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**BULLETIN**

**TO:            Preneed providers holding certificates of authority under the  
Alabama Preneed Funeral and Cemetery Act**

**Insurers authorized to write life insurance and annuities in Alabama**

**FROM:        Walter A. Bell  
Commissioner of Insurance** 

**DATE:        July 31, 2008**

**RE:           Alabama Act No. 2008-271 – investment in life insurance and annuities by  
preneed funeral merchandise and services trusts**

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On May 6, 2008, the Governor of Alabama approved Alabama Act No. 2008-271, (the "Act"). In relevant part, the Act amends Ala. Code § 27-14-3, which deals with insurable interest in personal insurance, and Ala. Code § 27-17A-32, a part of the Alabama Preneed Funeral and Cemetery Act (the "Preneed Act") which addresses, among other things, powers of trustees of funeral merchandise and services trusts.

This Bulletin states the Department's position on certain aspects of the Act and how it is to be implemented:

1. The Act applies only to funeral merchandise and services trusts regulated in Ala. Code §§ 27-17A-30 through 27-17A-34 and established by or on behalf of a preneed provider which holds a certificate of authority from the Department to engage in preneed sales.

2. The Act does not apply to cemetery merchandise and services trusts [Ala. Code §§ 27-17A-40 through 27-17A-44] and cemetery endowment care trusts [Ala. Code §§ 27-17A-47 through 27-17A-54]. Such cemetery trusts do not have an insurable interest in the lives of preneed contract buyers or beneficiaries, may not purchase life insurance or annuities on the lives of preneed contract buyers or beneficiaries, and may not "invest" in such life insurance or annuities consistent with Alabama statutes regulating trusts.

3. To the extent that existing funeral merchandise and services trust instruments do not permit investments of the type now allowed under the Act, the trust instruments must be amended to permit the investments and the amendment(s) submitted to and approved by the Department.

4. The Act does not change the trusting requirements imposed by the Preneed Act on preneed providers. Preneed contracts for which a trust invests in life insurance policies or annuities as permitted by the Act are trust-funded contracts, not insurance-funded contracts.

5. Under new Ala. Code § 27-14-3(d), added by the Act, a trustee of a funeral merchandise and services trust is deemed to have a limited insurable interest in the life of a preneed contract buyer or a preneed contract beneficiary. The Act does not grant a preneed provider an insurable interest in the life of a preneed contract buyer or beneficiary. Preneed providers do not otherwise have an insurable interest in the lives of preneed contract buyers or beneficiaries and may not purchase life insurance or annuities on the lives of preneed contract buyers or beneficiaries.

6. The extent of a trustee's insurable interest is limited by the Act to the lesser of \$20,000 or 100% of the purchase price of the preneed contract.

7. Under new Ala. Code § 27-17A-32(d), added by the Act, the trustee of a funeral merchandise and services trust may invest any portion or all of the funds received under preneed contracts and deposited in trust in life insurance contracts or annuities issued on the lives of preneed contract purchasers or preneed contract beneficiaries if the following requirements are met:

(a) The insurer is properly licensed by the Department and by the insurer's domiciliary jurisdiction (if not Alabama).

(b) Prior to the investment, the insured or annuitant consents, in writing, to the investment in a life insurance contract or annuity on the person's life.

8. Under the Alabama Insurance Code, the form of policy or annuity intended for use in connection with activity allowed under the Act must have been submitted to and approved by the Department before use.

9. The "written consent" required under new § 27-17A-32(d) must be by document separate from the preneed contract. Preneed providers, trustees, and insurance companies may not rely or act on "consent" contained within a preneed contract signed by the contract buyer or beneficiary.

10. The Act's "consent" requirement implies reasonably informed consent. With this Bulletin is a model consent form which incorporates elements the Department requires for informed consent. The actual form of written consent must be on a form submitted to and approved by the Department before use. Forms which do not substantially comply with the model form will not be approved for use.

11. Responsibility for complying with the Act's consent requirements falls on any insurance company proposing to issue life insurance policies or annuities to a preneed trust under the auspices of the Act. A preneed provider, through its preneed sales agents, may present a consent form to a prospective preneed contract purchaser as part of the preneed

contract sales process. The provider and its employees or agents shall not misrepresent the nature or terms of the consent form or the nature of the transaction. In connection with obtaining execution of the consent form, preneed sales agents or other employees or agents of the preneed provider shall not engage in activities constituting the sale, solicitation, or negotiation of insurance for which licensing as an insurance producer is required. Consumer inquiries about the nature or effect of the consent, if not otherwise answered on the face of the consent, must be referred to the insurance company.

12. Consent must be obtained from the preneed contract beneficiary to the extent that a preneed contract buyer identified in a preneed contract is not also identified as the beneficiary of that contract. The contract buyer, if different, may not give consent on the beneficiary's behalf except in the specific instances provided for in Ala. Code § 27-14-6(a)(1), - (2), or -(3). The person from whom consent is obtained must be of competent legal capacity to contract.

13. Consistent with the trust requirements imposed by the Preneed Act, the preneed trust or trustee electing to invest in life insurance policies or annuities as allowed by the Act will be shown as the owner and beneficiary of the policies or annuities.

14. Neither the insurance company nor the funeral merchandise and services trustee may lawfully pay a preneed provider or the provider's employees or agents a "commission" or any other form of compensation relating, directly or indirectly, to life insurance or annuities sold to a funeral merchandise and services trust as a trust investment within the scope of the Act.

15. An insurance company may not lawfully pay a funeral merchandise and services trust or the trustee of such a trust a "commission," rebate, or financial inducement of any kind directly or indirectly relating to life insurance or annuities sold to the trust as a trust investment within the scope of the Act.

16. Each preneed provider that is beneficiary of a funeral merchandise and services trust which invests in life insurance or annuities under authority of the Act shall require the trustee to separately account for preneed contracts entered into before May 1, 2002, the effective date of the Preneed Act, and preneed contracts entered into after that date.

17. Any trustee electing to use the investment mechanism allowed by the Act and any insurance company electing to sell life insurance or annuities to trusts as allowed by the Act are each deemed to have agreed to furnish to the Department and/or to the trust beneficiary for transmittal to the Department a complete and accurate accounting of the trust's investments in life insurance policies and annuities if requested by the Department as part of the Department's examination function or its regulatory responsibilities under the Alabama Insurance Code and/or the Preneed Act. Each preneed provider that is beneficiary of a funeral merchandise and services trust which invests in life insurance or annuities under authority of the Act shall require the trustee to maintain a complete and accurate accounting of the trust's investments in life insurance policies and annuities and to furnish such information to the Department upon request.

18. The Act purports to be retroactive in application. The Department construes this retroactivity to relate to amendment of the insurable interest statute and to allowing a trust legal authority to "invest" in life insurance policies and annuities. In instances where a funeral merchandise and services trust "invested" in either an individual or group life insurance policy on the life of a preneed contract beneficiary before the Act's effective date but without the beneficiary's written consent, either substantially meeting the elements of the attached consent form or by an application for insurance, the insurer must obtain written consent from the contract beneficiary (as otherwise provided above) and then reissue the policy to the trust in order to come under the Act.

WAB/JFM/bc

Attachment: Model Consent Form

DISCLOSURE AND CONSENT FORM  
FOR PRENEED LIFE INSURANCE OR ANNUITY PURCHASED BY PRENEED TRUST

ALABAMA LAW REQUIRES THAT CERTAIN PORTIONS OF THE PRICE PAID FOR A PRENEED CONTRACT BE PLACED IN TRUST IF THE CONTRACT IS TRUST FUNDED. THE PRENEED CONTRACT BENEFICIARY MUST CONSENT IF THE TRUST INTENDS TO INVEST SOME OR ALL TRUSTED FUNDS IN LIFE INSURANCE OR ANNUITIES ON THE LIFE OF THE PRENEED CONTRACT BENEFICIARY.

IF YOU HAVE QUESTIONS THAT ARE NOT ANSWERED BY THIS FORM, YOU  
SHOULD CONTACT THE INSURANCE COMPANY BEFORE COMPLETING THIS FORM.

Name of Preneed Beneficiary \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address of Preneed Beneficiary \_\_\_\_\_

Preneed Provider (Name of Funeral Home) \_\_\_\_\_

Address of Preneed Provider \_\_\_\_\_

Preneed Contract No. \_\_\_\_\_ Purchase Price of Preneed Contract \_\_\_\_\_

Trust name or identifier: \_\_\_\_\_

Name of Trustee \_\_\_\_\_

Address of Trustee \_\_\_\_\_

Name of Insurance Company \_\_\_\_\_

Address of Insurance Company \_\_\_\_\_

Amount of Insurance or Annuity to be Purchased \_\_\_\_\_

Current Amount in Trust \_\_\_\_\_ Premium Required to Purchase Insurance or Annuity \_\_\_\_\_

Amount That Will Remain In Trust (if any) After Insurance Purchase \_\_\_\_\_

**I understand that, if I consent:**

- **A life insurance policy, life insurance certificate, or annuity (the "Policy") will be issued on my life by the above-named Insurance Company. If I pay for my Preneed Contract in installments, several Policies may be issued.**
- **The Policy will be issued to the above-named Trust.**
- **The maximum face amount of the Policy will not exceed \$\_\_\_\_\_ at the time the Policy is issued. If several Policies are issued, the total face amounts of all will not exceed \$\_\_\_\_\_.**
- **The Trust will buy the Policy using funds that have been deposited in the Trust by the Preneed Provider on account of my preneed contract. I will not pay premiums for the Policy.**
- **The Trust will be the beneficiary of the Policy.**

- The Trust will apply for, own, and control the Policy in every respect. The Trust or its successors will continue to be the owner and beneficiary of the Policy indefinitely.
- Neither I nor my estate, heirs, executors, administrators, or assigns have any rights in the Policy or in any Policy proceeds.
- No portion of the Policy proceeds will be paid to me, my estate, or my heirs, executors, administrators, or assigns. All Policy proceeds will be paid to the Trust, which will pay them to the Preneed Provider upon performance of the Preneed Contract.
- The amount of Policy proceeds paid, either itself or in combination with payment of assets remaining in the Trust and growth on those assets (if any), may exceed the purchase price of my Preneed Contract.
- My consent is irrevocable and will be relied on by the Insurance Company to issue the Policy.

I understand that if I do NOT consent, assets held in the Trust on account of my Preneed Contract will NOT be invested in a life insurance policy, certificate, or annuity on my life.

INITIAL THE FOLLOWING STATEMENTS THAT APPLY:

I have read or have had read to me the above information. \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_ I **CONSENT** to the Trust buying a life insurance policy or annuity from the Insurance Company named above insuring my life as explained above. I REQUEST that a copy of the life insurance policy or annuity policy (including the application therefor) be sent to me when issued without cost to me.

\_\_\_\_\_ I **DO NOT CONSENT** to the Trust buying a life insurance policy or annuity from the Insurance company named above.

\_\_\_\_\_  
Signature of Insured

\_\_\_\_\_  
Date

Printed name of insured: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

Printed name of witness: \_\_\_\_\_

**A COMPLETED/FULLY SIGNED COPY OF THIS FORM  
MUST BE FURNISHED TO THE PROPOSED INSURED  
AT THE TIME OF SIGNING**