

1 HB87
2 155532-2
3 By Representatives Brown and Givan
4 RFD: Insurance
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8 SYNOPSIS: Under existing law, the Alabama Preneed
9 Funeral and Cemetery Act provides for the
10 regulation of the sale of preneed funeral or
11 cemetery merchandise and services.

12 This bill would strengthen consumer
13 protection and eliminate ambiguity in the
14 requirements for the proper handling of preneed and
15 cemetery endowment care funds.

16 This bill would provide further for the
17 ability of the Commissioner of Insurance to deter
18 violations and ensure compliance with the act.

19 This bill would grant the commissioner
20 jurisdiction over any person unlawfully writing, or
21 suspected of unlawfully writing, preneed contracts
22 and would clarify the penalties for violations.

23 This bill would further clarify the
24 requirement that any person selling funeral or
25 cemetery merchandise or services on a preneed basis
26 obtain a certificate of authority from the
27 Department of Insurance.

1 This bill would specify which violations
2 related to preneed sales, trust deposits, and
3 collections are felonies.

4 This bill would increase, from a Class B to
5 a Class A misdemeanor, all non-felony violations of
6 the act.

7 This bill would authorize the commissioner
8 to bring a civil action against any person or
9 company violating the act and increase the recovery
10 of funds on behalf of consumers.

11 This bill would clarify that a person who
12 only sells preneed burial rights is not required to
13 register as a preneed sales agent.

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

20 This bill would require each certificate
21 holder to file with the commissioner a quarterly
22 report of all preneed contract and trust activity.

23 This bill would clarify the amount of a bond
24 used as an alternative to a trusting requirement.

25 This bill would authorize the commissioner
26 to use funds received from any source for purposes
27 of enforcement.

1 This bill would clarify that funds received
2 for funeral and cemetery merchandise placed in
3 storage prior to death need not be placed in trust.

4 This bill would require certificate holders
5 to satisfy additional requirements and to file with
6 the commissioner a quarterly report of all preneed
7 contract trust activity.

8 This bill would subject endowment cemetery
9 authorities to the act.

10 This bill would require any person receiving
11 funds from the sale of a preneed contract to
12 contribute to a trust fund, life insurance
13 contract, or annuity contract.

14 This bill would require that preneed
15 cemetery merchandise and services funds remain in
16 trust until cancellation or fulfillment of a
17 preneed contract.

18 This bill would prohibit a person serving on
19 a cemetery board of trustees from also serving as
20 the trustee of an endowment care fund, with certain
21 specified exceptions, and would require bonds on
22 trustees, with certain specified exceptions.

23 This bill would define net income for
24 purposes of an endowment care fund.

25 Amendment 621 of the Constitution of Alabama
26 of 1901 prohibits a general law whose purpose or
27 effect would be to require a new or increased

1 expenditure of local funds from becoming effective
2 with regard to a local governmental entity without
3 enactment by a 2/3 vote unless: it comes within one
4 of a number of specified exceptions; it is approved
5 by the affected entity; or the Legislature
6 appropriates funds, or provides a local source of
7 revenue, to the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of Amendment 621. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in Amendment 621.

15
16 A BILL

17 TO BE ENTITLED

18 AN ACT

19
20 Relating to the Alabama Preneed Funeral and Cemetery
21 Act; to amend Sections 27-17A-2, 27-17A-3, 27-17A-10,
22 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-18,
23 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31, 27-17A-32,
24 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44, 27-17A-47,
25 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add
26 Sections 27-17A-11.1 and 27-17A-57 to the Code of Alabama
27 1975, to strengthen consumer protection and eliminate

1 ambiguity in the requirements for the proper handling of
2 preneed and cemetery endowment care funds; to provide further
3 for the ability of the Commissioner of Insurance to deter
4 violations and ensure compliance with the act; to grant the
5 commissioner jurisdiction over any person unlawfully writing,
6 or suspected of unlawfully writing, preneed contracts and to
7 clarify the penalties for violations; to further clarify the
8 requirement that any person selling funeral or cemetery
9 merchandise or services on a preneed basis obtain a
10 certificate of authority from the Department of Insurance; to
11 specify which violations related to preneed sales, trust
12 deposits, and collections are felonies; to increase, from a
13 Class B to a Class A misdemeanor, all non-felony violations of
14 the act; to authorize the commissioner to bring a civil action
15 against any person or company violating the act and increase
16 the recovery of funds on behalf of consumers; to clarify that
17 a person who only sells preneed burial rights is not required
18 to register as a preneed sales agent; to revise the annual
19 application and renewal dates for persons holding preneed
20 certificates of authority and to waive the requirement of
21 filing annual financial statements under certain circumstances
22 and upon written request to the commissioner; to require each
23 certificate holder to file with the commissioner a quarterly
24 report of all preneed contract and trust activity; to clarify
25 the amount of a bond used as an alternative to a trusting
26 requirement; to authorize the commissioner to use funds
27 received from any source for purposes of enforcement; to

1 clarify that funds received for funeral and cemetery
2 merchandise placed in storage prior to death need not be
3 placed in trust; to require certificate holders to satisfy
4 additional requirements and to file with the commissioner a
5 quarterly report of all preneed contract trust activity; to
6 subject endowment cemetery authorities to the act; to require
7 any person receiving funds from the sale of a preneed contract
8 to contribute to a trust fund, life insurance contract, or
9 annuity contract; to require that preneed cemetery merchandise
10 and services funds remain in trust until cancellation or
11 fulfillment of a preneed contract; to prohibit a person
12 serving on a cemetery board of trustees from also serving as
13 the trustee of an endowment care fund, with certain specified
14 exceptions, and to require bonds on trustees, with certain
15 specified exceptions; to define net income for purposes of an
16 endowment care fund; and in connection therewith to have as
17 its purpose or effect the requirement of a new or increased
18 expenditure of local funds within the meaning of Amendment 621
19 of the Constitution of Alabama of 1901.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§27-17A-2.

25 "As used in this chapter, the following terms shall
26 have the following meanings:

1 "(1) ALTERNATIVE CONTAINER. A nonmetal receptacle or
2 enclosure, without ornamentation or a fixed interior lining,
3 which is designed for the encasement of human remains and
4 which is made of cardboard, pressed-wood, composition
5 materials (with or without an outside covering), or pouches of
6 canvas or other materials.

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

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

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

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

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

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

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

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

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

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

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

20 "(13) CEMETERY MERCHANDISE. Any personal property
21 offered for sale, contracted for sale, or sold for use in
22 connection with the burial of, final disposition,
23 memorialization, interment, entombment, or inurnment of human
24 remains by a cemetery authority. Cemetery merchandise
25 specifically includes, but is not limited to, the casket, the
26 outer burial container, and the memorial.

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

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

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

11 "(17) COMMISSIONER. The Alabama Commissioner of
12 Insurance.

13 "(18) CREMATED REMAINS. The bone fragments remaining
14 after the cremation process, which may include the residue of
15 any foreign materials that were cremated with the human
16 remains.

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

19 "(20) CREMATION. The irreversible process of
20 reducing human remains to bone fragments through intense heat
21 and evaporation, performed in a specifically designed furnace
22 or retort, which may include any other mechanical or thermal
23 process whereby the bone fragments are pulverized, or
24 otherwise further reduced in size or quantity. Cremation is a
25 process and is a method of final disposition.

26 "(21) CREMATORY AUTHORITY. Any person who owns or
27 controls a crematory.

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

4 "(23) DECEASED or DECEDENT. One who is no longer
5 living.

6 "(24) EMBALMER. One authorized by law to engage in
7 embalming.

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

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

16 "(27) ENDOWMENT CARE. The maintenance and repair of
17 all places in the cemetery, subject to the rules and
18 regulations of the cemetery authority; may be known also as
19 endowed care, perpetual care, improvement care, or permanent
20 care.

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

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

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

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

6 "(32) FUNERAL BENEFICIARY. The person designated in
7 the preneed contract who is to be the recipient of the funeral
8 and cemetery goods and services of the preneed contract at his
9 or her time of death.

10 "~~(32)~~(33) FUNERAL DIRECTING. The act or service of
11 conducting funerals and counseling with survivors and
12 preparing human remains, other than by embalming, for the
13 interment or other means of disposition, and may include the
14 management and supervision of all operations in a funeral
15 establishment, which may or may not include the practice of
16 embalming.

17 "~~(33)~~(34) FUNERAL DIRECTOR. One authorized by law to
18 engage in funeral directing.

19 "~~(34)~~(35) FUNERAL ESTABLISHMENT. A place of business
20 used in the care, planning, and preparation for final
21 disposition or transportation of human remains, or any place
22 where one or more are engaged and represent themselves to be
23 engaged in the business of embalming or funeral directing.

24 "~~(35)~~(36) FUNERAL MERCHANDISE. Any personal property
25 offered for sale, contracted for sale, or sold for use in
26 connection with funeral directing. Funeral merchandise
27 specifically includes, but is not limited to, the following:

1 "a. Alternative container.

2 "b. Casket.

3 "c. Outer burial container.

4 "d. Urn.

5 "e. Memorials.

6 "~~(36)~~(37) FUNERAL SERVICE. Services provided by a
7 funeral establishment in connection with funeral directing,
8 interment of human remains, and installation of memorials.

9 "~~(37)~~(38) GRAVE SPACE. A space of ground in a
10 cemetery that is used or intended to be used for in-ground
11 burial.

12 "~~(38)~~(39) HUMAN REMAINS. The body of a decedent and
13 includes the body in any stage of decomposition and cremated
14 remains.

15 "~~(39)~~(40) INTERMENT. The final disposition of human
16 remains by burial, entombment, or inurnment.

17 "~~(40)~~(41) INTERMENT RIGHT. The right to inter human
18 remains in a particular interment space in the cemetery.

19 "~~(41)~~(42) INTERMENT SPACE. A space intended for the
20 final disposition of human remains including, but not limited
21 to, a grave space, mausoleum crypt, niche, and below-ground
22 crypt.

23 "~~(42)~~(43) INURNMENT. The act of placing cremated
24 remains in a receptacle including, but not limited to, an urn
25 and depositing it in a niche.

26 "~~(43)~~(44) MAUSOLEUM. A chamber or structure used or
27 intended to be used for entombment.

1 "~~(44)~~(45) MAUSOLEUM CRYPT. A chamber of a mausoleum
2 of sufficient size for entombment of human remains.

3 "~~(45)~~(46) MEMORIAL. Any product, other than a
4 mausoleum or columbarium, used for identifying an interment
5 space or for commemoration of the life, deeds, or career of
6 some decedent including, but not limited to, a monument,
7 marker, niche plate, urn garden plaque, crypt plate, cenotaph,
8 marker bench, and vase.

9 "~~(46)~~(47) MEMORIAL RETAILER. Any person offering or
10 selling memorials at retail to the public.

11 "~~(47)~~(48) MEMORIALIZATION. Any permanent system
12 designed to mark or record the names and other data pertaining
13 to a decedent.

14 "~~(48)~~(49) NICHE. A space usually within a
15 columbarium used or intended to be used for inurnment of
16 cremated remains.

17 "~~(49)~~(50) OUTER BURIAL CONTAINER. A container which
18 is designed for placement in the grave space around the casket
19 or the urn including, but not limited to, containers commonly
20 known as burial vaults, grave boxes, and grave liners.

21 "~~(50)~~(51) PERSON. Any individual, firm, corporation,
22 partnership, joint venture, limited liability company,
23 association, trustee, government or governmental subdivision,
24 agency, or other entity, or any combination thereof.

25 "~~(51)~~(52) PREARRANGEMENT. The term applied to
26 completing the details for selection of merchandise or

1 services on a preneed basis, which may or may not include
2 provisions for prefunding or prepayment.

3 "~~(52)~~ (53) PREDEVELOPED. Designated areas or
4 buildings within a cemetery that have been mapped and planned
5 for future construction but are not yet completed.

6 "~~(53)~~ (54) PREDEVELOPED INTERMENT SPACE. An interment
7 space that is planned for future construction but is not yet
8 completed.

9 "~~(54)~~ (55) PREFUND. The term applied to completing
10 the financial details of a prearrangement, which include
11 provisions for funding or prepayment.

12 "~~(55)~~ (56) PRENEED. Any time prior to death.

13 "~~(56)~~ (57) PRENEED CONTRACT. A written contract to
14 purchase funeral merchandise, funeral services, cemetery
15 merchandise, or cemetery services from the seller on a preneed
16 basis.

17 "~~(57)~~ (58) PRENEED CONTRACT TRUST FUND. The funds
18 received pursuant to a preneed contract which are required by
19 law to be held in trust until the merchandise or services
20 purchased pursuant to the contract are delivered or provided
21 or until otherwise lawfully withdrawn.

22 "~~(58)~~ (59) PROVIDER. A person who may or may not be
23 the seller, who will actually provide the merchandise and
24 services under the terms of a preneed contract.

25 "~~(59)~~ (60) PURCHASE PRICE. The amount paid by the
26 purchaser for merchandise and services purchased under a
27 preneed contract, exclusive of finance charges, sales tax,

1 charges relating to interment rights, arrangement conference
2 fees, or charges for credit life insurance.

3 "~~(60)~~ (61) PURCHASER. The person who purchases a
4 preneed contract either on his or her behalf or on behalf of a
5 third party beneficiary.

6 "~~(61)~~ (62) RELIGIOUS INSTITUTION. An organization
7 formed primarily for religious purposes which has qualified
8 for exemption from federal income tax as an exempt
9 organization under the provisions of Section 501(c)(3) of the
10 Internal Revenue Code of 1986, as amended.

11 "~~(62)~~ (63) SCATTERING. The lawful dispersion of
12 cremated remains.

13 "~~(63)~~ (64) SELLER. Any person offering or selling
14 merchandise or services on a preneed basis including, but not
15 limited to, funeral establishments, cemetery authorities,
16 crematory authorities, memorial retailers, direct disposers,
17 etc.

18 "~~(64)~~ (65) SPECIAL CARE. Any care provided, or to be
19 provided, that is supplemental to, or in excess of, endowment
20 care, in accordance with the specific directions of any donor
21 of funds for such purposes.

22 "~~(65)~~ (66) SUCCESSOR-IN-INTEREST. A person who
23 lawfully follows another in ownership or control of property
24 or rights.

25 "~~(66)~~ (67) THIRD-PARTY SELLER. Any person, who is not
26 a funeral establishment or a cemetery authority, engaged in

1 the sale of preneed funeral merchandise or cemetery
2 merchandise.

3 ~~"(67)(68)~~ TRUSTEE. Any person, state or national
4 bank, trust company, or federally insured savings and loan
5 association lawfully appointed as fiduciary over funds
6 deposited by one or more purchasers of a preneed contract or
7 deposited pursuant to an endowment care trust fund; not to be
8 confused with a board of trustees.

9 ~~"(68)(69)~~ URN. A receptacle for the encasement of
10 cremated remains.

11 "§27-17A-3.

12 "(a) Nothing in this chapter shall be construed to
13 prohibit the funding of preneed contracts with multiple
14 insurance or annuity contracts. Life insurance and annuity
15 contracts used to fund preneed contracts shall conform with
16 the provisions of this title as they relate to life insurance
17 and annuities and shall cover at a minimum the retail amount
18 of the preneed contract ~~at the time of purchase.~~

19 "(b) The initial premium payment for a life
20 insurance policy or annuity contract shall be made payable to
21 the issuing insurance company and the preneed seller shall
22 remit the payment to the insurance company within 10 business
23 days after the preneed contract is fully signed by the
24 parties. If a preneed contract provides for installment
25 payments, each premium payment shall be made payable to the
26 insurance company and, if collected by the preneed seller,

1 shall be remitted to the insurance company within 10 business
2 days after receipt by the preneed seller.

3 "(c) Nothing in this chapter shall prohibit a
4 seller, or any other person, from receiving commissions earned
5 and payable in regard to funding preneed contracts with life
6 insurance or annuity contracts, provided the seller or other
7 person holds a valid insurance producer license in this state
8 and is appointed by the insurance company paying the
9 commission.

10 "(d) A preneed seller may be identified as the
11 beneficiary or assignee of the death benefit proceeds of a
12 life insurance policy or annuity contract sold as a future
13 funding mechanism for a preneed contract, but may not be the
14 owner of the policy or annuity contract or exercise any
15 ownership rights in the policy or annuity. If the preneed
16 contract is cancelled before or after the death of the funeral
17 beneficiary, the preneed seller shall cancel and relinquish
18 any assignment of benefits or beneficiary status under the
19 policy or annuity contract, and deliver the policy or
20 contract, if in the custody of the preneed seller, to the
21 policy owner or his or her legal representative.

22 "§27-17A-10.

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

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

1 "(2) Any preneed transaction in which a buyer pays
2 to the seller before need, in whole or in part, a purchase
3 price for funeral or cemetery merchandise and services, and in
4 which the seller is not obligated to deliver the contracted
5 for merchandise or to perform the services until need, in
6 whole or in part, shall be evidenced by a written preneed
7 contract satisfying the requirements of this chapter and
8 signed by the seller and the purchaser. No person may receive
9 or accept any form of consideration in such a transaction
10 without a fully signed written preneed contract. A transaction
11 not evidenced by a signed written preneed contract shall be
12 voidable at the election of the buyer and, if such election is
13 made, the seller shall refund to the buyer the entire amount
14 paid by the buyer together with interest thereon at the legal
15 rate within 30 days after notice to the seller.

16 ~~"(2)~~(3) The provisions of subdivision (1) do not
17 apply to any legal reserve insurance company or to any trust
18 company or to any national or state bank or savings and loan
19 association having trust powers which company, bank, or
20 association receives any money in trust pursuant to the sale
21 of a preneed contract.

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

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

4 "§27-17A-11.

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

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

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

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

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

1 "a. Has the ability to discharge his or her
2 liabilities as they become due in the normal course of
3 business and has sufficient funds available during the
4 calendar year to perform his or her obligations under the
5 contract.

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

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

12 "d. Has complied with this chapter and any rules of
13 the commissioner.

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

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

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

1 appropriate fee as determined by the commissioner not to
2 exceed seventy-five dollars (\$75).

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

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

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

26 "(g) On or before ~~April~~ July 1 of each year, the
27 certificate holder shall file with the commissioner in the

1 form prescribed by the commissioner a full and true statement
2 as to the activities of any trust established by it pursuant
3 to this article for the preceding calendar year.

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

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

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

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

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

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

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

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

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

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

1 §27-17A-11.1.

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

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

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

1 Section 3. Sections 27-17A-12, 27-17A-13, 27-17A-14,
2 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31,
3 27-17A-32, 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44,
4 27-17A-47, 27-17A-50, and 27-17A-55 of the Code of Alabama
5 1975, are amended to read as follows:

6 "§27-17A-12.

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

9 "(b) Specific disclosure regarding whether,
10 consistent with the requirements of this chapter, the
11 certificate ~~holder's requirement to place~~ holder is placing
12 certain preneed funds received with the contract in trust, in
13 an annuity, or in insurance, is required in the preneed
14 contract.

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

20 "§27-17A-13.

21 "(a) Except as provided in Sections 27-17A-3 and
22 27-17A-14, every preneed contract shall require the ~~moneys~~
23 monies paid to the seller or trustee to be placed in trust in
24 accordance with Article 3, for funeral merchandise and
25 services sold by funeral establishments or third party
26 sellers, or Article 4, for cemetery merchandise and services
27 sold by cemetery authorities.

1 "(b) Although this chapter does not apply to preneed
2 contracts entered into prior to May 1, 2002, a preneed
3 provider which contends that a preneed trust fund which was in
4 effect prior to May 1, 2002, complies with this chapter with
5 respect to the contracts entered into prior to May 1, 2002,
6 may provide to the commissioner documentary proof thereof.
7 Upon the commissioner determining that compliance has been
8 established, the pre-existing preneed trust fund assets may be
9 merged with or into the trust fund required under this chapter
10 or continued as the trust fund and that determination by the
11 commissioner shall be noted on the certificate of authority,
12 and thereafter all preneed contracts covered by the trust
13 fund, including those entered into prior to May 1, 2002, shall
14 be subject to this chapter.

15 "§27-17A-14.

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

1 surety bond shall be in an amount sufficient to cover the
2 outstanding liability at the time each contract is executed.

3 "(b) The bond shall be made payable to the State of
4 Alabama for the benefit of the commissioner and of all
5 purchasers of preneed merchandise, services, and cash
6 advances. The bond shall be issued by an insurance company
7 licensed in the State of Alabama and authorized to issue
8 surety bonds and approved by the commissioner.

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

18 "(d) The amount of the bond shall be increased or
19 decreased as necessary to correlate with changes in the
20 outstanding liabilities. Further, the commissioner may order
21 the bond to be increased as necessary to correlate with
22 changes in the outstanding liabilities of bonded contracts due
23 to increases in the consumer price index.

24 "(e) If the preneed provider fails to maintain a
25 bond pursuant to this section the preneed provider shall cease
26 the offering for sale and sale of preneed merchandise,
27 services, and cash advances.

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

24 "(g) Upon prior approval by the commissioner, the
25 preneed provider may file with the commissioner a letter of
26 credit in the amount of the outstanding liabilities in lieu of
27 a surety bond, in the form and subject to the terms and

1 conditions evidencing the financial responsibility of the
2 party or parties issuing the letter of credit, and otherwise,
3 as may be prescribed by the commissioner.

4 "§27-17A-18.

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

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

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

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

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

5 "(f) The qualifications for a preneed sales agent
6 are as follows:

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

8 "(2) The applicant must be in good standing with the
9 commissioner.

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

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

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

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

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

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

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

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

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

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

26 "§27-17A-22.

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

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

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

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

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

26 "(2) In addition to the criminal penalty imposed
27 under subdivision (1), upon conviction of an offense under

1 subdivision (1), a person may not thereafter obtain a
2 certificate of authority or register as a preneed sales agent.

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

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

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

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

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

25 "a. Commits a Class B felony, punishable as provided
26 by law, if the aggregate amount withdrawn in any single

1 transaction or series of related transactions equals or
2 exceeds two thousand five hundred dollars (\$2,500).

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

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

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

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

21 "(2) Incident to, or during the course of, an
22 examination, inspection, investigation, or other inquiry
23 authorized by this chapter, the person knowingly makes
24 available to a representative of the commissioner any official
25 form, report, record, data, or other document required by the
26 commissioner containing a false statement or false information

1 concerning a matter material to the purpose of the
2 examination, inspection, investigation, or inquiry.

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

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

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

19 "§27-17A-23.

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

1 law, may award punitive damages and may provide equitable
2 relief as it deems proper or necessary, including enjoining
3 the defendant from further ~~violations~~ violation of this
4 chapter.

5 "§27-17A-25.

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

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

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

16 "§27-17A-31.

17 "(a) Any person who is paid, collects, or receives
18 funds under a preneed contract for funeral services or funeral
19 merchandise to be funded by trust shall deposit in ~~this state~~
20 trust an amount at least equal to the sum of 75 percent of the
21 amount collected on the purchase price ~~collected~~ for all
22 funeral services and funeral merchandise sold, transportation,
23 and facilities rented other than outer burial containers, 60
24 percent of the amount collected on the purchase price
25 ~~collected~~ for outer burial containers, 110 percent of the
26 wholesale cost of memorials from the amount collected on the
27 purchase price of memorials, and 100 percent of the amount

1 collected on the purchase price ~~collected~~ for all cash advance
2 items sold.

3 "(b) All deposits shall be made within 30 days after
4 the end of the calendar month in which the preneed contract is
5 paid in full, unless, prior to that time, all liabilities of
6 the seller under the preneed contract to deliver the specific
7 funeral merchandise or funeral services, or both, or the
8 specific cash advances, identified by the preneed provider as
9 properly allocated to the payment, have been satisfied, or the
10 preneed contract is validly cancelled.

11 "(c) The trustee shall take title to the property
12 conveyed to the trust for the purpose of investing,
13 protecting, and conserving it for the certificate holder;
14 collecting income; and distributing the principal and income
15 as prescribed in this article.

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

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

24 "(f) The funds shall be held in trust, both as to
25 principal and income earned thereon, and shall remain intact,
26 except that the cost of the operation of the trust or trust

1 account authorized by this section may be deducted from the
2 income earned thereon.

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

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

20 "(i) For all preneed contracts written or entered
21 into on or after January 1, 2015, all required deposits in
22 trust shall commence not later than 30 days after the end of
23 the calendar month in which the sum of the monies collected on
24 the preneed contract exceeds the amount that is not required
25 to be deposited in trust as determined under subsection (a)
26 unless, prior to that time, all liabilities of the preneed
27 seller under the preneed contract have been satisfied, or the

1 preneed contract is validly cancelled. Further required
2 deposits on the contract shall thereafter be made not later
3 than 30 days after the end of the calendar month in which each
4 contract payment is collected by the seller.

5 "§27-17A-32.

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

1 "(b) The trustee shall make regular valuations of
2 the assets it holds in trust and provide a report of the
3 valuations to the certificate holder at least quarterly. At
4 all times, the trustee shall be able to determine the amount
5 held in trust attributable to each contract holder. If the
6 trustee does not maintain records of each preneed contract for
7 which deposits are required under Section 27-17A-31, within 30
8 days after the end of each calendar quarter, the certificate
9 holder shall provide to the trustee a report of all contracts
10 for which the trustee holds funds in the trust, with
11 sufficient information that would allow the trustee to
12 identify the amount held in trust attributable to each
13 contract holder. For all contracts effective on or after
14 January 1, 2015, the determination shall be based upon the
15 fair market value of the trust at the time and the
16 proportionate share of the fair market value attributable to
17 each contract holder. For all contracts in effect before
18 January 1, 2015, the valuation of each contract may be
19 calculated using any valuation method that had been approved
20 by the commissioner or the department before January 1, 2015.
21 Any person who withdraws appreciation in the value of trust,
22 other than the pro rata portion of such appreciation which may
23 be withdrawn upon the death of a ~~contract~~ contract's funeral
24 beneficiary or upon cancellation of a preneed contract, shall
25 be required to make additional deposits from his or her own
26 funds to restore the aggregate value of assets to the value of
27 funds deposited in trust, but excluding from the funds

1 deposited those funds paid out upon preneed contracts which
2 the person has fully performed or which have been otherwise
3 withdrawn, as provided in this article. The certificate holder
4 shall be liable to third parties to the extent that income
5 from the trust is not sufficient to pay the expenses of the
6 trust.

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

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

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

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

26 "(d) Notwithstanding the provisions of Section
27 19-3-125, the trustee may, subject to compliance with the

1 requirements set forth below, invest any portion or all of the
2 funds received under preneed contracts and deposited in trust
3 in life insurance contracts or annuities issued on the lives
4 of preneed contract purchasers or preneed contract
5 beneficiaries, hereinafter, the insured or annuitant, without
6 any obligation to cover at a minimum the retail amount of the
7 preneed contract at the time of purchase of the life insurance
8 contracts or annuities as set forth in Section 27-17A-3.

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

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

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

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

25 "(2) Upon request, the insured or annuitant shall be
26 provided with a copy of any life insurance contract or annuity

1 issued to a preneed trustee at no expense to the insured or
2 annuitant.

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

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

13 "(5) It is the intention of the Legislature that
14 this subsection shall be retroactive and shall apply to all
15 life insurance contracts or annuities issued prior to May 6,
16 2008.

17 "§27-17A-34.

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

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

18 " (b) ~~If the preneed contract so provides, the~~
19 ~~trustee may distribute trust income allocable to the preneed~~
20 ~~contract to the certificate holder on an annual basis, so long~~
21 ~~as the distribution is consistent with subsection (b) of~~
22 ~~Section 27-17A-32~~ For all contracts effective on or after
23 January 1, 2015, 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
27 in trust for all preneed contracts as of the date of

1 withdrawal. For all contracts in effect before January 1,
2 2015, the valuation of each contract and the amount that may
3 be withdrawn from the trust may be calculated using any
4 valuation method that had been approved by the commissioner or
5 the department before January 1, 2015.

6 "§27-17A-40.

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

12 "§27-17A-42.

13 "(a) The obligation of the seller under a preneed
14 contract shall be to make contributions into the Cemetery
15 Merchandise and Services Trust Fund in accordance with the
16 following formulae:

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

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

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

24 "(4) With respect to all cash advance items sold,
25 100 percent of the purchase price specified for the same in
26 the preneed contract.

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

3 "(b) All contributions shall be made within 30 days
4 after the end of the calendar month in which the preneed
5 contract is paid in full, unless, prior to that time, all
6 liabilities of the seller under the preneed contract to
7 deliver the specific cemetery merchandise or cemetery
8 services, or both, or the specific cash advances, identified
9 by the preneed provider as properly allocated to the payment,
10 have been satisfied, or the preneed contract is validly
11 cancelled.

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

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

26 "~~(d)~~(e) The trustee shall make regular evaluations
27 of the fair market value of assets held in and liabilities, if

1 any, of the Cemetery Merchandise and Services Trust Fund and
2 provide a report of the evaluations to the seller at least
3 quarterly. Upon receipt of each quarterly report, the seller
4 may submit to the trustee a written and detailed analysis
5 concerning the balance of funds in the Cemetery Merchandise
6 and Services Trust Fund, certified under oath as being true
7 and correct upon information and belief by a responsible
8 officer of the seller.

9 ~~"(e)~~ (f) While the obligation of the seller to make
10 contributions to the Cemetery Merchandise and Services Trust
11 Fund is set forth in this section, the obligation of the
12 seller at the time of making certain withdrawals from the
13 Cemetery Merchandise and Services Trust Fund as herein
14 provided for shall be calculated with respect to the current
15 wholesale cost of cemetery merchandise and current retail
16 price of cemetery services and cash advances at the time of
17 withdrawal. If the fair market value as reported by the
18 trustee exceeds 110 percent of the total of the following, the
19 seller shall be entitled to withdraw and retain from the
20 merchandise trust fund, the excess funds therein: ~~One hundred~~
21 ~~and ten~~ 110 percent of the current wholesale cost of the
22 liability to deliver all cemetery merchandise, 60 percent of
23 the current retail price for all cemetery services, 60 percent
24 of the current retail price of outer burial containers, 75
25 percent of the current retail price of caskets, and 100
26 percent of the current retail price of all cash advances, for
27 the total of all preneed contracts for which the purchasers

1 have paid in full, all calculated as of the time of
2 withdrawal; and concerning the total of all preneed contracts
3 for which the purchasers have not paid in full, 25 percent of
4 the total of the following: 110 percent of the current
5 wholesale cost of the liability to deliver all cemetery
6 merchandise, 60 percent of the current retail price for all
7 cemetery services, and 100 percent of the current retail price
8 of all cash advances, all calculated as of the time of
9 withdrawal.

10 ~~"(f)~~ (g) At least annually the seller shall make the
11 aforesaid analysis and certification and provide the same to
12 the trustee. If the certification discloses that the fair
13 market value of the Cemetery Merchandise and Services Trust
14 Fund is less than 100 percent of the aggregate calculated
15 amount the seller shall from its own funds contribute to the
16 Cemetery Merchandise and Services Trust Fund within the 12
17 months succeeding the annual computation the amount necessary
18 to restore the trust fund to an amount equal to not less than
19 100 percent of the aggregate amount so calculated.

20 "§27-17A-44.

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

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

17 "§27-17A-47.

18 "(a) Every cemetery authority operating an endowment
19 care cemetery shall establish an endowment care fund which
20 shall be placed with and held by a bank, trust company,
21 savings and loan association, or other financial institution
22 authorized to provide trust services under Title 5, as
23 amended, or under the applicable laws of the United States or
24 any other state, or a board of trustees, consisting of at
25 least three members, who shall reside in the State of Alabama,
26 one of whom is engaged in outside cemetery management, and

1 each of whom shall be bonded to honestly perform the duties of
2 trustee under a formal trust agreement.

3 "(b) Except as specifically provided in this
4 subsection, commencing on the effective date of the act adding
5 this subsection, a person serving on a board of trustees or
6 cemetery authority may not also serve as a trustee of an
7 endowment care fund for the cemetery authority. A board of
8 trustees in existence on the effective date of the act adding
9 this subsection may continue to serve as the trustee of an
10 endowment care fund if the board of trustees otherwise
11 complies with this subsection. Unless exempted by the
12 commissioner pursuant to this subsection, on or before January
13 1, 2015, each member of a board of trustees in existence on
14 the effective date of the act adding this subsection shall
15 furnish the bond required by subsection (a) in the greater of
16 one hundred thousand dollars (\$100,000) or the amount in each
17 endowment care fund for which the board acts as trustee as of
18 December 31, 2014. Thereafter, the amount of the bonds shall
19 be increased on January 1 of each succeeding year to equal the
20 amount in each endowment care fund as of the immediately
21 preceding December 31. The commissioner shall exempt a board
22 of trustees from the bond requirement if the board of trustees
23 provides to the commissioner an annual audit report that
24 satisfies all of the following criteria:

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

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

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

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

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

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

23 ~~"(d)~~ (e) The cemetery authority may enter into a
24 contract with the qualified trustee for the management and
25 investment of the endowment care fund, which contract may
26 provide for the payment of income from the fund of reasonable

1 fees or commissions to the trustee, and its reasonable
2 expenses for administering the trust.

3 "(f) As often as he or she may deem necessary, the
4 commissioner may examine the records or facilities, or both,
5 of any cemetery authority operating an endowment care
6 cemetery.

7 "§27-17A-50.

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

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

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

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

13 "§27-17A-55.

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

1 if deposited by the cemetery authority in an escrow or trust
2 fund, and if not so deposited in an escrow or trust fund
3 earning interest, then plus interest in an amount equal to the
4 interest or discount which would have been earned thereon had
5 the funds been invested in United States Treasury Bills having
6 a 90-day maturity."

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

9 §27-17A-57.

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

16 Section 5. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 6. The provisions of this act are severable.
25 If any part of this act is declared invalid or
26 unconstitutional, that declaration shall not affect the part
27 which remains.

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