

1 HB338
2 138120-4
3 By Representative Brown
4 RFD: Insurance
5 First Read: 16-FEB-12

1 ENGROSSED

2
3
4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 To amend Sections 27-17A-2, 27-17A-3, 27-17A-10,
9 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-16,
10 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-30,
11 27-17A-31, 27-17A-32, 27-17A-33, 27-17A-34, 27-17A-47,
12 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add
13 Sections 27-17A-5 and 27-17A-11.1 to the Code of Alabama 1975;
14 relating to preneed funeral service contracts; to provide
15 further for the definition of a preneed contract and clarify
16 that a preneed contract is not an insurance contract; to
17 clarify and require any person selling funeral or cemetery
18 services on a preneed basis to obtain a certificate of
19 authority from the Department of Insurance; to revise the
20 annual application and renewal dates for preneed certificates
21 of authority; to waive the requirement of filing annual
22 financial statements under certain circumstances upon written
23 request to the commissioner; to require certificate holders to
24 file quarterly reports of preneed contract activity with the
25 commissioner; to clarify the amount of a bond used as an
26 alternative to a trusting requirement; to provide that the
27 commissioner has jurisdiction over any person lawfully

1 writing, or suspected of unlawfully writing, preneed
2 contracts; to clarify penalties for violations; to authorize
3 the commissioner to use funds received from any source for
4 purposes of enforcement; to clarify that funds received for
5 funeral and cemetery merchandise placed in storage prior to
6 death need not be placed in trust; to require certificate
7 holders to satisfy additional requirements and file with the
8 commissioner a quarterly report of all preneed contract trust
9 activity in lieu of filing financial statements with the
10 renewal application; to subject cemetery authorities to the
11 act; to require any person receiving funds from the sale of a
12 preneed contract to contribute to a trust fund, life insurance
13 contract, or annuity contract; to require any payments
14 received on a preneed contract written after April 30, 2002,
15 to be deposited into an approved trust; to require that
16 preneed cemetery merchandise and services funds remain in
17 trust until cancellation or fulfillment and to provide for the
18 refund of monies upon the cancellation of a preneed contract;
19 to prohibit a person serving on a board of trustees from also
20 serving as the trustee of an endowment care fund, with certain
21 exceptions; to require bonds of trustees, with certain
22 exceptions; to define net income for purposes of an endowment
23 care fund; to repeal Sections 27-17A-40, 27-17A-41, 27-17A-42,
24 27-17A-43, and 27-17A-44, Code of Alabama 1975; and in
25 connection therewith would have as its purpose or effect the
26 requirement of a new or increased expenditure of local funds
27 within the meaning of Amendment 621 of the Constitution of

1 Alabama of 1901, now appearing as Section 111.05 of the
2 Official ReCompilation of the Constitution of Alabama of 1901,
3 as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 27-17A-2 and 27-17A-3 of the
6 Code of Alabama 1975, are amended to read as follows:

7 "§27-17A-2.

8 "As used in this chapter, the following terms shall
9 have the following meanings:

10 "(1) ALTERNATIVE CONTAINER. A nonmetal receptacle or
11 enclosure, without ornamentation or a fixed interior lining,
12 which is designed for the encasement of human remains and
13 which is made of cardboard, pressed-wood, composition
14 materials (with or without an outside covering), or pouches of
15 canvas or other materials.

16 "(2) ARRANGEMENT CONFERENCE. The meeting occurring
17 either at need or preneed between the seller and the purchaser
18 during which funeral or cemetery merchandise and services are
19 discussed.

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

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

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

26 "(6) BELOW-GROUND CRYPT. A preplaced enclosed
27 chamber, which is usually constructed of reinforced concrete,

1 poured in place or a precast unit installed in quantity,
2 either side-by-side or multiple depth, and covered by earth or
3 sod and known also as a lawn crypt or turf-top crypt.

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

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

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

18 "(10) CASKET. A rigid container which is designed
19 for the encasement of human remains and which is usually
20 constructed of wood, metal, or like material, and ornamented
21 and lined with fabric.

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

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

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

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

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

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

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

19 "(18) CREMATED REMAINS. The bone fragments remaining
20 after the cremation process, which may include the residue of
21 any foreign materials that were cremated with the human
22 remains.

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

25 "(20) CREMATION. The irreversible process of
26 reducing human remains to bone fragments through intense heat
27 and evaporation, performed in a specifically designed furnace

1 or retort, which may include any other mechanical or thermal
2 process whereby the bone fragments are pulverized, or
3 otherwise further reduced in size or quantity. Cremation is a
4 process and is a method of final disposition.

5 "(21) CREMATORY AUTHORITY. Any person who owns or
6 controls a crematory.

7 "(22) DEATH CERTIFICATE. A legal document containing
8 vital statistics pertaining to the life and death of the
9 deceased.

10 "(23) DECEASED or DECEDENT. One who is no longer
11 living.

12 "(24) EMBALMER. One authorized by law to engage in
13 embalming.

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

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

22 "(27) ENDOWMENT CARE. The maintenance and repair of
23 all places in the cemetery, subject to the rules and
24 regulations of the cemetery authority; may be known also as
25 endowed care, perpetual care, improvement care, or permanent
26 care.

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

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

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

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

12 "(32) FUNERAL BENEFICIARY. The person designated in
13 the preneed contract who is to be the recipient of the funeral
14 and cemetery goods and services of the preneed contract at his
15 or her time of death.

16 "~~(32)~~(33) FUNERAL DIRECTING. The act or service of
17 conducting funerals and counseling with survivors and
18 preparing human remains, other than by embalming, for the
19 interment or other means of disposition, and may include the
20 management and supervision of all operations in a funeral
21 establishment, which may or may not include the practice of
22 embalming.

23 "~~(33)~~(34) FUNERAL DIRECTOR. One authorized by law to
24 engage in funeral directing.

25 "~~(34)~~(35) FUNERAL ESTABLISHMENT. A place of business
26 used in the care, planning, and preparation for final
27 disposition or transportation of human remains, or any place

1 where one or more are engaged and represent themselves to be
2 engaged in the business of embalming or funeral directing.

3 "~~(35)~~(36) FUNERAL MERCHANDISE. Any personal property
4 offered for sale, contracted for sale, or sold for use in
5 connection with funeral directing. Funeral merchandise
6 specifically includes, but is not limited to, the following:

7 "a. Alternative container.

8 "b. Casket.

9 "c. Outer burial container.

10 "d. Urn.

11 "~~(36)~~(37) FUNERAL SERVICE. Services provided by a
12 funeral establishment in connection with funeral directing.

13 "~~(37)~~(38) GRAVE SPACE. A space of ground in a
14 cemetery that is used or intended to be used for in-ground
15 burial.

16 "~~(38)~~(39) HUMAN REMAINS. The body of a decedent and
17 includes the body in any stage of decomposition and cremated
18 remains.

19 "~~(39)~~(40) INTERMENT. The final disposition of human
20 remains by burial, entombment, or inurnment.

21 "~~(40)~~(41) INTERMENT RIGHT. The right to inter human
22 remains in a particular interment space in the cemetery.

23 "~~(41)~~(42) INTERMENT SPACE. A space intended for the
24 final disposition of human remains including, but not limited
25 to, a grave space, mausoleum crypt, niche, and below-ground
26 crypt.

1 "~~(42)~~(43) INURNMENT. The act of placing cremated
2 remains in a receptacle including, but not limited to, an urn
3 and depositing it in a niche.

4 "~~(43)~~(44) MAUSOLEUM. A chamber or structure used or
5 intended to be used for entombment.

6 "~~(44)~~(45) MAUSOLEUM CRYPT. A chamber of a mausoleum
7 of sufficient size for entombment of human remains.

8 "~~(45)~~(46) MEMORIAL. Any product, other than a
9 mausoleum or columbarium, used for identifying an interment
10 space or for commemoration of the life, deeds, or career of
11 some decedent including, but not limited to, a monument,
12 marker, niche plate, urn garden plaque, crypt plate, cenotaph,
13 marker bench, and vase.

14 "~~(46)~~(47) MEMORIAL RETAILER. Any person offering or
15 selling memorials at retail to the public.

16 "~~(47)~~(48) MEMORIALIZATION. Any permanent system
17 designed to mark or record the names and other data pertaining
18 to a decedent.

19 "~~(48)~~(49) NICHE. A space usually within a
20 columbarium used or intended to be used for inurnment of
21 cremated remains.

22 "~~(49)~~(50) OUTER BURIAL CONTAINER. A container which
23 is designed for placement in the grave space around the casket
24 or the urn including, but not limited to, containers commonly
25 known as burial vaults, grave boxes, and grave liners.

26 "~~(50)~~(51) PERSON. Any individual, firm, corporation,
27 partnership, joint venture, limited liability company,

1 association, trustee, government or governmental subdivision,
2 agency, or other entity, or any combination thereof.

3 ~~"(51)~~ (52) PREARRANGEMENT. The term applied to
4 completing the details for selection of merchandise or
5 services on a preneed basis, which may or may not include
6 provisions for prefunding or prepayment.

7 ~~"(52)~~ (53) PREDEVELOPED. Designated areas or
8 buildings within a cemetery that have been mapped and planned
9 for future construction but are not yet completed.

10 ~~"(53)~~ (54) PREDEVELOPED INTERMENT SPACE. An interment
11 space that is planned for future construction but is not yet
12 completed.

13 ~~"(54)~~ (55) PREFUND. The term applied to completing
14 the financial details of a prearrangement, which include
15 provisions for funding or prepayment.

16 ~~"(55)~~ (56) PRENEED. Any time prior to death.

17 ~~"(56)~~ (57) PRENEED CONTRACT. A written contract ~~to~~
18 ~~purchase funeral merchandise, funeral services, cemetery~~
19 ~~merchandise, or cemetery services from the seller on a preneed~~
20 ~~basis as defined in Section 27-17A-5.~~

21 ~~"(57)~~ (58) PRENEED CONTRACT TRUST FUND. The funds
22 received pursuant to a preneed contract which are required by
23 law to be held in trust until the merchandise or services
24 purchased pursuant to the contract are delivered or provided
25 or until otherwise lawfully withdrawn.

1 "~~(58)~~(59) PROVIDER. A person who may or may not be
2 the seller, who will actually provide the merchandise and
3 services under the terms of a preneed contract.

4 "~~(59)~~(60) PURCHASE PRICE. The amount paid by the
5 purchaser for merchandise and services purchased under a
6 preneed contract, exclusive of finance charges, sales tax,
7 charges relating to interment rights, arrangement conference
8 fees, or charges for credit life insurance.

9 "~~(60)~~(61) PURCHASER. The person who purchases a
10 preneed contract either on his or her behalf or on behalf of a
11 third party beneficiary.

12 "~~(61)~~(62) RELIGIOUS INSTITUTION. An organization
13 formed primarily for religious purposes which has qualified
14 for exemption from federal income tax as an exempt
15 organization under the provisions of Section 501(c)(3) of the
16 Internal Revenue Code of 1986, as amended.

17 "~~(62)~~(63) SCATTERING. The lawful dispersion of
18 cremated remains.

19 "~~(63)~~(64) SELLER. Any person offering or selling
20 merchandise or services on a preneed basis including, but not
21 limited to, funeral establishments, cemetery authorities,
22 crematory authorities, memorial retailers, direct disposers,
23 etc.

24 "~~(64)~~(65) SPECIAL CARE. Any care provided, or to be
25 provided, that is supplemental to, or in excess of, endowment
26 care, in accordance with the specific directions of any donor
27 of funds for such purposes.

1 "~~(65)~~(66) SUCCESSOR-IN-INTEREST. A person who
2 lawfully follows another in ownership or control of property
3 or rights.

4 "~~(66)~~(67) THIRD-PARTY SELLER. Any person, who is not
5 a funeral establishment or a cemetery authority, engaged in
6 the sale of preneed funeral merchandise or cemetery
7 merchandise.

8 "~~(67)~~(68) TRUSTEE. Any person, state or national
9 bank, trust company, or federally insured savings and loan
10 association lawfully appointed as fiduciary over funds
11 deposited by one or more purchasers of a preneed contract or
12 deposited pursuant to an endowment care trust fund; not to be
13 confused with a board of trustees.

14 "~~(68)~~(69) URN. A receptacle for the encasement of
15 cremated remains.

16 "§27-17A-3.

17 ~~"Nothing in this chapter shall be construed to~~
18 ~~prohibit the funding of preneed contracts with insurance~~
19 ~~contracts. Life insurance contracts used to fund preneed~~
20 ~~contracts shall conform with the provisions of this title as~~
21 ~~they relate to life insurance and shall cover at a minimum the~~
22 ~~retail amount of the preneed contract at the time of purchase.~~

23 "(a) As a future funding mechanism for a preneed
24 contract, a preneed seller may offer a life insurance or an
25 annuity contract, or multiple policies or contracts if the
26 preneed contract provides for installment payments. These
27 funding insurance policies and annuity contracts may be

1 offered on an individual or group basis through an insurance
2 company authorized by the commissioner to transact the
3 business of life insurance or annuities in Alabama.

4 "(b) The provisions of each life insurance policy or
5 annuity contract offered as a future funding mechanism for a
6 preneed contract shall conform to this title relating to life
7 insurance policies and annuity contracts.

8 "(c) The insurance company underwriting the life
9 insurance policy or annuity contract shall file with the
10 commissioner each insurance or annuity policy or contract
11 form, together with any riders or endorsements, and other such
12 forms proposed for use with insurance policies or annuity
13 contracts offered in connection with preneed contracts, and
14 shall obtain the approval of the commissioner of such forms
15 before use in accordance with Section 27-14-8.

16 "(d) Any provision of Section 27-14-8 to the
17 contrary notwithstanding, with respect to group insurance
18 policies or annuities effectuated and delivered outside of
19 this state, but covering residents of this state, any group
20 certificates to be delivered or issued for delivery in this
21 state shall be filed with and approved by the commissioner
22 before use.

23 "(e) At a minimum, the death benefits to be provided
24 by a life insurance policy or annuity contract sold as a
25 future funding mechanism for a preneed contract shall
26 ultimately equal the initial retail price of the preneed
27 contract. If a series of life insurance policies or annuity

1 contracts are contemplated because the preneed contract
2 provides for installment payments, the death benefits to be
3 provided by such policies or contracts shall in the aggregate
4 ultimately equal the initial retail price of the preneed
5 contract at a minimum.

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

16 "(g) Each registered preneed sales agent, or
17 employee of a preneed seller acting as an insurance producer,
18 shall be properly licensed as an insurance producer, be
19 properly appointed by the insurance company whose product is
20 being offered, and comply with the requirements of Chapters 7
21 and 8A of this title and any rules adopted pursuant thereto. A
22 registered preneed sales agent, or employee of a preneed
23 seller, need not hold an insurance producer license if the
24 life insurance or annuity product being offered is a group
25 life insurance or annuity product, the activity of the preneed
26 sales agent or employee is strictly limited to obtaining
27 information needed to enroll a preneed contract's funeral

1 beneficiary in a group insurance or group annuity plan, and
2 the preneed sales agent or employee is not paid a commission
3 for such activity.

4 "(h) A preneed seller that is a business entity
5 which engages in and receives a commission or other
6 compensation for the solicitation, sale, or negotiation of
7 insurance shall hold a business entity producer license
8 pursuant to subsection (b) of Section 27-7-5. The individually
9 licensed producer designated as required by subdivision (1) of
10 subsection (b) of Section 27-7-5 shall be an officer or
11 employee of the business entity.

12 "(i) Nothing in this chapter shall prohibit a
13 seller, or any other person, from receiving commissions earned
14 and payable in regard to funding preneed contracts with life
15 insurance or annuity contracts, provided the seller or other
16 person holds a valid insurance producer license in this state
17 and is appointed by the insurance company paying the
18 commission.

19 "(j) A preneed contract in a transaction which uses
20 life insurance or an annuity contract as a future funding
21 mechanism shall clearly state all of the following:

22 "(1) That the life insurance policy or annuity
23 contract is the funding mechanism and that no funds paid by
24 the preneed contract purchaser shall be deposited into a
25 merchandise and services trust.

1 "(2) The name and address of the insurance company
2 which is underwriting the life insurance policy or annuity
3 contract.

4 "(3) That any premium paid for the life insurance or
5 annuity contract is to be made payable to the insurance
6 company, not to the preneed seller.

7 "(4) That, in the event the preneed contract
8 requires periodic premium payments, failure to timely make
9 those payments may cause cancellation of the life insurance
10 policies or annuity contract, and the corresponding preneed
11 contract, without a refund to the contract purchaser.

12 "(5) That the preneed seller is the beneficiary of
13 the life insurance policies or annuity contract and that, at
14 the time of need, the proceeds of the life insurance policies
15 or annuity contract, including any increase in proceeds that
16 may have accrued during the term of the insurance or annuity
17 contract, shall be paid to the preneed seller upon delivery at
18 the merchandise and performance of the services provided for
19 in the preneed contract.

20 "(6) If applicable, that the preneed seller may be
21 paid a commission by the insurance company underwriting the
22 life insurance policies or annuity contract.

23 "(k) Subject to subsection (h) of Section 27-17A-33,
24 a preneed seller may be identified as the beneficiary of a
25 life insurance policy or annuity contract sold as a future
26 funding mechanism, but may not be the owner of the policy or
27 annuity contract or exercise any ownership rights in the

1 policy or annuity including, but not limited to, any right to
2 cancel the policy or annuity contract or to obtain the cash
3 value of the policy or annuity contract by loan or otherwise.

4 "(1) In the event the seller is the designated
5 beneficiary of the funding life insurance policy or policies
6 or annuity contract, payment of the life insurance or annuity
7 death benefits proceeds to the preneed seller shall be
8 conditioned on the actual delivery of the merchandise by the
9 seller and performance of the services provided for in the
10 preneed contract, and subject to subsection (d) of Section
11 27-17A-33(d)."

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

14 §27-17A-5.

15 (a) For purposes of this chapter, a preneed contract
16 is a written contract entered into on a preneed basis which
17 obligates the buyer to pay to the seller, before need and in
18 whole or in part, a purchase price for funeral or cemetery
19 merchandise and services or for an interment right in an
20 interment space, which does not obligate the seller to deliver
21 the contracted for merchandise or to perform the services, in
22 whole or in part, or to deliver evidence of the ownership of
23 the buyer of an interment right, until need.

24 (b) A contract for the sale of an interment right in
25 a mausoleum or bank of below ground crypts, to be constructed
26 in the future pursuant to Section 27-17A-55, is a preneed
27 contract for purposes of this chapter.

1 (c) A contract for the sale of an interment right in
2 an existing interment space only, unaccompanied by any
3 agreement for the preneed sale of funeral or cemetery
4 merchandise or services, is not a preneed contract for
5 purposes of this chapter if all of the following are
6 satisfied:

7 (1) The seller delivers evidence of the ownership of
8 the buyer of the interment right to the buyer upon receipt by
9 the seller of full payment for the right.

10 (2) Delivery of such evidence is not contractually
11 conditioned on the existence of need or on the purchase of
12 funeral or cemetery merchandise or services.

13 (d) A retail sale of funeral or cemetery
14 merchandise, and of services directly required to install or
15 otherwise realize use of such merchandise, is not a preneed
16 contract for purposes of this chapter if all of the following
17 are satisfied:

18 (1) The transaction is described in a written
19 agreement.

20 (2) The buyer pays immediately or pursuant to a
21 contracted for installment payment plan.

22 (3) The seller delivers the merchandise to the
23 possession, custody, or control of the buyer and performs any
24 related service immediately upon payment, or within a
25 contractually defined commercially reasonable time not
26 conditioned on need or completion of installment payments, but
27 subject to any security interest retained by the seller.

1 (4) No further or future service is required to
2 realize effective use of the merchandise.

3 (5) The transaction is not combined or conditioned
4 on the preneed sale of other merchandise or services to be
5 delivered or performed at need.

6 (e) A preneed contract is not insurance for purposes
7 of this title and is not burial insurance for purposes of
8 Chapter 17 of this title.

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

11 "§27-17A-10.

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

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

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

23 ~~"(c) No person may obtain a certificate of authority~~
24 ~~under this article for the preneed sale of funeral services or~~
25 ~~cemetery services unless the person or its agent, in the case~~
26 ~~of a corporate entity, holds a license as a funeral director~~
27 ~~or a funeral establishment, or is a cemetery authority. A~~

1 preneed certificate of authority may only be issued to and
2 remain in effect for any of the following:

3 "(1) An individual who holds a current license as a
4 funeral director issued by the Alabama Board of Funeral
5 Services pursuant to Chapter 13 of Title 34.

6 "(2) An individual who is a cemetery authority as
7 defined in this chapter.

8 "(3) A business entity which holds a current license
9 as a funeral establishment issued by the Alabama Board of
10 Funeral Service pursuant to Chapter 13 of Title 34, or which
11 owns a controlling interest, exceeding 50 percent of the stock
12 or membership interests, in a business entity currently
13 licensed as a funeral establishment or, if not licensed as a
14 funeral establishment, the entity otherwise has as an officer,
15 partner, shareholder, or member, or continuously employs, an
16 individual who holds a current license as a funeral director
17 issued by the Alabama Board of Funeral Service pursuant to
18 Chapter 13 of Title 34.

19 "(4) A business entity that is a cemetery authority
20 as defined in this chapter.

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

24 "(e) The commissioner shall have the same
25 jurisdiction over funeral establishments, funeral directors,
26 cemetery authorities, or third party sellers who sell preneed
27 contracts without a preneed certificate of authority as he or

1 she has over those preneed sellers who possess a preneed
2 certificate of authority.

3 "§27-17A-11.

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

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

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

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

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

26 "a. Has the ability to discharge his or her
27 liabilities as they become due in the normal course of

1 business and has sufficient funds available during the
2 calendar year to perform his or her obligations under the
3 contract.

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

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

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

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

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

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

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

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

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

24 "(g) On or before ~~April~~ July 1 of each year, the
25 certificate holder shall file with the commissioner in the
26 form prescribed by the commissioner a full and true statement

1 as to the activities of any trust established by it pursuant
2 to this article for the preceding 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 statement of activities of the trust. Upon notice to
10 the certificate holder by the commissioner that the
11 certificate holder has failed to file the annual statement or
12 the statement of activities of the trust, the certificate
13 holder's authority to sell preneed contracts shall cease while
14 the default continues.

15 "(i) To facilitate uniformity in financial
16 statements and to facilitate analysis, the commissioner may by
17 rule adopt a form for financial statements. The holder of a
18 certificate of authority may submit a written request to the
19 commissioner to exempt the holder from filing financial
20 statements at renewal. The commissioner may waive the
21 requirement for filing a financial statement at renewal if all
22 of the following are satisfied:

23 "(1) No valid complaint has been filed since the
24 last examination.

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

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

5 "(4) The certificate holder certifies that it will
6 fully fund all preneed contracts with life insurance or will
7 deposit 100 percent of all funds collected on all preneed
8 contracts into trust within 30 days after the end of the
9 calendar month in which the funds are collected.

10 "(5) The preneed entity has provided to the
11 department in a timely manner all required and requested
12 records.

13 "(6) The preneed entity agrees to file quarterly
14 reports of its preneed activity on a form or in a form
15 prescribed by the commissioner.

16 "(j) The commissioner may authorize the transfer of
17 certificates of authority and establish fees for the transfer
18 in an amount not to exceed one hundred dollars (\$100). Upon
19 receipt of an application for transfer, the commissioner may
20 grant a temporary certificate of authority to the proposed
21 transferee, based upon criteria established by the
22 commissioner by rule, which criteria shall promote the
23 purposes of this article in protecting the consumer. A
24 temporary certificate of authority shall expire 60 days after
25 issuance unless renewed by the commissioner."

26 Section 4. Section 27-17A-11.1 is added to the Code
27 of Alabama 1975, to read as follows:

1 §27-17A-11.1.

2 (a) Within 45 days after the end of each calendar
3 quarter, the certificate holder shall file a report of its
4 preneed contract activity on a form or in a format prescribed
5 by the commissioner. The information reported shall include
6 the total number of preneed contracts in force at the end of
7 the previous quarter, the total number of preneed contracts
8 sold during the quarter, the total number of preneed contracts
9 fulfilled during the quarter, the total number of preneed
10 contracts in force at the end of the quarter, and such other
11 information as may be required by the commissioner. The report
12 shall be organized by type of funding including, life
13 insurance, trust, letter of credit, or surety bond. The report
14 shall also provide a certification by the trustee of the
15 amount of assets held by the trust at the beginning of the
16 quarter and at the end of the quarter, together with the
17 amount of deposits and withdrawals during the quarter.

18 (b) The certificate holder shall maintain a written
19 log of preneed sales. The log shall be in a form and format
20 prescribed by the commissioner, shall detail all information
21 required by the commissioner, and shall be available for
22 inspection at any time by the commissioner.

23 (c) Each cemetery authority shall maintain a written
24 log of the sale of cemetery interment rights. The log shall be
25 in a form and format prescribed by the commissioner and shall
26 detail all information required by the commissioner.

1 Section 5. Sections 27-17A-12, 27-17A-13, 27-17A-14,
2 27-17A-16, 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25,
3 27-17A-30, 27-17A-31, 27-17A-32, 27-17A-33, 27-17A-34,
4 27-17A-47, 27-17A-50, and 27-17A-55 of the Code of Alabama
5 1975, are amended to read as follows:

6 "§27-17A-12.

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

9 "(b) Specific disclosure regarding the certificate
10 holder's requirement to place certain preneed funds received
11 in trust, or insurance, but not both, is required in the
12 preneed contract.

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

18 "§27-17A-13.

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

24 "(b) Although this chapter does not apply to preneed
25 contracts entered into prior to May 1, 2002, a preneed
26 provider which contends that a preneed trust fund which was in
27 effect prior to May 1, 2002, complies with this chapter with

1 respect to the contracts entered into prior to May 1, 2002,
2 may provide to the commissioner documentary proof thereof.
3 Upon the commissioner determining that compliance has been
4 established, the pre-existing preneed trust fund assets may be
5 merged with or into the trust fund required under this chapter
6 or continued as the trust fund and that determination by the
7 commissioner shall be noted on the certificate of authority,
8 and thereafter all preneed contracts covered by the trust
9 fund, including those entered into prior to May 1, 2002, shall
10 be subject to this chapter.

11 "§27-17A-14.

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

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) The amount of the bond shall be based on a
5 report documenting the outstanding liabilities of the preneed
6 provider for the previous calendar quarter and the projected
7 liability for the immediately following quarter, shall be
8 prepared by the preneed provider using generally accepted
9 accounting principles, and shall be signed by the chief
10 executive officer or chief financial officer of the preneed
11 provider. The report shall be compiled as of the end of the
12 preneed provider's fiscal year and updated ~~annually~~ quarterly.

13 "(d) The amount of the bond shall be increased or
14 decreased as necessary to correlate with changes in the
15 outstanding liabilities. Further, the commissioner may order
16 the bond to be increased as necessary to correlate with
17 changes in the outstanding liabilities of bonded contracts due
18 to increases in the consumer price index.

19 "(e) If the preneed provider fails to maintain a
20 bond pursuant to this section the preneed provider shall cease
21 the offering for sale and sale of preneed merchandise,
22 services, and cash advances.

23 "(f) No surety bond used to comply with this section
24 shall be canceled or subject to cancellation unless at least
25 60 days' advance notice thereof, in writing, is filed with the
26 commissioner, by the surety company. The cancellation of the
27 bond shall not relieve the obligation of the surety company

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

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

26 "§27-17A-16.

1 "(a) A certificate holder shall be considered
2 inactive upon the acceptance of the surrender of its license
3 by the commissioner or upon the nonreceipt by the commissioner
4 of the certificate of authority renewal application and fees.

5 "(b) A certificate holder shall cease all preneed
6 sales to the public upon becoming inactive. The certificate
7 holder shall collect and deposit into trust all of the funds
8 ~~paid toward~~ required under Section 27-17A-31 for preneed
9 contracts sold prior to becoming inactive.

10 "(c) Any certificate holder desiring to surrender
11 its license to the commissioner shall first do all of the
12 following:

13 "(1) File notice with the commissioner.

14 "(2) Submit copies of its existing trust agreements.

15 "(3) Submit a sample copy of each type of preneed
16 contract sold.

17 "(4) Resolve to the commissioner's satisfaction all
18 findings and violations resulting from the last examination
19 conducted.

20 "(5) Pay all outstanding fines and invoices due the
21 commissioner.

22 "(6) Submit its current certificate of authority.

23 "(d) Upon receipt of the notice, the commissioner
24 shall review the certificate holder's trust funds, trust
25 agreements, and evidence of all outstanding preneed contracts.

26 "(e) After a review to the commissioner's
27 satisfaction, the commissioner shall terminate the certificate

1 of authority by an order which shall set forth the conditions
2 of termination established by the commissioner to ensure that
3 the preneed funds will be available for their intended
4 purpose.

5 "(f) The trust fund of the certificate holder shall
6 be held intact and in trust after the certificate holder has
7 become inactive, and the funds in that trust shall be
8 disbursed in accordance with the requirements of the written
9 contracts until the funds have been exhausted.

10 "(g) The commissioner shall continue to have
11 jurisdiction over the inactive certificate holder as if the
12 certificate were active and to require the reports and inspect
13 the records as the commissioner deems appropriate so long as
14 there are funds in trust or preneed contracts that are not
15 fulfilled.

16 "(h) In addition to any other terms of revocation or
17 suspension ordered pursuant to Chapter 13 of Title 34, the
18 provisions of this chapter may also apply.

19 "§27-17A-18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 "§27-17A-22.

19 ~~"Any officer or director, or person occupying
20 similar status or performing similar functions, of a
21 certificate holder who fails to make required deposits to any
22 trust fund required by this chapter; any director, officer,
23 agent, or employee of a certificate holder who makes any
24 unlawful withdrawal of funds from any such account or who
25 knowingly discloses to the commissioner or an employee thereof
26 any false report made pursuant to this chapter; or any person~~

1 ~~who willfully violates any of the provisions of this chapter~~
2 ~~commits a Class B misdemeanor, punishable as provided by law.~~

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

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

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

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

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

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

26 "a. Commits a Class B felony, punishable as provided
27 by law, as to each contract on which the amount due for

1 deposit in trust exceeds, in the aggregate, two thousand five
2 hundred dollars (\$2,500).

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

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

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

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

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

25 "(2) In addition to the criminal penalty imposed
26 under subdivision (1), upon conviction of an offense under
27 subdivision (1), the certificate of authority or preneed sales

1 agent registration held by the person shall be automatically
2 revoked and the person may not thereafter obtain a certificate
3 of authority or register as a preneed sales agent.

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

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

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

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

1 prevents the making of a correct entry, or causes the omission
2 of a correct entry in such records.

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

6 "§27-17A-23.

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

19 "§27-17A-25.

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

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

26 "(c) The commissioner may use funds available from
27 any source including, but not limited to, grants,

1 appropriations, and gifts, for any purpose in the enforcement
2 of this chapter.

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 preneed contracts for funeral and cemetery services or ~~funeral~~
7 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 that is written or entered into
11 on or after May 1, 2002, for funeral services or funeral
12 merchandise to be funded by trust shall deposit in ~~this state~~
13 trust an amount at least equal to the sum of 75 percent of the
14 amount collected on the purchase price ~~collected~~ for all
15 funeral services and funeral merchandise sold, transportation,
16 and facilities rented other than outer burial containers, 60
17 percent of the amount collected on the purchase price
18 ~~collected~~ for outer burial containers, and 100 percent of the
19 amount collected on the purchase price ~~collected~~ for all cash
20 advance items sold.

21 "(b) Any person who is paid, collects, or receives
22 funds under a preneed contract that is written or entered into
23 on or after May 1, 2002, and before January 1, 2015, for
24 cemetery services or cemetery merchandise to be funded by
25 trust shall deposit in trust:

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

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

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

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

9 "(c) Any person who is paid, collects, or receives
10 funds under a preneed contract that is written or entered into
11 on or after January 1, 2015, for cemetery services or cemetery
12 merchandise to be funded by trust shall deposit in trust an
13 amount at least equal to 60 percent of the amount collected on
14 the purchase price for all cemetery services and cemetery
15 merchandise sold, 60 percent of the amount collected on the
16 purchase price for outer burial containers, and 100 percent of
17 the amount collected on the purchase price for all cash
18 advance items sold. A cemetery authority may not sell funeral
19 services unless the cemetery authority is a business entity
20 currently licensed as a funeral establishment by the board.

21 ~~"(b) All~~ (d) For preneed contracts written or
22 entered into on or after May 1, 2002, and before January 1,
23 2015, all deposits in trust shall be made within 30 days after
24 the end of the calendar month in which the preneed contract is
25 paid in full unless, before that time, all liabilities of the
26 seller under the preneed contract to deliver the specific
27 funeral and cemetery merchandise or services, or both, or the

1 specific cash advances, identified by the preneed provider as
2 properly allocated to the payment, have been satisfied, or the
3 preneed contract is validly cancelled.

4 "(e) Effective January 1, 2015, for all preneed
5 contracts written or entered into on or after January 1, 2015,
6 all deposits in trust shall be made within 30 days after the
7 end of the calendar month in which the ~~preneed contract is~~
8 ~~paid in full~~ monies are collected, unless, prior to that time,
9 all liabilities of the seller under the preneed contract to
10 deliver the specific funeral and cemetery 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.

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

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

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

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

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

9 "(k) ~~(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 or cemetery merchandise, and for

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

17 "(b) The trustee shall make regular valuations of
18 the assets it holds in trust and provide a report of the
19 valuations to the certificate holder at least quarterly. At
20 all times, the trustee shall be able to determine the amount
21 held in trust attributable to each contract holder. If the
22 trustee does not maintain records of each preneed contract for
23 which deposits are required under Section 27-17A-31, within 30
24 days after the end of each calendar quarter the certificate
25 holder shall provide to the trustee a report of all contracts
26 for which the trustee holds funds in the trust, with
27 sufficient information that would allow the trustee to

1 identify the amount held in trust attributable to each
2 contract holder. The determination shall be based upon the
3 fair market value of the trust at that time and the
4 proportionate share of the fair market value attributable to
5 each contract holder. Any person who withdraws appreciation in
6 the value of trust, other than the pro rata portion of such
7 appreciation which may be withdrawn upon the death of a
8 ~~contract~~ contract's funeral beneficiary or upon cancellation
9 of a preneed contract, shall be required to make additional
10 deposits from his or her own funds to restore the aggregate
11 value of assets to the value of funds deposited in trust, but
12 excluding from the funds deposited those funds paid out upon
13 preneed contracts which the person has fully performed or
14 which have been otherwise withdrawn, as provided in this
15 article. The certificate holder shall be liable to third
16 parties to the extent that income from the trust is not
17 sufficient to pay the expenses of the trust.

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

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

24 ~~"(2) Borrow money up to an aggregate amount of 10~~
25 ~~percent of trust assets, at interest rates then prevailing~~
26 ~~from any individual, bank, insurance company, or other source,~~
27 ~~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 "(2) ~~(3)~~ Commingle the property of the trust with
6 the property of any other preneed funeral, preneed cemetery,
7 or endowment care trust established pursuant to this article
8 and make corresponding allocations and divisions of assets,
9 liabilities, income, and expenses.

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

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

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

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

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

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

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

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

24 " (5) It is the intention of the Legislature that
25 this subsection shall be retroactive and shall apply to all
26 life insurance contracts or annuities issued prior to May 6,
27 2008.

1 "§27-17A-33.

2 "~~(a) A purchaser, by providing written notice to the~~
3 ~~certificate holder, may cancel a preneed contract within 30~~
4 ~~days of the date that the contract was executed provided that~~
5 ~~the funeral merchandise and funeral services have not yet been~~
6 ~~used. Upon providing the notice, the purchaser shall be~~
7 ~~entitled to a complete refund of the amount paid, except for~~
8 ~~the amount allocable to any funeral merchandise or funeral~~
9 ~~services that have been used, and shall be released from all~~
10 ~~obligations under the contract. This subsection shall apply to~~
11 ~~all items that are purchased as part of a preneed contract.~~

12 "~~(b) After 30 days from the date the preneed~~
13 ~~contract was executed, a purchaser, by providing written~~
14 ~~notice to the certificate holder, may cancel the funeral~~
15 ~~services, funeral merchandise, facilities, and cash advance~~
16 ~~items portions of a preneed contract at any time, and shall be~~
17 ~~entitled to the refund defined in the preneed contract~~
18 ~~allocable to those items. Any accumulated earnings allocable~~
19 ~~to the preneed contract shall be paid to the certificate~~
20 ~~holder upon the cancellation.~~

21 "~~(c) Upon breach of contract or failure of the~~
22 ~~certificate holder to provide funeral merchandise or services~~
23 ~~under a preneed contract, the contract purchaser shall be~~
24 ~~entitled to a refund of 100 percent of all money paid on the~~
25 ~~contract. The refund shall be made within 30 days after~~
26 ~~receipt by the certificate holder of the contract purchaser's~~
27 ~~written request for refund.~~

1 ~~"(d) If a purchaser is 90 days past due in making~~
2 ~~payments on a preneed contract, the contract shall be~~
3 ~~considered to be in default, and the certificate holder shall~~
4 ~~be entitled to cancel the contract and withdraw all funds in~~
5 ~~trust. Upon making the withdrawal, the certificate holder~~
6 ~~shall refund to the purchaser the amount defined in the~~
7 ~~preneed contract in the event of default of the purchaser,~~
8 ~~provided that the certificate holder has provided the~~
9 ~~purchaser with 30 days' written notice of its intention to~~
10 ~~exercise any of its rights under this provision.~~

11 ~~"(e) All preneed contracts are cancelable and~~
12 ~~revocable as provided in this section during the lifetime of~~
13 ~~the purchaser, provided that a preneed contract does not~~
14 ~~restrict any contract purchaser who is a qualified applicant~~
15 ~~for, or a recipient of, supplemental security income,~~
16 ~~temporary cash assistance, or Medicaid from making his or her~~
17 ~~contract irrevocable.~~

18 ~~"(f) In the event that the preneed contract is made~~
19 ~~irrevocable pursuant to subsection (e), the purchaser or the~~
20 ~~authorizing agent shall have the right to appoint a provider~~
21 ~~other than the seller of the preneed contract. In the event~~
22 ~~that a provider is appointed pursuant to this subsection, the~~
23 ~~seller shall transfer to the appointed provider the amount~~
24 ~~paid by the purchaser less a reasonable transfer fee~~
25 ~~determined by the seller. No transfer hereunder shall occur~~
26 ~~without the acceptance of the appointed provider.~~

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

5 "(a) A preneed contract shall contain a provision,
6 on terms not less favorable than the following, which permits
7 contract cancellation by the contract purchaser or authorizing
8 agent of the funeral beneficiary for the complete failure of
9 performance at the default of the preneed contract seller by
10 failing to deliver the merchandise or perform the services
11 specified in a preneed contract upon notice to do so at the
12 death of a beneficiary:

13 "(1) In the case of a contract that uses a
14 merchandise and services trust or trust alternative other than
15 life insurance or an annuity as a funding mechanism, the
16 contract shall provide for a refund of all monies paid plus
17 any accumulated trust appreciation based upon the market value
18 of the proportionate share of the trust allocable to the
19 preneed contract as of the cancellation date. Within 15
20 calendar days after any such cancellation, the refund shall be
21 delivered to the contract purchaser or person determined under
22 subsection (e) or transferred to a succeeding provider as
23 directed by that person.

24 "(2) In the case of a preneed contract that uses
25 life insurance or annuity funding as a funding mechanism as
26 permitted by Section 27-17A-3, the preneed provider shall
27 cancel and relinquish any assignment of benefits or

1 beneficiary status under the policy or contract and deliver
2 the policy or contract, if in the custody of the preneed
3 seller, to the owner of the funding insurance policy or
4 policies or annuity contract or person or persons determined
5 under subsection (e) or transferred to a succeeding provider
6 as directed by that person. The action shall be taken within
7 15 calendar days after cancellation.

8 "(b) Unless made irrevocable as provided in
9 subsection (f), a preneed contract shall provide that the
10 contract purchaser may fully cancel the contract at any time
11 before the death of the designated funeral beneficiary of the
12 preneed contract upon written notice of the contract purchaser
13 to the seller.

14 "(c) In the case of a preneed contract that uses a
15 merchandise and services trust or trust alternative other than
16 life insurance or an annuity as a funding mechanism, the
17 contract shall provide for a refund or partial refund of the
18 total monies paid upon cancellation on terms not less
19 favorable than the following:

20 "(1) If the contract is validly cancelled within 30
21 days after it is fully signed by the parties, the preneed
22 seller shall refund to the purchaser all monies paid by the
23 purchaser less amounts equal to the current prices for any
24 services performed or merchandise delivered to the control of
25 the purchaser before receipt of the cancellation notice.

26 "(2) If the contract is validly cancelled more than
27 30 days after it is fully signed by the parties, and after

1 deductions of amounts equal to the current prices for any
2 services performed or merchandise delivered to the control of
3 the purchaser before receipt of the cancellation notice, and
4 after deductions for amounts equal to any finance charges and
5 installment interest paid as specified in the finance and
6 installment terms and provisions of the contract, the preneed
7 seller shall refund to the purchaser an amount not less than
8 75 percent of monies paid by the purchaser for funeral
9 merchandise, funeral services, transportation, and facilities
10 rented, 100 percent of monies paid for cash advance items, and
11 60 percent of monies paid by the purchaser for outer burial
12 containers, cemetery merchandise, and cemetery services.

13 "(3) Any refund payments required under this
14 subsection shall be made within 30 calendar days after receipt
15 of written cancellation notice by the preneed provider.

16 "(4) If, before notice of cancellation, the trust
17 has invested the principal amount allocable to a preneed
18 contract in one or more life insurance policies or annuities
19 in accordance with subsection (d) of Section 27-17A-32, the
20 refund obligation of the preneed seller is satisfied if the
21 seller causes the trustee to assign the policies or annuities
22 to the purchaser within 30 calendar days after receipt of the
23 written cancellation notice. Any remaining trust funds
24 allocable to the contract which are not invested in life
25 insurance or annuities at the time of cancellation shall be
26 refunded to the purchaser on a proportionate basis consistent

1 with subdivision (2) and within the time specified in
2 subdivision (3).

3 "(d) In the case of a preneed contract that uses
4 life insurance or annuity funding as a funding mechanism as
5 permitted by Section 27-17A-3, the contract shall provide for
6 cancellation on terms not less favorable than the following:

7 "(1) If the contract is validly cancelled within 30
8 days after it is fully signed by the parties, the preneed
9 contract purchaser shall be provided information about how to
10 request that the insurance company cancel the policy or
11 annuity contract and how to obtain a full refund of all monies
12 paid for the policy or contract or keep the policy or contract
13 in force. If the contract purchaser elects to keep the policy
14 or annuity in force, the preneed seller shall cancel and
15 relinquish any assignment of death benefits or beneficiary
16 status under the policy or contract and deliver the policy or
17 contract, if already issued and in the custody of the preneed
18 seller, to the contract purchaser.

19 "(2) If the contract is validly cancelled more than
20 30 days after it is fully signed by the parties, the purchaser
21 shall be given the option to do either the following:

22 "a. Cancel the preneed contract but retain the life
23 insurance policy or annuity contract, in which event the
24 preneed seller shall cancel and relinquish any assignment of
25 death benefits or beneficiary status under the policy or
26 contract and deliver the policy or contract, if in the custody
27 of the preneed seller, to the purchaser.

1 "b. Cancel the life insurance policy or annuity
2 contract and accept the cash value of the policy or contract,
3 if any, as the full refund due to the purchaser for
4 cancellation of the preneed contract. The preneed contract
5 shall disclose to the purchaser that the cash value of any
6 funding life insurance policy or annuity contract may be less
7 than the amount paid by the purchaser for the preneed
8 contract.

9 "(3) To the extent that a preneed seller has
10 actually delivered merchandise or performed services specified
11 in a preneed contract before receipt of notice of
12 cancellation, the seller may condition recognition of the
13 cancellation upon payment or partial assignment of the death
14 benefits for the delivered merchandise or performed services
15 at the prices stated in the current published general price
16 lists of the seller.

17 "(4) Any refunds or actions required under this
18 subsection shall be made or completed within 30 calendar days
19 after receipt of written cancellation notice by the preneed
20 provider.

21 "(e) The preneed contract shall clearly identify the
22 person or persons who may exercise any cancellation right
23 provided for in the contract before the death of the
24 contract's funeral beneficiary, or before the delivery of the
25 cemetery merchandise and services, and who are entitled to any
26 refunds. Any cancellation right provided for in a preneed
27 contract sold by a funeral establishment is exercisable at the

1 death of the funeral beneficiary identified in the contract by
2 the contract purchaser or the authorizing agent of the funeral
3 beneficiary. An authorizing agent does not acquire any right,
4 solely through status as authorizing agent, to receive cash
5 refunds for his or her personal benefit. Any such person, as
6 so designated or determined, shall be the contract purchaser
7 for purposes of this section. Any cancellation right provided
8 for in a preneed contract sold by a cemetery authority is
9 exercisable by the contract purchaser, or his or her successor
10 as determined by the terms and provisions of the cemetery
11 contract.

12 "(f) A contract purchaser may make a preneed
13 contract irrevocable if the funeral beneficiary of the
14 contract is a qualified applicant for, or recipient of,
15 supplemental security income, temporary cash assistance, or
16 Medicaid. An irrevocable contract does not prevent an
17 authorizing agent described in Section 34-13-11, at the death
18 of the contract's funeral beneficiary, from cancelling the
19 contract and designating in writing another funeral or
20 cemetery provider to furnish merchandise and services for the
21 beneficiary if the succeeding provider is willing to contract
22 for delivery of the merchandise and performance of the
23 services. Upon such designation:

24 "(1) In the case of a preneed contract that uses a
25 merchandise and services trust or trust alternative other than
26 life insurance or an annuity as a funding mechanism, the
27 preneed provider shall transfer to the succeeding provider an

1 amount not less than 75 percent of monies paid by the
2 purchaser for funeral merchandise, funeral services,
3 transportation, and facilities rented, 100 percent of monies
4 paid for cash advance items, and 60 percent of monies paid by
5 the purchaser for outer burial containers, cemetery
6 merchandise, and cemetery services as of the date of
7 cancellation. The transferring provider may retain the balance
8 of funds received or held for the contract, subject to the
9 following:

10 "a. The contract seller is entitled to retain
11 amounts equal to the current prices specified in the published
12 general price lists of the seller for any merchandise
13 delivered and services performed before the cancellation date.

14 "b. If the designated successor provider's business
15 location shall be at or beyond a 75-mile radius from the
16 location of the selling provider at which the contract was
17 sold, the amount transferred to the successor provider shall
18 also include an amount equal to the accumulated trust
19 appreciation on the statutory deposit amounts as of the date
20 of cancellation.

21 "c. The contract seller is entitled to retain any
22 and all contract amounts allocable to any finance charges and
23 installment interest paid and/or due the seller at the time of
24 the cancellation as specified in the finance and installment
25 terms and provisions of the contract.

26 "d. Upon cancellation and such funds transfer, the
27 preneed contract shall be considered cancelled.

1 "(2) In the case of a preneed contract that uses
2 life insurance or annuity funding as a funding mechanism as
3 permitted by Section 27-17A-3, the preneed provider shall
4 cancel and relinquish any assignment of benefits or
5 beneficiary status under the policy or contract and deliver
6 the policy or contract, if in the custody of the preneed
7 seller, to the succeeding provider or the authorizing agent of
8 the funeral beneficiary. Upon such transfer, the preneed
9 contract shall be considered cancelled.

10 "(3) The transfers provided for in this subsection
11 shall be completed within 30 calendar days after receipt of
12 notice by the preneed provider.

13 "(g) A preneed contract that uses a merchandise and
14 services trust or trust alternative other than life insurance
15 or an annuity as a funding mechanism may contain provisions
16 permitting the preneed seller to cancel the contract in the
17 event the contract purchaser is 90 days or more past due in
18 making payments on the contract in accordance with the
19 contract terms. Such provisions shall be not less favorable
20 than the following:

21 "(1) During the 90-day delinquency period, the
22 contract seller shall give the contract purchaser prior
23 written notice of not less than 30 calendar days advising of
24 the intent of the seller to cancel the contract for payment
25 default and allowing the purchaser the remainder of the notice
26 period to cure the default by tendering full payment of
27 amounts due but unpaid.

1 "(2) In the case of a preneed contract that uses a
2 merchandise and services trust as a funding mechanism, upon
3 cancellation, the contract seller may withdraw from trust all
4 funds allocated to that contract and the accumulated trust
5 appreciation based upon the market value of the proportionate
6 share of the trust allocable to that contract. From that
7 amount, the contract seller, upon receipt of the written
8 request of the purchaser for a refund of monies paid, shall
9 refund to the contract purchaser an amount specified in or
10 determined by the contract, which amount may not be less than
11 75 percent of the monies paid by the purchaser for funeral
12 merchandise, funeral services, transportation, and facilities
13 rented, 100 percent of monies paid for cash advance items, and
14 60 percent of monies paid by the purchaser for outer burial
15 containers, cemetery merchandise, and cemetery services. The
16 contract seller is not required to refund any monies collected
17 and due for those contract amounts allocable to the finance
18 charges and installment interest paid as specified in the
19 finance and installment terms and provisions of the contract.

20 "(3) In the case of a preneed contract that uses a
21 trust alternative other than life insurance or annuity funding
22 as a funding mechanism, upon receipt of the written request of
23 the purchaser for a refund of monies paid, the contract seller
24 shall refund to the contract purchaser an amount specified in
25 or determined by the contract, which amount shall not be less
26 than 75 percent of the monies paid by the purchaser for
27 funeral merchandise, funeral services, transportation, and

1 facilities rented, 100 percent of monies paid for cash advance
2 items, and 60 percent of monies paid by the purchaser for
3 outer burial containers, cemetery merchandise, and cemetery
4 services. The contract seller is not required to refund any
5 monies collected and due for those contract amounts allocable
6 to the finance charges and installment interest paid as
7 specified in the finance and installment terms and provisions
8 of the contract.

9 "(4) The refunds or other actions required by this
10 subsection shall be paid or completed within 30 calendar days
11 of receipt by the seller of the written acknowledgement of
12 cancellation and request for a refund of monies paid by the
13 purchaser.

14 "(h) A preneed contract that uses life insurance or
15 annuity funding as a funding mechanism as permitted by Section
16 27-17A-3 may contain provisions permitting the preneed seller
17 to cancel the contract if the contract purchaser is 90 days or
18 more past due in making premium payments in accordance with
19 the contract terms, or in the event that one or multiple
20 funding life insurance policies or annuity contracts lapse or
21 are cancelled or terminated by the issuing insurance company
22 for nonpayment of premiums by the preneed contract purchaser.
23 Such provisions shall be not less favorable than the
24 following:

25 "(1) Cancellation of the preneed contract may not
26 occur unless the contract purchaser has failed to cure the
27 premium delinquency or pay any monies needed to reinstate

1 coverage in the manner and by the times specified in the
2 insurance policies or annuity contracts.

3 "(2) If the preneed contract transaction has
4 resulted in one or more paid-up life insurance policies or
5 annuity contracts that are not dependent on future payments,
6 the preneed provider shall cancel and relinquish any
7 assignment of benefits or beneficiary status under such
8 policies or contracts and deliver the policies or contracts,
9 if in the custody of the preneed seller, to the preneed
10 contract purchaser.

11 "(3) The actions required by this subsection shall
12 be paid or completed within 30 calendar days of the preneed
13 contract cancellation date.

14 "§27-17A-34.

15 "(a) Disbursement of funds discharging any preneed
16 contract for funeral and cemetery services or ~~funeral~~
17 merchandise fulfilled after May 1, 2002, shall be made by the
18 trustee to the certificate holder upon receipt by the trustee
19 of a certification of the certificate holder that the preneed
20 contract has been performed in whole or in part or the preneed
21 contract has been cancelled. Before the trustee may disburse
22 any trust funds, the certificate holder shall provide to the
23 trustee a death certificate or other valid proof of death, a
24 letter from the preneed contract holder cancelling the preneed
25 contract, or valid proof the contract has been cancelled in
26 accordance with Section 27-17A-33, or valid proof the
27 merchandise has been delivered and installed, and services

1 have been performed. Any trustee accepting preneed contract
2 proceeds under this article may rely upon the certification of
3 the certificate holder as herein required to be made, and
4 shall not be liable to anyone for such reliance. If the
5 contract is only partially performed, the disbursement shall
6 only cover that portion of the contract performed. In the
7 event of any contract default by the contract purchaser, or in
8 the event that the funeral and cemetery merchandise or ~~funeral~~
9 service contracted for is not provided, the trustee shall
10 return, within 30 days after its receipt of a written request
11 therefor, 100 percent of the funds ~~paid~~ deposited into the
12 trust on the contract and the income and accretion thereon to
13 the certificate holder or to its assigns, subject to ~~the~~
14 ~~provisions of~~ Section 27-17A-33.

15 " (b) ~~If the preneed contract so provides, the~~
16 ~~trustee may distribute trust income allocable to the preneed~~
17 ~~contract to the certificate holder on an annual basis, so long~~
18 ~~as the distribution is consistent with subsection (b) of~~
19 ~~Section 27-17A-32~~ The amount that may be withdrawn from the
20 trust upon fulfillment or cancellation of any particular
21 preneed contract may not exceed the amount attributable to
22 that preneed contract in proportion to the total amount held
23 in trust for all preneed contracts as of the date of
24 withdrawal.

25 "§27-17A-47.

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

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

10 "(b) Except as specifically provided in this
11 subsection, commencing on the effective date of the act adding
12 this subsection, a person serving on a board of trustees or
13 cemetery authority may not also serve as a trustee of an
14 endowment care fund for the cemetery authority. A board of
15 trustees in existence on the effective date of the act adding
16 this subsection may continue to serve as the trustee of an
17 endowment care fund if the board of trustees otherwise
18 complies with this subsection. Unless exempted by the
19 commissioner pursuant to this subsection, on or before January
20 1, 2012, each member of a board of trustees in existence on
21 the effective date of the act adding this subsection shall
22 furnish the bond required by subsection (a) in the greater of
23 one hundred thousand dollars (\$100,000) or the amount in each
24 endowment care fund for which the board acts as trustee as of
25 December 31, 2011. Thereafter, the amount of the bonds shall
26 be increased on January 1 of each succeeding year to equal the
27 amount in each endowment care fund as of the immediately

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

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

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

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

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

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

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

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

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

13 "§27-17A-50.

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

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

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

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

18 "§27-17A-55.

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

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

12 Section 6. All laws or parts of laws which conflict
13 with this act are repealed. Specifically, Sections 27-17A-40,
14 27-17A-41, 27-17A-42, 27-17A-43, and 27-17A-44, Code of
15 Alabama 1975, providing for preneed contracts for cemetery
16 services or cemetery merchandise, are repealed.

17 Section 7. Mobile Memorial Gardens shall be exempt
18 from the provisions of this amendatory act.

19 Section 8. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 9. This act shall become effective on the
2 first day of the third month following its passage and
3 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 Insurance 16-FEB-12

Read for the second time and placed
on the calendar with 1 substitute
and..... 20-MAR-12

Read for the third time and passed
as amended..... 24-APR-12

Yeas 96, Nays 2, Abstains 0

Greg Pappas
Clerk