

1 HB338
2 216213-1
3 By Representative Brown (K)
4 RFD: Boards, Agencies and Commissions
5 First Read: 15-FEB-22

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

11 This bill would provide for the licensing
12 and regulation of cemetery authorities and
13 cemeteries by the board.

14 Amendment 621 of the Constitution of Alabama
15 of 1901, now appearing as Section 111.05 of the
16 Official Recompilation of the Constitution of
17 Alabama of 1901, as amended, prohibits a general
18 law whose purpose or effect would be to require a
19 new or increased expenditure of local funds from
20 becoming effective with regard to a local
21 governmental entity without enactment by a 2/3 vote
22 unless: it comes within one of a number of
23 specified exceptions; it is approved by the
24 affected entity; or the Legislature appropriates
25 funds, or provides a local source of revenue, to
26 the entity for the purpose.

1 The purpose or effect of this bill would be
2 to require a new or increased expenditure of local
3 funds within the meaning of the amendment. However,
4 the bill does not require approval of a local
5 governmental entity or enactment by a 2/3 vote to
6 become effective because it comes within one of the
7 specified exceptions contained in the amendment.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 Relating to the Alabama Board of Funeral Service; to
14 amend Sections 34-13-20 and 34-13-111, Code of Alabama 1975;
15 to add Article 6, commencing with Section 34-13-300, to
16 Chapter 13, Title 34, Code of Alabama 1975; to provide for the
17 licensing and regulation of cemetery authorities and
18 cemeteries by the board; to make corresponding technical
19 changes; and to repeal Sections 27-17A-46, 27-17A-47, and
20 27-17A-48, Code of Alabama 1975, relating to endowment care
21 cemeteries, the establishment of an endowment care fund, and
22 the maintenance of records by a cemetery authority,
23 respectively, under the Cemetery Merchandise and Services
24 Trust Fund; and in connection therewith would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds within the meaning of Amendment 621
27 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official Recompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. 34-13-20 and 34-13-111 of the Code of
5 Alabama 1975, are amended to read as follows:

6 "§34-13-20.

7 "(a) There is established the Alabama Board of
8 Funeral Service, ~~consisting of nine members, each of whom.~~ The
9 members of the board shall be citizens of the United States
10 and residents of the State of Alabama.

11 "(b) The appointing authorities shall coordinate
12 their appointments to assure board membership is inclusive and
13 reflects the racial, gender, geographic, ~~urban/rural~~ urban,
14 rural, and economic diversity of the state.

15 "(c) Commencing on January 1, ~~2019~~ 2023, as the
16 terms of the members serving on the board on August 1, ~~2017~~
17 2022, expire, the professional membership of the board shall
18 be reconstituted to consist of ~~seven~~ nine professional members
19 and two consumer members.

20 "(1) Each professional member of the board shall be
21 a citizen of the United States, a resident of Alabama, and
22 licensed and in good standing with the board ~~as an embalmer or~~
23 ~~funeral director~~ at the time of appointment and during the
24 entire term of office. Professional members of the board shall
25 be appointed by the Governor pursuant to subsection (e). As
26 the terms of the members serving on the board on the effective
27 date of the act adding this sentence expire, the professional

1 membership of the board shall be appointed to reflect the
2 following:

3 "a. ~~Four~~ Three of the professional members of the
4 board shall hold a current license from the board to practice
5 embalming in the state, shall have been actively practicing
6 embalming in the state for the last 10 consecutive years
7 immediately preceding appointment, and shall be engaged in the
8 practice of embalming at the time of appointment to the board.

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

18 "Two of the professional members of the board
19 shall hold a current license from the board to practice as a
20 cemetery sales agent, shall have been actively engaged in
21 cemetery sales in the state for the last five consecutive
22 years immediately preceding appointment, and shall be an
23 operator of a cemetery in this state at the time of
24 appointment to the board. One of these two professional
25 members shall also hold a current certificate of authority to
26 sell preneed services and merchandise. The initial appointment
27 for one cemetery sales agent appointed pursuant to this

1 paragraph shall expire on December 31, 2025, and for the other
2 December 31, 2026. Thereafter, the cemetery sales agent
3 members shall serve pursuant to subsection (e).

4 "(2) Each consumer member of the board shall
5 represent the public in general and shall have been a citizen
6 of the United States and a resident of Alabama for the last 10
7 consecutive years immediately preceding appointment and during
8 the entire term of office. A consumer member of the board may
9 not have held, nor currently hold, a license or certification
10 issued by the board, be employed at any time by, or
11 professionally or financially associated with, the holder of a
12 license or certificate issued by the board, or be related
13 within the third degree of consanguinity or affinity to the
14 holder of a license or certificate issued by the board. One
15 consumer member of the board shall be appointed by the
16 Lieutenant Governor and one consumer member shall be appointed
17 by the Speaker of the House of Representatives pursuant to a
18 procedure adopted by rule of the board.

19 "(d) Commencing in October of ~~2018~~ 2022, and each
20 October thereafter of a year where at least one professional
21 member term on the board has expired, or is vacant for any
22 reason, all licensed funeral directors ~~and~~, licensed
23 embalmers, and licensed cemetery sales agents shall meet in
24 Montgomery, at a time and place fixed by the board, for the
25 purpose of nominating and submitting the names of three
26 licensed persons for each position on the board to the
27 Governor. The Governor shall promptly appoint one of the three

1 persons so nominated to serve as a professional member of the
2 board.

3 "(e) (1) Professional and consumer members of the
4 board shall serve staggered terms of four years each to
5 provide continuity of service on the board. If an appointment
6 is not made before the expiration of a term, the board member
7 then serving may continue to serve until a successor has been
8 appointed. A board member may not serve more than two full
9 consecutive terms on the board.

10 "(2) A board member who is appointed to fill a
11 vacancy which occurs before the expiration of the term of the
12 vacating member shall serve the remaining portion of the term
13 to which the former member was appointed. If a member is
14 appointed to fill an unexpired term of less than two years,
15 the time may not be counted toward the maximum eight years of
16 service.

17 "(3) Not more than one professional member of the
18 board may reside in the same district as created by Section
19 34-13-21. A cemetery sales agent may serve in the same
20 district as another board member. The nominating cemetery
21 sales agents shall coordinate their nominations to ensure that
22 one cemetery sales agent serving on the board resides within
23 the northern half of the state and one resides within the
24 southern half of the state, as divided by the board, and
25 neither may reside within the same congressional district.

26 "(4) At each meeting where nominations are made for
27 the professional members of the board, only one licensed

1 funeral director ~~or~~, licensed embalmer, or licensed cemetery
2 sales agent employed by the same funeral establishment or
3 cemetery may vote. Only licensed funeral directors and
4 embalmers may nominate and vote on board seats held by funeral
5 directors and embalmers pursuant to subsection (c) and only
6 licensed cemetery sales agents may nominate and vote on board
7 seats held by cemetery sales agents pursuant to subsection
8 (c).

9 " (f) (1) In accordance with applicable law, in
10 addition to a board member resigning from the board in
11 writing, a board member may be removed from the board for any
12 of the following grounds:

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

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

18 "c. A final adjudication or determination of guilt
19 by any lawful authority of the board member or sanction of the
20 board member for the violation of any law the board determines
21 is substantially related to any practice governed by this
22 chapter.

23 "d. The revocation or suspension of the license of a
24 professional member of the board.

25 "(2) Any board member who fails to qualify after
26 appointment shall automatically become ineligible to serve as
27 a member of the board and a new member, properly qualified,

1 shall be appointed in the same manner as the original
2 appointment and shall serve the remainder of the term of the
3 vacating board member.

4 "(3) If a consumer board member fails to attend two
5 or more meetings within a year, without a valid excuse as
6 determined by the board, he or she shall be removed from the
7 board. A new consumer board member shall be appointed in the
8 same manner as the original appointment and shall serve the
9 remainder of the term.

10 "§34-13-111.

11 "(a) No funeral establishment or branch thereof for
12 the preparation, disposition, and care of dead human bodies
13 shall be opened or maintained unless licensed by the board. No
14 funeral establishment or branch shall be moved without
15 obtaining a new funeral establishment license from the board.

16 "(b) Every funeral service, memorial service, or
17 committal service, or part thereof, that is conducted in
18 Alabama, for hire or for profit, shall be in the actual charge
19 and shall be under the direct supervision of a funeral
20 director who is licensed by the board, unless otherwise
21 provided for in this chapter or by rule of the board.

22 "(c) The board shall set a fee, not exceeding one
23 hundred fifty dollars (\$150), that shall be in addition to the
24 license fee for the first inspection of any funeral
25 establishment seeking a license under Section 34-13-72 made
26 for the purpose of determining whether the funeral
27 establishment has fulfilled the requirements for licensure

1 pursuant to this chapter. The board shall set a fee, not
2 exceeding one hundred fifty dollars (\$150), for each
3 reinspection necessitated by failure of any funeral
4 establishment to pass the first inspection. The board, or a
5 representative of the board, shall annually conduct at least
6 one unannounced inspection of each funeral establishment and
7 branch, with an inspection fee of not more than one hundred
8 dollars (\$100). The inspection fee shall be submitted to the
9 board within 45 days after the inspection. Any funeral
10 establishment that does not submit the inspection fee within
11 45 days shall be charged a late penalty fee, as established by
12 the board. A funeral establishment, or branch thereof, that is
13 used for the preparation, disposition, and care of dead human
14 bodies shall meet and conform to this chapter and to such
15 other lawful standards and requirements as may be determined
16 by rule of the board in furtherance of this chapter; and, for
17 failure to do so, the board may revoke the funeral
18 establishment license in accordance with the procedure set
19 forth in this chapter.

20 "(d) Applications for transfer of a license to
21 another location in the same county shall be made upon a form
22 furnished by the board and shall be accompanied by a fee of
23 not more than seventy-five dollars (\$75).

24 "(e) Any change in ownership of a funeral
25 establishment shall be immediately reported to the board on a
26 form provided by the board. The new owner of the establishment
27 shall comply with Section 34-13-112 and Section 34-13-113 and

1 shall provide to the board a signed copy of the asset purchase
2 agreement with dollar amounts redacted. The fee for a change
3 of ownership application is two hundred fifty dollars (\$250).

4 "(f) (1) Each funeral establishment operating under
5 this chapter shall pay, on a date prescribed by rule of the
6 board, a disposition fee not exceeding fifty dollars (\$50) for
7 each final disposition arranged or performed by the funeral
8 establishment. The disposition fee applies to all final
9 dispositions and may be collected directly from the consumer,
10 submitted to the board quarterly, and deposited into the
11 Alabama State Funeral Service Fund.

12 "(2) When a final disposition is not arranged by a
13 funeral establishment operating under this chapter, each
14 cemetery shall pay, on a date prescribed by rule of the board,
15 a disposition fee not exceeding fifty dollars (\$50) for each
16 final disposition arranged or performed by the out-of-state
17 funeral establishment. The disposition fee may be collected
18 directly from the consumer, submitted to the board quarterly,
19 and deposited into the Alabama State Funeral Service Fund.

20 "(3) Failure to remit a disposition fee as required
21 by this subsection shall result in disciplinary action by the
22 board pursuant to this chapter."

23 Section 2. A new Article 6, commencing with Section
24 34-13-300, is added to Chapter 13 of Title 34, Code of Alabama
25 1975, to read as follows:

26 ARTICLE 6. REGULATION OF CEMETERIES.

27 §34-13-300. Cemetery operations.

1 This article applies to cemetery authorities and
2 does not apply to any cemetery owned and operated by a
3 governmental agency or a religious institution and any
4 cemetery which does not charge fees or sell plots, internment
5 rights, or any related cemetery merchandise.

6 §34-13-301. Initial license; cemetery authority.

7 (a) No legal entity may operate a cemetery authority
8 without first obtaining a cemetery establishment license
9 issued by the board.

10 (b) An applicant for a cemetery establishment
11 license shall file a written application with the board on
12 forms provided by the board.

13 (c) A cemetery establishment license is not
14 transferable. At least 30 days before a cemetery authority
15 changes ownership, or before more than 50 percent change in
16 equity ownership occurs, the person acquiring the ownership or
17 control shall submit a completed application for a cemetery
18 establishment license to the board and shall satisfy the
19 ownership requirements provided in Section 34-13-302.

20 §34-13-302. Existing companies; effect of article.

21 (a) A cemetery authority existing on October 1,
22 2022, may continue in full force and effect after that date,
23 shall immediately apply for an establishment license, and
24 shall thereafter be operated in accordance with this article.

25 (b) Any person who operates a non-endowment care
26 cemetery shall register, apply for, and obtain an
27 establishment license from the board to operate the

1 non-endowment care cemetery. Thereafter, the non-endowment
2 care cemetery shall be operated in accordance with this
3 chapter.

4 (c) To obtain a license to operate a cemetery
5 authority, an applicant shall substantiate, to the
6 satisfaction of the board, the following:

7 (1) That the applicant is of good moral character
8 and shall submit to a criminal history background check
9 pursuant to subdivision (2).

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

1 considered in licensure decisions to the extent permissible by
2 all applicable laws.

3 (d) An applicant for an original or renewal license
4 to operate a cemetery authority shall submit all of the
5 following to the board:

6 (1) A completed application, including a copy of the
7 current rules of the non-endowment care cemetery.

8 (2) If requested by the board, a current plat of the
9 land utilized by the non-endowment care cemetery, showing the
10 location of the non-endowment care cemetery, and each burial
11 plot and mausoleum, including the status of each, and the
12 status of each interment space or burial chamber, and any
13 access roads to the non-endowment care cemetery.

14 (3) A schedule of all charges in accordance with
15 Section 8-30-2, and as required by board rule, detailing and
16 itemizing the retail cost of all products, interment rights,
17 and all merchandise and services offered by the cemetery
18 authority.

19 (4) Payment of any applicable fees. An application
20 to the board for an initial cemetery authority license shall
21 be accompanied by an application fee, in an amount to be
22 determined by the board, not to exceed one thousand dollars
23 (\$1,000). Thereafter, on or before September 1 of each year,
24 the licensee shall pay a license renewal fee, in an amount to
25 be determined by the board, not to exceed one thousand dollars
26 (\$1,000).

1 (5) A designation of a point of contact, including
2 the name of the general manager of the non-endowment care
3 cemetery. If this information should change at any time, the
4 new point of contact and general manager should be immediately
5 reported to the board on a form prescribed by the board.

6 (6) Evidence of satisfactory completion of an
7 inspection of the non-endowment care cemetery by the board.

8 (e) A non-endowment care cemetery shall publicly
9 display all current and valid licenses and a current schedule
10 of all charges.

11 (f) (1) The board may suspend or revoke a
12 non-endowment care cemetery establishment license if the board
13 determines that the continued operation of the cemetery
14 authority is hazardous to purchasers, beneficiaries, or the
15 people of this state.

16 (2) If the board determines that the continued
17 operation of the cemetery authority is hazardous to
18 purchasers, beneficiaries, or the people of this state, the
19 board may levy a fine, in an amount determined by the board,
20 not to exceed five hundred dollars (\$500) per day, and may
21 revoke the establishment license of the non-endowment care
22 cemetery until the board determines any hazardous conditions
23 are removed and resolved.

24 (g) In addition to any other penalty imposed by this
25 chapter, the board may levy a fine, not to exceed fifty
26 dollars (\$50) per day, for each day a cemetery authority fails
27 to file any reports or records as required by the board.

1 §34-13-303. Registration and licensing of existing
2 endowment care cemeteries.

3 (a) Any person who operates an endowment care
4 cemetery shall register, apply for, and obtain a cemetery
5 establishment license from the board to operate the endowment
6 care cemetery. Thereafter, the endowment care cemetery shall
7 be operated in accordance with this chapter.

8 (b) To obtain a license to operate as an endowment
9 care cemetery, an applicant shall substantiate, to the
10 satisfaction of the board, the following:

11 (1) That the applicant is of good moral character
12 and shall submit to a criminal history background check
13 pursuant to subdivision (2).

14 (2) An applicant for an endowment care cemetery
15 establishment license shall submit to the board, on a form
16 sworn to by the applicant, his or her name, date of birth,
17 Social Security number, and two complete sets of fingerprints
18 for completion of a criminal history background check. The
19 board shall submit the fingerprints to the Alabama State Law
20 Enforcement Agency for a state criminal history background
21 check. The fingerprints shall be forwarded by the agency to
22 the Federal Bureau of Investigation for a national criminal
23 history background check. Costs associated with conducting a
24 criminal history background check shall be paid by the
25 applicant. The board shall keep information received pursuant
26 to this subdivision confidential, except that information
27 received and relied upon in denying the issuance of an

1 endowment care cemetery establishment license may be disclosed
2 if necessary to support the denial. All character information,
3 including the information obtained through the criminal
4 history background checks, shall be considered in licensure
5 decisions to the extent permissible by all applicable laws.

6 (c) An applicant for an original or renewal
7 endowment care cemetery establishment license shall submit all
8 of the following to the board:

9 (1) A completed application, including a copy of the
10 current rules of the endowment care cemetery.

11 (2) A schedule of all charges in accordance with
12 Section 8-30-2, and as required by board rule, detailing and
13 itemizing the retail cost of all products, interment rights,
14 and all services offered by the cemetery authority.

15 (3) Payment of all applicable fees. An application
16 to the board for an initial license as an endowment care
17 cemetery shall be accompanied by an application fee, in an
18 amount to be determined by the board, not to exceed one
19 thousand dollars (\$1,000). Thereafter, on or before September
20 1 of each year, each licensed endowment care cemetery shall
21 pay a license renewal fee, in an amount to be determined by
22 the board, not to exceed one thousand dollars (\$1,000).

23 (4) A designation of a point of contact, including
24 the name of the general manager of the endowment care
25 cemetery. Any change in the designation of a point of contact
26 or the general manager shall be immediately reported to the
27 board on a form prescribed by the board.

1 (5) Evidence of satisfactory completion of an
2 inspection by the endowment care cemetery by the board.

3 (6) Verification, in a manner prescribed by the
4 board, that the endowment care trust fund of the endowment
5 care cemetery is active and in good standing.

6 (d) (1) The board may revoke, suspend, place on
7 probation, or refuse to renew the establishment license of the
8 endowment care cemetery, if the board determines that the
9 continued operation of the endowment care cemetery would be
10 hazardous to purchasers, beneficiaries, or the people of this
11 state.

12 (2) The board may levy a fine, in an amount
13 determined by the board, not to exceed five hundred dollars
14 (\$500) per day, until the board determines the hazardous
15 conditions are removed and resolved.

16 (e) In addition to any other penalty imposed by this
17 chapter, the board may levy a fine, not to exceed fifty
18 dollars (\$50) per day, for each day an endowment care cemetery
19 fails to file its annual reports as required by this chapter,
20 and the board may levy a fine, not to exceed fifty dollars
21 (\$50) per day, for each day an endowment care cemetery fails
22 to file the statement of activities of the endowment trust.

23 §34-13-304. Licensing a newly established cemetery
24 authority.

25 (a) No newly established cemetery authority may
26 operate, unless otherwise authorized by this chapter or rule

1 of the board, without first obtaining an establishment license
2 from the board.

3 (b) A legal entity wanting to establish a new
4 cemetery authority shall first file a written application with
5 the board, on forms provided by the board.

6 (c) Upon receipt of the application fee, in an
7 amount to be determined by the board, not to exceed one
8 thousand dollars (\$1,000), the board shall conduct an
9 investigation of the applicant that examines all of the
10 following criteria for approval of the application:

11 (1) The creation of a legal entity to conduct
12 cemetery business, and its proposed financial structure.

13 (2) Verification, in a manner prescribed by the
14 board, that the endowment care trust fund of the cemetery is
15 established in good standing.

16 (3) A plat of the land to be used for the cemetery,
17 showing the location of the cemetery and the access roads to
18 the cemetery.

19 (4) A schedule of all charges in accordance with
20 Section 8-30-2, and as required by board rule, detailing and
21 itemizing the retail cost of all products, interment rights,
22 and all merchandise and services to be offered by the cemetery
23 authority.

24 (5) Payment of all applicable fees.

25 (6) Evidence of satisfactory completion of an
26 inspection of the cemetery by the board.

1 (7) Submission of documentation from the governing
2 body of the municipality with jurisdiction over the property
3 in which the cemetery is to be located, certifying that the
4 applicant has satisfied all municipal and county commission
5 requirements to operate the cemetery, and that the plans for
6 the cemetery are in compliance with all municipal and county
7 zoning requirements.

8 (8) Submission of development plans that are
9 sufficient to ensure the community that the cemetery will
10 provide adequate cemetery services and that the property is
11 suitable for use as a cemetery.

12 (d) The board, upon receipt of all documents and
13 reports, shall grant or refuse to grant the authority to
14 organize a cemetery to the applicant based upon the criteria
15 set forth in this chapter or rule of the board.

16 (e) A newly established cemetery authority shall
17 publicly display all current and valid licenses pursuant to
18 this chapter or rule of the board.

19 (f) If the board decides to deny an application, the
20 board shall give written notice of that decision to the
21 applicant. The notice shall state a time and a place for a
22 hearing before the board and shall include a summary statement
23 of the reasons for the proposed denial. The notice shall be
24 mailed, by certified mail, to the applicant at the address
25 stated in the application at least 20 days before the date of
26 the scheduled hearing. The applicant shall pay the costs of
27 the hearing as assessed by the board, unless the applicant

1 notifies the board, by certified mail at least five days
2 before the date of the scheduled hearing, that the applicant
3 waives the hearing. An appeal of the decision of the board
4 shall be with the Circuit Court of Montgomery County.

5 (g) If the board decides to grant a cemetery
6 establishment license, the board shall give written notice of
7 that decision to the applicant. The notice shall also inform
8 the cemetery authority that a cemetery establishment license
9 to operate a cemetery shall be issued upon the completion of
10 all of the following:

11 (1) The establishment of an endowment care trust
12 fund, and submission to the board of a certificate from the
13 trust company certifying receipt of the initial deposit
14 required under this chapter.

15 (2) A description, by metes and bounds, of the
16 acreage tract of the proposed cemetery, together with
17 evidence, pursuant to a title insurance policy or
18 certification by an attorney, that the applicant is the owner
19 in fee simple of the tract of land.

20 (3) A plat of the cemetery, showing the number and
21 location of all lots surveyed and permanently staked for sale.

22 (4) Certification after an inspection by the board,
23 or a representative of the board, that at least two acres of
24 the proposed cemetery, including a paved road extending from a
25 public roadway to the developed section, are fully developed
26 and ready for burials.

1 (h) On or before September 1 of each year, each
2 licensed cemetery authority shall pay a license renewal fee,
3 in an amount determined by the board, not to exceed one
4 thousand dollars (\$1,000).

5 (i) The board may revoke, suspend, place on
6 probation, or refuse to renew a cemetery establishment license
7 if the board determines that the continued operation of the
8 cemetery authority would be hazardous to purchasers,
9 beneficiaries, or to the people of this state.

10 §34-13-305.

11 A legal entity or cemetery authority may not
12 represent to the public that it is operating as an endowment
13 care cemetery or perpetual care cemetery until it has received
14 a license from the board to operate as an endowment care
15 cemetery and has satisfied the endowment care trust provisions
16 specified in Section 34-13-306.

17 §34-13-306.

18 Any provision of law to the contrary
19 notwithstanding, if the board determines that the continued
20 operation of an endowment care cemetery is hazardous to
21 purchasers, beneficiaries, or the public, the board may direct
22 the trustee of the endowment care fund to release any or all
23 portions of funds, including any principal amounts held in the
24 endowment trust, to be distributed and released to the
25 cemetery authority for the sole purposes of eliminating the
26 hazardous conditions, and the board may adopt rules to ensure

1 the released endowment care funds are used for their intended
2 purposes and principal amounts are repaid.

3 §34-13-307. Designation and licensing of a general
4 manager.

5 (a) Each cemetery authority shall designate a
6 general manager, who shall be and remain employed by the
7 cemetery authority at a designated cemetery or cemeteries. The
8 general manager shall be licensed as a preneed sales agent, if
9 the cemetery authority has a certificate of authority, or a
10 cemetery sales agent in accordance with this chapter. A
11 general manager is responsible for all of the following at a
12 designated cemetery:

13 (1) Full charge, control, and supervision of all
14 activities performed on the premises and involving cemetery
15 services.

16 (2) Preparing or submitting all reports and
17 documents prescribed or required by the board.

18 (3) Reporting any significant changes in operations,
19 management, or pertinent information to the board.

20 (4) Assisting the board in conducting inspections of
21 the cemeteries.

22 (5) Ensuring all licenses relating to the operation
23 of each cemetery are renewed timely.

24 (b) A general manager may sell, offer, and execute
25 the sales of grave spaces, mausoleum crypts, niches, vaults,
26 or any other cemetery merchandise or services under any plan
27 authorized for the cemetery and on behalf of all cemetery

1 locations owned or operated by the sponsoring cemetery
2 authority.

3 (c) The sponsoring cemetery authority shall be
4 responsible for the activities of the general manager. A
5 cemetery authority shall be subject to discipline if any
6 person acting as a general manager violates this chapter or
7 rule of the board.

8 §34-13-308. Licenses for cemetery sales agents.

9 (a) A cemetery sales agent is a person licensed in
10 this state to sell cemetery services or cemetery merchandise.
11 No person shall offer to sell niches, memorials, vaults, or
12 any other cemetery merchandise or services under any plan
13 authorized for any cemetery, before obtaining a license as a
14 cemetery sales agent from the board.

15 (b) To obtain a license as a cemetery sales agent, a
16 person shall file a written application with the board on
17 forms prescribed by the board. The board may require whatever
18 information and documentation the board deems necessary to
19 protect the public interest.

20 (c) The requirements of this section are in addition
21 to the requirements provided in Chapter 30 of Title 8 for a
22 salesperson.

23 (d) The qualifications for licensure as a cemetery
24 sales agent are as follows:

25 (1) The applicant shall be at least 18 years of age.

26 (2) The applicant shall be in good standing with the
27 board.

1 (3) The applicant may not have any felony or
2 misdemeanor convictions that relate to any activity regulated
3 by this chapter or a crime involving moral turpitude, as
4 defined by this chapter.

5 (4)a. The applicant shall be of good moral character
6 and shall submit to a criminal history background check
7 pursuant to paragraph b.

8 b. The applicant shall submit to the board, on a
9 form sworn to by the applicant, his or her name, date of
10 birth, Social Security number, and two complete sets of
11 fingerprints for completion of a criminal history background
12 check. The board shall submit the fingerprints to the Alabama
13 State Law Enforcement Agency for a state criminal history
14 background check. The fingerprints shall be forwarded by the
15 agency to the Federal Bureau of Investigation for a national
16 criminal history background check. Costs associated with
17 conducting a criminal history background check shall be paid
18 by the applicant. The board shall keep information received
19 pursuant to this subdivision confidential, except that
20 information received and relied upon in denying the issuance
21 of a cemetery sales agent license may be disclosed if
22 necessary to support the denial. All character information,
23 including the information obtained through the criminal
24 history background checks, shall be considered in licensure
25 decisions to the extent permissible by all applicable laws.

26 (e) An application for licensure as a cemetery sales
27 agent shall be submitted to the board with an application fee,

1 in an amount to be determined by the board, not to exceed five
2 hundred dollars (\$500). The application shall contain, at a
3 minimum, all the following:

4 (1) The name, address, Social Security number, and
5 date of birth of the applicant and any other information the
6 board may reasonably require of the applicant.

7 (2) The name, address, and establishment license
8 number of the sponsoring cemetery authority.

9 (3) An affidavit, signed by the applicant, that the
10 applicant satisfies the requirements of this chapter.

11 (4) An affidavit, signed by the general manager of
12 the cemetery, stating all of the following:

13 a. That the cemetery authority has trained the
14 applicant in the provisions of this chapter relating to the
15 sale of cemetery services and merchandise, grave spaces,
16 mausoleum crypts, and niches.

17 b. That the cemetery authority has trained the
18 applicant in the provisions of the sales contracts of the
19 cemetery authority, and the nature of the burial rights sold
20 by the cemetery authority.

21 c. That the applicant is authorized to offer, sell,
22 and sign preneed sales contracts on behalf of the cemetery
23 authority, if the cemetery authority has a current and active
24 certificate of authority to sale preneed sales contracts.

25 (5) A statement indicating whether the applicant has
26 any type of working or agency relationship with any other
27 cemetery authority or funeral home.

1 (f) A cemetery sales agent may be registered as a
2 cemetery sales agent on behalf of more than one cemetery
3 authority, provided that he or she has received the written
4 consent of all cemetery authorities and has filed the written
5 consent with the board.

6 (g) A cemetery authority shall notify the board
7 within 30 days after sponsorship of a cemetery sales agent has
8 been terminated.

9 (h) A cemetery sales agent shall be affiliated with
10 the cemetery authority that he or she is representing.

11 (i) Upon receipt of an application that complies
12 with this section, the board shall issue a cemetery sales
13 agent license to the applicant. The board, by rule, shall
14 provide for the annual renewal of the license and shall charge
15 a renewal fee, in an amount to be determined by the board, not
16 to exceed five hundred dollars (\$500).

17 (j) If the board grants a cemetery sales agent
18 license, the board shall give written notice of that decision
19 to the applicant. A cemetery sales agent license shall be
20 issued to the applicant upon presentment to the board of a
21 duly executed statement of employment between the applicant
22 and the cemetery or cemeteries to be serviced by him or her.

23 (k) If the board denies an application for a
24 cemetery sales agent license, the board shall give written
25 notice of that decision to the applicant. The notice shall
26 state a time and a place for a hearing before the board and
27 shall include a summary statement of the reasons for the

1 denial. The notice shall be mailed, by registered or certified
2 mail, to the applicant at the address stated in the
3 application at least 30 days before the date of the scheduled
4 hearing. An appeal of the decision of the board shall be with
5 the Circuit Court of Montgomery County.

6 (l) The cemetery authority shall be responsible for
7 the activities of all cemetery sales agents and all employees
8 acting as cemetery sales agents, who are affiliated with the
9 cemetery authority and who perform any type of sales of grave
10 spaces, mausoleum crypts, or niches on behalf of the cemetery
11 authority. A cemetery authority shall be subject to discipline
12 if any person acting as a cemetery sales agent violates this
13 chapter or any rule of the board.

14 (m) A cemetery sales agent may sell, offer, and
15 execute the sales of grave spaces, mausoleum crypts, niches,
16 vaults, or any other cemetery merchandise or services under
17 any plan authorized for the cemetery and on behalf of all
18 cemetery locations owned or operated by the sponsoring
19 cemetery authority.

20 (n) An individual may begin operating as a cemetery
21 sales agent as soon as a completed application as a cemetery
22 sales agent is approved by the board.

23 §34-13-309. Application for a change of control;
24 filing fee.

25 A person who proposes to acquire ownership of more
26 than 50 percent of an existing cemetery authority, whether by
27 purchasing the capital stock of the cemetery authority,

1 purchasing an owner's interest in the cemetery authority, or
2 otherwise acting to effectively change the control of the
3 authority, shall first make application on a form prescribed
4 by the board for a certificate of approval for the proposed
5 change of control. The application shall contain the name and
6 address of each proposed new owner. The board shall issue a
7 certificate of approval only after the board determines that
8 the proposed new owners are qualified by good moral character,
9 experience, and financial responsibility to control and
10 operate the cemetery authority in a legal and proper manner,
11 and that the interest of the public generally will not be
12 jeopardized by the proposed change in control. An application
13 for approval of a change of control shall be completed and
14 accompanied by a filing fee, in an amount determined by the
15 board, not to exceed one thousand six hundred dollars
16 (\$1,600). The board may not approve any change of control
17 until the applicant has provided sufficient evidence that any
18 trust accounts, as required by this chapter or rule of the
19 board, are maintained and funded in the required amounts. If
20 the cemetery authority has posted a performance bond in lieu
21 of any trust accounts, as required by this chapter or rule of
22 the board, then the board may not approve any change of
23 control until the applicant has provided sufficient evidence
24 that the performance bond is being appropriately maintained
25 and is in an amount sufficient to cover all payments made
26 directly or indirectly by or on account of purchasers who have
27 not received the purchased property and services.

1 §34-13-310. Applications for license renewal.

2 All applications for a renewal license under this
3 chapter shall be submitted annually on or before September 1,
4 in the case of an existing cemetery authority. Before any sale
5 of cemetery property, in the case of a new cemetery authority,
6 or a change of ownership or control as provided in Section
7 34-13-305, an application for transfer and a new establishment
8 license shall be submitted and approved and a new license
9 issued.

10 §34-13-311. License not assignable or transferable.

11 No license issued pursuant to this chapter shall be
12 transferable or assignable and no licensee shall develop or
13 operate any cemetery, authorized by this chapter, under any
14 name or at any location other than that contained in the
15 application for the license.

16 §34-13-312. Individual sales contracts and
17 purchaser's endowment care and maintenance expectations.

18 At the time of making a sale or receiving the
19 initial sale deposit under this chapter, the cemetery
20 authority shall deliver to the person to whom the sale is
21 made, or who makes the deposit, both of the following:

22 (1) An instrument in writing, in a form approved by
23 the board, itemizing all merchandise and services sold and a
24 statement that the net income of the endowment care and
25 maintenance trust fund shall be used solely for the care and
26 maintenance of the cemetery, for reasonable costs of

1 administering the care and maintenance, and for reasonable
2 costs of administering the trust fund.

3 (2) A copy of the current rules of the cemetery
4 authority.

5 §34-13-313.

6 (a) The cemetery authority shall publicly display
7 all current and valid licenses as provided in this chapter and
8 a current schedule of charges shall be available upon request.

9 (b) In accordance with Section 8-30-2, each cemetery
10 organized and operating under the laws of this state shall
11 have a full and complete schedule of all charges for cemetery
12 services and cemetery merchandise, provided by the cemetery,
13 plainly printed or typewritten, maintained, made available to
14 consumers, and subject to inspection. A copy shall be kept at
15 the usual place for transacting the regular business of the
16 cemetery.

17 §34-13-314. Timely delivery of cemetery merchandise.

18 (a) The board may adopt rules to ensure the prompt
19 installation and setting of memorials, grave markers, head
20 stones, and other markers by requiring memorials, grave
21 markers, head stones, and other markers to be ordered and
22 installed in a timely manner, as defined by the board.

23 (b) The board may impose a fine, in an amount
24 determined by the board, not to exceed two hundred dollars
25 (\$200) per day for each violation, on any seller who violates
26 the rules adopted by the board pursuant to subsection (a).

1 §34-13-315. Authority of board to investigate
2 cemetery complaints, practices, and implement resolutions.

3 In addition to any power conferred on the board by
4 this chapter, the board shall have the following powers and
5 duties relating to the enforcement of this article and any
6 rule adopted pursuant to this article:

7 (1) To investigate, upon its own initiative or upon
8 a verified complaint in writing, the actions of any person
9 engaged in the business or acting in the capacity of a
10 licensee under this chapter. The board may suspend, revoke, or
11 place on probation the license of any licensee who, in
12 performing or attempting to perform any of the acts specified
13 in this article or rule of the board, the board determines has
14 done any of the following:

15 a. Failed to pay a required fee.

16 b. Failed to make a report required by this chapter
17 or rule of the board.

18 c. Failed to remit any required amount to the care
19 and maintenance trust fund, merchandise trust fund, or
20 pre-construction trust fund.

21 d. Made a substantial misrepresentation.

22 e. Made a false statement of a character likely to
23 influence or persuade.

24 f. Made a continued and flagrant course of
25 misrepresentation or made false promises through cemetery
26 sales agents or employees.

1 g. Violated any provision of this chapter or rule of
2 the board.

3 h. Operated a cemetery in a manner that was
4 hazardous to a purchaser, beneficiary, or the people of this
5 state.

6 i. Engaged in any other conduct, whether of the same
7 or a different character than specified in this section, which
8 constitutes fraud or dishonest dealing, or has any felony or
9 misdemeanor convictions that relate to any activity regulated
10 by this chapter or a crime involving moral turpitude, as
11 defined by this chapter.

12 (2) To apply to the courts, in its own name, for
13 injunctive relief to prevent a violation of this chapter or
14 any rule of the board. A court may grant injunctive relief
15 regardless of whether criminal prosecution or any other action
16 is instituted as a result of the violation. A single violation
17 is sufficient to invoke the injunctive relief provided by this
18 subdivision. In any action for injunctive relief, an order or
19 judgment may be entered awarding a temporary or permanent
20 injunction as deemed proper by the court; provided, that
21 before any action is brought by the board pursuant to this
22 subdivision, the board shall give a cemetery authority at
23 least 20 days' notice in writing, stating the alleged
24 violation and giving the cemetery authority an opportunity,
25 within that 20-day period, to cure the violation. In addition
26 to all other means provided by law for the enforcement of a
27 temporary restraining order, temporary injunction, or

1 permanent injunction, the court may impound and appoint a
2 receiver for the property and business of the cemetery
3 authority including, but not limited to, books, papers,
4 documents, and records pertaining thereto, or so much thereof
5 as the court may deem reasonably necessary to prevent further
6 violation of this chapter or rule of the board through or by
7 means of the use of the property and business. The board may
8 institute proceedings against a cemetery authority, and its
9 owners or officers, when an audit, pursuant to this chapter or
10 rule of the board, reveals a shortage in the care and
11 maintenance trust fund, merchandise trust fund, or mausoleum
12 and below ground crypts pre-construction trust fund, to
13 recover the shortage.

14 (3) To adopt rules requiring licensees to file with
15 the board plans and specifications for the minimum quality of
16 any product sold. The sale of any product for which plans and
17 specifications required by the rules of the board have not
18 been filed, or the sale of any product of a lesser quality
19 than the plans and specifications filed with the board, is a
20 violation of this chapter.

21 (4) If the board finds that failure by a licensee to
22 maintain a cemetery properly has caused that cemetery to
23 become a public nuisance or a health or safety hazard, the
24 board may do any of the following:

25 a. Bring an action for injunctive relief against the
26 responsible licensee in the circuit court of the county in

1 which the cemetery, or any part thereof, is located or in the
2 Circuit Court of Montgomery County.

3 b. Issue an emergency suspension of all licenses
4 held by the cemetery, and its associated personnel, in
5 accordance with the Administrative Procedure Act.

6 §34-13-316. Cemetery inspection and endowment audit
7 by the board.

8 (a) The board, as often as the board determines
9 necessary, shall inspect and audit the business of any person
10 operating a cemetery authority under this chapter. The
11 inspection and audit shall be performed by representatives of
12 the board who are employed or contracted by the board.

13 (b) A written report of each inspection and audit
14 shall be filed with and maintained by the board.

15 (c) Any person, establishment, or entity inspected
16 and audited, upon request, shall produce all records of the
17 person, establishment, or entity. The representatives of the
18 board designated to perform inspections and audits may inspect
19 and audit the records and affairs of any person,
20 establishment, or entity operating a cemetery authority under
21 the jurisdiction of the board at any time, regardless of
22 whether the inspection and audit are in connection with a
23 formal inspection or audit, or not.

24 (d) Any person, establishment, or entity subject to
25 a formal inspection and audit pursuant to this section shall
26 pay the board an audit fee, in an amount determined by the
27 board, not to exceed one thousand dollars (\$1,000) per audit

1 day. The scope of informal, formal, and special inspections
2 and audits shall be established by rule of the board.

3 (e) Whenever the board determines that a special
4 inspection and audit of the premises, facilities, books, or
5 records of a cemetery authority is necessary because of the
6 failure of the cemetery authority to comply with this chapter
7 or rule adopted by the board, the board shall charge a fee
8 based on the cost of the special inspection and audit
9 including, but not limited to, the compensation of any
10 employees involved in the special audit and any other
11 reasonable expenses incurred.

12 (f) The board, by rule, may provide for the
13 suspension or revocation of the cemetery establishment license
14 of any person, establishment, or entity that fails to submit
15 levied inspection and audit fees to the board within 30 days
16 after the invoice date. In addition, the board may levy a
17 fine, in an amount determined by the board, not to exceed
18 fifty dollars (\$50) per day for each day the cemetery
19 authority fails to submit the inspection and audit fees.

20 §34-13-317. Additional penalties and fines.

21 (a) Unless otherwise provided by this chapter, any
22 person who violates this chapter, or rule adopted by the board
23 pursuant to this chapter, shall be guilty of a Class A
24 misdemeanor.

25 (b) (1) Any person who knowingly executes a sales
26 contract or receives payments for cemetery merchandise or

1 services without having a valid license as a cemetery sales
2 agent:

3 a. Shall be guilty of a Class B felony for each
4 contract for which the amount of the contract, or the sum of
5 payments received, is greater than two thousand five hundred
6 dollars (\$2,500).

7 b. Shall be guilty of a Class C felony for each
8 contract for which the amount of the contract, or the sum of
9 payments received, is greater than five hundred dollars (\$500)
10 and equal to or less than two thousand five hundred dollars
11 (\$2,500).

12 c. Shall be guilty of a Class A misdemeanor for each
13 contract for which the amount of the contract, or the sum of
14 payments received, is five hundred dollars (\$500) or less.

15 (2) In addition to the criminal penalty imposed
16 under subdivision (1), upon conviction of an offense under
17 subdivision (1), or an equivalent offense in any jurisdiction,
18 as determined by the board, a person may not thereafter obtain
19 a certificate of authority from the board or be licensed as a
20 preneed sales agent, cemetery sales agent, or general manager
21 by the board.

22 (3) If the board determines that the continued
23 operation of a cemetery authority is hazardous to purchasers,
24 beneficiaries, or the people of this state, the board may levy
25 a fine, in an amount determined by the board, not to exceed
26 five hundred dollars (\$500) per day, and may revoke the
27 establishment license of the cemetery authority, until the

1 board determines that the hazardous conditions are removed and
2 resolved.

3 (4) In addition to any other penalty provided by
4 this chapter, or rule of the board pursuant to this chapter,
5 the board may levy a fine, in an amount determined by the
6 board, not to exceed fifty dollars (\$50) per day, for each day
7 a cemetery authority fails to file any reports required by
8 this chapter or rule of the board, and the board may also levy
9 a fine, in an amount determined by the board, not to exceed
10 fifty dollars (\$50) per day, for each day a cemetery authority
11 fails to satisfy and comply with any order issued by the
12 board.

13 (5) If a representative of a cemetery authority
14 offers to sell grave spaces or lots, interment rights, niches,
15 memorials, vaults, or any other cemetery merchandise or
16 services under any plan authorized for any cemetery before
17 obtaining a license from the board as a cemetery sales agent,
18 the board may levy a fine, not to exceed two thousand five
19 hundred dollars (\$2,500), on the cemetery authority for each
20 violation.

21 (6) If a cemetery authority sells interment rights,
22 grave spaces or lots, niches, memorials, vaults, or any other
23 cemetery merchandise or services under any plan authorized for
24 any cemetery before obtaining a cemetery establishment license
25 from the board, the board may levy a fine, not to exceed two
26 thousand five hundred dollars (\$2,500), on the cemetery
27 authority for each violation.

1 Section 3. Sections 27-17A-46, 27-17A-47, and
2 27-17A-48, Code of Alabama 1975, relating to endowment care
3 cemeteries, the establishment of an endowment care fund, and
4 the maintenance of records by a cemetery authority,
5 respectively, under the Cemetery Merchandise and Services
6 Trust Fund, are repealed.

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

15 Section 5. This act shall become effective on the
16 first day of the first month following its passage and
17 approval by the Governor, or its otherwise becoming law.