

1 SB98
2 157560-5
3 By Senator Bussman
4 RFD: Banking and Insurance
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

1 SB98

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4 ENGROSSED

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7 A BILL

8 TO BE ENTITLED

9 AN ACT

10

11 Relating to the Alabama Preneed Funeral and Cemetery
12 Act; to amend Sections 27-17A-2, 27-17A-3, 27-17A-10,
13 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-18,
14 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31, 27-17A-32,
15 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44, 27-17A-47,
16 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add
17 Sections 27-17A-11.1 and 27-17A-57 to the Code of Alabama
18 1975, to strengthen consumer protection and eliminate
19 ambiguity in the requirements for the proper handling of
20 preneed and cemetery endowment care funds; to provide further
21 for the ability of the Commissioner of Insurance to deter
22 violations and ensure compliance with the act; to grant the
23 commissioner jurisdiction over any person unlawfully writing,
24 or suspected of unlawfully writing, preneed contracts and to
25 clarify the penalties for violations; to further clarify the
26 requirement that any person selling funeral or cemetery
27 merchandise or services on a preneed basis obtain a

1 certificate of authority from the Department of Insurance; to
2 specify which violations related to preneed sales, trust
3 deposits, and collections are felonies; to increase, from a
4 Class B to a Class A misdemeanor, all non-felony violations of
5 the act; to authorize the commissioner to bring a civil action
6 against any person or company violating the act and increase
7 the recovery of funds on behalf of consumers; to clarify that
8 a person who only sells preneed burial rights is not required
9 to register as a preneed sales agent; to revise the annual
10 application and renewal dates for persons holding preneed
11 certificates of authority and to waive the requirement of
12 filing annual financial statements under certain circumstances
13 and upon written request to the commissioner; to require each
14 certificate holder to file with the commissioner a quarterly
15 report of all preneed contract and trust activity; to clarify
16 the amount of a bond used as an alternative to a trusting
17 requirement; to authorize the commissioner to use funds
18 received from any source for purposes of enforcement; to
19 clarify that funds received for funeral and cemetery
20 merchandise placed in storage prior to death need not be
21 placed in trust; to require certificate holders to satisfy
22 additional requirements and to file with the commissioner a
23 quarterly report of all preneed contract trust activity; to
24 subject endowment cemetery authorities to the act; to require
25 any person receiving funds from the sale of a preneed contract
26 to contribute to a trust fund, life insurance contract, or
27 annuity contract; to require that preneed cemetery merchandise

1 and services funds remain in trust until cancellation or
2 fulfillment of a preneed contract; to prohibit a person
3 serving on a cemetery board of trustees from also serving as
4 the trustee of an endowment care fund, with certain specified
5 exceptions, and to require bonds on trustees, with certain
6 specified exceptions; to define net income for purposes of an
7 endowment care fund; and in connection therewith to have as
8 its purpose or effect the requirement of a new or increased
9 expenditure of local funds within the meaning of Amendment 621
10 of the Constitution of Alabama of 1901.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 27-17A-2, 27-17A-3, 27-17A-10,
13 and 27-17A-11 of the Code of Alabama 1975, are amended to read
14 as follows:

15 "§27-17A-2.

16 "As used in this chapter, the following terms shall
17 have the following meanings:

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

24 "(2) ARRANGEMENT CONFERENCE. The meeting occurring
25 either at need or preneed between the seller and the purchaser
26 during which funeral or cemetery merchandise and services are
27 discussed.

1 "(3) ARRANGEMENT CONFERENCE FEE. The charge to the
2 purchaser in conjunction with the arrangement conference.

3 "(4) AT NEED. At the time of death, or immediately
4 following death.

5 "(5) AUTHORIZING AGENT. One who is lawfully
6 authorized to control the final disposition of human remains.

7 "(6) BELOW-GROUND CRYPT. A preplaced enclosed
8 chamber, which is usually constructed of reinforced concrete,
9 poured in place or a precast unit installed in quantity,
10 either side-by-side or multiple depth, and covered by earth or
11 sod and known also as a lawn crypt or turf-top crypt.

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

15 "(8) BURIAL. The placement of human remains in a
16 grave space or lawn crypt.

17 "(9) CASH ADVANCE. Any item of service or
18 merchandise described to a purchaser as a "cash advance,"
19 "accommodation," "cash disbursement," or similar term. A cash
20 advance item is also any item obtained from a third party and
21 paid for by the seller on the purchaser's behalf. Cash advance
22 items may include, but are not limited to, cemetery or
23 crematory services, pallbearers, public transportation, clergy
24 honoraria, flowers, musicians or singers, nurses, obituary
25 notices, gratuities, and death certificates.

26 "(10) CASKET. A rigid container which is designed
27 for the encasement of human remains and which is usually

constructed of wood, metal, or like material, and ornamented and lined with fabric.

"(11) CEMETERY. A place that is established, maintained, managed, operated, or improved and which is dedicated to and used or intended to be used for the final disposition of human remains and their memorialization.

"(12) CEMETERY AUTHORITY. Any person who owns or controls a cemetery or conducts cemetery business.

"(13) CEMETERY MERCHANDISE. Any personal property offered for sale, contracted for sale, or sold for use in connection with the burial of, final disposition, memorialization, interment, entombment, or inurnment of human remains by a cemetery authority. Cemetery merchandise specifically includes, but is not limited to, the casket, the outer burial container, and the memorial.

"(14) CEMETERY SERVICES. Services provided by a cemetery authority for interment, entombment, inurnment, and installation of cemetery merchandise.

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

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

"(17) COMMISSIONER. The Alabama Commissioner of Insurance.

1 "(18) CREMATED REMAINS. The bone fragments remaining
2 after the cremation process, which may include the residue of
3 any foreign materials that were cremated with the human
4 remains.

5 "(19) CREMATED REMAINS CONTAINER. A receptacle in
6 which cremated remains are placed.

7 "(20) CREMATION. The irreversible process of
8 reducing human remains to bone fragments through intense heat
9 and evaporation, performed in a specifically designed furnace
10 or retort, which may include any other mechanical or thermal
11 process whereby the bone fragments are pulverized, or
12 otherwise further reduced in size or quantity. Cremation is a
13 process and is a method of final disposition.

14 "(21) CREMATORY AUTHORITY. Any person who owns or
15 controls a crematory.

16 "(22) DEATH CERTIFICATE. A legal document containing
17 vital statistics pertaining to the life and death of the
18 deceased.

19 "(23) DECEASED or DECEDENT. One who is no longer
20 living.

21 "(24) EMBALMER. One authorized by law to engage in
22 embalming.

23 "(25) EMBALMING. A procedure whereby human remains
24 are chemically treated by injection for temporary preservation
25 including, but not limited to, the act of disinfecting,
26 preserving, and restoring human remains to a natural life-like
27 appearance.

1 "(26) ENCASEMENT. The placement of human remains in
2 a rigid container, including, but not limited to, a casket or
3 urn.

4 "(27) ENDOWMENT CARE. The maintenance and repair of
5 all places in the cemetery, subject to the rules and
6 regulations of the cemetery authority; may be known also as
7 endowed care, perpetual care, improvement care, or permanent
8 care.

9 "(28) ENDOWMENT CARE TRUST FUND. An irrevocable
10 trust fund set aside by law with a trustee, along with the
11 income therefrom, to provide for the endowment care of the
12 cemetery.

13 "(29) ENTOMBMENT. The act of placing human remains
14 in a mausoleum crypt.

15 "(30) FINAL DISPOSITION. The lawful disposal of
16 human remains whether by interment, entombment, burial at sea,
17 cremation, or other method.

18 "(31) FUNERAL. The rites held commemorating the
19 deceased with human remains present.

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

24 "(33) FUNERAL DIRECTING. The act or service of
25 conducting funerals and counseling with survivors and
26 preparing human remains, other than by embalming, for the
27 interment or other means of disposition, and may include the

1 management and supervision of all operations in a funeral
2 establishment, which may or may not include the practice of
3 embalming.

4 " ~~(33)~~ (34) FUNERAL DIRECTOR. One authorized by law to
5 engage in funeral directing.

6 " ~~(34)~~ (35) FUNERAL ESTABLISHMENT. A place of business
7 used in the care, planning, and preparation for final
8 disposition or transportation of human remains, or any place
9 where one or more are engaged and represent themselves to be
10 engaged in the business of embalming or funeral directing.

11 " ~~(35)~~ (36) FUNERAL MERCHANDISE. Any personal property
12 offered for sale, contracted for sale, or sold for use in
13 connection with funeral directing. Funeral merchandise
14 specifically includes, but is not limited to, the following:

15 "a. Alternative container.

16 "b. Casket.

17 "c. Outer burial container.

18 "d. Urn.

19 "e. Memorials.

20 " ~~(36)~~ (37) FUNERAL SERVICE. Services provided by a
21 funeral establishment in connection with funeral directing,
22 interment of human remains, and installation of memorials.

23 " ~~(37)~~ (38) GRAVE SPACE. A space of ground in a
24 cemetery that is used or intended to be used for in-ground
25 burial.

1 "(38)(39) HUMAN REMAINS. The body of a decedent and
2 includes the body in any stage of decomposition and cremated
3 remains.

4 "(39)(40) INTERMENT. The final disposition of human
5 remains by burial, entombment, or inurnment.

6 "(40)(41) INTERMENT RIGHT. The right to inter human
7 remains in a particular interment space in the cemetery.

8 "(41)(42) INTERMENT SPACE. A space intended for the
9 final disposition of human remains including, but not limited
10 to, a grave space, mausoleum crypt, niche, and below-ground
11 crypt.

12 "(42)(43) INURNMENT. The act of placing cremated
13 remains in a receptacle including, but not limited to, an urn
14 and depositing it in a niche.

15 "(43)(44) MAUSOLEUM. A chamber or structure used or
16 intended to be used for entombment.

17 "(44)(45) MAUSOLEUM CRYPT. A chamber of a mausoleum
18 of sufficient size for entombment of human remains.

19 "(45)(46) MEMORIAL. Any product, other than a
20 mausoleum or columbarium, used for identifying an interment
21 space or for commemoration of the life, deeds, or career of
22 some decedent including, but not limited to, a monument,
23 marker, niche plate, urn garden plaque, crypt plate, cenotaph,
24 marker bench, and vase.

25 "(46)(47) MEMORIAL RETAILER. Any person offering or
26 selling memorials at retail to the public.

1 "(47)(48) MEMORIALIZATION. Any permanent system
2 designed to mark or record the names and other data pertaining
3 to a decedent.

4 "(48)(49) NICHE. A space usually within a
5 columbarium used or intended to be used for inurnment of
6 cremated remains.

7 "(49)(50) OUTER BURIAL CONTAINER. A container which
8 is designed for placement in the grave space around the casket
9 or the urn including, but not limited to, containers commonly
10 known as burial vaults, grave boxes, and grave liners.

11 "(50)(51) PERSON. Any individual, firm, corporation,
12 partnership, joint venture, limited liability company,
13 association, trustee, government or governmental subdivision,
14 agency, or other entity, or any combination thereof.

15 "(51)(52) PREARRANGEMENT. The term applied to
16 completing the details for selection of merchandise or
17 services on a preneed basis, which may or may not include
18 provisions for prefunding or prepayment.

19 "(52)(53) PREDEVELOPED. Designated areas or
20 buildings within a cemetery that have been mapped and planned
21 for future construction but are not yet completed.

22 "(53)(54) PREDEVELOPED INTERMENT SPACE. An interment
23 space that is planned for future construction but is not yet
24 completed.

25 "(54)(55) PREFUND. The term applied to completing
26 the financial details of a prearrangement, which include
27 provisions for funding or prepayment.

1 "~~(55)~~(56) PRENEED. Any time prior to death.

2 "~~(56)~~(57) PRENEED CONTRACT. A written contract to
3 purchase funeral merchandise, funeral services, cemetery
4 merchandise, or cemetery services from the seller on a preneed
5 basis.

6 "~~(57)~~(58) PRENEED CONTRACT TRUST FUND. The funds
7 received pursuant to a preneed contract which are required by
8 law to be held in trust until the merchandise or services
9 purchased pursuant to the contract are delivered or provided
10 or until otherwise lawfully withdrawn.

11 "~~(58)~~(59) PROVIDER. A person who may or may not be
12 the seller, who will actually provide the merchandise and
13 services under the terms of a preneed contract.

14 "~~(59)~~(60) PURCHASE PRICE. The amount paid by the
15 purchaser for merchandise and services purchased under a
16 preneed contract, exclusive of finance charges, sales tax,
17 charges relating to interment rights, arrangement conference
18 fees, or charges for credit life insurance.

19 "~~(60)~~(61) PURCHASER. The person who purchases a
20 preneed contract either on his or her behalf or on behalf of a
21 third party beneficiary.

22 "~~(61)~~(62) RELIGIOUS INSTITUTION. An organization
23 formed primarily for religious purposes which has qualified
24 for exemption from federal income tax as an exempt
25 organization under the provisions of Section 501(c)(3) of the
26 Internal Revenue Code of 1986, as amended.

1 "~~(62)~~(63) SCATTERING. The lawful dispersion of
2 cremated remains.

3 "~~(63)~~(64) SELLER. Any person offering or selling
4 merchandise or services on a preneed basis including, but not
5 limited to, funeral establishments, cemetery authorities,
6 crematory authorities, memorial retailers, direct disposers,
7 etc.

8 "~~(64)~~(65) SPECIAL CARE. Any care provided, or to be
9 provided, that is supplemental to, or in excess of, endowment
10 care, in accordance with the specific directions of any donor
11 of funds for such purposes.

12 "~~(65)~~(66) SUCCESSOR-IN-INTEREST. A person who
13 lawfully follows another in ownership or control of property
14 or rights.

15 "~~(66)~~(67) THIRD-PARTY SELLER. Any person, who is not
16 a funeral establishment or a cemetery authority, engaged in
17 the sale of preneed funeral merchandise or cemetery
18 merchandise.

19 "~~(67)~~(68) TRUSTEE. Any person, state or national
20 bank, trust company, or federally insured savings and loan
21 association lawfully appointed as fiduciary over funds
22 deposited by one or more purchasers of a preneed contract or
23 deposited pursuant to an endowment care trust fund; not to be
24 confused with a board of trustees.

25 "~~(68)~~(69) URN. A receptacle for the encasement of
26 cremated remains.

27 "§27-17A-3.

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

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

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

26 "(d) A preneed seller may be identified as the
27 beneficiary or assignee of the death benefit proceeds of a

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

11 "§27-17A-10.

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

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

17 "(2) Any preneed transaction in which a buyer pays
18 to the seller before need, in whole or in part, a purchase
19 price for funeral or cemetery merchandise and services, and in
20 which the seller is not obligated to deliver the contracted
21 for merchandise or to perform the services until need, in
22 whole or in part, shall be evidenced by a written preneed
23 contract satisfying the requirements of this chapter and
24 signed by the seller and the purchaser. No person may receive
25 or accept any form of consideration in such a transaction
26 without a fully signed written preneed contract. A transaction
27 not evidenced by a signed written preneed contract shall be

1 voidable at the election of the buyer and, if such election is
2 made, the seller shall refund to the buyer the entire amount
3 paid by the buyer together with interest thereon at the legal
4 rate within 30 days after notice to the seller.

5 " (3) The provisions of subdivision (1) do not apply
6 to the purchase of a life insurance policy or annuity, the
7 benefits of which are assigned to a funeral home and/or
8 cemetery authority, or the benefits of which are to be paid to
9 a funeral home and/or cemetery authority named as beneficiary
10 of the policy or annuity, as long as the purchaser and funeral
11 home and/or cemetery authority acknowledge in writing that no
12 preneed contract is entered as a result of the purchase or
13 assignment of the life insurance policy or annuity at the time
14 the policy or annuity is purchased. Benefits from a life
15 insurance policy or annuity issued under this subdivision
16 shall only be paid to a funeral home and/or cemetery authority
17 which provides funeral or cemetery merchandise and services at
18 the death of the insured whether or not such funeral home
19 and/or cemetery has been named as an assignee or the
20 beneficiary of the policy or annuity. If the amount of the
21 policy or annuity proceeds shall exceed the actual funeral
22 costs at the time of need, such excess amount must be paid to
23 a designated beneficiary, other than a funeral home and/or
24 cemetery authority, or to the estate of the insured or
25 annuitant.

26 " (2)(4) The provisions of subdivision (1) do not
27 apply to any legal reserve insurance company or to any trust

1 company or to any national or state bank or savings and loan
2 association having trust powers which company, bank, or
3 association receives any money in trust pursuant to the sale
4 of a preneed contract.

5 "(c) No person may obtain a certificate of authority
6 under this article for the preneed sale of funeral services or
7 cemetery services unless the person or its agent, in the case
8 of a corporate entity, holds a license as a funeral director
9 or a funeral establishment, or is a cemetery authority.

10 "(d) The provisions of this section do not apply to
11 a cemetery authority owned or operated by a governmental
12 agency or a religious institution.

13 "§27-17A-11.

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

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

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

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

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

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

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

"c. Has disbursed interest, dividends, or accretions earned by trust funds, in accordance with this article and rules promulgated hereunder.

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

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

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

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

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

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

26 "(e) Upon the commissioner being satisfied that the
27 statement and matters which may accompany it meet the

1 requirements of this article and of its rules, the
2 commissioner shall issue or renew the certificate of
3 authority.

4 "(f) The certificate of authority shall expire
5 annually on ~~June~~ September 1, unless renewed, or at such other
6 time or times as the commissioner may provide by rule.

7 "(g) On or before ~~April~~ July 1 of each year, the
8 certificate holder shall file with the commissioner in the
9 form prescribed by the commissioner a full and true statement
10 as to the activities of any trust established by it pursuant
11 to this article for the preceding calendar year.

12 "(h) In addition to any other penalty that may be
13 provided for under this article, the commissioner may levy a
14 fine not to exceed fifty dollars (\$50) per day for each day
15 the certificate holder fails to file its annual statement, and
16 the commissioner may levy a fine not to exceed fifty dollars
17 (\$50) per day for each day the certificate holder fails to
18 file the statement of activities of the trust. Upon notice to
19 the certificate holder by the commissioner that the
20 certificate holder has failed to file the annual statement or
21 the statement of activities of the trust, the certificate
22 holder's authority to sell preneed contracts shall cease while
23 the default continues.

24 "(i) To facilitate uniformity in financial
25 statements and to facilitate analysis, the commissioner may by
26 rule adopt a form for financial statements. The holder of a
27 certificate of authority may submit a written request to the

1 commissioner to exempt the holder from filing financial
2 statements at renewal. The commissioner may waive the
3 requirement for filing a financial statement at renewal if all
4 of the following are satisfied:

5 " (1) No valid complaint has been filed since the
6 last examination.

7 " (2) No administrative action against the preneed
8 entity has been instituted since the last examination.

9 " (3) The certificate holder certifies that all
10 outstanding preneed contracts written by the holder since
11 April 30, 2002, are fully funded in accordance with this
12 chapter.

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

18 " (5) The preneed entity has provided to the
19 department in a timely manner all required and requested
20 records.

21 " (6) The preneed entity agrees to file quarterly
22 reports of its preneed activity on a form or in a format
23 prescribed by the commissioner.

24 " (j) The commissioner may authorize the transfer of
25 certificates of authority and establish fees for the transfer
26 in an amount not to exceed one hundred dollars (\$100). Upon
27 receipt of an application for transfer, the commissioner may

grant a temporary certificate of authority to the proposed transferee, based upon criteria established by the commissioner by rule, which criteria shall promote the purposes of this article in protecting the consumer. A temporary certificate of authority shall expire 60 days after issuance unless renewed by the commissioner."

Section 2. Section 27-17A-11.1 is added to the Code of Alabama 1975, to read as follows:

§27-17A-11.1.

(a) On a semi-annual basis, within 45 days after the end of each second calendar reporting period, the certificate holder shall file a report of its preneed contract activity on a form or in a format prescribed by the commissioner. The information reported shall include the total number of preneed contracts in force at the end of the previous reporting period, the total number of preneed contracts sold during the reporting period, the total number of preneed contracts fulfilled during the reporting period, the total number of preneed contracts in force at the end of the reporting period, and such other information as may be required by the commissioner. The report shall be organized by type of funding including, life insurance, trust, letter of credit, or surety bond. The report shall also provide a certification by the trustee of the amount of assets held by the trust at the beginning of the reporting period and at the end of the reporting period, together with the amount of deposits and withdrawals during the reporting period. If a certificate

1 holder shall twice default in complying with the requirements
2 of this subsection, the commissioner may require that the
3 certificate holder thereafter submit the report within 45 days
4 after the end of each calendar quarter and shall continue so
5 reporting for a time to be determined by the commissioner.

6 (b) The certificate holder shall maintain a written
7 log of preneed sales. The log shall be on a form or in a
8 format prescribed by the commissioner, shall detail all
9 information required by the commissioner, and shall be
10 available for inspection at any time by the commissioner.

11 (c) Each cemetery authority shall maintain a written
12 log of the sale of cemetery interment rights. The log shall be
13 on a form or in a format prescribed by the commissioner and
14 shall detail all information required by the commissioner.

15 Section 3. Sections 27-17A-12, 27-17A-13, 27-17A-14,
16 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31,
17 27-17A-32, 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44,
18 27-17A-47, 27-17A-50, and 27-17A-55 of the Code of Alabama
19 1975, are amended to read as follows:

20 "§27-17A-12.

21 (a) Preneed contract forms and related forms shall
22 be filed with and approved by the commissioner.

23 (b) Specific disclosure regarding whether,
24 consistent with the requirements of this chapter, the
25 ~~certificate holder's requirement to place~~ holder is placing
26 certain preneed funds received with the contract in trust, in

1 an annuity, or in insurance, is required in the preneed
2 contract.

3 "(c) Preneed contracts which have been submitted to
4 the commissioner shall be deemed to have been approved by the
5 commissioner in the event that the commissioner fails to
6 notify the certificate holder that approval has been denied
7 within 30 days following submission to the commissioner.

8 "§27-17A-13.

9 "(a) Except as provided in Sections 27-17A-3 and
10 27-17A-14, every preneed contract shall require the ~~moneys~~
11 ~~monies~~ paid to the seller or trustee to be placed in trust in
12 accordance with Article 3, for funeral merchandise and
13 services sold by funeral establishments or third party
14 sellers, or Article 4, for cemetery merchandise and services
15 sold by cemetery authorities.

16 "(b) Although this chapter does not apply to preneed
17 contracts entered into prior to May 1, 2002, a preneed
18 provider which contends that a preneed trust fund which was in
19 effect prior to May 1, 2002, complies with this chapter with
20 respect to the contracts entered into prior to May 1, 2002,
21 may provide to the commissioner documentary proof thereof.
22 Upon the commissioner determining that compliance has been
23 established, the pre-existing preneed trust fund assets may be
24 merged with or into the trust fund required under this chapter
25 or continued as the trust fund and that determination by the
26 commissioner shall be noted on the certificate of authority,
27 and thereafter all preneed contracts covered by the trust

1 fund, including those entered into prior to May 1, 2002, shall
2 be subject to this chapter.

3 "§27-17A-14.

4 "(a) As an alternative to the trust requirement of
5 Section 27-17A-13, the details of which are set forth in
6 Articles 3 and 4, a preneed provider may, with the prior
7 approval of the commissioner, purchase a surety bond in an
8 amount not less than the aggregate value of outstanding
9 liabilities on undelivered preneed contracts for merchandise,
10 services, and cash advances. For the purposes of this section,
11 the term "outstanding liabilities" means the original retail
12 amount of services and cash advances and the actual cost to
13 the entity to provide the undelivered merchandise sold on ~~the~~
14 ~~contract each contract written after April 30, 2002. The~~
15 ~~surety bond shall be in an amount sufficient to cover the~~
16 ~~outstanding liability at the time each contract is executed.~~

17 "(b) The bond shall be made payable to the State of
18 Alabama for the benefit of the commissioner and of all
19 purchasers of preneed merchandise, services, and cash
20 advances. The bond shall be issued by an insurance company
21 licensed in the State of Alabama and authorized to issue
22 surety bonds and approved by the commissioner.

23 "(c) The amount of the bond shall be based on a
24 report documenting the outstanding liabilities of the preneed
25 provider ~~for the previous calendar quarter and the projected~~
26 ~~liability for the immediately following quarter,~~ shall be
27 prepared by the preneed provider using generally accepted

1 accounting principles, and shall be signed by the chief
2 executive officer or chief financial officer of the preneed
3 provider. The report shall be compiled as of the end of the
4 preneed provider's fiscal year and updated ~~annually quarterly~~.

5 "(d) The amount of the bond shall be increased or
6 decreased as necessary to correlate with changes in the
7 outstanding liabilities. Further, the commissioner may order
8 the bond to be increased as necessary to correlate with
9 changes in the outstanding liabilities of bonded contracts due
10 to increases in the consumer price index.

11 "(e) If the preneed provider fails to maintain a
12 bond pursuant to this section the preneed provider shall cease
13 the offering for sale and sale of preneed merchandise,
14 services, and cash advances.

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

1 have been fully complied with. If within 30 days of filing of
2 the notice of termination with the commissioner no replacement
3 bond acceptable to the commissioner or no evidence
4 satisfactory to the commissioner demonstrating that the
5 provisions of this chapter have been complied with is filed
6 with the commissioner, the commissioner shall suspend the
7 license of the certificate holder until the certificate holder
8 files a replacement bond acceptable to the commissioner or
9 demonstrates to the satisfaction of the commissioner that it
10 has complied with the provisions of this chapter.

11 "(g) Upon prior approval by the commissioner, the
12 preneed provider may file with the commissioner a letter of
13 credit in the amount of the outstanding liabilities in lieu of
14 a surety bond, in the form and subject to the terms and
15 conditions evidencing the financial responsibility of the
16 party or parties issuing the letter of credit, and otherwise,
17 as may be prescribed by the commissioner.

18 "§27-17A-18.

19 "(a) All individuals who offer preneed contracts to
20 the public, or who execute preneed contracts on behalf of a
21 certificate holder, ~~including all individuals who offer, sell,~~
22 ~~or sign contracts for the preneed sale of burial rights,~~ shall
23 be registered with the commissioner as preneed sales agents,
24 pursuant to this article.

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

"(c) A certificate holder shall be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales agents, who are affiliated with the certificate holder and who perform any type of preneed-related activity on behalf of the certificate holder. In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each certificate holder shall also be subject to discipline if its preneed sales agents or funeral directors acting as preneed sales agents violate any provision of this article.

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

"(e) An individual may begin functioning as a preneed sales agent as soon as a completed application for registration, as set forth in subsection (g), is sent to the commissioner.

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

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

"(2) The applicant must be in good standing with the commissioner.

"(3) The applicant must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter.

"(g) An application for registration as a preneed sales agent shall be submitted to the commissioner with an application fee determined by the commissioner, but not to exceed twenty-five dollars (\$25), by the certificate holder in a form that has been prescribed by commissioner rule and approved by the commissioner. The application shall contain, at a minimum, all of the following:

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

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

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

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

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

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

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

"(j) Upon receipt of an application that complies with all of the requirements of subsection (g), the commissioner shall register the applicant. The commissioner shall by rule provide for annual renewal of registration and a renewal fee not to exceed twenty-five dollars (\$25) as set by the commissioner.

"§27-17A-22.

"Any officer or director, or person occupying similar status or performing similar functions, of a certificate holder who fails to make required deposits to any trust fund required by this chapter; any director, officer, agent, or employee of a certificate holder who makes any unlawful withdrawal of funds from any such account or who knowingly discloses to the commissioner or an employee thereof any false report made pursuant to this chapter; or any person who willfully violates any of the provisions of this chapter commits a Class B misdemeanor, punishable as provided by law.

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

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

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

12 "c. Commits a Class A misdemeanor, punishable as
13 provided by law, as to each contract on which the payments
14 collected do not exceed, in the aggregate, five hundred
15 dollars (\$500).

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

20 "(b) (1) A person who willfully fails to timely
21 deposit the amount required to be so deposited under this
22 chapter in a preneed merchandise and services trust or
23 endowment care trust:

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

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

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

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

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

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

"(2) In addition to the criminal penalty imposed under subdivision (1), upon conviction of an offense under subdivision (1), the certificate of authority or preneed sales agent registration held by the person shall be automatically

1 revoked and the person may not thereafter obtain a certificate
2 of authority or register as a preneed sales agent.

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

5 " (1) The person knowingly delivers to the
6 commissioner any official form, report, record, data, or other
7 document required by the commissioner containing a false
8 statement or false information concerning a matter material to
9 the commissioner in the exercise of his or her authority to
10 administer and enforce this chapter.

11 " (2) Incident to, or during the course of, an
12 examination, inspection, investigation, or other inquiry
13 authorized by this chapter, the person knowingly makes
14 available to a representative of the commissioner any official
15 form, report, record, data, or other document required by the
16 commissioner containing a false statement or false information
17 concerning a matter material to the purpose of the
18 examination, inspection, investigation, or inquiry.

19 " (3) With respect to the business records of a
20 person engaging in, or who has at any time engaged in, the
21 sale of a preneed contract, a person, with a purpose to use
22 deception as defined in subdivision (1) of Section 13A-8-1,
23 makes false entries in such records or alters, erases,
24 obliterates, deletes, or removes a correct entry in such
25 records, fails to make a correct entry in such records, or
26 prevents the making of a correct entry, or causes the omission
27 of a correct entry in such records.

1 "(e) Except as otherwise provided in this section,
2 the willful violation of this chapter is a Class A
3 misdemeanor, punishable as provided by law.

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

8 "§27-17A-23.

9 "The commissioner, the Attorney General, or any
10 person may bring a civil action against a person or company
11 violating ~~the provisions~~ of this chapter in the appropriate
12 court of the county in which the alleged violator resides or
13 has his or her or its principal place of business or in the
14 county wherein the alleged violation occurred. Upon adverse
15 adjudication, the defendant shall be liable for actual damages
16 caused by the violation. The court ~~may~~, as provided by common
17 law, may award punitive damages and may provide equitable
18 relief as it deems proper or necessary, including enjoining
19 the defendant from further ~~violations~~ violation of this
20 chapter.

21 "§27-17A-25.

22 "(a) All fees collected by the commissioner pursuant
23 to this chapter shall be deposited into the State Treasury to
24 the credit of the Insurance Department Fund.

25 "(b) All fines collected by the commissioner
26 pursuant to this chapter shall be deposited into the State
27 Treasury to the credit of the State General Fund.

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

5 "§27-17A-31.

6 "(a) Any person who is paid, collects, or receives
7 funds under a preneed contract for funeral services or funeral
8 merchandise to be funded by trust shall deposit in ~~this state~~
9 trust an amount at least equal to the sum of 75 percent of the
10 amount collected on the purchase price collected for all
11 funeral services and funeral merchandise sold, transportation,
12 and facilities rented other than outer burial containers, 60
13 percent of the amount collected on the purchase price
14 collected for outer burial containers, 110 percent of the
15 wholesale cost of memorials from the amount collected on the
16 purchase price of memorials, and 100 percent of the amount
17 collected on the purchase price collected for all cash advance
18 items sold.

19 "(b) All deposits shall be made within 30 days after
20 the end of the calendar month in which the preneed contract is
21 paid in full, unless, prior to that time, all liabilities of
22 the seller under the preneed contract to deliver the specific
23 funeral merchandise or funeral services, or both, or the
24 specific cash advances, identified by the preneed provider as
25 properly allocated to the payment, have been satisfied, or the
26 preneed contract is validly cancelled.

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

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

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

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

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

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

1 the certificate holder and shall not be transferred to any
2 person without the prior written approval from the
3 commissioner and the trustee. Even though the certificate
4 holder shall be deemed and treated as the settlor and
5 beneficiary of the trust for all purposes, all of the trust
6 funds are exempt from all claims of creditors of the
7 certificate holder except as to the claims of the contract
8 purchaser, his or her representative, or the commissioner.

9 "(i) For all preneed contracts written or entered
10 into on or after January 1, 2015, all required deposits in
11 trust shall commence not later than 30 days after the end of
12 the calendar month in which the sum of the monies collected on
13 the preneed contract exceeds the amount that is not required
14 to be deposited in trust as determined under subsection (a)
15 unless, prior to that time, all liabilities of the preneed
16 seller under the preneed contract have been satisfied, or the
17 preneed contract is validly cancelled. Further required
18 deposits on the contract shall thereafter be made not later
19 than 30 days after the end of the calendar month in which each
20 contract payment is collected by the seller.

21 "§27-17A-32.

22 "(a) Without limiting in any way the liability of
23 the seller under a preneed contract to perform its obligations
24 thereunder, including, without limitation, the obligation to
25 deliver the funeral merchandise, and for installation thereof
26 if it is to be included in the preneed contract, the seller
27 shall not be required to place in trust proceeds If amounts

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

17 "(b) The trustee shall make regular valuations of
18 the assets it holds in trust and provide a report of the
19 valuations to the certificate holder at least quarterly. At
20 all times, the certificate holder shall be able to determine
21 the amount held in trust attributable to each contract holder.
22 For all contracts effective on or after January 1, 2015, the
23 determination shall be based upon the fair market value of the
24 trust at the time and the proportionate share of the fair
25 market value attributable to each contract holder. For all
26 contracts in effect before January 1, 2015, the valuation of
27 each contract may be calculated using any valuation method

1 that had been approved by the commissioner or the department
2 before January 1, 2015. Any person who withdraws appreciation
3 in the value of trust, other than the pro rata portion of such
4 appreciation which may be withdrawn upon the death of a
5 contract contract's funeral beneficiary or upon cancellation
6 of a preneed contract, shall be required to make additional
7 deposits from his or her own funds to restore the aggregate
8 value of assets to the value of funds deposited in trust, but
9 excluding from the funds deposited those funds paid out upon
10 preneed contracts which the person has fully performed or
11 which have been otherwise withdrawn, as provided in this
12 article. The certificate holder shall be liable to third
13 parties to the extent that income from the trust is not
14 sufficient to pay the expenses of the trust.

15 "(c) The trustee of the trust established pursuant
16 to this article shall have all of the following powers:

17 "(1) Make investments and exercise necessary
18 investment powers, provided that the commissioner may by order
19 require the trustee to liquidate or dispose of any investment
20 within 30 days after the order.

21 "(2) Borrow money up to an aggregate amount of 10
22 percent of trust assets, at interest rates then prevailing
23 from any individual, bank, insurance company, or other source,
24 irrespective of whether any such person is then acting as
25 trustee, and to create security interests in no more than 10
26 percent of trust assets by mortgage, pledge, or otherwise,

1 upon the terms and conditions and for the purposes as the
2 trustee may deem advisable.

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

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

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

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

25 "b. Prior to the investment, the insured or
26 annuitant consents, in writing, to the investment in life
27 insurance contracts or annuities.

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

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

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

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

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

"§27-17A-34.

"(a) Disbursement of funds discharging any preneed contract for funeral services or funeral merchandise fulfilled

1 after May 1, 2002, shall be made by the trustee to the
2 certificate holder upon receipt by the trustee of a
3 certification of the certificate holder that the preneed
4 contract has been performed in whole or in part or the preneed
5 contract has been cancelled. Before the trustee may disburse
6 any trust funds, the certificate holder shall provide to the
7 trustee a death certificate or other valid proof of death, a
8 letter from the preneed contract holder cancelling the preneed
9 contract or valid proof the contract has been cancelled in
10 accordance with Section 27-17A-33, or valid proof the
11 merchandise has been delivered and installed, and services
12 have been performed. Any trustee accepting preneed contract
13 proceeds under this article may rely upon the certification of
14 the certificate holder ~~as herein required to be made~~
15 ~~accompanied by the required proof,~~ and shall not be liable to
16 anyone for such reliance. If the contract is only partially
17 performed, the disbursement shall only cover that portion of
18 the contract performed. In the event of any contract default
19 by the contract purchaser, or in the event that the funeral
20 merchandise or funeral service contracted for is not provided,
21 the trustee shall return, within 30 days after its receipt of
22 a written request therefor, 100 percent of the funds ~~paid~~
23 deposited into the trust on the contract and the income and
24 accretion thereon to the certificate holder or to its assigns,
25 subject to ~~the provisions of~~ Section 27-17A-33.

26 " (b) ~~If the preneed contract so provides, the~~
27 ~~trustee may distribute trust income allocable to the preneed~~

1 contract to the certificate holder on an annual basis, so long
2 as the distribution is consistent with subsection (b) of
3 Section 27-17A-32 For all contracts effective on or after
4 January 1, 2015, the amount that may be withdrawn from the
5 trust upon fulfillment or cancellation of any particular
6 preneed contract may not exceed the amount attributable to
7 that preneed contract in proportion to the total amount held
8 in trust for all preneed contracts as of the date of
9 withdrawal. For all contracts in effect before January 1,
10 2015, the valuation of each contract and the amount that may
11 be withdrawn from the trust may be calculated using any
12 valuation method that had been approved by the commissioner or
13 the department before January 1, 2015.

14 "§27-17A-40.

15 "To comply with the trust requirement of subsection
16 (a) of Section 27-17A-13, all certificate holders who are
17 cemetery authorities providing preneed contracts for cemetery
18 services or cemetery merchandise shall be subject to this
19 article.

20 "§27-17A-42.

21 " "(a) The obligation of the seller under a preneed
22 contract shall be to make contributions into the Cemetery
23 Merchandise and Services Trust Fund in accordance with the
24 following formulae:

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

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

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

6 "(4) With respect to all cash advance items sold,
7 100 percent of the purchase price specified for the same in
8 the preneed contract.

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

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

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

1 Further required trust contributions on the contract shall
2 thereafter be made not later than 30 days after the end of the
3 calendar month in which each contract payment is collected by
4 the seller.

5 "~~(c)~~(d) The trustee shall invest and reinvest the
6 Cemetery Merchandise and Services Trust Fund.

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

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

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

18 "(f)(g) At least annually the seller shall make the
19 aforesaid analysis and certification and provide the same to
20 the trustee. If the certification discloses that the fair
21 market value of the Cemetery Merchandise and Services Trust
22 Fund is less than 100 percent of the aggregate calculated
23 amount the seller shall from its own funds contribute to the
24 Cemetery Merchandise and Services Trust Fund within the 12
25 months succeeding the annual computation the amount necessary
26 to restore the trust fund to an amount equal to not less than
27 100 percent of the aggregate amount so calculated.

1 "§27-17A-44.

2 "(a) ~~Without limiting in any way the liability of~~
3 ~~the seller under a preneed contract to perform its obligations~~
4 ~~thereunder, including, without limitation, the obligation to~~
5 ~~deliver the cemetery merchandise, and for installation thereof~~
6 ~~if it is to be included in the preneed contract, the seller~~
7 ~~shall not be required to place in trust proceeds paid under~~
8 ~~the contract for cemetery merchandise.~~

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

25 "§27-17A-47.

26 "(a) Every cemetery authority operating an endowment
27 care cemetery shall establish an endowment care fund which

1 shall be placed with and held by a bank, trust company,
2 savings and loan association, or other financial institution
3 authorized to provide trust services under Title 5, as
4 amended, or under the applicable laws of the United States or
5 any other state, or a board of trustees, consisting of at
6 least three members, who shall reside in the State of Alabama,
7 one of whom is engaged in outside cemetery management, and
8 each of whom shall be bonded to honestly perform the duties of
9 trustee under a formal trust agreement.

10 "(b) Except as specifically provided in this
11 subsection, commencing on the effective date of the act adding
12 this subsection, a person serving on a board of trustees or
13 cemetery authority may not also serve as a trustee of an
14 endowment care fund for the cemetery authority. A board of
15 trustees in existence on the effective date of the act adding
16 this subsection may continue to serve as the trustee of an
17 endowment care fund if the board of trustees otherwise
18 complies with this subsection. Unless exempted by the
19 commissioner pursuant to this subsection, on or before January
20 1, 2015, each member of a board of trustees in existence on
21 the effective date of the act adding this subsection shall
22 furnish the bond required by subsection (a) in the greater of
23 one hundred thousand dollars (\$100,000) or the amount in each
24 endowment care fund for which the board acts as trustee as of
25 December 31, 2014. Thereafter, the amount of the bonds shall
26 be increased on January 1 of each succeeding year to equal the
27 amount in each endowment care fund as of the immediately

1 preceding December 31. The commissioner shall exempt a board
2 of trustees from the bond requirement if the board of trustees
3 provides to the commissioner an annual audit report that
4 satisfies all of the following criteria:

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

7 " (2) The report evidences that the review made the
8 subject of the report by the accountant encompasses each
9 endowment care fund for which the board acts as trustee.

10 " (3) The report notes relating to the endowment care
11 fund or funds are in a form that is reasonably acceptable to
12 the commissioner.

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

16 " (b) The amount of each bond shall be a minimum of
17 twenty-five thousand dollars (\$25,000). (c) The corporate
18 trustee or board of trustees shall be referred to as a
19 "qualified trustee." Unless otherwise specified in this
20 article or in the terms of the trust instrument, the trustee
21 of any trust established under or pursuant to this article
22 shall have all powers granted to trustees under Article 14 of
23 Chapter 3 of Title 19. The incorporation herein of such powers
24 shall not be deemed to imply any duties of trustees of trusts
25 established under or pursuant to this article not expressly
26 delineated in this article.

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

3 "(d)(e) The cemetery authority may enter into a
4 contract with the qualified trustee for the management and
5 investment of the endowment care fund, which contract may
6 provide for the payment of income from the fund of reasonable
7 fees or commissions to the trustee, and its reasonable
8 expenses for administering the trust.

9 "(f) As often as he or she may deem necessary, the
10 commissioner may examine the records or facilities, or both,
11 of any cemetery authority operating an endowment care
12 cemetery.

13 "§27-17A-50.

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

1 the exercise of the trustee's discretion, deems the
2 investment, reinvestment, or retention to be for the best
3 interest of the trust estate.

4 "(b) The net income from the endowment care fund, to
5 the extent that the same is distributed from the fund, shall
6 be used exclusively for covering the costs of endowment care
7 of the cemetery.

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

18 "§27-17A-55.

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

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

12 Section 4. Section 27-17A-57 is added to the Code of
13 Alabama 1975, to read as follows:

14 §27-17A-57.

15 The commissioner shall have the same jurisdiction
16 over funeral establishments, funeral directors, cemetery
17 authorities, or third party sellers who sell preneed contracts
18 without a preneed certificate of authority as he or she has
19 over those preneed sellers who possess a preneed certificate
20 of authority.

21 Section 5. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

bill defines a new crime or amends the definition of an existing crime.

Section 6. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

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

1

2

3 Senate

4 Read for the first time and referred to the Senate
5 committee on Banking and Insurance.....

14-JAN-14

6

7 Read for the second time and placed on the calen-
8 dar with 1 substitute and 2 amendments

06-FEB-14

9

10 Read for the third time and passed as amended 20-FEB-14

11 Yeas 30
12 Nays 2

13

14

15 Patrick Harris
16 Secretary
17