

SB131 INTRODUCED



1 D78YTH-1

2 By Senator Figures

3 RFD: Fiscal Responsibility and Economic Development

4 First Read: 22-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.