

1 HB588
2 118808-7
3 By Representative Johnson
4 RFD: Government Operations
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ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to the sale of preneed funeral or cemetery merchandise and services; to amend Sections 27-17A-3, 27-17A-10, 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-22, 27-17A-25, 27-17A-30, 27-17A-31, 27-17A-32, 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43, 27-17A-44, 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add Sections 27-17A-5 and 27-17A-26 to the Code of Alabama 1975; to clarify that a preneed contract is not an insurance contract; to require any person selling funeral or cemetery services on a preneed basis to obtain a certificate of authority from the Department of Insurance; to require the quarterly submission of a statement of preneed financial transactions to the Commissioner of Insurance; to change the renewal and expiration dates for a preneed certificate of authority; to clarify the amount of a bond used as an alternative to a trusting requirement and require an initial bond to be based on the amount of preneed liability expected to be incurred within the next 12 months; to require the commissioner, at least annually, to inspect the preneed

1 records of any person lawfully, or suspected of unlawfully,
2 writing preneed contracts; to authorize the commissioner to
3 charge an inspection fee of up to \$250; to increase the
4 penalties for a willful violation from a Class B misdemeanor
5 to a Class C felony; to authorize the commissioner to use
6 funds available from all sources in the enforcement of this
7 act; to create the Alabama Funeral and Cemetery Preneed
8 Consumer Protection Fund for the protection of consumers who
9 purchase preneed contracts after April 30, 2002; to provide
10 that funds received for funeral and cemetery merchandise
11 placed in storage prior to death need not be placed in trust;
12 to subject cemetery authorities to the act; to require any
13 person receiving funds from the sale of a preneed contract to
14 contribute those funds to a trust fund, life insurance
15 contract, or annuity contract; to prohibit a seller of preneed
16 services from sharing in the discharge of the responsibilities
17 of the trustee, except for appointing an adviser; to require
18 any payments received on a preneed contract written after
19 April 30, 2002, to be deposited into an approved trust; to
20 require preneed cemetery merchandise and services funds remain
21 in trust until cancellation or fulfillment; to remove the
22 requirement that certification of a responsible officer of a
23 preneed cemetery authority be given under oath; and to require
24 a cemetery authority to place funds collected for the
25 construction of a mausoleum, columbarium, or below ground

1 crypt into a preconstruction trust until such time as
2 construction is complete.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 27-17A-3 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§27-17A-3.

7 "(a) Nothing in this chapter shall be construed to
8 prohibit the funding of funeral and cemetery preneed contracts
9 with life insurance contracts. Life insurance contracts used
10 to fund preneed contracts shall conform with the provisions of
11 this title as they relate to life insurance and shall cover at
12 a minimum the ~~retail amount of the preneed contract at the~~
13 ~~time of purchase~~ funding requirements provided in Sections
14 27-17A-31 and 27-17A-42.

15 "(b) Nothing in this chapter shall be construed to
16 prohibit a seller from distributing portions of payments
17 received by the seller into a life insurance contract or
18 annuity contract, or both, in lieu of trust funding for the
19 purpose of satisfying the funding requirements of a seller as
20 provided in this chapter.

21 "(c) Nothing in this chapter shall prohibit a
22 seller, or any other person, from receiving commissions earned
23 and payable in regard to funding preneed contracts with life
24 insurance contracts or annuity contracts, or both, provided
25 the seller or other person holds a valid and lawful license to
26 sell or solicit life insurance in this state."

1 Section 2. Section 27-17A-5 is added to the Code of
2 Alabama 1975, to read as follows:

3 (a) A preneed contract is not an insurance contract.

4 (b) A preneed contract does not include a contract
5 for the sale of interment rights or cemetery grave spaces or
6 lots.

7 (c) A preneed contract does not include a contract
8 for the sale of cemetery merchandise when delivery to the
9 purchaser is made within 120 days after the date of contract.

10 (d) An outer burial container shall only be
11 installed at time of need.

12 Section 3. Sections 27-17A-10, 27-17A-11, 27-17A-12,
13 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-22, and 27-17A-25 of
14 the Code of Alabama 1975, are amended to read as follows:

15 "§27-17A-10.

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

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

21 "(2) The provisions of subdivision (1) do not apply
22 to any legal reserve insurance company or to any trust company
23 or to any national or state bank or savings and loan
24 association having trust powers which company, bank, or
25 association receives any money in trust pursuant to the sale
26 of a preneed contract.

1 "(c) (1) No person that is an individual may obtain
2 or hold a certificate of authority under this article for the
3 preneed sale of funeral services or merchandise, or both, or
4 cemetery services or merchandise, or both, unless the person
5 or its agent, in the case of a corporate entity, holds a
6 current license as a funeral director or a funeral
7 establishment, from the Alabama Board of Funeral Service or is
8 a cemetery authority.

9 "(2) No person that is a business entity may obtain
10 or hold a certificate of authority under this article for the
11 preneed sale of funeral services or merchandise, or both, or
12 cemetery services or merchandise, or both, unless the person
13 satisfies one of the following requirements:

14 "a. Holds an interest in real property licensed as a
15 funeral establishment by the Alabama Board of Funeral Service.

16 "b. Owns a controlling interest of greater than 50
17 percent in another person that is a business entity and holds
18 an interest in real property licensed as a funeral
19 establishment by the Alabama Board of Funeral Service.

20 "c. Employs or has as an officer, partner,
21 shareholder, or member a person licensed as a funeral director
22 by the Alabama Board of Funeral Service.

23 "d. Is a cemetery authority.

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

1 "§27-17A-11.

2 "(a) An annual application to the commissioner for a
3 certificate of authority shall be accompanied by the statement
4 and other matters described in this section ~~in the form~~
5 ~~prescribed by the commissioner. Annually~~ Quarterly thereafter,
6 ~~within three months after the end of its fiscal period, or~~
7 within an extension of time therefor, as the commissioner for
8 good cause may grant, the person authorized to engage in the
9 sale of preneed contracts shall file with the commissioner a
10 full and true statement of his or her preneed financial
11 ~~condition, transactions, and affairs, prepared on a basis as~~
12 ~~adopted by a rule of the commissioner, as of the preceding~~
13 ~~fiscal period or at such other time or times as the~~
14 ~~commissioner may provide by rule, together with information~~
15 ~~and data which may be required by the commissioner.~~

16 "(b) The quarterly and annual statement shall
17 include all of the following:

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

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

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

24 "~~a. Has the ability to discharge his or her~~
25 ~~liabilities as they become due in the normal course of~~
26 ~~business and has sufficient funds available during the~~

1 ~~calendar year to perform his or her obligations under the~~
2 ~~contract.~~

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

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

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

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

14 "(3) All of the following about preneed activity
15 subject to this chapter:

16 "a. As to funeral or cemetery merchandise and
17 services:

18 "1. The name, physical address, and phone number of
19 the funeral establishment or cemetery authority.

20 "2. The name of the beneficiary.

21 "3. The contract number.

22 "4. The name of the trustee or insurance company, or
23 both.

24 "5. The quarterly report provided to the funeral
25 establishment by an insurance company or a trust company.

26 "b. As relating to a cemetery property sales log.

1 "1. The name, physical address, and phone number of
2 the cemetery authority.

3 "2. The name of the owner of the interment rights.

4 "3. The contract number.

5 "4. The name of the trustee or insurance company, or
6 both.

7 "5. The quarterly report provided to the cemetery by
8 an insurance company or a trust company.

9 "(6) The amount of any endowment trust fund
10 quarterly deposit.

11 "(c) If the person is an individual, the statement
12 shall be sworn by him or her; if a firm or association, by all
13 members thereof; or, if a corporation, by any officer of the
14 corporation.

15 "(d) (1) An application to the commissioner for an
16 initial certificate of authority shall be accompanied by an
17 application fee in an amount to be determined by the
18 commissioner, not to exceed one hundred fifty dollars (\$150).
19 Thereafter, each annual application for renewal of a
20 certificate of authority shall be accompanied by the
21 appropriate fee as determined by the commissioner not to
22 exceed seventy-five dollars (\$75).

23 "(2) Any person or entity that is part of a common
24 business enterprise that has a certificate of authority issued
25 pursuant to this article and elects to operate under a name
26 other than that of the common business enterprise shall submit

1 an application on a form adopted by the commissioner to become
2 a branch registrant. Upon the approval of the commissioner
3 that the entity qualifies to sell preneed contracts under this
4 article ~~except for the requirements of paragraph a. of~~
5 ~~subdivision (3) of subsection (b) and if the certificate~~
6 ~~holder meets the requirements of paragraph a.~~, a branch
7 registration shall be issued. Each branch registrant may
8 operate under the certificate of authority of the common
9 business enterprise upon the payment of a fee established by
10 the commissioner, not to exceed one hundred fifty dollars
11 (\$150), ~~accompanying the application on April~~ and filed on or
12 before July 1 annually.

13 "(e) Upon the commissioner being satisfied that the
14 statement and matters which may accompany it meet the
15 requirements of this article and of its rules, the
16 commissioner shall issue or renew the certificate of
17 authority.

18 "(f) The certificate of authority shall expire
19 annually ~~on June 1~~ at midnight on September 30, unless
20 renewed, or at such other time or times as the commissioner
21 may provide by rule.

22 "(g) On or before ~~April~~ June 1 of each year, the
23 certificate holder shall file with the commissioner in the
24 form prescribed by the commissioner a full and true statement
25 as to the activities of any trust, including trust statements,

1 established by it pursuant to this article for the preceding
2 calendar year.

3 "(h) In addition to any other penalty that may be
4 provided for under this article, the commissioner may levy a
5 fine not to exceed fifty dollars (\$50) per day for each day
6 the certificate holder fails to file its annual statement, and
7 the commissioner may levy a fine not to exceed fifty dollars
8 (\$50) per day for each day the certificate holder fails to
9 file the quarterly ~~statement of activities of the trust~~. Upon
10 notice to the certificate holder by the commissioner that the
11 certificate holder has failed to file the annual statement or
12 the quarterly ~~statement of activities of the trust~~, the
13 certificate holder's authority to sell preneed contracts shall
14 cease while the default continues.

15 "(i) To facilitate uniformity in ~~financial~~
16 ~~statements and to facilitate analysis~~ examinations, the
17 commissioner may by rule adopt a form for financial
18 statements. The basis of accounting for the form shall be
19 either generally accepted accounting principles in the United
20 States or in accordance with the otherwise comprehensive basis
21 of accounting, and may have the following exceptions:

22 "(1) Liability pre-act preneed contracts may be
23 reported at the current vendor costs of merchandise plus
24 freight.

25 "(2) Current revenue may include earned
26 administrative revenue. Administrative revenue is considered

1 earned after the 30th day after the date of the contract.
2 Administrative revenue shall be calculated at a rate up to 25
3 percent of collections of preneed contracts written on or
4 after May 1, 2002, excluding cash advanced items.

5 "(3) The statutory accounting basis of accounting,
6 as prescribed by rule of the department.

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

17 "§27-17A-12.

18 "(a) Preneed contract forms and related forms shall
19 be filed with and approved by the commissioner.

20 "(b) Specific disclosure regarding the certificate
21 holder's requirement to place certain preneed funds received
22 in trust or insurance, or both, is required in the preneed
23 contract.

24 "(c) Preneed contracts which have been submitted to
25 the commissioner shall be deemed to have been approved by the
26 commissioner in the event that the commissioner fails to

1 notify the certificate holder that approval has been denied
2 within 30 days following submission to the commissioner.

3 "§27-17A-13.

4 "(a) Except as provided in Sections 27-17A-3 and
5 27-17A-14, every preneed contract shall require the moneys
6 paid to the seller or trustee to be placed in trust in
7 accordance with Article 3, for funeral merchandise and
8 services, or Article 4, for cemetery merchandise and services.

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

26 "§27-17A-14.

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

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

18 "(c) (1) The amount of the bond shall be based on a
19 report documenting the outstanding liabilities of the preneed
20 provider, shall be prepared by the preneed provider using
21 generally accepted accounting principles, and shall be signed
22 by the chief executive officer or chief financial officer of
23 the preneed provider. The report shall be compiled as of the
24 end of the preneed provider's fiscal year and updated
25 annually.

1 "(2) The amount of the initial surety bond of a
2 newly authorized preneed provider with no outstanding preneed
3 liability shall be set by the commissioner in an amount
4 certified by the preneed provider as the amount of outstanding
5 preneed liability expected to be incurred by the provider
6 within the next 12 months.

7 "(d) The amount of the bond shall be increased or
8 decreased at the time of renewal as necessary to correlate
9 with changes in the outstanding liabilities as reported by the
10 preneed provider pursuant to subdivision (1) of subsection
11 (c). Further, the commissioner may order the bond to be
12 increased as necessary to correlate with changes in the
13 outstanding liabilities of bonded contracts due to increases
14 in the consumer price index.

15 "(e) If the preneed provider fails to maintain a
16 bond pursuant to this section the preneed provider shall cease
17 the offering for sale and sale of preneed merchandise,
18 services, and cash advances.

19 "(f) No surety bond used to comply with this section
20 shall be canceled or subject to cancellation unless at least
21 60 days' advance notice thereof, in writing, is filed with the
22 commissioner, by the surety company. The cancellation of the
23 bond shall not relieve the obligation of the surety company
24 for claims arising out of contracts issued or otherwise
25 covered before cancellation of the bond. In the event that
26 notice of termination of the bond is filed with the

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

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

23 "§27-17A-15.

24 "(a) The commissioner ~~shall, as often as he or she~~
25 ~~may deem necessary, examine the business~~ may inspect the
26 preneed contracts, preneed contract trust fund records, and at

1 need records of any person writing preneed contracts under
2 this chapter ~~to the extent applicable. The examination shall~~
3 ~~be made by designated representatives or examiners of the~~
4 ~~Department of Insurance. The cost of the inspection may not~~
5 ~~exceed two hundred fifty dollars (\$250) and shall be paid by~~
6 ~~the seller.~~

7 "(b) If the inspection shows that a seller is not in
8 compliance with this chapter or any rules adopted pursuant to
9 this chapter, the commissioner may examine the business of any
10 person writing preneed contracts. The examination shall be
11 performed by designated representatives of the commissioner or
12 examiners employed by the Department of Insurance.

13 "(c) The commissioner may examine the business of
14 any person who is writing preneed contracts without a valid
15 certificate of authority or suspected of writing preneed
16 contracts without a valid certificate of authority.

17 ~~"(b)~~ (d) The written report of each inspection and
18 examination, when completed, shall be filed in the office of
19 the commissioner and, when so filed, shall not constitute a
20 public record.

21 ~~"(c)~~ (e) Any person being examined shall produce,
22 upon request, all records of the person. The designated
23 representative of the commissioner may at any time examine the
24 preneed records and affairs of the person, whether in
25 connection with a formal examination or not.

1 "~~(d)~~(f) The commissioner may waive the examination
2 requirements of this section if the certificate holder submits
3 audited financial statements.

4 "~~(e)~~(g) The person examined shall pay the
5 examination expenses, travel expense and per diem subsistence
6 allowance provided for examiners and incurred by the
7 commissioner's representatives or examiners in connection with
8 an examination in accordance with Section 27-2-25.

9 "§27-17A-22.

10 "Any officer or director, or person occupying
11 similar status or performing similar functions, ~~of whether a~~
12 certificate holder or not, who fails to make ~~required~~ deposits
13 ~~to any trust fund~~ required by this chapter; any director,
14 officer, agent, or employee of ~~a certificate holder~~ any of the
15 foregoing who makes any unlawful withdrawal of funds from any
16 such account or who knowingly discloses to the commissioner or
17 an employee thereof any false report made pursuant to this
18 chapter; or any person who willfully violates ~~any of the~~
19 ~~provisions of~~ this chapter commits a Class ~~B~~ misdemeanor C
20 felony, punishable as provided by law.

21 "§27-17A-25.

22 "(a) All fees collected by the commissioner pursuant
23 to this chapter, excluding fees collected pursuant to Section
24 27-17A-26, shall be deposited into the State Treasury to the
25 credit of the Insurance Department Fund.

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

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

8 Section 4. Section 27-17A-26 is added to the Code of
9 Alabama 1975, to read as follows:

10 §27-17A-26.

11 (a) There is created a fund in the State Treasury,
12 designated as the Alabama Funeral and Cemetery Preneed
13 Consumer Protection Fund. Monies in the fund shall be used for
14 the protection of consumers who purchased preneed services
15 after April 30, 2002. All moneys in the fund are hereby
16 appropriated, as a continuing appropriation, to the
17 commissioner for use in implementing this chapter.

18 (b) Within 60 days after the end of each calendar
19 quarter, for each preneed contract written during the quarter
20 and not canceled within 30 days after the date of execution,
21 each certificate holder shall pay to the fund an amount
22 established by the commissioner. The amount may not exceed
23 twenty dollars (\$20) per preneed contract written. The amount
24 may be included in the total cost of a preneed contract and
25 later deducted for deposit into the fund.

1 (c) All monies received by the commissioner pursuant
2 to this section shall be deposited into the fund.

3 (d) (1) Upon the commencement of a liquidation
4 proceeding against a certificate holder, the department may
5 use up to 50 percent of the balance of the fund not already
6 committed to a prior liquidation proceeding solely for the
7 purpose of providing restitution to preneed contract
8 purchasers and their estates due to the failure of a
9 certificate holder to provide benefits pursuant to a preneed
10 contract or to refund the appropriate principal amount
11 pursuant to the cancellation of a preneed contract. The
12 balance of the fund shall be determined as of the date of the
13 delinquency proceeding.

14 (2) If a liquidation proceeding is not commenced,
15 the commissioner may use the fund to provide restitution to
16 any consumer, owner, or beneficiary of a preneed contract or
17 similar regulated arrangement under this chapter. The
18 commissioner may also provide payments from the fund if a
19 certificate holder has breached a preneed contract by failing
20 to provide benefits or an appropriate refund or if a provider,
21 who is a former certificate holder, or an establishment, which
22 has been regulated under this chapter, has sold a preneed
23 contract and has failed to fulfill the arrangement or provide
24 an appropriate refund because of a lack of adequate funds.

25 (3) To determine whether to make payments from the
26 fund and which party should be responsible for such payments,

1 the department shall consider whether a certificate holder or
2 previous provider has been acquired by a successor and whether
3 the successor should be responsible for the liabilities of the
4 defaulting entity.

5 a. With respect to preneed contracts funded by life
6 insurance, payments from the fund shall be made if the insurer
7 is insolvent, but only to the extent that funds are not
8 available through the liquidation proceeding of the insurer,
9 or if the certificate holder is unable to perform under the
10 contract and the insurance proceeds are not sufficient to
11 cover the cost of the merchandise and services contracted for.
12 In no event shall the commissioner approve payments in excess
13 of the insurance policy limits unless the commissioner
14 determines that at the time of sale of the preneed contract,
15 the insurance policy would have paid for the services and
16 merchandise contracted for. Such monetary relief shall be in
17 an amount as the department may determine and shall be payable
18 in such manner and upon such conditions and terms as the
19 department may prescribe. Such monetary relief shall be
20 approved by the commissioner.

21 b. With respect to preneed contracts funded pursuant
22 to Section 27-17A-13 or Section 27-17A-14, restitution may not
23 exceed, as to any single contract or arrangement, the lesser
24 of the gross amount paid under the contract or four percent of
25 the uncommitted assets of the fund.

1 c. With respect to preneed contracts funded by life
2 insurance policies, restitution may not exceed, as to any
3 single contract or arrangement, the lesser of the face amount
4 of the policy, the actual cost of the arrangement contracted
5 for, or four percent of the uncommitted assets of the fund.

6 (4) The total of all restitution made to all
7 applicants under this subsection in a single fiscal year may
8 not exceed the greater of 30 percent of the uncommitted assets
9 of the fund as of the end of the most recent fiscal year or
10 one hundred twenty thousand dollars (\$120,000).

11 (5) The department, upon order of the commissioner,
12 may use monies in the fund to contract with independent
13 vendors to administer this subsection.

14 (e) All monies deposited into the fund, together
15 with all accumulated income, shall be used only for the
16 purposes provided in this section and may not be subject to
17 any lien, charge, judgment, garnishment, or creditor claim
18 against a certificate holder, trustee utilized by a
19 certificate holder, company providing a surety bond, or
20 purchaser of a preneed contract. No preneed contract purchaser
21 shall have any vested rights in the fund.

22 (f) If restitution is paid to a preneed contract
23 purchaser, or his or her estate, pursuant to this section the
24 amount of restitution paid may not exceed the gross amount of
25 the principal payments made by the purchaser on a contract.

1 (g) If the department makes payments from the fund
2 to a purchaser, or his or her estate, the department shall be
3 subrogated to the rights of the purchaser under the contract
4 and any amounts collected by the department shall be deposited
5 into the fund.

6 (h) Notwithstanding the fee structure provided in
7 subsection (b), the department shall annually review the
8 financial status of the fund and, if the uncommitted fund
9 balance exceeds three million dollars (\$3,000,000), the
10 department, by rule, may lower the required payments to the
11 fund to an amount not less than one dollar (\$1) per preneed
12 contract written.

13 (i) The department shall adopt rules as necessary
14 for the implementation of this section. The rules shall
15 provide for all of the following:

16 (1) Forms for filing claims against the fund.

17 (2) Procedures for filing claims against the fund.

18 (3) The information and supporting documentation
19 required to be provided by claimants to support claims against
20 the fund.

21 (4) Procedures for investigating claims against the
22 fund.

23 (5) Criteria for determining whether a claim is
24 allowable and in what amount.

1 (6) Forms and procedures for use by preneed
2 licensees in making remittances to the fund as required by
3 this chapter.

4 Section 5. Sections 27-17A-30, 27-17A-31, 27-17A-32,
5 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43, 27-17A-44,
6 27-17A-50, and 27-17A-55 of the Code of Alabama 1975, are
7 amended to read as follows:

8 "§27-17A-30.

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

13 "§27-17A-31.

14 "(a) Any person who is paid, collects, or receives
15 funds under a preneed contract for funeral services or funeral
16 merchandise shall deposit ~~in this state~~ into an approved trust
17 an amount at least equal to the sum of 75 percent of the
18 purchase price collected for all funeral services and funeral
19 merchandise sold and facilities rented other than outer burial
20 containers, 60 percent of the purchase price collected for
21 outer burial containers, and 100 percent of the purchase price
22 collected for all cash advance items sold. For any preneed
23 contract written after April 30, 2002, and for the purposes of
24 this chapter, the contract purchaser and the seller recognize
25 that the seller has incurred certain expenses and provided
26 certain benefits to the contract purchaser and the contract

1 purchaser recognizes that the seller, to cover costs
2 associated with the sale of the preneed contract, and except
3 for cash advance items, may realize up to 25 percent of the
4 total preneed contract purchase price as income.

5 "(b) For any payment received on a preneed contract
6 written after April 30, 2002, all ~~All~~ deposits shall be made
7 within 30 days after the end of the calendar ~~month~~ quarter in
8 which the preneed contract is paid in full, unless, prior to
9 that time, all liabilities of the seller under the preneed
10 contract to deliver the specific funeral merchandise or
11 funeral services, or both, or the specific cash advances,
12 identified by the preneed provider as properly allocated to
13 the payment, have been satisfied, or the preneed contract is
14 validly cancelled. For any payment received on a preneed
15 contract written after January 1, 2020, all deposits shall be
16 made within 30 days after the end of the calendar year in
17 which the payment is received unless, before that time, all
18 liability of the seller under the preneed contract to deliver
19 the specific funeral merchandise or funeral services, or both,
20 or the specific cash advances, identified by the preneed
21 provider as properly allocated to the payment, have been
22 satisfied or the preneed contract is validly cancelled.

23 "(c) The trustee shall take title to the property
24 conveyed to the trust for the purpose of investing,
25 protecting, and conserving it for the certificate holder;

1 collecting income; and distributing the principal and income
2 as prescribed in this article.

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

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

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

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

19 "(h) In no event may such funds be loaned to a
20 certificate holder, an affiliate of a certificate holder, or
21 any person directly or indirectly engaged in the burial,
22 funeral home, or cemetery business. Furthermore, the
23 certificate holder's interest in the trust shall not be
24 pledged as collateral for any loans, debts, or liabilities of
25 the certificate holder and shall not be transferred to any
26 person without the prior written approval from the

1 commissioner and the trustee. Even though the certificate
2 holder shall be deemed and treated as the settlor and
3 beneficiary of the trust for all purposes, all of the trust
4 funds are exempt from all claims of creditors of the
5 certificate holder except as to the claims of the contract
6 purchaser, his or her representative, or the commissioner.

7 "§27-17A-32.

8 "(a) Without limiting in any way the liability of
9 the seller under a preneed contract to perform its obligations
10 thereunder, including, without limitation, the obligation to
11 deliver the funeral merchandise, and for installation thereof
12 if it is to be included in the preneed contract, the seller
13 shall not be required to place in trust proceeds paid under
14 the contract for funeral merchandise placed in storage in
15 accordance with this section. If the trust proceeds have
16 previously been paid, the seller may withdraw the principal
17 amount there, at such time as the funeral merchandise, if
18 comprised of materials designed to withstand prolonged,
19 protected storage without deterioration, is placed in storage
20 with a responsible third party bonded and insured for the
21 wholesale value thereof and evidenced by a receipt
22 specifically identifying the item, the specific preneed
23 contract, the location of the item, and the identity and
24 address of the bonding and insuring parties. For purposes of
25 this subsection only, caskets and alternative containers may
26 not be delivered prior to death.

1 "(b) The trustee shall make regular valuations of
2 the assets it holds in trust and provide a report of the
3 valuations to the certificate holder at least quarterly. Any
4 person who withdraws appreciation in the value of trust, other
5 than the pro rata portion of such appreciation which may be
6 withdrawn upon the death of a contract beneficiary or upon
7 cancellation of a preneed contract, shall be required to make
8 additional deposits from his or her own funds within 12 months
9 succeeding the withdrawal to restore the aggregate value of
10 assets to the value of funds deposited in trust, but excluding
11 from the funds deposited those funds paid out upon preneed
12 contracts which the person has fully performed or which have
13 been otherwise withdrawn, as provided in this article. The
14 certificate holder shall be liable to third parties to the
15 extent that income from the trust is not sufficient to pay the
16 expenses of the trust.

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

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

23 "~~(2) Borrow money up to an aggregate amount of 10~~
24 ~~percent of trust assets, at interest rates then prevailing~~
25 ~~from any individual, bank, insurance company, or other source,~~
26 ~~irrespective of whether any such person is then acting as~~

1 ~~trustee, and to create security interests in no more than 10~~
2 ~~percent of trust assets by mortgage, pledge, or otherwise,~~
3 ~~upon the terms and conditions and for the purposes as the~~
4 ~~trustee may deem advisable.~~

5 "~~(3)~~(2) Commingle the property of the trust with the
6 property of any other preneed funeral, preneed cemetery, or
7 endowment care trust fund established pursuant to this ~~article~~
8 chapter, and make corresponding allocations and divisions of
9 assets, liabilities, income, and expenses. This subsection
10 does not apply to any trust fund established pursuant to
11 Section 27-17A-55.

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

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

25 "a. The company issuing the life insurance contracts
26 or annuities is licensed by the Department of Insurance and

1 the insurance producer or annuity seller is properly licensed
2 within its domiciliary jurisdiction.

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

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

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

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

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

1 "(5) It is the intention of the Legislature that
2 this subsection shall be retroactive and shall apply to all
3 life insurance contracts or annuities issued prior to May 6,
4 2008.

5 "§27-17A-40.

6 "To comply with the trust requirement of subsection
7 (a) of Section 27-17A-13, all ~~certificate holders~~ cemetery
8 authorities providing preneed contracts for cemetery services
9 or cemetery merchandise shall be subject to this article.

10 "§27-17A-41.

11 "(a) Any person who receives or collects any funds
12 on account of a preneed contract in this state for cemetery
13 services or cemetery merchandise, or both, entered into after
14 ~~May 1~~ April 30, 2002, shall have the obligation to pay over
15 and contribute into a trust fund, or disperse portions of or
16 all payments received into a life insurance contract or
17 annuity contract, or both, as hereinafter described, those
18 amounts or proportions of the funds as hereinafter provided.

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

24 "(c) The trustee of the Cemetery Merchandise and
25 Services Trust Fund shall be qualified as such within the
26 definition of the trustee.

1 "(d) The trustee shall take title to the property
2 conveyed to the Cemetery Merchandise and Services Trust Fund
3 ~~subject to this section~~ for the purpose of investing,
4 protecting, and conserving the property for the certificate
5 holder, collecting income, and distributing the principal and
6 income as prescribed in this article. A seller is prohibited
7 from sharing in the discharge of these responsibilities,
8 except that a seller may appoint an advisor to the trustee or
9 elect tax free investments. Nothing in this chapter shall
10 prohibit a trustee from electing the qualified funeral trust
11 option under the Internal Revenue Code.

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

15 "(f) The party contracting to deliver the cemetery
16 merchandise or cemetery services or cash advances, whether or
17 not a preneed provider, shall be referred to in this section
18 as the "seller."

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

21 "§27-17A-42.

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

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

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

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

8 "(4) With respect to all cash advance items sold,
9 100 percent of the purchase price specified for the same in
10 the preneed contract.

11 "(b) For any contribution received on a preneed
12 contract written after April 30, 2002, all ~~All~~ contributions
13 shall be made to an approved trust fund within 30 days after
14 the end of the calendar ~~month~~ quarter in which the preneed
15 contract is paid in full, unless, prior to that time, all
16 liabilities of the seller under the preneed contract to
17 deliver the specific cemetery merchandise or cemetery
18 services, or both, or the specific cash advances, identified
19 by the preneed provider as properly allocated to the payment,
20 have been satisfied, or the preneed contract is validly
21 cancelled. All contributions on a preneed contract written
22 after January 1, 2020, shall be made to an approved trust
23 within 30 days after the end of the calendar year in which the
24 contribution is received unless, before that time, all
25 liabilities of the seller under the preneed contract to
26 deliver the specific cemetery merchandise or cemetery

1 services, or both, or the specific cash advances, identified
2 by the preneed provider as properly allocated to the payment,
3 have been satisfied or the preneed contract is validly
4 cancelled. For any preneed contract written after April 30,
5 2002, and for the purposes of this chapter, the contract
6 purchaser and the seller recognize that the seller has
7 incurred certain expenses and provided certain benefits to the
8 contract purchaser and the contract purchaser recognizes that
9 the seller, to cover costs associated with the sale of the
10 preneed contract, and except for cash advance items, may
11 realize up to 25 percent of the total preneed contract
12 purchase price as income.

13 "(c) The trustee shall invest and reinvest the
14 Cemetery Merchandise and Services Trust Fund. The trustee of
15 the trust fund established pursuant to this article shall have
16 all of the following powers:

17 "(1) To make investments and exercise necessary
18 investment powers.

19 "(2) To commingle the property of the Cemetery
20 Merchandise and Services Trust Fund with the property of any
21 other preneed funeral trust fund, endowment care trust fund,
22 or any other preneed cemetery trust fund, or any combination
23 of these, established pursuant to this chapter and make
24 corresponding allocations and divisions of assets,
25 liabilities, income, and expenses. This subsection does not

1 apply to any trust fund established pursuant to Section 27-17A-55.

2 "(d) The trustee shall make regular evaluations of
3 the fair market value of assets held in and liabilities, if
4 any, of the Cemetery Merchandise and Services Trust Fund and
5 provide a report of the evaluations to the seller at least
6 quarterly. If the fair market value of the Cemetery
7 Merchandise and Services Trust Fund is less than 100 percent
8 of the aggregate value of the assets deposited in trust, the
9 seller shall not be required to make additional deposits from
10 his or her own funds to restore the aggregate value of assets
11 to the value of funds deposited in trust. Upon receipt of each
12 quarterly report, the seller may submit to the trustee a
13 written and detailed analysis concerning the balance of funds
14 in the Cemetery Merchandise and Services Trust Fund, certified
15 under oath as being true and correct upon information and
16 belief by a responsible officer of the seller.

17 "~~(e) 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~~

1 ~~seller shall be entitled to withdraw and retain from the~~
2 ~~merchandise trust fund, the excess funds therein:~~

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

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

1 "(e) The funds shall be held in trust, both as to
2 principal and income earned thereon, and shall remain intact,
3 except that the cost of the operation of the approved trust
4 fund authorized by this article may be deducted from the
5 income earned thereon. The seller shall be liable to third
6 parties to the extent that income from the trust fund is not
7 sufficient to pay the expenses of the trust.

8 "§27-17A-43.

9 "(a) Upon cancellation of a preneed contract by
10 mutual agreement between the seller and purchaser, or upon
11 unilateral cancellation of a preneed contract by the seller by
12 reason of default on the part of the purchaser, or other valid
13 cancellation by reason of transfers to another seller or
14 otherwise, the seller may, upon submission of a certification
15 ~~under oath~~ by a responsible officer of the seller to the
16 trustee, withdraw from the Cemetery Merchandise and Services
17 Trust Fund ~~and retain an amount equal to the amount of all~~
18 ~~funds contributed to the trust fund with respect to the~~
19 ~~preneed contract~~ the amount allocable to that specific preneed
20 contract, including any income or appreciation, or both. Any
21 trustee accepting preneed contract proceeds under this article
22 may rely on the seller's certification ~~under oath~~ as required
23 herein to be made, and shall not be liable to anyone for such
24 reliance.

25 "(b) At such time as the seller undertakes to
26 perform its obligations under a preneed contract by delivery

1 or installation, or both, of cemetery merchandise and the
2 provision of cemetery services and disbursement on account of
3 cash advances, or otherwise, upon certification to the trustee
4 ~~under oath~~ by a responsible officer of the seller that the
5 obligations of the seller under the contract have been
6 completely fulfilled, the seller may withdraw from the
7 Cemetery Merchandise and Services Trust Fund ~~and retain an~~
8 ~~amount equal to the current wholesale cost to the fund with~~
9 ~~respect to the preneed contract~~ the amount allocable to that
10 specific preneed contract, including any income or
11 appreciation, or both.

12 "(c) At such time as the seller has fulfilled all of
13 its obligations under all preneed contracts with respect to
14 which funds have been contributed to ~~the~~ an approved trust
15 fund, and certification ~~under oath~~ to the trustee by a
16 responsible officer of the seller of those facts, the seller
17 may withdraw from the trust fund and retain all of the
18 remaining assets thereof, should any assets remain in trust.

19 "§27-17A-44.

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

1 the contract for cemetery merchandise placed in storage
2 pursuant to this section.

3 "(b) If the trust proceeds have previously been paid
4 the seller may withdraw the principal amount there, at such
5 time as the cemetery merchandise, if comprised of materials
6 designed to withstand prolonged, protected storage without
7 deterioration, is placed in storage with a responsible third
8 party bonded and insured for the wholesale value thereof and
9 evidenced by a receipt specifically identifying the item, the
10 specific preneed contract, the location of the item, and the
11 identity and address of the bonding and insuring parties.

12 "§27-17A-50.

13 "(a) No cemetery authority may directly or
14 indirectly require or direct the investment, reinvestment, or
15 retention by a qualified trustee of any part of an endowment
16 care trust in any asset or business in which the cemetery
17 authority or any officer, director, owner, partner, or
18 employee of the cemetery authority has a financial interest.
19 Nothing contained in this subsection shall prevent the
20 trustee, subject to the provisions regarding investment and
21 reinvestment of the trust estate as are contained in the
22 governing instrument creating the trust, from investing,
23 reinvesting, or retaining any asset or business in which the
24 cemetery authority or any officer, director, owner, partner,
25 or employee of the cemetery authority has an insubstantial or
26 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 capital gains or losses. All capital gains
10 and losses shall be recorded to corpus, which is the sum of
11 deposits made by a cemetery into an endowment care fund
12 pursuant to Section 27-17A-49, and all capital gains or
13 losses. Capital gains taxes, if any, may be paid from the
14 corpus.

15 "§27-17A-55.

16 ~~"A cemetery authority shall start construction of~~
17 ~~that section of a mausoleum or bank of below-ground crypts in~~
18 ~~which sales, contracts for sale, reservations for sale, or~~
19 ~~agreements for sale are being made, within five years after~~
20 ~~the date of the first sale or when 75 percent of the mausoleum~~
21 ~~or below-ground crypts have been sold and the purchase price~~
22 ~~has been received, whichever occurs first. The construction~~
23 ~~shall be completed within six years after the date of the~~
24 ~~first sale made. Extensions for completion, not to exceed one~~
25 ~~year, may be granted by the commissioner for good cause shown.~~
26 ~~If the units have not been completely constructed at the time~~

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

10 "(a) A cemetery authority which plans to offer for
11 sale space in a section of a mausoleum, columbarium, or bank
12 of below-ground crypts prior to construction shall establish a
13 preconstruction trust by written instrument. The
14 preconstruction trust shall be administered by a corporate
15 trustee and operated in conformity with Section 27-17A-42. The
16 preconstruction trust shall be separate from any other trust
17 that may be required by this chapter. The written instrument
18 by which the trustee of the preconstruction trust agrees to
19 act as trustee shall contain a statement that an approved
20 trust is created pursuant to the requirements of this section.
21 The approved trust shall be subject to examination by the
22 commissioner.

23 "(b) Before a sale, contract for sale, reservation
24 for sale, or agreement for sale in a mausoleum section,
25 columbarium, or bank of below-ground crypts may be made, the
26 cemetery authority shall compute the amount to be deposited to

1 the preconstruction trust. The total amount to be deposited in
2 an approved trust for each unit of the project shall be
3 computed by dividing the cost of the project plus 10 percent
4 of the cost, as computed by a licensed contractor, engineer,
5 architect, or other person with expertise in the development
6 of such property, by the number of crypts in the section or
7 bank of below-ground crypts or the number of niches in the
8 columbarium. When payments are received in installments, the
9 percentage of the installment payment placed in trust shall be
10 identical to the percentage which the payment received bears
11 to the total cost of the contract, including other merchandise
12 and services purchased. Deposits into the preconstruction
13 trust shall be made within 30 days after the end of the month
14 in which payment is received on preneed contracts written on
15 or after the effective date of this amendatory act.

16 "(c) When the cemetery authority delivers a
17 completed crypt or niche acceptable to the purchaser in lieu
18 of the crypt or niche purchased prior to construction, all
19 sums deposited to the preconstruction trust for that purchaser
20 shall be paid to the cemetery authority.

21 "(d) Subject to the approval of the department, each
22 cemetery authority, at the time of establishment of the
23 preconstruction trust, may negotiate a procedure for
24 withdrawal of the escrowed funds as a part of the construction
25 cost of the mausoleum section, columbarium, or bank of
26 below-ground crypts contemplated. Upon completion of the

1 mausoleum section, columbarium, or bank of below-ground
2 crypts, the cemetery authority shall certify completion to the
3 trustee and may withdraw all funds deposited to the account
4 thereof.

5 "(e) If the mausoleum section, columbarium, or bank
6 of below-ground crypts is not completed within the time limits
7 provided in this section, the trustee shall contract for and
8 cause the project to be completed. The trustee shall pay the
9 costs related to completion from trust funds deposited to the
10 account of the project, paying any balance, less costs and
11 expenses, to the cemetery authority. A refund shall apply only
12 to the extent that there are funds remaining in excess of the
13 costs to complete the facilities prior to any payments being
14 made to the cemetery authority.

15 "(f) On or before July 1 of each year, the trustee
16 shall file with the Department of Insurance, in a form
17 prescribed by rule of the department, a complete and true
18 statement of the activities of any trust established pursuant
19 to this chapter for the preceding calendar year.

20 "(g) In lieu of payments to a preconstruction trust,
21 a cemetery authority may deliver to the department a
22 performance bond in an amount and by a surety company
23 acceptable to the Department of Insurance."

24 Section 6. The provisions of this act are
25 self-executing. This act may not be interpreted as giving the
26 Commissioner of Insurance any additional regulatory authority,

1 nor authority to adopt any rules, except as expressly provided
2 in this act.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Government Oper-
ations 17-FEB-10

Read for the second time and placed
on the calendar with 1 substitute
and 01-APR-10

Read for the third time and passed
as amended 13-APR-10

Yeas 67, Nays 16, Abstains 3

Greg Pappas
Clerk