

1 SB98
2 157560-5
3 By Senator Bussman
4 RFD: Banking and Insurance
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

1 SB98

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4 ENROLLED, An Act,

5 Relating to the Alabama Preneed Funeral and Cemetery
6 Act; to amend Sections 27-17A-2, 27-17A-3, 27-17A-10,
7 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-18,
8 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31, 27-17A-32,
9 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44, 27-17A-47,
10 27-17A-50, and 27-17A-55, Code of Alabama 1975, and to add
11 Sections 27-17A-11.1 and 27-17A-57 to the Code of Alabama
12 1975, to strengthen consumer protection and eliminate
13 ambiguity in the requirements for the proper handling of
14 preneed and cemetery endowment care funds; to provide further
15 for the ability of the Commissioner of Insurance to deter
16 violations and ensure compliance with the act; to grant the
17 commissioner jurisdiction over any person unlawfully writing,
18 or suspected of unlawfully writing, preneed contracts and to
19 clarify the penalties for violations; to further clarify the
20 requirement that any person selling funeral or cemetery
21 merchandise or services on a preneed basis obtain a
22 certificate of authority from the Department of Insurance; to
23 specify which violations related to preneed sales, trust
24 deposits, and collections are felonies; to increase, from a
25 Class B to a Class A misdemeanor, all non-felony violations of

1 the act; to authorize the commissioner to bring a civil action
2 against any person or company violating the act and increase
3 the recovery of funds on behalf of consumers; to clarify that
4 a person who only sells preneed burial rights is not required
5 to register as a preneed sales agent; to revise the annual
6 application and renewal dates for persons holding preneed
7 certificates of authority and to waive the requirement of
8 filing annual financial statements under certain circumstances
9 and upon written request to the commissioner; to require each
10 certificate holder to file with the commissioner a quarterly
11 report of all preneed contract and trust activity; to clarify
12 the amount of a bond used as an alternative to a trusting
13 requirement; to authorize the commissioner to use funds
14 received from any source for purposes of enforcement; to
15 clarify that funds received for funeral and cemetery
16 merchandise placed in storage prior to death need not be
17 placed in trust; to require certificate holders to satisfy
18 additional requirements and to file with the commissioner a
19 quarterly report of all preneed contract trust activity; to
20 subject endowment cemetery authorities to the act; to require
21 any person receiving funds from the sale of a preneed contract
22 to contribute to a trust fund, life insurance contract, or
23 annuity contract; to require that preneed cemetery merchandise
24 and services funds remain in trust until cancellation or
25 fulfillment of a preneed contract; to prohibit a person

1 serving on a cemetery board of trustees from also serving as
2 the trustee of an endowment care fund, with certain specified
3 exceptions, and to require bonds on trustees, with certain
4 specified exceptions; to define net income for purposes of an
5 endowment care fund; and in connection therewith to have as
6 its purpose or effect the requirement of a new or increased
7 expenditure of local funds within the meaning of Amendment 621
8 of the Constitution of Alabama of 1901.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 27-17A-2, 27-17A-3, 27-17A-10,
11 and 27-17A-11 of the Code of Alabama 1975, are amended to read
12 as follows:

13 "§27-17A-2.

14 "As used in this chapter, the following terms shall
15 have the following meanings:

16 "(1) ALTERNATIVE CONTAINER. A nonmetal receptacle or
17 enclosure, without ornamentation or a fixed interior lining,
18 which is designed for the encasement of human remains and
19 which is made of cardboard, pressed-wood, composition
20 materials (with or without an outside covering), or pouches of
21 canvas or other materials.

22 "(2) ARRANGEMENT CONFERENCE. The meeting occurring
23 either at need or preneed between the seller and the purchaser
24 during which funeral or cemetery merchandise and services are
25 discussed.

1 "(3) ARRANGEMENT CONFERENCE FEE. The charge to the
2 purchaser in conjunction with the arrangement conference.

3 "(4) AT NEED. At the time of death, or immediately
4 following death.

5 "(5) AUTHORIZING AGENT. One who is lawfully
6 authorized to control the final disposition of human remains.

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

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

15 "(8) BURIAL. The placement of human remains in a
16 grave space or lawn crypt.

17 "(9) CASH ADVANCE. Any item of service or
18 merchandise described to a purchaser as a "cash advance,"
19 "accommodation," "cash disbursement," or similar term. A cash
20 advance item is also any item obtained from a third party and
21 paid for by the seller on the purchaser's behalf. Cash advance
22 items may include, but are not limited to, cemetery or
23 crematory services, pallbearers, public transportation, clergy
24 honoraria, flowers, musicians or singers, nurses, obituary
25 notices, gratuities, and death certificates.

1 "(10) CASKET. A rigid container which is designed
2 for the encasement of human remains and which is usually
3 constructed of wood, metal, or like material, and ornamented
4 and lined with fabric.

5 "(11) CEMETERY. A place that is established,
6 maintained, managed, operated, or improved and which is
7 dedicated to and used or intended to be used for the final
8 disposition of human remains and their memorialization.

9 "(12) CEMETERY AUTHORITY. Any person who owns or
10 controls a cemetery or conducts cemetery business.

11 "(13) CEMETERY MERCHANDISE. Any personal property
12 offered for sale, contracted for sale, or sold for use in
13 connection with the burial of, final disposition,
14 memorialization, interment, entombment, or inurnment of human
15 remains by a cemetery authority. Cemetery merchandise
16 specifically includes, but is not limited to, the casket, the
17 outer burial container, and the memorial.

18 "(14) CEMETERY SERVICES. Services provided by a
19 cemetery authority for interment, entombment, inurnment, and
20 installation of cemetery merchandise.

21 "(15) CERTIFICATE HOLDER. A funeral establishment,
22 cemetery authority, third-party seller, or any other person to
23 whom a valid certificate of authority to sell preneed
24 contracts has been granted by the commissioner.

1 "(16) COLUMBARIUM. A structure or room or space in a
2 building or structure used or intended to be used for the
3 inurnment of cremated remains.

4 "(17) COMMISSIONER. The Alabama Commissioner of
5 Insurance.

6 "(18) CREMATED REMAINS. The bone fragments remaining
7 after the cremation process, which may include the residue of
8 any foreign materials that were cremated with the human
9 remains.

10 "(19) CREMATED REMAINS CONTAINER. A receptacle in
11 which cremated remains are placed.

12 "(20) CREMATION. The irreversible process of
13 reducing human remains to bone fragments through intense heat
14 and evaporation, performed in a specifically designed furnace
15 or retort, which may include any other mechanical or thermal
16 process whereby the bone fragments are pulverized, or
17 otherwise further reduced in size or quantity. Cremation is a
18 process and is a method of final disposition.

19 "(21) CREMATORY AUTHORITY. Any person who owns or
20 controls a crematory.

21 "(22) DEATH CERTIFICATE. A legal document containing
22 vital statistics pertaining to the life and death of the
23 deceased.

24 "(23) DECEASED or DECEDENT. One who is no longer
25 living.

1 "(24) EMBALMER. One authorized by law to engage in
2 embalming.

3 "(25) EMBALMING. A procedure whereby human remains
4 are chemically treated by injection for temporary preservation
5 including, but not limited to, the act of disinfecting,
6 preserving, and restoring human remains to a natural life-like
7 appearance.

8 "(26) ENCASEMENT. The placement of human remains in
9 a rigid container, including, but not limited to, a casket or
10 urn.

11 "(27) ENDOWMENT CARE. The maintenance and repair of
12 all places in the cemetery, subject to the rules and
13 regulations of the cemetery authority; may be known also as
14 endowed care, perpetual care, improvement care, or permanent
15 care.

16 "(28) ENDOWMENT CARE TRUST FUND. An irrevocable
17 trust fund set aside by law with a trustee, along with the
18 income therefrom, to provide for the endowment care of the
19 cemetery.

20 "(29) ENTOMBMENT. The act of placing human remains
21 in a mausoleum crypt.

22 "(30) FINAL DISPOSITION. The lawful disposal of
23 human remains whether by interment, entombment, burial at sea,
24 cremation, or other method.

1 "(31) FUNERAL. The rites held commemorating the
2 deceased with human remains present.

3 "(32) FUNERAL BENEFICIARY. The person or persons who
4 will receive the benefit of the funeral and cemetery goods and
5 services to be delivered under a preneed contract at the time
6 of his, her, or their death.

7 "~~(32)~~(33) FUNERAL DIRECTING. The act or service of
8 conducting funerals and counseling with survivors and
9 preparing human remains, other than by embalming, for the
10 interment or other means of disposition, and may include the
11 management and supervision of all operations in a funeral
12 establishment, which may or may not include the practice of
13 embalming.

14 "~~(33)~~(34) FUNERAL DIRECTOR. One authorized by law to
15 engage in funeral directing.

16 "~~(34)~~(35) FUNERAL ESTABLISHMENT. A place of business
17 used in the care, planning, and preparation for final
18 disposition or transportation of human remains, or any place
19 where one or more are engaged and represent themselves to be
20 engaged in the business of embalming or funeral directing.

21 "~~(35)~~(36) FUNERAL MERCHANDISE. Any personal property
22 offered for sale, contracted for sale, or sold for use in
23 connection with funeral directing. Funeral merchandise
24 specifically includes, but is not limited to, the following:

25 "a. Alternative container.

1 "b. Casket.

2 "c. Outer burial container.

3 "d. Urn.

4 "e. Memorials.

5 "~~(36)~~(37) FUNERAL SERVICE. Services provided by a
6 funeral establishment in connection with funeral directing,
7 interment of human remains, and installation of memorials.

8 "~~(37)~~(38) GRAVE SPACE. A space of ground in a
9 cemetery that is used or intended to be used for in-ground
10 burial.

11 "~~(38)~~(39) HUMAN REMAINS. The body of a decedent and
12 includes the body in any stage of decomposition and cremated
13 remains.

14 "~~(39)~~(40) INTERMENT. The final disposition of human
15 remains by burial, entombment, or inurnment.

16 "~~(40)~~(41) INTERMENT RIGHT. The right to inter human
17 remains in a particular interment space in the cemetery.

18 "~~(41)~~(42) INTERMENT SPACE. A space intended for the
19 final disposition of human remains including, but not limited
20 to, a grave space, mausoleum crypt, niche, and below-ground
21 crypt.

22 "~~(42)~~(43) INURNMENT. The act of placing cremated
23 remains in a receptacle including, but not limited to, an urn
24 and depositing it in a niche.

1 "~~(43)~~(44) MAUSOLEUM. A chamber or structure used or
2 intended to be used for entombment.

3 "~~(44)~~(45) MAUSOLEUM CRYPT. A chamber of a mausoleum
4 of sufficient size for entombment of human remains.

5 "~~(45)~~(46) MEMORIAL. Any product, other than a
6 mausoleum or columbarium, used for identifying an interment
7 space or for commemoration of the life, deeds, or career of
8 some decedent including, but not limited to, a monument,
9 marker, niche plate, urn garden plaque, crypt plate, cenotaph,
10 marker bench, and vase.

11 "~~(46)~~(47) MEMORIAL RETAILER. Any person offering or
12 selling memorials at retail to the public.

13 "~~(47)~~(48) MEMORIALIZATION. Any permanent system
14 designed to mark or record the names and other data pertaining
15 to a decedent.

16 "~~(48)~~(49) NICHE. A space usually within a
17 columbarium used or intended to be used for inurnment of
18 cremated remains.

19 "~~(49)~~(50) OUTER BURIAL CONTAINER. A container which
20 is designed for placement in the grave space around the casket
21 or the urn including, but not limited to, containers commonly
22 known as burial vaults, grave boxes, and grave liners.

23 "~~(50)~~(51) PERSON. Any individual, firm, corporation,
24 partnership, joint venture, limited liability company,

1 association, trustee, government or governmental subdivision,
2 agency, or other entity, or any combination thereof.

3 "~~(51)~~ (52) PREARRANGEMENT. The term applied to
4 completing the details for selection of merchandise or
5 services on a preneed basis, which may or may not include
6 provisions for prefunding or prepayment.

7 "~~(52)~~ (53) PREDEVELOPED. Designated areas or
8 buildings within a cemetery that have been mapped and planned
9 for future construction but are not yet completed.

10 "~~(53)~~ (54) PREDEVELOPED INTERMENT SPACE. An interment
11 space that is planned for future construction but is not yet
12 completed.

13 "~~(54)~~ (55) PREFUND. The term applied to completing
14 the financial details of a prearrangement, which include
15 provisions for funding or prepayment.

16 "~~(55)~~ (56) PRENEED. Any time prior to death.

17 "~~(56)~~ (57) PRENEED CONTRACT. A written contract to
18 purchase funeral merchandise, funeral services, cemetery
19 merchandise, or cemetery services from the seller on a preneed
20 basis.

21 "~~(57)~~ (58) PRENEED CONTRACT TRUST FUND. The funds
22 received pursuant to a preneed contract which are required by
23 law to be held in trust until the merchandise or services
24 purchased pursuant to the contract are delivered or provided
25 or until otherwise lawfully withdrawn.

1 "~~(58)~~(59) PROVIDER. A person who may or may not be
2 the seller, who will actually provide the merchandise and
3 services under the terms of a preneed contract.

4 "~~(59)~~(60) PURCHASE PRICE. The amount paid by the
5 purchaser for merchandise and services purchased under a
6 preneed contract, exclusive of finance charges, sales tax,
7 charges relating to interment rights, arrangement conference
8 fees, or charges for credit life insurance.

9 "~~(60)~~(61) PURCHASER. The person who purchases a
10 preneed contract either on his or her behalf or on behalf of a
11 third party beneficiary.

12 "~~(61)~~(62) RELIGIOUS INSTITUTION. An organization
13 formed primarily for religious purposes which has qualified
14 for exemption from federal income tax as an exempt
15 organization under the provisions of Section 501(c)(3) of the
16 Internal Revenue Code of 1986, as amended.

17 "~~(62)~~(63) SCATTERING. The lawful dispersion of
18 cremated remains.

19 "~~(63)~~(64) SELLER. Any person offering or selling
20 merchandise or services on a preneed basis including, but not
21 limited to, funeral establishments, cemetery authorities,
22 crematory authorities, memorial retailers, direct disposers,
23 etc.

24 "~~(64)~~(65) SPECIAL CARE. Any care provided, or to be
25 provided, that is supplemental to, or in excess of, endowment

1 care, in accordance with the specific directions of any donor
2 of funds for such purposes.

3 "~~(65)~~ (66) SUCCESSOR-IN-INTEREST. A person who
4 lawfully follows another in ownership or control of property
5 or rights.

6 "~~(66)~~ (67) THIRD-PARTY SELLER. Any person, who is not
7 a funeral establishment or a cemetery authority, engaged in
8 the sale of preneed funeral merchandise or cemetery
9 merchandise.

10 "~~(67)~~ (68) TRUSTEE. Any person, state or national
11 bank, trust company, or federally insured savings and loan
12 association lawfully appointed as fiduciary over funds
13 deposited by one or more purchasers of a preneed contract or
14 deposited pursuant to an endowment care trust fund; not to be
15 confused with a board of trustees.

16 "~~(68)~~ (69) URN. A receptacle for the encasement of
17 cremated remains.

18 "§27-17A-3.

19 "(a) Nothing in this chapter shall be construed to
20 prohibit the funding of preneed contracts with multiple
21 insurance or annuity contracts. Life insurance and annuity
22 contracts used to fund preneed contracts shall conform with
23 the provisions of this title as they relate to life insurance
24 and annuities and shall cover ~~at a minimum the retail amount~~

1 not less than the initial retail price of the preneed contract
2 at the time of purchase.

3 "(b) The initial premium payment for a life
4 insurance policy or annuity contract shall be made payable to
5 the issuing insurance company and the preneed seller shall
6 remit the payment to the insurance company within 10 business
7 days after the insurance application is signed by the parties.
8 If a preneed contract provides for installment payments, each
9 premium payment shall be made payable to the insurance company
10 and, if collected by the preneed seller, shall be remitted to
11 the insurance company within 10 business days after receipt by
12 the preneed seller.

13 "(c) Nothing in this chapter shall prohibit a
14 seller, or any other person, from receiving commissions earned
15 and payable in regard to funding preneed contracts with life
16 insurance or annuity contracts, provided the seller or other
17 person holds a valid insurance producer license in this state
18 and is appointed by the insurance company paying the
19 commission.

20 "(d) A preneed seller may be identified as the
21 beneficiary or assignee of the death benefit proceeds of a
22 life insurance policy or annuity contract sold as a future
23 funding mechanism for a preneed contract, but may not be the
24 owner of the policy or annuity contract or exercise any
25 ownership rights in the policy or annuity. If the preneed

1 contract is cancelled before or after the death of the funeral
2 beneficiary, the preneed seller shall cancel and relinquish
3 any assignment of benefits or beneficiary status under the
4 policy or annuity contract, and deliver the policy or
5 contract, if in the custody of the preneed seller, to the
6 policy owner or his or her legal representative.

7 "§27-17A-10.

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

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

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

1 paid by the buyer together with interest thereon at the legal
2 rate within 30 days after notice to the seller.

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

24 "~~(2)~~(4) The provisions of subdivision (1) do not
25 apply to any legal reserve insurance company or to any trust

1 company or to any national or state bank or savings and loan
2 association having trust powers which company, bank, or
3 association receives any money in trust pursuant to the sale
4 of a preneed contract.

5 "(c) No person may obtain a certificate of authority
6 under this article for the preneed sale of funeral services or
7 cemetery services unless the person or its agent, in the case
8 of a corporate entity, holds a license as a funeral director
9 or a funeral establishment, or is a cemetery authority.

10 "(d) The provisions of this section do not apply to
11 a cemetery authority owned or operated by a governmental
12 agency or a religious institution.

13 "§27-17A-11.

14 "(a) An application to the commissioner for a
15 certificate of authority shall be accompanied by the statement
16 and other matters described in this section in the form
17 prescribed by the commissioner. Annually thereafter, within
18 ~~three~~ six months after the end of its fiscal period, or within
19 an extension of time therefor, as the commissioner for good
20 cause may grant, the person authorized to engage in the sale
21 of preneed contracts shall file with the commissioner a full
22 and true statement of his or her financial condition,
23 transactions, and affairs, prepared on a basis as adopted by a
24 rule of the commissioner, as of the preceding fiscal period or
25 at such other time or times as the commissioner may provide by

1 rule, together with information and data which may be required
2 by the commissioner.

3 "(b) The statement shall include all of the
4 following:

5 "(1) The types of preneed contracts proposed to be
6 written and the type of funding vehicle to be used.

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

9 "(3) Evidence that the person offering the statement
10 has the following qualifications:

11 "a. Has the ability to discharge his or her
12 liabilities as they become due in the normal course of
13 business and has sufficient funds available during the
14 calendar year to perform his or her obligations under the
15 contract.

16 "b. Has complied with the trust requirements for the
17 funds received under contracts issued by himself or herself as
18 hereinafter described.

19 "c. Has disbursed interest, dividends, or accretions
20 earned by trust funds, in accordance with this article and
21 rules promulgated hereunder.

22 "d. Has complied with this chapter and any rules of
23 the commissioner.

1 "(4) Any other information considered necessary by
2 the commissioner to meet the commissioner's responsibilities
3 under this chapter.

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

8 "(d) (1) An application to the commissioner for an
9 initial certificate of authority shall be accompanied by an
10 application fee in an amount to be determined by the
11 commissioner, not to exceed one hundred fifty dollars (\$150).
12 Thereafter, each annual application for renewal of a
13 certificate of authority shall be accompanied by the
14 appropriate fee as determined by the commissioner not to
15 exceed seventy-five dollars (\$75).

16 "(2) Any person or entity that is part of a common
17 business enterprise that has a certificate of authority issued
18 pursuant to this article and elects to operate under a name
19 other than that of the common business enterprise shall submit
20 an application on a form adopted by the commissioner to become
21 a branch registrant. Upon the approval of the commissioner
22 that the entity qualifies to sell preneed contracts under this
23 article except for the requirements of paragraph a. of
24 subdivision (3) of subsection (b) and if the certificate
25 holder meets the requirements of paragraph a., a branch

1 registration shall be issued. Each branch registrant may
2 operate under the certificate of authority of the common
3 business enterprise upon the payment of a fee established by
4 the commissioner not to exceed one hundred fifty dollars
5 (\$150) accompanying the application on ~~April~~ July 1 annually.

6 "(e) Upon the commissioner being satisfied that the
7 statement and matters which may accompany it meet the
8 requirements of this article and of its rules, the
9 commissioner shall issue or renew the certificate of
10 authority.

11 "(f) The certificate of authority shall expire
12 annually on ~~June~~ September 1, unless renewed, or at such other
13 time or times as the commissioner may provide by rule.

14 "(g) On or before ~~April~~ July 1 of each year, the
15 certificate holder shall file with the commissioner in the
16 form prescribed by the commissioner a full and true statement
17 as to the activities of any trust established by it pursuant
18 to this article for the preceding calendar year.

19 "(h) In addition to any other penalty that may be
20 provided for under this article, the commissioner may levy a
21 fine not to exceed fifty dollars (\$50) per day for each day
22 the certificate holder fails to file its annual statement, and
23 the commissioner may levy a fine not to exceed fifty dollars
24 (\$50) per day for each day the certificate holder fails to
25 file the statement of activities of the trust. Upon notice to

1 the certificate holder by the commissioner that the
2 certificate holder has failed to file the annual statement or
3 the statement of activities of the trust, the certificate
4 holder's authority to sell preneed contracts shall cease while
5 the default continues.

6 "(i) To facilitate uniformity in financial
7 statements and to facilitate analysis, the commissioner may by
8 rule adopt a form for financial statements. The holder of a
9 certificate of authority may submit a written request to the
10 commissioner to exempt the holder from filing financial
11 statements at renewal. The commissioner may waive the
12 requirement for filing a financial statement at renewal if all
13 of the following are satisfied:

14 "(1) No valid complaint has been filed since the
15 last examination.

16 "(2) No administrative action against the preneed
17 entity has been instituted since the last examination.

18 "(3) The certificate holder certifies that all
19 outstanding preneed contracts written by the holder since
20 April 30, 2002, are fully funded in accordance with this
21 chapter.

22 "(4) The certificate holder certifies that it will
23 fully fund all preneed contracts with life insurance, annuity,
24 or will deposit 100 percent of all funds collected on all

1 preneed contracts in trust within 30 days after the end of the
2 calendar month in which the funds are collected.

3 "(5) The preneed entity has provided to the
4 department in a timely manner all required and requested
5 records.

6 "(6) The preneed entity agrees to file quarterly
7 reports of its preneed activity on a form or in a format
8 prescribed by the commissioner.

9 "(j) The commissioner may authorize the transfer of
10 certificates of authority and establish fees for the transfer
11 in an amount not to exceed one hundred dollars (\$100). Upon
12 receipt of an application for transfer, the commissioner may
13 grant a temporary certificate of authority to the proposed
14 transferee, based upon criteria established by the
15 commissioner by rule, which criteria shall promote the
16 purposes of this article in protecting the consumer. A
17 temporary certificate of authority shall expire 60 days after
18 issuance unless renewed by the commissioner."

19 Section 2. Section 27-17A-11.1 is added to the Code
20 of Alabama 1975, to read as follows:

21 §27-17A-11.1.

22 (a) On a semi-annual basis, within 45 days after the
23 end of each second calendar reporting period, the certificate
24 holder shall file a report of its preneed contract activity on
25 a form or in a format prescribed by the commissioner. The

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

20 (b) The certificate holder shall maintain a written
21 log of preneed sales. The log shall be on a form or in a
22 format prescribed by the commissioner, shall detail all
23 information required by the commissioner, and shall be
24 available for inspection at any time by the commissioner.

1 (c) Each cemetery authority shall maintain a written
2 log of the sale of cemetery interment rights. The log shall be
3 on a form or in a format prescribed by the commissioner and
4 shall detail all information required by the commissioner.

5 Section 3. Sections 27-17A-12, 27-17A-13, 27-17A-14,
6 27-17A-18, 27-17A-22, 27-17A-23, 27-17A-25, 27-17A-31,
7 27-17A-32, 27-17A-34, 27-17A-40, 27-17A-42, 27-17A-44,
8 27-17A-47, 27-17A-50, and 27-17A-55 of the Code of Alabama
9 1975, are amended to read as follows:

10 "§27-17A-12.

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

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

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

24 "§27-17A-13.

1 "(a) Except as provided in Sections 27-17A-3 and
2 27-17A-14, every preneed contract shall require the ~~moneys~~
3 monies paid to the seller or trustee to be placed in trust in
4 accordance with Article 3, for funeral merchandise and
5 services sold by funeral establishments or third party
6 sellers, or Article 4, for cemetery merchandise and services
7 sold by cemetery authorities.

8 "(b) Although this chapter does not apply to preneed
9 contracts entered into prior to May 1, 2002, a preneed
10 provider which contends that a preneed trust fund which was in
11 effect prior to May 1, 2002, complies with this chapter with
12 respect to the contracts entered into prior to May 1, 2002,
13 may provide to the commissioner documentary proof thereof.
14 Upon the commissioner determining that compliance has been
15 established, the pre-existing preneed trust fund assets may be
16 merged with or into the trust fund required under this chapter
17 or continued as the trust fund and that determination by the
18 commissioner shall be noted on the certificate of authority,
19 and thereafter all preneed contracts covered by the trust
20 fund, including those entered into prior to May 1, 2002, shall
21 be subject to this chapter.

22 "§27-17A-14.

23 "(a) As an alternative to the trust requirement of
24 Section 27-17A-13, the details of which are set forth in
25 Articles 3 and 4, a preneed provider may, with the prior

1 approval of the commissioner, purchase a surety bond in an
2 amount not less than the aggregate value of outstanding
3 liabilities on undelivered preneed contracts for merchandise,
4 services, and cash advances. For the purposes of this section,
5 the term "outstanding liabilities" means the original retail
6 amount of services and cash advances and the actual cost to
7 the entity to provide the undelivered merchandise sold on ~~the~~
8 contract each contract written after April 30, 2002. The
9 surety bond shall be in an amount sufficient to cover the
10 outstanding liability at the time each contract is executed.

11 "(b) The bond shall be made payable to the State of
12 Alabama for the benefit of the commissioner and of all
13 purchasers of preneed merchandise, services, and cash
14 advances. The bond shall be issued by an insurance company
15 licensed in the State of Alabama and authorized to issue
16 surety bonds and approved by the commissioner.

17 "(c) The amount of the bond shall be based on a
18 report documenting the outstanding liabilities of the preneed
19 provider for the previous calendar quarter and the projected
20 liability for the immediately following quarter, shall be
21 prepared by the preneed provider using generally accepted
22 accounting principles, and shall be signed by the chief
23 executive officer or chief financial officer of the preneed
24 provider. The report shall be compiled as of the end of the
25 preneed provider's fiscal year and updated ~~annually~~ quarterly.

1 "(d) The amount of the bond shall be increased or
2 decreased as necessary to correlate with changes in the
3 outstanding liabilities. Further, the commissioner may order
4 the bond to be increased as necessary to correlate with
5 changes in the outstanding liabilities of bonded contracts due
6 to increases in the consumer price index.

7 "(e) If the preneed provider fails to maintain a
8 bond pursuant to this section the preneed provider shall cease
9 the offering for sale and sale of preneed merchandise,
10 services, and cash advances.

11 "(f) No surety bond used to comply with this section
12 shall be canceled or subject to cancellation unless at least
13 60 days' advance notice thereof, in writing, is filed with the
14 commissioner, by the surety company. The cancellation of the
15 bond shall not relieve the obligation of the surety company
16 for claims arising out of contracts issued or otherwise
17 covered before cancellation of the bond. In the event that
18 notice of termination of the bond is filed with the
19 commissioner, the certificate holder insured thereunder shall,
20 within 30 days of the filing of the notice of termination with
21 the commissioner, provide the commissioner with a replacement
22 bond or with evidence which is satisfactory to the
23 commissioner demonstrating that the provisions of this chapter
24 have been fully complied with. If within 30 days of filing of
25 the notice of termination with the commissioner no replacement

1 bond acceptable to the commissioner or no evidence
2 satisfactory to the commissioner demonstrating that the
3 provisions of this chapter have been complied with is filed
4 with the commissioner, the commissioner shall suspend the
5 license of the certificate holder until the certificate holder
6 files a replacement bond acceptable to the commissioner or
7 demonstrates to the satisfaction of the commissioner that it
8 has complied with the provisions of this chapter.

9 "(g) Upon prior approval by the commissioner, the
10 preneed provider may file with the commissioner a letter of
11 credit in the amount of the outstanding liabilities in lieu of
12 a surety bond, in the form and subject to the terms and
13 conditions evidencing the financial responsibility of the
14 party or parties issuing the letter of credit, and otherwise,
15 as may be prescribed by the commissioner.

16 "§27-17A-18.

17 "(a) All individuals who offer preneed contracts to
18 the public, or who execute preneed contracts on behalf of a
19 certificate holder, ~~including all individuals who offer, sell,~~
20 ~~or sign contracts for the preneed sale of burial rights,~~ shall
21 be registered with the commissioner as preneed sales agents,
22 pursuant to this article.

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

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

11 "(d) A preneed sales agent and a funeral director
12 acting as a preneed sales agent shall be authorized to sell,
13 offer, and execute preneed contracts on behalf of all entities
14 owned or operated by the sponsoring certificate holder.

15 "(e) An individual may begin functioning as a
16 preneed sales agent as soon as a completed application for
17 registration, as set forth in subsection (g), is sent to the
18 commissioner.

19 "(f) The qualifications for a preneed sales agent
20 are as follows:

21 "(1) The applicant must be at least 18 years of age.

22 "(2) The applicant must be in good standing with the
23 commissioner.

1 "(3) The applicant must not have any felony or
2 misdemeanor convictions that relate to any activity regulated
3 by this chapter.

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

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

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

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

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

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

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

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

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

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

20 "§27-17A-22.

21 ~~"Any officer or director, or person occupying~~
22 ~~similar status or performing similar functions, of a~~
23 ~~certificate holder who fails to make required deposits to any~~
24 ~~trust fund required by this chapter; any director, officer,~~
25 ~~agent, or employee of a certificate holder who makes any~~

1 ~~unlawful withdrawal of funds from any such account or who~~
2 ~~knowingly discloses to the commissioner or an employee thereof~~
3 ~~any false report made pursuant to this chapter; or any person~~
4 ~~who willfully violates any of the provisions of this chapter~~
5 ~~commits a Class B misdemeanor, punishable as provided by law.~~

6 "(a) (1) A person who knowingly receives payments for
7 a preneed contract without having a valid certificate of
8 authority:

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

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

17 "c. Commits a Class A misdemeanor, punishable as
18 provided by law, as to each contract on which the payments
19 collected do not exceed, in the aggregate, five hundred
20 dollars (\$500).

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

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

5 "a. Commits a Class B felony, punishable as provided
6 by law, as to each contract on which the amount due for
7 deposit in trust equals or exceeds, in the aggregate, two
8 thousand five hundred dollars (\$2,500).

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

13 "(2) In addition to the criminal penalty imposed
14 under subdivision (1), upon conviction of an offense under
15 subdivision (1), the certificate of authority or preneed sales
16 agent registration held by the person shall be automatically
17 revoked and the person may not thereafter obtain a certificate
18 of authority or register as a preneed sales agent.

19 "(c) (1) A person who knowingly withdraws funds or
20 assets from a preneed merchandise and services trust or
21 endowment care trust in a manner or under circumstances not
22 authorized by this chapter:

23 "a. Commits a Class B felony, punishable as provided
24 by law, if the aggregate amount withdrawn in any single

1 transaction or series of related transactions equals or
2 exceeds two thousand five hundred dollars (\$2,500).

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

7 "(2) In addition to the criminal penalty imposed
8 under subdivision (1), upon conviction of an offense under
9 subdivision (1), the certificate of authority or preneed sales
10 agent registration held by the person shall be automatically
11 revoked and the person may not thereafter obtain a certificate
12 of authority or register as a preneed sales agent.

13 "(d) A person commits a Class C felony, punishable
14 as provided by law, if any of the following occur:

15 "(1) The person knowingly delivers to the
16 commissioner any official form, report, record, data, or other
17 document required by the commissioner containing a false
18 statement or false information concerning a matter material to
19 the commissioner in the exercise of his or her authority to
20 administer and enforce this chapter.

21 "(2) Incident to, or during the course of, an
22 examination, inspection, investigation, or other inquiry
23 authorized by this chapter, the person knowingly makes
24 available to a representative of the commissioner any official
25 form, report, record, data, or other document required by the

1 commissioner containing a false statement or false information
2 concerning a matter material to the purpose of the
3 examination, inspection, investigation, or inquiry.

4 "(3) With respect to the business records of a
5 person engaging in, or who has at any time engaged in, the
6 sale of a preneed contract, a person, with a purpose to use
7 deception as defined in subdivision (1) of Section 13A-8-1,
8 makes false entries in such records or alters, erases,
9 obliterates, deletes, or removes a correct entry in such
10 records, fails to make a correct entry in such records, or
11 prevents the making of a correct entry, or causes the omission
12 of a correct entry in such records.

13 "(e) Except as otherwise provided in this section,
14 the willful violation of this chapter is a Class A
15 misdemeanor, punishable as provided by law.

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

20 "§27-17A-23.

21 "The commissioner, the Attorney General, or any
22 person may bring a civil action against a person or company
23 violating the provisions of this chapter in the appropriate
24 court of the county in which the alleged violator resides or
25 has his or her or its principal place of business or in the

1 county wherein the alleged violation occurred. Upon adverse
2 adjudication, the defendant shall be liable for actual damages
3 caused by the violation. The court ~~may~~, as provided by common
4 law, may award punitive damages and may provide equitable
5 relief as it deems proper or necessary, including enjoining
6 the defendant from further ~~violations~~ violation of this
7 chapter.

8 "§27-17A-25.

9 "(a) All fees collected by the commissioner pursuant
10 to this chapter shall be deposited into the State Treasury to
11 the credit of the Insurance Department Fund.

12 "(b) All fines collected by the commissioner
13 pursuant to this chapter shall be deposited into the State
14 Treasury to the credit of the State General Fund.

15 "(c) The commissioner may use funds available from
16 any source including, but not limited to, grants,
17 appropriations, and gifts, for any purpose in the enforcement
18 of this chapter.

19 "§27-17A-31.

20 "(a) Any person who is paid, collects, or receives
21 funds under a preneed contract for funeral services or funeral
22 merchandise to be funded by trust shall deposit in ~~this state~~
23 trust an amount at least equal to the sum of 75 percent of the
24 amount collected on the purchase price ~~collected~~ for all
25 funeral services and funeral merchandise sold, transportation,

1 and facilities rented other than outer burial containers, 60
2 percent of the amount collected on the purchase price
3 ~~collected~~ for outer burial containers, 110 percent of the
4 wholesale cost of memorials from the amount collected on the
5 purchase price of memorials, and 100 percent of the amount
6 collected on the purchase price ~~collected~~ for all cash advance
7 items sold.

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

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

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

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

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

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

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

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

1 certificate holder except as to the claims of the contract
2 purchaser, his or her representative, or the commissioner.

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

15 "§27-17A-32.

16 ~~"(a) Without limiting in any way the liability of~~
17 ~~the seller under a preneed contract to perform its obligations~~
18 ~~thereunder, including, without limitation, the obligation to~~
19 ~~deliver the funeral merchandise, and for installation thereof~~
20 ~~if it is to be included in the preneed contract, the seller~~
21 ~~shall not be required to place in trust proceeds If amounts~~
22 ~~paid by the purchaser under ~~the~~ a preneed contract for funeral~~
23 ~~merchandise. If the trust proceeds have previously been paid~~
24 ~~deposited in trust, the seller may withdraw the principal~~
25 ~~amount ~~there,~~ and trust appreciation attributable to the~~

1 delivered item at such time as the funeral merchandise is
2 delivered or installed or, if comprised of materials designed
3 to withstand prolonged, protected storage without
4 deterioration, the merchandise is placed in storage with a
5 responsible third party bonded and insured for the wholesale
6 value thereof and evidenced by a receipt specifically
7 identifying the item, the specific preneed contract, the
8 location of the item, and the identity and address of the
9 bonding and insuring parties. For purposes of this subsection
10 only, caskets and alternative containers may not be ~~delivered~~
11 held in storage by the seller or a third party storage
12 facility prior to the death of the funeral beneficiary.

13 " (b) The trustee shall make regular valuations of
14 the assets it holds in trust and provide a report of the
15 valuations to the certificate holder at least quarterly. At
16 all times, the certificate holder shall be able to determine
17 the amount held in trust attributable to each contract holder.
18 For all contracts effective on or after January 1, 2015, the
19 determination shall be based upon the fair market value of the
20 trust at the time and the proportionate share of the fair
21 market value attributable to each contract holder. For all
22 contracts in effect before January 1, 2015, the valuation of
23 each contract may be calculated using any valuation method
24 that had been approved by the commissioner or the department
25 before January 1, 2015. Any person who withdraws appreciation

1 in the value of trust, other than the pro rata portion of such
2 appreciation which may be withdrawn upon the death of a
3 ~~contract~~ contract's funeral beneficiary or upon cancellation
4 of a preneed contract, shall be required to make additional
5 deposits from his or her own funds to restore the aggregate
6 value of assets to the value of funds deposited in trust, but
7 excluding from the funds deposited those funds paid out upon
8 preneed contracts which the person has fully performed or
9 which have been otherwise withdrawn, as provided in this
10 article. The certificate holder shall be liable to third
11 parties to the extent that income from the trust is not
12 sufficient to pay the expenses of the trust.

13 "(c) The trustee of the trust established pursuant
14 to this article shall have all of the following powers:

15 "(1) Make investments and exercise necessary
16 investment powers, provided that the commissioner may by order
17 require the trustee to liquidate or dispose of any investment
18 within 30 days after the order.

19 ~~"(2) Borrow money up to an aggregate amount of 10~~
20 ~~percent of trust assets, at interest rates then prevailing~~
21 ~~from any individual, bank, insurance company, or other source,~~
22 ~~irrespective of whether any such person is then acting as~~
23 ~~trustee, and to create security interests in no more than 10~~
24 ~~percent of trust assets by mortgage, pledge, or otherwise,~~

1 ~~upon the terms and conditions and for the purposes as the~~
2 ~~trustee may deem advisable.~~

3 "~~(3)~~ (2) Commingle the property of the trust with the
4 property of any other preneed funeral, preneed cemetery, or
5 endowment care trust established pursuant to this article and
6 make corresponding allocations and divisions of assets,
7 liabilities, income, and expenses.

8 "(d) Notwithstanding the provisions of Section
9 19-3-125, the trustee may, subject to compliance with the
10 requirements set forth below, invest any portion or all of the
11 funds received under preneed contracts and deposited in trust
12 in life insurance contracts or annuities issued on the lives
13 of preneed contract purchasers or preneed contract
14 beneficiaries, hereinafter, the insured or annuitant, without
15 any obligation to cover at a minimum the retail amount of the
16 preneed contract at the time of purchase of the life insurance
17 contracts or annuities as set forth in Section 27-17A-3.

18 "(1) Trust funds shall not be invested by the
19 trustee in life insurance contracts or annuities unless the
20 following requirements are met:

21 "a. The company issuing the life insurance contracts
22 or annuities is licensed by the Department of Insurance and
23 the insurance producer or annuity seller is properly licensed
24 within its domiciliary jurisdiction.

1 "b. Prior to the investment, the insured or
2 annuitant consents, in writing, to the investment in life
3 insurance contracts or annuities.

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

10 " (2) Upon request, the insured or annuitant shall be
11 provided with a copy of any life insurance contract or annuity
12 issued to a preneed trustee at no expense to the insured or
13 annuitant.

14 " (3) Any life insurance contract or annuity issued
15 in accordance with this subsection and otherwise in compliance
16 therewith shall be valid and in full force according to the
17 terms and conditions thereof.

18 " (4) A trustee that invests all or any portion of
19 the funds received under preneed contracts and deposited in
20 trust in life insurance contracts or annuities issued by one
21 company licensed by the department shall be considered to
22 satisfy the standards and requirements of Section 19-3-120.2
23 and Chapter 3B of Title 19.

24 " (5) It is the intention of the Legislature that
25 this subsection shall be retroactive and shall apply to all

1 life insurance contracts or annuities issued prior to May 6,
2 2008.

3 "§27-17A-34.

4 "(a) Disbursement of funds discharging any preneed
5 contract for funeral services or funeral merchandise fulfilled
6 after May 1, 2002, shall be made by the trustee to the
7 certificate holder upon receipt by the trustee of a
8 certification of the certificate holder that the preneed
9 contract has been performed in whole or in part or the preneed
10 contract has been cancelled. Before the trustee may disburse
11 any trust funds, the certificate holder shall provide to the
12 trustee a death certificate or other valid proof of death, a
13 letter from the preneed contract holder cancelling the preneed
14 contract or valid proof the contract has been cancelled in
15 accordance with Section 27-17A-33, or valid proof the
16 merchandise has been delivered and installed, and services
17 have been performed. Any trustee accepting preneed contract
18 proceeds under this article may rely upon the certification of
19 the certificate holder ~~as herein required to be made~~
20 accompanied by the required proof, and shall not be liable to
21 anyone for such reliance. If the contract is only partially
22 performed, the disbursement shall only cover that portion of
23 the contract performed. In the event of any contract default
24 by the contract purchaser, or in the event that the funeral
25 merchandise or funeral service contracted for is not provided,

1 the trustee shall return, within 30 days after its receipt of
2 a written request therefor, 100 percent of the funds ~~paid~~
3 deposited into the trust on the contract and the income and
4 accretion thereon to the certificate holder or to its assigns,
5 subject to ~~the provisions of~~ Section 27-17A-33.

6 " (b) ~~If the preneed contract so provides, the~~
7 ~~trustee may distribute trust income allocable to the preneed~~
8 ~~contract to the certificate holder on an annual basis, so long~~
9 ~~as the distribution is consistent with subsection (b) of~~
10 ~~Section 27-17A-32~~ For all contracts effective on or after
11 January 1, 2015, the amount that may be withdrawn from the
12 trust upon fulfillment or cancellation of any particular
13 preneed contract may not exceed the amount attributable to
14 that preneed contract in proportion to the total amount held
15 in trust for all preneed contracts as of the date of
16 withdrawal. For all contracts in effect before January 1,
17 2015, the valuation of each contract and the amount that may
18 be withdrawn from the trust may be calculated using any
19 valuation method that had been approved by the commissioner or
20 the department before January 1, 2015.

21 "§27-17A-40.

22 "To comply with the trust requirement of subsection
23 (a) of Section 27-17A-13, all certificate holders who are
24 cemetery authorities providing preneed contracts for cemetery

1 services or cemetery merchandise shall be subject to this
2 article.

3 "§27-17A-42.

4 "(a) The obligation of the seller under a preneed
5 contract shall be to make contributions into the Cemetery
6 Merchandise and Services Trust Fund in accordance with the
7 following formulae:

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

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

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

15 "(4) With respect to all cash advance items sold,
16 100 percent of the purchase price specified for the same in
17 the preneed contract.

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

20 "(b) All contributions shall be made within 30 days
21 after the end of the calendar month in which the preneed
22 contract is paid in full, unless, prior to that time, all
23 liabilities of the seller under the preneed contract to
24 deliver the specific cemetery merchandise or cemetery
25 services, or both, or the specific cash advances, identified

1 by the preneed provider as properly allocated to the payment,
2 have been satisfied, or the preneed contract is validly
3 cancelled.

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

16 ~~"(c)(d)~~ The trustee shall invest and reinvest the
17 Cemetery Merchandise and Services Trust Fund.

18 ~~"(d)(e)~~ The trustee shall make regular evaluations
19 of the fair market value of assets held in and liabilities, if
20 any, of the Cemetery Merchandise and Services Trust Fund and
21 provide a report of the evaluations to the seller at least
22 quarterly. Upon receipt of each quarterly report, the seller
23 may submit to the trustee a written and detailed analysis
24 concerning the balance of funds in the Cemetery Merchandise
25 and Services Trust Fund, certified under oath as being true

1 and correct upon information and belief by a responsible
2 officer of the seller.

3 ~~"(e)~~ (f) While the obligation of the seller to make
4 contributions to the Cemetery Merchandise and Services Trust
5 Fund is set forth in this section, the obligation of the
6 seller at the time of making certain withdrawals from the
7 Cemetery Merchandise and Services Trust Fund as herein
8 provided for shall be calculated with respect to the current
9 wholesale cost of cemetery merchandise and current retail
10 price of cemetery services and cash advances at the time of
11 withdrawal. If the fair market value as reported by the
12 trustee exceeds 110 percent of the total of the following, the
13 seller shall be entitled to withdraw and retain from the
14 merchandise trust fund, the excess funds therein: ~~One hundred~~
15 ~~and ten~~ 110 percent of the current wholesale cost of the
16 liability to deliver all cemetery merchandise, 60 percent of
17 the current retail price for all cemetery services, 60 percent
18 of the current retail price of outer burial containers, 75
19 percent of the current retail price of caskets, and 100
20 percent of the current retail price of all cash advances, for
21 the total of all preneed contracts for which the purchasers
22 have paid in full, all calculated as of the time of
23 withdrawal; and concerning the total of all preneed contracts
24 for which the purchasers have not paid in full, 25 percent of
25 the total of the following: 110 percent of the current

1 wholesale cost of the liability to deliver all cemetery
2 merchandise, 60 percent of the current retail price for all
3 cemetery services, and 100 percent of the current retail price
4 of all cash advances, all calculated as of the time of
5 withdrawal.

6 ~~"(f) (g)~~ At least annually the seller shall make the
7 aforesaid analysis and certification and provide the same to
8 the trustee. If the certification discloses that the fair
9 market value of the Cemetery Merchandise and Services Trust
10 Fund is less than 100 percent of the aggregate calculated
11 amount the seller shall from its own funds contribute to the
12 Cemetery Merchandise and Services Trust Fund within the 12
13 months succeeding the annual computation the amount necessary
14 to restore the trust fund to an amount equal to not less than
15 100 percent of the aggregate amount so calculated.

16 "§27-17A-44.

17 ~~"(a) Without limiting in any way the liability of~~
18 ~~the seller under a preneed contract to perform its obligations~~
19 ~~thereunder, including, without limitation, the obligation to~~
20 ~~deliver the cemetery merchandise, and for installation thereof~~
21 ~~if it is to be included in the preneed contract, the seller~~
22 ~~shall not be required to place in trust proceeds paid under~~
23 ~~the contract for cemetery merchandise.~~

24 ~~"(b) If the trust proceeds amounts paid by the~~
25 ~~purchaser under a preneed contract for cemetery merchandise~~

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

15 "§27-17A-47.

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

1 each of whom shall be bonded to honestly perform the duties of
2 trustee under a formal trust agreement.

3 "(b) Except as specifically provided in this
4 subsection, commencing on the effective date of the act adding
5 this subsection, a person serving on a board of trustees or
6 cemetery authority may not also serve as a trustee of an
7 endowment care fund for the cemetery authority. A board of
8 trustees in existence on the effective date of the act adding
9 this subsection may continue to serve as the trustee of an
10 endowment care fund if the board of trustees otherwise
11 complies with this subsection. Unless exempted by the
12 commissioner pursuant to this subsection, on or before January
13 1, 2015, each member of a board of trustees in existence on
14 the effective date of the act adding this subsection shall
15 furnish the bond required by subsection (a) in the greater of
16 one hundred thousand dollars (\$100,000) or the amount in each
17 endowment care fund for which the board acts as trustee as of
18 December 31, 2014. Thereafter, the amount of the bonds shall
19 be increased on January 1 of each succeeding year to equal the
20 amount in each endowment care fund as of the immediately
21 preceding December 31. The commissioner shall exempt a board
22 of trustees from the bond requirement if the board of trustees
23 provides to the commissioner an annual audit report that
24 satisfies all of the following criteria:

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

3 "(2) The report evidences that the review made the
4 subject of the report by the accountant encompasses each
5 endowment care fund for which the board acts as trustee.

6 "(3) The report notes relating to the endowment care
7 fund or funds are in a form that is reasonably acceptable to
8 the commissioner.

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

12 ~~"(b) The amount of each bond shall be a minimum of~~
13 ~~twenty-five thousand dollars (\$25,000).~~ (c) The corporate
14 trustee or board of trustees shall be referred to as a
15 "qualified trustee." Unless otherwise specified in this
16 article or in the terms of the trust instrument, the trustee
17 of any trust established under or pursuant to this article
18 shall have all powers granted to trustees under Article 14 of
19 Chapter 3 of Title 19. The incorporation herein of such powers
20 shall not be deemed to imply any duties of trustees of trusts
21 established under or pursuant to this article not expressly
22 delineated in this article.

23 ~~"(c)~~ (d) The cemetery authority may employ a person
24 to advise the trustee in the management of the fund.

1 "~~(d)~~ (e) The cemetery authority may enter into a
2 contract with the qualified trustee for the management and
3 investment of the endowment care fund, which contract may
4 provide for the payment of income from the fund of reasonable
5 fees or commissions to the trustee, and its reasonable
6 expenses for administering the trust.

7 "(f) As often as he or she may deem necessary, the
8 commissioner may examine the records or facilities, or both,
9 of any cemetery authority operating an endowment care
10 cemetery.

11 "§27-17A-50.

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

1 the exercise of the trustee's discretion, deems the
2 investment, reinvestment, or retention to be for the best
3 interest of the trust estate.

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

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

18 "§27-17A-55.

19 "A cemetery authority shall start construction of
20 that section of a mausoleum or bank of below-ground crypts in
21 which sales, contracts for sale, reservations for sale, or
22 agreements for sale are being made, within five years after
23 the date of the first sale or when 75 percent of the mausoleum
24 or below-ground crypts have been sold and the purchase price
25 has been received, whichever occurs first. The construction

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

14 Section 4. Section 27-17A-57 is added to the Code of
15 Alabama 1975, to read as follows:

16 §27-17A-57.

17 The commissioner shall have the same jurisdiction
18 over funeral establishments, funeral directors, cemetery
19 authorities, or third party sellers who sell preneed contracts
20 without a preneed certificate of authority as he or she has
21 over those preneed sellers who possess a preneed certificate
22 of authority.

23 Section 5. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further

1 requirements and application under Amendment 621, now
2 appearing as Section 111.05 of the Official Recompilation of
3 the Constitution of Alabama of 1901, as amended, because the
4 bill defines a new crime or amends the definition of an
5 existing crime.

6 Section 6. The provisions of this act are severable.
7 If any part of this act is declared invalid or
8 unconstitutional, that declaration shall not affect the part
9 which remains.

10 Section 7. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB98

Senate 20-FEB-14

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 11-MAR-14

Senate concurred in House amendment 18-MAR-14

By: Senator Bussman