
1636 order or other process at his or her or its residence or
1637 principal office or place of business. The verified return by
1638 the person so serving the statement, notice, or order or other
1639 process, setting forth the manner of the service, shall be
1640 proof of the service; and the return postcard receipt for the
1641 statement, notice, or order or other process, certified and
1642 mailed as provided in this subsection, shall be proof of
1643 service of the statement, notice, or order or other process.

1644 (c) The ~~commissioner~~ board shall conduct or cause to
1645 have conducted a hearing in accordance with ~~Article 1 of~~
1646 ~~Chapter 2~~ this chapter, and shall, during the conduct of the
1647 hearing, have those powers necessary to enforce this chapter
1648 and rules of the board; however, the penalties for failure to
1649 comply with a subpoena or with an order directing discovery
1650 shall be limited to a fine not to exceed one thousand dollars
1651 (\$1,000) per violation. In accordance with Section 36-12-40,
1652 evidence introduced and presented in a hearing conducted under



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1653 this chapter shall be deemed a public writing."

1654 "~~§27-17A-21~~§34-13-202

1655 (a) If the ~~commissioner~~ board finds that one or more
1656 grounds exist for the discretionary suspension or revocation
1657 of a certificate of authority or establishment license issued
1658 under this ~~article~~ chapter, the ~~commissioner may~~ board, in
1659 lieu of the suspension or revocation, may impose a fine upon
1660 the certificate holder in an amount not to exceed one thousand
1661 dollars (\$1,000) for each nonwillful violation and in an
1662 amount not to exceed ten thousand dollars (\$10,000) for each
1663 willful violation.

1664 (b) The ~~commissioner~~ board may grant not more than 30
1665 days from the date of the order for the payment of any fine."

1666 "~~§27-17A-22~~§34-13-203

1667 (a) (1) A person who knowingly receives payments for a
1668 preneed contract without having a valid certificate of
1669 authority:

1670 a. Commits a Class B felony, ~~punishable as provided by~~
1671 ~~law~~, as to each contract on which the payments collected equal
1672 or exceed, in the aggregate, two thousand five hundred dollars
1673 (\$2,500).

1674 b. Commits a Class C felony, ~~punishable as provided by~~
1675 ~~law~~, as to each contract on which the payments collected are
1676 between, in the aggregate, five hundred dollars (\$500) and two
1677 thousand five hundred dollars (\$2,500).

1678 c. Commits a Class A misdemeanor, ~~punishable as~~
1679 ~~provided by law~~, as to each contract on which the payments
1680 collected do not exceed, in the aggregate, five hundred



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1681 dollars (\$500).

1682 (2) In addition to the criminal penalty imposed under
1683 subdivision (1), upon conviction of an offense under
1684 subdivision (1), a person may not thereafter obtain a
1685 certificate of authority or register as a preneed sales agent.

1686 (b) (1) A person who willfully fails to timely deposit
1687 the amount required to be so deposited under this chapter in a
1688 preneed merchandise and services trust or endowment care
1689 trust:

1690 a. Commits a Class B felony, ~~punishable as provided by~~
1691 ~~law~~, as to each contract on which the amount due for deposit
1692 in trust equals or exceeds, in the aggregate, two thousand
1693 five hundred dollars (\$2,500).

1694 b. Commits a Class C felony, ~~punishable as provided by~~
1695 ~~law~~, as to each contract on which the amount due for deposit
1696 in trust is less than, in the aggregate, two thousand five
1697 hundred dollars (\$2,500).

1698 (2) In addition to the criminal penalty imposed under
1699 subdivision (1), upon conviction of an offense under
1700 subdivision (1), the certificate of authority or preneed sales
1701 agent registration held by the person shall be automatically
1702 revoked and the person may not thereafter obtain a certificate
1703 of authority or register as a preneed sales agent.

1704 (c) (1) A person who knowingly withdraws funds or assets
1705 from a preneed merchandise and services trust or endowment
1706 care trust in a manner or under circumstances not authorized
1707 by this chapter or rule of the board:

1708 a. Commits a Class B felony, ~~punishable as provided by~~



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1709 ~~law~~, if the aggregate amount withdrawn in any single
1710 transaction or series of related transactions equals or
1711 exceeds two thousand five hundred dollars (\$2,500).

1712 b. Commits a Class C felony, ~~punishable as provided by~~
1713 ~~law~~, if the aggregate amount withdrawn in any single
1714 transaction or series of related transactions is less than two
1715 thousand five hundred dollars (\$2,500).

1716 (2) In addition to the criminal penalty imposed under
1717 subdivision (1), upon conviction of an offense under
1718 subdivision (1), the certificate of authority or preneed sales
1719 agent registration held by the person shall be automatically
1720 revoked and the person may not thereafter obtain a certificate
1721 of authority or register as a preneed sales agent.

1722 (d) A person commits a Class C felony, ~~punishable as~~
1723 ~~provided by law~~, if any of the following occur:

1724 (1) The person knowingly delivers to the ~~commissioner~~
1725 board any official form, report, record, data, or other
1726 document required by the ~~commissioner~~ board containing a false
1727 statement or false information concerning a matter material to
1728 the ~~commissioner~~ board in the exercise of ~~his or her~~ its
1729 authority to administer and enforce this chapter.

1730 (2) Incident to, or during the course of, an
1731 examination, inspection, investigation, or other inquiry
1732 authorized by this chapter, the person knowingly makes
1733 available to a representative of the ~~commissioner~~ board any
1734 official form, report, record, data, or other document
1735 required by the ~~commissioner~~ board containing a false
1736 statement or false information concerning a matter material to



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1737 the purpose of the examination, inspection, investigation, or
1738 inquiry.

1739 (3) With respect to the business records of a person
1740 engaging in, or who has at any time engaged in, the sale of a
1741 preneed contract, a person, with a purpose to use deception as
1742 defined in subdivision (1) of Section 13A-8-1, makes false
1743 entries in ~~such~~ the records or alters, erases, obliterates,
1744 deletes, or removes a correct entry in ~~such~~ the records, fails
1745 to make a correct entry in ~~such~~ the records, or prevents the
1746 making of a correct entry, or causes the omission of a correct
1747 entry in ~~such~~ the records.

1748 (e) Except as otherwise provided in this ~~section~~
1749 chapter, the willful violation of this chapter is a Class A
1750 misdemeanor, ~~punishable as provided by law.~~

1751 ~~(f) The duties and authority of the insurance fraud~~
1752 ~~unit created under Section 27-12A-40, including the powers of~~
1753 ~~the unit's investigators, shall extend to investigations into~~
1754 ~~violations of this section."~~

1755 "~~§27-17A-23~~§34-13-204

1756 The ~~commissioner~~ board, the Attorney General, or any
1757 person may bring a civil action against a person or company
1758 violating this chapter or rule of the board in Montgomery
1759 County or the appropriate court of the county in which the
1760 alleged violator resides or has his or her or its principal
1761 place of business or in the county wherein the alleged
1762 violation occurred. Upon adverse adjudication, the defendant
1763 shall be liable for actual damages caused by the violation.
1764 The court, as provided by common law, may award punitive



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1765 damages and may provide equitable relief as it deems proper or
1766 necessary, including enjoining the defendant from further
1767 violation of this chapter or rule of the board."

1768 "~~§27-17A-24~~§34-13-205

1769 The provisions of this chapter are cumulative to rights
1770 under the general civil and common law, and no action of the
1771 ~~commissioner~~ board may abrogate the rights to damages or other
1772 relief in any court."

1773 "~~§27-17A-25~~§34-13-206

1774 (a) All fees collected by the ~~commissioner~~ board
1775 pursuant to this chapter shall be deposited into the ~~State~~
1776 ~~Treasury to the credit of the Insurance Department~~ Alabama
1777 State Funeral Service Fund.

1778 (b) All fines collected by the ~~commissioner~~ board
1779 pursuant to this chapter shall be deposited into the ~~State~~
1780 ~~Treasury to the credit of the State General~~ Alabama State
1781 Funeral Service Fund.

1782 (c) The ~~commissioner~~ board may use funds available from
1783 any source including, but not limited to, grants,
1784 appropriations, and gifts, for any purpose in the enforcement
1785 of this chapter."

1786 Section 6. The following heading is added to Division
1787 3, commencing with Section 34-13-230, of Article 5, Chapter
1788 13, Title 34, Code of Alabama 1975:

1789 "Division 3. Funeral Merchandise and Services Trust
1790 Fund."

1791 Section 7. Sections 27-17A-30, 27-17A-31, 27-17A-32,
1792 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are



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1793 amended and renumbered as Division 3 of Article 5 of Chapter
1794 13 of Title 34, Code of Alabama 1975, to read as follows:

1795 "~~§27-17A-30~~§34-13-230

1796 To comply with the trust requirement of subsection (a)
1797 of Section ~~27-17A-13~~ 34-13-194, all certificate holders
1798 providing preneed contracts for funeral services or funeral
1799 merchandise shall be subject to this ~~article~~ chapter."

1800 "~~§27-17A-31~~§34-13-231

1801 (a) Any person who is paid, collects, or receives funds
1802 under a preneed contract for funeral services or funeral
1803 merchandise to be funded by trust shall deposit in trust an
1804 amount at least equal to the sum of 75 percent of the amount
1805 collected on the purchase price for all funeral services and
1806 funeral merchandise sold, transportation, and facilities
1807 rented other than outer burial containers, 60 percent of the
1808 amount collected on the purchase price for outer burial
1809 containers, 110 percent of the wholesale cost of memorials
1810 from the amount collected on the purchase price of memorials,
1811 and 100 percent of the amount collected on the purchase price
1812 for all cash advance items sold.

1813 (b) All deposits shall be made within 30 days after the
1814 end of the calendar month in which the preneed contract is
1815 paid in full, unless, prior to that time, all liabilities of
1816 the seller under the preneed contract to deliver the specific
1817 funeral merchandise or funeral services, or both, or the
1818 specific cash advances, identified by the preneed provider as
1819 properly allocated to the payment, have been satisfied, or the
1820 preneed contract is validly cancelled.



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1821 (c) The trustee shall take title to the property
1822 conveyed to the trust for the purpose of investing,
1823 protecting, and conserving it for the certificate holder;
1824 collecting income; and distributing the principal and income
1825 as prescribed in this ~~article~~ chapter.

1826 (d) The certificate holder is prohibited from sharing
1827 in the discharge of these responsibilities, except that the
1828 certificate holder may appoint an adviser to the trustee or
1829 elect tax free investments. Nothing in this chapter shall
1830 prohibit a trustee from electing the qualified funeral trust
1831 option under the Internal Revenue Code.

1832 (e) The trust agreement shall be submitted to the
1833 ~~commissioner~~ board for approval and filing.

1834 (f) The funds shall be held in trust, both as to
1835 principal and income earned thereon, and shall remain intact,
1836 except that the cost of the operation of the trust or trust
1837 account authorized by this section may be deducted from the
1838 income earned thereon.

1839 (g) The contract purchaser shall have no interest
1840 whatsoever in, or power whatsoever over, funds deposited in
1841 trust pursuant to this section.

1842 (h) In no event may ~~such~~ the funds be loaned to a
1843 certificate holder, an affiliate of a certificate holder, or
1844 any person directly or indirectly engaged in the burial,
1845 funeral home, or cemetery business. Furthermore, the
1846 certificate holder's interest in the trust shall not be
1847 pledged as collateral for any loans, debts, or liabilities of
1848 the certificate holder and shall not be transferred to any



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1849 person without the prior written approval from the
1850 ~~commissioner~~ board and the trustee. Even though the
1851 certificate holder shall be deemed and treated as the settlor
1852 and beneficiary of the trust for all purposes, all of the
1853 trust funds are exempt from all claims of creditors of the
1854 certificate holder except as to the claims of the contract
1855 purchaser, his or her representative, or the ~~commissioner~~
1856 board.

1857 (i) For all preneed contracts written or entered into
1858 on or after January 1, 2015, all required deposits in trust
1859 shall commence not later than 30 days after the end of the
1860 calendar month in which the sum of the monies collected on the
1861 preneed contract exceeds the amount that is not required to be
1862 deposited in trust as determined under subsection (a) unless,
1863 prior to that time, all liabilities of the preneed seller
1864 under the preneed contract have been satisfied, or the preneed
1865 contract is validly cancelled. Further required deposits on
1866 the contract shall thereafter be made not later than 30 days
1867 after the end of the calendar month in which each contract
1868 payment is collected by the seller."

1869 "~~§27-17A-32~~§34-13-232

1870 (a) If amounts paid by the purchaser under a preneed
1871 contract for funeral merchandise have previously been
1872 deposited in trust, the seller may withdraw the principal
1873 amount and trust appreciation attributable to the delivered
1874 item at such time as the funeral merchandise is delivered or
1875 installed or, if comprised of materials designed to withstand
1876 prolonged, protected storage without deterioration, the



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1877 merchandise is placed in storage with a responsible third
1878 party bonded and insured for the wholesale value thereof and
1879 evidenced by a receipt specifically identifying the item, the
1880 specific preneed contract, the location of the item, and the
1881 identity and address of the bonding and insuring parties. For
1882 purposes of this subsection only, caskets and alternative
1883 containers may not be held in storage by the seller or a third
1884 party storage facility prior to the death of the funeral
1885 beneficiary.

1886 (b) The trustee shall make regular valuations of the
1887 assets it holds in trust and provide a report of the
1888 valuations to the certificate holder at least quarterly. At
1889 all times, the certificate holder shall be able to determine
1890 the amount held in trust attributable to each contract holder.
1891 For all contracts effective on or after January 1, 2015, the
1892 determination shall be based upon the fair market value of the
1893 trust at the time and the proportionate share of the fair
1894 market value attributable to each contract holder. For all
1895 contracts in effect before January 1, 2015, the valuation of
1896 each contract may be calculated using any valuation method
1897 that had been previously approved by the ~~commissioner or the~~
1898 ~~department~~ Commissioner or the Department of Insurance before
1899 January 1, 2015. Any person who withdraws appreciation in the
1900 value of trust, other than the pro rata portion of ~~such~~ the
1901 appreciation which may be withdrawn upon the death of a
1902 contract's funeral beneficiary or upon cancellation of a
1903 preneed contract, shall be required to make additional
1904 deposits from his or her own funds to restore the aggregate



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1905 value of assets to the value of funds deposited in trust, but
1906 excluding from the funds deposited those funds paid out upon
1907 preneed contracts which the person has fully performed or
1908 which have been otherwise withdrawn, as provided in this
1909 ~~article~~ chapter. The certificate holder shall be liable to
1910 third parties to the extent that income from the trust is not
1911 sufficient to pay the expenses of the trust.

1912 (c) The trustee of the trust established pursuant to
1913 this ~~article~~ chapter shall have all of the following powers:

1914 (1) Make investments and exercise necessary investment
1915 powers, provided that the ~~commissioner~~ board may by order
1916 require the trustee to liquidate or dispose of any investment
1917 within 30 days after the order.

1918 (2) Commingle the property of the trust with the
1919 property of any other preneed funeral, preneed cemetery, or
1920 endowment care trust established pursuant to this ~~article~~
1921 chapter and make corresponding allocations and divisions of
1922 assets, liabilities, income, and expenses.

1923 (d) Notwithstanding the provisions of Section 19-3-125,
1924 the trustee ~~may~~, subject to compliance with the requirements
1925 set forth below, may invest any portion or all of the funds
1926 received under preneed contracts and deposited in trust in
1927 life insurance contracts or annuities issued on the lives of
1928 preneed contract purchasers or preneed contract beneficiaries,
1929 hereinafter, the insured or annuitant, without any obligation
1930 to cover at a minimum the retail amount of the preneed
1931 contract at the time of purchase of the life insurance
1932 contracts or annuities as set forth in Section ~~27-17A-3~~



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1933 [34-13-171.](#)

1934 (1) Trust funds shall not be invested by the trustee in
1935 life insurance contracts or annuities unless the following
1936 requirements are met:

1937 a. The company issuing the life insurance contracts or
1938 annuities is licensed by the Department of Insurance and the
1939 insurance producer or annuity seller is properly licensed
1940 within its domiciliary jurisdiction.

1941 b. Prior to the investment, the insured or annuitant
1942 consents, in writing, to the investment in life insurance
1943 contracts or annuities.

1944 c. For life insurance contracts or annuities issued
1945 prior to May 6, 2008, and currently in force, such contracts
1946 shall be construed to have been an authorized investment by
1947 the trustee under this chapter if the insured or annuitant is
1948 notified in writing of the existence of any such contract and
1949 provided with a copy of the contract.

1950 (2) Upon request, the insured or annuitant shall be
1951 provided with a copy of any life insurance contract or annuity
1952 issued to a preneed trustee at no expense to the insured or
1953 annuitant.

1954 (3) Any life insurance contract or annuity issued in
1955 accordance with this subsection and otherwise in compliance
1956 therewith shall be valid and in full force according to the
1957 terms and conditions thereof.

1958 (4) A trustee that invests all or any portion of the
1959 funds received under preneed contracts and deposited in trust
1960 in life insurance contracts or annuities issued by one company



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1961 licensed by the ~~department~~ State Department of Insurance shall
1962 be considered to satisfy the standards and requirements of
1963 Section 19-3-120.2 and Chapter 3B of Title 19.

1964 (5) It is the intention of the Legislature that this
1965 subsection shall be retroactive and shall apply to all life
1966 insurance contracts or annuities issued prior to May 6, 2008."

1967 "~~§27-17A-33~~§34-13-233

1968 (a) A purchaser, by providing written notice to the
1969 certificate holder, may cancel a preneed contract within 30
1970 days of the date that the contract was executed provided that
1971 the funeral merchandise and funeral services have not yet been
1972 used. Upon providing the notice, the purchaser shall be
1973 entitled to a complete refund of the amount paid, except for
1974 the amount allocable to any funeral merchandise or funeral
1975 services that have been used, and shall be released from all
1976 obligations under the contract. This subsection shall apply to
1977 all items that are purchased as part of a preneed contract.

1978 (b) After 30 days from the date the preneed contract
1979 was executed, a purchaser, by providing written notice to the
1980 certificate holder, may cancel the funeral services, funeral
1981 merchandise, facilities, and cash advance items portions of a
1982 preneed contract at any time, and shall be entitled to the
1983 refund defined in the preneed contract allocable to those
1984 items. Any accumulated earnings allocable to the preneed
1985 contract shall be paid to the certificate holder upon the
1986 cancellation.

1987 (c) Upon breach of contract or failure of the
1988 certificate holder to provide funeral merchandise or services



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1989 under a preneed contract, the contract purchaser shall be
1990 entitled to a refund of 100 percent of all money paid on the
1991 contract. The refund shall be made within 30 days after
1992 receipt by the certificate holder of the contract purchaser's
1993 written request for refund.

1994 (d) If a purchaser is 90 days past due in making
1995 payments on a preneed contract, the contract shall be
1996 considered to be in default, and the certificate holder shall
1997 be entitled to cancel the contract and withdraw all funds in
1998 trust. Upon making the withdrawal, the certificate holder
1999 shall refund to the purchaser the amount defined in the
2000 preneed contract in the event of default of the purchaser,
2001 provided that the certificate holder has provided the
2002 purchaser with 30 days' written notice of its intention to
2003 exercise any of its rights under this provision.

2004 (e) All preneed contracts are cancelable and revocable
2005 as provided in this section during the lifetime of the
2006 purchaser, provided that a preneed contract does not restrict
2007 any contract purchaser who is a qualified applicant for, or a
2008 recipient of, supplemental security income, temporary cash
2009 assistance, or Medicaid from making his or her contract
2010 irrevocable.

2011 (f) In the event that the preneed contract is made
2012 irrevocable pursuant to subsection (e), ~~the purchaser or~~ the
2013 authorizing agent shall have the right to appoint a provider
2014 other than the seller of the preneed contract. In the event
2015 that a provider is appointed pursuant to this subsection, the
2016 seller shall transfer to the appointed provider the amount



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2017 paid by the purchaser to the seller and those amounts
2018 deposited into trust, less a reasonable transfer fee
2019 determined by the ~~seller~~ board. In the event the preneed
2020 contract was funded by an insurance or annuity policy, the
2021 seller shall cancel and relinquish any assignment of benefits
2022 or beneficiary status under the policy or annuity contract,
2023 and deliver the policy, if in the custody of the preneed
2024 seller, to the policy owner or his or her legal
2025 representative, and the seller may collect a reasonable
2026 transfer fee as determined by rule of the board. No transfer
2027 hereunder shall occur without the acceptance of the appointed
2028 provider.

2029 (g) All refunds required to be made under this section
2030 to a purchaser who has canceled a contract must be made within
2031 30 days after the date the written notice of cancellation is
2032 received by the certificate holder."

2033 "~~§27-17A-34~~§34-13-234

2034 (a) Disbursement of funds discharging any preneed
2035 contract for funeral services or funeral merchandise fulfilled
2036 after May 1, 2002, shall be made by the trustee to the
2037 certificate holder upon receipt by the trustee of a
2038 certification of the certificate holder that the preneed
2039 contract has been performed in whole or in part or the preneed
2040 contract has been cancelled. Before the trustee may disburse
2041 any trust funds, the certificate holder shall provide to the
2042 trustee a death certificate or other valid proof of death, a
2043 letter from the preneed contract holder cancelling the preneed
2044 contract or valid proof the contract has been cancelled in



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2045 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof
2046 the merchandise has been delivered and installed, and services
2047 have been performed. Any trustee accepting preneed contract
2048 proceeds under this ~~article~~ chapter may rely upon the
2049 certification of the certificate holder accompanied by the
2050 required proof, and shall not be liable to anyone for such
2051 reliance. If the contract is only partially performed, the
2052 disbursement shall only cover that portion of the contract
2053 performed. In the event of any contract default by the
2054 contract purchaser, or in the event that the funeral
2055 merchandise or funeral service contracted for is not provided,
2056 the trustee shall return, within 30 days after its receipt of
2057 a written request therefor, 100 percent of the funds deposited
2058 into the trust on the contract and the income and accretion
2059 thereon to the certificate holder or to its assigns, subject
2060 to Section ~~27-17A-33~~ 34-13-233.

2061 (b) For all contracts effective on or after January 1,
2062 2015, the amount that may be withdrawn from the trust upon
2063 fulfillment or cancellation of any particular preneed contract
2064 may not exceed the amount attributable to that preneed
2065 contract in proportion to the total amount held in trust for
2066 all preneed contracts as of the date of withdrawal. For all
2067 contracts in effect before January 1, 2015, the valuation of
2068 each contract and the amount that may be withdrawn from the
2069 trust may be calculated using any valuation method that had
2070 been approved by the ~~commissioner or the department~~
2071 Commissioner or the Department of Insurance before January 1,
2072 2015."



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2073 Section 8. The following heading is added to Division
2074 4, commencing with Section 34-13-260, of Article 5, Chapter
2075 13, Title 34, Code of Alabama 1975:

2076 "Division 4. Cemetery Merchandise and Services Trust
2077 Fund."

2078 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,
2079 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,
2080 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,
2081 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of
2082 the Code of Alabama 1975, are amended and renumbered as
2083 Division 4 of Article 5 of Chapter 13 of Title 34, Code of
2084 Alabama 1975, to read as follows:

2085 "~~§27-17A-40~~§34-13-260

2086 To comply with the trust requirement of subsection (a)
2087 of Section ~~27-17A-13~~ 34-13-194, all certificate holders who
2088 are cemetery authorities providing preneed contracts for
2089 cemetery services or cemetery merchandise shall be subject to
2090 this ~~article~~ chapter."

2091 "~~§27-17A-41~~§34-13-261

2092 (a) Any person who receives or collects any funds on
2093 account of a preneed contract in this state for cemetery
2094 services or cemetery merchandise, or both, entered into after
2095 May 1, 2002, shall have the obligation to pay over and
2096 contribute into a trust fund as hereinafter described, those
2097 amounts or proportions of the funds as hereinafter provided.

2098 (b) Whether or not the preneed contract provides for
2099 cemetery merchandise or cemetery services, or any combination
2100 thereof, the trust fund shall be referred to in this section



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2101 as the Cemetery Merchandise and Services Trust Fund.

2102 (c) The trustee of the Cemetery Merchandise and
2103 Services Trust Fund shall be qualified as such within the
2104 definition of the trustee.

2105 (d) The trustee shall take title to the property
2106 conveyed to the Cemetery Merchandise and Services Trust Fund
2107 subject to this section.

2108 (e) The contract purchaser shall have no interest
2109 whatsoever in, or power whatsoever over, the funds deposited
2110 in the Cemetery Merchandise and Services Trust Fund.

2111 (f) The party contracting to deliver the cemetery
2112 merchandise or cemetery services or cash advances, whether or
2113 not a preneed provider, shall be referred to in this section
2114 as the "seller."

2115 (g) The seller shall be the beneficiary of the Cemetery
2116 Merchandise and Services Trust Fund."

2117 "~~§27-17A-42~~§34-13-262

2118 (a) The obligation of the seller under a preneed
2119 contract shall be to make contributions into the Cemetery
2120 Merchandise and Services Trust Fund in accordance with the
2121 following formulae:

2122 (1) With respect to all cemetery merchandise, 110
2123 percent of wholesale cost.

2124 (2) With respect to outer burial containers, 60 percent
2125 of the purchase price specified in the preneed contract.

2126 (3) With respect to cemetery services, 60 percent of
2127 the purchase price specified in the preneed contract.

2128 (4) With respect to all cash advance items sold, 100



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2129 percent of the purchase price specified for the same in the
2130 preneed contract.

2131 (5) With respect to caskets, 75 percent of the purchase
2132 price.

2133 (b) All contributions shall be made within 30 days
2134 after the end of the calendar month in which the preneed
2135 contract is paid in full, unless, prior to that time, all
2136 liabilities of the seller under the preneed contract to
2137 deliver the specific cemetery merchandise or cemetery
2138 services, or both, or the specific cash advances, identified
2139 by the preneed provider as properly allocated to the payment,
2140 have been satisfied, or the preneed contract is validly
2141 cancelled.

2142 (c) For all preneed contracts entered into on or after
2143 January 1, 2015, all contributions shall be made not later
2144 than 30 days after the end of the calendar month in which the
2145 sum of the monies collected on the preneed contract exceeds
2146 the amount that is not required to be contributed as
2147 determined under subsection (a), unless, prior to that time,
2148 all liabilities of the seller under the preneed contract have
2149 been satisfied, or the preneed contract is validly cancelled.
2150 Further required trust contributions on the contract shall
2151 thereafter be made not later than 30 days after the end of the
2152 calendar month in which each contract payment is collected by
2153 the seller.

2154 (d) The trustee shall invest and reinvest the Cemetery
2155 Merchandise and Services Trust Fund.

2156 (e) The trustee shall make regular evaluations of the



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2157 fair market value of assets held in and liabilities, if any,
2158 of the Cemetery Merchandise and Services Trust Fund and
2159 provide a report of the evaluations to the seller at least
2160 quarterly. Upon receipt of each quarterly report, the seller
2161 may submit to the trustee a written and detailed analysis
2162 concerning the balance of funds in the Cemetery Merchandise
2163 and Services Trust Fund, certified under oath as being true
2164 and correct upon information and belief by a responsible
2165 officer of the seller.

2166 (f) While the obligation of the seller to make
2167 contributions to the Cemetery Merchandise and Services Trust
2168 Fund is set forth in this section, the obligation of the
2169 seller at the time of making certain withdrawals from the
2170 Cemetery Merchandise and Services Trust Fund as herein
2171 provided for shall be calculated with respect to the current
2172 wholesale cost of cemetery merchandise and current retail
2173 price of cemetery services and cash advances at the time of
2174 withdrawal. If the fair market value as reported by the
2175 trustee exceeds 110 percent of the total of the following, the
2176 seller shall be entitled to withdraw and retain from the
2177 merchandise trust fund, the excess funds therein: 110 percent
2178 of the current wholesale cost of the liability to deliver all
2179 cemetery merchandise, 60 percent of the current retail price
2180 for all cemetery services, 60 percent of the current retail
2181 price of outer burial containers, 75 percent of the current
2182 retail price of caskets, and 100 percent of the current retail
2183 price of all cash advances, for the total of all preneed
2184 contracts for which the purchasers have paid in full, all



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2185 calculated as of the time of withdrawal; and concerning the
2186 total of all preneed contracts for which the purchasers have
2187 not paid in full, 25 percent of the total of the following:
2188 110 percent of the current wholesale cost of the liability to
2189 deliver all cemetery merchandise, 60 percent of the current
2190 retail price for all cemetery services, and 100 percent of the
2191 current retail price of all cash advances, all calculated as
2192 of the time of withdrawal.

2193 (g) At least annually the seller shall make the
2194 aforesaid analysis and certification and provide the same to
2195 the trustee. If the certification discloses that the fair
2196 market value of the Cemetery Merchandise and Services Trust
2197 Fund is less than 100 percent of the aggregate calculated
2198 amount the seller shall from its own funds contribute to the
2199 Cemetery Merchandise and Services Trust Fund within the 12
2200 months succeeding the annual computation the amount necessary
2201 to restore the trust fund to an amount equal to not less than
2202 100 percent of the aggregate amount so calculated."

2203 "~~§27-17A-43~~§34-13-263

2204 (a) Upon cancellation of a preneed contract by mutual
2205 agreement between the seller and purchaser, or upon unilateral
2206 cancellation of a preneed contract by the seller by reason of
2207 default on the part of the purchaser, or other valid
2208 cancellation by reason of transfers to another seller or
2209 otherwise, the seller ~~may~~, upon submission of a certification
2210 under oath by a responsible officer of the seller to the
2211 trustee, may withdraw from the Cemetery Merchandise and
2212 Services Trust Fund and retain an amount equal to the amount



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2213 of all funds contributed to the trust fund with respect to the
2214 preneed contract. Any trustee accepting preneed contract
2215 proceeds under this ~~article~~ chapter may rely on the seller's
2216 certification under oath as required herein to be made, and
2217 shall not be liable to anyone for such reliance.

2218 (b) At such time as the seller undertakes to perform
2219 its obligations under a preneed contract by delivery or
2220 installation, or both, of cemetery merchandise and the
2221 provision of cemetery services and disbursement on account of
2222 cash advances, or otherwise, upon certification to the trustee
2223 under oath by a responsible officer of the seller that the
2224 obligations of the seller under the contract have been
2225 completely fulfilled, the seller may withdraw from the
2226 Cemetery Merchandise and Services Trust Fund and retain an
2227 amount equal to the current wholesale cost to the fund with
2228 respect to the preneed contract.

2229 (c) At such time as the seller has fulfilled all of its
2230 obligations under all preneed contracts with respect to which
2231 funds have been contributed to the trust fund, and
2232 certification under oath to the trustee by a responsible
2233 officer of the seller of those facts, the seller may withdraw
2234 from the trust fund and retain all of the remaining assets
2235 thereof."

2236 "~~§27-17A-44~~§34-13-264

2237 If the amounts paid by the purchaser under a preneed
2238 contract for cemetery merchandise have previously been
2239 deposited in trust, the seller may withdraw the principal
2240 amount there, at such time as the cemetery merchandise is



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2241 delivered or installed or, if comprised of materials designed
2242 to withstand prolonged, protected storage without
2243 deterioration, the merchandise is placed in storage with a
2244 responsible third party bonded and insured for the wholesale
2245 value thereof and evidenced by a receipt specifically
2246 identifying the item, the specific preneed contract, the
2247 location of the item, and the identity and address of the
2248 bonding and insuring parties. For purposes of this section
2249 only, caskets and alternative containers may not be held in
2250 storage by the seller or a third party storage facility prior
2251 to the death of the funeral beneficiary."

2252 "~~§27-17A-45~~§34-13-265

2253 An endowment care fund and all payments or
2254 contributions to it are expressly permitted as and for
2255 charitable and eleemosynary purposes. No payment, gift, grant,
2256 bequest, or other contribution for endowment care is invalid
2257 by reason of any indefiniteness or uncertainty of the persons
2258 designated as beneficiaries in the instruments creating the
2259 fund, nor is the fund or any contributions to it invalid as
2260 violating any law against perpetuities, or the suspension of
2261 the power of alienation of title to property."

2262 "~~§27-17A-46~~§34-13-266

2263 Any cemetery now existing or hereafter established,
2264 excluding those operated by governmental agencies or religious
2265 institutions, ~~shall be~~ may be qualified as an endowment care
2266 cemetery, except those cemeteries which do not charge fees or
2267 sell plots, interment rights, or any related cemetery."

2268 "~~§27-17A-47~~§34-13-267



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2269 (a) Every cemetery authority operating an endowment
2270 care cemetery shall establish an endowment care fund which
2271 shall be placed with and held by a bank, trust company,
2272 savings and loan association, or other financial institution
2273 authorized to provide trust services under Title 5, as
2274 amended, or under the applicable laws of the United States or
2275 any other state, or a board of trustees, consisting of at
2276 least three members, who shall reside in the State of Alabama,
2277 one of whom is engaged in outside cemetery management, and
2278 each of whom shall be bonded to honestly perform the duties of
2279 trustee under a formal trust agreement.

2280 (b) Except as specifically provided in this subsection,
2281 commencing on July 1, 2014, a person serving on a board of
2282 trustees or cemetery authority may not also serve as a trustee
2283 of an endowment care fund for the cemetery authority. A board
2284 of trustees in existence on July 1, 2014, may continue to
2285 serve as the trustee of an endowment care fund if the board of
2286 trustees otherwise complies with this subsection. Unless
2287 exempted by the ~~commissioner~~ board pursuant to this
2288 subsection, on or before January 1, 2015, each member of a
2289 board of trustees in existence on July 1, 2014, shall furnish
2290 the bond required by subsection (a) in the greater of one
2291 hundred thousand dollars (\$100,000) or the amount in each
2292 endowment care fund for which the board of trustees acts as
2293 trustee as of December 31, 2014. Thereafter, the amount of the
2294 bonds shall be increased on January 1 of each succeeding year
2295 to equal the amount in each endowment care fund as of the
2296 immediately preceding December 31. The ~~commissioner~~ board



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2297 shall exempt a board of trustees from the bond requirement if
2298 the board of trustees provides to the ~~commissioner~~ board an
2299 annual audit report that satisfies all of the following
2300 criteria:

2301 (1) The report is prepared by a certified public
2302 accountant authorized to practice in Alabama.

2303 (2) The report evidences that the review made the
2304 subject of the report by the accountant encompasses each
2305 endowment care fund for which the board of trustees acts as
2306 trustee.

2307 (3) The report notes relating to the endowment care
2308 fund or funds are in a form that is reasonably acceptable to
2309 the ~~commissioner~~ board.

2310 (4) The report does not evidence any material violation
2311 of or noncompliance with this chapter relating to an endowment
2312 care fund.

2313 (c) The corporate trustee or board of trustees shall be
2314 referred to as a qualified trustee. Unless otherwise specified
2315 in this ~~article~~ chapter or in the terms of the trust
2316 instrument, the trustee of any trust established under or
2317 pursuant to this ~~article~~ chapter shall have all powers granted
2318 to trustees under Article 14 of Chapter 3 of Title 19. The
2319 incorporation herein of such powers shall not be deemed to
2320 imply any duties of trustees of trusts established under or
2321 pursuant to this ~~article~~ chapter not expressly delineated in
2322 this ~~article~~ chapter.

2323 (d) The cemetery authority may employ a person to
2324 advise the trustee in the management of the fund.



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2325 (e) The cemetery authority may enter into a contract
2326 with the qualified trustee for the management and investment
2327 of the endowment care fund, which contract may provide for the
2328 payment of income from the fund of reasonable fees or
2329 commissions to the trustee, and its reasonable expenses for
2330 administering the trust.

2331 (f) As often as ~~he or she~~ the board may deem necessary,
2332 the ~~commissioner~~ board may examine the records or facilities,
2333 or both, of any cemetery authority operating an endowment care
2334 cemetery."

2335 "~~§27-17A-48~~§34-13-268

2336 (a) Each cemetery authority shall comply with this
2337 chapter and maintain at each place of business a list of the
2338 names and addresses of its owners and directors, which shall
2339 be available to the public.

2340 (b) Each cemetery authority shall maintain a record of
2341 all ~~property~~ interment space owners by name and last known
2342 address with a description of merchandise and location of
2343 burial lots, crypts, or niches and the records shall be on a
2344 form or in a format prescribed by the board and shall detail
2345 all information required by the board. A plat map shall be
2346 maintained for each cemetery location at the cemetery business
2347 office. A book or file shall be kept as to the date, location
2348 by lot, and space number of each person interred or entombed
2349 in the cemetery. A written copy of the cemetery rules and
2350 regulations shall be maintained at each location and made
2351 available to the public upon request.-"

2352 "~~§27-17A-49~~§34-13-269



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2353 (a) From the sale price of each plot, crypt, or niche
2354 sold by the cemetery authority, of an endowment care cemetery,
2355 it shall pay an amount, not less than as determined in
2356 accordance with the following schedule, to the trustee of the
2357 endowment care fund, which payment shall be paid over to the
2358 trustee not more than four months after the close of the month
2359 in which the total or final payment on the sale has been
2360 received:

2361 (1) Fifteen percent of the ~~sale~~ net sales price of each
2362 grave or lawn crypt space.

2363 (2) Five percent of the ~~sale~~ net sales price of each
2364 mausoleum crypt or niche.

2365 (3) If a cemetery donates or gives a free space,
2366 mausoleum, or niche, a minimum of fifty dollars (\$50) shall be
2367 paid to the endowment care fund.

2368 ~~(3)~~ (4) The amount received for special care funds,
2369 gifts, grants, contribution devises, or bequests made with
2370 respect to the separate or special care of a particular lot,
2371 grave, crypt, niche, mausoleum, monument, or marker or that of
2372 a particular family, as distinguished from the general endowed
2373 care of a cemetery or of a garden.

2374 (b) In addition to subsection (a), a cemetery authority
2375 may receive, and transfer to the trustee, as a part of or
2376 incident to the endowment care fund, any property, real,
2377 personal, or mixed, bequeathed, devised, given, or otherwise
2378 contributed to it for endowment care purposes. Any contractual
2379 endowment care deposits shall fall under this ~~article~~ chapter.

2380 (c) Any cemetery authority which is organized and



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2381 engaged in business prior to May 1, 2002, shall qualify as an
2382 endowment care cemetery if the following occur:

2383 (1) Not already placed, it shall within 90 days of May
2384 1, 2002, have placed the entire principal of any endowment
2385 care fund in its possession, custody, or control, into the
2386 hands of a qualified trustee designated by it, to be
2387 administered as set forth in this ~~article~~ chapter; and
2388 principal of its endowment care fund, or the aggregate
2389 principal of its endowment care funds, if more than one, shall
2390 have a fair market value on either May 1, 2002, or on the date
2391 of transfer to the trustee of not less than twenty-five
2392 thousand dollars (\$25,000); or it shall substitute 25 percent
2393 for each percentage of each sale for the next five years or
2394 five thousand dollars (\$5,000) per year, whichever is greater,
2395 until the balance of twenty-five thousand dollars (\$25,000) is
2396 reached. In such case, the entire amount of twenty-five
2397 thousand dollars (\$25,000) shall be paid into the fund before
2398 the end of the fifth year, and no interest may be removed from
2399 the fund until the twenty-five thousand dollars (\$25,000)
2400 minimum has been reached.

2401 (2) It shall at all times after May 1, 2002, comply
2402 with the minimum requirements for payments to the trustee for
2403 endowment care.

2404 (d) Any cemetery authority organizing a cemetery after
2405 May 1, 2002, whether it be by incorporation, association,
2406 individually, or by any other means, or having its first
2407 burial after May 1, 2002, before disposing of any burial lot
2408 or right or making any sale thereof or making its first



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2409 burial, or both, shall cause to be deposited with a qualified
2410 trustee, in cash, the sum of twenty-five thousand dollars
2411 (\$25,000) in the endowment care fund.

2412 (e) When a cemetery authority has placed with a
2413 trustee, pursuant to this ~~article~~ chapter, a sum of money in
2414 excess of the aggregate which would be required only under
2415 subsection (a), the cemetery authority shall not be required
2416 under this ~~article~~ chapter to make further payments to the
2417 trustee until such time thereafter as, taking into account all
2418 sales of plots, crypts, and niches in the cemetery property
2419 since the first of the sales, the aggregate of payments to the
2420 trustee if made in accordance with subsection (a) would equal
2421 the applicable minimum amount paid to the trustee under
2422 subdivision (1) of subsection (c), or subsection (d) ~~of this~~
2423 ~~section~~.

2424 (f) Any deposit previously made, or represented to be
2425 made to an existing endowment care fund which exceeds 10
2426 percent of the gross selling price of all plots, crypts, and
2427 niches sold since representation of endowment care shall be
2428 made a permanent part of the endowment care fund and
2429 transferred to the qualified trustee under this ~~article~~
2430 chapter."

2431 "~~§27-17A-50~~§34-13-270

2432 (a) No cemetery authority may directly or indirectly
2433 require or direct the investment, reinvestment, or retention
2434 by a qualified trustee of any part of an endowment care trust
2435 in any asset or business in which the cemetery authority or
2436 any officer, director, owner, partner, or employee of the



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2437 cemetery authority has a financial interest. Nothing contained
2438 in this subsection shall prevent the trustee, subject to the
2439 provisions regarding investment and reinvestment of the trust
2440 estate as are contained in the governing instrument creating
2441 the trust, from investing, reinvesting, or retaining any asset
2442 or business in which the cemetery authority or any officer,
2443 director, owner, partner, or employee of the cemetery
2444 authority has an insubstantial or nonmaterial financial
2445 interest, provided that the trustee, in the exercise of the
2446 trustee's discretion, deems the investment, reinvestment, or
2447 retention to be for the best interest of the trust estate.

2448 (b) The net income from the endowment care fund, to the
2449 extent that the same is distributed from the fund, shall be
2450 used exclusively for covering the costs of endowment care of
2451 the cemetery.

2452 (c) For the purposes of this section, net income does
2453 not include realized or unrealized capital gains or losses.
2454 All realized capital gains and losses shall be recorded to
2455 corpus, which is the sum of deposits made by a cemetery
2456 authority into an endowment care fund, pursuant to Section
2457 ~~27-17A-49~~ 34-13-269, and all realized capital gains or losses.
2458 Capital gains taxes, if any, may be paid from the corpus.
2459 Unrealized capital gains and losses, if any, shall be recorded
2460 as an adjustment to the fair market value of the endowment
2461 care fund."

2462 "~~§27-17A-51~~ §34-13-271

2463 The trustee shall not be required to inquire into the
2464 propriety of the expenditures made by the cemetery authority



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2465 in connection with endowment care of the cemetery, and it
2466 shall not be held responsible in any manner whatsoever for and
2467 on account of payments of the income from the endowment care
2468 fund made to the cemetery authority."

2469 "~~§27-17A-52~~§34-13-272

2470 The trustee ~~shall~~, not less than annually, shall file
2471 with the cemetery authority an account which shall include a
2472 complete disclosure of all activity since the previous account
2473 and a statement detailing fund investments."

2474 "~~§27-17A-53~~§34-13-273

2475 To the extent that any endowment care trust existing on
2476 May 1, 2002, includes investments or assets, the retention of
2477 which the trustee in the free exercise of its discretion deems
2478 not in the best interest of the trust estate, the trustee
2479 shall dispose of the investments or assets as soon as
2480 practicable without undue sacrifice to the trust estate, and
2481 in any event within two years after May 1, 2002."

2482 "~~§27-17A-54~~§34-13-274

2483 An annual report of the endowment care fund shall be
2484 made to the ~~commissioner~~ board by each cemetery authority
2485 within 90 days of the close of each calendar year. This report
2486 shall include the qualified trustee's name or names, the bond
2487 numbers if individual trustees or the name and address of the
2488 financial institution in which the fund is maintained, and the
2489 affidavit of the cemetery authority affirming compliance with
2490 this ~~article~~ chapter. Prior to the sale or transfer of a
2491 cemetery, the cemetery authority shall report and document to
2492 the ~~commissioner~~ board that the endowment care fund is



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2493 currently funded in accordance with this ~~article~~ chapter."

2494 "~~§27-17A-55~~§34-13-275

2495 A cemetery authority shall start construction of that
2496 section of a mausoleum or bank of below-ground crypts in which
2497 sales, contracts for sale, reservations for sale, or
2498 agreements for sale are being made, within five years after
2499 the date of the first sale or when 75 percent of the mausoleum
2500 or below-ground crypts have been sold and the purchase price
2501 has been received, whichever occurs first. The construction
2502 shall be completed within six years after the date of the
2503 first sale made. Extensions for completion, not to exceed one
2504 year, may be granted by the ~~commissioner~~ board for good cause
2505 shown. If the units have not been completely constructed at
2506 the time of need or the time specified herein, unless
2507 otherwise specified in the preneed contract, all monies paid
2508 shall be refunded upon request, plus interest earned thereon
2509 if deposited by the cemetery authority in an escrow or trust
2510 fund, and if not so deposited in an escrow or trust fund
2511 earning interest, then plus interest in an amount equal to the
2512 interest or discount which would have been earned thereon had
2513 the funds been invested in United States Treasury Bills having
2514 a 90-day maturity."

2515 "~~§27-17A-56~~§34-13-276

2516 (a) ~~Cemetery~~ Each cemetery shall adopt rules and
2517 regulations ~~are adopted~~ for the mutual protection of the
2518 cemetery owners and the owners of interment rights in the
2519 cemetery. All owners of interment rights and other persons
2520 within the cemetery shall be subject to these rules and



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2521 regulations as they now exist and as they may be amended or
2522 altered by the cemetery. The cemetery authority ~~has the right~~
2523 ~~to~~ shall enforce these rules and regulations. ~~The cemetery~~
2524 ~~authority expressly reserves the right~~ and, at any time and
2525 without prior notice to any owners, ~~to~~ may adopt new rules and
2526 regulations or to amend, modify, or repeal any ~~section,~~
2527 ~~paragraph, or sentence of these~~ rules and regulations.

2528 (b) This section shall not apply to the officers,
2529 directors, shareholders, partners, employees, agents, or
2530 representatives of a cemetery authority who intentionally
2531 commit an act of vandalism or other illegal act."

2532 "~~§27-17A-57~~ §34-13-277

2533 The ~~commissioner~~ board shall have the same jurisdiction
2534 over funeral establishments, funeral directors, cemetery
2535 authorities, or third party sellers who sell preneed contracts
2536 without a preneed certificate of authority as ~~he or she~~ the
2537 board has over those preneed sellers who possess a preneed
2538 certificate of authority."

2539 Section 10. Beginning with the 2024 fiscal year, the
2540 Department of Insurance may transfer to the Alabama Board of
2541 Funeral Service and Cemetery Service quarterly, for deposit by
2542 the board into the Alabama Board of Funeral Services Fund, the
2543 total amount of three hundred thousand dollars (\$300,000) per
2544 fiscal year, to defray costs associated with the
2545 administration and operation of the Alabama Preneed Funeral
2546 and Cemetery Act of 2023 by the board. Unless extended by an
2547 act of the Legislature, this section shall be repealed at the
2548 end of the 2027 fiscal year.



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2549 Section 11. Although this bill would have as its
2550 purpose or effect the requirement of a new or increased
2551 expenditure of local funds, the bill is excluded from further
2552 requirements and application under Section 111.05 of the
2553 Constitution of Alabama of 2022, because the bill defines a
2554 new crime or amends the definition of an existing crime.

2555 Section 12. This act shall become effective on the
2556 October 1, 2023, following its passage and approval by the
2557 Governor, or its otherwise becoming law.

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2558
2559
2560 Senate

2561 Read for the first time and referred22-Mar-23
2562 to the Senate committee on Fiscal
2563 Responsibility and Economic
2564 Development

2565
2566 Read for the second time and placed05-Apr-23
2567 on the calendar:
2568 1 amendment

2569
2570 Read for the third time and passed06-Apr-23
2571 as amended
2572 Yeas 31
2573 Nays 0
2574 Abstains 0

2575
2576
2577 Patrick Harris,
2578 Secretary.
2579