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3 SUBSTITUTE FOR HB47
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8 SYNOPSIS: Under existing law, the Alabama Board of
9 Funeral Service licenses and regulates funeral
10 establishments, funeral directors, and embalmers.

11 This bill would provide further for
12 definitions and the membership of the board.

13 This bill would also establish the Alabama
14 Preneed Funeral and Cemetery Act of 2022, and would
15 transfer the regulation of preneed contracts
16 pursuant to the Preneed Funeral and Cemetery Act
17 from the Commissioner and the Department of
18 Insurance to the board.

19 This bill would also authorize the
20 Department of Insurance to temporarily transfer
21 certain funds to the Alabama Board of Funeral
22 Service to defray costs associated with the
23 administration and operation of the Alabama Preneed
24 Funeral and Cemetery Act of 2022.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, as amended by Amendment 890, now appearing
27 as Section 111.05 of the Official ReCompilation of

1 the Constitution of Alabama of 1901, as amended,
2 prohibits a general law whose purpose or effect
3 would be to require a new or increased expenditure
4 of local funds from becoming effective with regard
5 to a local governmental entity without enactment by
6 a 2/3 vote unless: it comes within one of a number
7 of specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

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

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to the Alabama Board of Funeral Service; to
24 amend Sections 34-13-1 and 34-13-20, Code of Alabama 1975, to
25 provide further for definitions and the membership of the
26 board; to add Article 5 to Chapter 13, Title 34, Code of
27 Alabama 1975, by amending and renumbering Sections 27-17A-1,

1 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25, inclusive,
2 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to 27-17A-57,
3 inclusive, as Sections 34-13-170 to 34-13-172, inclusive,
4 34-13-190 to 34-13-206, inclusive, 34-13-230 to 34-13-234,
5 inclusive, and 34-13-260 to 34-13-277, inclusive, Code of
6 Alabama 1975; to establish the Alabama Preneed Funeral and
7 Cemetery Act of 2022; to transfer the existing Preneed Funeral
8 and Cemetery Act, and the regulation of preneed contracts,
9 from the Commissioner and Department of Insurance to the
10 Alabama Board of Funeral Service; to make corresponding
11 technical changes; to authorize the Department of Insurance to
12 temporarily transfer certain funds to the board to defray
13 costs associated with the administration and operation of the
14 Alabama Preneed Funeral and Cemetery Act of 2022; and to
15 repeal Section 27-17A-2, Code of Alabama 1975, relating to
16 definitions; and in connection therewith would have as its
17 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, as amended by
20 Amendment 890, now appearing as Section 111.05 of the Official
21 Recompilation of the Constitution of Alabama of 1901, as
22 amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 34-13-1 and 34-13-20 of the Code
25 of Alabama 1975, are amended to read as follows:

26 "§34-13-1.

1 "(a) For purposes of this chapter, the following
2 terms shall have the following meanings:

3 "(1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY
4 SCIENCE. A school or college approved by the ~~Alabama~~ American
5 Board of Funeral Service ~~and Education,~~ or a successor
6 organization, which maintains a course of instruction of not
7 less than 48 calendar weeks or four academic quarters or
8 college terms and which gives a course of instruction in the
9 fundamental subjects ~~including, but not limited to, the~~
10 ~~following:~~

11 ~~"a. Mortuary management and administration.~~

12 ~~"b. Legal medicine and toxicology as it pertains to~~
13 ~~funeral directing.~~

14 ~~"c. Public health, hygiene, and sanitary science.~~

15 ~~"d. Mortuary science, to include embalming~~
16 ~~technique, in all its aspects; chemistry of embalming, color~~
17 ~~harmony; discoloration, its causes, effects, and treatment;~~
18 ~~treatment of special cases; restorative art; funeral~~
19 ~~management; and professional ethics.~~

20 ~~"e. Anatomy and physiology.~~

21 ~~"f. Chemistry, organic and inorganic.~~

22 ~~"g. Pathology.~~

23 ~~"h. Bacteriology.~~

24 ~~"i. Sanitation and hygiene.~~

25 ~~"j. Public health regulations.~~

26 ~~"k. Other related to funeral service and mortuary~~
27 ~~science education as approved by the American Board of Funeral~~

1 Service Education, or a successor organization, and other
2 courses of instruction in fundamental subjects as may be
3 prescribed by the Alabama Board of Funeral Service.

4 "(2) ALKALINE HYDROLYSIS. The technical process that
5 reduces human remains to bone fragments using heat, water, and
6 chemical agents.

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

13 "~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION.
14 ~~That funeral service educational organization which is an~~
15 ~~agency granted official recognition by the United States~~
16 ~~Secretary of Education and which is composed of members~~
17 ~~representing the American Association of College of Mortuary~~
18 ~~Science, the Conference of Funeral Service Examining Board of~~
19 ~~the United States, Inc., the National Association of Colleges~~
20 ~~of Mortuary Science, and the University Mortuary Science~~
21 ~~Education Association and which has as its object the~~
22 ~~furtherance of education in the field of funeral service and~~
23 ~~in fields necessary to, or allied with, the field of funeral~~
24 ~~service, and further to formulate standards of funeral service~~
25 ~~education and to grant accreditation to qualified schools and~~
26 ~~colleges of mortuary science and to do all things incidental~~
27 ~~to the foregoing~~ The national academic accreditation agency

1 for college and university programs in funeral service and
2 mortuary science education. The accrediting function of the
3 American Board of Funeral Service Education is recognized by
4 the United States Department of Education and the Council on
5 Higher Education Accreditation.

6 "(4)(5) APPRENTICE EMBALMER or EMBALMER'S
7 APPRENTICE. Any person engaged in the study of the art of
8 embalming under the instructions and supervision of a licensed
9 embalmer practicing in this state.

10 "(5)(6) APPRENTICE FUNERAL DIRECTOR or FUNERAL
11 DIRECTOR'S APPRENTICE. Any person operating under or in
12 association with a funeral director for the purpose of
13 learning the business or profession of funeral director, to
14 the end that he or she may become licensed under this chapter.

15 "(7) AT NEED. At the time of death or immediately
16 following death.

17 "(6)(8) AUTHORIZING AGENT. A person ~~at least 18~~
18 ~~years of age~~ who is at least the legal age of majority in this
19 state, except in the case of a surviving spouse or parent, who
20 is legally entitled to order the cremation or final
21 disposition of particular human remains.

22 "(9) BASIC SERVICES FEE. The fee for the
23 professional services of the funeral director and staff that
24 is added to the total cost of the funeral arrangements. The
25 term includes a charge for services performed in conducting
26 the arrangements conference, planning the funeral, securing

1 the necessary permits, preparing the notices, and coordinating
2 the cemetery or crematory arrangements.

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

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

11 "~~(7)~~(12) BOARD. The Alabama Board of Funeral
12 Service.

13 "(13) BRANCH. Any person or entity that is part of a
14 common business enterprise that has a certificate of authority
15 issued pursuant to Article 5 and elects to operate under a
16 name other than that of the common business enterprise.

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

19 "~~(8)~~(15) CASH ADVANCE ITEMS. Any item of service or
20 merchandise described to a purchaser using the term cash
21 advance, accommodation, cash disbursement, or similar term. A
22 cash advance item is also any item obtained from a third party
23 and paid for by a funeral provider or a seller on behalf of a
24 purchaser. Cash advance items include, but are not limited to,
25 all of the following:

26 "a. Cemetery or crematory services.

27 "b. Pallbearers.

1 "c. Public, or other, transportation.

2 "d. Clergy honoraria.

3 "e. Flowers.

4 "f. Musicians or singers.

5 "g. Nurses.

6 "h. Obituary notices.

7 "i. Funeral programs.

8 "j. Gratuities.

9 "k. Death certificates.

10 "l. Outer burial containers.

11 "m. Cemetery plots.

12 "n. Escorts.

13 "~~(9)~~(16) CASKET. A rigid container that is designed
14 for the encasement of human remains, usually constructed of
15 wood, metal, or similar material, and ornamented and lined
16 with fabric.

17 "~~(10)~~(17) CEMETERY. A place established, maintained,
18 managed, operated, or improved and which is dedicated to and
19 used or intended to be used for the permanent interment of
20 human remains and their memorialization. It may be either land
21 or earth interment; a columbarium; a mausoleum for vault or
22 crypt entombment; a structure or place used or intended to be
23 used for the interment of cremated remains; cryogenic storage;
24 or any combination of one or more thereof.

25 "~~(11)~~(18) CEMETERY AUTHORITY. Any individual,
26 person, firm, profit or nonprofit corporation, trustee,
27 partnership, society, religious society, church association or

1 denomination, municipality, or other group or entity, however
2 organized, insofar as they or any of them may now or hereafter
3 establish, own, operate, lease, control, or manage one or more
4 cemeteries, burial parks, mausoleums, columbariums, or any
5 combination or variation thereof, or hold lands or structures
6 for burial grounds or burial purposes in this state and engage
7 in the operation of a cemetery, including any one or more of
8 the following: The care and maintenance of a cemetery; the
9 interment, entombment, and memorialization of the human dead
10 in a cemetery; the sale, installation, care, maintenance, or
11 any combination thereof, with respect of monuments, markers,
12 foundations, memorials, burial vaults, urns, crypts,
13 mausoleums, columbariums, flower vases, floral arrangements,
14 and other cemetery accessories, for installation or use within
15 a cemetery; and the supervision and conduct of funeral and
16 burial services within the bounds of the cemetery.

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

24 "(20) CEMETERY SERVICES. At need or preneed services
25 provided by a cemetery authority for interment, entombment,
26 inurnment, and installation of cemetery merchandise.

1 "(21) CERTIFICATE HOLDER. A funeral establishment,
2 cemetery authority, third-party seller, or any other person to
3 whom a valid certificate of authority to sell preneed
4 contracts has been granted by the board.

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

8 "~~(12)~~ (23) CONVICTION. The entry of a plea of guilty
9 or a guilty verdict rendered by any court of competent
10 jurisdiction, excluding traffic violations.

11 "~~(13)~~ (24) CREMATED REMAINS. Human remains recovered
12 after the completion of the cremation process, including
13 pulverization, which leaves only bone fragments reduced to
14 unidentifiable dimensions, and the residue of any foreign
15 materials that were cremated with the human remains.

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

18 "~~(14)~~ (26) CREMATION. The technical irreversible
19 process, using heat, flames, or chemical agents, that reduces
20 human remains to bone fragments. The reduction takes place
21 through heat and evaporation. Cremation shall include the
22 processing, and may include the pulverization, of the bone
23 fragments. Cremation is a process and is a method of final
24 disposition.

25 "~~(15)~~ (27) CREMATIONIST. A person licensed by the
26 board to perform the procedure of cremation.

1 "~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel
2 used to reduce human remains to bone fragments.

3 "~~(17)~~ (29) CREMATION CONTAINER. The container in
4 which human remains are transported to a crematory, in which
5 human remains are placed in upon arrival at a crematory, or
6 for storage and placement in a cremation chamber for
7 cremation.

8 "~~(18)~~ (30) CREMATORY. A building or portion of a
9 building that houses a cremation chamber and that may house a
10 holding facility for purposes of cremation and as part of a
11 funeral establishment.

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

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

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

19 "~~(19)~~ (34) EMBALMER. Any person engaged or holding
20 himself or herself out as engaged in the business, practice,
21 science, or profession of embalming, whether on his or her own
22 behalf or in the employ of a registered and licensed funeral
23 director.

24 "~~(20)~~ (35) EMBALMING. The practice, science, or
25 profession, as commonly practiced, of preserving,
26 disinfecting, and preparing by application of chemicals or

1 other effectual methods, human dead for burial, cremation, or
2 transportation.

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

6 "(37) ENDOWMENT CARE. The maintenance and repair of
7 all places in a cemetery, subject to the rules of the cemetery
8 authority. The term may also be referred to as endowed care,
9 perpetual care, improvement care, or permanent care.

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

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

16 "(40) FINAL DISPOSITION. The lawful disposal of
17 human remains whether by interment, cremation, or other
18 method.

19 ~~"(21)~~ (41) FUNERAL. A ceremony for celebrating,
20 sanctifying, or remembering the life of a person who has died.
21 A funeral may be divided into the following two parts:

22 "a. The funeral service, which may take place at a
23 funeral home, church, or other place.

24 "b. The committal service or final disposition,
25 which may take place by the grave, tomb, mausoleum, or
26 crematory where the body of the decedent is to be buried or
27 cremated.

1 "~~(22)~~(42) FUNERAL ARRANGEMENTS. The completing of
2 funeral service arrangements, cremation arrangements, and the
3 financial details of a funeral at the time of death. The term
4 includes the collection of vital statistic information, death
5 certificate information, obituary and funeral notice
6 completion, the completion of a statement of funeral goods and
7 services selected, organizing of funeral and memorial services
8 for families, and the ordering of cash advance items.

9 "(43) FUNERAL BENEFICIARY. The person or persons who
10 will receive the benefit of the funeral and cemetery goods and
11 services to be delivered under a preneed contract at the time
12 of his, her, or their death.

13 "~~(23)~~(44) FUNERAL DIRECTING. The practice of
14 directing or supervising funerals, the practice of preparing
15 dead human bodies for burial by means other than embalming, or
16 the preparation for the final disposition of dead human
17 bodies; the making of funeral arrangements or providing for
18 funeral services or the making of financial arrangements for
19 the rendering of these services; the provision or maintenance
20 of a place for the preparation for final disposition of dead
21 human bodies; or the use of the terms funeral director,
22 undertaker, mortician, funeral parlor, or any other term from
23 which can be implied the practice of funeral directing; or the
24 holding out to the public that one is a funeral director or
25 engaged in a practice described in this subdivision.

26 "~~(24)~~(45) FUNERAL DIRECTOR. A person required to be
27 licensed to practice the profession of funeral directing under

1 the laws of this state, who consults with the public, who
2 plans details of funeral services with members of the family
3 and minister or any other person responsible for such
4 planning, or who directs, is in charge, or apparent charge of,
5 and supervises funeral service in a funeral home, church, or
6 other place; who enters into the making, negotiation, or
7 completion of financial arrangements for funeral services, or
8 who uses in connection with the profession of funeral
9 directing the terms funeral director, undertaker, funeral
10 counselor, mortician, or any other term or picture or
11 combination thereof when considered in context in which used,
12 from which can be implied the practicing of the profession of
13 funeral directing or that the person using such term or
14 picture can be implied to be holding himself or herself out to
15 the public as being engaged in the profession of funeral
16 directing; and for all purposes under Alabama law, a funeral
17 director is considered a professional. For the purposes of
18 this chapter, the term does not include any cemetery
19 authority.

20 ~~"(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes
21 any funeral home or mortuary service located at a specific
22 street address where the profession of funeral directing,
23 embalming, or cremation is practiced in the care, planning,
24 and preparation for burial, cremation, or transportation of
25 human dead. A funeral establishment shall consist of and
26 maintain all of the following facilities:

1 "a. A preparation room equipped with sanitary
2 nonporous floor and walls, necessary drainage and ventilation,
3 and containing operating embalming equipment, necessary
4 approved tables, instruments, hot and cold running water,
5 containers or receptacles for soiled linen or clothing, and
6 supplies for the preparation and embalming of dead human
7 bodies for burial, cremation, and transportation.

8 "b. A display room containing a stock of adult
9 caskets and funeral supplies displayed in full size, cuts,
10 photographs, or electronic images. At no time shall less than
11 eight different adult size caskets be on the premises.

12 "c. At least one operating funeral coach or hearse
13 properly licensed and equipped for transporting human remains
14 in a casket or urn.

15 "d. If engaged in the practice of cremation, the
16 establishment shall satisfy all crematory requirements
17 provided in this chapter and have on site an adequate supply
18 of urns for display and sale.

19 "e. A room suitable for public viewing or other
20 funeral services that is ~~able to accommodate~~ a minimum of ~~100~~
21 ~~people~~ 1,000 square feet.

22 "f. An office for holding arrangement conferences
23 with relatives or authorizing agents.

24 "(47) FUNERAL SERVICE. At need or preneed services
25 provided by a funeral establishment in connection with funeral
26 directing, final disposition of human remains, or installation
27 of memorials.

1 "~~(26)~~(48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE.
2 ~~Caskets made of any material for use in the burial or~~
3 ~~transportation of human dead; outer receptacles, Any item~~
4 offered for sale, contracted for sale, or sold for use in
5 connection with funeral directing when sold by a funeral
6 director, including, but not limited to, caskets, alternative
7 containers, outer burial vaults and containers, urns, for
8 ~~cremated human remains, memorials,~~ clothing used to dress
9 human dead when sold by a funeral director, and all equipment
10 and accouterments normally required for the preparation for
11 burial or funeral and other final disposition of human dead.

12 "(49) GRAVE SPACE. A space of ground in a cemetery
13 that is used or intended to be used for in-ground burial.

14 "~~(27)~~(50) GROSS IMMORALITY. Willful, flagrant, or
15 shameful immorality or showing a moral indifference to the
16 opinions of the good and respectable members of the community
17 and to the just obligations of the position held by the
18 offender.

19 "~~(28)~~(51) HOLDING ROOM. Either of the following:

20 "a. A room within a funeral establishment that
21 satisfies the requirements of a branch location as provided in
22 this chapter or board rule, for the retention of human remains
23 before final disposition.

24 "b. A room within a crematory facility, designated
25 for the retention of human remains before and after cremation,
26 that is not accessible to the public.

1 "(52) HUMAN REMAINS. The body of a decedent in any
2 stage of decomposition, including cremated remains.

3 "(53) INTERMENT. The final disposition of human
4 remains by burial, burial at sea, entombment, or inurnment.

5 "(54) INTERMENT RIGHT. The right to inter human
6 remains in a particular interment space in a cemetery.

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

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

14 "(57) LICENSEE. Any individual, firm, corporation,
15 partnership, joint venture, or limited liability company which
16 obtains a license, certificate, or registration in accordance
17 with this chapter.

18 ~~"(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral
19 director and cremationist who has full charge, control, and
20 supervision of all activities involving cremation at a funeral
21 establishment or crematory.

22 ~~"(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who
23 has full charge, control, and supervision of all activities
24 involving the preparation room and embalming.

25 ~~"(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed
26 funeral director who has full charge, control, and supervision

1 of all activities involving funeral directing for a funeral
2 establishment.

3 "(61) MAUSOLEUM. A chamber or structure used or
4 intended to be used for entombment.

5 "(62) MAUSOLEUM CRYPT. A chamber of a mausoleum of
6 sufficient size for entombment of human remains.

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

13 "(64) MEMORIAL RETAILER. Any person offering or
14 selling memorials at retail to the public.

15 "(65) MEMORIALIZATION. Any permanent system designed
16 to mark or record the names and other data pertaining to a
17 decedent.

18 ~~"(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or
19 violent act, or any act involving theft, theft of services,
20 theft by deception, extortion, receiving stolen property,
21 identity theft, forgery, fraud, tampering with records,
22 bribery, perjury, or any similar act in any jurisdiction.

23 ~~"(33)~~ (67) MORTUARY SCIENCE. The scientific,
24 professional, and practical aspects, with due consideration
25 given to accepted practices, covering the care, preparation
26 for burial, or transportation of dead human bodies, which
27 shall include the preservation and sanitation of the bodies

1 and restorative art and those aspects related to public
2 health, jurisprudence, and good business administration.

3 "~~(34)~~ (68) MORTUARY SERVICE. A location with a
4 specific street address where embalming or cremation, or both,
5 is practiced for a licensed funeral establishment and where no
6 services or merchandise are sold directly or at retail to the
7 public. A mortuary service shall consist of and maintain all
8 of the following facilities:

9 "a. A preparation room equipped with sanitary
10 nonporous floor and walls, operating embalming equipment, and
11 necessary drainage and ventilation and containing necessary
12 approved tables, instruments, hot and cold running water,
13 containers or receptacles for soiled linen or clothing, and
14 supplies for the preparation and embalming of dead human
15 bodies for burial, cremation, and transportation.

16 "b. At least one operating motor vehicle properly
17 licensed and equipped for transporting human remains in a
18 casket or urn.

19 "c. If engaged in the practice of cremation, the
20 establishment shall satisfy all requirements for a crematory
21 provided in this chapter.

22 "(69) NICHE. A space usually within a columbarium
23 used or intended to be used for inurnment of cremated remains.

24 "~~(35)~~ (70) OPERATOR. A person, corporation, firm,
25 legal representative, managing funeral director, general
26 manager, or other organization owning or operating a funeral
27 establishment or cemetery.

1 "(71) OUTER BURIAL CONTAINER. A container that is
2 designed for placement in the grave space around the casket or
3 the urn including, but not limited to, containers commonly
4 known as burial vaults, grave boxes, and grave liners.

5 "(72) PERSON. Any individual, firm, corporation,
6 partnership, joint venture, limited liability company,
7 association, trustee, government or governmental subdivision,
8 agency, or other entity, or any combination thereof.

9 ~~"(36)~~ (73) PRACTICAL EMBALMER. Any person who has
10 been actively and continuously engaged or employed in the
11 practice of embalming under the supervision of a licensed
12 embalmer for four consecutive years immediately preceding May
13 1, 1975, and has been issued a license as a practical embalmer
14 under the grandfather provisions of this chapter.

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

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

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

25 "(77) PREFUND. The term applied to completing the
26 financial details of a prearrangement, which include
27 prefunding or prepayment.

1 "(78) PRENEED. Any time prior to death.

2 "(79) 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 "(80) 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 "(81) PRENEED SALES AGENT. A person who is in the
12 business of selling preneed contracts.

13 ~~"(37)~~ (82) PROCESSING or PULVERIZATION. The reduction
14 of identifiable bone fragments after the completion of the
15 cremation process to unidentifiable bone fragments or
16 granulated particles by manual or mechanical means.

17 "(83) PROVIDER. The person, who may or may not be
18 the seller, who actually provides merchandise and services
19 under the terms of a preneed contract.

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

25 "(85) PURCHASER. The person who purchases a preneed
26 contract either on his or her behalf or on behalf of a
27 third-party beneficiary.

1 "(86) RELIGIOUS INSTITUTION. An organization formed
2 primarily for religious purposes which has applied and
3 qualified for exemption from federal income tax as an exempt
4 organization under Section 501(c)(3) of the Internal Revenue
5 Code of 1986, as amended.

6 "(87) SCATTERING. The lawful dispersion of cremated
7 remains.

8 "(88) SELLER. Any person offering or selling
9 merchandise or services on a preneed basis including, but not
10 limited to, funeral establishments, cemetery authorities,
11 crematory authorities, and memorial retailers.

12 "(89) SPECIAL CARE. Any care provided, or to be
13 provided, that is supplemental to, or in excess of, endowment
14 care, in accordance with the specific directions of any donor
15 of funds for those purposes.

16 "(90) SUCCESSOR-IN-INTEREST. A person who lawfully
17 follows another in ownership or control of property or rights.

18 ~~"(38)~~ (91) TEMPORARY CONTAINER. A receptacle for
19 cremated remains, usually composed of cardboard, plastic, or
20 similar material, that can be closed in a manner that prevents
21 the leakage or spillage of the cremated remains or the
22 entrance of foreign material, and is a single container of
23 sufficient size to hold the cremated remains until an urn is
24 acquired or the cremated remains are scattered or buried.

25 "(92) THIRD-PARTY SELLER. Any person, who is not a
26 funeral establishment or a cemetery authority, engaged in the
27 sale of preneed funeral merchandise or cemetery merchandise.

1 "(93) TRUSTEE. Any person, state or national bank,
2 trust company, or federally insured savings and loan
3 association lawfully appointed as fiduciary over funds
4 deposited by one or more purchasers of a preneed contract or
5 deposited pursuant to an endowment care trust fund. The term
6 does not refer to a board of trustees.

7 "~~(39)~~ (94) URN. A receptacle designed to encase
8 cremated remains.

9 "(b) Nothing in this chapter shall require a funeral
10 director or funeral establishment to have or provide a chapel
11 or to restrict the conduct of funeral services from a church
12 or chapel.

13 "§34-13-20.

14 "(a) There is established the Alabama Board of
15 Funeral Service, consisting of nine members, each of whom
16 shall be citizens of the United States and residents of the
17 State of Alabama.

18 "(b) The appointing authorities shall coordinate
19 their appointments to assure board membership is inclusive and
20 reflects the racial, gender, geographic, urban/rural, and
21 economic diversity of the state.

22 "(c) Commencing on January 1, 2019, as the terms of
23 the members serving on the board on August 1, 2017, expire,
24 the membership of the board shall be reconstituted to consist
25 of seven professional members and two consumer members.

26 "(1) Each professional member of the board shall be
27 a citizen of the United States, a resident of Alabama, and

1 licensed and in good standing with the board as an embalmer or
2 funeral director at the time of appointment and during the
3 entire term of office. Professional members of the board shall
4 be appointed by the Governor pursuant to subsection (e). As
5 the terms of the members serving on the board on the effective
6 date of the act adding this sentence expire, the professional
7 membership of the board shall be appointed to reflect the
8 following:

9 "a. ~~Four~~ Three of the professional members of the
10 board shall hold a current license from the board to practice
11 embalming in the state, shall have been actively practicing
12 embalming in the state for the last 10 consecutive years
13 immediately preceding appointment, and shall be engaged in the
14 practice of embalming at the time of appointment to the board.

15 "b. ~~Three~~ Four of the professional members of the
16 board shall hold a current license from the board to practice
17 funeral directing in the state, shall have been actively
18 engaged in funeral directing in the state for the last 10
19 consecutive years immediately preceding appointment, and shall
20 be the operator of a funeral establishment in this state at
21 the time of appointment to the board. Two of these four
22 professional members shall also hold a current certificate of
23 authority to sell preneed services and merchandise.

24 "(2) Each consumer member of the board shall
25 represent the public in general and shall have been a citizen
26 of the United States and a resident of Alabama for the last 10
27 consecutive years immediately preceding appointment and during

1 the entire term of office. A consumer member of the board may
2 not have held, nor currently hold, a license or certification
3 issued by the board, be employed at any time by, or
4 professionally or financially associated with, the holder of a
5 license or certificate issued by the board, or be related
6 within the third degree of consanguinity or affinity to the
7 holder of a license or certificate issued by the board. One
8 consumer member of the board shall be appointed by the
9 Lieutenant Governor and one consumer member shall be appointed
10 by the Speaker of the House of Representatives pursuant to a
11 procedure adopted by rule of the board.

12 "(d) Commencing in October of 2018, and each October
13 thereafter of a year where at least one professional member
14 term on the board has expired, or is vacant for any reason,
15 all licensed funeral directors and licensed embalmers shall
16 meet in Montgomery, at a time and place fixed by the board,
17 for the purpose of nominating and submitting the names of
18 three licensed persons for each position on the board to the
19 Governor. The Governor shall promptly appoint one of the three
20 persons so nominated to serve as a professional member of the
21 board.

22 "(e) (1) Professional and consumer members of the
23 board shall serve staggered terms of four years each to
24 provide continuity of service on the board. If an appointment
25 is not made before the expiration of a term, the board member
26 then serving may continue to serve until a successor has been

1 appointed. A board member may not serve more than two full
2 consecutive terms on the board.

3 "(2) A board member who is appointed to fill a
4 vacancy which occurs before the expiration of the term of the
5 vacating member shall serve the remaining portion of the term
6 to which the former member was appointed. If a member is
7 appointed to fill an unexpired term of less than two years,
8 the time may not be counted toward the maximum eight years of
9 service.

10 "(3) Not more than one professional member of the
11 board may reside in the same district as created by Section
12 34-13-21.

13 "(4) At each meeting where nominations are made for
14 the professional members of the board, only one licensed
15 funeral director or licensed embalmer employed by the same
16 funeral establishment may vote.

17 "(f) (1) In accordance with applicable law, in
18 addition to a board member resigning from the board in
19 writing, a board member may be removed from the board for any
20 of the following grounds:

21 "a. The refusal or inability to perform board duties
22 in an efficient, responsible, or professional manner.

23 "b. The misuse of his or her position on the board
24 to obtain financial gain or seek personal advantage for
25 himself, herself, or another person.

26 "c. A final adjudication or determination of guilt
27 by any lawful authority of the board member or sanction of the

1 board member for the violation of any law the board determines
2 is substantially related to any practice governed by this
3 chapter.

4 "d. The revocation or suspension of the license of a
5 professional member of the board.

6 "(2) Any board member who fails to qualify after
7 appointment shall automatically become ineligible to serve as
8 a member of the board and a new member, properly qualified,
9 shall be appointed in the same manner as the original
10 appointment and shall serve the remainder of the term of the
11 vacating board member.

12 "(3) If a consumer board member fails to attend two
13 or more meetings within a year, without a valid excuse as
14 determined by the board, he or she shall be removed from the
15 board. A new consumer board member shall be appointed in the
16 same manner as the original appointment and shall serve the
17 remainder of the term.

18 Section 2. Sections 27-17A-1, 27-17A-3, and 27-17A-4
19 of the Code of Alabama 1975, are amended and renumbered as
20 Division 1 of Article 5 of Chapter 13 of Title 34, Code of
21 Alabama 1975, to read as follows:

22 "ARTICLE 5. Alabama Preneed Funeral and Cemetery Act
23 of 2022.

24 "Division 1. General Provisions.

25 "~~§27-17A-1.~~ §34-13-170.

26 "(a) This chapter article shall be known and may be
27 cited as the Alabama Preneed Funeral and Cemetery Act of 2022.

1 "(b) (1) The Alabama Board of Funeral Service
2 succeeds to and is vested with the powers, duties, and
3 functions of the Department of Insurance relating to the
4 regulation of endowment care, preneed sales contracts, and the
5 licensing of preneed sales agents.

6 "(2) All funds and records of the Department of
7 Insurance relating to the regulation of preneed sales
8 contracts, endowment care, and the licensing of preneed sales
9 agents are transferred to the board.

10 "(3) The status of any person properly licensed by
11 the Department of Insurance under the former Chapter 17A of
12 Title 27, on the effective date of the act adding this
13 subdivision, shall continue under the board.

14 "(4) The administrative rules of the Department of
15 Insurance existing on the effective date of the act adding
16 this subdivision shall remain in effect as administrative
17 rules of the board until added, amended, or repealed by the
18 board.

19 "(5) The existence and functioning of the Alabama
20 Preneed Funeral and Cemetery Act, created and functioning
21 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is
22 continued as the Alabama Preneed Funeral and Cemetery Act of
23 2022, under this article. All rights, duties, and obligations
24 existing in the name of the Department of Insurance, relating
25 to endowment care, preneed sales contracts, and preneed sales
26 agent licenses, shall continue under the board. Any reference
27 to the Department of Insurance in any existing law, contract,

1 or other instrument relating to endowment care, preneed sales
2 contracts, and preneed sales agent licenses, shall be deemed a
3 reference to the board.

4 "(6) The transfer of the regulation of preneed
5 contracts and the licensing of preneed sales agents from the
6 Department of Insurance to the board shall not affect the
7 rights of any person held before the effective date of the act
8 adding this subdivision, as those rights relate to any preneed
9 trust funds, endowment care trust funds, or any other funds
10 held in trust pursuant to the Alabama Preneed Funeral and
11 Cemetery Act.

12 ~~"§27-17A-3.~~ §34-13-171.

13 "(a) Nothing in this chapter shall be construed to
14 prohibit the funding of preneed contracts with multiple
15 insurance or annuity contracts. Life insurance and annuity
16 contracts used to fund preneed contracts shall conform with
17 ~~the provisions of this title~~ Title 27 as they relate to life
18 insurance and annuities and shall cover not less than the
19 initial retail price of the preneed contract.

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

1 the insurance company within 10 business days after receipt by
2 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-4.~~ §34-13-172.

23 "Nothing in this chapter shall be construed to
24 prohibit cemetery authorities from selling funeral
25 merchandise, funeral establishments from selling cemetery
26 merchandise, or third-party sellers from selling either
27 funeral merchandise or cemetery merchandise, or both.

1 Provided, the required amount of the purchase price to be
2 placed into trust shall be governed by the appropriate section
3 of this chapter."

4 Section 3. Sections 27-17A-10, 27-17A-11,
5 27-17A-11.1, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15,
6 27-17A-16, 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20,
7 27-17A-21, 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of
8 the Code of Alabama 1975, are amended and renumbered as
9 Division 2 of Article 5 of Chapter 13 of Title 34, Code of
10 Alabama 1975, to read as follows:

11 "Division 2. Certificate of Authority.

12 ~~"§27-17A-10.~~ §34-13-190.

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

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

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

1 not evidenced by a signed written preneed contract shall be
2 voidable at the election of the buyer and, if such election is
3 made, the seller shall refund to the buyer the entire amount
4 paid by the buyer together with interest thereon at the legal
5 rate within 30 days after notice to the seller.

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

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

7 "(c) (1) No person may obtain a certificate of
8 authority under this ~~article~~ chapter for the preneed sale of
9 funeral services or cemetery services unless the person or its
10 agent, in the case of a corporate entity, holds a license as a
11 funeral director or a funeral establishment, or is a cemetery
12 authority. and qualifies as an applicant for a certificate of
13 authority pursuant to the following standards and
14 qualifications:

15 "a. The applicant shall be at least the legal age of
16 majority in this state.

17 "b. The applicant shall be in good standing with the
18 board.

19 "c. The applicant may not have any felony or
20 misdemeanor convictions that relate to any activity regulated
21 by this chapter or a crime involving moral turpitude, as
22 defined by this chapter.

23 "d. The applicant shall be of good moral character
24 and submit to a criminal history background check pursuant to
25 subdivision (2).

26 "(2) An applicant for a certificate of authority
27 shall submit to the board, on a form sworn to by the

1 applicant, his or her name, date of birth, Social Security
2 number, and two complete sets of fingerprints for completion
3 of a criminal history background check. The board shall submit
4 the fingerprints to the Alabama State Law Enforcement Agency
5 for a state criminal history background check. The
6 fingerprints shall be forwarded by the agency to the Federal
7 Bureau of Investigation for a national criminal history
8 background check. Costs associated with conducting a criminal
9 history background check shall be paid by the applicant. The
10 board shall keep information received pursuant to this
11 subdivision confidential, except that information received and
12 relied upon in denying the issuance of a certificate of
13 authority may be disclosed if necessary to support the denial.
14 All character information, including the information obtained
15 through the criminal history background checks, shall be
16 considered in licensure decisions to the extent permissible by
17 all applicable laws.

18 " (d) ~~The provisions of this~~ This section ~~do~~ does not
19 apply to a cemetery authority owned or operated by a
20 governmental agency or a religious institution or to those
21 cemeteries that do not charge fees or sell plots, interment
22 rights, or any related cemetery merchandise.

23 "~~§27-17A-11.~~ §34-13-191.

24 " (a) An application to the ~~commissioner~~ board for a
25 certificate of authority shall be accompanied by the statement
26 and other matters described in this section in the form
27 prescribed by the ~~commissioner~~ board. Annually thereafter,

1 ~~within six months after the end of its fiscal period,~~ or
2 within an extension of time therefor, as the ~~commissioner~~
3 board for good cause may grant, the person authorized to
4 engage in the sale of preneed contracts shall file with the
5 ~~commissioner~~ board a full and true statement of his or her
6 financial condition, transactions, and affairs, prepared on a
7 basis as adopted by a rule of the ~~commissioner~~ board, as of
8 the preceding fiscal period or at such other time or times as
9 the ~~commissioner~~ board may provide by rule, together with
10 information and data which may be required by the ~~commissioner~~
11 board.

12 "(b) The statement shall include all of the
13 following:

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

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

18 "(3) Evidence that the person offering the statement
19 has the following qualifications:

20 "a. Has the ability to discharge his or her preneed
21 liabilities as they become due in the normal course of
22 business and has sufficient funds available during the
23 calendar year to perform his or her obligations under the
24 contract.

25 "b. Has complied with the trust requirements for the
26 funds received under contracts issued by himself or herself as
27 hereinafter described.

1 "c. Has disbursed interest, dividends, or accretions
2 earned by trust funds, in accordance with this ~~article~~ chapter
3 and rules ~~promulgated~~ adopted hereunder.

4 "d. Has complied with this chapter and any rules of
5 the ~~commissioner~~ board.

6 "(4) Any other information considered necessary by
7 the ~~commissioner~~ board to meet the ~~commissioner's~~ board's
8 responsibilities under this chapter.

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

13 "(d) (1) An application to the ~~commissioner~~ board for
14 an initial certificate of authority shall be accompanied by an
15 application fee, in an amount to be determined by the
16 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~
17 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,
18 each annual application for renewal of a certificate of
19 authority shall be accompanied by the appropriate fee as
20 determined by the ~~commissioner~~ board not to exceed
21 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

22 "(2) Any person or entity that is part of a common
23 business enterprise that has a certificate of authority issued
24 pursuant to this ~~article~~ chapter and elects to operate under a
25 name other than that of the common business enterprise shall
26 submit an application on a form ~~adopted~~ prescribed by the
27 ~~commissioner~~ board to become a branch registrant. Upon the

1 approval of the ~~commissioner~~ board that the entity qualifies
2 to sell preneed contracts under this ~~article~~ chapter except
3 for the requirements of subparagraph 1. of paragraph a. of
4 subdivision (3) of subsection (b) and if the certificate
5 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,
6 a branch registration shall be issued. Each branch registrant
7 may operate under the certificate of authority of the common
8 business enterprise upon the payment of a fee established by
9 the ~~commissioner~~ board not to exceed ~~one hundred fifty dollars~~
10 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying
11 the application on ~~July~~ September 1 annually.

12 "(e) Upon the ~~commissioner~~ board being satisfied
13 that the statement and matters which may accompany ~~it~~ the
14 statement meet the requirements of this ~~article~~ chapter and of
15 its rules, the ~~commissioner~~ board shall issue or renew the
16 certificate of authority.

17 "(f) The certificate of authority shall expire
18 annually on ~~September~~ October 1, unless renewed, or at such
19 other time or times as the ~~commissioner~~ board may provide by
20 rule.

21 "(g) On or before ~~July 1~~ of a date adopted by the
22 board each year, the certificate holder shall file with the
23 ~~commissioner~~ board in the form prescribed by the ~~commissioner~~
24 board a full and true statement as to the activities of any
25 trust established by it pursuant to this ~~article~~ chapter for
26 the preceding calendar year.

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

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

21 "(1) No valid complaint has been filed since the
22 last ~~examination~~ audit.

23 "(2) No administrative action against the preneed
24 entity has been instituted since the last ~~examination~~ audit.

25 "(3) The certificate holder certifies that all
26 outstanding preneed contracts written by the holder since

1 April 30, 2002, are fully funded in accordance with this
2 chapter.

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

8 "(5) The preneed entity has provided to the
9 ~~department~~ board in a timely manner all required and requested
10 records.

11 "(6) The preneed entity agrees to file ~~quarterly~~
12 reports of its preneed activity on a form ~~or,~~ in a format, and
13 as often as prescribed by the ~~commissioner~~ board.

14 "(j) The ~~commissioner~~ board may authorize the
15 transfer of certificates of authority and establish fees for
16 the transfer in an amount not to exceed ~~one hundred dollars~~
17 ~~(\$100)~~ one hundred thirty-two dollars (\$132). Upon receipt of
18 an application for transfer, the ~~commissioner~~ board may grant
19 a temporary certificate of authority to the proposed
20 transferee, based upon criteria established by the
21 ~~commissioner~~ board by rule, which criteria shall promote the
22 purposes of this ~~article~~ chapter in protecting the consumer. A
23 temporary certificate of authority shall expire 60 days after
24 issuance unless renewed by the ~~commissioner~~ board.

25 "~~§27-17A-11.1.~~ §34-13-192.

26 "(a) On a ~~semi-annual basis, within 45 days after~~
27 ~~the end of each second calendar reporting period~~ or before

1 July 1, each year, the certificate holder shall file a report
2 of its preneed contract activity on a form or in a format
3 prescribed by the ~~commissioner~~ board. The information reported
4 shall include the total number of preneed contracts in force
5 at the end of the previous ~~reporting period~~ calendar year, the
6 total number of preneed contracts sold during the ~~reporting~~
7 ~~period~~ previous calendar year, the total number of preneed
8 contracts fulfilled during the ~~reporting period~~ previous
9 calendar year, the total number of preneed contracts in force
10 at the end of the ~~reporting period~~ previous calendar year, and
11 such other information as may be required by the ~~commissioner~~
12 board. The report shall be organized by type of funding
13 including, life insurance, annuity, trust, letter of credit,
14 or surety bond. The report shall also provide a certification
15 by the trustee of the amount of assets held by the trust at
16 the beginning of the reporting period and at the end of the
17 reporting period, together with the amount of deposits and
18 withdrawals during the reporting period. If a certificate
19 holder shall twice default in complying with the requirements
20 of this subsection, the ~~commissioner~~ board may require that
21 the certificate holder thereafter submit the report within 45
22 days after the end of each calendar quarter and shall continue
23 so reporting for a time to be determined by the ~~commissioner~~
24 board.

25 " (b) The certificate holder shall maintain a written
26 log of preneed sales. The log shall be on a form or in a
27 format prescribed by the ~~commissioner~~ board, shall detail all

1 information required by the ~~commissioner~~ board, and shall be
2 available for inspection at any time by the ~~commissioner~~
3 board.

4 "(c) Each cemetery authority shall maintain a
5 written log of the sale of cemetery interment rights. The log
6 shall be on a form or in a format prescribed by the
7 ~~commissioner~~ board and shall detail all information required
8 by the ~~commissioner~~ board.

9 "~~§27-17A-12.~~ §34-13-193.

10 "(a) Preneed contract forms and related forms shall
11 be filed with and approved by the ~~commissioner~~ board.

12 "(b) Specific disclosure regarding whether,
13 consistent with the requirements of this chapter, the
14 certificate holder is placing certain preneed funds received
15 with the contract in trust, in an annuity, or in insurance, is
16 required in the preneed contract.

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

23 "(d) The board may maintain a statewide database of
24 preneed contracts reported to the board pursuant to subsection
25 (a). The board may make information in this database
26 searchable by the public by means of unique identifiers, or
27 any other means, that the board determines respects the

1 privacy of those involved while also protecting consumers from
2 financial waste by allowing families to determine if a
3 deceased loved one has an existing preneed contract. Any
4 preneed consumer who does not wish for his or her information
5 to appear in this searchable database may opt out by following
6 a process established by the board.

7 ~~"§27-17A-13.~~ §34-13-194.

8 "(a) Except as provided in Sections ~~27-17A-3 and~~
9 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract
10 shall require the monies paid to the seller or trustee to be
11 placed in trust in accordance with ~~Article 3~~ Division 3, for
12 funeral merchandise and services sold by funeral
13 establishments or third party sellers, or ~~Article 4~~ Division
14 4, for cemetery merchandise and services sold by cemetery
15 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~~ board documentary proof
22 thereof. Upon the ~~commissioner~~ board determining that
23 compliance has been established, the pre-existing preneed
24 trust fund assets may be merged with or into the trust fund
25 required under this chapter or continued as the trust fund and
26 that determination by the ~~commissioner~~ board shall be noted on
27 the certificate of authority, and thereafter all preneed

1 contracts covered by the trust fund, including those entered
2 into prior to May 1, 2002, shall be subject to this chapter.

3 ~~"§27-17A-14. §34-13-195.~~

4 "(a) As an alternative to the trust requirement of
5 Section ~~27-17A-13~~ 34-13-194, the details of which are set
6 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed
7 provider ~~may~~, with the prior approval of the ~~commissioner~~
8 board, may purchase a surety bond in an amount not less than
9 the aggregate value of outstanding liabilities on undelivered
10 preneed contracts for merchandise, services, and cash
11 advances. For the purposes of this section, the term
12 outstanding liabilities means the original retail amount of
13 services and cash advances and the actual cost to the entity
14 to provide the undelivered merchandise sold on each contract
15 written after April 30, 2002. The surety bond shall be in an
16 amount sufficient to cover the outstanding liability at the
17 time each contract is executed.

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

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

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

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

12 "(e) If the preneed provider fails to maintain a
13 bond pursuant to this section the preneed provider shall cease
14 the offering for sale and sale of preneed merchandise,
15 services, and cash advances as provided by this chapter or
16 rule of the board.

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

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

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

22 "~~§27-17A-15.~~ §34-13-196.

23 "(a) The ~~commissioner shall~~ board, as often as ~~he or~~
24 ~~she may deem~~ deemed necessary, ~~examine~~ shall audit the
25 business of any person writing, or holding himself or herself
26 out to be writing, preneed contracts under this chapter to the
27 extent applicable. The ~~examination~~ audit shall be made by

1 designated representatives employed or ~~examiners of the~~
2 ~~Department of Insurance~~ contracted by the board.

3 "(b) The written report of each ~~examination~~ audit,
4 when completed, shall be filed in the office of the
5 ~~commissioner~~ board and, when so filed, shall not constitute a
6 public record.

7 "(c) Any person being ~~examined~~ audited shall
8 produce, upon request, all records of the person. The
9 designated representative of the ~~commissioner~~ board may at any
10 time examine the records and affairs of the person, whether in
11 connection with a formal ~~examination~~ audit or not.

12 "(d) The ~~commissioner~~ board may waive the
13 ~~examination~~ audit requirements of this section if the
14 certificate holder submits audited financial statements.

15 "(e) The person ~~examined~~ audited shall pay the
16 ~~examination~~ audit expenses, travel expense, and per diem
17 subsistence allowance provided for examiners and incurred by
18 the ~~commissioner's~~ board's representatives or ~~examiners~~
19 auditors in connection with an ~~examination in accordance with~~
20 ~~Section 27-2-25~~ audit as prescribed by rule of the board.

21 "(f) Whenever any special audit of the premises,
22 facilities, books, or records of a licensee is necessary based
23 on the failure of the licensee to comply with this chapter or
24 rule adopted by the board, the board shall charge a fee based
25 on the cost of the special audit including, but not limited
26 to, the prorated compensation of board employees involved in
27 the special audit and any expenses incurred.

1 "(g) If the board finds that a certificate of
2 authority holder or licensee has failed to operate in
3 accordance with this chapter and, by their action, has created
4 a deficit of preneed funds entrusted to them by the consumer,
5 then the board may:

6 "(1) Bring an action for injunctive relief against
7 the responsible licensee or the holder of the certificate of
8 authority in the Circuit Court of Montgomery County.

9 "(2) Issue an emergency suspension of all licenses
10 held by the holder of the certificate of authority, and its
11 associated personnel, in accordance with the Administrative
12 Procedure Act.

13 "(3) Take any other disciplinary action authorized
14 by this chapter.

15 ~~"§27-17A-16. §34-13-197.~~

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

21 "(b) A certificate holder shall cease all preneed
22 sales to the public upon becoming inactive. The certificate
23 holder shall collect and deposit into trust all of the funds
24 paid toward preneed contracts sold prior to becoming inactive.

25 "(c) Any certificate holder desiring to surrender
26 its license to the ~~commissioner~~ board shall first do all of
27 the following:

1 "(1) File notice with the ~~commissioner~~ board.

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

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

5 "(4) Resolve to the ~~commissioner's~~ satisfaction of
6 the board all findings and violations resulting from the last
7 ~~examination~~ audit conducted.

8 "(5) Pay all outstanding fines and invoices due the
9 ~~commissioner~~ board.

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

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

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

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

25 "(g) The ~~commissioner~~ board shall continue to have
26 jurisdiction over the inactive certificate holder as if the
27 certificate were active and to require the reports and inspect

1 the records as the ~~commissioner~~ board deems appropriate so
2 long as there are funds in trust or preneed contracts that are
3 not fulfilled.

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

7 ~~§27-17A-17.~~ §34-13-198.

8 ~~"(a) Any dissolution or liquidation of a certificate~~
9 ~~holder shall be deemed to be the liquidation of an insurance~~
10 ~~company and shall be conducted under the supervision of the~~
11 ~~commissioner, who shall have all powers with respect thereto~~
12 ~~granted to the commissioner under Chapter 32 with respect to~~
13 ~~the liquidation of insurance companies.~~

14 ~~"(b) The commissioner may apply for an order~~
15 ~~directing the commissioner to liquidate a certificate holder~~
16 ~~upon any one or more grounds set out in Section 27-32-6 or~~
17 ~~when, in the commissioner's opinion, the continued operation~~
18 ~~of the certificate holder would be hazardous either to~~
19 ~~purchasers, beneficiaries, or to the people of this state.~~

20 "The board may fine and revoke, suspend, or place on
21 probation the certificate of authority and the establishment
22 license of a certificate holder on any of the following
23 grounds:

24 "(1) The certificate holder is impaired or
25 insolvent.

1 "(2) The certificate holder has refused to submit,
2 or has withheld, any of its books, records, accounts, or
3 affairs to audit by the board.

4 "(3) The certificate holder has concealed or removed
5 records or preneed assets, or both.

6 "(4) The certificate holder has failed to comply
7 with an order of the board.

8 "(5) The certificate holder has transferred, or
9 attempted to transfer, substantially its entire property or
10 business, or has entered into any transaction the effect of
11 which is to merge substantially its entire property or
12 business with that of any other certificate holder, person,
13 corporation, or entity without first having obtained the
14 written approval of the board.

15 "(6) The certificate holder has willfully violated
16 its articles of incorporation or any law of this state,
17 including any rule of the board.

18 "(7) The certificate holder has an officer,
19 director, or manager who has refused to be audited under oath
20 concerning the affairs of the certificate holder.

21 "(8) If the board determines that the continued
22 operation of the certificate holder would be hazardous to
23 purchasers, beneficiaries, or residents of this state.

24 ~~"§27-17A-18. §34-13-199.~~

25 "(a) All individuals who offer preneed contracts to
26 the public, or who execute preneed contracts on behalf of a
27 certificate holder, shall be registered with the ~~commissioner~~

1 board as preneed sales agents, pursuant to this ~~article~~
2 chapter.

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

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

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

21 "(e) An individual may begin ~~functioning~~ operating
22 as a preneed sales agent as soon as a completed application
23 for registration, as set forth in subsection (g), is ~~sent to~~
24 ~~the commissioner~~ approved by the board.

25 "(f) (1) The qualifications for a preneed sales agent
26 are as follows:

1 "~~(1)~~a. The applicant must be at least 18 years of
2 age.

3 "~~(2)~~b. The applicant must be in good standing with
4 the ~~commissioner~~ board.

5 "~~(3)~~c. The applicant ~~must~~ may not have any felony or
6 misdemeanor convictions that relate to any activity regulated
7 by this chapter or a crime involving moral turpitude, as
8 defined by this chapter.

9 "d. The applicant shall be of good moral character
10 and submit to a criminal history background check pursuant to
11 subdivision (2).

12 "(2) An applicant for licensure as a preneed sales
13 agent shall submit to the board, on a form sworn to by the
14 applicant, his or her name, date of birth, Social Security
15 number, and two complete sets of fingerprints for completion
16 of a criminal history background check. The board shall submit
17 the fingerprints to the Alabama State Law Enforcement Agency
18 for a state criminal history background check. The
19 fingerprints shall be forwarded by the agency to the Federal
20 Bureau of Investigation for a national criminal history
21 background check. Costs associated with conducting a criminal
22 history background check shall be paid by the applicant. The
23 board shall keep information received pursuant to this
24 subdivision confidential, except that information received and
25 relied upon in denying the issuance of a certificate of
26 authority may be disclosed if necessary to support the denial.
27 All character information, including the information obtained

1 through the criminal history background checks, shall be
2 considered in licensure decisions to the extent permissible by
3 all applicable laws.

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

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

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

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

21 "(4) A representation, signed by the certificate
22 holder, that the applicant is authorized to offer, sell, and
23 sign preneed contracts on behalf of the certificate holder,
24 and that the certificate holder has trained the applicant in
25 ~~the provisions of this article~~ chapter relating to preneed
26 sales, the provisions of the certificate holder's preneed

1 contract, and the nature of the merchandise, services, or
2 burial rights sold by the certificate holder.

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

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

10 "(i) A certificate holder who has registered a
11 preneed sales agent shall notify the ~~commissioner~~ board within
12 30 days after the individual's status as a preneed sales agent
13 has been terminated.

14 "(j) Upon receipt of an application that complies
15 with all of the requirements of subsection (g), the
16 ~~commissioner~~ board shall register the applicant. The
17 ~~commissioner shall by rule~~ board, in accordance with this
18 chapter, shall provide for annual renewal of registration upon
19 receipt of a renewal application and a renewal fee not to
20 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as
21 set by the ~~commissioner~~ board.

22 "~~§27-17A-19.~~ §34-13-200.

23 "No person shall engage in this state in any trade
24 practice which is addressed in the Alabama Deceptive Trade
25 Practices Act ~~(Section 8-19-1 et seq.)~~, Chapter 19 of Title 8,
26 or as determined pursuant to this chapter to be, an unfair

1 method of competition or an unfair or deceptive act or
2 practice.

3 ~~"§27-17A-20. §34-13-201.~~

4 "(a) Whenever the ~~commissioner~~ board has reason to
5 believe that any person has engaged, or is engaging, in this
6 state in any unfair method of competition or any unfair or
7 deceptive act or practice as defined in this ~~article~~ chapter,
8 or is engaging in the sale of preneed contracts without being
9 properly licensed as required by this ~~article~~ chapter, or is
10 otherwise acting in violation of this chapter, and that a
11 proceeding by the ~~commissioner~~ board in respect thereto would
12 be in the interest of the public, the ~~commissioner~~ board shall
13 institute a proceeding in accordance with this section.

14 "(b) A statement of charges, notice, or order or
15 other process under this chapter may be served by anyone duly
16 authorized by the ~~commissioner~~ board. Service may be made
17 either in the manner provided by law for service of process in
18 civil actions or by certifying and mailing a copy of the
19 statement to the person affected by the statement, notice, or
20 order or other process at his or her or its residence or
21 principal office or place of business. The verified return by
22 the person so serving the statement, notice, or order or other
23 process, setting forth the manner of the service, shall be
24 proof of the service; and the return postcard receipt for the
25 statement, notice, or order or other process, certified and
26 mailed as provided in this subsection, shall be proof of
27 service of the statement, notice, or order or other process.

1 "(c) The ~~commissioner~~ board shall conduct or cause
2 to have conducted a hearing in accordance with ~~Article 1 of~~
3 ~~Chapter 2~~ this chapter, and shall, during the conduct of the
4 hearing, have those powers necessary to enforce this chapter
5 and rules of the board; however, the penalties for failure to
6 comply with a subpoena or with an order directing discovery
7 shall be limited to a fine not to exceed one thousand dollars
8 (\$1,000) per violation. All evidence introduced and presented
9 in a hearing conducted under this chapter shall be deemed
10 public information.

11 "~~§27-17A-21.~~ §34-13-202.

12 "(a) If the ~~commissioner~~ board finds that one or
13 more grounds exist for the discretionary suspension or
14 revocation of a certificate of authority or establishment
15 license issued under this ~~article~~ chapter, the ~~commissioner~~
16 ~~may~~ board, in lieu of the suspension or revocation, may impose
17 a fine upon the certificate holder in an amount not to exceed
18 one thousand dollars (\$1,000) for each nonwillful violation
19 and in an amount not to exceed ten thousand dollars (\$10,000)
20 for each willful violation.

21 "(b) The ~~commissioner~~ board may grant not more than
22 30 days from the date of the order for the payment of any
23 fine.

24 "~~§27-17A-22.~~ §34-13-203.

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

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

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

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

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

17 "(b) (1) A person who willfully fails to timely
18 deposit the amount required to be so deposited under this
19 chapter in a preneed merchandise and services trust or
20 endowment care trust, or who knowingly receives payments for
21 or executes a preneed contract without having a valid license
22 as a preneed sales agent:

23 "a. Commits a Class B felony, ~~punishable as provided~~
24 ~~by law,~~ as to each contract on which the amount due for
25 deposit in trust equals or exceeds, in the aggregate, two
26 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 or rule of the board:

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
2 certificate 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~~ board any official form, report, record, data, or
7 other document required by the ~~commissioner~~ board containing a
8 false statement or false information concerning a matter
9 material to the ~~commissioner~~ board in the exercise of his ~~or~~
10 ~~her~~ its authority to administer and enforce this chapter.

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

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

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

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

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

10 "~~§27-17A-23.~~ §34-13-204.

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

23 "~~§27-17A-24.~~ §34-13-205.

24 The provisions of this chapter are cumulative to
25 rights under the general civil and common law, and no action
26 of the ~~commissioner~~ board may abrogate the rights to damages
27 or other relief in any court.

1 "~~§27-17A-25.~~ §34-13-206.

2 "(a) All fees collected by the ~~commissioner board~~
3 pursuant to this chapter shall be deposited into the ~~State~~
4 ~~Treasury to the credit of the Insurance Department Fund~~
5 Alabama State Funeral Service Fund.

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

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

14 Section 4. Sections 27-17A-30, 27-17A-31, 27-17A-32,
15 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are
16 amended and renumbered as Division 3 of Article 5 of Chapter
17 13 of Title 34, Code of Alabama 1975, to read as follows:

18 "Division 3. Funeral Merchandise and Services Trust
19 Fund.

20 "~~§27-17A-30.~~ §34-13-230.

21 "To comply with the trust requirement of subsection
22 (a) of Section ~~27-17A-13~~ 34-13-194, all certificate holders
23 providing preneed contracts for funeral services or funeral
24 merchandise shall be subject to this ~~article~~ chapter.

25 "~~§27-17A-31.~~ §34-13-231.

26 "(a) Any person who is paid, collects, or receives
27 funds under a preneed contract for funeral services or funeral

1 merchandise to be funded by trust shall deposit in trust an
2 amount at least equal to the sum of 75 percent of the amount
3 collected on the purchase price for all funeral services and
4 funeral merchandise sold, transportation, and facilities
5 rented other than outer burial containers, 60 percent of the
6 amount collected on the purchase price for outer burial
7 containers, 110 percent of the wholesale cost of memorials
8 from the amount collected on the purchase price of memorials,
9 and 100 percent of the amount collected on the purchase price
10 for all cash advance items sold.

11 "(b) All deposits shall be made within 30 days after
12 the end of the calendar month in which the preneed contract is
13 paid in full, unless, prior to that time, all liabilities of
14 the seller under the preneed contract to deliver the specific
15 funeral merchandise or funeral services, or both, or the
16 specific cash advances, identified by the preneed provider as
17 properly allocated to the payment, have been satisfied, or the
18 preneed contract is validly cancelled.

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

24 "(d) The certificate holder is prohibited from
25 sharing in the discharge of these responsibilities, except
26 that the certificate holder may appoint an adviser to the
27 trustee or elect tax free investments. Nothing in this chapter

1 shall prohibit a trustee from electing the qualified funeral
2 trust option under the Internal Revenue Code.

3 "(e) The trust agreement shall be submitted to the
4 ~~commissioner~~ board for approval and filing.

5 "(f) The funds shall be held in trust, both as to
6 principal and income earned thereon, and shall remain intact,
7 except that the cost of the operation of the trust or trust
8 account authorized by this section may be deducted from the
9 income earned thereon.

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

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

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

13 "~~§27-17A-32.~~ §34-13-232.

14 "(a) If amounts paid by the purchaser under a
15 preneed contract for funeral merchandise have previously been
16 deposited in trust, the seller may withdraw the principal
17 amount and trust appreciation attributable to the delivered
18 item at such time as the funeral merchandise is delivered or
19 installed or, if comprised of materials designed to withstand
20 prolonged, protected storage without deterioration, the
21 merchandise is placed in storage with a responsible third
22 party bonded and insured for the wholesale value thereof and
23 evidenced by a receipt specifically identifying the item, the
24 specific preneed contract, the location of the item, and the
25 identity and address of the bonding and insuring parties. For
26 purposes of this subsection only, caskets and alternative
27 containers may not be held in storage by the seller or a third

1 party storage facility prior to the death of the funeral
2 beneficiary.

3 "(b) The trustee shall make regular valuations of
4 the assets it holds in trust and provide a report of the
5 valuations to the certificate holder at least quarterly. At
6 all times, the certificate holder shall be able to determine
7 the amount held in trust attributable to each contract holder.
8 For all contracts effective on or after January 1, 2015, the
9 determination shall be based upon the fair market value of the
10 trust at the time and the proportionate share of the fair
11 market value attributable to each contract holder. For all
12 contracts in effect before January 1, 2015, the valuation of
13 each contract may be calculated using any valuation method
14 that had been previously approved by the ~~commissioner or the~~
15 ~~department~~ Commissioner or the Department of Insurance before
16 January 1, 2015. Any person who withdraws appreciation in the
17 value of trust, other than the pro rata portion of ~~such~~ the
18 appreciation which may be withdrawn upon the death of a
19 contract's funeral beneficiary or upon cancellation of a
20 preneed contract, shall be required to make additional
21 deposits from his or her own funds to restore the aggregate
22 value of assets to the value of funds deposited in trust, but
23 excluding from the funds deposited those funds paid out upon
24 preneed contracts which the person has fully performed or
25 which have been otherwise withdrawn, as provided in this
26 ~~article~~ chapter. The certificate holder shall be liable to

1 third parties to the extent that income from the trust is not
2 sufficient to pay the expenses of the trust.

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

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

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

15 "(d) Notwithstanding the provisions of Section
16 19-3-125, the trustee ~~may~~, subject to compliance with the
17 requirements set forth below, may invest any portion or all of
18 the funds received under preneed contracts and deposited in
19 trust in life insurance contracts or annuities issued on the
20 lives of preneed contract purchasers or preneed contract
21 beneficiaries, hereinafter, the insured or annuitant, without
22 any obligation to cover at a minimum the retail amount of the
23 preneed contract at the time of purchase of the life insurance
24 contracts or annuities as set forth in Section ~~27-17A-3~~
25 34-13-171.

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~~ State Department of
2 Insurance shall be considered to satisfy the standards and
3 requirements of Section 19-3-120.2 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-33.~~ §34-13-233.

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

19 "(b) After 30 days from the date the preneed
20 contract was executed, a purchaser, by providing written
21 notice to the certificate holder, may cancel the funeral
22 services, funeral merchandise, facilities, and cash advance
23 items portions of a preneed contract at any time, and shall be
24 entitled to the refund defined in the preneed contract
25 allocable to those items. Any accumulated earnings allocable
26 to the preneed contract shall be paid to the certificate
27 holder upon the cancellation.

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

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

18 "(e) All preneed contracts are cancelable and
19 revocable as provided in this section during the lifetime of
20 the purchaser, provided that a preneed contract does not
21 restrict any contract purchaser who is a qualified applicant
22 for, or a recipient of, supplemental security income,
23 temporary cash assistance, or Medicaid from making his or her
24 contract irrevocable.

25 "(f) In the event that the preneed contract is made
26 irrevocable pursuant to subsection (e), ~~the purchaser or the~~
27 authorizing agent shall have the right to appoint a provider

1 other than the seller of the preneed contract. In the event
2 that a provider is appointed pursuant to this subsection, the
3 seller shall transfer to the appointed provider the amount
4 paid by the purchaser to the seller and those amounts
5 deposited into trust, less a reasonable transfer fee
6 determined by the ~~seller~~ board. In the event the preneed
7 contract was funded by an insurance or annuity policy, the
8 seller shall cancel and relinquish any assignment of benefits
9 or beneficiary status under the policy or annuity contract,
10 and deliver the policy, if in the custody of the preneed
11 seller, to the policy owner or his or her legal
12 representative, and the seller may collect a reasonable
13 transfer fee as determined by rule of the board. No transfer
14 hereunder shall occur without the acceptance of the appointed
15 provider.

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

20 "~~§27-17A-34.~~ §34-13-234.

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

1 any trust funds, the certificate holder shall provide to the
2 trustee a death certificate or other valid proof of death, a
3 letter from the preneed contract holder cancelling the preneed
4 contract or valid proof the contract has been cancelled in
5 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof
6 the merchandise has been delivered and installed, and services
7 have been performed. Any trustee accepting preneed contract
8 proceeds under this ~~article~~ chapter may rely upon the
9 certification of the certificate holder accompanied by the
10 required proof, and shall not be liable to anyone for such
11 reliance. If the contract is only partially performed, the
12 disbursement shall only cover that portion of the contract
13 performed. In the event of any contract default by the
14 contract purchaser, or in the event that the funeral
15 merchandise or funeral service contracted for is not provided,
16 the trustee shall return, within 30 days after its receipt of
17 a written request therefor, 100 percent of the funds deposited
18 into the trust on the contract and the income and accretion
19 thereon to the certificate holder or to its assigns, subject
20 to Section ~~27-17A-33~~ 34-13-233.

21 "(b) For all contracts effective on or after January
22 1, 2015, the amount that may be withdrawn from the trust upon
23 fulfillment or cancellation of any particular preneed contract
24 may not exceed the amount attributable to that preneed
25 contract in proportion to the total amount held in trust for
26 all preneed contracts as of the date of withdrawal. For all
27 contracts in effect before January 1, 2015, the valuation of

1 each contract and the amount that may be withdrawn from the
2 trust may be calculated using any valuation method that had
3 been approved by the ~~commissioner or the department~~
4 Commissioner or the Department of Insurance before January 1,
5 2015."

6 Section 5. Sections 27-17A-40, 27-17A-41, 27-17A-42,
7 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,
8 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,
9 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of
10 the Code of Alabama 1975, are amended and renumbered as
11 Division 4 of Article 5 of Chapter 13 of Title 34, Code of
12 Alabama 1975, to read as follows:

13 "Division 4. Cemetery Merchandise and Services Trust
14 Fund.

15 ~~"§27-17A-40.~~ §34-13-260.

16 "To comply with the trust requirement of subsection
17 (a) of Section ~~27-17A-13~~ 34-13-194, all certificate holders
18 who are cemetery authorities providing preneed contracts for
19 cemetery services or cemetery merchandise shall be subject to
20 this ~~article~~ chapter.

21 ~~"§27-17A-41.~~ §34-13-261.

22 "(a) Any person who receives or collects any funds
23 on account of a preneed contract in this state for cemetery
24 services or cemetery merchandise, or both, entered into after
25 May 1, 2002, shall have the obligation to pay over and
26 contribute into a trust fund as hereinafter described, those
27 amounts or proportions of the funds as hereinafter provided.

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

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

9 "(d) The trustee shall take title to the property
10 conveyed to the Cemetery Merchandise and Services Trust Fund
11 subject to this section.

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

15 "(f) The party contracting to deliver the cemetery
16 merchandise or cemetery services or cash advances, whether or
17 not a preneed provider, shall be referred to in this section
18 as the "seller."

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

21 "~~§27-17A-42.~~ §34-13-262.

22 "(a) The obligation of the seller under a preneed
23 contract shall be to make contributions into the Cemetery
24 Merchandise and Services Trust Fund in accordance with the
25 following formulae:

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

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

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

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

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

11 "(b) All contributions shall be made within 30 days
12 after the end of the calendar month in which the preneed
13 contract is paid in full, unless, prior to that time, all
14 liabilities of the seller under the preneed contract to
15 deliver the specific cemetery merchandise or cemetery
16 services, or both, or the specific cash advances, identified
17 by the preneed provider as properly allocated to the payment,
18 have been satisfied, or the preneed contract is validly
19 cancelled.

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

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

5 "(d) The trustee shall invest and reinvest the
6 Cemetery Merchandise and Services Trust Fund.

7 "(e) The trustee shall make regular evaluations of
8 the fair market value of assets held in and liabilities, if
9 any, of the Cemetery Merchandise and Services Trust Fund and
10 provide a report of the evaluations to the seller at least
11 quarterly. Upon receipt of each quarterly report, the seller
12 may submit to the trustee a written and detailed analysis
13 concerning the balance of funds in the Cemetery Merchandise
14 and Services Trust Fund, certified under oath as being true
15 and correct upon information and belief by a responsible
16 officer of the seller.

17 "(f) While the obligation of the seller to make
18 contributions to the Cemetery Merchandise and Services Trust
19 Fund is set forth in this section, the obligation of the
20 seller at the time of making certain withdrawals from the
21 Cemetery Merchandise and Services Trust Fund as herein
22 provided for shall be calculated with respect to the current
23 wholesale cost of cemetery merchandise and current retail
24 price of cemetery services and cash advances at the time of
25 withdrawal. If the fair market value as reported by the
26 trustee exceeds 110 percent of the total of the following, the
27 seller shall be entitled to withdraw and retain from the

1 merchandise trust fund, the excess funds therein: 110 percent
2 of the current wholesale cost of the liability to deliver all
3 cemetery merchandise, 60 percent of the current retail price
4 for all cemetery services, 60 percent of the current retail
5 price of outer burial containers, 75 percent of the current
6 retail price of caskets, and 100 percent of the current retail
7 price of all cash advances, for the total of all preneed
8 contracts for which the purchasers have paid in full, all
9 calculated as of the time of withdrawal; and concerning the
10 total of all preneed contracts for which the purchasers have
11 not paid in full, 25 percent of the total of the following:
12 110 percent of the current wholesale cost of the liability to
13 deliver all cemetery merchandise, 60 percent of the current
14 retail price for all cemetery services, and 100 percent of the
15 current retail price of all cash advances, all calculated as
16 of the time of withdrawal.

17 "(g) At least annually the seller shall make the
18 aforesaid analysis and certification and provide the same to
19 the trustee. If the certification discloses that the fair
20 market value of the Cemetery Merchandise and Services Trust
21 Fund is less than 100 percent of the aggregate calculated
22 amount the seller shall from its own funds contribute to the
23 Cemetery Merchandise and Services Trust Fund within the 12
24 months succeeding the annual computation the amount necessary
25 to restore the trust fund to an amount equal to not less than
26 100 percent of the aggregate amount so calculated.

27 "~~§27-17A-43.~~ §34-13-263.

1 "(a) Upon cancellation of a preneed contract by
2 mutual agreement between the seller and purchaser, or upon
3 unilateral cancellation of a preneed contract by the seller by
4 reason of default on the part of the purchaser, or other valid
5 cancellation by reason of transfers to another seller or
6 otherwise, the seller ~~may~~, upon submission of a certification
7 under oath by a responsible officer of the seller to the
8 trustee, may withdraw from the Cemetery Merchandise and
9 Services Trust Fund and retain an amount equal to the amount
10 of all funds contributed to the trust fund with respect to the
11 preneed contract. Any trustee accepting preneed contract
12 proceeds under this ~~article~~ chapter may rely on the seller's
13 certification under oath as required herein to be made, and
14 shall not be liable to anyone for such reliance.

15 "(b) At such time as the seller undertakes to
16 perform its obligations under a preneed contract by delivery
17 or installation, or both, of cemetery merchandise and the
18 provision of cemetery services and disbursement on account of
19 cash advances, or otherwise, upon certification to the trustee
20 under oath by a responsible officer of the seller that the
21 obligations of the seller under the contract have been
22 completely fulfilled, the seller may withdraw from the
23 Cemetery Merchandise and Services Trust Fund and retain an
24 amount equal to the current wholesale cost to the fund with
25 respect to the preneed contract.

26 "(c) At such time as the seller has fulfilled all of
27 its obligations under all preneed contracts with respect to

1 which funds have been contributed to the trust fund, and
2 certification under oath to the trustee by a responsible
3 officer of the seller of those facts, the seller may withdraw
4 from the trust fund and retain all of the remaining assets
5 thereof.

6 ~~"§27-17A-44.~~ §34-13-264.

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

22 ~~"§27-17A-45.~~ §34-13-265.

23 "An endowment care fund and all payments or
24 contributions to it are expressly permitted as and for
25 charitable and eleemosynary purposes. No payment, gift, grant,
26 bequest, or other contribution for endowment care is invalid
27 by reason of any indefiniteness or uncertainty of the persons

1 designated as beneficiaries in the instruments creating the
2 fund, nor is the fund or any contributions to it invalid as
3 violating any law against perpetuities, or the suspension of
4 the power of alienation of title to property.

5 ~~"§27-17A-46.~~ §34-13-266.

6 "Any cemetery now existing or hereafter established,
7 excluding those operated by governmental agencies or religious
8 institutions, ~~shall be~~ may be qualified as an endowment care
9 cemetery, except those cemeteries which do not charge fees or
10 sell plots, interment rights, or any related cemetery
11 merchandise.

12 ~~"§27-17A-47.~~ §34-13-267.

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

24 "(b) Except as specifically provided in this
25 subsection, commencing on July 1, 2014, a person serving on a
26 board of trustees or cemetery authority may not also serve as
27 a trustee of an endowment care fund for the cemetery

1 authority. A board of trustees in existence on July 1, 2014,
2 may continue to serve as the trustee of an endowment care fund
3 if the board of trustees otherwise complies with this
4 subsection. Unless exempted by the ~~commissioner~~ board pursuant
5 to this subsection, on or before January 1, 2015, each member
6 of a board of trustees in existence on July 1, 2014, 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 of trustees acts as
10 trustee as of December 31, 2014. Thereafter, the amount of the
11 bonds shall be increased on January 1 of each succeeding year
12 to equal the amount in each endowment care fund as of the
13 immediately preceding December 31. The ~~commissioner~~ board
14 shall exempt a board of trustees from the bond requirement if
15 the board of trustees provides to the ~~commissioner~~ board an
16 annual audit report that satisfies all of the following
17 criteria:

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

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

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

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

4 "(c) The corporate trustee or board of trustees
5 shall be referred to as a qualified trustee. Unless otherwise
6 specified in this ~~article~~ chapter or in the terms of the trust
7 instrument, the trustee of any trust established under or
8 pursuant to this ~~article~~ chapter shall have all powers granted
9 to trustees under Article 14 of Chapter 3 of Title 19. The
10 incorporation herein of such powers shall not be deemed to
11 imply any duties of trustees of trusts established under or
12 pursuant to this ~~article~~ chapter not expressly delineated in
13 this ~~article~~ chapter.

14 "(d) The cemetery authority may employ a person to
15 advise the trustee in the management of the fund.

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

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

26 "~~§27-17A-48.~~ §34-13-268.

1 "(a) Each cemetery authority shall comply with this
2 chapter and maintain at each place of business a list of the
3 names and addresses of its owners and directors, which shall
4 be available to the public.

5 "(b) Each cemetery authority shall maintain a record
6 of all ~~property~~ interment space owners by name and last known
7 address with a description of merchandise and location of
8 burial lots, crypts, or niches and the records shall be on a
9 form or in a format prescribed by the board and shall detail
10 all information required by the board. A plat map shall be
11 maintained for each cemetery location at the cemetery business
12 office. A book or file shall be kept as to the date, location
13 by lot, and space number of each person interred or entombed
14 in the cemetery. A written copy of the cemetery rules and
15 regulations shall be maintained at each location and made
16 available to the public upon request.

17 "~~§27-17A-49.~~ §34-13-269.

18 "(a) From the sale price of each plot, crypt, or
19 niche sold by the cemetery authority, of an endowment care
20 cemetery, it shall pay an amount, not less than as determined
21 in accordance with the following schedule, to the trustee of
22 the endowment care fund, which payment shall be paid over to
23 the trustee not more than four months after the close of the
24 month in which the total or final payment on the sale has been
25 received:

26 "(1) Fifteen percent of the sale price of each grave
27 or lawn crypt space.

1 "(2) Five percent of the sale price of each
2 mausoleum crypt or niche.

3 "(3) The amount received for special care funds,
4 gifts, grants, contribution devises, or bequests made with
5 respect to the separate or special care of a particular lot,
6 grave, crypt, niche, mausoleum, monument, or marker or that of
7 a particular family, as distinguished from the general endowed
8 care of a cemetery or of a garden.

9 "(b) In addition to subsection (a), a cemetery
10 authority may receive, and transfer to the trustee, as a part
11 of or incident to the endowment care fund, any property, real,
12 personal, or mixed, bequeathed, devised, given, or otherwise
13 contributed to it for endowment care purposes. Any contractual
14 endowment care deposits shall fall under this ~~article~~ chapter.

15 "(c) Any cemetery authority which is organized and
16 engaged in business prior to May 1, 2002, shall qualify as an
17 endowment care cemetery if the following occur:

18 "(1) Not already placed, it shall within 90 days of
19 May 1, 2002, have placed the entire principal of any endowment
20 care fund in its possession, custody, or control, into the
21 hands of a qualified trustee designated by it, to be
22 administered as set forth in this ~~article~~ chapter; and
23 principal of its endowment care fund, or the aggregate
24 principal of its endowment care funds, if more than one, shall
25 have a fair market value on either May 1, 2002, or on the date
26 of transfer to the trustee of not less than twenty-five
27 thousand dollars (\$25,000); or it shall substitute 25 percent

1 for each percentage of each sale for the next five years or
2 five thousand dollars (\$5,000) per year, whichever is greater,
3 until the balance of twenty-five thousand dollars (\$25,000) is
4 reached. In such case, the entire amount of twenty-five
5 thousand dollars (\$25,000) shall be paid into the fund before
6 the end of the fifth year, and no interest may be removed from
7 the fund until the twenty-five thousand dollars (\$25,000)
8 minimum has been reached.

9 "(2) It shall at all times after May 1, 2002, comply
10 with the minimum requirements for payments to the trustee for
11 endowment care.

12 "(d) Any cemetery authority organizing a cemetery
13 after May 1, 2002, whether it be by incorporation,
14 association, individually, or by any other means, or having
15 its first burial after May 1, 2002, before disposing of any
16 burial lot or right or making any sale thereof or making its
17 first burial, or both, shall cause to be deposited with a
18 qualified trustee, in cash, the sum of twenty-five thousand
19 dollars (\$25,000) in the endowment care fund.

20 "(e) When a cemetery authority has placed with a
21 trustee, pursuant to this ~~article~~ chapter, a sum of money in
22 excess of the aggregate which would be required only under
23 subsection (a), the cemetery authority shall not be required
24 under this ~~article~~ chapter to make further payments to the
25 trustee until such time thereafter as, taking into account all
26 sales of plots, crypts, and niches in the cemetery property
27 since the first of the sales, the aggregate of payments to the

1 trustee if made in accordance with subsection (a) would equal
2 the applicable minimum amount paid to the trustee under
3 subdivision (1) of subsection (c), or subsection (d) ~~of this~~
4 ~~section.~~

5 "(f) Any deposit previously made, or represented to
6 be made to an existing endowment care fund which exceeds 10
7 percent of the gross selling price of all plots, crypts, and
8 niches sold since representation of endowment care shall be
9 made a permanent part of the endowment care fund and
10 transferred to the qualified trustee under this ~~article~~
11 chapter.

12 "~~§27-17A-50.~~ §34-13-270.

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

1 investment, reinvestment, or retention to be for the best
2 interest of the trust estate.

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

7 "(c) For the purposes of this section, net income
8 does not include realized or unrealized capital gains or
9 losses. All realized capital gains and losses shall be
10 recorded to corpus, which is the sum of deposits made by a
11 cemetery authority into an endowment care fund, pursuant to
12 Section ~~27-17A-49~~ 34-13-269, and all realized capital gains or
13 losses. Capital gains taxes, if any, may be paid from the
14 corpus. Unrealized capital gains and losses, if any, shall be
15 recorded as an adjustment to the fair market value of the
16 endowment care fund.

17 "~~§27-17A-51.~~ §34-13-271.

18 "The trustee shall not be required to inquire into
19 the propriety of the expenditures made by the cemetery
20 authority in connection with endowment care of the cemetery,
21 and it shall not be held responsible in any manner whatsoever
22 for and on account of payments of the income from the
23 endowment care fund made to the cemetery authority.

24 "~~§27-17A-52.~~ §34-13-272.

25 "The trustee ~~shall~~, not less than annually, shall
26 file with the cemetery authority an account which shall

1 include a complete disclosure of all activity since the
2 previous account and a statement detailing fund investments.

3 ~~"§27-17A-53.~~ §34-13-273.

4 "To the extent that any endowment care trust
5 existing on May 1, 2002, includes investments or assets, the
6 retention of which the trustee in the free exercise of its
7 discretion deems not in the best interest of the trust estate,
8 the trustee shall dispose of the investments or assets as soon
9 as practicable without undue sacrifice to the trust estate,
10 and in any event within two years after May 1, 2002.

11 ~~"§27-17A-54.~~ §34-13-274.

12 "An annual report of the endowment care fund shall
13 be made to the ~~commissioner~~ board by each cemetery authority
14 within 90 days of the close of each calendar year. This report
15 shall include the qualified trustee's name or names, the bond
16 numbers if individual trustees or the name and address of the
17 financial institution in which the fund is maintained, and the
18 affidavit of the cemetery authority affirming compliance with
19 this ~~article~~ chapter. Prior to the sale or transfer of a
20 cemetery, the cemetery authority shall report and document to
21 the ~~commissioner~~ board that the endowment care fund is
22 currently funded in accordance with this ~~article~~ chapter.

23 ~~"§27-17A-55.~~ §34-13-275.

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

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

17 ~~"§27-17A-56. §34-13-276.~~

18 "(a) Each cemetery authority shall adopt rules.

19 Cemetery rules and regulations are adopted for the mutual
20 protection of the cemetery owners and the owners of interment
21 rights in the cemetery. All owners of interment rights and
22 other persons within the cemetery shall be subject to these
23 rules and regulations as they now exist and as they may be
24 amended or altered by the cemetery. The cemetery authority ~~has~~
25 ~~the right to~~ may enforce these rules and regulations. ~~The~~
26 ~~cemetery authority expressly reserves the right~~ and, at any
27 time and without prior notice to any owners, ~~to~~ may adopt new

1 rules and regulations or ~~to~~ amend, modify, or repeal any
2 ~~section, paragraph, or sentence of these~~ rules and
3 regulations.

4 "(b) This section shall not apply to the officers,
5 directors, shareholders, partners, employees, agents, or
6 representatives of a cemetery authority who intentionally
7 commit an act of vandalism or other illegal act.

8 "~~§27-17A-57.~~ §34-13-277.

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

15 Section 6. Beginning with the 2022 fiscal year, the
16 Department of Insurance may transfer to the Alabama Board of
17 Funeral Service quarterly, for deposit by the board into the
18 Alabama State Funeral Service Fund, the total amount of three
19 hundred thousand dollars (\$300,000) per fiscal year, to defray
20 costs associated with the administration and operation of the
21 Alabama Preneed Funeral and Cemetery Act of 2022 by the board.
22 Unless extended by an act of the Legislature, this section
23 shall be repealed at the end of the 2025 fiscal year.

24 Section 7. All laws or parts of laws which conflict
25 with this act are repealed, and specifically, Section
26 27-17A-2, Code of Alabama 1975, relating to definitions as now

1 appearing in Section 34-13-1, Code of Alabama 1975, is
2 repealed.

3 Section 8. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, as amended
7 by Amendment 890, now appearing as Section 111.05 of the
8 Official Recompilation of the Constitution of Alabama of 1901,
9 as amended, because the bill defines a new crime or amends the
10 definition of an existing crime.

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