

1 HB338
2 136382-2
3 By Representative Brown
4 RFD: Insurance
5 First Read: 16-FEB-12

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8 SYNOPSIS: This bill would provide further for the
9 definition of a preneed contract and would clarify
10 that a preneed contract is not an insurance
11 contract.

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

16 This bill would revise the annual
17 application and renewal dates for persons holding
18 preneed certificates of authority and would waive
19 the requirement of filing annual financial
20 statements under certain circumstances and upon
21 written request to the commissioner.

22 This bill would require each certificate
23 holder to file with the commissioner a quarterly
24 report of all preneed contract activity.

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

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

3 This bill would give the commissioner
4 jurisdiction over any person lawfully writing, or
5 suspected of unlawfully writing, preneed contracts
6 and would clarify the penalties for violations.

7 This bill would authorize the commissioner
8 to use funds received from any source for purposes
9 of enforcement.

10 This bill would clarify that funds received
11 for funeral and cemetery merchandise placed in
12 storage prior to death need not be placed in trust.

13 This bill would require certificate holders
14 to satisfy additional requirements and file with
15 the commissioner a quarterly report of all preneed
16 contract trust activity in lieu of filing financial
17 statements with the renewal application.

18 This bill would subject cemetery authorities
19 to the act.

20 This bill would require any person receiving
21 funds from the sale of a preneed contract to
22 contribute to a trust fund, life insurance
23 contract, or annuity contract.

24 This bill would require any payments
25 received on a preneed contract written after April
26 30, 2002, to be deposited into an approved trust.

1 This bill would require that preneed
2 cemetery merchandise and services funds remain in
3 trust until cancellation or fulfillment and would
4 provide for the refund of monies upon the
5 cancellation of a preneed contract.

6 This bill would prohibit a person serving on
7 a board of trustees from also serving as the
8 trustee of an endowment care fund, with certain
9 specified exceptions, and would require bonds of
10 trustees, with certain specified exceptions.

11 This bill would define net income for
12 purposes of an endowment care fund.

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

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT

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16 To amend Sections 27-17A-2, 27-17A-3, 27-17A-10,
17 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-16,
18 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-30,
19 27-17A-31, 27-17A-32, 27-17A-33, 27-17A-34, 27-17A-47,
20 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add
21 Sections 27-17A-5 and 27-17A-11.1 to the Code of Alabama 1975;
22 relating to preneed funeral service contracts; to provide
23 further for the definition of a preneed contract and clarify
24 that a preneed contract is not an insurance contract; to
25 clarify and require any person selling funeral or cemetery
26 services on a preneed basis to obtain a certificate of
27 authority from the Department of Insurance; to revise the

1 annual application and renewal dates for preneed certificates
2 of authority; to waive the requirement of filing annual
3 financial statements under certain circumstances upon written
4 request to the commissioner; to require certificate holders to
5 file quarterly reports of preneed contract activity with the
6 commissioner; to clarify the amount of a bond used as an
7 alternative to a trusting requirement; to require an initial
8 bond to be based on the amount of preneed liability expected
9 to be incurred within the next 12 months; to provide that the
10 commissioner has jurisdiction over any person lawfully
11 writing, or suspected of unlawfully writing, preneed
12 contracts; to clarify penalties for violations; to authorize
13 the commissioner to use funds received from any source for
14 purposes of enforcement; to clarify that funds received for
15 funeral and cemetery merchandise placed in storage prior to
16 death need not be placed in trust; to require certificate
17 holders to satisfy additional requirements and file with the
18 commissioner a quarterly report of all preneed contract trust
19 activity in lieu of filing financial statements with the
20 renewal application; to subject cemetery authorities to the
21 act; to require any person receiving funds from the sale of a
22 preneed contract to contribute to a trust fund, life insurance
23 contract, or annuity contract; to require any payments
24 received on a preneed contract written after April 30, 2002,
25 to be deposited into an approved trust; to require that
26 preneed cemetery merchandise and services funds remain in
27 trust until cancellation or fulfillment and to provide for the

1 refund of monies upon the cancellation of a preneed contract;
2 to prohibit a person serving on a board of trustees from also
3 serving as the trustee of an endowment care fund, with certain
4 exceptions; to require bonds of trustees, with certain
5 exceptions; to define net income for purposes of an endowment
6 care fund; to require a cemetery authority to place funds
7 collected for the construction of a mausoleum, columbarium, or
8 below-ground crypt into a preconstruction trust until such
9 time as construction is complete; and in connection therewith;
10 and in connection therewith would have as its purpose or
11 effect the requirement of a new or increased expenditure of
12 local funds within the meaning of Amendment 621 of the
13 Constitution of Alabama of 1901, now appearing as Section
14 111.05 of the Official Recompilation of the Constitution of
15 Alabama of 1901, as amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§27-17A-2.

20 "As used in this chapter, the following terms shall
21 have the following meanings:

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

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

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

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

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

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

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

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

21 "(9) CASH ADVANCE. Any item of service or
22 merchandise described to a purchaser as a "cash advance,"
23 "accommodation," "cash disbursement," or similar term. A cash
24 advance item is also any item obtained from a third party and
25 paid for by the seller on the purchaser's behalf. Cash advance
26 items may include, but are not limited to, cemetery or
27 crematory services, pallbearers, public transportation, clergy

1 honoraria, flowers, musicians or singers, nurses, obituary
2 notices, gratuities, and death certificates.

3 "(10) CASKET. A rigid container which is designed
4 for the encasement of human remains and which is usually
5 constructed of wood, metal, or like material, and ornamented
6 and lined with fabric.

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

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

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

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

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

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

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

6 "(18) CREMATED REMAINS. The bone fragments remaining
7 after the cremation process, which may include the residue of
8 any foreign materials that were cremated with the human
9 remains.

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

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

19 "(21) CREMATORY AUTHORITY. Any person who owns or
20 controls a crematory.

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

24 "(23) DECEASED or DECEDENT. One who is no longer
25 living.

26 "(24) EMBALMER. One authorized by law to engage in
27 embalming.

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

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

9 "(27) ENDOWMENT CARE. The maintenance and repair of
10 all places in the cemetery, subject to the rules and
11 regulations of the cemetery authority; may be known also as
12 endowed care, perpetual care, improvement care, or permanent
13 care.

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

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

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

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

25 "(32) FUNERAL BENEFICIARY. The person designated in
26 the preneed contract who is to be the recipient of the funeral

1 and cemetery goods and services of the preneed contract at his
2 or her time of death.

3 "~~(32)~~(33) FUNERAL DIRECTING. The act or service of
4 conducting funerals and counseling with survivors and
5 preparing human remains, other than by embalming, for the
6 interment or other means of disposition, and may include the
7 management and supervision of all operations in a funeral
8 establishment, which may or may not include the practice of
9 embalming.

10 "~~(33)~~(34) FUNERAL DIRECTOR. One authorized by law to
11 engage in funeral directing.

12 "~~(34)~~(35) FUNERAL ESTABLISHMENT. A place of business
13 used in the care, planning, and preparation for final
14 disposition or transportation of human remains, or any place
15 where one or more are engaged and represent themselves to be
16 engaged in the business of embalming or funeral directing.

17 "~~(35)~~(36) FUNERAL MERCHANDISE. Any personal property
18 offered for sale, contracted for sale, or sold for use in
19 connection with funeral directing. Funeral merchandise
20 specifically includes, but is not limited to, the following:

21 "a. Alternative container.

22 "b. Casket.

23 "c. Outer burial container.

24 "d. Urn.

25 "~~(36)~~(37) FUNERAL SERVICE. Services provided by a
26 funeral establishment in connection with funeral directing.

1 "~~(37)~~(38) GRAVE SPACE. A space of ground in a
2 cemetery that is used or intended to be used for in-ground
3 burial.

4 "~~(38)~~(39) HUMAN REMAINS. The body of a decedent and
5 includes the body in any stage of decomposition and cremated
6 remains.

7 "~~(39)~~(40) INTERMENT. The final disposition of human
8 remains by burial, entombment, or inurnment.

9 "~~(40)~~(41) INTERMENT RIGHT. The right to inter human
10 remains in a particular interment space in the cemetery.

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

15 "~~(42)~~(43) INURNMENT. The act of placing cremated
16 remains in a receptacle including, but not limited to, an urn
17 and depositing it in a niche.

18 "~~(43)~~(44) MAUSOLEUM. A chamber or structure used or
19 intended to be used for entombment.

20 "~~(44)~~(45) MAUSOLEUM CRYPT. A chamber of a mausoleum
21 of sufficient size for entombment of human remains.

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

1 "~~(46)~~(47) MEMORIAL RETAILER. Any person offering or
2 selling memorials at retail to the public.

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

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

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

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

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

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

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

1 "~~(54)~~(55) PREFUND. The term applied to completing
2 the financial details of a prearrangement, which include
3 provisions for funding or prepayment.

4 "~~(55)~~(56) PRENEED. Any time prior to death.

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

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

14 "~~(58)~~(59) PROVIDER. A person who may or may not be
15 the seller, who will actually provide the merchandise and
16 services under the terms of a preneed contract.

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

22 "~~(60)~~(61) PURCHASER. The person who purchases a
23 preneed contract either on his or her behalf or on behalf of a
24 third party beneficiary.

25 "~~(61)~~(62) RELIGIOUS INSTITUTION. An organization
26 formed primarily for religious purposes which has qualified
27 for exemption from federal income tax as an exempt

1 organization under the provisions of Section 501(c)(3) of the
2 Internal Revenue Code of 1986, as amended.

3 "~~(62)~~(63) SCATTERING. The lawful dispersion of
4 cremated remains.

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

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

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

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

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

1 "~~(68)~~(69) URN. A receptacle for the encasement of
2 cremated remains.

3 "\$27-17A-3.

4 "~~Nothing in this chapter shall be construed to~~
5 ~~prohibit the funding of preneed contracts with insurance~~
6 ~~contracts. Life insurance contracts used to fund preneed~~
7 ~~contracts shall conform with the provisions of this title as~~
8 ~~they relate to life insurance and shall cover at a minimum the~~
9 ~~retail amount of the preneed contract at the time of purchase.~~

10 "(a) As a future funding mechanism for a preneed
11 contract, a preneed seller may offer a life insurance or an
12 annuity contract, or a series of such policies or contracts if
13 the preneed contract provides for installment payments. These
14 funding insurance policies and annuity contracts may be
15 offered on an individual or group basis through an insurance
16 company authorized by the commissioner to transact the
17 business of life insurance or annuities in Alabama.

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

22 "(c) The insurance company underwriting the life
23 insurance policy or annuity contract shall file with the
24 commissioner each insurance or annuity policy or contract
25 form, together with any riders or endorsements, and other such
26 forms proposed for use with insurance policies or annuity
27 contracts offered in connection with preneed contracts, and

1 shall obtain the approval of the commissioner of such forms
2 before use in accordance with Section 27-14-8.

3 "(d) Any provision of Section 27-14-8 to the
4 contrary notwithstanding, with respect to group insurance
5 policies or annuities effectuated and delivered outside of
6 this state, but covering residents of this state, any group
7 certificates to be delivered or issued for delivery in this
8 state shall be filed with and approved by the commissioner
9 before use.

10 "(e) At a minimum, the death benefits to be provided
11 by a life insurance policy or annuity contract sold as a
12 future funding mechanism for a preneed contract shall
13 ultimately equal the initial retail price of the preneed
14 contract. If a series of life insurance policies or annuity
15 contracts are contemplated because the preneed contract
16 provides for installment payments, the death benefits to be
17 provided by such policies or contracts shall in the aggregate
18 ultimately equal the initial retail price of the preneed
19 contract at a minimum.

20 "(f) The initial premium payment for a life
21 insurance policy or annuity contract shall be made payable to
22 the issuing insurance company and the preneed seller shall
23 remit the payment to the insurance company within five
24 business days after the preneed contract is fully signed by
25 the parties. If a preneed contract provides for installment
26 payments, each premium payment shall be made payable to the
27 insurance company and, if collected by the preneed seller,

1 shall be remitted to the insurance company within five
2 business days after receipt by the preneed seller.

3 "(g) Each registered preneed sales agent, or
4 employee of a preneed seller acting as an insurance producer,
5 shall be properly licensed as an insurance producer, be
6 properly appointed by the insurance company whose product is
7 being offered, and comply with the requirements of Chapters 7
8 and 8A of this title and any rules adopted pursuant thereto. A
9 registered preneed sales agent, or employee of a preneed
10 seller, need not hold an insurance producer license if the
11 life insurance or annuity product being offered is a group
12 life insurance or annuity product, the activity of the preneed
13 sales agent or employee is strictly limited to obtaining
14 information needed to enroll a preneed contract's funeral
15 beneficiary in a group insurance or group annuity plan, and
16 the preneed sales agent or employee is not paid a commission
17 for such activity.

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

26 "(i) Nothing in this chapter shall prohibit a
27 seller, or any other person, from receiving commissions earned

1 and payable in regard to funding preneed contracts with life
2 insurance or annuity contracts, provided the seller or other
3 person holds a valid insurance producer license in this state
4 and is appointed by the insurance company paying the
5 commission.

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

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

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

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

19 "(4) That, in the event the preneed contract
20 requires periodic premium payments, failure to timely make
21 those payments may cause cancellation of the life insurance
22 policies or annuity contract, and the corresponding preneed
23 contract, without a refund to the contract purchaser.

24 "(5) That the preneed seller is the beneficiary of
25 the life insurance policies or annuity contract and that, at
26 the time of need, the proceeds of the life insurance policies
27 or annuity contract, including any increase in proceeds that

1 may have accrued during the term of the insurance or annuity
2 contract, shall be paid to the preneed seller upon delivery at
3 the merchandise and performance of the services provided for
4 in the preneed contract.

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

8 "(k) Subject to subsection (h) of Section 27-17A-33,
9 a preneed seller may be identified as the beneficiary of a
10 life insurance policy or annuity contract sold as a future
11 funding mechanism, but may not be the owner of the policy or
12 annuity contract or exercise any ownership rights in the
13 policy or annuity including, but not limited to, any right to
14 cancel the policy or annuity contract or to obtain the cash
15 value of the policy or annuity contract by loan or otherwise.

16 "(l) In the event the seller is the designated
17 beneficiary of the funding life insurance policy or policies
18 or annuity contract, payment of the life insurance or annuity
19 death benefits proceeds to the preneed seller shall be
20 conditioned on the actual delivery of the merchandise by the
21 seller and performance of the services provided for in the
22 preneed contract, and subject to subsection (d) of Section
23 27-17A-33(d)."

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

26 §27-17A-5.

1 (a) For purposes of this chapter, a preneed contract
2 is a written contract entered into on a preneed basis which
3 obligates the buyer to pay to the seller, before need and in
4 whole or in part, a purchase price for funeral or cemetery
5 merchandise and services or for an interment right in an
6 interment space, which does not obligate the seller to deliver
7 the contracted for merchandise or to perform the services, in
8 whole or in part, or to deliver evidence of the ownership of
9 the buyer of an interment right, until need.

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

14 (c) A contract for the sale of an interment right in
15 an existing interment space only, unaccompanied by any
16 agreement for the preneed sale of funeral or cemetery
17 merchandise or services, is not a preneed contract for
18 purposes of this chapter if all of the following are
19 satisfied:

20 (1) The seller delivers evidence of the ownership of
21 the buyer of the interment right to the buyer upon receipt by
22 the seller of full payment for the right.

23 (2) Delivery of such evidence is not contractually
24 conditioned on the existence of need or on the purchase of
25 funeral or cemetery merchandise or services.

26 (d) A retail sale of funeral or cemetery
27 merchandise, and of services directly required to install or

1 otherwise realize use of such merchandise, is not a preneed
2 contract for purposes of this chapter if all of the following
3 are satisfied:

4 (1) The transaction is described in a written
5 agreement.

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

8 (3) The seller delivers the merchandise to the
9 possession, custody, or control of the buyer and performs any
10 related service immediately upon payment, or within a
11 contractually defined commercially reasonable time not
12 conditioned on need or completion of installment payments, but
13 subject to any security interest retained by the seller.

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

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

19 (e) A preneed contract is not insurance for purposes
20 of this title and is not burial insurance for purposes of
21 Chapter 17 of this title.

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

24 "§27-17A-10.

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

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

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

10 ~~"(c) No person may obtain a certificate of authority~~
11 ~~under this article for the preneed sale of funeral services or~~
12 ~~cemetery services unless the person or its agent, in the case~~
13 ~~of a corporate entity, holds a license as a funeral director~~
14 ~~or a funeral establishment, or is a cemetery authority. A~~
15 preneed certificate of authority may only be issued to and
16 remain in effect for any of the following:

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

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

22 "(3) A business entity which holds a current license
23 as a funeral establishment issued by the Alabama Board of
24 Funeral Service pursuant to Chapter 13 of Title 34, or which
25 owns a controlling interest, exceeding 50 percent of the stock
26 or membership interests, in a business entity currently
27 licensed as a funeral establishment or, if not licensed as a

1 funeral establishment, the entity otherwise has as an officer,
2 partner, shareholder, or member, or continuously employs, an
3 individual who holds a current license as a funeral director
4 issued by the Alabama Board of Funeral Service pursuant to
5 Chapter 13 of Title 34.

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

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

11 "(e) The commissioner shall have the same
12 jurisdiction over funeral establishments, funeral directors,
13 cemetery authorities, or third party sellers who sell preneed
14 contracts without a preneed certificate of authority as he or
15 she has over those preneed sellers who possess a preneed
16 certificate of authority.

17 "\$27-17A-11.

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

1 rule of the commissioner, as of the preceding fiscal period or
2 at such other time or times as the commissioner may provide by
3 rule, together with information and data which may be required
4 by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

16 "(2) Any person or entity that is part of a common
17 business enterprise that has a certificate of authority issued
18 pursuant to this article and elects to operate under a name
19 other than that of the common business enterprise shall submit
20 an application on a form adopted by the commissioner to become
21 a branch registrant. Upon the approval of the commissioner
22 that the entity qualifies to sell preneed contracts under this
23 article except for the requirements of paragraph a. of
24 subdivision (3) of subsection (b) and if the certificate
25 holder meets the requirements of paragraph a., a branch
26 registration shall be issued. Each branch registrant may
27 operate under the certificate of authority of the common

1 business enterprise upon the payment of a fee established by
2 the commissioner not to exceed one hundred fifty dollars
3 (\$150) accompanying the application on ~~April~~ July 1 annually.

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

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

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

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

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

3 "(i) To facilitate uniformity in financial
4 statements and to facilitate analysis, the commissioner may by
5 rule adopt a form for financial statements. The holder of a
6 certificate of authority may submit a written request to the
7 commissioner to exempt the holder from filing financial
8 statements at renewal. The commissioner may waive the
9 requirement for filing a financial statement at renewal if all
10 of the following are satisfied:

11 "(1) No valid complaint has been filed since the
12 last examination.

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

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

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

24 "(5) The preneed entity has provided to the
25 department in a timely manner all required and requested
26 records.

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

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

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

16 §27-17A-11.1.

17 (a) Within 30 days after the end of each calendar
18 quarter, the certificate holder shall file a report of its
19 preneed contract activity on a form or in a format prescribed
20 by the commissioner. The information reported shall include
21 the total number of preneed contracts in force at the end of
22 the previous quarter, the total amount of preneed contract
23 sales during the quarter, the total number of preneed
24 contracts fulfilled during the quarter, the total number of
25 preneed contracts in force at the end of the quarter, and such
26 other information as may be required by the commissioner. The

1 report shall be organized by type of funding including, life
2 insurance, trust, letter of credit, or surety bond.

3 (b) The certificate holder shall submit the report
4 required by subsection (a) with the report required by
5 subsection (b) of Section 27-17A-32.

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

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

15 Section 5. Sections 27-17A-12, 27-17A-13, 27-17A-14,
16 27-17A-16, 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25,
17 27-17A-30, 27-17A-31, 27-17A-32, 27-17A-33, 27-17A-34,
18 27-17A-47, 27-17A-50, and 27-17A-55 of the Code of Alabama
19 1975, are amended to read as follows:

20 "§27-17A-12.

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

23 "(b) Specific disclosure regarding the certificate
24 holder's requirement to place certain preneed funds received
25 in trust, or insurance, but not both, is required in the
26 preneed contract.

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

6 "§27-17A-13.

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

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

26 "§27-17A-14.

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

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

20 "(c) The amount of the bond shall be based on a
21 report documenting the outstanding liabilities of the preneed
22 provider for the previous calendar quarter and the projected
23 liability for the immediately following quarter, shall be
24 prepared by the preneed provider using generally accepted
25 accounting principles, and shall be signed by the chief
26 executive officer or chief financial officer of the preneed

1 provider. The report shall be compiled as of the end of the
2 preneed provider's fiscal year and updated ~~annually~~ quarterly.

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

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

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

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

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

16 "(h) Commencing on the effective date of the act
17 adding this subsection, and except as specifically provided in
18 this subsection, the commissioner may not approve a surety
19 bond or letter of credit as an alternative to the trust
20 requirement of Section 27-17A-13. If, on the effective date of
21 the act adding this subsection, a certificate holder has in
22 effect a surety bond or letter of credit previously approved
23 by the commissioner pursuant to subsection (a) or subsection
24 (g), the certificate holder may continue to rely on the bond
25 or letter of credit as an alternative to the trust requirement
26 if the bond or letter of credit continuously complies with
27 this section. The commissioner may approve substitute or

1 additional surety bonds and letters of credit in such
2 instance. If an existing approved bond or letter of credit is
3 withdrawn or cancelled without contemporaneous substitution of
4 another bond or letter of credit approved by the commissioner,
5 or the commissioner withdraws approval of a bond or letter of
6 credit for noncompliance with this section, or for any other
7 reason, the certificate holder shall thereupon establish and
8 fund a merchandise and services trust in accordance with this
9 chapter for preneed contracts sold during the time the bond or
10 letter of credit was in effect and shall thereafter use either
11 a merchandise and services trust or life insurance or annuity
12 contract as a funding mechanism.

13 "§27-17A-16.

14 "(a) A certificate holder shall be considered
15 inactive upon the acceptance of the surrender of its license
16 by the commissioner or upon the nonreceipt by the commissioner
17 of the certificate of authority renewal application and fees.

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

23 "(c) Any certificate holder desiring to surrender
24 its license to the commissioner shall first do all of the
25 following:

26 "(1) File notice with the commissioner.

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

1 "(3) Submit a sample copy of each type of preneed
2 contract sold.

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

6 "(5) Pay all outstanding fines and invoices due the
7 commissioner.

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

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

12 "(e) After a review to the commissioner's
13 satisfaction, the commissioner shall terminate the certificate
14 of authority by an order which shall set forth the conditions
15 of termination established by the commissioner to ensure that
16 the preneed funds will be available for their intended
17 purpose.

18 "(f) The trust fund of the certificate holder shall
19 be held intact and in trust after the certificate holder has
20 become inactive, and the funds in that trust shall be
21 disbursed in accordance with the requirements of the written
22 contracts until the funds have been exhausted.

23 "(g) The commissioner shall continue to have
24 jurisdiction over the inactive certificate holder as if the
25 certificate were active and to require the reports and inspect
26 the records as the commissioner deems appropriate so long as

1 there are funds in trust or preneed contracts that are not
2 fulfilled.

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

6 "§27-17A-18.

7 "(a) All individuals who offer preneed contracts to
8 the public, or who execute preneed contracts on behalf of a
9 certificate holder, ~~including all individuals who offer, sell,~~
10 ~~or sign contracts for the preneed sale of burial rights,~~ shall
11 be registered with the commissioner as preneed sales agents,
12 pursuant to this article.

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

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

26 "(d) A preneed sales agent and a funeral director
27 acting as a preneed sales agent shall be authorized to sell,

1 offer, and execute preneed contracts on behalf of all entities
2 owned or operated by the sponsoring certificate holder.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 "(j) Upon receipt of an application that complies
24 with all of the requirements of subsection (g), the
25 commissioner shall register the applicant. The commissioner
26 shall by rule provide for annual renewal of registration and a

1 renewal fee not to exceed twenty-five dollars (\$25) as set by
2 the commissioner.

3 "§27-17A-22.

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

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

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

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

25 "c. Commits a Class A misdemeanor, punishable as
26 provided by law, as to each contract on which the payments

1 collected do not exceed, in the aggregate, five hundred
2 dollars (\$500).

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

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

11 "a. Commits a Class B felony, punishable as provided
12 by law, as to each contract on which the amount due for
13 deposit in trust exceeds, in the aggregate, two thousand five
14 hundred dollars (\$2,500).

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

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

25 "(c)(1) A person who intentionally withdraws funds
26 or assets from a preneed merchandise and services trust or

1 endowment care trust in a manner or under circumstances not
2 authorized by this chapter:

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

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

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

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

19 "(1) The person knowingly delivers to the
20 commissioner any official form, report, record, data, or other
21 document required by the commissioner containing a false
22 statement or false information concerning a matter material to
23 the commissioner in the exercise of his or her authority to
24 administer and enforce this chapter.

25 "(2) Incident to, or during the course of, an
26 examination, inspection, investigation, or other inquiry
27 authorized by this chapter, the person knowingly makes

1 available to a representative of the commissioner any official
2 form, report, record, data, or other document required by the
3 commissioner containing a false statement or false information
4 concerning a matter material to the purpose of the
5 examination, inspection, investigation, or inquiry.

6 "(3) With respect to the business records of a
7 person engaging in, or who has at any time engaged in, the
8 sale of a preneed contract, a person, with a purpose to use
9 deception as defined in subdivision (1) of Section 13A-8-1,
10 makes false entries in such records or alters, erases,
11 obliterates, deletes, or removes a correct entry in such
12 records, fails to make a correct entry in such records, or
13 prevents the making of a correct entry, or causes the omission
14 of a correct entry in such records.

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

18 "§27-17A-23.

19 "The commissioner, the Attorney General, or any
20 person may bring a civil action against a person or company
21 violating the provisions of this chapter in the appropriate
22 court of the county in which the alleged violator resides or
23 has his or her or its principal place of business or in the
24 county wherein the alleged violation occurred. Upon adverse
25 adjudication, the defendant shall be liable for actual damages
26 caused by the violation. The court may, as provided by common
27 law, may award punitive damages and may provide equitable

1 relief as it deems proper or necessary, including enjoining
2 the defendant from further ~~violations~~ violation of this
3 chapter.

4 "§27-17A-25.

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

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

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

15 "§27-17A-30.

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

20 "§27-17A-31.

21 "(a) 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, for funeral services or funeral
24 merchandise to be funded by trust shall deposit in ~~this state~~
25 trust an amount at least equal to the sum of 75 percent of the
26 amount collected on the purchase price ~~collected~~ for all
27 funeral services and funeral merchandise sold and facilities

1 rented other than outer burial containers, 60 percent of the
2 amount collected on the purchase price collected for outer
3 burial containers, and 100 percent of the amount collected on
4 the purchase price collected for all cash advance items sold.

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

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

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

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

17 "(4) With respect to all cash advance items sold,
18 100 percent of the purchase price specified for the items sold
19 in the preneed contract.

20 "(c) Any person who is paid, collects, or receives
21 funds under a preneed contract that is written or entered into
22 on or after January 1, 2015, for cemetery services or cemetery
23 merchandise to be funded by trust shall deposit in trust an
24 amount at least equal to 60 percent of the amount collected on
25 the purchase price for all cemetery services and cemetery
26 merchandise sold, 60 percent of the amount collected on the
27 purchase price for outer burial containers, and 100 percent of

1 the amount collected on the purchase price for all cash
2 advance items sold. A cemetery authority may not sell funeral
3 services.

4 "(b) All (d) For preneed contracts written or
5 entered into on or after May 1, 2002, and before January 1,
6 2015, all deposits in trust shall be made within 30 days after
7 the end of the calendar month in which the preneed contract is
8 paid in full unless, before that time, all liabilities of the
9 seller under the preneed contract to deliver the specific
10 funeral and cemetery merchandise or services, or both, or the
11 specific cash advances, identified by the preneed provider as
12 properly allocated to the payment, have been satisfied, or the
13 preneed contract is validly cancelled.

14 "(e) Effective January 1, 2015, for all preneed
15 contracts written or entered into on or after January 1, 2015,
16 all deposits in trust shall be made within 30 days after the
17 end of the calendar month in which the ~~preneed contract is~~
18 ~~paid in full~~ monies are collected, unless, prior to that time,
19 all liabilities of the seller under the preneed contract to
20 deliver the specific funeral and cemetery merchandise or
21 ~~funeral~~ services, or both, or the specific cash advances,
22 identified by the preneed provider as properly allocated to
23 the payment, have been satisfied, or the preneed contract is
24 validly cancelled.

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

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

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

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

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

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

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

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

6 "§27-17A-32.

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

25 "(b) The trustee shall make regular valuations of
26 the assets it holds in trust and provide a report of the
27 valuations to the certificate holder at least quarterly. The

1 report shall detail the number of preneed contracts held by
2 the trust at the beginning of the quarter and at the end of
3 the quarter, the number of new preneed contracts written or
4 entered into during the quarter, and the number of preneed
5 contracts fulfilled or cancelled during the quarter. The
6 report shall also detail the amount of assets held by the
7 trust at the beginning of the quarter and at the end of the
8 quarter, together with the amount of deposits and withdrawals
9 during the quarter. Within 30 days after the end of each
10 calendar quarter, the certificate holder shall furnish to the
11 commissioner the report of the valuations provided by the
12 trustee. At all times, the trustee shall be able to determine
13 the amount held in trust attributable to each contract holder.
14 The determination shall be based upon the fair market value of
15 the trust at that time and the proportionate share of the fair
16 market value attributable to each contract holder. Any person
17 who withdraws appreciation in the value of trust, other than
18 the pro rata portion of such appreciation which may be
19 withdrawn upon the death of a ~~contract~~ contract's funeral
20 beneficiary or upon cancellation of a preneed contract, shall
21 be required to make additional deposits from his or her own
22 funds to restore the aggregate value of assets to the value of
23 funds deposited in trust, but excluding from the funds
24 deposited those funds paid out upon preneed contracts which
25 the person has fully performed or which have been otherwise
26 withdrawn, as provided in this article. The certificate holder
27 shall be liable to third parties to the extent that income

1 from the trust is not sufficient to pay the expenses of the
2 trust.

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

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

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

17 "(2) ~~(3)~~ Commingle the property of the trust with
18 the property of any other preneed funeral, preneed cemetery,
19 or endowment care trust established pursuant to this article
20 and make corresponding allocations and divisions of assets,
21 liabilities, income, and expenses.

22 "(d) Notwithstanding the provisions of Section
23 19-3-125, the trustee may, subject to compliance with the
24 requirements set forth below, invest any portion or all of the
25 funds received under preneed contracts and deposited in trust
26 in life insurance contracts or annuities issued on the lives
27 of preneed contract purchasers or preneed contract

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

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

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

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

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

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

25 "(3) Any life insurance contract or annuity issued
26 in accordance with this subsection and otherwise in compliance

1 therewith shall be valid and in full force according to the
2 terms and conditions thereof.

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

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

13 "§27-17A-33.

14 ~~"(a) A purchaser, by providing written notice to the~~
15 ~~certificate holder, may cancel a preneed contract within 30~~
16 ~~days of the date that the contract was executed provided that~~
17 ~~the funeral merchandise and funeral services have not yet been~~
18 ~~used. Upon providing the notice, the purchaser shall be~~
19 ~~entitled to a complete refund of the amount paid, except for~~
20 ~~the amount allocable to any funeral merchandise or funeral~~
21 ~~services that have been used, and shall be released from all~~
22 ~~obligations under the contract. This subsection shall apply to~~
23 ~~all items that are purchased as part of a preneed contract.~~

24 ~~"(b) After 30 days from the date the preneed~~
25 ~~contract was executed, a purchaser, by providing written~~
26 ~~notice to the certificate holder, may cancel the funeral~~
27 ~~services, funeral merchandise, facilities, and cash advance~~

1 ~~items portions of a preneed contract at any time, and shall be~~
2 ~~entitled to the refund defined in the preneed contract~~
3 ~~allocable to those items. Any accumulated earnings allocable~~
4 ~~to the preneed contract shall be paid to the certificate~~
5 ~~holder upon the cancellation.~~

6 ~~"(c) Upon breach of contract or failure of the~~
7 ~~certificate holder to provide funeral merchandise or services~~
8 ~~under a preneed contract, the contract purchaser shall be~~
9 ~~entitled to a refund of 100 percent of all money paid on the~~
10 ~~contract. The refund shall be made within 30 days after~~
11 ~~receipt by the certificate holder of the contract purchaser's~~
12 ~~written request for refund.~~

13 ~~"(d) If a purchaser is 90 days past due in making~~
14 ~~payments on a preneed contract, the contract shall be~~
15 ~~considered to be in default, and the certificate holder shall~~
16 ~~be entitled to cancel the contract and withdraw all funds in~~
17 ~~trust. Upon making the withdrawal, the certificate holder~~
18 ~~shall refund to the purchaser the amount defined in the~~
19 ~~preneed contract in the event of default of the purchaser,~~
20 ~~provided that the certificate holder has provided the~~
21 ~~purchaser with 30 days' written notice of its intention to~~
22 ~~exercise any of its rights under this provision.~~

23 ~~"(e) All preneed contracts are cancelable and~~
24 ~~revocable as provided in this section during the lifetime of~~
25 ~~the purchaser, provided that a preneed contract does not~~
26 ~~restrict any contract purchaser who is a qualified applicant~~
27 ~~for, or a recipient of, supplemental security income,~~

1 temporary cash assistance, or Medicaid from making his or her
2 contract irrevocable.

3 ~~"(f) In the event that the preneed contract is made~~
4 ~~irrevocable pursuant to subsection (e), the purchaser or the~~
5 ~~authorizing agent shall have the right to appoint a provider~~
6 ~~other than the seller of the preneed contract. In the event~~
7 ~~that a provider is appointed pursuant to this subsection, the~~
8 ~~seller shall transfer to the appointed provider the amount~~
9 ~~paid by the purchaser less a reasonable transfer fee~~
10 ~~determined by the seller. No transfer hereunder shall occur~~
11 ~~without the acceptance of the appointed provider.~~

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

16 "(a) A preneed contract shall contain a provision,
17 on terms not less favorable than the following, which permits
18 contract cancellation by the authorizing agent of the funeral
19 beneficiary for the failure of performance at the default of
20 the preneed contract seller by failing to deliver the
21 merchandise or perform the services specified in a preneed
22 contract upon notice to do so at the death of a beneficiary:

23 "(1) In the case of a contract that uses a
24 merchandise and services trust or trust alternative other than
25 life insurance or an annuity as a funding mechanism, the
26 contract shall provide for a refund of all monies paid plus
27 any accumulated trust appreciation based upon the market value

1 of the proportionate share of the trust allocable to the
2 preneed contract as of the cancellation date. Within 15
3 calendar days after any such cancellation, the refund shall be
4 delivered to the contract purchaser or person determined under
5 subsection (e) or transferred to a succeeding provider as
6 directed by that person.

7 "(2) In the case of a preneed contract that uses
8 life insurance or annuity funding as a funding mechanism as
9 permitted by Section 27-17A-3, the preneed provider shall
10 cancel and relinquish any assignment of benefits or
11 beneficiary status under the policy or contract and deliver
12 the policy or contract, if in the custody of the preneed
13 seller, to the owner of the funding insurance policy or
14 policies or annuity contract or person or persons determined
15 under subsection (e) or transferred to a succeeding provider
16 as directed by that person. The action shall be taken within
17 15 calendar days after cancellation.

18 "(b) Unless made irrevocable as provided in
19 subsection (f), a preneed contract shall provide that the
20 contract purchaser may fully cancel the contract at any time
21 before the death of the designated funeral beneficiary of the
22 preneed contract upon written notice of the contract purchaser
23 to the seller.

24 "(c) 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 contract shall provide for a refund or partial refund of the

1 total monies paid upon cancellation on terms not less
2 favorable than the following:

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

9 "(2) If the contract is validly cancelled more than
10 30 days after it is fully signed by the parties, and after
11 deductions of amounts equal to the current prices for any
12 services performed or merchandise delivered to the control of
13 the purchaser before receipt of the cancellation notice, the
14 preneed seller shall refund to the purchaser an amount not
15 less than 75 percent of all monies paid by the purchaser for
16 funeral merchandise, funeral services, and facilities rented,
17 100 percent of all monies paid for cash advance items, and 60
18 percent of all monies paid by the purchaser for outer burial
19 containers, cemetery merchandise, and cemetery services.

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

23 "(4) If, before notice of cancellation, the trust
24 has invested the principal amount allocable to a preneed
25 contract in one or more life insurance policies or annuities
26 in accordance with subsection (d) of Section 27-17A-32, the
27 refund obligation of the preneed seller is satisfied if the

1 seller causes the trustee to assign the policies or annuities
2 to the purchaser within 30 calendar days after receipt of the
3 written cancellation notice. Any remaining trust funds
4 allocable to the contract which are not invested in life
5 insurance or annuities at the time of cancellation shall be
6 refunded to the purchaser on a proportionate basis consistent
7 with subdivision (2) and within the time specified in
8 subdivision (3).

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

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

25 "(2) If the contract is validly cancelled more than
26 30 days after it is fully signed by the parties, the purchaser
27 shall be given the option to do either the following:

1 "a. Cancel the preneed contract but retain the life
2 insurance policy or annuity contract, in which event the
3 preneed seller shall cancel and relinquish any assignment of
4 death benefits or beneficiary status under the policy or
5 contract and deliver the policy or contract, if in the custody
6 of the preneed seller, to the purchaser.

7 "b. Cancel the life insurance policy or annuity
8 contract and accept the cash value of the policy or contract,
9 if any, as the full refund due to the purchaser for
10 cancellation of the preneed contract. The preneed contract
11 shall disclose to the purchaser that the cash value of any
12 funding life insurance policy or annuity contract may be less
13 than the amount paid by the purchaser for the preneed
14 contract.

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

23 "(4) Any refunds or actions required under this
24 subsection shall be made or completed within 30 calendar days
25 after receipt of written cancellation notice by the preneed
26 provider.

1 "(e) The preneed contract shall clearly identify the
2 person or persons who may exercise any cancellation right
3 provided for in the contract before the death of the
4 contract's funeral beneficiary and who are entitled to any
5 refunds. Any cancellation right provided for in a preneed
6 contract is exercisable at the death of the funeral
7 beneficiary identified in the contract by the authorizing
8 agent of the funeral beneficiary. An authorizing agent does
9 not acquire any right, solely through status as authorizing
10 agent, to receive cash refunds for his or her personal
11 benefit. Any such person, as so designated or determined,
12 shall be the contract purchaser for purposes of this section.

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

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

1 preneed provider shall transfer to the succeeding provider
2 monies equaling the total amount paid for the contract plus
3 any accumulated trust appreciation based upon the market value
4 of the proportionate share of the trust allocable to the
5 preneed contract as of the date of cancellation.

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

10 "b. The contract seller is entitled to retain a
11 transfer fee, not to exceed 25 percent of the total monies
12 paid by the purchaser.

13 "c. Upon cancellation and such funds transfer, the
14 preneed contract shall be considered cancelled.

15 "(2) In the case of a preneed contract that uses
16 life insurance or annuity funding as a funding mechanism as
17 permitted by Section 27-17A-3, the preneed provider shall
18 cancel and relinquish any assignment of benefits or
19 beneficiary status under the policy or contract and deliver
20 the policy or contract, if in the custody of the preneed
21 seller, to the succeeding provider or the authorizing agent of
22 the funeral beneficiary. Upon such transfer, the preneed
23 contract shall be considered cancelled.

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

1 "(g) A preneed contract that uses a merchandise and
2 services trust or trust alternative other than life insurance
3 or an annuity as a funding mechanism may contain provisions
4 permitting the preneed seller to cancel the contract in the
5 event the contract purchaser is 90 days or more past due in
6 making payments on the contract in accordance with the
7 contract terms. Such provisions shall be not less favorable
8 than the following:

9 "(1) During the 90-day delinquency period, the
10 contract seller shall give the contract purchaser prior
11 written notice of not less than 30 calendar days advising of
12 the intent of the seller to cancel the contract for payment
13 default and allowing the purchaser the remainder of the notice
14 period to cure the default by tendering full payment of
15 amounts due but unpaid.

16 "(2) In the case of a preneed contract that uses a
17 merchandise and services trust as a funding mechanism, upon
18 cancellation, the contract seller may withdraw from trust all
19 funds allocated to that contract and the accumulated trust
20 appreciation based upon the market value of the proportionate
21 share of the trust allocable to that contract. From that
22 amount, the contract seller, upon receipt of the written
23 request of the purchaser for a refund of monies paid, shall
24 refund to the contract purchaser an amount specified in or
25 determined by the contract, which amount may not be less than
26 75 percent of the total monies paid by the purchaser for
27 funeral merchandise, funeral services, and facilities rented,

1 100 percent of all monies paid for cash advance items, and 60
2 percent of all monies paid by the purchaser for outer burial
3 containers, cemetery merchandise, and cemetery services.

4 "(3) In the case of a preneed contract that uses a
5 trust alternative other than life insurance or annuity funding
6 as a funding mechanism, upon receipt of the written request of
7 the purchaser for a refund of monies paid, the contract seller
8 shall refund to the contract purchaser an amount specified in
9 or determined by the contract, which amount shall not be less
10 than 75 percent of the total monies paid by the purchaser for
11 funeral merchandise, funeral services, and facilities rented,
12 100 percent of all monies paid for cash advance items, and 60
13 percent of all monies paid by the purchaser for outer burial
14 containers, cemetery merchandise, and cemetery services.

15 "(4) The refunds or other actions required by this
16 subsection shall be paid or completed within 30 calendar days
17 of receipt by the seller of the written acknowledgement of
18 cancellation and request for a refund of monies paid by the
19 purchaser.

20 "(h) A preneed contract that uses life insurance or
21 annuity funding as a funding mechanism as permitted by Section
22 27-17A-3 may contain provisions permitting the preneed seller
23 to cancel the contract if the contract purchaser is 90 days or
24 more past due in making premium payments in accordance with
25 the contract terms, or in the event that one or multiple
26 funding life insurance policies or annuity contracts lapse or
27 are cancelled or terminated by the issuing insurance company

1 for nonpayment of premiums by the preneed contract purchaser.
2 Such provisions shall be not less favorable than the
3 following:

4 "(1) Cancellation of the preneed contract may not
5 occur unless the contract purchaser has failed to cure the
6 premium delinquency or pay any monies needed to reinstate
7 coverage in the manner and by the times specified in the
8 insurance policies or annuity contracts.

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

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

20 "§27-17A-34.

21 "(a) Disbursement of funds discharging any preneed
22 contract for funeral and cemetery services or ~~funeral~~
23 merchandise fulfilled after May 1, 2002, shall be made by the
24 trustee to the certificate holder upon receipt by the trustee
25 of a certification of the certificate holder that the preneed
26 contract has been performed in whole or in part or the preneed
27 contract has been cancelled. Before the trustee may disburse

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

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

1 in trust for all preneed contracts as of the date of
2 withdrawal.

3 "§27-17A-47.

4 "(a) Every cemetery authority operating an endowment
5 care cemetery shall establish an endowment care fund which
6 shall be placed with and held by a bank, trust company,
7 savings and loan association, or other financial institution
8 authorized to provide trust services under Title 5, as
9 amended, or under the applicable laws of the United States or
10 any other state, or a board of trustees, consisting of at
11 least three members, who shall reside in the State of Alabama,
12 one of whom is engaged in outside cemetery management, and
13 each of whom shall be bonded to honestly perform the duties of
14 trustee under a formal trust agreement.

15 "(b) Except as specifically provided in this
16 subsection, commencing on the effective date of the act adding
17 this subsection, a person serving on a board of trustees may
18 not also serve as the trustee of an endowment care fund. A
19 board of trustees in existence on the effective date of the
20 act adding this subsection may continue to serve as the
21 trustee of an endowment care fund if the board of trustees
22 otherwise complies with this subsection. Unless exempted by
23 the commissioner pursuant to this subsection, on or before
24 January 1, 2012, each member of a board of trustees in
25 existence on the effective date of the act adding this
26 subsection shall furnish the bond required by subsection (a)
27 in the greater of one hundred thousand dollars (\$100,000) or

1 the amount in each endowment care fund for which the board
2 acts as trustee as of December 31, 2011. Thereafter, the
3 amount of the bonds shall be increased on January 1 of each
4 succeeding year to equal the amount in each endowment care
5 fund as of the immediately preceding December 31. The
6 commissioner shall exempt a board of trustees from the bond
7 requirement if the board of trustees provides to the
8 commissioner an annual audit report that satisfies all of the
9 following criteria:

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

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

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

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

21 "(c) (b) The amount of each bond shall be a minimum
22 of twenty-five thousand dollars (\$25,000). The corporate
23 trustee or board of trustees shall be referred to as a
24 "qualified trustee." Unless otherwise specified in this
25 article or in the terms of the trust instrument, the trustee
26 of any trust established under or pursuant to this article
27 shall have all powers granted to trustees under Article 14 of

1 Chapter 3 of Title 19. The incorporation herein of such powers
2 shall not be deemed to imply any duties of trustees of trusts
3 established under or pursuant to this article not expressly
4 delineated in this article.

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

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

13 "(f) As often as he or she may deem necessary, the
14 commissioner may examine the records or facilities, or both,
15 of any cemetery authority operating an endowment care
16 cemetery.

17 "§27-17A-50.

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

1 reinvesting, or retaining any asset or business in which the
2 cemetery authority or any officer, director, owner, partner,
3 or employee of the cemetery authority has an insubstantial or
4 nonmaterial financial interest, provided that the trustee, in
5 the exercise of the trustee's discretion, deems the
6 investment, reinvestment, or retention to be for the best
7 interest of the trust estate.

8 "(b) The net income from the endowment care fund, to
9 the extent that the same is distributed from the fund, shall
10 be used exclusively for covering the costs of endowment care
11 of the cemetery.

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

22 "§27-17A-55.

23 "(a) A cemetery authority shall start construction
24 of that section of a mausoleum or bank of below-ground crypts
25 in which sales, contracts for sale, reservations for sale, or
26 agreements for sale are being made, within five years after
27 the date of the first sale or when 75 percent of the mausoleum

1 or below-ground crypts have been sold and the purchase price
2 has been received, whichever occurs first. The construction
3 shall be completed within six years after the date of the
4 first sale made. Extensions for completion, not to exceed one
5 year, may be granted by the commissioner for good cause shown.
6 If the units have not been completely constructed at the time
7 of need or the time specified herein, unless otherwise
8 specified in the preneed contract, all ~~moneys~~ monies paid
9 shall be refunded upon request, plus interest earned thereon
10 if deposited by the cemetery authority in an escrow or trust
11 fund, and if not so deposited in an escrow or trust fund
12 earning interest, then plus interest in an amount equal to the
13 interest or discount which would have been earned thereon had
14 the funds been invested in United States Treasury Bills having
15 a 90-day maturity.

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

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

21 "(d) If the cemetery authority delivers a completed
22 crypt or niche acceptable to the purchaser, in lieu of the
23 crypt or niche purchased before construction, all sums
24 deposited into the preconstruction trust for that purchaser
25 shall be paid to the cemetery authority.

26 "(e) Subject to the approval of the commissioner,
27 each cemetery authority, at the time of establishment of a

1 preconstruction trust, may negotiate a procedure for
2 withdrawal of the escrowed funds as a part of the construction
3 cost of the mausoleum section, columbarium, or bank of
4 below-ground crypts contemplated. Upon completion of the
5 mausoleum section, columbarium, or bank of below-ground
6 crypts, the cemetery authority shall certify completion to the
7 trustee and may withdraw all funds deposited to the account
8 thereof.

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

19 "(g) On or before July 1 of each year, the trustee
20 shall file with the commissioner, in a form prescribed by rule
21 of the commissioner, a complete and true statement of the
22 activities of any trust established pursuant to this chapter
23 for the preceding calendar year.

24 "(h) In lieu of payments to a preconstruction trust,
25 a cemetery authority may deliver to the commissioner a
26 performance bond in an amount and by a surety company
27 acceptable to the commissioner."

1 Section 6. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

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