

**Senate Insurance Engrossed Substitute for SB131**



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A BILL  
TO BE ENTITLED  
AN ACT

Relating to the Alabama Board of Funeral Service; to amend Section 34-13-1, as amended by Act 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21, and 34-13-22, Sections 34-13-23 and 34-13-27, as amended by Act 2022-339, 2022 Regular Session, Code of Alabama 1975, to rename the Alabama Board of Funeral Service as the Alabama Board of Funeral Services and to provide further for definitions and the membership of the board; to add Article 5 to Chapter 13, Title 34, Code of Alabama 1975, by amending and renumbering Sections 27-17A-1, 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25, inclusive, 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to 27-17A-57, inclusive, as Sections 34-13-170 to 34-13-172, inclusive, 34-13-190 to 34-13-206, inclusive, 34-13-230 to 34-13-234, inclusive, and 34-13-260 to 34-13-277, inclusive, Code of Alabama 1975; to establish the Alabama Preneed Funeral and Cemetery Act of 2023; to transfer the existing Preneed Funeral and Cemetery Act, and the regulation of preneed contracts, from the Commissioner and Department of Insurance to the Alabama Board of Funeral Service; to authorize the

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29 Department of Insurance to temporarily transfer certain funds  
30 to the board to defray costs associated with the  
31 administration and operation of the Alabama Preneed Funeral  
32 and Cemetery Act of 2023; and in connection therewith would  
33 have as its purpose or effect the requirement of a new or  
34 increased expenditure of local funds within the meaning of  
35 Section 111.05 of the Constitution of Alabama of 2022.

36 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

37 Section 1. Sections 34-13-1, as amended by Act  
38 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21,  
39 and 34-13-22, and Sections 34-13-23 and 34-13-27, as amended  
40 by Act 2022-339, 2022 Regular Session, of the Code of Alabama  
41 1975, are amended to read as follows:

42 "§34-13-1

43 (a) For purposes of this chapter, the following terms  
44 have the following meanings:

45 (1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY SCIENCE. A  
46 school or college approved by the American Board of Funeral  
47 Service Education, or a successor organization, which  
48 maintains a course of instruction of not less than 48 calendar  
49 weeks or four academic quarters or college terms and which  
50 gives a course of instruction in the fundamental subjects  
51 related to funeral service and mortuary science education as  
52 approved by the American Board of Funeral Service Education,  
53 or a successor organization, and other courses of instruction  
54 in fundamental subjects as may be prescribed by the Alabama  
55 Board of Funeral Service.

56 (2) ALKALINE HYDROLYSIS. The technical process that

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57 reduces human remains to bone fragments using heat, water, and  
58 chemical agents.

59 (3) ALTERNATIVE CONTAINER. A nonmetal receptacle or  
60 enclosure, without ornamentation or a fixed interior lining,  
61 which is designed for the encasement of human remains and  
62 which is made of cardboard, pressed-wood, composition  
63 materials, with or without an outside covering, pouches of  
64 canvas, or other materials.

65 ~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION. The  
66 national academic accreditation agency for college and  
67 university programs in funeral service and mortuary science  
68 education. The accrediting function of the American Board of  
69 Funeral Service Education is recognized by the United States  
70 Department of Education and the Council on Higher Education  
71 Accreditation.

72 ~~(4)~~ (5) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.  
73 Any person engaged in the study of the art of embalming under  
74 the instructions and supervision of a licensed embalmer  
75 practicing in this state.

76 ~~(5)~~ (6) APPRENTICE FUNERAL DIRECTOR or FUNERAL  
77 DIRECTOR'S APPRENTICE. Any person operating under or in  
78 association with a funeral director for the purpose of  
79 learning the business or profession of funeral director, to  
80 the end that he or she may become licensed under this chapter.

81 (7) AT NEED. At the time of death or immediately  
82 following death.

83 ~~(6)~~ (8) AUTHORIZING AGENT. A person at least 18 years of  
84 age, except in the case of a surviving spouse or parent, who

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85 is legally entitled to order the cremation or final  
86 disposition of particular human remains.

87 (9) BASIC SERVICES FEE. The fee for the professional  
88 services of the funeral director and staff that is added to  
89 the total cost of the funeral arrangements. The term includes  
90 a charge for services performed in conducting the arrangements  
91 conference, planning the funeral, securing the necessary  
92 permits, preparing the notices, and coordinating the cemetery  
93 or crematory arrangements.

94 (10) BELOW-GROUND CRYPT. A preplaced enclosed chamber,  
95 usually constructed of reinforced concrete, poured in place or  
96 a precast unit installed in quantity, either side-by-side or  
97 multiple depth, and covered by earth or sod and known also as  
98 a lawn crypt or turf-top crypt.

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

102 ~~(7)~~ (12) BOARD. The Alabama Board of Funeral Service.

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

107 (14) BURIAL. The placement of human remains in a grave  
108 space or lawn crypt.

109 ~~(8)~~ (15) CASH ADVANCE ITEMS. Any item of service or  
110 merchandise described to a purchaser using the term cash  
111 advance, accommodation, cash disbursement, or similar term. A  
112 cash advance item is also any item obtained from a third party

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113 and paid for by a funeral provider on behalf of a purchaser.  
114 Cash advance items include, but are not limited to, all of the  
115 following:

- 116 a. Cemetery or crematory services.
- 117 b. Pallbearers.
- 118 c. Public or other transportation.
- 119 d. Clergy honoraria.
- 120 e. Flowers.
- 121 f. Musicians or singers.
- 122 g. Nurses.
- 123 h. Obituary notices.
- 124 i. Funeral programs.
- 125 j. Gratuities.
- 126 k. Death certificates.
- 127 l. Outer burial containers.
- 128 m. Cemetery plots.
- 129 n. Escorts.

130 ~~(9)~~ (16) CASKET. A rigid container designed for the  
131 encasement of human remains which is usually constructed of  
132 wood, metal, or similar material and ornamented and lined with  
133 fabric.

134 ~~(10)~~ (17) CEMETERY. A place established, maintained,  
135 managed, operated, or improved which is dedicated to and used  
136 or intended to be used for the permanent interment of human  
137 remains and their memorialization. It may be either land or  
138 earth interment; a columbarium; a mausoleum for vault or crypt  
139 entombment; a structure or place used or intended to be used  
140 for the interment of cremated remains; cryogenic storage; or

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141 any combination of one or more thereof.

142 ~~(11)~~ (18) CEMETERY AUTHORITY. Any individual, person,  
143 firm, profit or nonprofit corporation, trustee, partnership,  
144 society, religious society, church association or  
145 denomination, municipality, or other group or entity, however  
146 organized, insofar as they or any of them may now or hereafter  
147 establish, own, operate, lease, control, or manage one or more  
148 cemeteries, burial parks, mausoleums, columbariums, or any  
149 combination or variation thereof, or hold lands or structures  
150 for burial grounds or burial purposes in this state and engage  
151 in the operation of a cemetery, including any one or more of  
152 the following: The care and maintenance of a cemetery; the  
153 interment, entombment, and memorialization of the human dead  
154 in a cemetery; the sale, installation, care, maintenance, or  
155 any combination thereof, with respect of monuments, markers,  
156 foundations, memorials, burial vaults, urns, crypts,  
157 mausoleums, columbariums, flower vases, floral arrangements,  
158 and other cemetery accessories for installation or use within  
159 a cemetery; and the supervision and conduct of funeral and  
160 burial services within the bounds of the cemetery.

161 (19) CEMETERY MERCHANDISE. Any **personal** property  
162 offered for sale, contracted for sale, or sold for use in  
163 connection with the burial, final disposition,  
164 memorialization, interment, entombment, or inurnment of human  
165 remains by a cemetery authority. The term specifically  
166 includes, but is not limited to, the casket, the alternative  
167 container, the outer burial container, and the memorial, ~~and~~  
168 ~~interment rights.~~

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169           (20) CEMETERY SERVICES. At need or preneed services  
170 provided by a cemetery authority for interment, entombment,  
171 inurnment, and installation of cemetery merchandise.

172           (21) CERTIFICATE HOLDER. A funeral establishment,  
173 cemetery authority, third-party seller, or any other person to  
174 whom a valid certificate of authority to sell preneed  
175 contracts has been granted by the board.

176           (22) COLUMBARIUM. A structure or room or space in a  
177 building or structure used or intended to be used for the  
178 inurnment of cremated remains.

179           ~~(12)~~ (23) CONVICTION. The entry of a plea of guilty or a  
180 guilty verdict rendered by any court of competent  
181 jurisdiction, excluding traffic violations.

182           ~~(13)~~ (24) CREMATED REMAINS. Human remains recovered  
183 after the completion of the cremation process, including  
184 pulverization, which leaves only bone fragments reduced to  
185 unidentifiable dimensions, and the residue of any foreign  
186 materials that were cremated with the human remains.

187           (25) CREMATED REMAINS CONTAINER. A receptacle in which  
188 cremated remains are placed.

189           ~~(14)~~ (26) CREMATION. The technical irreversible process,  
190 using heat, flames, or chemical agents, that reduces human  
191 remains to bone fragments. The reduction takes place through  
192 heat and evaporation. Cremation shall include the processing,  
193 and may include the pulverization, of the bone fragments.  
194 Cremation is a process and is a method of final disposition.

195           ~~(15)~~ (27) CREMATIONIST. A person licensed by the board  
196 to perform the procedure of cremation.

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197           ~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel used  
198 to reduce human remains to bone fragments.

199           ~~(17)~~ (29) CREMATION CONTAINER. The container in which  
200 human remains are transported to a crematory, in which human  
201 remains are placed upon arrival at a crematory, or for storage  
202 and placement in a cremation chamber for cremation.

203           ~~(18)~~ (30) CREMATORY. A building or portion of a building  
204 that houses a cremation chamber and that may house a holding  
205 facility for purposes of cremation and as part of a funeral  
206 establishment.

207           (31) CREMATORY AUTHORITY. Any person who owns or  
208 controls a crematory.

209           (32) DEATH CERTIFICATE. A legal document containing  
210 vital statistics pertaining to the life and death of the  
211 deceased.

212           (33) DECEASED or DECEDENT. One who is no longer living.

213           ~~(19)~~ (34) EMBALMER. Any person engaged, or holding  
214 himself or herself out as engaged, in the business, practice,  
215 science, or profession of embalming, whether on his or her own  
216 behalf or in the employ of a registered and licensed funeral  
217 director.

218           ~~(20)~~ (35) EMBALMING. The practice, science, or  
219 profession, as commonly practiced, of preserving,  
220 disinfecting, and preparing by application of chemicals or  
221 other effectual methods, human dead for burial, cremation, or  
222 transportation.

223           (36) ENCASEMENT. The placement of human remains in a  
224 rigid container including, but not limited to, a casket or



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225 urn.

226 (37) ENDOWMENT CARE. The maintenance and repair of all  
227 places in a cemetery, subject to the rules of the cemetery  
228 authority. The term may also be referred to as endowed care,  
229 perpetual care, improvement care, or permanent care.

230 (38) ENDOWMENT CARE TRUST FUND. An irrevocable trust  
231 fund set aside by law with a trustee, along with the income  
232 therefrom, to provide for the endowment care of a cemetery.

233 (39) ENTOMBMENT. The act of placing human remains in a  
234 mausoleum crypt.

235 (40) FINAL DISPOSITION. The lawful disposal of human  
236 remains whether by interment, cremation, or other method.

237 ~~(21)~~ (41) FUNERAL. A ceremony for celebrating,  
238 sanctifying, or remembering the life of a person who has died.  
239 A funeral may be divided into the following two parts:

240 a. The funeral service, which may take place at a  
241 funeral home, church, or other place.

242 b. The committal service or disposition, which may take  
243 place by the grave, tomb, mausoleum, or crematory where the  
244 body of the decedent is to be buried or cremated.

245 ~~(22)~~ (42) FUNERAL ARRANGEMENTS. The completing of  
246 funeral service arrangements, cremation arrangements, and the  
247 financial details of a funeral at the time of death. The term  
248 includes the collection of vital statistic information, death  
249 certificate information, obituary and funeral notice  
250 completion, the completion of a statement of funeral goods and  
251 services selected, organizing of funeral and memorial services  
252 for families, and the ordering of cash advance items.

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253           (43) FUNERAL BENEFICIARY. The person or persons who  
254 will receive the benefit of the funeral and cemetery goods and  
255 services to be delivered under a preneed contract at the time  
256 of his, her, or their death.

257           ~~(23)~~ (44) FUNERAL DIRECTING. The practice of directing  
258 or supervising funerals, the practice of preparing dead human  
259 bodies for burial by means other than embalming, or the  
260 preparation for the final disposition of dead human bodies;  
261 the making of funeral arrangements or providing for funeral  
262 services or the making of financial arrangements for the  
263 rendering of these services; the provision or maintenance of a  
264 place for the preparation for final disposition of dead human  
265 bodies; the use of the terms funeral director, undertaker,  
266 mortician, funeral parlor, or any other term from which can be  
267 implied the practice of funeral directing; or the holding out  
268 to the public that one is a funeral director or engaged in a  
269 practice described in this subdivision.

270           ~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be  
271 licensed to practice the profession of funeral directing under  
272 the laws of this state, who consults with the public, who  
273 plans details of funeral services with members of the family  
274 and minister or any other person responsible for such  
275 planning, or who directs, is in charge, or apparent charge of,  
276 and supervises funeral service in a funeral home, church, or  
277 other place; who enters into the making, negotiation, or  
278 completion of financial arrangements for funeral services, or  
279 who uses in connection with the profession of funeral  
280 directing the terms funeral director, undertaker, funeral

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281 counselor, mortician, or any other term or picture or  
282 combination thereof when considered in context in which used,  
283 from which can be implied the practicing of the profession of  
284 funeral directing or that the person using such term or  
285 picture can be implied to be holding himself or herself out to  
286 the public as being engaged in the profession of funeral  
287 directing; and for all purposes under Alabama law, a funeral  
288 director is considered a professional. For the purposes of  
289 this chapter, the term does not include any cemetery  
290 authority.

291 ~~(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes any  
292 funeral home or mortuary service located at a specific street  
293 address where the profession of funeral directing, embalming,  
294 or cremation is practiced in the care, planning, and  
295 preparation for burial, cremation, or transportation of human  
296 dead. A funeral establishment shall consist of and maintain  
297 all of the following facilities:

298 a. A preparation room equipped with sanitary nonporous  
299 floor and wall and necessary drainage and ventilation, and  
300 containing operating embalming equipment, necessary approved  
301 tables, instruments, hot and cold running water, containers or  
302 receptacles for soiled linen or clothing, and supplies for the  
303 preparation and embalming of dead human bodies for burial,  
304 cremation, and transportation.

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

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309 c. At least one operating funeral coach or hearse  
310 properly licensed and equipped for transporting human remains  
311 in a casket or urn.

312 d. If engaged in the practice of cremation, the  
313 establishment shall satisfy all crematory requirements  
314 provided in this chapter and have on site an adequate supply  
315 of urns for display and sale.

316 e. A room suitable for public viewing or other funeral  
317 services that is a minimum of 1,000 square feet.

318 f. An office for holding arrangement conferences with  
319 relatives or authorizing agents.

320 (47) FUNERAL SERVICE. At need or preneed services  
321 provided by a funeral establishment in connection with funeral  
322 directing, final disposition of human remains, or installation  
323 of memorials.

324 ~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE. Any  
325 item offered for sale, contracted for sale, or sold for use in  
326 connection with funeral directing or funeral services when  
327 sold by a funeral director including, but not limited to,  
328 caskets, alternative containers, outer burial containers,  
329 urns, memorials, clothing used to dress human dead when sold  
330 by a funeral director, and all equipment and accoutrements  
331 normally required for the preparation for burial or funeral  
332 and other disposition of human dead.

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

335 ~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or  
336 shameful immorality or showing a moral indifference to the

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337 opinions of the good and respectable members of the community  
338 and to the just obligations of the position held by the  
339 offender.

340 ~~(28)~~ (51) HOLDING ROOM. Either of the following:

341 a. A room within a funeral establishment that satisfies  
342 the requirements of a branch location as provided in this  
343 chapter or board rule, for the retention of human remains  
344 before final disposition.

345 b. A room within a crematory facility, designated for  
346 the retention of human remains before and after cremation,  
347 that is not accessible to the public.

348 (52) HUMAN REMAINS. The body of a decedent in any stage  
349 of decomposition, including cremated remains.

350 (53) INTERMENT. The final disposition of human remains  
351 by burial, burial at sea, entombment, or inurnment.

352 (54) INTERMENT RIGHT. The right to inter human remains  
353 in a particular interment space in a cemetery.

354 (55) INTERMENT SPACE. A space intended for the final  
355 disposition of human remains including, but not limited to, a  
356 grave space, mausoleum crypt, niche, and below-ground crypt.

357 (56) INURNMENT. The act of placing cremated remains in  
358 a receptacle including, but not limited to, an urn and  
359 depositing it in a niche.

360 (57) LICENSEE. Any individual, firm, corporation,  
361 partnership, joint venture, or limited liability company which  
362 obtains a license, certificate, or registration in accordance  
363 with this chapter.

364 ~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral

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365 director and cremationist who has full charge, control, and  
366 supervision of all activities involving cremation at a funeral  
367 establishment or crematory.

368 ~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who has  
369 full charge, control, and supervision of all activities  
370 involving the preparation room and embalming.

371 ~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed funeral  
372 director who has full charge, control, and supervision of all  
373 activities involving funeral directing for a funeral  
374 establishment.

375 (61) MAUSOLEUM. A chamber or structure used or intended  
376 to be used for entombment.

377 (62) MAUSOLEUM CRYPT. A chamber of a mausoleum of  
378 sufficient size for entombment of human remains.

379 (63) MEMORIAL. Any product, other than a mausoleum or  
380 columbarium, used for identifying an interment space or for  
381 commemoration of the life, deeds, or career of some decedent  
382 including, but not limited to, a monument, marker, niche  
383 plate, urn garden plaque, crypt plate, cenotaph, marker bench,  
384 and vase.

385 (64) MEMORIAL RETAILER. Any person offering or selling  
386 memorials at retail to the public.

387 (65) MEMORIALIZATION. Any permanent system designed to  
388 mark or record the names and other data pertaining to a  
389 decedent.

390 ~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or  
391 violent act, or any act involving theft, theft of services,  
392 theft by deception, extortion, receiving stolen property,



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393 identity theft, forgery, fraud, tampering with records,  
394 bribery, perjury, or any similar act in any jurisdiction.

395 ~~(33)~~ (67) MORTUARY SCIENCE. The scientific,  
396 professional, and practical aspects, with due consideration  
397 given to accepted practices, covering the care, preparation  
398 for burial, or transportation of dead human bodies, which  
399 shall include the preservation and sanitation of the bodies  
400 and restorative art and those aspects related to public  
401 health, jurisprudence, and good business administration.

402 ~~(34)~~ (68) MORTUARY SERVICE. A location with a specific  
403 street address where embalming or cremation, or both, is  
404 practiced for a licensed funeral establishment and where no  
405 services or merchandise are sold directly or at retail to the  
406 public. A mortuary service shall consist of and maintain all  
407 of the following facilities:

408 a. A preparation room equipped with sanitary nonporous  
409 floor and walls, operating embalming equipment, and necessary  
410 drainage and ventilation and containing necessary approved  
411 tables, instruments, hot and cold running water, containers or  
412 receptacles for soiled linen or clothing, and supplies for the  
413 preparation and embalming of dead human bodies for burial,  
414 cremation, and transportation.

415 b. At least one operating motor vehicle properly  
416 licensed and equipped for transporting human remains in a  
417 casket or urn.

418 c. If engaged in the practice of cremation, the  
419 establishment shall satisfy all requirements for a crematory  
420 provided in this chapter.

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

423 ~~(35)~~ (70) OPERATOR. A person, corporation, firm, legal  
424 representative, managing funeral director, general manager, or  
425 other organization owning or operating a funeral establishment  
426 or cemetery.

427 (71) OUTER BURIAL CONTAINER. A rigid container that is  
428 designed for placement in the grave space around the casket or  
429 the urn including, but not limited to, containers commonly  
430 known as burial vaults, grave boxes, and grave liners.

431 (72) PERSON. Any individual, firm, corporation,  
432 partnership, joint venture, limited liability company,  
433 association, trustee, government or governmental subdivision,  
434 agency, or other entity, or any combination thereof.

435 ~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has been  
436 actively and continuously engaged or employed in the practice  
437 of embalming under the supervision of a licensed embalmer for  
438 four consecutive years immediately preceding May 1, 1975, and  
439 has been issued a license as a practical embalmer under the  
440 grandfather provisions of this chapter.

441 (74) PREARRANGEMENT. The term applied to completing the  
442 details for selection of merchandise or services on a preneed  
443 basis, which may or may not include prefunding or prepayment.

444 (75) PREDEVELOPED. Designated areas or buildings within  
445 a cemetery that have been mapped and planned for future  
446 construction but are not yet completed.

447 (76) PREDEVELOPED INTERMENT SPACE. An interment space  
448 that is planned for future construction but is not yet



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449 completed.

450 (77) PREFUND. The term applied to completing the  
451 financial details of a prearrangement, which include  
452 prefunding or prepayment.

453 (78) PRENEED. Any time prior to death.

454 (79) PRENEED CONTRACT. A written contract to purchase  
455 funeral merchandise, funeral services, cemetery merchandise,  
456 or cemetery services from the seller on a preneed basis.

457 (80) PRENEED CONTRACT TRUST FUND. The funds received  
458 pursuant to a preneed contract which are required by law to be  
459 held in trust until the merchandise or services purchased  
460 pursuant to the contract are delivered or provided or until  
461 otherwise lawfully withdrawn.

462 (81) PRENEED SALES AGENT. A person who is in the  
463 business of selling preneed contracts.

464 ~~(37)~~ (82) PROCESSING or PULVERIZATION. The reduction of  
465 identifiable bone fragments after the completion of the  
466 cremation process to unidentifiable bone fragments or  
467 granulated particles by manual or mechanical means.

468 (83) PROVIDER. The person, who may or may not be the  
469 seller, who actually provides merchandise and services under  
470 the terms of a preneed contract.

471 (84) PURCHASE PRICE. The amount paid by the purchaser  
472 for merchandise and services purchased under a preneed  
473 contract, exclusive of finance charges, sales tax, charges  
474 relating to interment rights, arrangement conference fees, or  
475 charges for credit life insurance.

476 (85) PURCHASER. The person who purchases a preneed

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477 contract either on his or her behalf or on behalf of a  
478 third-party beneficiary.

479 (86) RELIGIOUS INSTITUTION. An organization formed  
480 primarily for religious purposes which has applied and  
481 qualified for exemption from federal income tax as an exempt  
482 organization under Section 501(c)(3) of the Internal Revenue  
483 Code of 1986, as amended.

484 (87) SCATTERING. The lawful dispersion of cremated  
485 remains.

486 (88) SELLER. Any person offering or selling merchandise  
487 or services on a preneed basis including, but not limited to,  
488 funeral establishments, cemetery authorities, crematory  
489 authorities, and memorial retailers.

490 (89) SPECIAL CARE. Any care provided, or to be  
491 provided, that is supplemental to, or in excess of, endowment  
492 care, in accordance with the specific directions of any donor  
493 of funds for those purposes.

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

496 ~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for cremated  
497 remains, usually composed of cardboard, plastic, or similar  
498 material, that can be closed in a manner that prevents the  
499 leakage or spillage of the cremated remains or the entrance of  
500 foreign material, and is a single container of sufficient size  
501 to hold the cremated remains until an urn is acquired or the  
502 cremated remains are scattered or buried.

503 (92) THIRD-PARTY SELLER. Any person, who is not a  
504 funeral establishment or a cemetery authority, engaged in the

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505 sale of preneed funeral merchandise or cemetery merchandise.

506 (93) TRUSTEE. Any person, state or national bank, trust  
507 company, or federally insured savings and loan association  
508 lawfully appointed as fiduciary over funds deposited by one or  
509 more purchasers of a preneed contract or deposited pursuant to  
510 an endowment care trust fund. The term does not refer to a  
511 board of trustees.

512 ~~(39)~~ (94) URN. A receptacle designed to encase cremated  
513 remains.

514 (b) Nothing in this chapter shall require a funeral  
515 director or funeral establishment to have or provide a chapel  
516 or to restrict the conduct of funeral services from a church  
517 or chapel."

518 "§34-13-20

519 (a) There is established the Alabama Board of Funeral  
520 ~~Service~~ Services, consisting of ~~nine~~ 14 members, each of whom  
521 shall be citizens of the United States and residents of the  
522 State of Alabama. The membership of the board shall be divided  
523 into two distinct divisions, the funeral division and the  
524 preneed division, with each division having jurisdiction over  
525 their respective areas of service.

526 (b) The appointing authorities shall coordinate their  
527 appointments to assure board membership is inclusive and  
528 reflects the racial, gender, geographic, ~~urban/rural~~ urban,  
529 rural, and economic diversity of the state.

530 (c) (1) Commencing on January 1, 2019, as the terms of  
531 the members serving on the board on August 1, 2017, expire,  
532 the membership of the funeral division of the board shall be

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533 reconstituted to consist of seven professional members and two  
534 consumer members.

535 ~~(1)~~ Each professional member of the funeral division of  
536 the board shall be a citizen of the United States, a resident  
537 of Alabama, and licensed and in good standing with the board  
538 as an embalmer or funeral director at the time of appointment  
539 and during the entire term of office. Professional members of  
540 the board shall be appointed by the Governor pursuant to  
541 subsection (e). As the terms of the members serving on the  
542 board on October 1, 2023, expire, the professional membership  
543 of the board shall be appointed to reflect the following:

544 a. ~~Four~~ Three of the professional members of the board  
545 shall hold a current license from the board to practice  
546 embalming in the state, shall have been actively practicing  
547 embalming in the state for the last 10 consecutive years  
548 immediately preceding appointment, and shall be engaged in the  
549 practice of embalming at the time of appointment to the board.

550 b. ~~Three~~ Four of the professional members of the board  
551 shall hold a current license from the board to practice  
552 funeral directing in the state, shall have been actively  
553 engaged in funeral directing in the state for the last 10  
554 consecutive years immediately preceding appointment, and shall  
555 be the operator of a funeral establishment in this state at  
556 the time of appointment to the board.

557 (2) Commencing on October 1, 2023, the preneed division  
558 of the board shall be created to consist of four professional  
559 members and one consumer member. Two professional members  
560 shall be licensed funeral directors and two professional

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561 members shall be licensed preneed sales agents employed by a  
562 cemetery. Each professional member of the preneed division of  
563 the board shall hold a current license from the board to  
564 practice as a preneed sales agent, shall have been actively  
565 engaged in preneed sales or direct management of preneed sales  
566 in the state for the last five consecutive years immediately  
567 preceding appointment, and shall be employed by a certificate  
568 of authority license holder in this state at the time of  
569 appointment to the board. Two of these professional members  
570 shall also hold a current certificate of authority to sell  
571 preneed services and merchandise. The initial appointment of  
572 two of the preneed sales agents appointed pursuant to this  
573 paragraph shall expire on December 31, 2025, and for the other  
574 two, shall expire on December 31, 2026. Thereafter, the  
575 preneed sales agent members shall serve pursuant to subsection  
576 (e). Professional members of the board shall be appointed by  
577 the Governor pursuant to subsection (e).

578 ~~(2)~~ (3) Each consumer member of the board shall  
579 represent the public in general and shall have been a citizen  
580 of the United States and a resident of Alabama for the last 10  
581 consecutive years immediately preceding appointment and during  
582 the entire term of office. A consumer member of the board may  
583 not have held, nor currently hold, a license or certification  
584 issued by the board, be employed at any time by, or  
585 professionally or financially associated with, the holder of a  
586 license or certificate issued by the board, or be related  
587 within the third degree of consanguinity or affinity to the  
588 holder of a license or certificate issued by the board. ~~One~~

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589 Two consumer ~~member~~ members of the board shall be appointed by  
590 the Lieutenant Governor and one consumer member shall be  
591 appointed by the Speaker of the House of Representatives  
592 pursuant to a procedure adopted by rule of the board.

593 (d) Commencing in October of 2018, and each October  
594 thereafter of a year where at least one professional member  
595 term on either division of the board has expired, ~~or is vacant~~  
596 ~~for any reason,~~ all licensed funeral directors and licensed  
597 embalmers for a funeral division member, and all licensed  
598 preneed sales agents for a preneed division member, shall meet  
599 in Montgomery, at a time and place fixed by the respective  
600 division of the board, for the purpose of nominating and  
601 submitting the names of three licensed persons for each  
602 position on the board to the Governor. The Governor shall  
603 promptly appoint one of the three persons so nominated to  
604 serve as a professional member of the board.

605 (e) (1) Professional and consumer members of the board  
606 shall serve staggered terms of four years each to provide  
607 continuity of service on the board. If an appointment is not  
608 made before the expiration of a term, the board member then  
609 serving may continue to serve until a successor has been  
610 appointed. A board member may not serve more than two full  
611 consecutive terms on the board.

612 (2) ~~A board member who is appointed to fill a vacancy~~  
613 ~~which occurs before the expiration of the term of the vacating~~  
614 ~~member shall serve the remaining portion of the term to which~~  
615 ~~the former member was appointed.~~ A vacancy on the board for  
616 any reason shall be filled by appointment of the Governor for

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617 the unexpired term. The appointee shall serve until his or her  
618 successor is nominated and appointed pursuant to subsection  
619 (d). If a member is appointed to fill an unexpired term of  
620 less than two years, the time may not be counted toward the  
621 maximum eight years of service.

622 (3) ~~Not more than~~ Only one professional funeral  
623 division member and one professional preneed division member  
624 of ~~the board~~ a division may reside in ~~the same~~ each district  
625 ~~as~~ created by Section 34-13-21.

626 (4) At each meeting where nominations are made for the  
627 professional members of the funeral division of the board,  
628 only one licensed funeral director or licensed embalmer  
629 employed by the same funeral establishment may vote. At each  
630 meeting where nominations are made for the professional  
631 members of the preneed division of the board, only one  
632 licensed preneed sales agent employed by the same certificate  
633 of authority holder may vote.

634 (f) (1) In accordance with applicable law, in addition  
635 to a board member resigning from the board in writing, a board  
636 member may be removed from the board for any of the following  
637 grounds:

638 a. The refusal or inability to perform board duties in  
639 an efficient, responsible, or professional manner.

640 b. The misuse of his or her position on the board to  
641 obtain financial gain or seek personal advantage for himself,  
642 herself, or another person.

643 c. A final adjudication or determination of guilt by  
644 any lawful authority of the board member or sanction of the

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645 board member for the violation of any law the board determines  
646 is substantially related to any practice governed by this  
647 chapter.

648 d. The revocation or suspension of the license of a  
649 professional member of the board.

650 (2) Any board member who fails to qualify after  
651 appointment shall automatically become ineligible to serve as  
652 a member of the board and a new member, properly qualified,  
653 shall be appointed in the same manner as the original  
654 appointment and shall serve the remainder of the term of the  
655 vacating board member.

656 (3) If a consumer board member fails to attend two or  
657 more meetings within a year, without a valid excuse as  
658 determined by the board, he or she shall be removed from the  
659 board. A new consumer board member shall be appointed in the  
660 same manner as the original appointment and shall serve the  
661 remainder of the term.

662 (g) (1) The status of any person or entity properly  
663 licensed by the Alabama Board of Funeral Service on the  
664 effective date of this act shall continue under the Alabama  
665 Board of Funeral Services.

666 (2) All the rights, duties, property, real or personal,  
667 and all other effects existing in the name of the Alabama  
668 Board of Funeral Service shall be transferred to the Alabama  
669 Board of Funeral Services. Any reference to the Alabama Board  
670 of Funeral Service in any existing law, contract, or other  
671 instrument, shall be deemed a reference to the Alabama Board  
672 of Funeral Services.



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673           (3) A reasonable transition period for the name change  
674 shall be allowed to permit an orderly and cost-effective  
675 transition, relating particularly to the use of equipment and  
676 supplies, all letterhead, business cards, forms, and any other  
677 materials in use by the board containing the name Alabama  
678 Board of Funeral Service shall continue to be used by the  
679 Alabama Board of Funeral Services until the supplies are  
680 exhausted. Replacement supplies shall contain the name of the  
681 Alabama Board of Funeral Services.

682           (4) The Code Commissioner, pursuant to Section 29-7-8,  
683 at times determined appropriate, shall implement this  
684 statutory name change in applicable sections of this code."

685           "§34-13-21

686           There are created, for the purpose of this chapter,  
687 seven geographical districts which shall be identical with the  
688 seven congressional districts as fixed and established by  
689 Section 17-14-70, as may be amended. It is the purpose and  
690 intention of this section to provide that not more than one  
691 professional member of each division of the board shall be  
692 selected from each district and that three nominees to the  
693 Governor for appointment to the board shall be made from each  
694 district. The ~~two~~ three consumer members of the board may not  
695 reside in the same congressional district."

696           "§34-13-22

697           (a) The Alabama Board of Funeral-~~Service~~ Services shall  
698 hold not less than one joint meeting of both divisions  
699 quarterly, ~~such meeting~~ for the purpose of reviewing  
700 financial, budgetary, and employment matters. The quarterly

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701 meetings to be held at ~~such~~ a time and place as the board may  
702 determine after notice of ~~such~~ the meeting has been given in  
703 the manner prescribed herein at least 15 days prior to ~~such~~  
704 the meeting. The board may hold ~~such~~ other meetings as ~~it~~ the  
705 board may deem necessary. A majority of the appointed members  
706 shall constitute a quorum authorized to transact general  
707 business in the name of the board. ~~The board shall not meet on~~  
708 ~~the premises of any embalming school or college of mortuary~~  
709 ~~science; and, if any such meeting is held, all the proceedings~~  
710 ~~of such meeting shall be void~~ Upon the executive director  
711 serving on the effective date of the act amending this  
712 subsection leaving office, two-thirds of the appointed members  
713 of each division shall constitute a quorum for the purposes of  
714 selecting an executive director and establishing fees.

715 (b) Additionally, each division of the board shall hold  
716 at least one division meeting quarterly."

717 "§34-13-23

718 (a) (1) The board ~~appointed under this chapter and each~~  
719 ~~successor thereto may~~ shall select from its own membership a  
720 chair and to adopt rules for the transaction of its business  
721 and for the betterment and promotion of the standards of  
722 service and practice to be followed in the death care industry  
723 in the State of Alabama as the board may deem expedient and  
724 consistent with the laws of this state and for the public  
725 good.

726 (2) The chair shall preside at all meetings of the  
727 board unless otherwise ordered, and he or she shall exercise  
728 and perform all duties and functions incident to the office of

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729 chair.

730 (3) The board may also select from its own membership a  
731 vice chair, a secretary, and a treasurer. No two offices shall  
732 be held by the same person.

733 (b) The treasurer shall give bond to the State of  
734 Alabama in the sum of ten thousand dollars (\$10,000), and any  
735 premium payable for the bond shall be paid from the funds of  
736 the board. The bond shall be deposited with the Treasurer of  
737 the State of Alabama.

738 (c) A board member shall be reimbursed for necessary  
739 travel expenses, per diem, and the necessary expenses incident  
740 to his or her attendance upon the business of the board, and,  
741 in addition thereto, shall receive compensation in the amount  
742 of seventy-five dollars (\$75) for every day not to exceed 20  
743 days per year actually spent by the member upon the business  
744 of the board. The board may employ in the unclassified service  
745 an executive director and up to four associate executive  
746 directors who shall each receive and be paid an annual salary  
747 to be fixed by the board pursuant to Section 36-6-6. The  
748 salary shall be paid on a semimonthly basis. In addition, the  
749 executive director and associate executive directors shall  
750 each receive his or her necessary travel and other incidental  
751 expenses as are incurred in the performance of duties, and all  
752 expenses, per diem, and compensation shall be paid out of the  
753 receipts of the board. At no time shall the operation of the  
754 board be an expense to the state.

755 (d) The executive director of the board shall have  
756 complete supervision and be held responsible for the direction

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757 of the office of the board, shall have supervision over  
758 employees, field inspections, ~~audits~~ examinations, and  
759 enforcement of this chapter, and shall be responsible and  
760 answerable to the board. The associate executive directors  
761 shall assist the executive director and perform such other  
762 duties as may be assigned to him or her by the executive  
763 director.

764 (e) The executive director shall keep a record in which  
765 shall be registered the name and business address of every  
766 person to whom licenses have been granted in accordance with  
767 this chapter, the number and date of the license and the date  
768 of each renewal. Upon request to do so, the executive director  
769 shall supply a list of all persons and establishments holding  
770 a license under this chapter, then in force, giving the names  
771 of the persons, their business addresses, and the numbers of  
772 their licenses.

773 (f) It shall be the duty of the executive director to  
774 prepare under the direction of the board and cause to be  
775 printed all forms required by this chapter to be prescribed by  
776 the board. All notices required to be mailed by this chapter  
777 shall be directed to the last known address of the party to  
778 whom the notice is sent.

779 (g) The executive director shall serve at the pleasure  
780 of the board and shall perform duties as may be necessary for  
781 the proper functioning of the board as the board may determine  
782 or as may be prescribed in this chapter. During the employment  
783 of the executive director, he or she may not be employed by  
784 any funeral establishment.



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785 (h) All fees and fines received under this chapter  
786 shall be paid into a special fund in the State Treasury to be  
787 known as the Alabama State Funeral Service Fund, which is  
788 hereby created, for the necessary and proper expenses of the  
789 board, and for a reasonable reserve for future use by the  
790 board. All monies in the fund are hereby appropriated, as a  
791 continuing appropriation, to the board to be used for carrying  
792 out this chapter. Commencing on October 1, 2023, the name of  
793 the fund shall be changed to the Alabama Board of Funeral  
794 Services Fund.

795 (i) Each member of the board, the executive director,  
796 the associate executive directors, designated employees, and  
797 independent contractors of the board appropriately identified  
798 are authorized at any given time to enter the office,  
799 premises, establishment, or place of business where any  
800 practice or activity regulated by this chapter is carried on,  
801 or advertised as being carried on, to investigate complaints  
802 or perform ~~audits~~ examinations or inspections. Each on-site  
803 inspection shall include an inspection of the license,  
804 certification, and registration of each licensee and  
805 apprentice trainee operating therein.

806 (j) All members of the board or designated employees of  
807 the board may serve and execute any process issued by any  
808 court under this chapter and execute any papers, orders, or  
809 process issued by the board or any officer or member of the  
810 board under this chapter.

811 (k) The board may employ clerical assistants and  
812 employees as necessary to carry out this chapter, and the

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813 terms and conditions of employment shall be determined by the  
814 board. The board may establish and equip an office from which  
815 this chapter may be carried out.

816 (1) (1) The board may acquire and hold, in its own name,  
817 real property by purchase, gift, lease, lease with the option  
818 to purchase, or other lawful means, except eminent domain,  
819 which real property may be used by the board to carry out its  
820 responsibilities. The board may also transfer, sell, convey,  
821 or cause to be conveyed real property and any improvements  
822 thereon, subject to the requirements of this section. In  
823 purchasing any real property, maintaining real property, or  
824 making improvements thereto, the board may expend any funds  
825 contained in the Funeral Board Property Acquisition Fund  
826 established in subdivision (2), and any obligations created in  
827 connection with the purchase or improvement of the real  
828 property shall not create debts, obligations, or liabilities  
829 of the state. As used in this subsection, real property shall  
830 include land, lots, and all things and interests, including  
831 leasehold interests, pertaining thereto, and all other things  
832 annexed or attached to the land which would pass to a vendee  
833 by conveyance of the land or lot, including mineral, gas, and  
834 oil interests. All sales or leases made by the board of any  
835 real property owned or held by the board shall be subject to  
836 the requirements of Article 3, Chapter 15, Title 9.  
837 Notwithstanding the foregoing, the proceeds from the sale of  
838 real property owned by the board which are distributed  
839 pursuant to Section 9-15-83 shall be paid to the board and  
840 deposited into the property acquisition fund.

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841 (2) There is established the Funeral Board Property  
842 Acquisition Fund within the State Treasury. Any funds received  
843 by the board pursuant to this section shall be deposited into  
844 the property acquisition fund and shall be held by the board  
845 in trust for carrying out the purposes of the property  
846 acquisition fund. Amounts in the property acquisition fund  
847 shall be budgeted and allotted in accordance with Sections  
848 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.  
849 Not later than May 1, 2022, the executive director shall  
850 transfer from the Alabama State Funeral Service Fund to the  
851 property acquisition fund an amount determined by vote of the  
852 board for the purchase of real property. Thereafter, the board  
853 shall annually, during the month of October, transfer an  
854 amount between two percent and seven percent of the receipts  
855 of the board from the previous fiscal year to the property  
856 acquisition fund.

857 (3) At the end of each fiscal year, any unencumbered  
858 and unexpended balance in the property acquisition fund shall  
859 not revert to the State General Fund but shall carry over to  
860 the next fiscal year."

861 "§34-13-27

862 (a) The board shall adopt a common seal, which may be  
863 altered as often as the board may desire, and the funeral  
864 division of the board may adopt and enforce, for the  
865 protection of the public health, safety, and welfare,  
866 reasonable rules relating to all of the following:

867 (1) The practice of the profession of embalming,  
868 including, but not limited to, solicitation of business.

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869 (2) The practice of the profession of funeral  
870 directing, including, but not limited to, solicitation of  
871 business.

872 (3) The sanitary condition and physical facilities of  
873 funeral homes, mortuaries, and funeral establishments where  
874 the profession of embalming and funeral directing is carried  
875 on, with particular regard to plumbing, sewage, disinfecting,  
876 ventilation, and equipment.

877 (4) Carrying out generally the various provisions of  
878 this chapter for the protection of the peace, health, safety,  
879 and welfare of the public.

880 (5) Carrying out a program for training of apprentice  
881 embalmers and apprentice funeral directors.

882 (6) The sale of goods, services, and merchandise and  
883 the operation of entities and establishments regulated by the  
884 board.

885 (b) The preneed division of the board may adopt and  
886 enforce, for the protection of the public health, safety, and  
887 welfare, reasonable rules relating to the sale of preneed  
888 merchandise and services."

889 Section 2. The following heading is added to Division  
890 1, commencing with Section 34-13-170, of Article 5, Chapter  
891 13, Title 34, Code of Alabama 1975:

892 "Article 5. Alabama Preneed Funeral and Cemetery Act of  
893 2023.

894 "Division 1. General Provisions."

895 Section 3. Sections 27-17A-1, 27-17A-3, and 27-17A-4 of  
896 the Code of Alabama 1975, are amended and renumbered as





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897 Division 1 of Article 5 of Chapter 13 of Title 34, Code of  
898 Alabama 1975, to read as follows:

899 "~~§27-17A-1~~§34-13-170

900 (a) This ~~chapter~~ article shall be known and may be  
901 cited as the Alabama Preneed Funeral and Cemetery Act of 2023.

902 (b) (1) The Alabama Board of Funeral Services succeeds  
903 to and is vested with the powers, duties, and functions of the  
904 Department of Insurance relating to the regulation of  
905 endowment care, preneed sales contracts, and the licensing of  
906 preneed sales agents.

907 (2) All records of the Department of Insurance relating  
908 to the regulation of preneed sales contracts, endowment care,  
909 and the licensing of preneed sales agents are transferred to  
910 the board.

911 (3) The status of any person properly licensed by the  
912 Department of Insurance under the former Chapter 17A of Title  
913 27, on the effective date of the act adding this subdivision,  
914 shall continue under the board.

915 (4) The administrative rules of the Department of  
916 Insurance existing on the effective date of the act adding  
917 this subdivision shall remain in effect as administrative  
918 rules of the board until added, amended, or repealed by the  
919 board.

920 (5) The existence and functioning of the Alabama  
921 Preneed Funeral and Cemetery Act, created and functioning  
922 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is  
923 continued as the Alabama Preneed Funeral and Cemetery Act of  
924 2023, under this article. All rights, duties, and obligations

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925 existing in the name of the Department of Insurance, relating  
926 to endowment care, preneed sales contracts, and preneed sales  
927 agent licenses, shall continue under the board. Any reference  
928 to the Department of Insurance in any existing law, contract,  
929 or other instrument relating to endowment care, preneed sales  
930 contracts, and preneed sales agent licenses, shall be deemed a  
931 reference to the board.

932 (6) The transfer of the regulation of preneed contracts  
933 and the licensing of preneed sales agents from the Department  
934 of Insurance to the board shall not affect the rights of any  
935 person held before the effective date of the act adding this  
936 subdivision, as those rights relate to any preneed trust  
937 funds, endowment care trust funds, or any other funds held in  
938 trust pursuant to the Alabama Preneed Funeral and Cemetery  
939 Act."

940 ~~"§27-17A-3~~§34-13-171

941 (a) Nothing in this chapter shall be construed to  
942 prohibit the funding of preneed contracts with multiple  
943 insurance or annuity contracts. Life insurance and annuity  
944 contracts used to fund preneed contracts shall conform with  
945 ~~the provisions of this title~~ Title 27 as they relate to life  
946 insurance and annuities and shall cover not less than the  
947 initial retail price of the preneed contract.

948 (b) The initial premium payment for a life insurance  
949 policy or annuity contract shall be made payable to the  
950 issuing insurance company and the preneed seller shall remit  
951 the payment to the insurance company within 10 business days  
952 after the insurance application is signed by the parties. If a

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953 preneed contract provides for installment payments, each  
954 premium payment shall be made payable to the insurance company  
955 and, if collected by the preneed seller, shall be remitted to  
956 the insurance company within 10 business days after receipt by  
957 the preneed seller.

958 (c) Nothing in this chapter shall prohibit a seller, or  
959 any other person, from receiving commissions earned and  
960 payable in regard to funding preneed contracts with life  
961 insurance or annuity contracts, provided the seller or other  
962 person holds a valid insurance producer license in this state  
963 and is appointed by the insurance company paying the  
964 commission.

965 (d) A preneed seller may be identified as the  
966 beneficiary or assignee of the death benefit proceeds of a  
967 life insurance policy or annuity contract sold as a future  
968 funding mechanism for a preneed contract, but may not be the  
969 owner of the policy or annuity contract or exercise any  
970 ownership rights in the policy or annuity. If the preneed  
971 contract is cancelled before or after the death of the funeral  
972 beneficiary, the preneed seller shall cancel and relinquish  
973 any assignment of benefits or beneficiary status under the  
974 policy or annuity contract, and deliver the policy or  
975 contract, if in the custody of the preneed seller, to the  
976 policy owner or his or her legal representative."

977 "~~§27-17A-4~~§34-13-172

978 Nothing in this chapter shall be construed to prohibit  
979 cemetery authorities from selling funeral merchandise, funeral  
980 establishments from selling cemetery merchandise, or

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981 third-party sellers from selling either funeral merchandise or  
982 cemetery merchandise, or both. Provided, the required amount  
983 of the purchase price to be placed into trust shall be  
984 governed by the appropriate section of this chapter."

985 Section 4. The following heading is added to Division  
986 2, commencing with Section 34-13-190, of Article 5, Chapter  
987 13, Title 34, Code of Alabama 1975:

988 "Division 2. Certificate of Authority."

989 Section 5. Sections 27-17A-10, 27-17A-11, 27-17A-11.1,  
990 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-16,  
991 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20, 27-17A-21,  
992 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of the Code of  
993 Alabama 1975, are amended and renumbered as Division 2 of  
994 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to  
995 read as follows:

996 "~~§27-17A-10~~§34-13-190

997 (a) No person may sell a preneed contract without first  
998 having a valid certificate of authority.

999 (b) (1) No person may receive any funds for payment on a  
1000 preneed contract who does not hold a valid certificate of  
1001 authority.

1002 (2) Any preneed transaction in which a buyer pays to  
1003 the seller before need, in whole or in part, a purchase price  
1004 for funeral or cemetery merchandise and services, and in which  
1005 the seller is not obligated to deliver the contracted for  
1006 merchandise or to perform the services until need, in whole or  
1007 in part, shall be evidenced by a written preneed contract  
1008 satisfying the requirements of this chapter and signed by the

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1009 seller and the purchaser. No person may receive or accept any  
1010 form of consideration in such a transaction without a fully  
1011 signed written preneed contract. A transaction not evidenced  
1012 by a signed written preneed contract shall be voidable at the  
1013 election of the buyer and, if such election is made, the  
1014 seller shall refund to the buyer the entire amount paid by the  
1015 buyer together with interest thereon at the legal rate within  
1016 30 days after notice to the seller.

1017 (3) The provisions of subdivision (1) do not apply to  
1018 the purchase of a life insurance policy or annuity, the  
1019 benefits of which are assigned to a funeral home ~~and/or~~ or  
1020 cemetery authority, or the benefits of which are to be paid to  
1021 a funeral home ~~and/or~~ or cemetery authority named as  
1022 beneficiary of the policy or annuity, as long as the purchaser  
1023 and funeral home ~~and/or~~ or cemetery authority acknowledge in  
1024 writing that no preneed contract is entered as a result of the  
1025 purchase or assignment of the life insurance policy or annuity  
1026 at the time the policy or annuity is purchased. Benefits from  
1027 a life insurance policy or annuity issued under this  
1028 subdivision shall only be paid to a funeral home ~~and/or~~ or  
1029 cemetery authority which provides funeral or cemetery  
1030 merchandise and services at the death of the insured whether  
1031 or not such funeral home ~~and/or~~ or cemetery has been named as  
1032 an assignee or the beneficiary of the policy or annuity. If  
1033 the amount of the policy or annuity proceeds shall exceed the  
1034 actual funeral costs at the time of need, ~~such~~ the excess  
1035 amount ~~must~~ shall be paid to a designated beneficiary, other  
1036 than a funeral home ~~and/or~~ or cemetery authority, or to the

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1037 estate of the insured or annuitant.

1038 (4) ~~The provisions of subdivision~~ Subdivision (1) ~~de~~  
1039 does not apply to any legal reserve insurance company or to  
1040 any trust company or to any national or state bank or savings  
1041 and loan association having trust powers which company, bank,  
1042 or association receives any money in trust pursuant to the  
1043 sale of a preneed contract.

1044 (c) (1) No person may obtain a certificate of authority  
1045 under this ~~article~~ chapter for the preneed sale of funeral  
1046 services or cemetery services unless the person or its agent,  
1047 in the case of a corporate entity, holds a license as a  
1048 funeral director or a funeral establishment, or is a cemetery  
1049 authority ~~and qualifies as an applicant for a certificate of~~  
1050 authority pursuant to the following standards and  
1051 qualifications:

1052 a. The applicant shall be at least the legal age of  
1053 majority in this state.

1054 b. The applicant shall be in good standing with the  
1055 board.

1056 c. The applicant may not have any felony or misdemeanor  
1057 convictions that relate to any activity regulated by this  
1058 chapter or a crime involving moral turpitude, as defined by  
1059 this chapter.

1060 d. The applicant shall be of good moral character and  
1061 submit to a criminal history background check pursuant to  
1062 subdivision (2).

1063 (2) An applicant for a certificate of authority shall  
1064 submit to the board, on a form sworn to by the applicant, his

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1065 or her name, date of birth, Social Security number, and two  
1066 complete sets of fingerprints for completion of a criminal  
1067 history background check. The board shall submit the  
1068 fingerprints to the Alabama State Law Enforcement Agency for a  
1069 state criminal history background check. The fingerprints  
1070 shall be forwarded by the agency to the Federal Bureau of  
1071 Investigation for a national criminal history background  
1072 check. Costs associated with conducting a criminal history  
1073 background check shall be paid by the applicant. The board  
1074 shall keep information received pursuant to this subdivision  
1075 confidential, except that information received and relied upon  
1076 in denying the issuance of a certificate of authority may be  
1077 disclosed if necessary to support the denial. All character  
1078 information, including the information obtained through the  
1079 criminal history background checks, shall be considered in  
1080 licensure decisions to the extent permissible by all  
1081 applicable laws.

1082 (d) ~~The provisions of this~~ This section ~~do~~ does not  
1083 apply to a cemetery authority owned or operated by a  
1084 governmental agency or a religious institution or to those  
1085 cemeteries that do not charge fees or sell plots, interment  
1086 rights, or any related cemetery merchandise."

1087 "~~§27-17A-11~~ §34-13-191

1088 (a) An application to the ~~commissioner~~ board for a  
1089 certificate of authority shall be accompanied by the statement  
1090 and other matters described in this section in the form  
1091 prescribed by the ~~commissioner~~ board. Annually thereafter,  
1092 ~~within six months after the end of its fiscal period,~~ or

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1093 within an extension of time therefor, as the ~~commissioner~~  
1094 board for good cause may grant, the person authorized to  
1095 engage in the sale of preneed contracts shall file with the  
1096 ~~commissioner~~ board a full and true statement of his or her  
1097 financial condition, transactions, and affairs, prepared on a  
1098 basis as adopted by a rule of the ~~commissioner~~ board, as of  
1099 the preceding fiscal period or at such other time or times as  
1100 the ~~commissioner~~ board may provide by rule, together with  
1101 information and data which may be required by the ~~commissioner~~  
1102 board.

1103 (b) The statement shall include all of the following:

1104 (1) The types of preneed contracts proposed to be  
1105 written and the type of funding ~~vehiele~~ vehicles to be used.

1106 (2) The name and address of the place of business of  
1107 the person offering to write preneed contracts.

1108 (3) Evidence that the person offering the statement has  
1109 the following qualifications:

1110 a. Has the ability to discharge his or her preneed  
1111 liabilities as they become due in the normal course of  
1112 business and has sufficient funds available during the  
1113 calendar year to perform his or her obligations under the  
1114 contract.

1115 b. Has complied with the trust requirements for the  
1116 funds received under contracts issued by himself or herself as  
1117 hereinafter described.

1118 c. Has disbursed interest, dividends, or accretions  
1119 earned by trust funds, in accordance with this ~~article~~ chapter  
1120 and rules ~~promulgated~~ adopted hereunder.



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1121 d. Has complied with this chapter and any rules of the  
1122 ~~commissioner~~ board.

1123 (4) Any other information considered necessary by the  
1124 ~~commissioner~~ board to meet the ~~commissioner's~~ board's  
1125 responsibilities under this chapter.

1126 (c) If the person is an individual, the statement shall  
1127 be sworn by him or her; if a firm or association, by all  
1128 members thereof; or, if a corporation, by any officer of the  
1129 corporation.

1130 (d) (1) An application to the ~~commissioner~~ board for an  
1131 initial certificate of authority shall be accompanied by an  
1132 application fee in an amount to be determined by the  
1133 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~  
1134 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,  
1135 each annual application for renewal of a certificate of  
1136 authority shall be accompanied by the appropriate fee as  
1137 determined by the ~~commissioner~~ board not to exceed  
1138 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

1139 (2) Any person or entity that is part of a common  
1140 business enterprise that has a certificate of authority issued  
1141 pursuant to this ~~article~~ chapter and elects to operate under a  
1142 name other than that of the common business enterprise shall  
1143 submit an application on a form ~~adopted~~ prescribed by the  
1144 ~~commissioner~~ board to become a branch registrant. Upon the  
1145 approval of the ~~commissioner~~ board that the entity qualifies  
1146 to sell preneed contracts under this ~~article~~ chapter except  
1147 for the requirements of subparagraph 1., of paragraph a. of  
1148 subdivision (3) of subsection (b) and if the certificate

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1149 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,  
1150 a branch registration shall be issued. Each branch registrant  
1151 may operate under the certificate of authority of the common  
1152 business enterprise upon the payment of a fee established by  
1153 the ~~commissioner board~~ not to exceed ~~one hundred fifty dollars~~  
1154 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying  
1155 the application on ~~July~~ September 1 annually.

1156 (e) Upon the ~~commissioner board~~ being satisfied that  
1157 the statement and matters which may accompany ~~it~~ the statement  
1158 meet the requirements of this ~~article chapter~~ and of its  
1159 rules, the ~~commissioner board~~ shall issue or renew the  
1160 certificate of authority.

1161 (f) The certificate of authority shall expire annually  
1162 on ~~September~~ October 1, unless renewed, or at such other time  
1163 or times as the ~~commissioner board~~ may provide by rule.

1164 (g) On or before ~~July 1 of~~ a date adopted by the board  
1165 each year, the certificate holder shall file with the  
1166 ~~commissioner board~~ in the form prescribed by the ~~commissioner~~  
1167 board a full and true statement as to the activities of any  
1168 trust established by it pursuant to this ~~article chapter~~ for  
1169 the preceding calendar year.

1170 (h) In addition to any other penalty that may be  
1171 provided for under this ~~article chapter~~, the ~~commissioner~~  
1172 board may levy a fine not to exceed fifty dollars (\$50) per  
1173 day for each day the certificate holder fails to file its  
1174 annual statement, and the ~~commissioner board~~ may levy a fine  
1175 not to exceed fifty dollars (\$50) per day for each day the  
1176 certificate holder fails to file the statement of activities

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1177 of the trust. Upon notice to the certificate holder by the  
1178 ~~commissioner~~ board that the certificate holder has failed to  
1179 file the annual statement or the statement of activities of  
1180 the trust, the certificate holder's authority to sell preneed  
1181 contracts shall cease while the default continues.

1182 (i) To facilitate uniformity in financial statements  
1183 and to facilitate analysis, the ~~commissioner~~ board may by rule  
1184 adopt a form for financial statements. The holder of a  
1185 certificate of authority may submit a written request to the  
1186 ~~commissioner~~ board to exempt the holder from filing financial  
1187 statements at renewal. The ~~commissioner~~ board may waive the  
1188 requirement for filing a financial statement at renewal if all  
1189 of the following are satisfied:

1190 (1) No valid complaint has been filed since the last  
1191 ~~examination~~ audit.

1192 (2) No administrative action against the preneed entity  
1193 has been instituted since the last ~~examination~~ audit.

1194 (3) The certificate holder certifies that all  
1195 outstanding preneed contracts written by the holder since  
1196 April 30, 2002, are fully funded in accordance with this  
1197 chapter.

1198 (4) The certificate holder certifies that it will fully  
1199 fund all preneed contracts with life insurance, annuity, or  
1200 will deposit 100 percent of all funds collected on all preneed  
1201 contracts in trust within 30 days after the end of the  
1202 calendar month in which the funds are collected.

1203 (5) The preneed entity has provided to the ~~department~~  
1204 board in a timely manner all required and requested records.

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1205 (6) The preneed entity agrees to file ~~quarterly~~ reports  
1206 of its preneed activity on a form ~~or,~~ in a format, and as  
1207 often as prescribed by the ~~commissioner~~ board.

1208 (j) The ~~commissioner~~ board may authorize the transfer  
1209 of certificates of authority and establish fees for the  
1210 transfer in an amount not to exceed ~~one hundred dollars (\$100)~~  
1211 one hundred thirty-two dollars (\$132). Upon receipt of an  
1212 application for transfer, the ~~commissioner~~ board may grant a  
1213 temporary certificate of authority to the proposed transferee,  
1214 based upon criteria established by the ~~commissioner~~ board by  
1215 rule, which criteria shall promote the purposes of this  
1216 ~~article~~ chapter in protecting the consumer. A temporary  
1217 certificate of authority shall expire 60 days after issuance  
1218 unless renewed by the ~~commissioner~~ board."

1219 "~~§27-17A-11.1~~ §34-13-192

1220 (a) On ~~a semi-annual basis, within 45 days after the~~  
1221 ~~end of each second calendar reporting period~~ or before July 1,  
1222 each year, the certificate holder shall file a report of its  
1223 preneed contract activity on a form or in a format prescribed  
1224 by the ~~commissioner~~ board. The information reported shall  
1225 include the total number of preneed contracts in force at the  
1226 end of the previous ~~reporting period~~ calendar year, the total  
1227 number of preneed contracts sold during the ~~reporting period~~  
1228 previous calendar year, the total number of preneed contracts  
1229 fulfilled during the ~~reporting period~~ previous calendar year,  
1230 the total number of preneed contracts in force at the end of  
1231 the ~~reporting period~~ previous calendar year, and such other  
1232 information as may be required by the ~~commissioner~~ board. The

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1233 report shall be organized by type of funding including, life  
1234 insurance, annuity, trust, letter of credit, or surety bond.  
1235 The report shall also provide a certification by the trustee  
1236 of the amount of assets held by the trust at the beginning of  
1237 the reporting period and at the end of the reporting period,  
1238 together with the amount of deposits and withdrawals during  
1239 the reporting period. If a certificate holder shall twice  
1240 default in complying with the requirements of this subsection,  
1241 the ~~commissioner~~ board may require that the certificate holder  
1242 thereafter submit the report within 45 days after the end of  
1243 each calendar quarter and shall continue so reporting for a  
1244 time to be determined by the ~~commissioner~~ board.

1245 (b) The certificate holder shall maintain a written log  
1246 of preneed sales. The log shall be on a form or in a format  
1247 prescribed by the ~~commissioner~~ board, shall detail all  
1248 information required by the ~~commissioner~~ board, and shall be  
1249 available for inspection at any time by the ~~commissioner~~  
1250 board.

1251 (c) Each cemetery authority shall maintain a written  
1252 log of the sale of cemetery interment rights. The log shall be  
1253 on a form or in a format prescribed by the ~~commissioner~~ board  
1254 and shall detail all information required by the ~~commissioner~~  
1255 board.

1256 (d) The board may maintain a statewide database of  
1257 preneed contracts reported to the board pursuant to subsection  
1258 (a). The board may make information in this database  
1259 searchable by the public by means of unique identifiers, or  
1260 any other means, that the board determines respects the

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1261 privacy of those involved while also protecting consumers from  
1262 financial waste by allowing families to determine if a  
1263 deceased loved one has an existing preneed contract. Any  
1264 preneed consumer who does not wish for his or her information  
1265 to appear in this searchable database may opt out by following  
1266 a process established by the board."

1267 "~~§27-17A-12~~§34-13-193

1268 (a) Preneed contract forms and related forms shall be  
1269 filed with and approved by the ~~commissioner~~ board.

1270 (b) Specific disclosure regarding whether, consistent  
1271 with the requirements of this chapter, the certificate holder  
1272 is placing certain preneed funds received with the contract in  
1273 trust, in an annuity, or in insurance, is required in the  
1274 preneed contract.

1275 (c) Preneed contracts which have been submitted to the  
1276 ~~commissioner~~ board shall be deemed to have been approved by  
1277 the ~~commissioner~~ board in the event that the ~~commissioner~~  
1278 board fails to notify the certificate holder that approval has  
1279 been denied within 30 days following submission to the  
1280 ~~commissioner~~ board."

1281 "~~§27-17A-13~~§34-13-194

1282 (a) Except as provided in Sections ~~27-17A-3 and~~  
1283 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract  
1284 shall require the monies paid to the seller or trustee to be  
1285 placed in trust in accordance with ~~Article 3~~ Division 3, for  
1286 funeral merchandise and services sold by funeral  
1287 establishments or third party sellers, or ~~Article 4~~ Division  
1288 4, for cemetery merchandise and services sold by cemetery

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1289 authorities.

1290 (b) Although this chapter does not apply to preneed  
1291 contracts entered into prior to May 1, 2002, a preneed  
1292 provider which contends that a preneed trust fund which was in  
1293 effect prior to May 1, 2002, complies with this chapter with  
1294 respect to the contracts entered into prior to May 1, 2002,  
1295 may provide to the ~~commissioner~~ board documentary proof  
1296 thereof. Upon the ~~commissioner~~ board determining that  
1297 compliance has been established, the pre-existing preneed  
1298 trust fund assets may be merged with or into the trust fund  
1299 required under this chapter or continued as the trust fund and  
1300 that determination by the ~~commissioner~~ board shall be noted on  
1301 the certificate of authority, and thereafter all preneed  
1302 contracts covered by the trust fund, including those entered  
1303 into prior to May 1, 2002, shall be subject to this chapter."

1304 "~~§27-17A-14~~§34-13-195

1305 (a) As an alternative to the trust requirement of  
1306 Section ~~27-17A-13~~ 34-13-194, the details of which are set  
1307 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed  
1308 provider ~~may~~, with the prior approval of the ~~commissioner~~  
1309 board, may purchase a surety bond in an amount not less than  
1310 the aggregate value of outstanding liabilities on undelivered  
1311 preneed contracts for merchandise, services, and cash  
1312 advances. For the purposes of this section, the term  
1313 outstanding liabilities means the original retail amount of  
1314 services and cash advances and the actual cost to the entity  
1315 to provide the undelivered merchandise sold on each contract  
1316 written after April 30, 2002. The surety bond shall be in an

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1317 amount sufficient to cover the outstanding liability at the  
1318 time each contract is executed.

1319 (b) The bond shall be made payable to the State of  
1320 Alabama for the benefit of the ~~commissioner~~ board and of all  
1321 purchasers of preneed merchandise, services, and cash  
1322 advances. The bond shall be issued by an insurance company  
1323 licensed in the State of Alabama and authorized to issue  
1324 surety bonds and approved by the ~~commissioner~~ board.

1325 (c) The amount of the bond shall be based on a report  
1326 documenting the outstanding liabilities of the preneed  
1327 provider for the previous calendar quarter and the projected  
1328 liability for the immediately following quarter, shall be  
1329 prepared by the preneed provider using generally accepted  
1330 accounting principles, and shall be signed by the chief  
1331 executive officer or chief financial officer of the preneed  
1332 provider. The report shall be compiled as of the end of the  
1333 preneed provider's fiscal year and updated quarterly.

1334 (d) The amount of the bond shall be increased or  
1335 decreased as necessary to correlate with changes in the  
1336 outstanding liabilities. Further, the ~~commissioner~~ board may  
1337 order the bond to be increased as necessary to correlate with  
1338 changes in the outstanding liabilities of bonded contracts due  
1339 to increases in the consumer price index.

1340 (e) If the preneed provider fails to maintain a bond  
1341 pursuant to this section the preneed provider shall cease the  
1342 offering for sale and sale of preneed merchandise, services,  
1343 and cash advances as provided by rule of the board.

1344 (f) No surety bond used to comply with this section



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1345 shall be canceled or subject to cancellation unless at least  
1346 60 days' advance notice thereof, in writing, is filed with the  
1347 ~~commissioner~~, board by the surety company. The cancellation of  
1348 the bond shall not relieve the obligation of the surety  
1349 company for claims arising out of contracts issued or  
1350 otherwise covered before cancellation of the bond. In the  
1351 event that notice of termination of the bond is filed with the  
1352 ~~commissioner~~ board, the certificate holder insured thereunder  
1353 ~~shall~~, within 30 days of the filing of the notice of  
1354 termination with the ~~commissioner~~ board, ~~shall~~ provide the  
1355 ~~commissioner~~ board with a replacement bond or with evidence  
1356 which is satisfactory to the ~~commissioner~~ board demonstrating  
1357 that ~~the provisions of~~ this chapter ~~have~~ has been fully  
1358 complied with. If within 30 days of filing of the notice of  
1359 termination with the ~~commissioner~~ board no replacement bond  
1360 acceptable to the ~~commissioner~~ board or no evidence  
1361 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~  
1362 ~~provisions of~~ this chapter ~~have~~ has been complied with is  
1363 filed with the ~~commissioner~~ board, the ~~commissioner~~ board  
1364 shall suspend the license of the certificate holder until the  
1365 certificate holder files a replacement bond acceptable to the  
1366 ~~commissioner~~ board or demonstrates to the satisfaction of the  
1367 ~~commissioner~~ board that it has complied with ~~the provisions of~~  
1368 this chapter.

1369 (g) Upon prior approval by the ~~commissioner~~ board, the  
1370 preneed provider may file with the ~~commissioner~~ board a letter  
1371 of credit in the amount of the outstanding liabilities in lieu  
1372 of a surety bond, in the form and subject to the terms and

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1373 conditions evidencing the financial responsibility of the  
1374 party or parties issuing the letter of credit, and otherwise,  
1375 as may be prescribed by the ~~commissioner~~ board."

1376 "~~§27-17A-15~~§34-13-196

1377 (a) The ~~commissioner shall~~ board, as often as ~~he or she~~  
1378 ~~may deem~~ deemed necessary, ~~examine shall examine~~ the business  
1379 of any person writing, or holding himself or herself out to be  
1380 writing, preneed contracts under this chapter to the extent  
1381 applicable. The examination shall be made by designated  
1382 representatives employed or ~~examiners of the Department of~~  
1383 ~~Insurance~~ contracted by the board.

1384 (b) The written report of each examination, when  
1385 completed, shall be filed in the office of the ~~commissioner~~  
1386 board and, when so filed, shall not constitute a public  
1387 record.

1388 (c) Any person being examined shall produce, upon  
1389 request, all records of the person. The designated  
1390 representative of the ~~commissioner~~ board may at any time  
1391 examine the records and affairs of the person, whether in  
1392 connection with a formal examination or not.

1393 (d) The ~~commissioner may~~ board shall waive the  
1394 examination requirements of this section if the certificate  
1395 holder submits audited financial statements. Upon receipt of a  
1396 verifiable complaint, the board may perform a target market  
1397 conduct examination as a part of an investigation.

1398 (e) The person examined shall pay the examination  
1399 expenses, travel expense, and per diem subsistence allowance  
1400 provided for examiners and incurred by the ~~commissioner's~~

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1401 board's representatives or examiners in connection with an  
1402 examination ~~in accordance with Section 27-2-25~~ as prescribed  
1403 by rule of the board.

1404 (f) Whenever any special examination of the premises,  
1405 facilities, books, or records of a licensee is necessary based  
1406 on the failure of the licensee to comply with this chapter or  
1407 rule adopted by the board, the board shall charge a fee based  
1408 on the cost of the special examination including, but not  
1409 limited to, the prorated compensation of board employees  
1410 involved in the special examination and any expenses incurred.

1411 (g) If the board finds that a certificate of authority  
1412 holder or licensee has failed to operate in accordance with  
1413 this chapter and, by their action, has created a deficit of  
1414 preneed funds entrusted to them by the consumer, then the  
1415 board may:

1416 (1) Bring an action for injunctive relief against the  
1417 responsible licensee or the holder of the certificate of  
1418 authority in the Circuit Court of Montgomery County.

1419 (2) Issue an emergency suspension of all licenses held  
1420 by the holder of the certificate of authority, and its  
1421 associated personnel, in accordance with the Administrative  
1422 Procedure Act.

1423 (3) Take any other disciplinary action authorized by  
1424 this chapter."

1425 ~~"§27-17A-16~~ §34-13-197

1426 (a) A certificate holder shall be considered inactive  
1427 upon the acceptance of the surrender of its license by the  
1428 ~~commissioner~~ board or upon the nonreceipt by the ~~commissioner~~

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1429 board of the certificate of authority renewal application and  
1430 fees.

1431 (b) A certificate holder shall cease all preneed sales  
1432 to the public upon becoming inactive. The certificate holder  
1433 shall collect and deposit into trust all of the funds paid  
1434 toward preneed contracts sold prior to becoming inactive.

1435 (c) Any certificate holder desiring to surrender its  
1436 license to the ~~commissioner~~ board shall first do all of the  
1437 following:

1438 (1) File notice with the ~~commissioner~~ board.

1439 (2) Submit copies of its existing trust agreements.

1440 (3) Submit a sample copy of each type of preneed  
1441 contract sold.

1442 (4) Resolve to the ~~commissioner's~~ satisfaction of the  
1443 board all findings and violations resulting from the last  
1444 examination conducted.

1445 (5) Pay all outstanding fines and invoices due the  
1446 ~~commissioner~~ board.

1447 (6) Submit its current certificate of authority.

1448 (d) Upon receipt of the notice, the ~~commissioner~~ board  
1449 shall review the certificate holder's trust funds, trust  
1450 agreements, and evidence of all outstanding preneed contracts.

1451 (e) After a review to the ~~commissioner's~~ satisfaction  
1452 of the board, the ~~commissioner~~ board shall terminate the  
1453 certificate of authority by an order which shall set forth the  
1454 conditions of termination established by the ~~commissioner~~  
1455 board to ensure that the preneed funds will be available for  
1456 their intended purpose.



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1457 (f) The trust fund of the certificate holder shall be  
1458 held intact and in trust after the certificate holder has  
1459 become inactive, and the funds in that trust shall be  
1460 disbursed in accordance with the requirements of the written  
1461 contracts until the funds have been exhausted.

1462 (g) The ~~commissioner~~ board shall continue to have  
1463 jurisdiction over the inactive certificate holder as if the  
1464 certificate were active and to require the reports and inspect  
1465 the records as the ~~commissioner~~ board deems appropriate so  
1466 long as there are funds in trust or preneed contracts that are  
1467 not fulfilled.

1468 (h) ~~In addition to any other~~ Other terms of revocation  
1469 or suspension ordered pursuant to ~~Chapter 13 of Title 34, the~~  
1470 ~~provisions of~~ this chapter may ~~also~~ apply. -"

1471 "~~§27-17A-17~~ §34-13-198

1472 ~~(a) Any dissolution or liquidation of a certificate~~  
1473 ~~holder shall be deemed to be the liquidation of an insurance~~  
1474 ~~company and shall be conducted under the supervision of the~~  
1475 ~~commissioner, who shall have all powers with respect thereto~~  
1476 ~~granted to the commissioner under Chapter 32 with respect to~~  
1477 ~~the liquidation of insurance companies.~~

1478 ~~(b) The commissioner may apply for an order directing~~  
1479 ~~the commissioner to liquidate a certificate holder upon any~~  
1480 ~~one or more grounds set out in Section 27-32-6 or when, in the~~  
1481 ~~commissioner's opinion, the continued operation of the~~  
1482 ~~certificate holder would be hazardous either to purchasers,~~  
1483 ~~beneficiaries, or to the people of this state.~~

1484 The board may fine and revoke, suspend, or place on

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1485 probation the certificate of authority and the establishment  
1486 license of a certificate holder on any of the following  
1487 grounds:

1488 (1) The certificate holder is impaired or insolvent.

1489 (2) The certificate holder has refused to submit, or  
1490 has withheld, any of its books, records, accounts, or affairs  
1491 to examination by the board.

1492 (3) The certificate holder has concealed or removed  
1493 records or preneed assets, or both.

1494 (4) The certificate holder has failed to comply with an  
1495 order of the board.

1496 (5) The certificate holder has transferred, or  
1497 attempted to transfer, substantially its entire property or  
1498 business, or has entered into any transaction the effect of  
1499 which is to merge substantially its entire property or  
1500 business with that of any other certificate holder, person,  
1501 corporation, or entity without first having obtained the  
1502 written approval of the board.

1503 (6) The certificate holder has willfully violated its  
1504 articles of incorporation or any law of this state, including  
1505 any rule of the board.

1506 (7) The certificate holder has an officer, director, or  
1507 manager who has refused to be examined under oath concerning  
1508 the affairs of the certificate holder.

1509 (8) If the board determines that the continued preneed  
1510 sales of the certificate holder would be hazardous to  
1511 purchasers, beneficiaries, or residents of this state."

1512 ~~"§27-17A-18~~§34-13-199

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1513 (a) All individuals who offer preneed contracts to the  
1514 public, or who execute preneed contracts on behalf of a  
1515 certificate holder, shall be registered with the ~~commissioner~~  
1516 board as preneed sales agents, pursuant to this ~~article~~  
1517 chapter.

1518 (b) All preneed sales agents and funeral directors  
1519 acting as preneed sales agents shall be affiliated with the  
1520 certificate holder that they are representing.

1521 (c) A certificate holder shall be responsible for the  
1522 activities of all preneed sales agents and all funeral  
1523 directors acting as preneed sales agents, who are affiliated  
1524 with the certificate holder and who perform any type of  
1525 preneed-related activity on behalf of the certificate holder.  
1526 In addition to the preneed sales agents and funeral directors  
1527 acting as preneed sales agents, each certificate holder shall  
1528 also be subject to discipline if its preneed sales agents or  
1529 funeral directors acting as preneed sales agents violate ~~any~~  
1530 ~~provision of~~ this ~~article~~ chapter.

1531 (d) A preneed sales agent and a funeral director acting  
1532 as a preneed sales agent ~~shall be authorized to~~ may sell,  
1533 offer, and execute preneed contracts on behalf of all properly  
1534 licensed entities owned or operated by the sponsoring  
1535 certificate holder.

1536 (e) An individual may begin ~~functioning~~ operating as a  
1537 preneed sales agent as soon as a completed application for  
1538 registration, as set forth in subsection (g), is ~~sent to the~~  
1539 ~~commissioner~~ approved by the board.

1540 (f) (1) The qualifications for a preneed sales agent are

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1541 as follows:

1542 ~~(1)~~a. The applicant must be at least 18 years of age.

1543 ~~(2)~~b. The applicant must be in good standing with the  
1544 ~~commissioner~~ board.

1545 ~~(3)~~c. The applicant ~~must~~ may not have any felony or  
1546 misdemeanor convictions that relate to any activity regulated  
1547 by this chapter or a crime involving moral turpitude, as  
1548 defined by this chapter.

1549 d. The applicant shall be of good moral character and  
1550 submit to a criminal history background check pursuant to  
1551 subdivision (2).

1552 (2) An applicant for licensure as a preneed sales agent  
1553 shall submit to the board, on a form sworn to by the  
1554 applicant, his or her name, date of birth, Social Security  
1555 number, and two complete sets of fingerprints for completion  
1556 of a criminal history background check. The board shall submit  
1557 the fingerprints to the Alabama State Law Enforcement Agency  
1558 for a state criminal history background check. The  
1559 fingerprints shall be forwarded by the agency to the Federal  
1560 Bureau of Investigation for a national criminal history  
1561 background check. Costs associated with conducting a criminal  
1562 history background check shall be paid by the applicant. The  
1563 board shall keep information received pursuant to this  
1564 subdivision confidential, except that information received and  
1565 relied upon in denying the issuance of a certificate of  
1566 authority may be disclosed if necessary to support the denial.  
1567 All character information, including the information obtained  
1568 through the criminal history background checks, shall be



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1569 considered in licensure decisions to the extent permissible by  
1570 all applicable laws.

1571 (g) An application for registration as a preneed sales  
1572 agent shall be submitted to the ~~commissioner~~ board with an  
1573 application fee determined by the ~~commissioner~~ board, but not  
1574 to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars  
1575 (\$33), by the certificate holder in a form that has been  
1576 prescribed by ~~commissioner~~ board rule ~~and approved by the~~  
1577 ~~commissioner~~. The application shall contain, at a minimum, all  
1578 of the following:

1579 (1) The name, address, Social Security number, and date  
1580 of birth of the applicant and any other information as the  
1581 ~~commissioner~~ board may reasonably require of the applicant.

1582 (2) The name, address, and license number of the  
1583 sponsoring certificate holder.

1584 (3) A representation, signed by the applicant, that the  
1585 applicant meets the requirements set forth in subsection (f).

1586 (4) A representation, signed by the certificate holder,  
1587 that the applicant is authorized to offer, sell, and sign  
1588 preneed contracts on behalf of the certificate holder, and  
1589 that the certificate holder has trained the applicant in ~~the~~  
1590 ~~provisions of~~ this ~~article~~ chapter relating to preneed sales,  
1591 the provisions of the certificate holder's preneed contract,  
1592 and the nature of the merchandise, services, or burial rights  
1593 sold by the certificate holder.

1594 (5) A statement indicating whether the applicant has  
1595 any type of working or agency relationship with any other  
1596 certificate holder or insurance company.



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1597 (h) An individual may be registered as a preneed sales  
1598 agent on behalf of more than one certificate holder, provided  
1599 that the individual has received the written consent of all  
1600 certificate holders.

1601 (i) A certificate holder who has registered a preneed  
1602 sales agent shall notify the ~~commissioner~~ board within 30 days  
1603 after the individual's status as a preneed sales agent has  
1604 been terminated.

1605 (j) Upon ~~receipt~~ approval of an application that  
1606 complies with all of the requirements of subsection (g), the  
1607 ~~commissioner~~ board shall register the applicant. The  
1608 ~~commissioner shall by rule~~ board, in accordance with this  
1609 chapter, shall provide for annual renewal of registration upon  
1610 receipt of a renewal application and a renewal fee not to  
1611 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as  
1612 set by the ~~commissioner~~ board."

1613 "~~§27-17A-19~~§34-13-200

1614 No person shall engage in this state in any trade  
1615 practice which is addressed in the Alabama Deceptive Trade  
1616 Practices Act ~~(Section 8-19-1 et seq.)~~ Chapter 19 of Title 8,  
1617 or as determined pursuant to this chapter to be, an unfair  
1618 method of competition or an unfair or deceptive act or  
1619 practice."

1620 "~~§27-17A-20~~§34-13-201

1621 (a) Whenever the ~~commissioner~~ board has reason to  
1622 believe that any person has engaged, or is engaging, in this  
1623 state in any unfair method of competition or any unfair or  
1624 deceptive act or practice as defined in this ~~article~~ chapter,

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1625 or is engaging in the sale of preneed contracts without being  
1626 properly licensed as required by this ~~article~~ chapter, or is  
1627 otherwise acting in violation of this chapter, and that a  
1628 proceeding by the ~~commissioner~~ board in respect thereto would  
1629 be in the interest of the public, the ~~commissioner~~ board shall  
1630 institute a proceeding in accordance with this section.

1631 (b) A statement of charges, notice, or order or other  
1632 process under this chapter may be served by anyone duly  
1633 authorized by the ~~commissioner~~ board. Service may be made  
1634 either in the manner provided by law for service of process in  
1635 civil actions or by certifying and mailing a copy of the  
1636 statement to the person affected by the statement, notice, or  
1637 order or other process at his or her or its residence or  
1638 principal office or place of business. The verified return by  
1639 the person so serving the statement, notice, or order or other  
1640 process, setting forth the manner of the service, shall be  
1641 proof of the service; and the return postcard receipt for the  
1642 statement, notice, or order or other process, certified and  
1643 mailed as provided in this subsection, shall be proof of  
1644 service of the statement, notice, or order or other process.

1645 (c) The ~~commissioner~~ board shall conduct or cause to  
1646 have conducted a hearing in accordance with ~~Article 1 of~~  
1647 ~~Chapter 2~~ this chapter, and shall, during the conduct of the  
1648 hearing, have those powers necessary to enforce this chapter  
1649 and rules of the board; however, the penalties for failure to  
1650 comply with a subpoena or with an order directing discovery  
1651 shall be limited to a fine not to exceed one thousand dollars  
1652 (\$1,000) per violation. In accordance with Section 36-12-40,

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1653 evidence introduced and presented in a hearing conducted under  
1654 this chapter shall be deemed a public writing."

1655 "~~§27-17A-21~~§34-13-202

1656 (a) If the ~~commissioner~~ board finds that one or more  
1657 grounds exist for the discretionary suspension or revocation  
1658 of a certificate of authority or establishment license issued  
1659 under this ~~article~~ chapter, the ~~commissioner may~~ board, in  
1660 lieu of the suspension or revocation, may impose a fine upon  
1661 the certificate holder in an amount not to exceed one thousand  
1662 dollars (\$1,000) for each nonwillful violation and in an  
1663 amount not to exceed ten thousand dollars (\$10,000) for each  
1664 willful violation.

1665 (b) The ~~commissioner~~ board may grant not more than 30  
1666 days from the date of the order for the payment of any fine."

1667 "~~§27-17A-22~~§34-13-203

1668 (a) (1) A person who knowingly receives payments for a  
1669 preneed contract without having a valid certificate of  
1670 authority:

1671 a. Commits a Class B felony, ~~punishable as provided by~~  
1672 ~~law~~, as to each contract on which the payments collected equal  
1673 or exceed, in the aggregate, two thousand five hundred dollars  
1674 (\$2,500).

1675 b. Commits a Class C felony, ~~punishable as provided by~~  
1676 ~~law~~, as to each contract on which the payments collected are  
1677 between, in the aggregate, five hundred dollars (\$500) and two  
1678 thousand five hundred dollars (\$2,500).

1679 c. Commits a Class A misdemeanor, ~~punishable as~~  
1680 ~~provided by law~~, as to each contract on which the payments

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1681 collected do not exceed, in the aggregate, five hundred  
1682 dollars (\$500).

1683 (2) In addition to the criminal penalty imposed under  
1684 subdivision (1), upon conviction of an offense under  
1685 subdivision (1), a person may not thereafter obtain a  
1686 certificate of authority or register as a preneed sales agent.

1687 (b) (1) A person who willfully fails to timely deposit  
1688 the amount required to be so deposited under this chapter in a  
1689 preneed merchandise and services trust or endowment care  
1690 trust:

1691 a. Commits a Class B felony, ~~punishable as provided by~~  
1692 ~~law~~, as to each contract on which the amount due for deposit  
1693 in trust equals or exceeds, in the aggregate, two thousand  
1694 five hundred dollars (\$2,500).

1695 b. Commits a Class C felony, ~~punishable as provided by~~  
1696 ~~law~~, as to each contract on which the amount due for deposit  
1697 in trust is less than, in the aggregate, two thousand five  
1698 hundred dollars (\$2,500).

1699 (2) In addition to the criminal penalty imposed under  
1700 subdivision (1), upon conviction of an offense under  
1701 subdivision (1), the certificate of authority or preneed sales  
1702 agent registration held by the person shall be automatically  
1703 revoked and the person may not thereafter obtain a certificate  
1704 of authority or register as a preneed sales agent.

1705 (c) (1) A person who knowingly withdraws funds or assets  
1706 from a preneed merchandise and services trust or endowment  
1707 care trust in a manner or under circumstances not authorized  
1708 by this chapter or rule of the board:

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1709 a. Commits a Class B felony, ~~punishable as provided by~~  
1710 ~~law,~~ if the aggregate amount withdrawn in any single  
1711 transaction or series of related transactions equals or  
1712 exceeds two thousand five hundred dollars (\$2,500).

1713 b. Commits a Class C felony, ~~punishable as provided by~~  
1714 ~~law,~~ if the aggregate amount withdrawn in any single  
1715 transaction or series of related transactions is less than two  
1716 thousand five hundred dollars (\$2,500).

1717 (2) In addition to the criminal penalty imposed under  
1718 subdivision (1), upon conviction of an offense under  
1719 subdivision (1), the certificate of authority or preneed sales  
1720 agent registration held by the person shall be automatically  
1721 revoked and the person may not thereafter obtain a certificate  
1722 of authority or register as a preneed sales agent.

1723 (d) A person commits a Class C felony, ~~punishable as~~  
1724 ~~provided by law,~~ if any of the following occur:

1725 (1) The person knowingly delivers to the ~~commissioner~~  
1726 board any official form, report, record, data, or other  
1727 document required by the ~~commissioner~~ board containing a false  
1728 statement or false information concerning a matter material to  
1729 the ~~commissioner~~ board in the exercise of ~~his or her~~ its  
1730 authority to administer and enforce this chapter.

1731 (2) Incident to, or during the course of, an  
1732 examination, inspection, investigation, or other inquiry  
1733 authorized by this chapter, the person knowingly makes  
1734 available to a representative of the ~~commissioner~~ board any  
1735 official form, report, record, data, or other document  
1736 required by the ~~commissioner~~ board containing a false

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1737 statement or false information concerning a matter material to  
1738 the purpose of the examination, inspection, investigation, or  
1739 inquiry.

1740 (3) With respect to the business records of a person  
1741 engaging in, or who has at any time engaged in, the sale of a  
1742 preneed contract, a person, with a purpose to use deception as  
1743 defined in subdivision (1) of Section 13A-8-1, makes false  
1744 entries in ~~such~~ the records or alters, erases, obliterates,  
1745 deletes, or removes a correct entry in ~~such~~ the records, fails  
1746 to make a correct entry in ~~such~~ the records, or prevents the  
1747 making of a correct entry, or causes the omission of a correct  
1748 entry in ~~such~~ the records.

1749 (e) Except as otherwise provided in this ~~section~~  
1750 chapter, the willful violation of this chapter is a Class A  
1751 misdemeanor, ~~punishable as provided by law.~~

1752 ~~(f) The duties and authority of the insurance fraud~~  
1753 ~~unit created under Section 27-12A-40, including the powers of~~  
1754 ~~the unit's investigators, shall extend to investigations into~~  
1755 ~~violations of this section."~~

1756 "~~§27-17A-23~~§34-13-204

1757 The ~~commissioner~~ board, the Attorney General, or any  
1758 person may bring a civil action against a person or company  
1759 violating this chapter or rule of the board in Montgomery  
1760 County or the appropriate court of the county in which the  
1761 alleged violator resides or has his or her or its principal  
1762 place of business or in the county wherein the alleged  
1763 violation occurred. Upon adverse adjudication, the defendant  
1764 shall be liable for actual damages caused by the violation.

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1765 The court, as provided by common law, may award punitive  
1766 damages and may provide equitable relief as it deems proper or  
1767 necessary, including enjoining the defendant from further  
1768 violation of this chapter or rule of the board."

1769 "~~§27-17A-24~~§34-13-205

1770 The provisions of this chapter are cumulative to rights  
1771 under the general civil and common law, and no action of the  
1772 ~~commissioner board~~ may abrogate the rights to damages or other  
1773 relief in any court."

1774 "~~§27-17A-25~~§34-13-206

1775 (a) All fees collected by the ~~commissioner board~~  
1776 pursuant to this chapter shall be deposited into the ~~State~~  
1777 ~~Treasury to the credit of the Insurance Department~~ Alabama  
1778 State Funeral Service Fund.

1779 (b) All fines collected by the ~~commissioner board~~  
1780 pursuant to this chapter shall be deposited into the ~~State~~  
1781 ~~Treasury to the credit of the State General~~ Alabama State  
1782 Funeral Service Fund.

1783 (c) The ~~commissioner board~~ may use funds available from  
1784 any source including, but not limited to, grants,  
1785 appropriations, and gifts, for any purpose in the enforcement  
1786 of this chapter."

1787 Section 6. The following heading is added to Division  
1788 3, commencing with Section 34-13-230, of Article 5, Chapter  
1789 13, Title 34, Code of Alabama 1975:

1790 "Division 3. Funeral Merchandise and Services Trust  
1791 Fund."

1792 Section 7. Sections 27-17A-30, 27-17A-31, 27-17A-32,





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1793 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are  
1794 amended and renumbered as Division 3 of Article 5 of Chapter  
1795 13 of Title 34, Code of Alabama 1975, to read as follows:

1796 "~~§27-17A-30~~§34-13-230

1797 To comply with the trust requirement of subsection (a)  
1798 of Section ~~27-17A-13~~ 34-13-194, all certificate holders  
1799 providing preneed contracts for funeral services or funeral  
1800 merchandise shall be subject to this ~~article~~ chapter."

1801 "~~§27-17A-31~~§34-13-231

1802 (a) Any person who is paid, collects, or receives funds  
1803 under a preneed contract for funeral services or funeral  
1804 merchandise to be funded by trust shall deposit in trust an  
1805 amount at least equal to the sum of 75 percent of the amount  
1806 collected on the purchase price for all funeral services and  
1807 funeral merchandise sold, transportation, and facilities  
1808 rented other than outer burial containers, 60 percent of the  
1809 amount collected on the purchase price for outer burial  
1810 containers, 110 percent of the wholesale cost of memorials  
1811 from the amount collected on the purchase price of memorials,  
1812 and 100 percent of the amount collected on the purchase price  
1813 for all cash advance items sold.

1814 (b) All deposits shall be made within 30 days after the  
1815 end of the calendar month in which the preneed contract is  
1816 paid in full, unless, prior to that time, all liabilities of  
1817 the seller under the preneed contract to deliver the specific  
1818 funeral merchandise or funeral services, or both, or the  
1819 specific cash advances, identified by the preneed provider as  
1820 properly allocated to the payment, have been satisfied, or the

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1821 preneed contract is validly cancelled.

1822 (c) The trustee shall take title to the property  
1823 conveyed to the trust for the purpose of investing,  
1824 protecting, and conserving it for the certificate holder;  
1825 collecting income; and distributing the principal and income  
1826 as prescribed in this ~~article~~ chapter.

1827 (d) The certificate holder is prohibited from sharing  
1828 in the discharge of these responsibilities, except that the  
1829 certificate holder may appoint an adviser to the trustee or  
1830 elect tax free investments. Nothing in this chapter shall  
1831 prohibit a trustee from electing the qualified funeral trust  
1832 option under the Internal Revenue Code.

1833 (e) The trust agreement shall be submitted to the  
1834 ~~commissioner~~ board for approval and filing.

1835 (f) The funds shall be held in trust, both as to  
1836 principal and income earned thereon, and shall remain intact,  
1837 except that the cost of the operation of the trust or trust  
1838 account authorized by this section may be deducted from the  
1839 income earned thereon.

1840 (g) The contract purchaser shall have no interest  
1841 whatsoever in, or power whatsoever over, funds deposited in  
1842 trust pursuant to this section.

1843 (h) In no event may ~~such~~ the funds be loaned to a  
1844 certificate holder, an affiliate of a certificate holder, or  
1845 any person directly or indirectly engaged in the burial,  
1846 funeral home, or cemetery business. Furthermore, the  
1847 certificate holder's interest in the trust shall not be  
1848 pledged as collateral for any loans, debts, or liabilities of

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1849 the certificate holder and shall not be transferred to any  
1850 person without the prior written approval from the  
1851 ~~commissioner~~ board and the trustee. Even though the  
1852 certificate holder shall be deemed and treated as the settlor  
1853 and beneficiary of the trust for all purposes, all of the  
1854 trust funds are exempt from all claims of creditors of the  
1855 certificate holder except as to the claims of the contract  
1856 purchaser, his or her representative, or the ~~commissioner~~  
1857 board.

1858 (i) For all preneed contracts written or entered into  
1859 on or after January 1, 2015, all required deposits in trust  
1860 shall commence not later than 30 days after the end of the  
1861 calendar month in which the sum of the monies collected on the  
1862 preneed contract exceeds the amount that is not required to be  
1863 deposited in trust as determined under subsection (a) unless,  
1864 prior to that time, all liabilities of the preneed seller  
1865 under the preneed contract have been satisfied, or the preneed  
1866 contract is validly cancelled. Further required deposits on  
1867 the contract shall thereafter be made not later than 30 days  
1868 after the end of the calendar month in which each contract  
1869 payment is collected by the seller."

1870 "~~§27-17A-32~~ §34-13-232

1871 (a) If amounts paid by the purchaser under a preneed  
1872 contract for funeral merchandise have previously been  
1873 deposited in trust, the seller may withdraw the principal  
1874 amount and trust appreciation attributable to the delivered  
1875 item at such time as the funeral merchandise is delivered or  
1876 installed or, if comprised of materials designed to withstand

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1877 prolonged, protected storage without deterioration, the  
1878 merchandise is placed in storage with a responsible third  
1879 party bonded and insured for the wholesale value thereof and  
1880 evidenced by a receipt specifically identifying the item, the  
1881 specific preneed contract, the location of the item, and the  
1882 identity and address of the bonding and insuring parties. For  
1883 purposes of this subsection only, caskets and alternative  
1884 containers may not be held in storage by the seller or a third  
1885 party storage facility prior to the death of the funeral  
1886 beneficiary.

1887 (b) The trustee shall make regular valuations of the  
1888 assets it holds in trust and provide a report of the  
1889 valuations to the certificate holder at least quarterly. At  
1890 all times, the certificate holder shall be able to determine  
1891 the amount held in trust attributable to each contract holder.  
1892 For all contracts effective on or after January 1, 2015, the  
1893 determination shall be based upon the fair market value of the  
1894 trust at the time and the proportionate share of the fair  
1895 market value attributable to each contract holder. For all  
1896 contracts in effect before January 1, 2015, the valuation of  
1897 each contract may be calculated using any valuation method  
1898 that had been previously approved by the ~~commissioner or the~~  
1899 ~~department~~ Commissioner or the Department of Insurance before  
1900 January 1, 2015. Any person who withdraws appreciation in the  
1901 value of trust, other than the pro rata portion of ~~such~~ the  
1902 appreciation which may be withdrawn upon the death of a  
1903 contract's funeral beneficiary or upon cancellation of a  
1904 preneed contract, shall be required to make additional

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1905 deposits from his or her own funds to restore the aggregate  
1906 value of assets to the value of funds deposited in trust, but  
1907 excluding from the funds deposited those funds paid out upon  
1908 preneed contracts which the person has fully performed or  
1909 which have been otherwise withdrawn, as provided in this  
1910 ~~article~~ chapter. The certificate holder shall be liable to  
1911 third parties to the extent that income from the trust is not  
1912 sufficient to pay the expenses of the trust.

1913 (c) The trustee of the trust established pursuant to  
1914 this ~~article~~ chapter shall have all of the following powers:

1915 (1) Make investments and exercise necessary investment  
1916 powers, provided that the ~~commissioner~~ board may by order  
1917 require the trustee to liquidate or dispose of any investment  
1918 within 30 days after the order.

1919 (2) Commingle the property of the trust with the  
1920 property of any other preneed funeral, preneed cemetery, or  
1921 endowment care trust established pursuant to this ~~article~~  
1922 chapter and make corresponding allocations and divisions of  
1923 assets, liabilities, income, and expenses.

1924 (d) Notwithstanding the provisions of Section 19-3-125,  
1925 the trustee ~~may~~, subject to compliance with the requirements  
1926 set forth below, may invest any portion or all of the funds  
1927 received under preneed contracts and deposited in trust in  
1928 life insurance contracts or annuities issued on the lives of  
1929 preneed contract purchasers or preneed contract beneficiaries,  
1930 hereinafter, the insured or annuitant, without any obligation  
1931 to cover at a minimum the retail amount of the preneed  
1932 contract at the time of purchase of the life insurance

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1933 contracts or annuities as set forth in Section ~~27-17A-3~~  
1934 [34-13-171](#).

1935 (1) Trust funds shall not be invested by the trustee in  
1936 life insurance contracts or annuities unless the following  
1937 requirements are met:

1938 a. The company issuing the life insurance contracts or  
1939 annuities is licensed by the Department of Insurance and the  
1940 insurance producer or annuity seller is properly licensed  
1941 within its domiciliary jurisdiction.

1942 b. Prior to the investment, the insured or annuitant  
1943 consents, in writing, to the investment in life insurance  
1944 contracts or annuities.

1945 c. For life insurance contracts or annuities issued  
1946 prior to May 6, 2008, and currently in force, such contracts  
1947 shall be construed to have been an authorized investment by  
1948 the trustee under this chapter if the insured or annuitant is  
1949 notified in writing of the existence of any such contract and  
1950 provided with a copy of the contract.

1951 (2) Upon request, the insured or annuitant shall be  
1952 provided with a copy of any life insurance contract or annuity  
1953 issued to a preneed trustee at no expense to the insured or  
1954 annuitant.

1955 (3) Any life insurance contract or annuity issued in  
1956 accordance with this subsection and otherwise in compliance  
1957 therewith shall be valid and in full force according to the  
1958 terms and conditions thereof.

1959 (4) A trustee that invests all or any portion of the  
1960 funds received under preneed contracts and deposited in trust

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1961 in life insurance contracts or annuities issued by one company  
1962 licensed by the ~~department~~ State Department of Insurance shall  
1963 be considered to satisfy the standards and requirements of  
1964 Section 19-3-120.2 and Chapter 3B of Title 19.

1965 (5) It is the intention of the Legislature that this  
1966 subsection shall be retroactive and shall apply to all life  
1967 insurance contracts or annuities issued prior to May 6, 2008."

1968 "~~§27-17A-33~~§34-13-233

1969 (a) A purchaser, by providing written notice to the  
1970 certificate holder, may cancel a preneed contract within 30  
1971 days of the date that the contract was executed provided that  
1972 the funeral merchandise and funeral services have not yet been  
1973 used. Upon providing the notice, the purchaser shall be  
1974 entitled to a complete refund of the amount paid, except for  
1975 the amount allocable to any funeral merchandise or funeral  
1976 services that have been used, and shall be released from all  
1977 obligations under the contract. This subsection shall apply to  
1978 all items that are purchased as part of a preneed contract.

1979 (b) After 30 days from the date the preneed contract  
1980 was executed, a purchaser, by providing written notice to the  
1981 certificate holder, may cancel the funeral services, funeral  
1982 merchandise, facilities, and cash advance items portions of a  
1983 preneed contract at any time, and shall be entitled to the  
1984 refund defined in the preneed contract allocable to those  
1985 items. Any accumulated earnings allocable to the preneed  
1986 contract shall be paid to the certificate holder upon the  
1987 cancellation.

1988 (c) Upon breach of contract or failure of the

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1989 certificate holder to provide funeral merchandise or services  
1990 under a preneed contract, the contract purchaser shall be  
1991 entitled to a refund of 100 percent of all money paid on the  
1992 contract. The refund shall be made within 30 days after  
1993 receipt by the certificate holder of the contract purchaser's  
1994 written request for refund.

1995 (d) If a purchaser is 90 days past due in making  
1996 payments on a preneed contract, the contract shall be  
1997 considered to be in default, and the certificate holder shall  
1998 be entitled to cancel the contract and withdraw all funds in  
1999 trust. Upon making the withdrawal, the certificate holder  
2000 shall refund to the purchaser the amount defined in the  
2001 preneed contract in the event of default of the purchaser,  
2002 provided that the certificate holder has provided the  
2003 purchaser with 30 days' written notice of its intention to  
2004 exercise any of its rights under this provision.

2005 (e) All preneed contracts are cancelable and revocable  
2006 as provided in this section during the lifetime of the  
2007 purchaser, provided that a preneed contract does not restrict  
2008 any contract purchaser who is a qualified applicant for, or a  
2009 recipient of, supplemental security income, temporary cash  
2010 assistance, or Medicaid from making his or her contract  
2011 irrevocable.

2012 (f) In the event that the preneed contract is made  
2013 irrevocable pursuant to subsection (e), ~~the purchaser or~~ the  
2014 authorizing agent shall have the right to appoint a provider  
2015 other than the seller of the preneed contract. In the event  
2016 that a provider is appointed pursuant to this subsection, the



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2017 seller shall transfer to the appointed provider the amount  
2018 paid by the purchaser to the seller and those amounts  
2019 deposited into trust, less a reasonable transfer fee  
2020 determined by the ~~seller~~ board. In the event the preneed  
2021 contract was funded by an insurance or annuity policy, the  
2022 seller shall cancel and relinquish any assignment of benefits  
2023 or beneficiary status under the policy or annuity contract,  
2024 and deliver the policy, if in the custody of the preneed  
2025 seller, to the policy owner or his or her legal  
2026 representative, and the seller may collect a reasonable  
2027 transfer fee as determined by rule of the board. No transfer  
2028 hereunder shall occur without the acceptance of the appointed  
2029 provider.

2030 (g) All refunds required to be made under this section  
2031 to a purchaser who has canceled a contract must be made within  
2032 30 days after the date the written notice of cancellation is  
2033 received by the certificate holder."

2034 "~~§27-17A-34~~§34-13-234

2035 (a) Disbursement of funds discharging any preneed  
2036 contract for funeral services or funeral merchandise fulfilled  
2037 after May 1, 2002, shall be made by the trustee to the  
2038 certificate holder upon receipt by the trustee of a  
2039 certification of the certificate holder that the preneed  
2040 contract has been performed in whole or in part or the preneed  
2041 contract has been cancelled. Before the trustee may disburse  
2042 any trust funds, the certificate holder shall provide to the  
2043 trustee a death certificate or other valid proof of death, a  
2044 letter from the preneed contract holder cancelling the preneed

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2045 contract or valid proof the contract has been cancelled in  
2046 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof  
2047 the merchandise has been delivered and installed, and services  
2048 have been performed. Any trustee accepting preneed contract  
2049 proceeds under this ~~article~~ chapter may rely upon the  
2050 certification of the certificate holder accompanied by the  
2051 required proof, and shall not be liable to anyone for such  
2052 reliance. If the contract is only partially performed, the  
2053 disbursement shall only cover that portion of the contract  
2054 performed. In the event of any contract default by the  
2055 contract purchaser, or in the event that the funeral  
2056 merchandise or funeral service contracted for is not provided,  
2057 the trustee shall return, within 30 days after its receipt of  
2058 a written request therefor, 100 percent of the funds deposited  
2059 into the trust on the contract and the income and accretion  
2060 thereon to the certificate holder or to its assigns, subject  
2061 to Section ~~27-17A-33~~ 34-13-233.

2062 (b) For all contracts effective on or after January 1,  
2063 2015, the amount that may be withdrawn from the trust upon  
2064 fulfillment or cancellation of any particular preneed contract  
2065 may not exceed the amount attributable to that preneed  
2066 contract in proportion to the total amount held in trust for  
2067 all preneed contracts as of the date of withdrawal. For all  
2068 contracts in effect before January 1, 2015, the valuation of  
2069 each contract and the amount that may be withdrawn from the  
2070 trust may be calculated using any valuation method that had  
2071 been approved by the ~~commissioner or the department~~  
2072 Commissioner or the Department of Insurance before January 1,



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2073 2015."

2074 Section 8. The following heading is added to Division  
2075 4, commencing with Section 34-13-260, of Article 5, Chapter  
2076 13, Title 34, Code of Alabama 1975:

2077 "Division 4. Cemetery Merchandise and Services Trust  
2078 Fund."

2079 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,  
2080 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,  
2081 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,  
2082 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of  
2083 the Code of Alabama 1975, are amended and renumbered as  
2084 Division 4 of Article 5 of Chapter 13 of Title 34, Code of  
2085 Alabama 1975, to read as follows:

2086 "~~§27-17A-40~~§34-13-260

2087 To comply with the trust requirement of subsection (a)  
2088 of Section ~~27-17A-13~~ 34-13-194, all certificate holders who  
2089 are cemetery authorities providing preneed contracts for  
2090 cemetery services or cemetery merchandise shall be subject to  
2091 this ~~article~~ chapter."

2092 "~~§27-17A-41~~§34-13-261

2093 (a) Any person who receives or collects any funds on  
2094 account of a preneed contract in this state for cemetery  
2095 services or cemetery merchandise, or both, entered into after  
2096 May 1, 2002, shall have the obligation to pay over and  
2097 contribute into a trust fund as hereinafter described, those  
2098 amounts or proportions of the funds as hereinafter provided.

2099 (b) Whether or not the preneed contract provides for  
2100 cemetery merchandise or cemetery services, or any combination

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2101 thereof, the trust fund shall be referred to in this section  
2102 as the Cemetery Merchandise and Services Trust Fund.

2103 (c) The trustee of the Cemetery Merchandise and  
2104 Services Trust Fund shall be qualified as such within the  
2105 definition of the trustee.

2106 (d) The trustee shall take title to the property  
2107 conveyed to the Cemetery Merchandise and Services Trust Fund  
2108 subject to this section.

2109 (e) The contract purchaser shall have no interest  
2110 whatsoever in, or power whatsoever over, the funds deposited  
2111 in the Cemetery Merchandise and Services Trust Fund.

2112 (f) The party contracting to deliver the cemetery  
2113 merchandise or cemetery services or cash advances, whether or  
2114 not a preneed provider, shall be referred to in this section  
2115 as the "seller."

2116 (g) The seller shall be the beneficiary of the Cemetery  
2117 Merchandise and Services Trust Fund."

2118 "~~§27-17A-42~~§34-13-262

2119 (a) The obligation of the seller under a preneed  
2120 contract shall be to make contributions into the Cemetery  
2121 Merchandise and Services Trust Fund in accordance with the  
2122 following formulae:

2123 (1) With respect to all cemetery merchandise, 110  
2124 percent of wholesale cost.

2125 (2) With respect to outer burial containers, 60 percent  
2126 of the purchase price specified in the preneed contract.

2127 (3) With respect to cemetery services, 60 percent of  
2128 the purchase price specified in the preneed contract.

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2129 (4) With respect to all cash advance items sold, 100  
2130 percent of the purchase price specified for the same in the  
2131 preneed contract.

2132 (5) With respect to caskets, 75 percent of the purchase  
2133 price.

2134 (b) All contributions shall be made within 30 days  
2135 after the end of the calendar month in which the preneed  
2136 contract is paid in full, unless, prior to that time, all  
2137 liabilities of the seller under the preneed contract to  
2138 deliver the specific cemetery merchandise or cemetery  
2139 services, or both, or the specific cash advances, identified  
2140 by the preneed provider as properly allocated to the payment,  
2141 have been satisfied, or the preneed contract is validly  
2142 cancelled.

2143 (c) For all preneed contracts entered into on or after  
2144 January 1, 2015, all contributions shall be made not later  
2145 than 30 days after the end of the calendar month in which the  
2146 sum of the monies collected on the preneed contract exceeds  
2147 the amount that is not required to be contributed as  
2148 determined under subsection (a), unless, prior to that time,  
2149 all liabilities of the seller under the preneed contract have  
2150 been satisfied, or the preneed contract is validly cancelled.  
2151 Further required trust contributions on the contract shall  
2152 thereafter be made not later than 30 days after the end of the  
2153 calendar month in which each contract payment is collected by  
2154 the seller.

2155 (d) The trustee shall invest and reinvest the Cemetery  
2156 Merchandise and Services Trust Fund.

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2157 (e) The trustee shall make regular evaluations of the  
2158 fair market value of assets held in and liabilities, if any,  
2159 of the Cemetery Merchandise and Services Trust Fund and  
2160 provide a report of the evaluations to the seller at least  
2161 quarterly. Upon receipt of each quarterly report, the seller  
2162 may submit to the trustee a written and detailed analysis  
2163 concerning the balance of funds in the Cemetery Merchandise  
2164 and Services Trust Fund, certified under oath as being true  
2165 and correct upon information and belief by a responsible  
2166 officer of the seller.

2167 (f) While the obligation of the seller to make  
2168 contributions to the Cemetery Merchandise and Services Trust  
2169 Fund is set forth in this section, the obligation of the  
2170 seller at the time of making certain withdrawals from the  
2171 Cemetery Merchandise and Services Trust Fund as herein  
2172 provided for shall be calculated with respect to the current  
2173 wholesale cost of cemetery merchandise and current retail  
2174 price of cemetery services and cash advances at the time of  
2175 withdrawal. If the fair market value as reported by the  
2176 trustee exceeds 110 percent of the total of the following, the  
2177 seller shall be entitled to withdraw and retain from the  
2178 merchandise trust fund, the excess funds therein: 110 percent  
2179 of the current wholesale cost of the liability to deliver all  
2180 cemetery merchandise, 60 percent of the current retail price  
2181 for all cemetery services, 60 percent of the current retail  
2182 price of outer burial containers, 75 percent of the current  
2183 retail price of caskets, and 100 percent of the current retail  
2184 price of all cash advances, for the total of all preneed

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2185 contracts for which the purchasers have paid in full, all  
2186 calculated as of the time of withdrawal; and concerning the  
2187 total of all preneed contracts for which the purchasers have  
2188 not paid in full, 25 percent of the total of the following:  
2189 110 percent of the current wholesale cost of the liability to  
2190 deliver all cemetery merchandise, 60 percent of the current  
2191 retail price for all cemetery services, and 100 percent of the  
2192 current retail price of all cash advances, all calculated as  
2193 of the time of withdrawal.

2194 (g) At least annually the seller shall make the  
2195 aforesaid analysis and certification and provide the same to  
2196 the trustee. If the certification discloses that the fair  
2197 market value of the Cemetery Merchandise and Services Trust  
2198 Fund is less than 100 percent of the aggregate calculated  
2199 amount the seller shall from its own funds contribute to the  
2200 Cemetery Merchandise and Services Trust Fund within the 12  
2201 months succeeding the annual computation the amount necessary  
2202 to restore the trust fund to an amount equal to not less than  
2203 100 percent of the aggregate amount so calculated."

2204 "~~§27-17A-43~~§34-13-263

2205 (a) Upon cancellation of a preneed contract by mutual  
2206 agreement between the seller and purchaser, or upon unilateral  
2207 cancellation of a preneed contract by the seller by reason of  
2208 default on the part of the purchaser, or other valid  
2209 cancellation by reason of transfers to another seller or  
2210 otherwise, the seller ~~may~~, upon submission of a certification  
2211 under oath by a responsible officer of the seller to the  
2212 trustee, may withdraw from the Cemetery Merchandise and

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2213 Services Trust Fund and retain an amount equal to the amount  
2214 of all funds contributed to the trust fund with respect to the  
2215 preneed contract. Any trustee accepting preneed contract  
2216 proceeds under this ~~article~~ chapter may rely on the seller's  
2217 certification under oath as required herein to be made, and  
2218 shall not be liable to anyone for such reliance.

2219 (b) At such time as the seller undertakes to perform  
2220 its obligations under a preneed contract by delivery or  
2221 installation, or both, of cemetery merchandise and the  
2222 provision of cemetery services and disbursement on account of  
2223 cash advances, or otherwise, upon certification to the trustee  
2224 under oath by a responsible officer of the seller that the  
2225 obligations of the seller under the contract have been  
2226 completely fulfilled, the seller may withdraw from the  
2227 Cemetery Merchandise and Services Trust Fund and retain an  
2228 amount equal to the current wholesale cost to the fund with  
2229 respect to the preneed contract.

2230 (c) At such time as the seller has fulfilled all of its  
2231 obligations under all preneed contracts with respect to which  
2232 funds have been contributed to the trust fund, and  
2233 certification under oath to the trustee by a responsible  
2234 officer of the seller of those facts, the seller may withdraw  
2235 from the trust fund and retain all of the remaining assets  
2236 thereof."

2237 "~~§27-17A-44~~§34-13-264

2238 If the amounts paid by the purchaser under a preneed  
2239 contract for cemetery merchandise have previously been  
2240 deposited in trust, the seller may withdraw the principal



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2241 amount there, at such time as the cemetery merchandise is  
2242 delivered or installed or, if comprised of materials designed  
2243 to withstand prolonged, protected storage without  
2244 deterioration, the merchandise is placed in storage with a  
2245 responsible third party bonded and insured for the wholesale  
2246 value thereof and evidenced by a receipt specifically  
2247 identifying the item, the specific preneed contract, the  
2248 location of the item, and the identity and address of the  
2249 bonding and insuring parties. For purposes of this section  
2250 only, caskets and alternative containers may not be held in  
2251 storage by the seller or a third party storage facility prior  
2252 to the death of the funeral beneficiary."

2253 "~~§27-17A-45~~§34-13-265

2254 An endowment care fund and all payments or  
2255 contributions to it are expressly permitted as and for  
2256 charitable and eleemosynary purposes. No payment, gift, grant,  
2257 bequest, or other contribution for endowment care is invalid  
2258 by reason of any indefiniteness or uncertainty of the persons  
2259 designated as beneficiaries in the instruments creating the  
2260 fund, nor is the fund or any contributions to it invalid as  
2261 violating any law against perpetuities, or the suspension of  
2262 the power of alienation of title to property."

2263 "~~§27-17A-46~~§34-13-266

2264 Any cemetery now existing or hereafter established,  
2265 excluding those operated by governmental agencies or religious  
2266 institutions, ~~shall be~~ may be qualified as an endowment care  
2267 cemetery, except those cemeteries which do not charge fees or  
2268 sell plots, interment rights, or any related cemetery."

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2269 "~~§27-17A-47~~§34-13-267

2270 (a) Every cemetery authority operating an endowment  
2271 care cemetery shall establish an endowment care fund which  
2272 shall be placed with and held by a bank, trust company,  
2273 savings and loan association, or other financial institution  
2274 authorized to provide trust services under Title 5, as  
2275 amended, or under the applicable laws of the United States or  
2276 any other state, or a board of trustees, consisting of at  
2277 least three members, who shall reside in the State of Alabama,  
2278 one of whom is engaged in outside cemetery management, and  
2279 each of whom shall be bonded to honestly perform the duties of  
2280 trustee under a formal trust agreement.

2281 (b) Except as specifically provided in this subsection,  
2282 commencing on July 1, 2014, a person serving on a board of  
2283 trustees or cemetery authority may not also serve as a trustee  
2284 of an endowment care fund for the cemetery authority. A board  
2285 of trustees in existence on July 1, 2014, may continue to  
2286 serve as the trustee of an endowment care fund if the board of  
2287 trustees otherwise complies with this subsection. Unless  
2288 exempted by the ~~commissioner~~ board pursuant to this  
2289 subsection, on or before January 1, 2015, each member of a  
2290 board of trustees in existence on July 1, 2014, shall furnish  
2291 the bond required by subsection (a) in the greater of one  
2292 hundred thousand dollars (\$100,000) or the amount in each  
2293 endowment care fund for which the board of trustees acts as  
2294 trustee as of December 31, 2014. Thereafter, the amount of the  
2295 bonds shall be increased on January 1 of each succeeding year  
2296 to equal the amount in each endowment care fund as of the

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2297 immediately preceding December 31. The ~~commissioner~~ board  
2298 shall exempt a board of trustees from the bond requirement if  
2299 the board of trustees provides to the ~~commissioner~~ board an  
2300 annual audit report that satisfies all of the following  
2301 criteria:

2302 (1) The report is prepared by a certified public  
2303 accountant authorized to practice in Alabama.

2304 (2) The report evidences that the review made the  
2305 subject of the report by the accountant encompasses each  
2306 endowment care fund for which the board of trustees acts as  
2307 trustee.

2308 (3) The report notes relating to the endowment care  
2309 fund or funds are in a form that is reasonably acceptable to  
2310 the ~~commissioner~~ board.

2311 (4) The report does not evidence any material violation  
2312 of or noncompliance with this chapter relating to an endowment  
2313 care fund.

2314 (c) The corporate trustee or board of trustees shall be  
2315 referred to as a qualified trustee. Unless otherwise specified  
2316 in this ~~article~~ chapter or in the terms of the trust  
2317 instrument, the trustee of any trust established under or  
2318 pursuant to this ~~article~~ chapter shall have all powers granted  
2319 to trustees under Article 14 of Chapter 3 of Title 19. The  
2320 incorporation herein of such powers shall not be deemed to  
2321 imply any duties of trustees of trusts established under or  
2322 pursuant to this ~~article~~ chapter not expressly delineated in  
2323 this ~~article~~ chapter.

2324 (d) The cemetery authority may employ a person to

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2325 advise the trustee in the management of the fund.

2326 (e) The cemetery authority may enter into a contract  
2327 with the qualified trustee for the management and investment  
2328 of the endowment care fund, which contract may provide for the  
2329 payment of income from the fund of reasonable fees or  
2330 commissions to the trustee, and its reasonable expenses for  
2331 administering the trust.

2332 (f) As often as ~~he or she~~ the board may deem necessary,  
2333 the ~~commissioner~~ board may examine the records or facilities,  
2334 or both, of any cemetery authority operating an endowment care  
2335 cemetery."

2336 "~~§27-17A-48~~§34-13-268

2337 (a) Each cemetery authority shall comply with this  
2338 chapter and maintain at each place of business a list of the  
2339 names and addresses of its owners and directors, which shall  
2340 be available to the public.

2341 (b) Each cemetery authority shall maintain a record of  
2342 all ~~property~~ interment space owners by name and last known  
2343 address with a description of merchandise and location of  
2344 burial lots, crypts, or niches and the records shall be on a  
2345 form or in a format prescribed by the board and shall detail  
2346 all information required by the board. A plat map shall be  
2347 maintained for each cemetery location at the cemetery business  
2348 office. A book or file shall be kept as to the date, location  
2349 by lot, and space number of each person interred or entombed  
2350 in the cemetery. A written copy of the cemetery rules and  
2351 regulations shall be maintained at each location and made  
2352 available to the public upon request.-"

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2353 "~~§27-17A-49~~§34-13-269

2354 (a) From the sale price of each plot, crypt, or niche  
2355 sold by the cemetery authority, of an endowment care cemetery,  
2356 it shall pay an amount, not less than as determined in  
2357 accordance with the following schedule, to the trustee of the  
2358 endowment care fund, which payment shall be paid over to the  
2359 trustee not more than four months after the close of the month  
2360 in which the total or final payment on the sale has been  
2361 received:

2362 (1) Fifteen percent of the ~~sale~~ net sales price of each  
2363 grave or lawn crypt space.

2364 (2) Five percent of the ~~sale~~ net sales price of each  
2365 mausoleum crypt or niche.

2366 (3) If a cemetery donates or gives a free space,  
2367 mausoleum, or niche, a minimum of fifty dollars (\$50) shall be  
2368 paid to the endowment care fund.

2369 ~~(3)~~ (4) The amount received for special care funds,  
2370 gifts, grants, contribution devises, or bequests made with  
2371 respect to the separate or special care of a particular lot,  
2372 grave, crypt, niche, mausoleum, monument, or marker or that of  
2373 a particular family, as distinguished from the general endowed  
2374 care of a cemetery or of a garden.

2375 (b) In addition to subsection (a), a cemetery authority  
2376 may receive, and transfer to the trustee, as a part of or  
2377 incident to the endowment care fund, any property, real,  
2378 personal, or mixed, bequeathed, devised, given, or otherwise  
2379 contributed to it for endowment care purposes. Any contractual  
2380 endowment care deposits shall fall under this ~~article~~ chapter.

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2381 (c) Any cemetery authority which is organized and  
2382 engaged in business prior to May 1, 2002, shall qualify as an  
2383 endowment care cemetery if the following occur:

2384 (1) Not already placed, it shall within 90 days of May  
2385 1, 2002, have placed the entire principal of any endowment  
2386 care fund in its possession, custody, or control, into the  
2387 hands of a qualified trustee designated by it, to be  
2388 administered as set forth in this ~~article~~ chapter; and  
2389 principal of its endowment care fund, or the aggregate  
2390 principal of its endowment care funds, if more than one, shall  
2391 have a fair market value on either May 1, 2002, or on the date  
2392 of transfer to the trustee of not less than twenty-five  
2393 thousand dollars (\$25,000); or it shall substitute 25 percent  
2394 for each percentage of each sale for the next five years or  
2395 five thousand dollars (\$5,000) per year, whichever is greater,  
2396 until the balance of twenty-five thousand dollars (\$25,000) is  
2397 reached. In such case, the entire amount of twenty-five  
2398 thousand dollars (\$25,000) shall be paid into the fund before  
2399 the end of the fifth year, and no interest may be removed from  
2400 the fund until the twenty-five thousand dollars (\$25,000)  
2401 minimum has been reached.

2402 (2) It shall at all times after May 1, 2002, comply  
2403 with the minimum requirements for payments to the trustee for  
2404 endowment care.

2405 (d) Any cemetery authority organizing a cemetery after  
2406 May 1, 2002, whether it be by incorporation, association,  
2407 individually, or by any other means, or having its first  
2408 burial after May 1, 2002, before disposing of any burial lot

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2409 or right or making any sale thereof or making its first  
2410 burial, or both, shall cause to be deposited with a qualified  
2411 trustee, in cash, the sum of twenty-five thousand dollars  
2412 (\$25,000) in the endowment care fund.

2413 (e) When a cemetery authority has placed with a  
2414 trustee, pursuant to this ~~article~~ chapter, a sum of money in  
2415 excess of the aggregate which would be required only under  
2416 subsection (a), the cemetery authority shall not be required  
2417 under this ~~article~~ chapter to make further payments to the  
2418 trustee until such time thereafter as, taking into account all  
2419 sales of plots, crypts, and niches in the cemetery property  
2420 since the first of the sales, the aggregate of payments to the  
2421 trustee if made in accordance with subsection (a) would equal  
2422 the applicable minimum amount paid to the trustee under  
2423 subdivision (1) of subsection (c) ~~or subsection (d) of this~~  
2424 ~~section.~~

2425 (f) Any deposit previously made, or represented to be  
2426 made to an existing endowment care fund which exceeds 10  
2427 percent of the gross selling price of all plots, crypts, and  
2428 niches sold since representation of endowment care shall be  
2429 made a permanent part of the endowment care fund and  
2430 transferred to the qualified trustee under this ~~article~~  
2431 chapter."

2432 "~~§27-17A-50~~§34-13-270

2433 (a) No cemetery authority may directly or indirectly  
2434 require or direct the investment, reinvestment, or retention  
2435 by a qualified trustee of any part of an endowment care trust  
2436 in any asset or business in which the cemetery authority or



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2437 any officer, director, owner, partner, or employee of the  
2438 cemetery authority has a financial interest. Nothing contained  
2439 in this subsection shall prevent the trustee, subject to the  
2440 provisions regarding investment and reinvestment of the trust  
2441 estate as are contained in the governing instrument creating  
2442 the trust, from investing, reinvesting, or retaining any asset  
2443 or business in which the cemetery authority or any officer,  
2444 director, owner, partner, or employee of the cemetery  
2445 authority has an insubstantial or nonmaterial financial  
2446 interest, provided that the trustee, in the exercise of the  
2447 trustee's discretion, deems the investment, reinvestment, or  
2448 retention to be for the best interest of the trust estate.

2449 (b) The net income from the endowment care fund, to the  
2450 extent that the same is distributed from the fund, shall be  
2451 used exclusively for covering the costs of endowment care of  
2452 the cemetery.

2453 (c) For the purposes of this section, net income does  
2454 not include realized or unrealized capital gains or losses.  
2455 All realized capital gains and losses shall be recorded to  
2456 corpus, which is the sum of deposits made by a cemetery  
2457 authority into an endowment care fund, pursuant to Section  
2458 ~~27-17A-49~~ 34-13-269, and all realized capital gains or losses.  
2459 Capital gains taxes, if any, may be paid from the corpus.  
2460 Unrealized capital gains and losses, if any, shall be recorded  
2461 as an adjustment to the fair market value of the endowment  
2462 care fund."

2463 "~~S27-17A-51~~ S34-13-271

2464 The trustee shall not be required to inquire into the





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2465 propriety of the expenditures made by the cemetery authority  
2466 in connection with endowment care of the cemetery, and it  
2467 shall not be held responsible in any manner whatsoever for and  
2468 on account of payments of the income from the endowment care  
2469 fund made to the cemetery authority."

2470 "~~§27-17A-52~~§34-13-272

2471 The trustee ~~shall~~, not less than annually, shall file  
2472 with the cemetery authority an account which shall include a  
2473 complete disclosure of all activity since the previous account  
2474 and a statement detailing fund investments."

2475 "~~§27-17A-53~~§34-13-273

2476 To the extent that any endowment care trust existing on  
2477 May 1, 2002, includes investments or assets, the retention of  
2478 which the trustee in the free exercise of its discretion deems  
2479 not in the best interest of the trust estate, the trustee  
2480 shall dispose of the investments or assets as soon as  
2481 practicable without undue sacrifice to the trust estate, and  
2482 in any event within two years after May 1, 2002."

2483 "~~§27-17A-54~~§34-13-274

2484 An annual report of the endowment care fund shall be  
2485 made to the ~~commissioner~~ board by each cemetery authority  
2486 within 90 days of the close of each calendar year. This report  
2487 shall include the qualified trustee's name or names, the bond  
2488 numbers if individual trustees or the name and address of the  
2489 financial institution in which the fund is maintained, and the  
2490 affidavit of the cemetery authority affirming compliance with  
2491 this ~~article~~ chapter. Prior to the sale or transfer of a  
2492 cemetery, the cemetery authority shall report and document to

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2493 the ~~commissioner~~ board that the endowment care fund is  
2494 currently funded in accordance with this ~~article~~ chapter."

2495 "~~§27-17A-55~~§34-13-275

2496 A cemetery authority shall start construction of that  
2497 section of a mausoleum or bank of below-ground crypts in which  
2498 sales, contracts for sale, reservations for sale, or  
2499 agreements for sale are being made, within five years after  
2500 the date of the first sale or when 75 percent of the mausoleum  
2501 or below-ground crypts have been sold and the purchase price  
2502 has been received, whichever occurs first. The construction  
2503 shall be completed within six years after the date of the  
2504 first sale made. Extensions for completion, not to exceed one  
2505 year, may be granted by the ~~commissioner~~ board for good cause  
2506 shown. If the units have not been completely constructed at  
2507 the time of need or the time specified herein, unless  
2508 otherwise specified in the preneed contract, all monies paid  
2509 shall be refunded upon request, plus interest earned thereon  
2510 if deposited by the cemetery authority in an escrow or trust  
2511 fund, and if not so deposited in an escrow or trust fund  
2512 earning interest, then plus interest in an amount equal to the  
2513 interest or discount which would have been earned thereon had  
2514 the funds been invested in United States Treasury Bills having  
2515 a 90-day maturity."

2516 "~~§27-17A-56~~§34-13-276

2517 (a) ~~Cemetery~~ Each cemetery shall adopt rules and  
2518 regulations ~~are adopted~~ for the mutual protection of the  
2519 cemetery owners and the owners of interment rights in the  
2520 cemetery. All owners of interment rights and other persons

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2521 within the cemetery shall be subject to these rules and  
2522 regulations as they now exist and as they may be amended or  
2523 altered by the cemetery. The cemetery authority ~~has the right~~  
2524 ~~to~~ shall enforce these rules and regulations. ~~The cemetery~~  
2525 ~~authority expressly reserves the right~~ and, at any time and  
2526 without prior notice to any owners, ~~to~~ may adopt new rules and  
2527 regulations or to amend, modify, or repeal any ~~section,~~  
2528 ~~paragraph, or sentence of these~~ rules and regulations.

2529 (b) This section shall not apply to the officers,  
2530 directors, shareholders, partners, employees, agents, or  
2531 representatives of a cemetery authority who intentionally  
2532 commit an act of vandalism or other illegal act. -"

2533 "~~§27-17A-57~~ §34-13-277

2534 The ~~commissioner~~ board shall have the same jurisdiction  
2535 over funeral establishments, funeral directors, cemetery  
2536 authorities, or third party sellers who sell preneed contracts  
2537 without a preneed certificate of authority as ~~he or she~~ the  
2538 board has over those preneed sellers who possess a preneed  
2539 certificate of authority."

2540 Section 10. Beginning with the 2024 fiscal year, the  
2541 Department of Insurance may transfer to the Alabama Board of  
2542 Funeral Service and Cemetery Service quarterly, for deposit by  
2543 the board into the Alabama Board of Funeral Services Fund, the  
2544 total amount of three hundred thousand dollars (\$300,000) per  
2545 fiscal year, to defray costs associated with the  
2546 administration and operation of the Alabama Preneed Funeral  
2547 and Cemetery Act of 2023 by the board. Unless extended by an  
2548 act of the Legislature, this section shall be repealed at the

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2549 end of the 2027 fiscal year.

2550           Section 11. Although this bill would have as its  
2551 purpose or effect the requirement of a new or increased  
2552 expenditure of local funds, the bill is excluded from further  
2553 requirements and application under Section 111.05 of the  
2554 Constitution of Alabama of 2022, because the bill defines a  
2555 new crime or amends the definition of an existing crime.

2556           Section 12. This act shall become effective on the  
2557 October 1, 2023, following its passage and approval by the  
2558 Governor, or its otherwise becoming law.



2559  
2560  
2561 Senate

2562 Read for the first time and referred .....22-Mar-23  
2563 to the Senate committee on Fiscal  
2564 Responsibility and Economic  
2565 Development  
2566  
2567 Read for the second time and placed .....05-Apr-23  
2568 on the calendar:  
2569 1 amendment  
2570  
2571 Read for the third time and passed .....06-Apr-23  
2572 as amended  
2573 Yeas 31  
2574 Nays 0  
2575 Abstains 0  
2576  
2577

2578 Patrick Harris,  
2579 Secretary.  
2580