

# HB212 INTRODUCED



1    0HODCC-1  
2    By Representative Clouse  
3    RFD: Insurance  
4    First Read: 23-Mar-23  
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SYNOPSIS:

Under existing law, the Alabama Board of Funeral Service licenses and regulates funeral establishments, funeral directors, and embalmers.

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

This bill would also establish the Alabama Preneed Funeral and Cemetery Act of 2023 and would transfer the regulation of preneed contracts pursuant to the Preneed Funeral and Cemetery Act from the Commissioner and the Department of Insurance to the board.

This bill would authorize the Department of Insurance to temporarily transfer certain funds to the Alabama Board of Funeral Service to defray costs associated with the administration and operation of the Alabama Preneed Funeral and Cemetery Act of 2023.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or



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29 provides a local source of revenue, to the entity for  
30 the purpose.

31 The purpose or effect of this bill would be to  
32 require a new or increased expenditure of local funds  
33 within the meaning of the amendment. However, the bill  
34 does not require approval of a local governmental  
35 entity or enactment by a 2/3 vote to become effective  
36 because it comes within one of the specified exceptions  
37 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Relating to the Alabama Board of Funeral Service; to  
45 amend Section 34-13-1, as amended by Act 2022-339, 2022  
46 Regular Session, Sections 34-13-20, 34-13-21, and 34-13-22,  
47 Sections 34-13-23 and 34-13-27, as amended by Act 2022-339,  
48 2022 Regular Session, Code of Alabama 1975, to rename the  
49 Alabama Board of Funeral Service as the Alabama Board of  
50 Funeral Services and to provide further for definitions and  
51 the membership of the board; to add Article 5 to Chapter 13,  
52 Title 34, Code of Alabama 1975, by amending and renumbering  
53 Sections 27-17A-1, 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25,  
54 inclusive, 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to  
55 27-17A-57, inclusive, as Sections 34-13-170 to 34-13-172,  
56 inclusive, 34-13-190 to 34-13-206, inclusive, 34-13-230 to



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57 34-13-234, inclusive, and 34-13-260 to 34-13-277, inclusive,  
58 Code of Alabama 1975; to establish the Alabama Preneed Funeral  
59 and Cemetery Act of 2023; to transfer the existing Preneed  
60 Funeral and Cemetery Act, and the regulation of preneed  
61 contracts, from the Commissioner and Department of Insurance  
62 to the Alabama Board of Funeral Service; to authorize the  
63 Department of Insurance to temporarily transfer certain funds  
64 to the board to defray costs associated with the  
65 administration and operation of the Alabama Preneed Funeral  
66 and Cemetery Act of 2023; and in connection therewith would  
67 have as its purpose or effect the requirement of a new or  
68 increased expenditure of local funds within the meaning of  
69 Section 111.05 of the Constitution of Alabama of 2022.

70 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

71 Section 1. Sections 34-13-1, as amended by Act  
72 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21,  
73 and 34-13-22, and Sections 34-13-23 and 34-13-27, as amended  
74 by Act 2022-339, 2022 Regular Session, of the Code of Alabama  
75 1975, are amended to read as follows:

76 "§34-13-1

77 (a) For purposes of this chapter, the following terms  
78 have the following meanings:

79 (1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY SCIENCE. A  
80 school or college approved by the American Board of Funeral  
81 Service Education, or a successor organization, which  
82 maintains a course of instruction of not less than 48 calendar  
83 weeks or four academic quarters or college terms and which  
84 gives a course of instruction in the fundamental subjects



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85 related to funeral service and mortuary science education as  
86 approved by the American Board of Funeral Service Education,  
87 or a successor organization, and other courses of instruction  
88 in fundamental subjects as may be prescribed by the Alabama  
89 Board of Funeral Service.

90 (2) ALKALINE HYDROLYSIS. The technical process that  
91 reduces human remains to bone fragments using heat, water, and  
92 chemical agents.

93 (3) ALTERNATIVE CONTAINER. A nonmetal receptacle or  
94 enclosure, without ornamentation or a fixed interior lining,  
95 which is designed for the encasement of human remains and  
96 which is made of cardboard, pressed-wood, composition  
97 materials, with or without an outside covering, pouches of  
98 canvas, or other materials.

99 ~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION. The  
100 national academic accreditation agency for college and  
101 university programs in funeral service and mortuary science  
102 education. The accrediting function of the American Board of  
103 Funeral Service Education is recognized by the United States  
104 Department of Education and the Council on Higher Education  
105 Accreditation.

106 ~~(4)~~ (5) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.  
107 Any person engaged in the study of the art of embalming under  
108 the instructions and supervision of a licensed embalmer  
109 practicing in this state.

110 ~~(5)~~ (6) APPRENTICE FUNERAL DIRECTOR or FUNERAL  
111 DIRECTOR'S APPRENTICE. Any person operating under or in  
112 association with a funeral director for the purpose of



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113 learning the business or profession of funeral director, to  
114 the end that he or she may become licensed under this chapter.

115 (7) AT NEED. At the time of death or immediately  
116 following death.

117 ~~(6)~~ (8) AUTHORIZING AGENT. A person at least 18 years of  
118 age, except in the case of a surviving spouse or parent, who  
119 is legally entitled to order the cremation or final  
120 disposition of particular human remains.

121 (9) BASIC SERVICES FEE. The fee for the professional  
122 services of the funeral director and staff that is added to  
123 the total cost of the funeral arrangements. The term includes  
124 a charge for services performed in conducting the arrangements  
125 conference, planning the funeral, securing the necessary  
126 permits, preparing the notices, and coordinating the cemetery  
127 or crematory arrangements.

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

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

136 ~~(7)~~ (12) BOARD. The Alabama Board of Funeral Service.

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



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

143 ~~(8)~~ (15) CASH ADVANCE ITEMS. Any item of service or  
144 merchandise described to a purchaser using the term cash  
145 advance, accommodation, cash disbursement, or similar term. A  
146 cash advance item is also any item obtained from a third party  
147 and paid for by a funeral provider on behalf of a purchaser.  
148 Cash advance items include, but are not limited to, all of the  
149 following:

- 150 a. Cemetery or crematory services.
- 151 b. Pallbearers.
- 152 c. Public or other transportation.
- 153 d. Clergy honoraria.
- 154 e. Flowers.
- 155 f. Musicians or singers.
- 156 g. Nurses.
- 157 h. Obituary notices.
- 158 i. Funeral programs.
- 159 j. Gratuities.
- 160 k. Death certificates.
- 161 l. Outer burial containers.
- 162 m. Cemetery plots.
- 163 n. Escorts.

164 ~~(9)~~ (16) CASKET. A rigid container designed for the  
165 encasement of human remains which is usually constructed of  
166 wood, metal, or similar material and ornamented and lined with  
167 fabric.

168 ~~(10)~~ (17) CEMETERY. A place established, maintained,



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169 managed, operated, or improved which is dedicated to and used  
170 or intended to be used for the permanent interment of human  
171 remains and their memorialization. It may be either land or  
172 earth interment; a columbarium; a mausoleum for vault or crypt  
173 entombment; a structure or place used or intended to be used  
174 for the interment of cremated remains; cryogenic storage; or  
175 any combination of one or more thereof.

176 ~~(11)~~ (18) CEMETERY AUTHORITY. Any individual, person,  
177 firm, profit or nonprofit corporation, trustee, partnership,  
178 society, religious society, church association or  
179 denomination, municipality, or other group or entity, however  
180 organized, insofar as they or any of them may now or hereafter  
181 establish, own, operate, lease, control, or manage one or more  
182 cemeteries, burial parks, mausoleums, columbariums, or any  
183 combination or variation thereof, or hold lands or structures  
184 for burial grounds or burial purposes in this state and engage  
185 in the operation of a cemetery, including any one or more of  
186 the following: The care and maintenance of a cemetery; the  
187 interment, entombment, and memorialization of the human dead  
188 in a cemetery; the sale, installation, care, maintenance, or  
189 any combination thereof, with respect of monuments, markers,  
190 foundations, memorials, burial vaults, urns, crypts,  
191 mausoleums, columbariums, flower vases, floral arrangements,  
192 and other cemetery accessories for installation or use within  
193 a cemetery; and the supervision and conduct of funeral and  
194 burial services within the bounds of the cemetery.

195 (19) CEMETERY MERCHANDISE. Any property offered for  
196 sale, contracted for sale, or sold for use in connection with





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197 the burial, final disposition, memorialization, interment,  
198 entombment, or inurnment of human remains by a cemetery  
199 authority. The term specifically includes, but is not limited  
200 to, the casket, the alternative container, the outer burial  
201 container, the memorial, and interment rights.

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

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

209 (22) COLUMBARIUM. A structure or room or space in a  
210 building or structure used or intended to be used for the  
211 inurnment of cremated remains.

212 ~~(12)~~ (23) CONVICTION. The entry of a plea of guilty or a  
213 guilty verdict rendered by any court of competent  
214 jurisdiction, excluding traffic violations.

215 ~~(13)~~ (24) CREMATED REMAINS. Human remains recovered  
216 after the completion of the cremation process, including  
217 pulverization, which leaves only bone fragments reduced to  
218 unidentifiable dimensions, and the residue of any foreign  
219 materials that were cremated with the human remains.

220 (25) CREMATED REMAINS CONTAINER. A receptacle in which  
221 cremated remains are placed.

222 ~~(14)~~ (26) CREMATION. The technical irreversible process,  
223 using heat, flames, or chemical agents, that reduces human  
224 remains to bone fragments. The reduction takes place through



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225 heat and evaporation. Cremation shall include the processing,  
226 and may include the pulverization, of the bone fragments.

227 Cremation is a process and is a method of final disposition.

228 ~~(15)~~ (27) CREMATIONIST. A person licensed by the board  
229 to perform the procedure of cremation.

230 ~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel used  
231 to reduce human remains to bone fragments.

232 ~~(17)~~ (29) CREMATION CONTAINER. The container in which  
233 human remains are transported to a crematory, in which human  
234 remains are placed upon arrival at a crematory, or for storage  
235 and placement in a cremation chamber for cremation.

236 ~~(18)~~ (30) CREMATORY. A building or portion of a building  
237 that houses a cremation chamber and that may house a holding  
238 facility for purposes of cremation and as part of a funeral  
239 establishment.

240 (31) CREMATORY AUTHORITY. Any person who owns or  
241 controls a crematory.

242 (32) DEATH CERTIFICATE. A legal document containing  
243 vital statistics pertaining to the life and death of the  
244 deceased.

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

246 ~~(19)~~ (34) EMBALMER. Any person engaged, or holding  
247 himself or herself out as engaged, in the business, practice,  
248 science, or profession of embalming, whether on his or her own  
249 behalf or in the employ of a registered and licensed funeral  
250 director.

251 ~~(20)~~ (35) EMBALMING. The practice, science, or  
252 profession, as commonly practiced, of preserving,



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253 disinfecting, and preparing by application of chemicals or  
254 other effectual methods, human dead for burial, cremation, or  
255 transportation.

256 (36) ENCASEMENT. The placement of human remains in a  
257 rigid container including, but not limited to, a casket or  
258 urn.

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

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

266 (39) ENTOMBMENT. The act of placing human remains in a  
267 mausoleum crypt.

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

270 ~~(21)~~ (41) FUNERAL. A ceremony for celebrating,  
271 sanctifying, or remembering the life of a person who has died.  
272 A funeral may be divided into the following two parts:

273 a. The funeral service, which may take place at a  
274 funeral home, church, or other place.

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

278 ~~(22)~~ (42) FUNERAL ARRANGEMENTS. The completing of  
279 funeral service arrangements, cremation arrangements, and the  
280 financial details of a funeral at the time of death. The term



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281 includes the collection of vital statistic information, death  
282 certificate information, obituary and funeral notice  
283 completion, the completion of a statement of funeral goods and  
284 services selected, organizing of funeral and memorial services  
285 for families, and the ordering of cash advance items.

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

290 ~~(23)~~ (44) FUNERAL DIRECTING. The practice of directing  
291 or supervising funerals, the practice of preparing dead human  
292 bodies for burial by means other than embalming, or the  
293 preparation for the final disposition of dead human bodies;  
294 the making of funeral arrangements or providing for funeral  
295 services or the making of financial arrangements for the  
296 rendering of these services; the provision or maintenance of a  
297 place for the preparation for final disposition of dead human  
298 bodies; the use of the terms funeral director, undertaker,  
299 mortician, funeral parlor, or any other term from which can be  
300 implied the practice of funeral directing; or the holding out  
301 to the public that one is a funeral director or engaged in a  
302 practice described in this subdivision.

303 ~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be  
304 licensed to practice the profession of funeral directing under  
305 the laws of this state, who consults with the public, who  
306 plans details of funeral services with members of the family  
307 and minister or any other person responsible for such  
308 planning, or who directs, is in charge, or apparent charge of,



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309 and supervises funeral service in a funeral home, church, or  
310 other place; who enters into the making, negotiation, or  
311 completion of financial arrangements for funeral services, or  
312 who uses in connection with the profession of funeral  
313 directing the terms funeral director, undertaker, funeral  
314 counselor, mortician, or any other term or picture or  
315 combination thereof when considered in context in which used,  
316 from which can be implied the practicing of the profession of  
317 funeral directing or that the person using such term or  
318 picture can be implied to be holding himself or herself out to  
319 the public as being engaged in the profession of funeral  
320 directing; and for all purposes under Alabama law, a funeral  
321 director is considered a professional. For the purposes of  
322 this chapter, the term does not include any cemetery  
323 authority.

324 ~~(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes any  
325 funeral home or mortuary service located at a specific street  
326 address where the profession of funeral directing, embalming,  
327 or cremation is practiced in the care, planning, and  
328 preparation for burial, cremation, or transportation of human  
329 dead. A funeral establishment shall consist of and maintain  
330 all of the following facilities:

331 a. A preparation room equipped with sanitary nonporous  
332 floor and wall and necessary drainage and ventilation, and  
333 containing operating embalming equipment, necessary approved  
334 tables, instruments, hot and cold running water, containers or  
335 receptacles for soiled linen or clothing, and supplies for the  
336 preparation and embalming of dead human bodies for burial,



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337 cremation, and transportation.

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

342           c. At least one operating funeral coach or hearse  
343 properly licensed and equipped for transporting human remains  
344 in a casket or urn.

345           d. If engaged in the practice of cremation, the  
346 establishment shall satisfy all crematory requirements  
347 provided in this chapter and have on site an adequate supply  
348 of urns for display and sale.

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

351           f. An office for holding arrangement conferences with  
352 relatives or authorizing agents.

353           (47) FUNERAL SERVICE. At need or preneed services  
354 provided by a funeral establishment in connection with funeral  
355 directing, final disposition of human remains, or installation  
356 of memorials.

357           ~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE. Any  
358 item offered for sale, contracted for sale, or sold for use in  
359 connection with funeral directing or funeral services when  
360 sold by a funeral director including, but not limited to,  
361 caskets, alternative containers, outer burial containers,  
362 urns, memorials, clothing used to dress human dead when sold  
363 by a funeral director, and all equipment and accoutrements  
364 normally required for the preparation for burial or funeral



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365 and other disposition of human dead.

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

368 ~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or  
369 shameful immorality or showing a moral indifference to the  
370 opinions of the good and respectable members of the community  
371 and to the just obligations of the position held by the  
372 offender.

373 ~~(28)~~ (51) HOLDING ROOM. Either of the following:

374 a. A room within a funeral establishment that satisfies  
375 the requirements of a branch location as provided in this  
376 chapter or board rule, for the retention of human remains  
377 before final disposition.

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

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

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

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

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

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



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393 (57) LICENSEE. Any individual, firm, corporation,  
394 partnership, joint venture, or limited liability company which  
395 obtains a license, certificate, or registration in accordance  
396 with this chapter.

397 ~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral  
398 director and cremationist who has full charge, control, and  
399 supervision of all activities involving cremation at a funeral  
400 establishment or crematory.

401 ~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who has  
402 full charge, control, and supervision of all activities  
403 involving the preparation room and embalming.

404 ~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed funeral  
405 director who has full charge, control, and supervision of all  
406 activities involving funeral directing for a funeral  
407 establishment.

408 (61) MAUSOLEUM. A chamber or structure used or intended  
409 to be used for entombment.

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

412 (63) MEMORIAL. Any product, other than a mausoleum or  
413 columbarium, used for identifying an interment space or for  
414 commemoration of the life, deeds, or career of some decedent  
415 including, but not limited to, a monument, marker, niche  
416 plate, urn garden plaque, crypt plate, cenotaph, marker bench,  
417 and vase.

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

420 (65) MEMORIALIZATION. Any permanent system designed to





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421 mark or record the names and other data pertaining to a  
422 decedent.

423 ~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or  
424 violent act, or any act involving theft, theft of services,  
425 theft by deception, extortion, receiving stolen property,  
426 identity theft, forgery, fraud, tampering with records,  
427 bribery, perjury, or any similar act in any jurisdiction.

428 ~~(33)~~ (67) MORTUARY SCIENCE. The scientific,  
429 professional, and practical aspects, with due consideration  
430 given to accepted practices, covering the care, preparation  
431 for burial, or transportation of dead human bodies, which  
432 shall include the preservation and sanitation of the bodies  
433 and restorative art and those aspects related to public  
434 health, jurisprudence, and good business administration.

435 ~~(34)~~ (68) MORTUARY SERVICE. A location with a specific  
436 street address where embalming or cremation, or both, is  
437 practiced for a licensed funeral establishment and where no  
438 services or merchandise are sold directly or at retail to the  
439 public. A mortuary service shall consist of and maintain all  
440 of the following facilities:

441 a. A preparation room equipped with sanitary nonporous  
442 floor and walls, operating embalming equipment, and necessary  
443 drainage and ventilation and containing necessary approved  
444 tables, instruments, hot and cold running water, containers or  
445 receptacles for soiled linen or clothing, and supplies for the  
446 preparation and embalming of dead human bodies for burial,  
447 cremation, and transportation.

448 b. At least one operating motor vehicle properly



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449 licensed and equipped for transporting human remains in a  
450 casket or urn.

451 c. If engaged in the practice of cremation, the  
452 establishment shall satisfy all requirements for a crematory  
453 provided in this chapter.

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

456 ~~(35)~~ (70) OPERATOR. A person, corporation, firm, legal  
457 representative, managing funeral director, general manager, or  
458 other organization owning or operating a funeral establishment  
459 or cemetery.

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

464 (72) PERSON. Any individual, firm, corporation,  
465 partnership, joint venture, limited liability company,  
466 association, trustee, government or governmental subdivision,  
467 agency, or other entity, or any combination thereof.

468 ~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has been  
469 actively and continuously engaged or employed in the practice  
470 of embalming under the supervision of a licensed embalmer for  
471 four consecutive years immediately preceding May 1, 1975, and  
472 has been issued a license as a practical embalmer under the  
473 grandfather provisions of this chapter.

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



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

480 (76) PREDEVELOPED INTERMENT SPACE. An interment space  
481 that is planned for future construction but is not yet  
482 completed.

483 (77) PREFUND. The term applied to completing the  
484 financial details of a prearrangement, which include  
485 prefunding or prepayment.

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

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

490 (80) PRENEED CONTRACT TRUST FUND. The funds received  
491 pursuant to a preneed contract which are required by law to be  
492 held in trust until the merchandise or services purchased  
493 pursuant to the contract are delivered or provided or until  
494 otherwise lawfully withdrawn.

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

497 ~~(37)~~ (82) PROCESSING or PULVERIZATION. The reduction of  
498 identifiable bone fragments after the completion of the  
499 cremation process to unidentifiable bone fragments or  
500 granulated particles by manual or mechanical means.

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

504 (84) PURCHASE PRICE. The amount paid by the purchaser



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505 for merchandise and services purchased under a preneed  
506 contract, exclusive of finance charges, sales tax, charges  
507 relating to interment rights, arrangement conference fees, or  
508 charges for credit life insurance.

509 (85) PURCHASER. The person who purchases a preneed  
510 contract either on his or her behalf or on behalf of a  
511 third-party beneficiary.

512 (86) RELIGIOUS INSTITUTION. An organization formed  
513 primarily for religious purposes which has applied and  
514 qualified for exemption from federal income tax as an exempt  
515 organization under Section 501(c)(3) of the Internal Revenue  
516 Code of 1986, as amended.

517 (87) SCATTERING. The lawful dispersion of cremated  
518 remains.

519 (88) SELLER. Any person offering or selling merchandise  
520 or services on a preneed basis including, but not limited to,  
521 funeral establishments, cemetery authorities, crematory  
522 authorities, and memorial retailers.

523 (89) SPECIAL CARE. Any care provided, or to be  
524 provided, that is supplemental to, or in excess of, endowment  
525 care, in accordance with the specific directions of any donor  
526 of funds for those purposes.

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

529 ~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for cremated  
530 remains, usually composed of cardboard, plastic, or similar  
531 material, that can be closed in a manner that prevents the  
532 leakage or spillage of the cremated remains or the entrance of



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533 foreign material, and is a single container of sufficient size  
534 to hold the cremated remains until an urn is acquired or the  
535 cremated remains are scattered or buried.

536 (92) THIRD-PARTY SELLER. Any person, who is not a  
537 funeral establishment or a cemetery authority, engaged in the  
538 sale of preneed funeral merchandise or cemetery merchandise.

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

545 ~~(39)~~ (94) URN. A receptacle designed to encase cremated  
546 remains.

547 (b) Nothing in this chapter shall require a funeral  
548 director or funeral establishment to have or provide a chapel  
549 or to restrict the conduct of funeral services from a church  
550 or chapel."

551 "§34-13-20

552 (a) There is established the Alabama Board of Funeral  
553 ~~Service Services~~, consisting of ~~nine~~ 14 members, each of whom  
554 shall be citizens of the United States and residents of the  
555 State of Alabama. The membership of the board shall be divided  
556 into two distinct divisions, the funeral division and the  
557 preneed division, with each division having jurisdiction over  
558 their respective areas of service.

559 (b) The appointing authorities shall coordinate their  
560 appointments to assure board membership is inclusive and



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561 reflects the racial, gender, geographic, ~~urban/rural~~ urban,  
562 rural, and economic diversity of the state.

563 (c) (1) Commencing on January 1, 2019, as the terms of  
564 the members serving on the board on August 1, 2017, expire,  
565 the membership of the funeral division of the board shall be  
566 reconstituted to consist of seven professional members and two  
567 consumer members.

568 ~~(1)~~ Each professional member of the funeral division of  
569 the board shall be a citizen of the United States, a resident  
570 of Alabama, and licensed and in good standing with the board  
571 as an embalmer or funeral director at the time of appointment  
572 and during the entire term of office. Professional members of  
573 the board shall be appointed by the Governor pursuant to  
574 subsection (e). As the terms of the members serving on the  
575 board on October 1, 2023, expire, the professional membership  
576 of the board shall be appointed to reflect the following:

577 a. ~~Four~~ Three of the professional members of the board  
578 shall hold a current license from the board to practice  
579 embalming in the state, shall have been actively practicing  
580 embalming in the state for the last 10 consecutive years  
581 immediately preceding appointment, and shall be engaged in the  
582 practice of embalming at the time of appointment to the board.

583 b. ~~Three~~ Four of the professional members of the board  
584 shall hold a current license from the board to practice  
585 funeral directing in the state, shall have been actively  
586 engaged in funeral directing in the state for the last 10  
587 consecutive years immediately preceding appointment, and shall  
588 be the operator of a funeral establishment in this state at



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589 the time of appointment to the board.

590 (2) Commencing on October 1, 2023, the preneed division  
591 of the board shall be created to consist of four professional  
592 members and one consumer member. Two professional members  
593 shall be licensed funeral directors and two professional  
594 members shall be licensed preneed sales agents employed by a  
595 cemetery. Each professional member of the preneed division of  
596 the board shall hold a current license from the board to  
597 practice as a preneed sales agent, shall have been actively  
598 engaged in preneed sales or direct management of preneed sales  
599 in the state for the last five consecutive years immediately  
600 preceding appointment, and shall be employed by a certificate  
601 of authority license holder in this state at the time of  
602 appointment to the board. Two of these professional members  
603 shall also hold a current certificate of authority to sell  
604 preneed services and merchandise. The initial appointment of  
605 two of the preneed sales agents appointed pursuant to this  
606 paragraph shall expire on December 31, 2025, and for the other  
607 two, shall expire on December 31, 2026. Thereafter, the  
608 preneed sales agent members shall serve pursuant to subsection  
609 (e). Professional members of the board shall be appointed by  
610 the Governor pursuant to subsection (e).

611 ~~(2)~~ (3) Each consumer member of the board shall  
612 represent the public in general and shall have been a citizen  
613 of the United States and a resident of Alabama for the last 10  
614 consecutive years immediately preceding appointment and during  
615 the entire term of office. A consumer member of the board may  
616 not have held, nor currently hold, a license or certification



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617 issued by the board, be employed at any time by, or  
618 professionally or financially associated with, the holder of a  
619 license or certificate issued by the board, or be related  
620 within the third degree of consanguinity or affinity to the  
621 holder of a license or certificate issued by the board. ~~One~~  
622 Two consumer ~~member~~ members of the board shall be appointed by  
623 the Lieutenant Governor and one consumer member shall be  
624 appointed by the Speaker of the House of Representatives  
625 pursuant to a procedure adopted by rule of the board.

626 (d) Commencing in October of 2018, and each October  
627 thereafter of a year where at least one professional member  
628 term on either division of the board has expired, ~~or is vacant~~  
629 ~~for any reason,~~ all licensed funeral directors and licensed  
630 embalmers for a funeral division member, and all licensed  
631 preneed sales agents for a preneed division member, shall meet  
632 in Montgomery, at a time and place fixed by the respective  
633 division of the board, for the purpose of nominating and  
634 submitting the names of three licensed persons for each  
635 position on the board to the Governor. The Governor shall  
636 promptly appoint one of the three persons so nominated to  
637 serve as a professional member of the board.

638 (e) (1) Professional and consumer members of the board  
639 shall serve staggered terms of four years each to provide  
640 continuity of service on the board. If an appointment is not  
641 made before the expiration of a term, the board member then  
642 serving may continue to serve until a successor has been  
643 appointed. A board member may not serve more than two full  
644 consecutive terms on the board.





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645           (2) ~~A board member who is appointed to fill a vacancy~~  
646 ~~which occurs before the expiration of the term of the vacating~~  
647 ~~member shall serve the remaining portion of the term to which~~  
648 ~~the former member was appointed.~~ A vacancy on the board for  
649 any reason shall be filled by appointment of the Governor for  
650 the unexpired term. The appointee shall serve until his or her  
651 successor is nominated and appointed pursuant to subsection  
652 (d). If a member is appointed to fill an unexpired term of  
653 less than two years, the time may not be counted toward the  
654 maximum eight years of service.

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

659           (4) At each meeting where nominations are made for the  
660 professional members of the funeral division of the board,  
661 only one licensed funeral director or licensed embalmer  
662 employed by the same funeral establishment may vote. At each  
663 meeting where nominations are made for the professional  
664 members of the preneed division of the board, only one  
665 licensed preneed sales agent employed by the same certificate  
666 of authority holder may vote.

667           (f) (1) In accordance with applicable law, in addition  
668 to a board member resigning from the board in writing, a board  
669 member may be removed from the board for any of the following  
670 grounds:

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



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

676           c. A final adjudication or determination of guilt by  
677 any lawful authority of the board member or sanction of the  
678 board member for the violation of any law the board determines  
679 is substantially related to any practice governed by this  
680 chapter.

681           d. The revocation or suspension of the license of a  
682 professional member of the board.

683           (2) Any board member who fails to qualify after  
684 appointment shall automatically become ineligible to serve as  
685 a member of the board and a new member, properly qualified,  
686 shall be appointed in the same manner as the original  
687 appointment and shall serve the remainder of the term of the  
688 vacating board member.

689           (3) If a consumer board member fails to attend two or  
690 more meetings within a year, without a valid excuse as  
691 determined by the board, he or she shall be removed from the  
692 board. A new consumer board member shall be appointed in the  
693 same manner as the original appointment and shall serve the  
694 remainder of the term.

695           (g) (1) The status of any person or entity properly  
696 licensed by the Alabama Board of Funeral Service on the  
697 effective date of this act shall continue under the Alabama  
698 Board of Funeral Services.

699           (2) All the rights, duties, property, real or personal,  
700 and all other effects existing in the name of the Alabama



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701 Board of Funeral Service shall be transferred to the Alabama  
702 Board of Funeral Services. Any reference to the Alabama Board  
703 of Funeral Service in any existing law, contract, or other  
704 instrument, shall be deemed a reference to the Alabama Board  
705 of Funeral Services.

706 (3) A reasonable transition period for the name change  
707 shall be allowed to permit an orderly and cost-effective  
708 transition, relating particularly to the use of equipment and  
709 supplies, all letterhead, business cards, forms, and any other  
710 materials in use by the board containing the name Alabama  
711 Board of Funeral Service shall continue to be used by the  
712 Alabama Board of Funeral Services until the supplies are  
713 exhausted. Replacement supplies shall contain the name of the  
714 Alabama Board of Funeral Services.

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

718 "§34-13-21

719 There are created, for the purpose of this chapter,  
720 seven geographical districts which shall be identical with the  
721 seven congressional districts as fixed and established by  
722 Section 17-14-70, as may be amended. It is the purpose and  
723 intention of this section to provide that not more than one  
724 professional member of each division of the board shall be  
725 selected from each district and that three nominees to the  
726 Governor for appointment to the board shall be made from each  
727 district. The ~~two~~ three consumer members of the board may not  
728 reside in the same congressional district."



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729 "§34-13-22

730 (a) The Alabama Board of Funeral ~~Service~~ Services shall  
731 hold not less than one joint meeting of both divisions  
732 quarterly, ~~such meeting~~ for the purpose of reviewing  
733 financial, budgetary, and employment matters. The quarterly  
734 meetings to be held at ~~such a~~ time and place as the board may  
735 determine after notice of ~~such the~~ meeting has been given in  
736 the manner prescribed herein at least 15 days prior to ~~such~~  
737 the meeting. The board may hold ~~such~~ other meetings as ~~it the~~  
738 board may deem necessary. A majority of the appointed members  
739 shall constitute a quorum authorized to transact general  
740 business in the name of the board. ~~The board shall not meet on~~  
741 ~~the premises of any embalming school or college of mortuary~~  
742 ~~science; and, if any such meeting is held, all the proceedings~~  
743 ~~of such meeting shall be void~~ Upon the executive director  
744 -serving on the effective date of the act amending this  
745 subsection leaving office, two-thirds of the appointed members  
746 of each division shall constitute a quorum for the purposes of  
747 selecting an executive director and establishing fees.

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

750 "§34-13-23

751 (a) (1) The board ~~appointed under this chapter and each~~  
752 ~~successor thereto may~~ shall select from its own membership a  
753 chair and to adopt rules for the transaction of its business  
754 and for the betterment and promotion of the standards of  
755 service and practice to be followed in the death care industry  
756 in the State of Alabama as the board may deem expedient and



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757 consistent with the laws of this state and for the public  
758 good.

759 (2) The chair shall preside at all meetings of the  
760 board unless otherwise ordered, and he or she shall exercise  
761 and perform all duties and functions incident to the office of  
762 chair.

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

766 (b) The treasurer shall give bond to the State of  
767 Alabama in the sum of ten thousand dollars (\$10,000), and any  
768 premium payable for the bond shall be paid from the funds of  
769 the board. The bond shall be deposited with the Treasurer of  
770 the State of Alabama.

771 (c) A board member shall be reimbursed for necessary  
772 travel expenses, per diem, and the necessary expenses incident  
773 to his or her attendance upon the business of the board, and,  
774 in addition thereto, shall receive compensation in the amount  
775 of seventy-five dollars (\$75) for every day not to exceed 20  
776 days per year actually spent by the member upon the business  
777 of the board. The board may employ in the unclassified service  
778 an executive director and up to four associate executive  
779 directors who shall each receive and be paid an annual salary  
780 to be fixed by the board pursuant to Section 36-6-6. The  
781 salary shall be paid on a semimonthly basis. In addition, the  
782 executive director and associate executive directors shall  
783 each receive his or her necessary travel and other incidental  
784 expenses as are incurred in the performance of duties, and all



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785 expenses, per diem, and compensation shall be paid out of the  
786 receipts of the board. At no time shall the operation of the  
787 board be an expense to the state.

788 (d) The executive director of the board shall have  
789 complete supervision and be held responsible for the direction  
790 of the office of the board, shall have supervision over  
791 employees, field inspections, ~~audits~~ examinations, and  
792 enforcement of this chapter, and shall be responsible and  
793 answerable to the board. The associate executive directors  
794 shall assist the executive director and perform such other  
795 duties as may be assigned to him or her by the executive  
796 director.

797 (e) The executive director shall keep a record in which  
798 shall be registered the name and business address of every  
799 person to whom licenses have been granted in accordance with  
800 this chapter, the number and date of the license and the date  
801 of each renewal. Upon request to do so, the executive director  
802 shall supply a list of all persons and establishments holding  
803 a license under this chapter, then in force, giving the names  
804 of the persons, their business addresses, and the numbers of  
805 their licenses.

806 (f) It shall be the duty of the executive director to  
807 prepare under the direction of the board and cause to be  
808 printed all forms required by this chapter to be prescribed by  
809 the board. All notices required to be mailed by this chapter  
810 shall be directed to the last known address of the party to  
811 whom the notice is sent.

812 (g) The executive director shall serve at the pleasure



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813 of the board and shall perform duties as may be necessary for  
814 the proper functioning of the board as the board may determine  
815 or as may be prescribed in this chapter. During the employment  
816 of the executive director, he or she may not be employed by  
817 any funeral establishment.

818 (h) All fees and fines received under this chapter  
819 shall be paid into a special fund in the State Treasury to be  
820 known as the Alabama State Funeral Service Fund, which is  
821 hereby created, for the necessary and proper expenses of the  
822 board, and for a reasonable reserve for future use by the  
823 board. All monies in the fund are hereby appropriated, as a  
824 continuing appropriation, to the board to be used for carrying  
825 out this chapter. Commencing on October 1, 2023, the name of  
826 the fund shall be changed to the Alabama Board of Funeral  
827 Services Fund.

828 (i) Each member of the board, the executive director,  
829 the associate executive directors, designated employees, and  
830 independent contractors of the board appropriately identified  
831 are authorized at any given time to enter the office,  
832 premises, establishment, or place of business where any  
833 practice or activity regulated by this chapter is carried on,  
834 or advertised as being carried on, to investigate complaints  
835 or perform ~~audits~~ examinations or inspections. Each on-site  
836 inspection shall include an inspection of the license,  
837 certification, and registration of each licensee and  
838 apprentice trainee operating therein.

839 (j) All members of the board or designated employees of  
840 the board may serve and execute any process issued by any



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841 court under this chapter and execute any papers, orders, or  
842 process issued by the board or any officer or member of the  
843 board under this chapter.

844 (k) The board may employ clerical assistants and  
845 employees as necessary to carry out this chapter, and the  
846 terms and conditions of employment shall be determined by the  
847 board. The board may establish and equip an office from which  
848 this chapter may be carried out.

849 (l) (1) The board may acquire and hold, in its own name,  
850 real property by purchase, gift, lease, lease with the option  
851 to purchase, or other lawful means, except eminent domain,  
852 which real property may be used by the board to carry out its  
853 responsibilities. The board may also transfer, sell, convey,  
854 or cause to be conveyed real property and any improvements  
855 thereon, subject to the requirements of this section. In  
856 purchasing any real property, maintaining real property, or  
857 making improvements thereto, the board may expend any funds  
858 contained in the Funeral Board Property Acquisition Fund  
859 established in subdivision (2), and any obligations created in  
860 connection with the purchase or improvement of the real  
861 property shall not create debts, obligations, or liabilities  
862 of the state. As used in this subsection, real property shall  
863 include land, lots, and all things and interests, including  
864 leasehold interests, pertaining thereto, and all other things  
865 annexed or attached to the land which would pass to a vendee  
866 by conveyance of the land or lot, including mineral, gas, and  
867 oil interests. All sales or leases made by the board of any  
868 real property owned or held by the board shall be subject to





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869 the requirements of Article 3, Chapter 15, Title 9.  
870 Notwithstanding the foregoing, the proceeds from the sale of  
871 real property owned by the board which are distributed  
872 pursuant to Section 9-15-83 shall be paid to the board and  
873 deposited into the property acquisition fund.

874 (2) There is established the Funeral Board Property  
875 Acquisition Fund within the State Treasury. Any funds received  
876 by the board pursuant to this section shall be deposited into  
877 the property acquisition fund and shall be held by the board  
878 in trust for carrying out the purposes of the property  
879 acquisition fund. Amounts in the property acquisition fund  
880 shall be budgeted and allotted in accordance with Sections  
881 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.  
882 Not later than May 1, 2022, the executive director shall  
883 transfer from the Alabama State Funeral Service Fund to the  
884 property acquisition fund an amount determined by vote of the  
885 board for the purchase of real property. Thereafter, the board  
886 shall annually, during the month of October, transfer an  
887 amount between two percent and seven percent of the receipts  
888 of the board from the previous fiscal year to the property  
889 acquisition fund.

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

894 "§34-13-27

895 (a) The board shall adopt a common seal, which may be  
896 altered as often as the board may desire, and the funeral



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897 division of the board may adopt and enforce, for the  
898 protection of the public health, safety, and welfare,  
899 reasonable rules relating to all of the following:

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

902 (2) The practice of the profession of funeral  
903 directing, including, but not limited to, solicitation of  
904 business.

905 (3) The sanitary condition and physical facilities of  
906 funeral homes, mortuaries, and funeral establishments where  
907 the profession of embalming and funeral directing is carried  
908 on, with particular regard to plumbing, sewage, disinfecting,  
909 ventilation, and equipment.

910 (4) Carrying out generally the various provisions of  
911 this chapter for the protection of the peace, health, safety,  
912 and welfare of the public.

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

915 (6) The sale of goods, services, and merchandise and  
916 the operation of entities and establishments regulated by the  
917 board.

918 (b) The preneed division of the board may adopt and  
919 enforce, for the protection of the public health, safety, and  
920 welfare, reasonable rules relating to the sale of preneed  
921 merchandise and services."

922 Section 2. The following heading is added to Division  
923 1, commencing with Section 34-13-170, of Article 5, Chapter  
924 13, Title 34, Code of Alabama 1975:



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925 "Article 5. Alabama Preneed Funeral and Cemetery Act of  
926 2023.

927 "Division 1. General Provisions."

928 Section 3. Sections 27-17A-1, 27-17A-3, and 27-17A-4 of  
929 the Code of Alabama 1975, are amended and renumbered as  
930 Division 1 of Article 5 of Chapter 13 of Title 34, Code of  
931 Alabama 1975, to read as follows:

932 "~~§27-17A-1~~§34-13-170

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

935 (b) (1) The Alabama Board of Funeral Services succeeds  
936 to and is vested with the powers, duties, and functions of the  
937 Department of Insurance relating to the regulation of  
938 endowment care, preneed sales contracts, and the licensing of  
939 preneed sales agents.

940 (2) All records of the Department of Insurance relating  
941 to the regulation of preneed sales contracts, endowment care,  
942 and the licensing of preneed sales agents are transferred to  
943 the board.

944 (3) The status of any person properly licensed by the  
945 Department of Insurance under the former Chapter 17A of Title  
946 27, on the effective date of the act adding this subdivision,  
947 shall continue under the board.

948 (4) The administrative rules of the Department of  
949 Insurance existing on the effective date of the act adding  
950 this subdivision shall remain in effect as administrative  
951 rules of the board until added, amended, or repealed by the  
952 board.



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953 (5) The existence and functioning of the Alabama  
954 Preneed Funeral and Cemetery Act, created and functioning  
955 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is  
956 continued as the Alabama Preneed Funeral and Cemetery Act of  
957 2023, under this article. All rights, duties, and obligations  
958 existing in the name of the Department of Insurance, relating  
959 to endowment care, preneed sales contracts, and preneed sales  
960 agent licenses, shall continue under the board. Any reference  
961 to the Department of Insurance in any existing law, contract,  
962 or other instrument relating to endowment care, preneed sales  
963 contracts, and preneed sales agent licenses, shall be deemed a  
964 reference to the board.

965 (6) The transfer of the regulation of preneed contracts  
966 and the licensing of preneed sales agents from the Department  
967 of Insurance to the board shall not affect the rights of any  
968 person held before the effective date of the act adding this  
969 subdivision, as those rights relate to any preneed trust  
970 funds, endowment care trust funds, or any other funds held in  
971 trust pursuant to the Alabama Preneed Funeral and Cemetery  
972 Act."

973 ~~"§27-17A-3~~§34-13-171

974 (a) Nothing in this chapter shall be construed to  
975 prohibit the funding of preneed contracts with multiple  
976 insurance or annuity contracts. Life insurance and annuity  
977 contracts used to fund preneed contracts shall conform with  
978 ~~the provisions of this title~~ Title 27 as they relate to life  
979 insurance and annuities and shall cover not less than the  
980 initial retail price of the preneed contract.



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981           (b) The initial premium payment for a life insurance  
982 policy or annuity contract shall be made payable to the  
983 issuing insurance company and the preneed seller shall remit  
984 the payment to the insurance company within 10 business days  
985 after the insurance application is signed by the parties. If a  
986 preneed contract provides for installment payments, each  
987 premium payment shall be made payable to the insurance company  
988 and, if collected by the preneed seller, shall be remitted to  
989 the insurance company within 10 business days after receipt by  
990 the preneed seller.

991           (c) Nothing in this chapter shall prohibit a seller, or  
992 any other person, from receiving commissions earned and  
993 payable in regard to funding preneed contracts with life  
994 insurance or annuity contracts, provided the seller or other  
995 person holds a valid insurance producer license in this state  
996 and is appointed by the insurance company paying the  
997 commission.

998           (d) A preneed seller may be identified as the  
999 beneficiary or assignee of the death benefit proceeds of a  
1000 life insurance policy or annuity contract sold as a future  
1001 funding mechanism for a preneed contract, but may not be the  
1002 owner of the policy or annuity contract or exercise any  
1003 ownership rights in the policy or annuity. If the preneed  
1004 contract is cancelled before or after the death of the funeral  
1005 beneficiary, the preneed seller shall cancel and relinquish  
1006 any assignment of benefits or beneficiary status under the  
1007 policy or annuity contract, and deliver the policy or  
1008 contract, if in the custody of the preneed seller, to the



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1009 policy owner or his or her legal representative."

1010 "~~§27-17A-4~~§34-13-172

1011 Nothing in this chapter shall be construed to prohibit  
1012 cemetery authorities from selling funeral merchandise, funeral  
1013 establishments from selling cemetery merchandise, or  
1014 third-party sellers from selling either funeral merchandise or  
1015 cemetery merchandise, or both. Provided, the required amount  
1016 of the purchase price to be placed into trust shall be  
1017 governed by the appropriate section of this chapter."

1018 Section 4. The following heading is added to Division  
1019 2, commencing with Section 34-13-190, of Article 5, Chapter  
1020 13, Title 34, Code of Alabama 1975:

1021 "Division 2. Certificate of Authority."

1022 Section 5. Sections 27-17A-10, 27-17A-11, 27-17A-11.1,  
1023 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-16,  
1024 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20, 27-17A-21,  
1025 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of the Code of  
1026 Alabama 1975, are amended and renumbered as Division 2 of  
1027 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to  
1028 read as follows:

1029 "~~§27-17A-10~~§34-13-190

1030 (a) No person may sell a preneed contract without first  
1031 having a valid certificate of authority.

1032 (b) (1) No person may receive any funds for payment on a  
1033 preneed contract who does not hold a valid certificate of  
1034 authority.

1035 (2) Any preneed transaction in which a buyer pays to  
1036 the seller before need, in whole or in part, a purchase price



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1037 for funeral or cemetery merchandise and services, and in which  
1038 the seller is not obligated to deliver the contracted for  
1039 merchandise or to perform the services until need, in whole or  
1040 in part, shall be evidenced by a written preneed contract  
1041 satisfying the requirements of this chapter and signed by the  
1042 seller and the purchaser. No person may receive or accept any  
1043 form of consideration in such a transaction without a fully  
1044 signed written preneed contract. A transaction not evidenced  
1045 by a signed written preneed contract shall be voidable at the  
1046 election of the buyer and, if such election is made, the  
1047 seller shall refund to the buyer the entire amount paid by the  
1048 buyer together with interest thereon at the legal rate within  
1049 30 days after notice to the seller.

1050 (3) The provisions of subdivision (1) do not apply to  
1051 the purchase of a life insurance policy or annuity, the  
1052 benefits of which are assigned to a funeral home ~~and/or~~ or  
1053 cemetery authority, or the benefits of which are to be paid to  
1054 a funeral home ~~and/or~~ or cemetery authority named as  
1055 beneficiary of the policy or annuity, as long as the purchaser  
1056 and funeral home ~~and/or~~ or cemetery authority acknowledge in  
1057 writing that no preneed contract is entered as a result of the  
1058 purchase or assignment of the life insurance policy or annuity  
1059 at the time the policy or annuity is purchased. Benefits from  
1060 a life insurance policy or annuity issued under this  
1061 subdivision shall only be paid to a funeral home ~~and/or~~ or  
1062 cemetery authority which provides funeral or cemetery  
1063 merchandise and services at the death of the insured whether  
1064 or not such funeral home ~~and/or~~ or cemetery has been named as



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1065 an assignee or the beneficiary of the policy or annuity. If  
1066 the amount of the policy or annuity proceeds shall exceed the  
1067 actual funeral costs at the time of need, ~~such~~ the excess  
1068 amount ~~must~~ shall be paid to a designated beneficiary, other  
1069 than a funeral home ~~and/or~~ or cemetery authority, or to the  
1070 estate of the insured or annuitant.

1071 (4) ~~The provisions of subdivision~~ Subdivision (1) ~~do~~  
1072 does not apply to any legal reserve insurance company or to  
1073 any trust company or to any national or state bank or savings  
1074 and loan association having trust powers which company, bank,  
1075 or association receives any money in trust pursuant to the  
1076 sale of a preneed contract.

1077 (c) (1) No person may obtain a certificate of authority  
1078 under this ~~article~~ chapter for the preneed sale of funeral  
1079 services or cemetery services unless the person or its agent,  
1080 in the case of a corporate entity, holds a license as a  
1081 funeral director or a funeral establishment, or is a cemetery  
1082 authority ~~and qualifies as an applicant for a certificate of~~  
1083 authority pursuant to the following standards and  
1084 qualifications:

1085 a. The applicant shall be at least the legal age of  
1086 majority in this state.

1087 b. The applicant shall be in good standing with the  
1088 board.

1089 c. The applicant may not have any felony or misdemeanor  
1090 convictions that relate to any activity regulated by this  
1091 chapter or a crime involving moral turpitude, as defined by  
1092 this chapter.





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1093 d. The applicant shall be of good moral character and  
1094 submit to a criminal history background check pursuant to  
1095 subdivision (2).

1096 (2) An applicant for a certificate of authority shall  
1097 submit to the board, on a form sworn to by the applicant, his  
1098 or her name, date of birth, Social Security number, and two  
1099 complete sets of fingerprints for completion of a criminal  
1100 history background check. The board shall submit the  
1101 fingerprints to the Alabama State Law Enforcement Agency for a  
1102 state criminal history background check. The fingerprints  
1103 shall be forwarded by the agency to the Federal Bureau of  
1104 Investigation for a national criminal history background  
1105 check. Costs associated with conducting a criminal history  
1106 background check shall be paid by the applicant. The board  
1107 shall keep information received pursuant to this subdivision  
1108 confidential, except that information received and relied upon  
1109 in denying the issuance of a certificate of authority may be  
1110 disclosed if necessary to support the denial. All character  
1111 information, including the information obtained through the  
1112 criminal history background checks, shall be considered in  
1113 licensure decisions to the extent permissible by all  
1114 applicable laws.

1115 (d) ~~The provisions of this~~ This section ~~do~~ does not  
1116 apply to a cemetery authority owned or operated by a  
1117 governmental agency or a religious institution or to those  
1118 cemeteries that do not charge fees or sell plots, interment  
1119 rights, or any related cemetery merchandise."

1120 "~~§27-17A-11~~ §34-13-191



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1121 (a) An application to the ~~commissioner~~ board for a  
1122 certificate of authority shall be accompanied by the statement  
1123 and other matters described in this section in the form  
1124 prescribed by the ~~commissioner~~ board. Annually thereafter,  
1125 ~~within six months after the end of its fiscal period,~~ or  
1126 within an extension of time therefor, as the ~~commissioner~~  
1127 board for good cause may grant, the person authorized to  
1128 engage in the sale of preneed contracts shall file with the  
1129 ~~commissioner~~ board a full and true statement of his or her  
1130 financial condition, transactions, and affairs, prepared on a  
1131 basis as adopted by a rule of the ~~commissioner~~ board, as of  
1132 the preceding fiscal period or at such other time or times as  
1133 the ~~commissioner~~ board may provide by rule, together with  
1134 information and data which may be required by the ~~commissioner~~  
1135 board.

1136 (b) The statement shall include all of the following:

1137 (1) The types of preneed contracts proposed to be  
1138 written and the type of funding ~~vehiele~~ vehicles to be used.

1139 (2) The name and address of the place of business of  
1140 the person offering to write preneed contracts.

1141 (3) Evidence that the person offering the statement has  
1142 the following qualifications:

1143 a. Has the ability to discharge his or her preneed  
1144 liabilities as they become due in the normal course of  
1145 business and has sufficient funds available during the  
1146 calendar year to perform his or her obligations under the  
1147 contract.

1148 b. Has complied with the trust requirements for the



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1149 funds received under contracts issued by himself or herself as  
1150 hereinafter described.

1151 c. Has disbursed interest, dividends, or accretions  
1152 earned by trust funds, in accordance with this ~~article~~ chapter  
1153 and rules ~~promulgated~~ adopted hereunder.

1154 d. Has complied with this chapter and any rules of the  
1155 ~~commissioner~~ board.

1156 (4) Any other information considered necessary by the  
1157 ~~commissioner~~ board to meet the ~~commissioner's~~ board's  
1158 responsibilities under this chapter.

1159 (c) If the person is an individual, the statement shall  
1160 be sworn by him or her; if a firm or association, by all  
1161 members thereof; or, if a corporation, by any officer of the  
1162 corporation.

1163 (d) (1) An application to the ~~commissioner~~ board for an  
1164 initial certificate of authority shall be accompanied by an  
1165 application fee in an amount to be determined by the  
1166 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~  
1167 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,  
1168 each annual application for renewal of a certificate of  
1169 authority shall be accompanied by the appropriate fee as  
1170 determined by the ~~commissioner~~ board not to exceed  
1171 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

1172 (2) Any person or entity that is part of a common  
1173 business enterprise that has a certificate of authority issued  
1174 pursuant to this ~~article~~ chapter and elects to operate under a  
1175 name other than that of the common business enterprise shall  
1176 submit an application on a form ~~adopted~~ prescribed by the



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1177 ~~commissioner~~ board to become a branch registrant. Upon the  
1178 approval of the ~~commissioner~~ board that the entity qualifies  
1179 to sell preneed contracts under this ~~article~~ chapter except  
1180 for the requirements of subparagraph 1., of paragraph a. of  
1181 subdivision (3) of subsection (b) and if the certificate  
1182 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,  
1183 a branch registration shall be issued. Each branch registrant  
1184 may operate under the certificate of authority of the common  
1185 business enterprise upon the payment of a fee established by  
1186 the ~~commissioner~~ board not to exceed ~~one hundred fifty dollars~~  
1187 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying  
1188 the application on ~~July~~ September 1 annually.

1189 (e) Upon the ~~commissioner~~ board being satisfied that  
1190 the statement and matters which may accompany ~~it~~ the statement  
1191 meet the requirements of this ~~article~~ chapter and of its  
1192 rules, the ~~commissioner~~ board shall issue or renew the  
1193 certificate of authority.

1194 (f) The certificate of authority shall expire annually  
1195 on ~~September~~ October 1, unless renewed, or at such other time  
1196 or times as the ~~commissioner~~ board may provide by rule.

1197 (g) On or before ~~July 1 of~~ a date adopted by the board  
1198 each year, the certificate holder shall file with the  
1199 ~~commissioner~~ board in the form prescribed by the ~~commissioner~~  
1200 board a full and true statement as to the activities of any  
1201 trust established by it pursuant to this ~~article~~ chapter for  
1202 the preceding calendar year.

1203 (h) In addition to any other penalty that may be  
1204 provided for under this ~~article~~ chapter, the ~~commissioner~~



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1205 board may levy a fine not to exceed fifty dollars (\$50) per  
1206 day for each day the certificate holder fails to file its  
1207 annual statement, and the ~~commissioner~~ board may levy a fine  
1208 not to exceed fifty dollars (\$50) per day for each day the  
1209 certificate holder fails to file the statement of activities  
1210 of the trust. Upon notice to the certificate holder by the  
1211 ~~commissioner~~ board that the certificate holder has failed to  
1212 file the annual statement or the statement of activities of  
1213 the trust, the certificate holder's authority to sell preneed  
1214 contracts shall cease while the default continues.

1215 (i) To facilitate uniformity in financial statements  
1216 and to facilitate analysis, the ~~commissioner~~ board may by rule  
1217 adopt a form for financial statements. The holder of a  
1218 certificate of authority may submit a written request to the  
1219 ~~commissioner~~ board to exempt the holder from filing financial  
1220 statements at renewal. The ~~commissioner~~ board may waive the  
1221 requirement for filing a financial statement at renewal if all  
1222 of the following are satisfied:

1223 (1) No valid complaint has been filed since the last  
1224 ~~examination~~ audit.

1225 (2) No administrative action against the preneed entity  
1226 has been instituted since the last ~~examination~~ audit.

1227 (3) The certificate holder certifies that all  
1228 outstanding preneed contracts written by the holder since  
1229 April 30, 2002, are fully funded in accordance with this  
1230 chapter.

1231 (4) The certificate holder certifies that it will fully  
1232 fund all preneed contracts with life insurance, annuity, or



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1233 will deposit 100 percent of all funds collected on all preneed  
1234 contracts in trust within 30 days after the end of the  
1235 calendar month in which the funds are collected.

1236 (5) The preneed entity has provided to the ~~department~~  
1237 board in a timely manner all required and requested records.

1238 (6) The preneed entity agrees to file ~~quarterly~~ reports  
1239 of its preneed activity on a form ~~or,~~ in a format, and as  
1240 often as prescribed by the ~~commissioner~~ board.

1241 (j) The ~~commissioner~~ board may authorize the transfer  
1242 of certificates of authority and establish fees for the  
1243 transfer in an amount not to exceed ~~one hundred dollars (\$100)~~  
1244 one hundred thirty-two dollars (\$132). Upon receipt of an  
1245 application for transfer, the ~~commissioner~~ board may grant a  
1246 temporary certificate of authority to the proposed transferee,  
1247 based upon criteria established by the ~~commissioner~~ board by  
1248 rule, which criteria shall promote the purposes of this  
1249 ~~article~~ chapter in protecting the consumer. A temporary  
1250 certificate of authority shall expire 60 days after issuance  
1251 unless renewed by the ~~commissioner~~ board."

1252 "~~§27-17A-11.1~~ §34-13-192

1253 (a) On ~~a semi-annual basis, within 45 days after the~~  
1254 ~~end of each second calendar reporting period~~ or before July 1,  
1255 each year, the certificate holder shall file a report of its  
1256 preneed contract activity on a form or in a format prescribed  
1257 by the ~~commissioner~~ board. The information reported shall  
1258 include the total number of preneed contracts in force at the  
1259 end of the previous ~~reporting period~~ calendar year, the total  
1260 number of preneed contracts sold during the ~~reporting period~~



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1261 previous calendar year, the total number of preneed contracts  
1262 fulfilled during the ~~reporting period~~ previous calendar year,  
1263 the total number of preneed contracts in force at the end of  
1264 the ~~reporting period~~ previous calendar year, and such other  
1265 information as may be required by the ~~commissioner~~ board. The  
1266 report shall be organized by type of funding including, life  
1267 insurance, annuity, trust, letter of credit, or surety bond.  
1268 The report shall also provide a certification by the trustee  
1269 of the amount of assets held by the trust at the beginning of  
1270 the reporting period and at the end of the reporting period,  
1271 together with the amount of deposits and withdrawals during  
1272 the reporting period. If a certificate holder shall twice  
1273 default in complying with the requirements of this subsection,  
1274 the ~~commissioner~~ board may require that the certificate holder  
1275 thereafter submit the report within 45 days after the end of  
1276 each calendar quarter and shall continue so reporting for a  
1277 time to be determined by the ~~commissioner~~ board.

1278 (b) The certificate holder shall maintain a written log  
1279 of preneed sales. The log shall be on a form or in a format  
1280 prescribed by the ~~commissioner~~ board, shall detail all  
1281 information required by the ~~commissioner~~ board, and shall be  
1282 available for inspection at any time by the ~~commissioner~~  
1283 board.

1284 (c) Each cemetery authority shall maintain a written  
1285 log of the sale of cemetery interment rights. The log shall be  
1286 on a form or in a format prescribed by the ~~commissioner~~ board  
1287 and shall detail all information required by the ~~commissioner~~  
1288 board.



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1289 (d) The board may maintain a statewide database of  
1290 preneed contracts reported to the board pursuant to subsection  
1291 (a). The board may make information in this database  
1292 searchable by the public by means of unique identifiers, or  
1293 any other means, that the board determines respects the  
1294 privacy of those involved while also protecting consumers from  
1295 financial waste by allowing families to determine if a  
1296 deceased loved one has an existing preneed contract. Any  
1297 preneed consumer who does not wish for his or her information  
1298 to appear in this searchable database may opt out by following  
1299 a process established by the board."

1300 ~~"§27-17A-12~~§34-13-193

1301 (a) Preneed contract forms and related forms shall be  
1302 filed with and approved by the ~~commissioner~~ board.

1303 (b) Specific disclosure regarding whether, consistent  
1304 with the requirements of this chapter, the certificate holder  
1305 is placing certain preneed funds received with the contract in  
1306 trust, in an annuity, or in insurance, is required in the  
1307 preneed contract.

1308 (c) Preneed contracts which have been submitted to the  
1309 ~~commissioner~~ board shall be deemed to have been approved by  
1310 the ~~commissioner~~ board in the event that the ~~commissioner~~  
1311 board fails to notify the certificate holder that approval has  
1312 been denied within 30 days following submission to the  
1313 ~~commissioner~~ board."

1314 ~~"§27-17A-13~~§34-13-194

1315 (a) Except as provided in Sections ~~27-17A-3 and~~  
1316 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract





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1317 shall require the monies paid to the seller or trustee to be  
1318 placed in trust in accordance with ~~Article 3~~ Division 3, for  
1319 funeral merchandise and services sold by funeral  
1320 establishments or third party sellers, or ~~Article 4~~ Division  
1321 4, for cemetery merchandise and services sold by cemetery  
1322 authorities.

1323 (b) Although this chapter does not apply to preneed  
1324 contracts entered into prior to May 1, 2002, a preneed  
1325 provider which contends that a preneed trust fund which was in  
1326 effect prior to May 1, 2002, complies with this chapter with  
1327 respect to the contracts entered into prior to May 1, 2002,  
1328 may provide to the ~~commissioner~~ board documentary proof  
1329 thereof. Upon the ~~commissioner~~ board determining that  
1330 compliance has been established, the pre-existing preneed  
1331 trust fund assets may be merged with or into the trust fund  
1332 required under this chapter or continued as the trust fund and  
1333 that determination by the ~~commissioner~~ board shall be noted on  
1334 the certificate of authority, and thereafter all preneed  
1335 contracts covered by the trust fund, including those entered  
1336 into prior to May 1, 2002, shall be subject to this chapter."

1337 "~~§27-17A-14~~§34-13-195

1338 (a) As an alternative to the trust requirement of  
1339 Section ~~27-17A-13~~ 34-13-194, the details of which are set  
1340 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed  
1341 provider ~~may~~, with the prior approval of the ~~commissioner~~  
1342 board, may purchase a surety bond in an amount not less than  
1343 the aggregate value of outstanding liabilities on undelivered  
1344 preneed contracts for merchandise, services, and cash



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1345 advances. For the purposes of this section, the term  
1346 outstanding liabilities means the original retail amount of  
1347 services and cash advances and the actual cost to the entity  
1348 to provide the undelivered merchandise sold on each contract  
1349 written after April 30, 2002. The surety bond shall be in an  
1350 amount sufficient to cover the outstanding liability at the  
1351 time each contract is executed.

1352 (b) The bond shall be made payable to the State of  
1353 Alabama for the benefit of the ~~commissioner~~ board and of all  
1354 purchasers of preneed merchandise, services, and cash  
1355 advances. The bond shall be issued by an insurance company  
1356 licensed in the State of Alabama and authorized to issue  
1357 surety bonds and approved by the ~~commissioner~~ board.

1358 (c) The amount of the bond shall be based on a report  
1359 documenting the outstanding liabilities of the preneed  
1360 provider for the previous calendar quarter and the projected  
1361 liability for the immediately following quarter, shall be  
1362 prepared by the preneed provider using generally accepted  
1363 accounting principles, and shall be signed by the chief  
1364 executive officer or chief financial officer of the preneed  
1365 provider. The report shall be compiled as of the end of the  
1366 preneed provider's fiscal year and updated quarterly.

1367 (d) The amount of the bond shall be increased or  
1368 decreased as necessary to correlate with changes in the  
1369 outstanding liabilities. Further, the ~~commissioner~~ board may  
1370 order the bond to be increased as necessary to correlate with  
1371 changes in the outstanding liabilities of bonded contracts due  
1372 to increases in the consumer price index.



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1373 (e) If the preneed provider fails to maintain a bond  
1374 pursuant to this section the preneed provider shall cease the  
1375 offering for sale and sale of preneed merchandise, services,  
1376 and cash advances as provided by rule of the board.

1377 (f) No surety bond used to comply with this section  
1378 shall be canceled or subject to cancellation unless at least  
1379 60 days' advance notice thereof, in writing, is filed with the  
1380 ~~commissioner~~, board by the surety company. The cancellation of  
1381 the bond shall not relieve the obligation of the surety  
1382 company for claims arising out of contracts issued or  
1383 otherwise covered before cancellation of the bond. In the  
1384 event that notice of termination of the bond is filed with the  
1385 ~~commissioner~~ board, the certificate holder insured thereunder  
1386 ~~shall~~, within 30 days of the filing of the notice of  
1387 termination with the ~~commissioner~~ board, shall provide the  
1388 ~~commissioner~~ board with a replacement bond or with evidence  
1389 which is satisfactory to the ~~commissioner~~ board demonstrating  
1390 that ~~the provisions of~~ this chapter ~~have~~ has been fully  
1391 complied with. If within 30 days of filing of the notice of  
1392 termination with the ~~commissioner~~ board no replacement bond  
1393 acceptable to the ~~commissioner~~ board or no evidence  
1394 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~  
1395 ~~provisions of~~ this chapter ~~have~~ has been complied with is  
1396 filed with the ~~commissioner~~ board, the ~~commissioner~~ board  
1397 shall suspend the license of the certificate holder until the  
1398 certificate holder files a replacement bond acceptable to the  
1399 ~~commissioner~~ board or demonstrates to the satisfaction of the  
1400 ~~commissioner~~ board that it has complied with ~~the provisions of~~



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1401 this chapter.

1402 (g) Upon prior approval by the ~~commissioner~~ board, the  
1403 preneed provider may file with the ~~commissioner~~ board a letter  
1404 of credit in the amount of the outstanding liabilities in lieu  
1405 of a surety bond, in the form and subject to the terms and  
1406 conditions evidencing the financial responsibility of the  
1407 party or parties issuing the letter of credit, and otherwise,  
1408 as may be prescribed by the ~~commissioner~~ board."

1409 "~~§27-17A-15~~ §34-13-196

1410 (a) The ~~commissioner shall~~ board, as often as ~~he or she~~  
1411 ~~may deem~~ deemed necessary, ~~examine~~ shall examine the business  
1412 of any person writing, or holding himself or herself out to be  
1413 writing, preneed contracts under this chapter to the extent  
1414 applicable. The examination shall be made by designated  
1415 representatives employed or ~~examiners of the Department of~~  
1416 ~~Insurance~~ contracted by the board.

1417 (b) The written report of each examination, when  
1418 completed, shall be filed in the office of the ~~commissioner~~  
1419 board and, when so filed, shall not constitute a public  
1420 record.

1421 (c) Any person being examined shall produce, upon  
1422 request, all records of the person. The designated  
1423 representative of the ~~commissioner~~ board may at any time  
1424 examine the records and affairs of the person, whether in  
1425 connection with a formal examination or not.

1426 (d) The ~~commissioner may~~ board shall waive the  
1427 examination requirements of this section if the certificate  
1428 holder submits audited financial statements. Upon receipt of a



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1429 verifiable complaint, the board may perform a target market  
1430 conduct examination as a part of an investigation.

1431 (e) The person examined shall pay the examination  
1432 expenses, travel expense, and per diem subsistence allowance  
1433 provided for examiners and incurred by the ~~commissioner's~~  
1434 board's representatives or examiners in connection with an  
1435 examination ~~in accordance with Section 27-2-25~~ as prescribed  
1436 by rule of the board.

1437 (f) Whenever any special examination of the premises,  
1438 facilities, books, or records of a licensee is necessary based  
1439 on the failure of the licensee to comply with this chapter or  
1440 rule adopted by the board, the board shall charge a fee based  
1441 on the cost of the special examination including, but not  
1442 limited to, the prorated compensation of board employees  
1443 involved in the special examination and any expenses incurred.

1444 (g) If the board finds that a certificate of authority  
1445 holder or licensee has failed to operate in accordance with  
1446 this chapter and, by their action, has created a deficit of  
1447 preneed funds entrusted to them by the consumer, then the  
1448 board may:

1449 (1) Bring an action for injunctive relief against the  
1450 responsible licensee or the holder of the certificate of  
1451 authority in the Circuit Court of Montgomery County.

1452 (2) Issue an emergency suspension of all licenses held  
1453 by the holder of the certificate of authority, and its  
1454 associated personnel, in accordance with the Administrative  
1455 Procedure Act.

1456 (3) Take any other disciplinary action authorized by



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1457 this chapter."

1458 "~~§27-17A-16~~§34-13-197

1459 (a) A certificate holder shall be considered inactive  
1460 upon the acceptance of the surrender of its license by the  
1461 ~~commissioner~~ board or upon the nonreceipt by the ~~commissioner~~  
1462 board of the certificate of authority renewal application and  
1463 fees.

1464 (b) A certificate holder shall cease all preneed sales  
1465 to the public upon becoming inactive. The certificate holder  
1466 shall collect and deposit into trust all of the funds paid  
1467 toward preneed contracts sold prior to becoming inactive.

1468 (c) Any certificate holder desiring to surrender its  
1469 license to the ~~commissioner~~ board shall first do all of the  
1470 following:

1471 (1) File notice with the ~~commissioner~~ board.

1472 (2) Submit copies of its existing trust agreements.

1473 (3) Submit a sample copy of each type of preneed  
1474 contract sold.

1475 (4) Resolve to the ~~commissioner's~~ satisfaction of the  
1476 board all findings and violations resulting from the last  
1477 examination conducted.

1478 (5) Pay all outstanding fines and invoices due the  
1479 ~~commissioner~~ board.

1480 (6) Submit its current certificate of authority.

1481 (d) Upon receipt of the notice, the ~~commissioner~~ board  
1482 shall review the certificate holder's trust funds, trust  
1483 agreements, and evidence of all outstanding preneed contracts.

1484 (e) After a review to the ~~commissioner's~~ satisfaction



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1485 of the board, the ~~commissioner~~ board shall terminate the  
1486 certificate of authority by an order which shall set forth the  
1487 conditions of termination established by the ~~commissioner~~  
1488 board to ensure that the preneed funds will be available for  
1489 their intended purpose.

1490 (f) The trust fund of the certificate holder shall be  
1491 held intact and in trust after the certificate holder has  
1492 become inactive, and the funds in that trust shall be  
1493 disbursed in accordance with the requirements of the written  
1494 contracts until the funds have been exhausted.

1495 (g) The ~~commissioner~~ board shall continue to have  
1496 jurisdiction over the inactive certificate holder as if the  
1497 certificate were active and to require the reports and inspect  
1498 the records as the ~~commissioner~~ board deems appropriate so  
1499 long as there are funds in trust or preneed contracts that are  
1500 not fulfilled.

1501 (h) ~~In addition to any other~~ Other terms of revocation  
1502 or suspension ordered pursuant to ~~Chapter 13 of Title 34, the~~  
1503 ~~provisions of~~ this chapter may ~~also~~ apply.--"

1504 "~~§27-17A-17~~§34-13-198

1505 ~~(a) Any dissolution or liquidation of a certificate~~  
1506 ~~holder shall be deemed to be the liquidation of an insurance~~  
1507 ~~company and shall be conducted under the supervision of the~~  
1508 ~~commissioner, who shall have all powers with respect thereto~~  
1509 ~~granted to the commissioner under Chapter 32 with respect to~~  
1510 ~~the liquidation of insurance companies.~~

1511 ~~(b) The commissioner may apply for an order directing~~  
1512 ~~the commissioner to liquidate a certificate holder upon any~~



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1513 ~~one or more grounds set out in Section 27-32-6 or when, in the~~  
1514 ~~commissioner's opinion, the continued operation of the~~  
1515 ~~certificate holder would be hazardous either to purchasers,~~  
1516 ~~beneficiaries, or to the people of this state.~~

1517 The board may fine and revoke, suspend, or place on  
1518 probation the certificate of authority and the establishment  
1519 license of a certificate holder on any of the following  
1520 grounds:

1521 (1) The certificate holder is impaired or insolvent.

1522 (2) The certificate holder has refused to submit, or  
1523 has withheld, any of its books, records, accounts, or affairs  
1524 to examination by the board.

1525 (3) The certificate holder has concealed or removed  
1526 records or preneed assets, or both.

1527 (4) The certificate holder has failed to comply with an  
1528 order of the board.

1529 (5) The certificate holder has transferred, or  
1530 attempted to transfer, substantially its entire property or  
1531 business, or has entered into any transaction the effect of  
1532 which is to merge substantially its entire property or  
1533 business with that of any other certificate holder, person,  
1534 corporation, or entity without first having obtained the  
1535 written approval of the board.

1536 (6) The certificate holder has willfully violated its  
1537 articles of incorporation or any law of this state, including  
1538 any rule of the board.

1539 (7) The certificate holder has an officer, director, or  
1540 manager who has refused to be examined under oath concerning





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1541 the affairs of the certificate holder.

1542 (8) If the board determines that the continued preneed  
1543 sales of the certificate holder would be hazardous to  
1544 purchasers, beneficiaries, or residents of this state."

1545 "~~§27-17A-18~~§34-13-199

1546 (a) All individuals who offer preneed contracts to the  
1547 public, or who execute preneed contracts on behalf of a  
1548 certificate holder, shall be registered with the ~~commissioner~~  
1549 board as preneed sales agents, pursuant to this ~~article~~  
1550 chapter.

1551 (b) All preneed sales agents and funeral directors  
1552 acting as preneed sales agents shall be affiliated with the  
1553 certificate holder that they are representing.

1554 (c) A certificate holder shall be responsible for the  
1555 activities of all preneed sales agents and all funeral  
1556 directors acting as preneed sales agents, who are affiliated  
1557 with the certificate holder and who perform any type of  
1558 preneed-related activity on behalf of the certificate holder.  
1559 In addition to the preneed sales agents and funeral directors  
1560 acting as preneed sales agents, each certificate holder shall  
1561 also be subject to discipline if its preneed sales agents or  
1562 funeral directors acting as preneed sales agents violate ~~any~~  
1563 ~~provision of~~ this ~~article~~ chapter.

1564 (d) A preneed sales agent and a funeral director acting  
1565 as a preneed sales agent ~~shall be authorized to~~ may sell,  
1566 offer, and execute preneed contracts on behalf of all properly  
1567 licensed entities owned or operated by the sponsoring  
1568 certificate holder.



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1569 (e) An individual may begin ~~functioning~~ operating as a  
1570 preneed sales agent as soon as a completed application for  
1571 registration, as set forth in subsection (g), is ~~sent to the~~  
1572 ~~commissioner~~ approved by the board.

1573 (f) (1) The qualifications for a preneed sales agent are  
1574 as follows:

1575 ~~(1)~~ a. The applicant must be at least 18 years of age.

1576 ~~(2)~~ b. The applicant must be in good standing with the  
1577 ~~commissioner~~ board.

1578 ~~(3)~~ c. The applicant ~~must~~ may not have any felony or  
1579 misdemeanor convictions that relate to any activity regulated  
1580 by this chapter or a crime involving moral turpitude, as  
1581 defined by this chapter.

1582 d. The applicant shall be of good moral character and  
1583 submit to a criminal history background check pursuant to  
1584 subdivision (2).

1585 (2) An applicant for licensure as a preneed sales agent  
1586 shall submit to the board, on a form sworn to by the  
1587 applicant, his or her name, date of birth, Social Security  
1588 number, and two complete sets of fingerprints for completion  
1589 of a criminal history background check. The board shall submit  
1590 the fingerprints to the Alabama State Law Enforcement Agency  
1591 for a state criminal history background check. The  
1592 fingerprints shall be forwarded by the agency to the Federal  
1593 Bureau of Investigation for a national criminal history  
1594 background check. Costs associated with conducting a criminal  
1595 history background check shall be paid by the applicant. The  
1596 board shall keep information received pursuant to this



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1597 subdivision confidential, except that information received and  
1598 relied upon in denying the issuance of a certificate of  
1599 authority may be disclosed if necessary to support the denial.  
1600 All character information, including the information obtained  
1601 through the criminal history background checks, shall be  
1602 considered in licensure decisions to the extent permissible by  
1603 all applicable laws.

1604 (g) An application for registration as a preneed sales  
1605 agent shall be submitted to the ~~commissioner~~ board with an  
1606 application fee determined by the ~~commissioner~~ board, but not  
1607 to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars  
1608 (\$33), by the certificate holder in a form that has been  
1609 prescribed by ~~commissioner~~ board rule ~~and approved by the~~  
1610 ~~commissioner~~. The application shall contain, at a minimum, all  
1611 of the following:

1612 (1) The name, address, Social Security number, and date  
1613 of birth of the applicant and any other information as the  
1614 ~~commissioner~~ board may reasonably require of the applicant.

1615 (2) The name, address, and license number of the  
1616 sponsoring certificate holder.

1617 (3) A representation, signed by the applicant, that the  
1618 applicant meets the requirements set forth in subsection (f).

1619 (4) A representation, signed by the certificate holder,  
1620 that the applicant is authorized to offer, sell, and sign  
1621 preneed contracts on behalf of the certificate holder, and  
1622 that the certificate holder has trained the applicant in ~~the~~  
1623 ~~provisions of~~ this ~~article~~ chapter relating to preneed sales,  
1624 the provisions of the certificate holder's preneed contract,



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1625 and the nature of the merchandise, services, or burial rights  
1626 sold by the certificate holder.

1627 (5) A statement indicating whether the applicant has  
1628 any type of working or agency relationship with any other  
1629 certificate holder or insurance company.

1630 (h) An individual may be registered as a preneed sales  
1631 agent on behalf of more than one certificate holder, provided  
1632 that the individual has received the written consent of all  
1633 certificate holders.

1634 (i) A certificate holder who has registered a preneed  
1635 sales agent shall notify the ~~commissioner~~ board within 30 days  
1636 after the individual's status as a preneed sales agent has  
1637 been terminated.

1638 (j) Upon ~~receipt~~ approval of an application that  
1639 complies with all of the requirements of subsection (g), the  
1640 ~~commissioner~~ board shall register the applicant. The  
1641 ~~commissioner shall by rule~~ board, in accordance with this  
1642 chapter, shall provide for annual renewal of registration upon  
1643 receipt of a renewal application and a renewal fee not to  
1644 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as  
1645 set by the ~~commissioner~~ board."

1646 "~~§27-17A-19~~§34-13-200

1647 No person shall engage in this state in any trade  
1648 practice which is addressed in the Alabama Deceptive Trade  
1649 Practices Act ~~(Section 8-19-1 et seq.)~~ Chapter 19 of Title 8,  
1650 or as determined pursuant to this chapter to be, an unfair  
1651 method of competition or an unfair or deceptive act or  
1652 practice."



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1653 "~~§27-17A-20~~§34-13-201

1654 (a) Whenever the ~~commissioner~~ board has reason to  
1655 believe that any person has engaged, or is engaging, in this  
1656 state in any unfair method of competition or any unfair or  
1657 deceptive act or practice as defined in this ~~article~~ chapter,  
1658 or is engaging in the sale of preneed contracts without being  
1659 properly licensed as required by this ~~article~~ chapter, or is  
1660 otherwise acting in violation of this chapter, and that a  
1661 proceeding by the ~~commissioner~~ board in respect thereto would  
1662 be in the interest of the public, the ~~commissioner~~ board shall  
1663 institute a proceeding in accordance with this section.

1664 (b) A statement of charges, notice, or order or other  
1665 process under this chapter may be served by anyone duly  
1666 authorized by the ~~commissioner~~ board. Service may be made  
1667 either in the manner provided by law for service of process in  
1668 civil actions or by certifying and mailing a copy of the  
1669 statement to the person affected by the statement, notice, or  
1670 order or other process at his or her or its residence or  
1671 principal office or place of business. The verified return by  
1672 the person so serving the statement, notice, or order or other  
1673 process, setting forth the manner of the service, shall be  
1674 proof of the service; and the return postcard receipt for the  
1675 statement, notice, or order or other process, certified and  
1676 mailed as provided in this subsection, shall be proof of  
1677 service of the statement, notice, or order or other process.

1678 (c) The ~~commissioner~~ board shall conduct or cause to  
1679 have conducted a hearing in accordance with ~~Article 1 of~~  
1680 ~~Chapter 2~~ this chapter, and shall, during the conduct of the



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1681 hearing, have those powers necessary to enforce this chapter  
1682 and rules of the board; however, the penalties for failure to  
1683 comply with a subpoena or with an order directing discovery  
1684 shall be limited to a fine not to exceed one thousand dollars  
1685 (\$1,000) per violation. In accordance with Section 36-12-40,  
1686 evidence introduced and presented in a hearing conducted under  
1687 this chapter shall be deemed a public writing."

1688 "~~§27-17A-21~~§34-13-202

1689 (a) If the ~~commissioner~~ board finds that one or more  
1690 grounds exist for the discretionary suspension or revocation  
1691 of a certificate of authority or establishment license issued  
1692 under this ~~article~~ chapter, the ~~commissioner may~~ board, in  
1693 lieu of the suspension or revocation, may impose a fine upon  
1694 the certificate holder in an amount not to exceed one thousand  
1695 dollars (\$1,000) for each nonwillful violation and in an  
1696 amount not to exceed ten thousand dollars (\$10,000) for each  
1697 willful violation.

1698 (b) The ~~commissioner~~ board may grant not more than 30  
1699 days from the date of the order for the payment of any fine."

1700 "~~§27-17A-22~~§34-13-203

1701 (a) (1) A person who knowingly receives payments for a  
1702 preneed contract without having a valid certificate of  
1703 authority:

1704 a. Commits a Class B felony, ~~punishable as provided by~~  
1705 ~~law~~, as to each contract on which the payments collected equal  
1706 or exceed, in the aggregate, two thousand five hundred dollars  
1707 (\$2,500).

1708 b. Commits a Class C felony, ~~punishable as provided by~~



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1709 ~~law,~~ as to each contract on which the payments collected are  
1710 between, in the aggregate, five hundred dollars (\$500) and two  
1711 thousand five hundred dollars (\$2,500).

1712 c. Commits a Class A misdemeanor, ~~punishable as~~  
1713 ~~provided by law,~~ as to each contract on which the payments  
1714 collected do not exceed, in the aggregate, five hundred  
1715 dollars (\$500).

1716 (2) In addition to the criminal penalty imposed under  
1717 subdivision (1), upon conviction of an offense under  
1718 subdivision (1), a person may not thereafter obtain a  
1719 certificate of authority or register as a preneed sales agent.

1720 (b) (1) A person who willfully fails to timely deposit  
1721 the amount required to be so deposited under this chapter in a  
1722 preneed merchandise and services trust or endowment care  
1723 trust:

1724 a. Commits a Class B felony, ~~punishable as provided by~~  
1725 ~~law,~~ as to each contract on which the amount due for deposit  
1726 in trust equals or exceeds, in the aggregate, two thousand  
1727 five hundred dollars (\$2,500).

1728 b. Commits a Class C felony, ~~punishable as provided by~~  
1729 ~~law,~~ as to each contract on which the amount due for deposit  
1730 in trust is less than, in the aggregate, two thousand five  
1731 hundred dollars (\$2,500).

1732 (2) In addition to the criminal penalty imposed under  
1733 subdivision (1), upon conviction of an offense under  
1734 subdivision (1), the certificate of authority or preneed sales  
1735 agent registration held by the person shall be automatically  
1736 revoked and the person may not thereafter obtain a certificate



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1737 of authority or register as a preneed sales agent.

1738 (c) (1) A person who knowingly withdraws funds or assets  
1739 from a preneed merchandise and services trust or endowment  
1740 care trust in a manner or under circumstances not authorized  
1741 by this chapter or rule of the board:

1742 a. Commits a Class B felony, ~~punishable as provided by~~  
1743 ~~law~~, if the aggregate amount withdrawn in any single  
1744 transaction or series of related transactions equals or  
1745 exceeds two thousand five hundred dollars (\$2,500).

1746 b. Commits a Class C felony, ~~punishable as provided by~~  
1747 ~~law~~, if the aggregate amount withdrawn in any single  
1748 transaction or series of related transactions is less than two  
1749 thousand five hundred dollars (\$2,500).

1750 (2) In addition to the criminal penalty imposed under  
1751 subdivision (1), upon conviction of an offense under  
1752 subdivision (1), the certificate of authority or preneed sales  
1753 agent registration held by the person shall be automatically  
1754 revoked and the person may not thereafter obtain a certificate  
1755 of authority or register as a preneed sales agent.

1756 (d) A person commits a Class C felony, ~~punishable as~~  
1757 ~~provided by law~~, if any of the following occur:

1758 (1) The person knowingly delivers to the ~~commissioner~~  
1759 board any official form, report, record, data, or other  
1760 document required by the ~~commissioner~~ board containing a false  
1761 statement or false information concerning a matter material to  
1762 the ~~commissioner~~ board in the exercise of ~~his or her~~ its  
1763 authority to administer and enforce this chapter.

1764 (2) Incident to, or during the course of, an





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1765 examination, inspection, investigation, or other inquiry  
1766 authorized by this chapter, the person knowingly makes  
1767 available to a representative of the ~~commissioner~~ board any  
1768 official form, report, record, data, or other document  
1769 required by the ~~commissioner~~ board containing a false  
1770 statement or false information concerning a matter material to  
1771 the purpose of the examination, inspection, investigation, or  
1772 inquiry.

1773 (3) With respect to the business records of a person  
1774 engaging in, or who has at any time engaged in, the sale of a  
1775 preneed contract, a person, with a purpose to use deception as  
1776 defined in subdivision (1) of Section 13A-8-1, makes false  
1777 entries in ~~such~~ the records or alters, erases, obliterates,  
1778 deletes, or removes a correct entry in ~~such~~ the records, fails  
1779 to make a correct entry in ~~such~~ the records, or prevents the  
1780 making of a correct entry, or causes the omission of a correct  
1781 entry in ~~such~~ the records.

1782 (e) Except as otherwise provided in this ~~section~~  
1783 chapter, the willful violation of this chapter is a Class A  
1784 misdemeanor, ~~punishable as provided by law.~~

1785 ~~(f) The duties and authority of the insurance fraud~~  
1786 ~~unit created under Section 27-12A-40, including the powers of~~  
1787 ~~the unit's investigators, shall extend to investigations into~~  
1788 ~~violations of this section."~~

1789 "~~§27-17A-23~~ §34-13-204

1790 The ~~commissioner~~ board, the Attorney General, or any  
1791 person may bring a civil action against a person or company  
1792 violating this chapter or rule of the board in Montgomery



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1793 County or the appropriate court of the county in which the  
1794 alleged violator resides or has his or her or its principal  
1795 place of business or in the county wherein the alleged  
1796 violation occurred. Upon adverse adjudication, the defendant  
1797 shall be liable for actual damages caused by the violation.  
1798 The court, as provided by common law, may award punitive  
1799 damages and may provide equitable relief as it deems proper or  
1800 necessary, including enjoining the defendant from further  
1801 violation of this chapter or rule of the board."

1802 "~~§27-17A-24~~§34-13-205

1803 The provisions of this chapter are cumulative to rights  
1804 under the general civil and common law, and no action of the  
1805 ~~commissioner board~~ may abrogate the rights to damages or other  
1806 relief in any court."

1807 "~~§27-17A-25~~§34-13-206

1808 (a) All fees collected by the ~~commissioner board~~  
1809 pursuant to this chapter shall be deposited into the ~~State~~  
1810 ~~Treasury to the credit of the Insurance Department~~ Alabama  
1811 State Funeral Service Fund.

1812 (b) All fines collected by the ~~commissioner board~~  
1813 pursuant to this chapter shall be deposited into the ~~State~~  
1814 ~~Treasury to the credit of the State General~~ Alabama State  
1815 Funeral Service Fund.

1816 (c) The ~~commissioner board~~ may use funds available from  
1817 any source including, but not limited to, grants,  
1818 appropriations, and gifts, for any purpose in the enforcement  
1819 of this chapter."

1820 Section 6. The following heading is added to Division



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1821 3, commencing with Section 34-13-230, of Article 5, Chapter  
1822 13, Title 34, Code of Alabama 1975:

1823 "Division 3. Funeral Merchandise and Services Trust  
1824 Fund."

1825 Section 7. Sections 27-17A-30, 27-17A-31, 27-17A-32,  
1826 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are  
1827 amended and renumbered as Division 3 of Article 5 of Chapter  
1828 13 of Title 34, Code of Alabama 1975, to read as follows:

1829 "~~§27-17A-30~~§34-13-230

1830 To comply with the trust requirement of subsection (a)  
1831 of Section ~~27-17A-13~~ 34-13-194, all certificate holders  
1832 providing preneed contracts for funeral services or funeral  
1833 merchandise shall be subject to this ~~article~~ chapter."

1834 "~~§27-17A-31~~§34-13-231

1835 (a) Any person who is paid, collects, or receives funds  
1836 under a preneed contract for funeral services or funeral  
1837 merchandise to be funded by trust shall deposit in trust an  
1838 amount at least equal to the sum of 75 percent of the amount  
1839 collected on the purchase price for all funeral services and  
1840 funeral merchandise sold, transportation, and facilities  
1841 rented other than outer burial containers, 60 percent of the  
1842 amount collected on the purchase price for outer burial  
1843 containers, 110 percent of the wholesale cost of memorials  
1844 from the amount collected on the purchase price of memorials,  
1845 and 100 percent of the amount collected on the purchase price  
1846 for all cash advance items sold.

1847 (b) All deposits shall be made within 30 days after the  
1848 end of the calendar month in which the preneed contract is



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1849 paid in full, unless, prior to that time, all liabilities of  
1850 the seller under the preneed contract to deliver the specific  
1851 funeral merchandise or funeral services, or both, or the  
1852 specific cash advances, identified by the preneed provider as  
1853 properly allocated to the payment, have been satisfied, or the  
1854 preneed contract is validly cancelled.

1855 (c) The trustee shall take title to the property  
1856 conveyed to the trust for the purpose of investing,  
1857 protecting, and conserving it for the certificate holder;  
1858 collecting income; and distributing the principal and income  
1859 as prescribed in this ~~article~~ chapter.

1860 (d) The certificate holder is prohibited from sharing  
1861 in the discharge of these responsibilities, except that the  
1862 certificate holder may appoint an adviser to the trustee or  
1863 elect tax free investments. Nothing in this chapter shall  
1864 prohibit a trustee from electing the qualified funeral trust  
1865 option under the Internal Revenue Code.

1866 (e) The trust agreement shall be submitted to the  
1867 ~~commissioner~~ board for approval and filing.

1868 (f) The funds shall be held in trust, both as to  
1869 principal and income earned thereon, and shall remain intact,  
1870 except that the cost of the operation of the trust or trust  
1871 account authorized by this section may be deducted from the  
1872 income earned thereon.

1873 (g) The contract purchaser shall have no interest  
1874 whatsoever in, or power whatsoever over, funds deposited in  
1875 trust pursuant to this section.

1876 (h) In no event may ~~such~~ the funds be loaned to a



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1877 certificate holder, an affiliate of a certificate holder, or  
1878 any person directly or indirectly engaged in the burial,  
1879 funeral home, or cemetery business. Furthermore, the  
1880 certificate holder's interest in the trust shall not be  
1881 pledged as collateral for any loans, debts, or liabilities of  
1882 the certificate holder and shall not be transferred to any  
1883 person without the prior written approval from the  
1884 ~~commissioner~~ board and the trustee. Even though the  
1885 certificate holder shall be deemed and treated as the settlor  
1886 and beneficiary of the trust for all purposes, all of the  
1887 trust funds are exempt from all claims of creditors of the  
1888 certificate holder except as to the claims of the contract  
1889 purchaser, his or her representative, or the ~~commissioner~~  
1890 board.

1891 (i) For all preneed contracts written or entered into  
1892 on or after January 1, 2015, all required deposits in trust  
1893 shall commence not later than 30 days after the end of the  
1894 calendar month in which the sum of the monies collected on the  
1895 preneed contract exceeds the amount that is not required to be  
1896 deposited in trust as determined under subsection (a) unless,  
1897 prior to that time, all liabilities of the preneed seller  
1898 under the preneed contract have been satisfied, or the preneed  
1899 contract is validly cancelled. Further required deposits on  
1900 the contract shall thereafter be made not later than 30 days  
1901 after the end of the calendar month in which each contract  
1902 payment is collected by the seller."

1903 "~~§27-17A-32~~ §34-13-232

1904 (a) If amounts paid by the purchaser under a preneed



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1905 contract for funeral merchandise have previously been  
1906 deposited in trust, the seller may withdraw the principal  
1907 amount and trust appreciation attributable to the delivered  
1908 item at such time as the funeral merchandise is delivered or  
1909 installed or, if comprised of materials designed to withstand  
1910 prolonged, protected storage without deterioration, the  
1911 merchandise is placed in storage with a responsible third  
1912 party bonded and insured for the wholesale value thereof and  
1913 evidenced by a receipt specifically identifying the item, the  
1914 specific preneed contract, the location of the item, and the  
1915 identity and address of the bonding and insuring parties. For  
1916 purposes of this subsection only, caskets and alternative  
1917 containers may not be held in storage by the seller or a third  
1918 party storage facility prior to the death of the funeral  
1919 beneficiary.

1920 (b) The trustee shall make regular valuations of the  
1921 assets it holds in trust and provide a report of the  
1922 valuations to the certificate holder at least quarterly. At  
1923 all times, the certificate holder shall be able to determine  
1924 the amount held in trust attributable to each contract holder.  
1925 For all contracts effective on or after January 1, 2015, the  
1926 determination shall be based upon the fair market value of the  
1927 trust at the time and the proportionate share of the fair  
1928 market value attributable to each contract holder. For all  
1929 contracts in effect before January 1, 2015, the valuation of  
1930 each contract may be calculated using any valuation method  
1931 that had been previously approved by the ~~commissioner or the~~  
1932 ~~department~~ Commissioner or the Department of Insurance before



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1933 January 1, 2015. Any person who withdraws appreciation in the  
1934 value of trust, other than the pro rata portion of ~~such~~ the  
1935 appreciation which may be withdrawn upon the death of a  
1936 contract's funeral beneficiary or upon cancellation of a  
1937 preneed contract, shall be required to make additional  
1938 deposits from his or her own funds to restore the aggregate  
1939 value of assets to the value of funds deposited in trust, but  
1940 excluding from the funds deposited those funds paid out upon  
1941 preneed contracts which the person has fully performed or  
1942 which have been otherwise withdrawn, as provided in this  
1943 ~~article~~ chapter. The certificate holder shall be liable to  
1944 third parties to the extent that income from the trust is not  
1945 sufficient to pay the expenses of the trust.

1946 (c) The trustee of the trust established pursuant to  
1947 this ~~article~~ chapter shall have all of the following powers:

1948 (1) Make investments and exercise necessary investment  
1949 powers, provided that the ~~commissioner~~ board may by order  
1950 require the trustee to liquidate or dispose of any investment  
1951 within 30 days after the order.

1952 (2) Commingle the property of the trust with the  
1953 property of any other preneed funeral, preneed cemetery, or  
1954 endowment care trust established pursuant to this ~~article~~  
1955 chapter and make corresponding allocations and divisions of  
1956 assets, liabilities, income, and expenses.

1957 (d) Notwithstanding the provisions of Section 19-3-125,  
1958 the trustee ~~may~~, subject to compliance with the requirements  
1959 set forth below, may invest any portion or all of the funds  
1960 received under preneed contracts and deposited in trust in



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1961 life insurance contracts or annuities issued on the lives of  
1962 preneed contract purchasers or preneed contract beneficiaries,  
1963 hereinafter, the insured or annuitant, without any obligation  
1964 to cover at a minimum the retail amount of the preneed  
1965 contract at the time of purchase of the life insurance  
1966 contracts or annuities as set forth in Section ~~27-17A-3~~  
1967 [34-13-171](#).

1968 (1) Trust funds shall not be invested by the trustee in  
1969 life insurance contracts or annuities unless the following  
1970 requirements are met:

1971 a. The company issuing the life insurance contracts or  
1972 annuities is licensed by the Department of Insurance and the  
1973 insurance producer or annuity seller is properly licensed  
1974 within its domiciliary jurisdiction.

1975 b. Prior to the investment, the insured or annuitant  
1976 consents, in writing, to the investment in life insurance  
1977 contracts or annuities.

1978 c. For life insurance contracts or annuities issued  
1979 prior to May 6, 2008, and currently in force, such contracts  
1980 shall be construed to have been an authorized investment by  
1981 the trustee under this chapter if the insured or annuitant is  
1982 notified in writing of the existence of any such contract and  
1983 provided with a copy of the contract.

1984 (2) Upon request, the insured or annuitant shall be  
1985 provided with a copy of any life insurance contract or annuity  
1986 issued to a preneed trustee at no expense to the insured or  
1987 annuitant.

1988 (3) Any life insurance contract or annuity issued in





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1989 accordance with this subsection and otherwise in compliance  
1990 therewith shall be valid and in full force according to the  
1991 terms and conditions thereof.

1992 (4) A trustee that invests all or any portion of the  
1993 funds received under preneed contracts and deposited in trust  
1994 in life insurance contracts or annuities issued by one company  
1995 licensed by the ~~department~~ State Department of Insurance shall  
1996 be considered to satisfy the standards and requirements of  
1997 Section 19-3-120.2 and Chapter 3B of Title 19.

1998 (5) It is the intention of the Legislature that this  
1999 subsection shall be retroactive and shall apply to all life  
2000 insurance contracts or annuities issued prior to May 6, 2008."

2001 "~~§27-17A-33~~ §34-13-233

2002 (a) A purchaser, by providing written notice to the  
2003 certificate holder, may cancel a preneed contract within 30  
2004 days of the date that the contract was executed provided that  
2005 the funeral merchandise and funeral services have not yet been  
2006 used. Upon providing the notice, the purchaser shall be  
2007 entitled to a complete refund of the amount paid, except for  
2008 the amount allocable to any funeral merchandise or funeral  
2009 services that have been used, and shall be released from all  
2010 obligations under the contract. This subsection shall apply to  
2011 all items that are purchased as part of a preneed contract.

2012 (b) After 30 days from the date the preneed contract  
2013 was executed, a purchaser, by providing written notice to the  
2014 certificate holder, may cancel the funeral services, funeral  
2015 merchandise, facilities, and cash advance items portions of a  
2016 preneed contract at any time, and shall be entitled to the



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2017 refund defined in the preneed contract allocable to those  
2018 items. Any accumulated earnings allocable to the preneed  
2019 contract shall be paid to the certificate holder upon the  
2020 cancellation.

2021 (c) Upon breach of contract or failure of the  
2022 certificate holder to provide funeral merchandise or services  
2023 under a preneed contract, the contract purchaser shall be  
2024 entitled to a refund of 100 percent of all money paid on the  
2025 contract. The refund shall be made within 30 days after  
2026 receipt by the certificate holder of the contract purchaser's  
2027 written request for refund.

2028 (d) If a purchaser is 90 days past due in making  
2029 payments on a preneed contract, the contract shall be  
2030 considered to be in default, and the certificate holder shall  
2031 be entitled to cancel the contract and withdraw all funds in  
2032 trust. Upon making the withdrawal, the certificate holder  
2033 shall refund to the purchaser the amount defined in the  
2034 preneed contract in the event of default of the purchaser,  
2035 provided that the certificate holder has provided the  
2036 purchaser with 30 days' written notice of its intention to  
2037 exercise any of its rights under this provision.

2038 (e) All preneed contracts are cancelable and revocable  
2039 as provided in this section during the lifetime of the  
2040 purchaser, provided that a preneed contract does not restrict  
2041 any contract purchaser who is a qualified applicant for, or a  
2042 recipient of, supplemental security income, temporary cash  
2043 assistance, or Medicaid from making his or her contract  
2044 irrevocable.



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2045 (f) In the event that the preneed contract is made  
2046 irrevocable pursuant to subsection (e), ~~the purchaser or~~ the  
2047 authorizing agent shall have the right to appoint a provider  
2048 other than the seller of the preneed contract. In the event  
2049 that a provider is appointed pursuant to this subsection, the  
2050 seller shall transfer to the appointed provider the amount  
2051 paid by the purchaser to the seller and those amounts  
2052 deposited into trust, less a reasonable transfer fee  
2053 determined by the ~~seller~~ board. In the event the preneed  
2054 contract was funded by an insurance or annuity policy, the  
2055 seller shall cancel and relinquish any assignment of benefits  
2056 or beneficiary status under the policy or annuity contract,  
2057 and deliver the policy, if in the custody of the preneed  
2058 seller, to the policy owner or his or her legal  
2059 representative, and the seller may collect a reasonable  
2060 transfer fee as determined by rule of the board. No transfer  
2061 hereunder shall occur without the acceptance of the appointed  
2062 provider.

2063 (g) All refunds required to be made under this section  
2064 to a purchaser who has canceled a contract must be made within  
2065 30 days after the date the written notice of cancellation is  
2066 received by the certificate holder."

2067 "~~§27-17A-34~~§34-13-234

2068 (a) Disbursement of funds discharging any preneed  
2069 contract for funeral services or funeral merchandise fulfilled  
2070 after May 1, 2002, shall be made by the trustee to the  
2071 certificate holder upon receipt by the trustee of a  
2072 certification of the certificate holder that the preneed



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2073 contract has been performed in whole or in part or the preneed  
2074 contract has been cancelled. Before the trustee may disburse  
2075 any trust funds, the certificate holder shall provide to the  
2076 trustee a death certificate or other valid proof of death, a  
2077 letter from the preneed contract holder cancelling the preneed  
2078 contract or valid proof the contract has been cancelled in  
2079 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof  
2080 the merchandise has been delivered and installed, and services  
2081 have been performed. Any trustee accepting preneed contract  
2082 proceeds under this ~~article~~ chapter may rely upon the  
2083 certification of the certificate holder accompanied by the  
2084 required proof, and shall not be liable to anyone for such  
2085 reliance. If the contract is only partially performed, the  
2086 disbursement shall only cover that portion of the contract  
2087 performed. In the event of any contract default by the  
2088 contract purchaser, or in the event that the funeral  
2089 merchandise or funeral service contracted for is not provided,  
2090 the trustee shall return, within 30 days after its receipt of  
2091 a written request therefor, 100 percent of the funds deposited  
2092 into the trust on the contract and the income and accretion  
2093 thereon to the certificate holder or to its assigns, subject  
2094 to Section ~~27-17A-33~~ 34-13-233.

2095 (b) For all contracts effective on or after January 1,  
2096 2015, the amount that may be withdrawn from the trust upon  
2097 fulfillment or cancellation of any particular preneed contract  
2098 may not exceed the amount attributable to that preneed  
2099 contract in proportion to the total amount held in trust for  
2100 all preneed contracts as of the date of withdrawal. For all



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2101 contracts in effect before January 1, 2015, the valuation of  
2102 each contract and the amount that may be withdrawn from the  
2103 trust may be calculated using any valuation method that had  
2104 been approved by the ~~commissioner or the department~~  
2105 Commissioner or the Department of Insurance before January 1,  
2106 2015."

2107 Section 8. The following heading is added to Division  
2108 4, commencing with Section 34-13-260, of Article 5, Chapter  
2109 13, Title 34, Code of Alabama 1975:

2110 "Division 4. Cemetery Merchandise and Services Trust  
2111 Fund."

2112 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,  
2113 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,  
2114 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,  
2115 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of  
2116 the Code of Alabama 1975, are amended and renumbered as  
2117 Division 4 of Article 5 of Chapter 13 of Title 34, Code of  
2118 Alabama 1975, to read as follows:

2119 "~~§27-17A-40~~§34-13-260

2120 To comply with the trust requirement of subsection (a)  
2121 of Section ~~27-17A-13~~ 34-13-194, all certificate holders who  
2122 are cemetery authorities providing preneed contracts for  
2123 cemetery services or cemetery merchandise shall be subject to  
2124 this ~~article~~ chapter."

2125 "~~§27-17A-41~~§34-13-261

2126 (a) Any person who receives or collects any funds on  
2127 account of a preneed contract in this state for cemetery  
2128 services or cemetery merchandise, or both, entered into after



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2129 May 1, 2002, shall have the obligation to pay over and  
2130 contribute into a trust fund as hereinafter described, those  
2131 amounts or proportions of the funds as hereinafter provided.

2132 (b) Whether or not the preneed contract provides for  
2133 cemetery merchandise or cemetery services, or any combination  
2134 thereof, the trust fund shall be referred to in this section  
2135 as the Cemetery Merchandise and Services Trust Fund.

2136 (c) The trustee of the Cemetery Merchandise and  
2137 Services Trust Fund shall be qualified as such within the  
2138 definition of the trustee.

2139 (d) The trustee shall take title to the property  
2140 conveyed to the Cemetery Merchandise and Services Trust Fund  
2141 subject to this section.

2142 (e) The contract purchaser shall have no interest  
2143 whatsoever in, or power whatsoever over, the funds deposited  
2144 in the Cemetery Merchandise and Services Trust Fund.

2145 (f) The party contracting to deliver the cemetery  
2146 merchandise or cemetery services or cash advances, whether or  
2147 not a preneed provider, shall be referred to in this section  
2148 as the "seller."

2149 (g) The seller shall be the beneficiary of the Cemetery  
2150 Merchandise and Services Trust Fund."

2151 "~~§27-17A-42~~§34-13-262

2152 (a) The obligation of the seller under a preneed  
2153 contract shall be to make contributions into the Cemetery  
2154 Merchandise and Services Trust Fund in accordance with the  
2155 following formulae:

2156 (1) With respect to all cemetery merchandise, 110



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2157 percent of wholesale cost.

2158 (2) With respect to outer burial containers, 60 percent  
2159 of the purchase price specified in the preneed contract.

2160 (3) With respect to cemetery services, 60 percent of  
2161 the purchase price specified in the preneed contract.

2162 (4) With respect to all cash advance items sold, 100  
2163 percent of the purchase price specified for the same in the  
2164 preneed contract.

2165 (5) With respect to caskets, 75 percent of the purchase  
2166 price.

2167 (b) All contributions shall be made within 30 days  
2168 after the end of the calendar month in which the preneed  
2169 contract is paid in full, unless, prior to that time, all  
2170 liabilities of the seller under the preneed contract to  
2171 deliver the specific cemetery merchandise or cemetery  
2172 services, or both, or the specific cash advances, identified  
2173 by the preneed provider as properly allocated to the payment,  
2174 have been satisfied, or the preneed contract is validly  
2175 cancelled.

2176 (c) For all preneed contracts entered into on or after  
2177 January 1, 2015, all contributions shall be made not later  
2178 than 30 days after the end of the calendar month in which the  
2179 sum of the monies collected on the preneed contract exceeds  
2180 the amount that is not required to be contributed as  
2181 determined under subsection (a), unless, prior to that time,  
2182 all liabilities of the seller under the preneed contract have  
2183 been satisfied, or the preneed contract is validly cancelled.  
2184 Further required trust contributions on the contract shall



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2185 thereafter be made not later than 30 days after the end of the  
2186 calendar month in which each contract payment is collected by  
2187 the seller.

2188 (d) The trustee shall invest and reinvest the Cemetery  
2189 Merchandise and Services Trust Fund.

2190 (e) The trustee shall make regular evaluations of the  
2191 fair market value of assets held in and liabilities, if any,  
2192 of the Cemetery Merchandise and Services Trust Fund and  
2193 provide a report of the evaluations to the seller at least  
2194 quarterly. Upon receipt of each quarterly report, the seller  
2195 may submit to the trustee a written and detailed analysis  
2196 concerning the balance of funds in the Cemetery Merchandise  
2197 and Services Trust Fund, certified under oath as being true  
2198 and correct upon information and belief by a responsible  
2199 officer of the seller.

2200 (f) While the obligation of the seller to make  
2201 contributions to the Cemetery Merchandise and Services Trust  
2202 Fund is set forth in this section, the obligation of the  
2203 seller at the time of making certain withdrawals from the  
2204 Cemetery Merchandise and Services Trust Fund as herein  
2205 provided for shall be calculated with respect to the current  
2206 wholesale cost of cemetery merchandise and current retail  
2207 price of cemetery services and cash advances at the time of  
2208 withdrawal. If the fair market value as reported by the  
2209 trustee exceeds 110 percent of the total of the following, the  
2210 seller shall be entitled to withdraw and retain from the  
2211 merchandise trust fund, the excess funds therein: 110 percent  
2212 of the current wholesale cost of the liability to deliver all





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2213 cemetery merchandise, 60 percent of the current retail price  
2214 for all cemetery services, 60 percent of the current retail  
2215 price of outer burial containers, 75 percent of the current  
2216 retail price of caskets, and 100 percent of the current retail  
2217 price of all cash advances, for the total of all preneed  
2218 contracts for which the purchasers have paid in full, all  
2219 calculated as of the time of withdrawal; and concerning the  
2220 total of all preneed contracts for which the purchasers have  
2221 not paid in full, 25 percent of the total of the following:  
2222 110 percent of the current wholesale cost of the liability to  
2223 deliver all cemetery merchandise, 60 percent of the current  
2224 retail price for all cemetery services, and 100 percent of the  
2225 current retail price of all cash advances, all calculated as  
2226 of the time of withdrawal.

2227 (g) At least annually the seller shall make the  
2228 aforesaid analysis and certification and provide the same to  
2229 the trustee. If the certification discloses that the fair  
2230 market value of the Cemetery Merchandise and Services Trust  
2231 Fund is less than 100 percent of the aggregate calculated  
2232 amount the seller shall from its own funds contribute to the  
2233 Cemetery Merchandise and Services Trust Fund within the 12  
2234 months succeeding the annual computation the amount necessary  
2235 to restore the trust fund to an amount equal to not less than  
2236 100 percent of the aggregate amount so calculated."

2237 "~~§27-17A-43~~§34-13-263

2238 (a) Upon cancellation of a preneed contract by mutual  
2239 agreement between the seller and purchaser, or upon unilateral  
2240 cancellation of a preneed contract by the seller by reason of



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2241 default on the part of the purchaser, or other valid  
2242 cancellation by reason of transfers to another seller or  
2243 otherwise, the seller ~~may~~, upon submission of a certification  
2244 under oath by a responsible officer of the seller to the  
2245 trustee, may withdraw from the Cemetery Merchandise and  
2246 Services Trust Fund and retain an amount equal to the amount  
2247 of all funds contributed to the trust fund with respect to the  
2248 preneed contract. Any trustee accepting preneed contract  
2249 proceeds under this ~~article~~ chapter may rely on the seller's  
2250 certification under oath as required herein to be made, and  
2251 shall not be liable to anyone for such reliance.

2252 (b) At such time as the seller undertakes to perform  
2253 its obligations under a preneed contract by delivery or  
2254 installation, or both, of cemetery merchandise and the  
2255 provision of cemetery services and disbursement on account of  
2256 cash advances, or otherwise, upon certification to the trustee  
2257 under oath by a responsible officer of the seller that the  
2258 obligations of the seller under the contract have been  
2259 completely fulfilled, the seller may withdraw from the  
2260 Cemetery Merchandise and Services Trust Fund and retain an  
2261 amount equal to the current wholesale cost to the fund with  
2262 respect to the preneed contract.

2263 (c) At such time as the seller has fulfilled all of its  
2264 obligations under all preneed contracts with respect to which  
2265 funds have been contributed to the trust fund, and  
2266 certification under oath to the trustee by a responsible  
2267 officer of the seller of those facts, the seller may withdraw  
2268 from the trust fund and retain all of the remaining assets



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2269 thereof."

2270 "~~§27-17A-44~~§34-13-264

2271 If the amounts paid by the purchaser under a preneed  
2272 contract for cemetery merchandise have previously been  
2273 deposited in trust, the seller may withdraw the principal  
2274 amount there, at such time as the cemetery merchandise is  
2275 delivered or installed or, if comprised of materials designed  
2276 to withstand prolonged, protected storage without  
2277 deterioration, the merchandise is placed in storage with a  
2278 responsible third party bonded and insured for the wholesale  
2279 value thereof and evidenced by a receipt specifically  
2280 identifying the item, the specific preneed contract, the  
2281 location of the item, and the identity and address of the  
2282 bonding and insuring parties. For purposes of this section  
2283 only, caskets and alternative containers may not be held in  
2284 storage by the seller or a third party storage facility prior  
2285 to the death of the funeral beneficiary."

2286 "~~§27-17A-45~~§34-13-265

2287 An endowment care fund and all payments or  
2288 contributions to it are expressly permitted as and for  
2289 charitable and eleemosynary purposes. No payment, gift, grant,  
2290 bequest, or other contribution for endowment care is invalid  
2291 by reason of any indefiniteness or uncertainty of the persons  
2292 designated as beneficiaries in the instruments creating the  
2293 fund, nor is the fund or any contributions to it invalid as  
2294 violating any law against perpetuities, or the suspension of  
2295 the power of alienation of title to property."

2296 "~~§27-17A-46~~§34-13-266



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2297 Any cemetery now existing or hereafter established,  
2298 excluding those operated by governmental agencies or religious  
2299 institutions, ~~shall be~~ may be qualified as an endowment care  
2300 cemetery, except those cemeteries which do not charge fees or  
2301 sell plots, interment rights, or any related cemetery."

2302 "~~§27-17A-47~~§34-13-267

2303 (a) Every cemetery authority operating an endowment  
2304 care cemetery shall establish an endowment care fund which  
2305 shall be placed with and held by a bank, trust company,  
2306 savings and loan association, or other financial institution  
2307 authorized to provide trust services under Title 5, as  
2308 amended, or under the applicable laws of the United States or  
2309 any other state, or a board of trustees, consisting of at  
2310 least three members, who shall reside in the State of Alabama,  
2311 one of whom is engaged in outside cemetery management, and  
2312 each of whom shall be bonded to honestly perform the duties of  
2313 trustee under a formal trust agreement.

2314 (b) Except as specifically provided in this subsection,  
2315 commencing on July 1, 2014, a person serving on a board of  
2316 trustees or cemetery authority may not also serve as a trustee  
2317 of an endowment care fund for the cemetery authority. A board  
2318 of trustees in existence on July 1, 2014, may continue to  
2319 serve as the trustee of an endowment care fund if the board of  
2320 trustees otherwise complies with this subsection. Unless  
2321 exempted by the ~~commissioner~~ board pursuant to this  
2322 subsection, on or before January 1, 2015, each member of a  
2323 board of trustees in existence on July 1, 2014, shall furnish  
2324 the bond required by subsection (a) in the greater of one



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2325 hundred thousand dollars (\$100,000) or the amount in each  
2326 endowment care fund for which the board of trustees acts as  
2327 trustee as of December 31, 2014. Thereafter, the amount of the  
2328 bonds shall be increased on January 1 of each succeeding year  
2329 to equal the amount in each endowment care fund as of the  
2330 immediately preceding December 31. The ~~commissioner~~ board  
2331 shall exempt a board of trustees from the bond requirement if  
2332 the board of trustees provides to the ~~commissioner~~ board an  
2333 annual audit report that satisfies all of the following  
2334 criteria:

2335 (1) The report is prepared by a certified public  
2336 accountant authorized to practice in Alabama.

2337 (2) The report evidences that the review made the  
2338 subject of the report by the accountant encompasses each  
2339 endowment care fund for which the board of trustees acts as  
2340 trustee.

2341 (3) The report notes relating to the endowment care  
2342 fund or funds are in a form that is reasonably acceptable to  
2343 the ~~commissioner~~ board.

2344 (4) The report does not evidence any material violation  
2345 of or noncompliance with this chapter relating to an endowment  
2346 care fund.

2347 (c) The corporate trustee or board of trustees shall be  
2348 referred to as a qualified trustee. Unless otherwise specified  
2349 in this ~~article~~ chapter or in the terms of the trust  
2350 instrument, the trustee of any trust established under or  
2351 pursuant to this ~~article~~ chapter shall have all powers granted  
2352 to trustees under Article 14 of Chapter 3 of Title 19. The



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2353 incorporation herein of such powers shall not be deemed to  
2354 imply any duties of trustees of trusts established under or  
2355 pursuant to this ~~article~~ chapter not expressly delineated in  
2356 this ~~article~~ chapter.

2357 (d) The cemetery authority may employ a person to  
2358 advise the trustee in the management of the fund.

2359 (e) The cemetery authority may enter into a contract  
2360 with the qualified trustee for the management and investment  
2361 of the endowment care fund, which contract may provide for the  
2362 payment of income from the fund of reasonable fees or  
2363 commissions to the trustee, and its reasonable expenses for  
2364 administering the trust.

2365 (f) As often as ~~he or she~~ the board may deem necessary,  
2366 the ~~commissioner~~ board may examine the records or facilities,  
2367 or both, of any cemetery authority operating an endowment care  
2368 cemetery."

2369 "~~§27-17A-48~~ §34-13-268

2370 (a) Each cemetery authority shall comply with this  
2371 chapter and maintain at each place of business a list of the  
2372 names and addresses of its owners and directors, which shall  
2373 be available to the public.

2374 (b) Each cemetery authority shall maintain a record of  
2375 all ~~property~~ interment space owners by name and last known  
2376 address with a description of merchandise and location of  
2377 burial lots, crypts, or niches and the records shall be on a  
2378 form or in a format prescribed by the board and shall detail  
2379 all information required by the board. A plat map shall be  
2380 maintained for each cemetery location at the cemetery business



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2381 office. A book or file shall be kept as to the date, location  
2382 by lot, and space number of each person interred or entombed  
2383 in the cemetery. A written copy of the cemetery rules and  
2384 regulations shall be maintained at each location and made  
2385 available to the public upon request.-"

2386 "~~§27-17A-49~~§34-13-269

2387 (a) From the sale price of each plot, crypt, or niche  
2388 sold by the cemetery authority, of an endowment care cemetery,  
2389 it shall pay an amount, not less than as determined in  
2390 accordance with the following schedule, to the trustee of the  
2391 endowment care fund, which payment shall be paid over to the  
2392 trustee not more than four months after the close of the month  
2393 in which the total or final payment on the sale has been  
2394 received:

2395 (1) Fifteen percent of the ~~sale~~ net sales price of each  
2396 grave or lawn crypt space.

2397 (2) Five percent of the ~~sale~~ net sales price of each  
2398 mausoleum crypt or niche.

2399 (3) If a cemetery donates or gives a free space,  
2400 mausoleum, or niche, a minimum of fifty dollars (\$50) shall be  
2401 paid to the endowment care fund.

2402 ~~(3)~~ (4) The amount received for special care funds,  
2403 gifts, grants, contribution devises, or bequests made with  
2404 respect to the separate or special care of a particular lot,  
2405 grave, crypt, niche, mausoleum, monument, or marker or that of  
2406 a particular family, as distinguished from the general endowed  
2407 care of a cemetery or of a garden.

2408 (b) In addition to subsection (a), a cemetery authority



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2409 may receive, and transfer to the trustee, as a part of or  
2410 incident to the endowment care fund, any property, real,  
2411 personal, or mixed, bequeathed, devised, given, or otherwise  
2412 contributed to it for endowment care purposes. Any contractual  
2413 endowment care deposits shall fall under this ~~article~~ chapter.

2414 (c) Any cemetery authority which is organized and  
2415 engaged in business prior to May 1, 2002, shall qualify as an  
2416 endowment care cemetery if the following occur:

2417 (1) Not already placed, it shall within 90 days of May  
2418 1, 2002, have placed the entire principal of any endowment  
2419 care fund in its possession, custody, or control, into the  
2420 hands of a qualified trustee designated by it, to be  
2421 administered as set forth in this ~~article~~ chapter; and  
2422 principal of its endowment care fund, or the aggregate  
2423 principal of its endowment care funds, if more than one, shall  
2424 have a fair market value on either May 1, 2002, or on the date  
2425 of transfer to the trustee of not less than twenty-five  
2426 thousand dollars (\$25,000); or it shall substitute 25 percent  
2427 for each percentage of each sale for the next five years or  
2428 five thousand dollars (\$5,000) per year, whichever is greater,  
2429 until the balance of twenty-five thousand dollars (\$25,000) is  
2430 reached. In such case, the entire amount of twenty-five  
2431 thousand dollars (\$25,000) shall be paid into the fund before  
2432 the end of the fifth year, and no interest may be removed from  
2433 the fund until the twenty-five thousand dollars (\$25,000)  
2434 minimum has been reached.

2435 (2) It shall at all times after May 1, 2002, comply  
2436 with the minimum requirements for payments to the trustee for





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2437 endowment care.

2438 (d) Any cemetery authority organizing a cemetery after  
2439 May 1, 2002, whether it be by incorporation, association,  
2440 individually, or by any other means, or having its first  
2441 burial after May 1, 2002, before disposing of any burial lot  
2442 or right or making any sale thereof or making its first  
2443 burial, or both, shall cause to be deposited with a qualified  
2444 trustee, in cash, the sum of twenty-five thousand dollars  
2445 (\$25,000) in the endowment care fund.

2446 (e) When a cemetery authority has placed with a  
2447 trustee, pursuant to this ~~article~~ chapter, a sum of money in  
2448 excess of the aggregate which would be required only under  
2449 subsection (a), the cemetery authority shall not be required  
2450 under this ~~article~~ chapter to make further payments to the  
2451 trustee until such time thereafter as, taking into account all  
2452 sales of plots, crypts, and niches in the cemetery property  
2453 since the first of the sales, the aggregate of payments to the  
2454 trustee if made in accordance with subsection (a) would equal  
2455 the applicable minimum amount paid to the trustee under  
2456 subdivision (1) of subsection (c), or subsection (d) ~~of this~~  
2457 ~~section~~.

2458 (f) Any deposit previously made, or represented to be  
2459 made to an existing endowment care fund which exceeds 10  
2460 percent of the gross selling price of all plots, crypts, and  
2461 niches sold since representation of endowment care shall be  
2462 made a permanent part of the endowment care fund and  
2463 transferred to the qualified trustee under this ~~article~~  
2464 chapter."



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2465 "~~§27-17A-50~~§34-13-270

2466 (a) No cemetery authority may directly or indirectly  
2467 require or direct the investment, reinvestment, or retention  
2468 by a qualified trustee of any part of an endowment care trust  
2469 in any asset or business in which the cemetery authority or  
2470 any officer, director, owner, partner, or employee of the  
2471 cemetery authority has a financial interest. Nothing contained  
2472 in this subsection shall prevent the trustee, subject to the  
2473 provisions regarding investment and reinvestment of the trust  
2474 estate as are contained in the governing instrument creating  
2475 the trust, from investing, reinvesting, or retaining any asset  
2476 or business in which the cemetery authority or any officer,  
2477 director, owner, partner, or employee of the cemetery  
2478 authority has an insubstantial or nonmaterial financial  
2479 interest, provided that the trustee, in the exercise of the  
2480 trustee's discretion, deems the investment, reinvestment, or  
2481 retention to be for the best interest of the trust estate.

2482 (b) The net income from the endowment care fund, to the  
2483 extent that the same is distributed from the fund, shall be  
2484 used exclusively for covering the costs of endowment care of  
2485 the cemetery.

2486 (c) For the purposes of this section, net income does  
2487 not include realized or unrealized capital gains or losses.  
2488 All realized capital gains and losses shall be recorded to  
2489 corpus, which is the sum of deposits made by a cemetery  
2490 authority into an endowment care fund, pursuant to Section  
2491 ~~27-17A-49~~ 34-13-269, and all realized capital gains or losses.  
2492 Capital gains taxes, if any, may be paid from the corpus.



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2493 Unrealized capital gains and losses, if any, shall be recorded  
2494 as an adjustment to the fair market value of the endowment  
2495 care fund."

2496 "~~§27-17A-51~~§34-13-271

2497 The trustee shall not be required to inquire into the  
2498 propriety of the expenditures made by the cemetery authority  
2499 in connection with endowment care of the cemetery, and it  
2500 shall not be held responsible in any manner whatsoever for and  
2501 on account of payments of the income from the endowment care  
2502 fund made to the cemetery authority."

2503 "~~§27-17A-52~~§34-13-272

2504 The trustee ~~shall~~, not less than annually, shall file  
2505 with the cemetery authority an account which shall include a  
2506 complete disclosure of all activity since the previous account  
2507 and a statement detailing fund investments."

2508 "~~§27-17A-53~~§34-13-273

2509 To the extent that any endowment care trust existing on  
2510 May 1, 2002, includes investments or assets, the retention of  
2511 which the trustee in the free exercise of its discretion deems  
2512 not in the best interest of the trust estate, the trustee  
2513 shall dispose of the investments or assets as soon as  
2514 practicable without undue sacrifice to the trust estate, and  
2515 in any event within two years after May 1, 2002."

2516 "~~§27-17A-54~~§34-13-274

2517 An annual report of the endowment care fund shall be  
2518 made to the ~~commissioner~~ board by each cemetery authority  
2519 within 90 days of the close of each calendar year. This report  
2520 shall include the qualified trustee's name or names, the bond



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2521 numbers if individual trustees or the name and address of the  
2522 financial institution in which the fund is maintained, and the  
2523 affidavit of the cemetery authority affirming compliance with  
2524 this ~~article~~ chapter. Prior to the sale or transfer of a  
2525 cemetery, the cemetery authority shall report and document to  
2526 the ~~commissioner~~ board that the endowment care fund is  
2527 currently funded in accordance with this ~~article~~ chapter."

2528 "~~§27-17A-55~~§34-13-275

2529 A cemetery authority shall start construction of that  
2530 section of a mausoleum or bank of below-ground crypts in which  
2531 sales, contracts for sale, reservations for sale, or  
2532 agreements for sale are being made, within five years after  
2533 the date of the first sale or when 75 percent of the mausoleum  
2534 or below-ground crypts have been sold and the purchase price  
2535 has been received, whichever occurs first. The construction  
2536 shall be completed within six years after the date of the  
2537 first sale made. Extensions for completion, not to exceed one  
2538 year, may be granted by the ~~commissioner~~ board for good cause  
2539 shown. If the units have not been completely constructed at  
2540 the time of need or the time specified herein, unless  
2541 otherwise specified in the preneed contract, all monies paid  
2542 shall be refunded upon request, plus interest earned thereon  
2543 if deposited by the cemetery authority in an escrow or trust  
2544 fund, and if not so deposited in an escrow or trust fund  
2545 earning interest, then plus interest in an amount equal to the  
2546 interest or discount which would have been earned thereon had  
2547 the funds been invested in United States Treasury Bills having  
2548 a 90-day maturity."



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2549 "~~§27-17A-56~~§34-13-276

2550 (a) ~~Cemetery~~ Each cemetery shall adopt rules and  
2551 regulations ~~are adopted~~ for the mutual protection of the  
2552 cemetery owners and the owners of interment rights in the  
2553 cemetery. All owners of interment rights and other persons  
2554 within the cemetery shall be subject to these rules and  
2555 regulations as they now exist and as they may be amended or  
2556 altered by the cemetery. The cemetery authority ~~has the right~~  
2557 ~~to~~ shall enforce these rules and regulations. ~~The cemetery~~  
2558 ~~authority expressly reserves the right~~ and, at any time and  
2559 without prior notice to any owners, ~~to~~ may adopt new rules and  
2560 regulations or to amend, modify, or repeal any ~~section,~~  
2561 ~~paragraph, or sentence of these~~ rules and regulations.

2562 (b) This section shall not apply to the officers,  
2563 directors, shareholders, partners, employees, agents, or  
2564 representatives of a cemetery authority who intentionally  
2565 commit an act of vandalism or other illegal act. -"

2566 "~~§27-17A-57~~§34-13-277

2567 The ~~commissioner~~ board shall have the same jurisdiction  
2568 over funeral establishments, funeral directors, cemetery  
2569 authorities, or third party sellers who sell preneed contracts  
2570 without a preneed certificate of authority as ~~he or she~~ the  
2571 board has over those preneed sellers who possess a preneed  
2572 certificate of authority."

2573 Section 10. Beginning with the 2024 fiscal year, the  
2574 Department of Insurance may transfer to the Alabama Board of  
2575 Funeral Service and Cemetery Service quarterly, for deposit by  
2576 the board into the Alabama Board of Funeral Services Fund, the



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2577 total amount of three hundred thousand dollars (\$300,000) per  
2578 fiscal year, to defray costs associated with the  
2579 administration and operation of the Alabama Preneed Funeral  
2580 and Cemetery Act of 2023 by the board. Unless extended by an  
2581 act of the Legislature, this section shall be repealed at the  
2582 end of the 2027 fiscal year.

2583           Section 11. Although this bill would have as its  
2584 purpose or effect the requirement of a new or increased  
2585 expenditure of local funds, the bill is excluded from further  
2586 requirements and application under Section 111.05 of the  
2587 Constitution of Alabama of 2022, because the bill defines a  
2588 new crime or amends the definition of an existing crime.

2589           Section 12. This act shall become effective on the  
2590 October 1, 2023, following its passage and approval by the  
2591 Governor, or its otherwise becoming law.