

1 HB588
2 115274-2
3 By Representative Johnson
4 RFD: Government Operations
5 First Read: 17-FEB-10

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8 SYNOPSIS: Under existing law, there are certain
9 standards for the sale of preneed funeral and
10 cemetery merchandise and services.

11 This bill would clarify that a preneed
12 contract is not an insurance contract.

13 This bill would clarify and require any
14 person selling funeral or cemetery services on a
15 preneed basis to obtain a certificate of authority
16 from the Department of Insurance.

17 This bill would require the quarterly
18 submission of a statement of preneed financial
19 transactions to the Commissioner of Insurance.

20 This bill would change the renewal period
21 for persons holding a preneed certificate of
22 authority from April 1 to July 1 and would provide
23 for the expiration of the certificate on September
24 30 in lieu of June 1.

25 This bill would clarify the amount of a bond
26 used as an alternative to a trusting requirement
27 and would require an initial bond to be based on

1 the amount of preneed liability expected to be
2 incurred within the next 12 months.

3 This bill would require the commissioner, at
4 least annually, to inspect the preneed records of
5 any person lawfully writing, or suspected of
6 unlawfully writing, preneed contracts and would
7 authorize the commissioner to charge an inspection
8 fee of up to \$250.

9 This bill would increase the penalties for a
10 willful violation from those for a Class B
11 misdemeanor to those for a Class C felony.

12 This bill would authorize the commissioner
13 to use funds available from all sources in the
14 enforcement of this act.

15 This bill would create the Alabama Funeral
16 and Cemetery Preneed Consumer Protection Fund for
17 the protection of consumers who purchase preneed
18 contracts after April 30, 2002.

19 This bill would clarify that funds received
20 for funeral and cemetery merchandise placed in
21 storage prior to death need not be placed in trust.

22 This bill would subject cemetery authorities
23 to the act.

24 This bill would require any person receiving
25 funds from the sale of a preneed contract to
26 contribute to a trust fund, life insurance
27 contract, or annuity contract.

1 This bill would prohibit a seller of preneed
2 services from sharing in the discharge of the
3 responsibilities of the trustee, except for
4 appointing an adviser.

5 This bill would require any payments
6 received on a preneed contract written after April
7 30, 2002, to be deposited into an approved trust.

8 This bill would require that preneed
9 cemetery merchandise and services funds remain in
10 trust until cancellation or fulfillment.

11 This bill would remove the requirement that
12 certification of a responsible officer of a preneed
13 cemetery authority be given under oath.

14 This bill would also require a cemetery
15 authority to place funds collected for the
16 construction of a mausoleum, columbarium, or below
17 ground crypt into a preconstruction trust until
18 such time as construction is complete.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 Relating to the sale of preneed funeral or cemetery
25 merchandise and services; to amend Sections 27-17A-3,
26 27-17A-10, 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14,
27 27-17A-15, 27-17A-22, 27-17A-25, 27-17A-30, 27-17A-31,

1 27-17A-32, 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43,
2 27-17A-44, 27-17A-50, and 27-17A-55, Code of Alabama 1975, and
3 to add Sections 27-17A-5 and 27-17A-26 to the Code of Alabama
4 1975; to clarify that a preneed contract is not an insurance
5 contract; to require any person selling funeral or cemetery
6 services on a preneed basis to obtain a certificate of
7 authority from the Department of Insurance; to require the
8 quarterly submission of a statement of preneed financial
9 transactions to the Commissioner of Insurance; to change the
10 renewal and expiration dates for a preneed certificate of
11 authority; to clarify the amount of a bond used as an
12 alternative to a trusting requirement and require an initial
13 bond to be based on the amount of preneed liability expected
14 to be incurred within the next 12 months; to require the
15 commissioner, at least annually, to inspect the preneed
16 records of any person lawfully, or suspected of unlawfully,
17 writing preneed contracts; to authorize the commissioner to
18 charge an inspection fee of up to \$250; to increase the
19 penalties for a willful violation from a Class B misdemeanor
20 to a Class C felony; to authorize the commissioner to use
21 funds available from all sources in the enforcement of this
22 act; to create the Alabama Funeral and Cemetery Preneed
23 Consumer Protection Fund for the protection of consumers who
24 purchase preneed contracts after April 30, 2002; to provide
25 that funds received for funeral and cemetery merchandise
26 placed in storage prior to death need not be placed in trust;
27 to subject cemetery authorities to the act; to require any

1 person receiving funds from the sale of a preneed contract to
2 contribute those funds to a trust fund, life insurance
3 contract, or annuity contract; to prohibit a seller of preneed
4 services from sharing in the discharge of the responsibilities
5 of the trustee, except for appointing an adviser; to require
6 any payments received on a preneed contract written after
7 April 30, 2002, to be deposited into an approved trust; to
8 require preneed cemetery merchandise and services funds remain
9 in trust until cancellation or fulfillment; to remove the
10 requirement that certification of a responsible officer of a
11 preneed cemetery authority be given under oath; and to require
12 a cemetery authority to place funds collected for the
13 construction of a mausoleum, columbarium, or below ground
14 crypt into a preconstruction trust until such time as
15 construction is complete.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 27-17A-3 of the Code of Alabama
18 1975, is amended to read as follows:

19 "§27-17A-3.

20 "(a) Nothing in this chapter shall be construed to
21 prohibit the funding of funeral and cemetery preneed contracts
22 with life insurance contracts. Life insurance contracts used
23 to fund preneed contracts shall conform with the provisions of
24 this title as they relate to life insurance and shall cover at
25 a minimum the ~~retail amount of the preneed contract at the~~
26 ~~time of purchase~~ funding requirements provided in Sections
27 27-17A-31 and 27-17A-42.

1 "(b) Nothing in this chapter shall be construed to
2 prohibit a seller from distributing portions of payments
3 received by the seller into a life insurance contract or
4 annuity contract, or both, in lieu of trust funding for the
5 purpose of satisfying the funding requirements of a seller as
6 provided in this chapter.

7 "(c) Nothing in this chapter shall prohibit a
8 seller, or any other person, from receiving commissions earned
9 and payable in regard to funding preneed contracts with life
10 insurance contracts or annuity contracts, or both, provided
11 the seller or other person holds a valid and lawful license to
12 sell or solicit life insurance in this state."

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

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

16 (b) A preneed contract does not include a contract
17 for the sale of interment rights or cemetery grave spaces or
18 lots.

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

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

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

27 "§27-17A-10.

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

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

6 "(2) The provisions of subdivision (1) do not apply
7 to any legal reserve insurance company or to any trust company
8 or to any national or state bank or savings and loan
9 association having trust powers which company, bank, or
10 association receives any money in trust pursuant to the sale
11 of a preneed contract.

12 "(c) (1) No person that is an individual may obtain
13 or hold a certificate of authority under this article for the
14 preneed sale of funeral services or merchandise, or both, or
15 cemetery services or merchandise, or both, unless the person
16 ~~or its agent, in the case of a corporate entity,~~ holds a
17 current license as a funeral director ~~or a funeral~~
18 ~~establishment,~~ from the Alabama Board of Funeral Service or is
19 a cemetery authority.

20 "(2) No person that is a business entity may obtain
21 or hold a certificate of authority under this article for the
22 preneed sale of funeral services or merchandise, or both, or
23 cemetery services or merchandise, or both, unless the person
24 satisfies one of the following requirements:

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

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

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

8 "d. Is a cemetery authority.

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

12 "\$27-17A-11.

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

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

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

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

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

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

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

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

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

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

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

1 "a. As to funeral or cemetery merchandise and
2 services:

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

5 "2. The name of the beneficiary.

6 "3. The contract number.

7 "4. The date of the contract.

8 "5. The net amount of the contract.

9 "6. The amount funded and the name of the company.

10 "7. The paid in full date.

11 "8. The date the contract is fulfilled, voided, or
12 cancelled.

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

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

16 "2. The name of the property owner.

17 "3. The contract number.

18 "4. The date of the contract.

19 "5. The net amount of property.

20 "6. A statement of whether the contract is paid in
21 full or paid in installments.

22 "7. The amount of cumulative installments.

23 "8. The paid in full date.

24 "9. The amount due endowment care.

25 "10. The date of any endowment care contribution.

26 "11. The date the contract is fulfilled, voided, or
27 cancelled.

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

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

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

1 (\$150), ~~accompanying the application on April~~ and filed on or
2 before July 1 annually.

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

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

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

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

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

3 "(i) To facilitate uniformity in ~~financial~~
4 ~~statements and to facilitate analysis examinations~~, the
5 commissioner may by rule adopt a form for financial
6 statements. The basis of accounting for the form shall be
7 either generally accepted accounting principles in the United
8 States or in accordance with the otherwise comprehensive basis
9 of accounting, and may have the following exceptions:

10 "(1) Liability pre-act preneed contracts may be
11 reported at the current vendor costs of merchandise plus
12 freight.

13 "(2) Current revenue may include earned
14 administrative revenue. Administrative revenue is considered
15 earned after the 30th day after the date of the contract.
16 Administrative revenue shall be calculated at the rate of 25
17 percent of collections of preneed contracts written on or
18 after May 1, 2002.

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

21 "(j) The commissioner may authorize the transfer of
22 certificates of authority and establish fees for the transfer
23 in an amount not to exceed one hundred dollars (\$100). Upon
24 receipt of an application for transfer, the commissioner may
25 grant a temporary certificate of authority to the proposed
26 transferee, based upon criteria established by the
27 commissioner by rule, which criteria shall promote the

1 purposes of this article in protecting the consumer. A
2 temporary certificate of authority shall expire 60 days after
3 issuance unless renewed by the commissioner.

4 "§27-17A-12.

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

7 "(b) Specific disclosure regarding the certificate
8 holder's requirement to place certain preneed funds received
9 in trust or insurance, or both, is required in the preneed
10 contract.

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

16 "§27-17A-13.

17 "(a) Except as provided in Sections 27-17A-3 and
18 27-17A-14, every preneed contract shall require the moneys
19 paid to the seller or trustee to be placed in trust in
20 accordance with Article 3, for funeral merchandise and
21 services, or Article 4, for cemetery merchandise and services.

22 "(b) ~~Although this~~ This chapter does not apply to
23 preneed contracts entered into prior to May 1, 2002, ~~a preneed~~
24 ~~provider which contends that a preneed trust fund which was in~~
25 ~~effect prior to May 1, 2002, complies with this chapter with~~
26 ~~respect to the contracts entered into prior to May 1, 2002,~~
27 ~~may provide to the commissioner documentary proof thereof.~~

1 ~~Upon the commissioner determining that compliance has been~~
2 ~~established, the pre-existing preneed trust fund assets may be~~
3 ~~merged with or into the trust fund required under this chapter~~
4 ~~or continued as the trust fund and that determination by the~~
5 ~~commissioner shall be noted on the certificate of authority,~~
6 ~~and thereafter all preneed contracts covered by the trust~~
7 ~~fund, including those entered into prior to May 1, 2002, shall~~
8 ~~be subject to this chapter. A preneed provider may merge a~~
9 ~~preneed trust fund in effect before May 1, 2002, with or into~~
10 ~~a trust fund required under this chapter. In the event of such~~
11 ~~a merger, the preneed trust in effect before May 1, 2002,~~
12 ~~shall be exempt from the requirements of this chapter.~~

13 "§27-17A-14.

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

25 "(b) The bond shall be made payable to the State of
26 Alabama for the benefit of the commissioner and of all
27 purchasers of preneed merchandise, services, and cash

1 advances. The bond shall be issued by an insurance company
2 licensed in the State of Alabama and authorized to issue
3 surety bonds and approved by the commissioner.

4 "(c) (1) The amount of the bond shall be based on a
5 report documenting the outstanding liabilities of the preneed
6 provider, shall be prepared by the preneed provider using
7 generally accepted accounting principles, and shall be signed
8 by the chief executive officer or chief financial officer of
9 the preneed provider. The report shall be compiled as of the
10 end of the preneed provider's fiscal year and updated
11 annually.

12 "(2) The amount of the initial surety bond of a
13 newly authorized preneed provider with no outstanding preneed
14 liability shall be set by the commissioner in an amount
15 certified by the preneed provider as the amount of outstanding
16 preneed liability expected to be incurred by the provider
17 within the next 12 months.

18 "(d) The amount of the bond shall be increased or
19 decreased at the time of renewal as necessary to correlate
20 with changes in the outstanding liabilities as reported by the
21 preneed provider pursuant to subdivision (1) of subsection
22 (c). Further, the commissioner may order the bond to be
23 increased as necessary to correlate with changes in the
24 outstanding liabilities of bonded contracts due to increases
25 in the consumer price index.

26 "(e) If the preneed provider fails to maintain a
27 bond pursuant to this section the preneed provider shall cease

1 the offering for sale and sale of preneed merchandise,
2 services, and cash advances.

3 "(f) No surety bond used to comply with this section
4 shall be canceled or subject to cancellation unless at least
5 60 days' advance notice thereof, in writing, is filed with the
6 commissioner, by the surety company. The cancellation of the
7 bond shall not relieve the obligation of the surety company
8 for claims arising out of contracts issued or otherwise
9 covered before cancellation of the bond. In the event that
10 notice of termination of the bond is filed with the
11 commissioner, the certificate holder insured thereunder shall,
12 within 30 days of the filing of the notice of termination with
13 the commissioner, provide the commissioner with a replacement
14 bond or with evidence which is satisfactory to the
15 commissioner demonstrating that the provisions of this chapter
16 have been fully complied with. If within 30 days of filing of
17 the notice of termination with the commissioner no replacement
18 bond acceptable to the commissioner or no evidence
19 satisfactory to the commissioner demonstrating that the
20 provisions of this chapter have been complied with is filed
21 with the commissioner, the commissioner shall suspend the
22 license of the certificate holder until the certificate holder
23 files a replacement bond acceptable to the commissioner or
24 demonstrates to the satisfaction of the commissioner that it
25 has complied with the provisions of this chapter.

26 "(g) Upon prior approval by the commissioner, the
27 preneed provider may file with the commissioner a letter of

1 credit in the amount of the outstanding liabilities in lieu of
2 a surety bond, in the form and subject to the terms and
3 conditions evidencing the financial responsibility of the
4 party or parties issuing the letter of credit, and otherwise,
5 as may be prescribed by the commissioner.

6 "§27-17A-15.

7 "(a) The commissioner ~~shall, as often as he or she~~
8 ~~may deem necessary, examine the business~~ may inspect the
9 preneed contracts, preneed contract trust fund records, and at
10 need records of any person writing preneed contracts under
11 this chapter ~~to the extent applicable. The examination shall~~
12 ~~be made by designated representatives or examiners of the~~
13 ~~Department of Insurance. The cost of the inspection may not~~
14 exceed two hundred fifty dollars (\$250) and shall be paid by
15 the seller.

16 "(b) If the inspection shows that a seller is not in
17 compliance with this chapter or any rules adopted pursuant to
18 this chapter, the commissioner may examine the business of any
19 person writing preneed contracts. The examination shall be
20 performed by designated representatives of the commissioner or
21 examiners employed by the Department of Insurance.

22 "(c) The commissioner may examine the business of
23 any person who is writing preneed contracts without a valid
24 certificate of authority or suspected of writing preneed
25 contracts without a valid certificate of authority.

26 "~~(b)~~ (d) The written report of each inspection and
27 examination, when completed, shall be filed in the office of

1 the commissioner and, when so filed, shall not constitute a
2 public record.

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

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

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

16 "§27-17A-22.

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

1 "§27-17A-25.

2 "(a) All fees collected by the commissioner pursuant
3 to this chapter, excluding fees collected pursuant to Section
4 27-17A-26, shall be deposited into the State Treasury to the
5 credit of the Insurance Department Fund.

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

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

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

15 §27-17A-26.

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

23 (b) Within 60 days after the end of each calendar
24 quarter, for each preneed contract written during the quarter
25 and not canceled within 30 days after the date of execution,
26 each certificate holder shall pay to the fund an amount
27 established by the commissioner. The amount may not exceed

1 twenty dollars (\$20) per preneed contract written. The amount
2 may be included in the total cost of a preneed contract and
3 later deducted for deposit into the fund.

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

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

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

1 (3) To determine whether to make payments from the
2 fund and which party should be responsible for such payments,
3 the department shall consider whether a certificate holder or
4 previous provider has been acquired by a successor and whether
5 the successor should be responsible for the liabilities of the
6 defaulting entity.

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

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

26 (g) If the department makes payments from the fund
27 to a purchaser, or his or her estate, the department shall be

1 subrogated to the rights of the purchaser under the contract
2 and any amounts collected by the department shall be deposited
3 into the fund.

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

11 (i) The board shall adopt rules as necessary
12 for the implementation of this section. The rules shall
13 provide for all of the following:

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

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

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

19 (4) Procedures for investigating claims against the
20 fund.

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

23 (6) Forms and procedures for use by preneed
24 licensees in making remittances to the fund as required by
25 this chapter.

26 Section 5. Sections 27-17A-30, 27-17A-31, 27-17A-32,
27 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43, 27-17A-44,

1 27-17A-50, and 27-17A-55 of the Code of Alabama 1975, are
2 amended to read as follows:

3 "§27-17A-30.

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

8 "§27-17A-31.

9 "(a) Any person who is paid, collects, or receives
10 funds under a preneed contract for funeral services or funeral
11 merchandise shall deposit ~~in this state~~ into an approved trust
12 an amount at least equal to the sum of 75 percent of the
13 purchase price collected for all funeral services and funeral
14 merchandise sold and facilities rented other than outer burial
15 containers, 60 percent of the purchase price collected for
16 outer burial containers, and 100 percent of the purchase price
17 collected for all cash advance items sold. For the purposes of
18 this chapter, the contract purchaser and the seller recognize
19 that the seller has incurred certain expenses and provided
20 certain benefits to the contract purchaser and the contract
21 purchaser recognizes that the seller, to cover costs
22 associated with the sale of the preneed contract, and except
23 for cash advance items, may realize up to 25 percent of the
24 total preneed contract purchase price as income.

25 "(b) For any payment received on a preneed contract
26 written after April 30, 2002, all ~~All~~ deposits shall be made
27 within 30 days after the end of the calendar ~~month~~ quarter in

1 which the preneed contract is paid in full, unless, prior to
2 that time, all liabilities of the seller under the preneed
3 contract to deliver the specific funeral merchandise or
4 funeral services, or both, or the specific cash advances,
5 identified by the preneed provider as properly allocated to
6 the payment, have been satisfied, or the preneed contract is
7 validly cancelled. For any payment received on a preneed
8 contract written after January 1, 2020, all deposits shall be
9 made within 30 days after the end of the calendar year in
10 which the payment is received unless, before that time, all
11 liability of the seller under the preneed contract to deliver
12 the specific funeral merchandise or funeral services, or both,
13 or the specific cash advances, identified by the preneed
14 provider as properly allocated to the payment, have been
15 satisfied or the preneed contract is validly cancelled.

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

21 "(d) The certificate holder is prohibited from
22 sharing in the discharge of these responsibilities, except
23 that the certificate holder may appoint an adviser to the
24 trustee.

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

1 "(f) 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 trust or an~~
4 approved trust account authorized by this section may be
5 deducted from the income earned thereon.

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

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

23 "§27-17A-32.

24 "(a) Without limiting in any way the liability of
25 the seller under a preneed contract to perform its obligations
26 thereunder, including, without limitation, the obligation to
27 deliver the funeral merchandise, and for installation thereof

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

16 "(b) The trustee shall make regular valuations of
17 the assets it holds in trust and provide a report of the
18 valuations to the certificate holder at least quarterly. Any
19 person who withdraws appreciation in the value of trust, other
20 than the pro rata portion of such appreciation which may be
21 withdrawn upon the death of a contract beneficiary or upon
22 cancellation of a preneed contract, shall be required to make
23 additional deposits from his or her own funds within 12 months
24 succeeding the withdrawal to restore the aggregate value of
25 assets to the value of funds deposited in trust, but excluding
26 from the funds deposited those funds paid out upon preneed
27 contracts which the person has fully performed or which have

1 been otherwise withdrawn, as provided in this article. The
2 certificate holder shall be liable to third parties to the
3 extent that income from the trust is not sufficient to pay the
4 expenses of the trust.

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

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

11 ~~"(2) Borrow money up to an aggregate amount of 10~~
12 ~~percent of trust assets, at interest rates then prevailing~~
13 ~~from any individual, bank, insurance company, or other source,~~
14 ~~irrespective of whether any such person is then acting as~~
15 ~~trustee, and to create security interests in no more than 10~~
16 ~~percent of trust assets by mortgage, pledge, or otherwise,~~
17 ~~upon the terms and conditions and for the purposes as the~~
18 ~~trustee may deem advisable.~~

19 ~~"(3) (2)~~ Commingle the property of the trust with
20 the property of any other preneed funeral, cemetery, or
21 endowment care trust established pursuant to this article
22 chapter and make corresponding allocations and divisions of
23 assets, liabilities, income, and expenses.

24 ~~"(d) (c)~~ Notwithstanding the provisions of Section
25 19-3-125, the trustee may, subject to compliance with the
26 requirements set forth below, may invest any portion or all of
27 the funds received under preneed contracts and deposited in

1 trust in life insurance contracts or annuities issued on the
2 lives of preneed contract purchasers or preneed contract
3 beneficiaries, hereinafter, the insured or annuitant, without
4 any obligation to cover at a minimum the retail amount of the
5 preneed contract at the time of purchase of the life insurance
6 contracts or annuities as set forth in Section 27-17A-3.

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

10 "a. The company issuing the life insurance contracts
11 or annuities is licensed by the Department of Insurance and
12 the insurance producer or annuity seller is properly licensed
13 within its domiciliary jurisdiction.

14 "b. Prior to the investment, the insured or
15 annuitant consents, in writing, to the investment in life
16 insurance contracts or annuities.

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

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

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

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

11 "(5) It is the intention of the Legislature that
12 this subsection shall be retroactive and shall apply to all
13 life insurance contracts or annuities issued prior to May 6,
14 2008.

15 "§27-17A-40.

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

20 "§27-17A-41.

21 "(a) Any person who receives or collects any funds
22 on account of a preneed contract in this state for cemetery
23 services or cemetery merchandise, or both, entered into after
24 ~~May 1~~ April 30, 2002, shall have the obligation to pay over
25 and contribute into a trust fund, or disperse portions of or
26 all payments received into a life insurance contract or

1 annuity contract, or both, as hereinafter described, those
2 amounts or proportions of the funds as hereinafter provided.

3 "(b) Whether or not the preneed contract provides
4 for cemetery merchandise or cemetery services, or any
5 combination thereof, the trust fund shall be referred to in
6 this section as the Cemetery Merchandise and Services Trust
7 Fund.

8 "(c) The trustee of the Cemetery Merchandise and
9 Services Trust Fund shall be qualified as such within the
10 definition of the trustee.

11 "(d) The trustee shall take title to the property
12 conveyed to the Cemetery Merchandise and Services Trust Fund
13 subject to this section for the purpose of investing,
14 protecting, and conserving the property for the certificate
15 holder, collecting income, and distributing the principal and
16 income as prescribed in this article. A seller is prohibited
17 from sharing in the discharge of these responsibilities,
18 except that a seller may appoint an advisor to the trustee or
19 elect tax free investments.

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

23 "(f) The party contracting to deliver the cemetery
24 merchandise or cemetery services or cash advances, whether or
25 not a preneed provider, shall be referred to in this section
26 as the "seller."

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

3 "§27-17A-42.

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

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

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

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

15 "(4) With respect to all cash advance items sold,
16 100 percent of the purchase price specified for the same in
17 the preneed contract.

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

1 cancelled. All contributions on a preneed contract written
2 after January 1, 2020, shall be made to an approved trust
3 within 30 days after the end of the calendar year in which the
4 contribution is received unless, before that time, all
5 liabilities of the seller under the preneed contract to
6 deliver the specific cemetery merchandise or cemetery
7 services, or both, or the specific cash advances, identified
8 by the preneed provider as properly allocated to the payment,
9 have been satisfied or the preneed contract is validly
10 cancelled. For the purposes of this chapter, the contract
11 purchaser and the seller recognize that the seller has
12 incurred certain expenses and provided certain benefits to the
13 contract purchaser and the contract purchaser recognizes that
14 the seller, to cover costs associated with the sale of the
15 preneed contract, and except for cash advance items, may
16 realize up to 25 percent of the total preneed contract
17 purchase price as income.

18 "(c) The trustee shall invest and reinvest the
19 Cemetery Merchandise and Services Trust Fund. The trustee of
20 the trust established pursuant to this article shall have all
21 of the following powers:

22 "(1) To make investments and exercise necessary
23 investment powers.

24 "(2) To commingle the property of the trust fund
25 with the property of any other preneed funeral trust fund,
26 endowment care trust fund, or cemetery trust fund, or any
27 combination of these, established pursuant to this chapter and

1 make corresponding allocations and divisions of assets,
2 liabilities, income, and expenses.

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

18 ~~"(e) While the obligation of the seller to make~~
19 ~~contributions to the Cemetery Merchandise and Services Trust~~
20 ~~Fund is set forth in this section, the obligation of the~~
21 ~~seller at the time of making certain withdrawals from the~~
22 ~~Cemetery Merchandise and Services Trust Fund as herein~~
23 ~~provided for shall be calculated with respect to the current~~
24 ~~wholesale cost of cemetery merchandise and current retail~~
25 ~~price of cemetery services and cash advances at the time of~~
26 ~~withdrawal. If the fair market value as reported by the~~
27 ~~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 ~~aforesaid 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 section 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 and any income or
19 appreciation, or both, with respect to the specific preneed
20 contract. Any trustee accepting preneed contract proceeds
21 under this article may rely on the seller's certification
22 ~~under oath~~ as required herein to be made, and shall not be
23 liable to anyone for such reliance.

24 "(b) At such time as the seller undertakes to
25 perform its obligations under a preneed contract by delivery
26 or installation, or both, of cemetery merchandise and the
27 provision of cemetery services and disbursement on account of

1 cash advances, or otherwise, upon certification to the trustee
2 under oath by a responsible officer of the seller that the
3 obligations of the seller under the contract have been
4 completely fulfilled, the seller may withdraw from the
5 Cemetery Merchandise and Services Trust Fund and retain an
6 amount equal to the ~~current wholesale cost to the fund~~ amount
7 of funds contributed to the trust with respect to the specific
8 preneed contract and any income or appreciation, or both.

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

16 "§27-17A-44.

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

25 "(b) If the trust proceeds have previously been paid
26 the seller may withdraw the principal amount there, at such
27 time as the cemetery merchandise, if comprised of materials

1 designed to withstand prolonged, protected storage without
2 deterioration, is placed in storage with a responsible third
3 party bonded and insured for the wholesale value thereof and
4 evidenced by a receipt specifically identifying the item, the
5 specific preneed contract, the location of the item, and the
6 identity and address of the bonding and insuring parties.

7 "§27-17A-50.

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

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

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

3 "(c) For the purposes of this section, net income
4 does not include capital gains or losses. All capital gains
5 and losses shall be recorded to corpus, which is the sum of
6 deposits made by a cemetery into an endowment care fund
7 pursuant to Section 27-17A-49, and all capital gains or
8 losses. Capital gains taxes, if any, may be paid from the
9 corpus.

10 "\$27-17A-55.

11 ~~"A cemetery authority shall start construction of~~
12 ~~that section of a mausoleum or bank of below-ground crypts in~~
13 ~~which sales, contracts for sale, reservations for sale, or~~
14 ~~agreements for sale are being made, within five years after~~
15 ~~the date of the first sale or when 75 percent of the mausoleum~~
16 ~~or below-ground crypts have been sold and the purchase price~~
17 ~~has been received, whichever occurs first. The construction~~
18 ~~shall be completed within six years after the date of the~~
19 ~~first sale made. Extensions for completion, not to exceed one~~
20 ~~year, may be granted by the commissioner for good cause shown.~~
21 ~~If the units have not been completely constructed at the time~~
22 ~~of need or the time specified herein, unless otherwise~~
23 ~~specified in the preneed contract, all moneys paid shall be~~
24 ~~refunded upon request, plus interest earned thereon if~~
25 ~~deposited by the cemetery authority in an escrow or trust~~
26 ~~fund, and if not so deposited in an escrow or trust fund~~
27 ~~earning interest, then plus interest in an amount equal to the~~

1 ~~interest or discount which would have been earned thereon had~~
2 ~~the funds been invested in United States Treasury Bills having~~
3 ~~a 90-day maturity.~~

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

17 "(b) Before a sale, contract for sale, reservation
18 for sale, or agreement for sale in a mausoleum section,
19 columbarium, or bank of below-ground crypts may be made, the
20 cemetery authority shall compute the amount to be deposited to
21 the preconstruction trust. The total amount to be deposited in
22 an approved trust for each unit of the project shall be
23 computed by dividing the cost of the project plus 10 percent
24 of the cost, as computed by a licensed contractor, engineer,
25 architect, or other person with expertise in the development
26 of such property, by the number of crypts in the section or
27 bank of below-ground crypts or the number of niches in the

1 columbarium. When payments are received in installments, the
2 percentage of the installment payment placed in trust shall be
3 identical to the percentage which the payment received bears
4 to the total cost of the contract, including other merchandise
5 and services purchased. Deposits into the preconstruction
6 trust shall be made within 30 days after the end of the month
7 in which payment is received on preneed contracts written on
8 or after the effective date of this amendatory act.

9 "(c) When the cemetery authority delivers a
10 completed crypt or niche acceptable to the purchaser in lieu
11 of the crypt or niche purchased prior to construction, all
12 sums deposited to the preconstruction trust for that purchaser
13 shall be paid to the cemetery authority.

14 "(d) Subject to the approval of the department, each
15 cemetery authority, at the time of establishment of the
16 preconstruction trust, may negotiate a procedure for
17 withdrawal of the escrowed funds as a part of the construction
18 cost of the mausoleum section, columbarium, or bank of
19 below-ground crypts contemplated. Upon completion of the
20 mausoleum section, columbarium, or bank of below-ground
21 crypts, the cemetery authority shall certify completion to the
22 trustee and may withdraw all funds deposited to the account
23 thereof.

24 "(e) If the mausoleum section, columbarium, or bank
25 of below-ground crypts is not completed within the time limits
26 provided in this section, the trustee shall contract for and
27 cause the project to be completed. The trustee shall pay the

1 costs related to completion from trust funds deposited to the
2 account of the project, paying any balance, less costs and
3 expenses, to the cemetery authority. A refund shall apply only
4 to the extent that there are funds remaining in excess of the
5 costs to complete the facilities prior to any payments being
6 made to the cemetery authority.

7 "(f) On or before July 1 of each year, the trustee
8 shall file with the Alabama Board of Funeral Service, in a
9 form prescribed by rule of the board, a complete and true
10 statement of the activities of any trust established pursuant
11 to this chapter for the preceding calendar year.

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

16 Section 6. The provisions of this act are
17 self-executing. This act may not be interpreted as giving the
18 Commissioner of Insurance any additional regulatory authority,
19 nor authority to adopt any rules, except as expressly provided
20 in this act.

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