

1 HB87  
2 157558-7  
3 By Representatives Brown and Givan  
4 RFD: Insurance  
5 First Read: 14-JAN-14  
6 PFD: 01/06/2014

1 ENGROSSED

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3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

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

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

1 the trustee of an endowment care fund, with certain specified  
2 exceptions, and to require bonds on trustees, with certain  
3 specified exceptions; to define net income for purposes of an  
4 endowment care fund; and in connection therewith to have as  
5 its purpose or effect the requirement of a new or increased  
6 expenditure of local funds within the meaning of Amendment 621  
7 of the Constitution of Alabama of 1901.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§27-17A-2.

13 "As used in this chapter, the following terms shall  
14 have the following meanings:

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

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

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

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

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

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

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

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

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

24           "(10) CASKET. A rigid container which is designed  
25 for the encasement of human remains and which is usually  
26 constructed of wood, metal, or like material, and ornamented  
27 and lined with fabric.

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

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

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

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

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

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

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

26           "(18) CREMATED REMAINS. The bone fragments remaining  
27 after the cremation process, which may include the residue of

1 any foreign materials that were cremated with the human  
2 remains.

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

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

12 "(21) CREMATORY AUTHORITY. Any person who owns or  
13 controls a crematory.

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

17 "(23) DECEASED or DECEDENT. One who is no longer  
18 living.

19 "(24) EMBALMER. One authorized by law to engage in  
20 embalming.

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

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

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

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

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

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

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

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

24           "~~(32)~~(33) FUNERAL DIRECTING. The act or service of  
25 conducting funerals and counseling with survivors and  
26 preparing human remains, other than by embalming, for the  
27 interment or other means of disposition, and may include the



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

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

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

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

15 "a. Alternative container.

16 "b. Casket.

17 "c. Outer burial container.

18 "d. Urn.

19 "e. Memorials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27          "§27-17A-3.

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

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

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

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

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

11 "§27-17A-10.

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

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

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

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

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

26 "~~(2)~~ ~~(3)~~ (4) The provisions of subdivision (1) do not  
27 apply to any legal reserve insurance company or to any trust



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

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

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

13 "§27-17A-11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 §27-17A-11.1.

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

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

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

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

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

20 "§27-17A-12.

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

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

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

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

8 "§27-17A-13.

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

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



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

3 "§27-17A-14.

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

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

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

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

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

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

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

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

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

18 "§27-17A-18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           "§27-17A-22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

8           "§27-17A-23.

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

21           "§27-17A-25.

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

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

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

5           "§27-17A-31.

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

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

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

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

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

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

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

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

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

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

21 "§27-17A-32.

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

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

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

1 identify the amount held in trust attributable to each  
2 contract holder. For all contracts effective on or after  
3 January 1, 2015, the determination shall be based upon the  
4 fair market value of the trust at the time and the  
5 proportionate share of the fair market value attributable to  
6 each contract holder. For all contracts in effect before  
7 January 1, 2015, the valuation of each contract may be  
8 calculated using any valuation method that had been approved  
9 by the commissioner or the department before January 1, 2015.

10 Any person who withdraws appreciation in the value of trust,  
11 other than the pro rata portion of such appreciation which may  
12 be withdrawn upon the death of a ~~contract~~ contract's funeral  
13 beneficiary or upon cancellation of a preneed contract, shall  
14 be required to make additional deposits from his or her own  
15 funds to restore the aggregate value of assets to the value of  
16 funds deposited in trust, but excluding from the funds  
17 deposited those funds paid out upon preneed contracts which  
18 the person has fully performed or which have been otherwise  
19 withdrawn, as provided in this article. The certificate holder  
20 shall be liable to third parties to the extent that income  
21 from the trust is not sufficient to pay the expenses of the  
22 trust.

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

25 "(1) Make investments and exercise necessary  
26 investment powers, provided that the commissioner may by order

1 require the trustee to liquidate or dispose of any investment  
2 within 30 days after the order.

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

11 ~~"(3) (2)~~ Commingle the property of the trust with the  
12 property of any other preneed funeral, preneed cemetery, or  
13 endowment care trust established pursuant to this article and  
14 make corresponding allocations and divisions of assets,  
15 liabilities, income, and expenses.

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



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

4           "a. The company issuing the life insurance contracts  
5 or annuities is licensed by the Department of Insurance and  
6 the insurance producer or annuity seller is properly licensed  
7 within its domiciliary jurisdiction.

8           "b. Prior to the investment, the insured or  
9 annuitant consents, in writing, to the investment in life  
10 insurance contracts or annuities.

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

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

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

25           "(4) A trustee that invests all or any portion of  
26 the funds received under preneed contracts and deposited in  
27 trust in life insurance contracts or annuities issued by one

1 company licensed by the department shall be considered to  
2 satisfy the standards and requirements of Section 19-3-120.2  
3 and Chapter 3B of Title 19.

4 "(5) It is the intention of the Legislature that  
5 this subsection shall be retroactive and shall apply to all  
6 life insurance contracts or annuities issued prior to May 6,  
7 2008.

8 "§27-17A-34.

9 "(a) Disbursement of funds discharging any preneed  
10 contract for funeral services or funeral merchandise fulfilled  
11 after May 1, 2002, shall be made by the trustee to the  
12 certificate holder upon receipt by the trustee of a  
13 certification of the certificate holder that the preneed  
14 contract has been performed in whole or in part or the preneed  
15 contract has been cancelled. Before the trustee may disburse  
16 any trust funds, the certificate holder shall provide to the  
17 trustee a death certificate or other valid proof of death, a  
18 letter from the preneed contract holder cancelling the preneed  
19 contract or valid proof the contract has been cancelled in  
20 accordance with Section 27-17A-33, or valid proof the  
21 merchandise has been delivered and installed, and services  
22 have been performed. Any trustee accepting preneed contract  
23 proceeds under this article may rely upon the certification of  
24 the certificate holder ~~as herein required to be made~~  
25 accompanied by the required proof, and shall not be liable to  
26 anyone for such reliance. If the contract is only partially  
27 performed, the disbursement shall only cover that portion of

1 the contract performed. In the event of any contract default  
2 by the contract purchaser, or in the event that the funeral  
3 merchandise or funeral service contracted for is not provided,  
4 the trustee shall return, within 30 days after its receipt of  
5 a written request therefor, 100 percent of the funds ~~paid~~  
6 deposited into the trust on the contract and the income and  
7 accretion thereon to the certificate holder or to its assigns,  
8 subject to ~~the provisions of~~ Section 27-17A-33.

9 " (b) ~~If the preneed contract so provides, the~~  
10 ~~trustee may distribute trust income allocable to the preneed~~  
11 ~~contract to the certificate holder on an annual basis, so long~~  
12 ~~as the distribution is consistent with subsection (b) of~~  
13 ~~Section 27-17A-32~~ For all contracts effective on or after  
14 January 1, 2015, the amount that may be withdrawn from the  
15 trust upon fulfillment or cancellation of any particular  
16 preneed contract may not exceed the amount attributable to  
17 that preneed contract in proportion to the total amount held  
18 in trust for all preneed contracts as of the date of  
19 withdrawal. For all contracts in effect before January 1,  
20 2015, the valuation of each contract and the amount that may  
21 be withdrawn from the trust may be calculated using any  
22 valuation method that had been approved by the commissioner or  
23 the department before January 1, 2015.

24 "§27-17A-40.

25 "To comply with the trust requirement of subsection  
26 (a) of Section 27-17A-13, all certificate holders who are  
27 cemetery authorities providing preneed contracts for cemetery

1 services or cemetery merchandise shall be subject to this  
2 article.

3 "§27-17A-42.

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

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

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

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

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

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

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

1 have been satisfied, or the preneed contract is validly  
2 cancelled.

3 "(c) For all preneed contracts entered into on or  
4 after January 1, 2015, all contributions shall be made not  
5 later than 30 days after the end of the calendar month in  
6 which the sum of the monies collected on the preneed contract  
7 exceeds the amount that is not required to be contributed as  
8 determined under subsection (a), unless, prior to that time,  
9 all liabilities of the seller under the preneed contract have  
10 been satisfied, or the preneed contract is validly cancelled.  
11 Further required trust contributions on the contract shall  
12 thereafter be made not later than 30 days after the end of the  
13 calendar month in which each contract payment is collected by  
14 the seller.

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

17 ~~"(d)~~ (e) The trustee shall make regular evaluations  
18 of the fair market value of assets held in and liabilities, if  
19 any, of the Cemetery Merchandise and Services Trust Fund and  
20 provide a report of the evaluations to the seller at least  
21 quarterly. Upon receipt of each quarterly report, the seller  
22 may submit to the trustee a written and detailed analysis  
23 concerning the balance of funds in the Cemetery Merchandise  
24 and Services Trust Fund, certified under oath as being true  
25 and correct upon information and belief by a responsible  
26 officer of the seller.

1           "~~(e)~~ (f) While the obligation of the seller to make  
2 contributions to the Cemetery Merchandise and Services Trust  
3 Fund is set forth in this section, the obligation of the  
4 seller at the time of making certain withdrawals from the  
5 Cemetery Merchandise and Services Trust Fund as herein  
6 provided for shall be calculated with respect to the current  
7 wholesale cost of cemetery merchandise and current retail  
8 price of cemetery services and cash advances at the time of  
9 withdrawal. If the fair market value as reported by the  
10 trustee exceeds 110 percent of the total of the following, the  
11 seller shall be entitled to withdraw and retain from the  
12 merchandise trust fund, the excess funds therein: ~~One hundred~~  
13 ~~and ten~~ 110 percent of the current wholesale cost of the  
14 liability to deliver all cemetery merchandise, 60 percent of  
15 the current retail price for all cemetery services, 60 percent  
16 of the current retail price of outer burial containers, 75  
17 percent of the current retail price of caskets, and 100  
18 percent of the current retail price of all cash advances, for  
19 the total of all preneed contracts for which the purchasers  
20 have paid in full, all calculated as of the time of  
21 withdrawal; and concerning the total of all preneed contracts  
22 for which the purchasers have not paid in full, 25 percent of  
23 the total of the following: 110 percent of the current  
24 wholesale cost of the liability to deliver all cemetery  
25 merchandise, 60 percent of the current retail price for all  
26 cemetery services, and 100 percent of the current retail price

1 of all cash advances, all calculated as of the time of  
2 withdrawal.

3 ~~"(f)(g)~~ At least annually the seller shall make the  
4 aforesaid analysis and certification and provide the same to  
5 the trustee. If the certification discloses that the fair  
6 market value of the Cemetery Merchandise and Services Trust  
7 Fund is less than 100 percent of the aggregate calculated  
8 amount the seller shall from its own funds contribute to the  
9 Cemetery Merchandise and Services Trust Fund within the 12  
10 months succeeding the annual computation the amount necessary  
11 to restore the trust fund to an amount equal to not less than  
12 100 percent of the aggregate amount so calculated.

13 "§27-17A-44.

14 ~~"(a) Without limiting in any way the liability of  
15 the seller under a preneed contract to perform its obligations  
16 thereunder, including, without limitation, the obligation to  
17 deliver the cemetery merchandise, and for installation thereof  
18 if it is to be included in the preneed contract, the seller  
19 shall not be required to place in trust proceeds paid under  
20 the contract for cemetery merchandise.~~

21 ~~"(b) If the trust proceeds amounts paid by the  
22 purchaser under a preneed contract for cemetery merchandise  
23 have previously been paid deposited in trust, the seller may  
24 withdraw the principal amount there, at such time as the  
25 cemetery merchandise is delivered or installed or, if  
26 comprised of materials designed to withstand prolonged,  
27 protected storage without deterioration, the merchandise is~~

1 placed in storage with a responsible third party bonded and  
2 insured for the wholesale value thereof and evidenced by a  
3 receipt specifically identifying the item, the specific  
4 preneed contract, the location of the item, and the identity  
5 and address of the bonding and insuring parties. For purposes  
6 of this subsection only, caskets and alternative containers  
7 may not be held in storage by the seller or a third party  
8 storage facility prior to the death of the funeral  
9 beneficiary.

10 "§27-17A-47.

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

22 "(b) Except as specifically provided in this  
23 subsection, commencing on the effective date of the act adding  
24 this subsection, a person serving on a board of trustees or  
25 cemetery authority may not also serve as a trustee of an  
26 endowment care fund for the cemetery authority. A board of  
27 trustees in existence on the effective date of the act adding



1 this subsection may continue to serve as the trustee of an  
2 endowment care fund if the board of trustees otherwise  
3 complies with this subsection. Unless exempted by the  
4 commissioner pursuant to this subsection, on or before January  
5 1, 2015, each member of a board of trustees in existence on  
6 the effective date of the act adding this subsection shall  
7 furnish the bond required by subsection (a) in the greater of  
8 one hundred thousand dollars (\$100,000) or the amount in each  
9 endowment care fund for which the board acts as trustee as of  
10 December 31, 2014. Thereafter, the amount of the bonds shall  
11 be increased on January 1 of each succeeding year to equal the  
12 amount in each endowment care fund as of the immediately  
13 preceding December 31. The commissioner shall exempt a board  
14 of trustees from the bond requirement if the board of trustees  
15 provides to the commissioner an annual audit report that  
16 satisfies all of the following criteria:

17 "(1) The report is prepared by a certified public  
18 accountant licensed authorized to practice in Alabama.

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

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

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

1           ~~"(b) The amount of each bond shall be a minimum of~~  
2 ~~twenty-five thousand dollars (\$25,000).~~ (c) The corporate  
3 trustee or board of trustees shall be referred to as a  
4 "qualified trustee." Unless otherwise specified in this  
5 article or in the terms of the trust instrument, the trustee  
6 of any trust established under or pursuant to this article  
7 shall have all powers granted to trustees under Article 14 of  
8 Chapter 3 of Title 19. The incorporation herein of such powers  
9 shall not be deemed to imply any duties of trustees of trusts  
10 established under or pursuant to this article not expressly  
11 delineated in this article.

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

14           ~~"(d) (e)~~ The cemetery authority may enter into a  
15 contract with the qualified trustee for the management and  
16 investment of the endowment care fund, which contract may  
17 provide for the payment of income from the fund of reasonable  
18 fees or commissions to the trustee, and its reasonable  
19 expenses for administering the trust.

20           "(f) As often as he or she may deem necessary, the  
21 commissioner may examine the records or facilities, or both,  
22 of any cemetery authority operating an endowment care  
23 cemetery.

24           "§27-17A-50.

25           "(a) No cemetery authority may directly or  
26 indirectly require or direct the investment, reinvestment, or  
27 retention by a qualified trustee of any part of an endowment

1 care trust in any asset or business in which the cemetery  
2 authority or any officer, director, owner, partner, or  
3 employee of the cemetery authority has a financial interest.  
4 Nothing contained in this subsection shall prevent the  
5 trustee, subject to the provisions regarding investment and  
6 reinvestment of the trust estate as are contained in the  
7 governing instrument creating the trust, from investing,  
8 reinvesting, or retaining any asset or business in which the  
9 cemetery authority or any officer, director, owner, partner,  
10 or employee of the cemetery authority has an insubstantial or  
11 nonmaterial financial interest, provided that the trustee, in  
12 the exercise of the trustee's discretion, deems the  
13 investment, reinvestment, or retention to be for the best  
14 interest of the trust estate.

15 "(b) The net income from the endowment care fund, to  
16 the extent that the same is distributed from the fund, shall  
17 be used exclusively for covering the costs of endowment care  
18 of the cemetery.

19 "(c) For the purposes of this section, net income  
20 does not include realized or unrealized capital gains or  
21 losses. All realized capital gains and losses shall be  
22 recorded to corpus, which is the sum of deposits made by a  
23 cemetery authority into an endowment care fund, pursuant to  
24 Section 27-17A-49, and all realized capital gains or losses.  
25 Capital gains taxes, if any, may be paid from the corpus.  
26 Unrealized capital gains and losses, if any, shall be recorded

1 as an adjustment to the fair market value of the endowment  
2 care fund.

3 "§27-17A-55.

4 "A cemetery authority shall start construction of  
5 that section of a mausoleum or bank of below-ground crypts in  
6 which sales, contracts for sale, reservations for sale, or  
7 agreements for sale are being made, within five years after  
8 the date of the first sale or when 75 percent of the mausoleum  
9 or below-ground crypts have been sold and the purchase price  
10 has been received, whichever occurs first. The construction  
11 shall be completed within six years after the date of the  
12 first sale made. Extensions for completion, not to exceed one  
13 year, may be granted by the commissioner for good cause shown.  
14 If the units have not been completely constructed at the time  
15 of need or the time specified herein, unless otherwise  
16 specified in the preneed contract, all ~~moneys~~ monies paid  
17 shall be refunded upon request, plus interest earned thereon  
18 if deposited by the cemetery authority in an escrow or trust  
19 fund, and if not so deposited in an escrow or trust fund  
20 earning interest, then plus interest in an amount equal to the  
21 interest or discount which would have been earned thereon had  
22 the funds been invested in United States Treasury Bills having  
23 a 90-day maturity."

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

26 §27-17A-57.

1           The commissioner shall have the same jurisdiction  
2 over funeral establishments, funeral directors, cemetery  
3 authorities, or third party sellers who sell preneed contracts  
4 without a preneed certificate of authority as he or she has  
5 over those preneed sellers who possess a preneed certificate  
6 of authority.

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

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

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Insurance ..... . . . . 14-JAN-14

Read for the second time and placed  
on the calendar with 1 substitute  
and 2 amendments..... . . . . 06-FEB-14

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

Yeas 92, Nays 6, Abstains 1

Jeff Woodard  
Clerk