

1 HB53  
2 44461-7  
3 By Representative Major  
4 RFD: State Government  
5 First Read: 08-JAN-2002  
6 PFD 01/07/2002

# ACT No. 2002-74



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Enrolled, An Act,

To add Chapter 17A to Title 27, Code of Alabama 1975, to authorize the Commissioner of Insurance to provide for the certification process and regulation of the sale of preneed funeral or cemetery merchandise and services; to provide for the establishment and administration of certain trust funds; to provide for fees; to provide for violations and criminal punishment for violations; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 17A is added to Title 27, Code of Alabama 1975, to read as follows:

Chapter 17A. PRENEED FUNERAL AND CEMETERY ACT.

Article 1. General Provisions.

Section 27-17A-1. This chapter shall be cited as the Alabama Preneed Funeral and Cemetery Act.

Section 27-17A-2.

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

(1) ALTERNATIVE CONTAINER. A nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining,

1 which is designed for the encasement of human remains and  
2 which is made of cardboard, pressed-wood, composition  
3 materials (with or without an outside covering), or pouches of  
4 canvas or other materials.

5 (2) ARRANGEMENT CONFERENCE. The meeting occurring  
6 either at need or preneed between the seller and the purchaser  
7 during which funeral or cemetery merchandise and services are  
8 discussed.

9 (3) ARRANGEMENT CONFERENCE FEE. The charge to the  
10 purchaser in conjunction with the arrangement conference.

11 (4) AT NEED. At the time of death, or immediately  
12 following death.

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

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

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

23 (8) BURIAL. The placement of human remains in a  
24 grave space or lawn crypt.

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

10           (10) CASKET. A rigid container which is designed for  
 11 the encasement of human remains and which is usually  
 12 constructed of wood, metal, or like material, and ornamented  
 13 and lined with fabric.

14           (11) CEMETERY. A place that is established,  
 15 maintained, managed, operated, or improved and which is  
 16 dedicated to and used or intended to be used for the final  
 17 disposition of human remains and their memorialization.

18           (12) CEMETERY AUTHORITY. Any person who owns or  
 19 controls a cemetery or conducts cemetery business.

20           (13) CEMETERY MERCHANDISE. Any personal property  
 21 offered for sale, contracted for sale, or sold for use in  
 22 connection with the burial of, final disposition,  
 23 memorialization, interment, entombment, or inurnment of human  
 24 remains. Cemetery merchandise specifically includes, but is  
 25 not limited to, the outer burial container and the memorial.

1           (14) CEMETERY SERVICES. Services provided by a  
2 cemetery authority for interment, entombment, inurnment, and  
3 installation of cemetery merchandise.

4           (15) CERTIFICATE HOLDER. A funeral establishment,  
5 cemetery authority, third-party seller or any other person to  
6 whom a valid certificate of authority to sell preneed  
7 contracts has been granted by the commissioner.

8           (16) COLUMBARIUM. A structure or room or space in a  
9 building or structure used or intended to be used for the  
10 inurnment of cremated remains.

11           (17) COMMISSIONER. The Alabama Commissioner of  
12 Insurance.

13           (18) CREMATED REMAINS. The bone fragments remaining  
14 after the cremation process, which may include the residue of  
15 any foreign materials that were cremated with the human  
16 remains.

17           (19) CREMATED REMAINS CONTAINER. A receptacle in  
18 which cremated remains are placed.

19           (20) CREMATION. The irreversible process of reducing  
20 human remains to bone fragments through intense heat and  
21 evaporation, performed in a specifically designed furnace or  
22 retort, which may include any other mechanical or thermal  
23 process whereby the bone fragments are pulverized, or  
24 otherwise further reduced in size or quantity. Cremation is a  
25 process and is a method of final disposition.

1                   (21) CREMATORY AUTHORITY. Any person who owns or  
2 controls a crematory.

3                   (22) DEATH CERTIFICATE. A legal document containing  
4 vital statistics pertaining to the life and death of the  
5 deceased.

6                   (23) DECEASED or DECEDENT. One who is no longer  
7 living.

8                   (24) EMBALMER. One authorized by law to engage in  
9 embalming.

10                  (25) EMBALMING. A procedure whereby human remains  
11 are chemically treated by injection for temporary preservation  
12 including, but not limited to, the act of disinfecting,  
13 preserving, and restoring human remains to a natural life-like  
14 appearance.

15                  (26) ENCASEMENT. The placement of human remains in a  
16 rigid container, including, but not limited to, a casket or  
17 urn.

18                  (27) ENDOWMENT CARE. The maintenance and repair of  
19 all places in the cemetery, subject to the rules and  
20 regulations of the cemetery authority; may be known also as  
21 endowed care, perpetual care, improvement care, or permanent  
22 care.

23                  (28) ENDOWMENT CARE TRUST FUND. An irrevocable trust  
24 fund set aside by law with a trustee, along with the income  
25 therefrom, to provide for the endowment care of the cemetery.

1           (29) ENTOMBMENT. The act of placing human remains in  
2 a mausoleum crypt.

3           (30) FINAL DISPOSITION. The lawful disposal of human  
4 remains whether by interment, entombment, burial at sea,  
5 cremation, or other method.

6           (31) FUNERAL. The rites held commemorating the  
7 deceased with human remains present.

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

15           (33) FUNERAL DIRECTOR. One authorized by law to  
16 engage in funeral directing.

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

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

- 1 a. Alternative container.
- 2 b. Casket.
- 3 c. Outer burial container.
- 4 d. Urn.

5 (36) FUNERAL SERVICE. Services provided by a funeral  
6 establishment in connection with funeral directing.

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

9 (38) HUMAN REMAINS. The body of a decedent and  
10 includes the body in any stage of decomposition and cremated  
11 remains.

12 (39) INTERMENT. The final disposition of human  
13 remains by burial, entombment, or inurnment.

14 (40) INTERMENT RIGHT. The right to inter human  
15 remains in a particular interment space in the cemetery.

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

19 (42) INURNMENT. The act of placing cremated remains  
20 in a receptacle including, but not limited to, an urn and  
21 depositing it in a niche.

22 (43) MAUSOLEUM. A chamber or structure used or  
23 intended to be used for entombment.

24 (44) MAUSOLEUM CRYPT. A chamber of a mausoleum of  
25 sufficient size for entombment of human remains.



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

7           (46) MEMORIAL RETAILER. Any person offering or  
8 selling memorials at retail to the public.

9           (47) MEMORIALIZATION. Any permanent system designed  
10 to mark or record the names and other data pertaining to a  
11 decedent.

12           (48) NICHE. A space usually within a columbarium  
13 used or intended to be used for inurnment of cremated remains.

14           (49) OUTER BURIAL CONTAINER. A container which is  
15 designed for placement in the grave space around the casket or  
16 the urn including, but not limited to, containers commonly  
17 known as burial vaults, grave boxes, and grave liners.

18           (50) PERSON. Any individual, firm, corporation,  
19 partnership, joint venture, limited liability company,  
20 association, trustee, government or governmental subdivision,  
21 agency, or other entity, or any combination thereof.

22           (51) PREARRANGEMENT. The term applied to completing  
23 the details for selection of merchandise or services on a  
24 preneed basis, which may or may not include provisions for  
25 prefunding or prepayment.

1                   (52) PREDEVELOPED. Designated areas or buildings  
2 within a cemetery that have been mapped and planned for future  
3 construction but are not yet completed.

4                   (53) PREDEVELOPED INTERMENT SPACE. An interment  
5 space that is planned for future construction but is not yet  
6 completed.

7                   (54) PREFUND. The term applied to completing the  
8 financial details of a prearrangement, which include  
9 provisions for funding or prepayment.

10                  (55) PRENEED. Any time prior to death.

11                  (56) PRENEED CONTRACT. A written contract to  
12 purchase funeral merchandise, funeral services, cemetery  
13 merchandise, or cemetery services from the seller on a preneed  
14 basis.

15                  (57) PRENEED CONTRACT TRUST FUND. The funds received  
16 pursuant to a preneed contract which are required by law to be  
17 held in trust until the merchandise or services purchased  
18 pursuant to the contract are delivered or provided or until  
19 otherwise lawfully withdrawn.

20                  (58) PROVIDER. A person who may or may not be the  
21 seller, who will actually provide the merchandise and services  
22 under the terms of a preneed contract.

23                  (59) PURCHASE PRICE. The amount paid by the  
24 purchaser for merchandise and services purchased under a  
25 preneed contract, exclusive of finance charges, sales tax,

1 charges relating to interment rights, arrangement conference  
2 fees, or charges for credit life insurance.

3 (60) PURCHASER. The person who purchases a preneed  
4 contract either on his or her behalf or on behalf of a third  
5 party beneficiary.

6 (61) RELIGIOUS INSTITUTION. An organization formed  
7 primarily for religious purposes which has qualified for  
8 exemption from federal income tax as an exempt organization  
9 under the provisions of Section 501(c)(3) of the Internal  
10 Revenue Code of 1986, as amended.

11 (62) SCATTERING. The lawful dispersion of cremated  
12 remains.

13 (63) SELLER. Any person offering or selling  
14 merchandise or services on a preneed basis including, but not  
15 limited to, funeral establishment, cemetery authorities,  
16 crematory authorities, memorial retailers, direct disposers,  
17 etc.

18 (64) SPECIAL CARE. Any care provided, or to be  
19 provided, that is supplemental to, or in excess of, endowment  
20 care, in accordance with the specific directions of any donor  
21 of funds for such purposes.

22 (65) SUCCESSOR-IN-INTEREST. A person who lawfully  
23 follows another in ownership or control of property or rights.

1           (66) THIRD-PARTY SELLER. Any person, who is not a  
2 funeral establishment or a cemetery authority, engaged in the  
3 sale of preneed funeral merchandise or cemetery merchandise.

4           (67) TRUSTEE. Any person, state or national bank,  
5 trust company, or federally insured savings and loan  
6 association lawfully appointed as fiduciary over funds  
7 deposited by one or more purchasers of a preneed contract or  
8 deposited pursuant to an endowment care trust fund; not to be  
9 confused with a board of trustees.

10           (68) URN. A receptacle for the encasement of  
11 cremated remains.

12           Section 27-17A-3.

13           Nothing in this chapter shall be construed to  
14 prohibit the funding of preneed contracts with insurance  
15 contracts. Life insurance contracts used to fund preneed  
16 contracts shall conform with the provisions of this title as  
17 they relate to life insurance and shall cover at a minimum the  
18 retail amount of the preneed contract at the time of purchase.

19           Section 27-17A-4.

20           Nothing in this chapter shall be construed to  
21 prohibit cemetery authorities from selling funeral  
22 merchandise, funeral establishments from selling cemetery  
23 merchandise or third-party sellers from selling either funeral  
24 merchandise or cemetery merchandise or both. Provided, the

1 required amount of the purchase price to be placed into trust  
2 shall be governed by the appropriate section of this chapter.

3 Article 2. Certificate of Authority.

4 Section 27-17A-10.

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

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

10 (2) The provisions of subdivision (1) do not apply  
11 to any legal reserve insurance company or to any trust company  
12 or to any national or state bank or savings and loan  
13 association having trust powers which company, bank, or  
14 association receives any money in trust pursuant to the sale  
15 of a preneed contract.

16 (c) No person may obtain a certificate of authority  
17 under this article for the preneed sale of funeral services or  
18 cemetery services unless the person or its agent, in the case  
19 of a corporate entity, holds a license as a funeral director  
20 or a funeral establishment, or is a cemetery authority.

21 (d) The provisions of this section do not apply to a  
22 cemetery authority owned or operated by a governmental agency  
23 or a religious institution.

24 Section 27-17A-11.

1           (a) An application to the commissioner for a  
 2 certificate of authority shall be accompanied by the statement  
 3 and other matters described in this section in the form  
 4 prescribed by the commissioner. Annually thereafter, within  
 5 three months after the end of its fiscal period, or within an  
 6 extension of time therefor, as the commissioner for good cause  
 7 may grant, the person authorized to engage in the sale of  
 8 preneed contracts shall file with the commissioner a full and  
 9 true statement of his or her financial condition,  
 10 transactions, and affairs, prepared on a basis as adopted by a  
 11 rule of the commissioner, as of the preceding fiscal period or  
 12 at such other time or times as the commissioner may provide by  
 13 rule, together with information and data which may be required  
 14 by the commissioner.

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

17           (1) The types of preneed contracts proposed to be  
 18 written and the type of funding vehicle to be used.

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

21           (3) Evidence that the person offering the statement  
 22 has the following qualifications:

23           a. Has the ability to discharge his or her  
 24 liabilities as they become due in the normal course of  
 25 business and has sufficient funds available during the

1 calendar year to perform his or her obligations under the  
2 contract.

3 b. Has complied with the trust requirements for the  
4 funds received under contracts issued by himself or herself as  
5 hereinafter described.

6 c. Has disbursed interest, dividends, or accretions  
7 earned by trust funds, in accordance with this article and  
8 rules promulgated thereunder.

9 d. Has complied with this chapter and any rules of  
10 the commissioner.

11 (4) Any other information considered necessary by  
12 the commissioner to meet the commissioner's responsibilities  
13 under this chapter.

14 (c) If the person is an individual, the statement  
15 shall be sworn by him or her; if a firm or association, by all  
16 members thereof; or, if a corporation, by any officer of the  
17 corporation.

18 (d) (1) An application to the commissioner for an  
19 initial certificate of authority shall be accompanied by an  
20 application fee in an amount to be determined by the  
21 commissioner, not to exceed one hundred fifty dollars (\$150).  
22 Thereafter, each annual application for renewal of a  
23 certificate of authority shall be accompanied by the  
24 appropriate fee as determined by the commissioner not to  
25 exceed seventy-five dollars (\$75).

1           (2) Any person or entity that is part of a common  
2 business enterprise that has a certificate of authority issued  
3 pursuant to this article and elects to operate under a name  
4 other than that of the common business enterprise shall submit  
5 an application on a form adopted by the commissioner to become  
6 a branch registrant. Upon the approval of the commissioner  
7 that the entity qualifies to sell preneed contracts under this  
8 article except for the requirements of paragraph a. of  
9 subdivision (3) of subsection (b) and if the certificate  
10 holder meets the requirements of paragraph a., a branch  
11 registration shall be issued. Each branch registrant may  
12 operate under the certificate of authority of the common  
13 business enterprise upon the payment of a fee established by  
14 the commissioner not to exceed one hundred fifty dollars  
15 (\$150) accompanying the application on April 1 annually.

16           (e) Upon the commissioner being satisfied that the  
17 statement and matters which may accompany it meet the  
18 requirements of this article and of its rules, the  
19 commissioner shall issue or renew the certificate of  
20 authority.

21           (f) The certificate of authority shall expire  
22 annually on June 1, unless renewed, or at such other time or  
23 times as the commissioner may provide by rule.

24           (g) On or before April 1 of each year, the  
25 certificate holder shall file with the commissioner in the



1 form prescribed by the commissioner a full and true statement  
2 as to the activities of any trust established by it pursuant  
3 to this article for the preceding calendar year.

4 (h) In addition to any other penalty that may be  
5 provided for under this article, the commissioner may levy a  
6 fine not to exceed fifty dollars (\$50) per day for each day  
7 the certificate holder fails to file its annual statement, and  
8 the commissioner may levy a fine not to exceed fifty dollars  
9 (\$50) per day for each day the certificate holder fails to  
10 file the statement of activities of the trust. Upon notice to  
11 the certificate holder by the commissioner that the  
12 certificate holder has failed to file the annual statement or  
13 the statement of activities of the trust, the certificate  
14 holder's authority to sell preneed contracts shall cease while  
15 the default continues.

16 (i) To facilitate uniformity in financial statements  
17 and to facilitate analysis, the commissioner may by rule adopt  
18 a form for financial statements.

19 (j) The commissioner may authorize the transfer of  
20 certificates of authority and establish fees for the transfer  
21 in an amount not to exceed one hundred dollars (\$100). Upon  
22 receipt of an application for transfer, the commissioner may  
23 grant a temporary certificate of authority to the proposed  
24 transferee, based upon criteria established by the  
25 commissioner by rule, which criteria shall promote the

1 purposes of this article in protecting the consumer. A  
2 temporary certificate of authority shall expire 60 days after  
3 issuance unless renewed by the commissioner.

4 Section 27-17A-12.

5 (a) Preneed contract forms and related forms shall  
6 be filed with and approved by the commissioner.

7 (b) Specific disclosure regarding the certificate  
8 holder's requirement to place certain preneed funds received  
9 in trust, is required in the preneed contract.

10 (c) Preneed contracts which have been submitted to  
11 the commissioner shall be deemed to have been approved by the  
12 commissioner in the event that the commissioner fails to  
13 notify the certificate holder that approval has been denied  
14 within 30 days following submission to the commissioner.

15 Section 27-17A-13.

16 (a) Except as provided in Sections 27-17A-3 and  
17 27-17A-14, every preneed contract shall require the moneys  
18 paid to the seller or trustee to be placed in trust in  
19 accordance with Article 3, for funeral merchandise and  
20 services, or Article 4, for cemetery merchandise and services.

21 (b) Although this chapter does not apply to preneed  
22 contracts entered into prior to the effective date of this  
23 act, a preneed provider which contends that a preneed trust  
24 fund which was in effect prior to the effective date complies  
25 with this chapter with respect to the contracts entered into

1 prior to the effective date may provide to the commissioner  
2 documentary proof thereof. Upon the commissioner determining  
3 that compliance has been established, the pre-existing preneed  
4 trust fund assets may be merged with or into the trust fund  
5 required under this chapter or continued as the trust fund and  
6 that determination by the commissioner shall be noted on the  
7 certificate of authority, and thereafter all preneed contracts  
8 covered by the trust fund, including those entered into prior  
9 to the effective date, shall be subject to the provisions of  
10 this chapter.

11 Section 27-17A-14.

12 (a) As an alternative to the trust requirement of  
13 Section 27-17A-13, the details of which are set forth in  
14 Articles 3 and 4, a preneed provider may, with the prior  
15 approval of the commissioner, purchase a surety bond in an  
16 amount not less than the aggregate value of outstanding  
17 liabilities on undelivered preneed contracts for merchandise,  
18 services, and cash advances. For the purposes of this section,  
19 the term "outstanding liabilities" means the original retail  
20 amount of services and cash advances and the actual cost to  
21 the entity to provide the undelivered merchandise sold on the  
22 contract.

23 (b) The bond shall be made payable to the State of  
24 Alabama for the benefit of the commissioner and of all  
25 purchasers of preneed merchandise, services, and cash

1 advances. The bond shall be issued by an ~~authorized corporate~~  
 2 surety insurance company licensed in the State of Alabama and  
 3 authorized to issue surety bonds and approved by the  
 4 commissioner.

5 (c) The amount of the bond shall be based on a  
 6 report documenting the outstanding liabilities of the preneed  
 7 provider, shall be prepared by the preneed provider using  
 8 generally accepted accounting principles, and shall be signed  
 9 by the chief executive officer or chief financial officer of  
 10 the preneed provider. The report shall be compiled as of the  
 11 end of the preneed provider's fiscal year and updated  
 12 annually.

13 (d) The amount of the bond shall be increased or  
 14 decreased as necessary to correlate with changes in the  
 15 outstanding liabilities. Further, the commissioner may order  
 16 the bond to be increased as necessary to correlate with  
 17 changes in the outstanding liabilities of bonded contracts due  
 18 to increases in the consumer price index.

19 (e) If the preneed provider fails to maintain a bond  
 20 pursuant to this section the preneed provider shall cease the  
 21 offering for sale and sale of preneed merchandise, services,  
 22 and cash advances.

23 (f) No surety bond used to comply with this section  
 24 shall be canceled or subject to cancellation unless at least  
 25 60 days' advance notice thereof, in writing, is filed with the

1 commissioner, by the surety company. The cancellation of the  
2 bond shall not relieve the obligation of the surety company  
3 for claims arising out of contracts issued or otherwise  
4 covered before cancellation of the bond. In the event that  
5 notice of termination of the bond is filed with the  
6 commissioner, the certificate holder insured thereunder shall,  
7 within 30 days of the filing of the notice of termination with  
8 the commissioner, provide the commissioner with a replacement  
9 bond or with evidence which is satisfactory to the  
10 commissioner demonstrating that the provisions of this chapter  
11 have been fully complied with. If within 30 days of filing of  
12 the notice of termination with the commissioner no replacement  
13 bond acceptable to the commissioner or no evidence  
14 satisfactory to the commissioner demonstrating that the  
15 provisions of this chapter have been complied with is filed  
16 with the commissioner, the commissioner shall suspend the  
17 license of the certificate holder until the certificate holder  
18 files a replacement bond acceptable to the commissioner or  
19 demonstrates to the satisfaction of the commissioner that it  
20 has complied with the provisions of this chapter.

21 (g) Upon prior approval by the commissioner, the  
22 preneed provider may file with the commissioner a letter of  
23 credit in the amount of the outstanding liabilities in lieu of  
24 a surety bond, in the form and subject to the terms and  
25 conditions evidencing the financial responsibility of the

1 party or parties issuing the letter of credit, and otherwise,  
2 as may be prescribed by the commissioner.

3 Section 27-17A-15.

4 (a) The commissioner shall, as often as he or she  
5 may deem necessary, examine the business of any person writing  
6 preneed contracts under this chapter to the extent applicable.  
7 The examination shall be made by designated representatives or  
8 examiners of the Department of Insurance.

9 (b) The written report of each examination, when  
10 completed, shall be filed in the office of the commissioner  
11 and, when so filed, shall not constitute a public record.

12 (c) Any person being examined shall produce, upon  
13 request, all records of the person. The designated  
14 representative of the commissioner may at any time examine the  
15 records and affairs of the person, whether in connection with  
16 a formal examination or not.

17 (d) The commissioner may waive the examination  
18 requirements of this section if the certificate holder submits  
19 audited financial statements.

20 (e) The person examined shall pay the examination  
21 expenses, travel expense and per diem subsistence allowance  
22 provided for examiners and incurred by the commissioner's  
23 representatives or examiners in connection with an examination  
24 in accordance with Section 27-2-25.

25 Section 27-17A-16.

1           (a) A certificate holder shall be considered  
2 inactive upon the acceptance of the surrender of its license  
3 by the commissioner or upon the nonreceipt by the commissioner  
4 of the certificate of authority renewal application and fees.

5           (b) A certificate holder shall cease all preneed  
6 sales to the public upon becoming inactive. The certificate  
7 holder shall collect and deposit into trust all of the funds  
8 paid toward preneed contracts sold prior to becoming inactive.

9           (c) Any certificate holder desiring to surrender its  
10 license to the commissioner shall first do all of the  
11 following:

12                 (1) File notice with the commissioner.

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

14                 (3) Submit a sample copy of each type of preneed  
15 contract sold.

16                 (4) Resolve to the commissioner's satisfaction all  
17 findings and violations resulting from the last examination  
18 conducted.

19                 (5) Pay all outstanding fines and invoices due the  
20 commissioner.

21                 (6) Submit its current certificate of authority.

22           (d) Upon receipt of the notice, the commissioner  
23 shall review the certificate holder's trust funds, trust  
24 agreements, and evidence of all outstanding preneed contracts.

1           (e) After a review to the commissioner's  
2           satisfaction, the commissioner shall terminate the certificate  
3           of authority by an order which shall set forth the conditions  
4           of termination established by the commissioner to ensure that  
5           the preneed funds will be available for their intended  
6           purpose.

7           (f) The trust fund of the certificate holder shall  
8           be held intact and in trust after the certificate holder has  
9           become inactive, and the funds in that trust shall be  
10          disbursed in accordance with the requirements of the written  
11          contracts until the funds have been exhausted.

12          (g) The commissioner shall continue to have  
13          jurisdiction over the inactive certificate holder as if the  
14          certificate were active and to require the reports and inspect  
15          the records as the commissioner deems appropriate so long as  
16          there are funds in trust or preneed contracts that are not  
17          fulfilled.

18          (h) In addition to any other terms of revocation or  
19          suspension ordered pursuant to Chapter 13 of Title 34, the  
20          provisions of this chapter may also apply.

21                   Section 27-17A-17.

22          (a) Any dissolution or liquidation of a certificate  
23          holder shall be deemed to be the liquidation of an insurance  
24          company and shall be conducted under the supervision of the  
25          commissioner, who shall have all powers with respect thereto



1 granted to the commissioner under the provisions of Chapter 32  
2 with respect to the liquidation of insurance companies.

3 (b) The commissioner may apply for an order  
4 directing the commissioner to liquidate a certificate holder  
5 upon any one or more grounds set out in Section 27-32-6 or  
6 when, in the commissioner's opinion, the continued operation  
7 of the certificate holder would be hazardous either to  
8 purchasers, beneficiaries, or to the people of this state.

9 Section 27-17A-18.

10 (a) All individuals who offer preneed contracts to  
11 the public, or who execute preneed contracts on behalf of a  
12 certificate holder, including all individuals who offer, sell,  
13 or sign contracts for the preneed sale of burial rights, shall  
14 be registered with the commissioner as preneed sales agents,  
15 pursuant to this article.

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

19 (c) A certificate holder shall be responsible for  
20 the activities of all preneed sales agents and all funeral  
21 directors acting as preneed sales agents, who are affiliated  
22 with the certificate holder and who perform any type of  
23 preneed-related activity on behalf of the certificate holder.  
24 In addition to the preneed sales agents and funeral directors  
25 acting as preneed sales agents, each certificate holder shall

1 also be subject to discipline if its preneed sales agents or  
2 funeral directors acting as preneed sales agents violate any  
3 provision of this article.

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

8 (e) An individual may begin functioning as a preneed  
9 sales agent as soon as a completed application for  
10 registration, as set forth in subsection (g), is sent to the  
11 commissioner.

12 (f) The qualifications for a preneed sales agent are  
13 as follows:

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

15 (2) The applicant must be in good standing with the  
16 commissioner.

17 (3) The applicant must not have any felony or  
18 misdemeanor convictions that relate to any activity regulated  
19 by this chapter.

20 (g) An application for registration as a preneed  
21 sales agent shall be submitted to the commissioner with an  
22 application fee determined by the commissioner, but not to  
23 exceed twenty-five dollars (\$25) by the certificate holder in  
24 a form that has been prescribed by commissioner rule and

1 approved by the commissioner. The application shall contain,  
2 at a minimum, all of the following:

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

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

8 (3) A representation, signed by the applicant, that  
9 the applicant meets the requirements set forth in subsection  
10 (f).

11 (4) A representation, signed by the certificate  
12 holder, that the applicant is authorized to offer, sell, and  
13 sign preneed contracts on behalf of the certificate holder,  
14 and that the certificate holder has trained the applicant in  
15 the provisions of this article relating to preneed sales, the  
16 provisions of the certificate holder's preneed contract, and  
17 the nature of the merchandise, services, or burial rights sold  
18 by the certificate holder.

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

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

1           (i) A certificate holder who has registered a  
2           preneed sales agent shall notify the commissioner within 30  
3           days after the individual's status as a preneed sales agent  
4           has been terminated.

5           (j) Upon receipt of an application that complies  
6           with all of the requirements of subsection (g), the  
7           commissioner shall register the applicant. The commissioner  
8           shall by rule provide for annual renewal of registration and a  
9           renewal fee not to exceed twenty-five dollars (\$25) as set by  
10          the commissioner.

11           Section 27-17A-19.

12          No person shall engage in this state in any trade  
13          practice which is addressed in the Alabama Deceptive Trade  
14          Practices Act (Section 8-19-1 et seq.), or as determined  
15          pursuant to this chapter to be, an unfair method of  
16          competition or an unfair or deceptive act or practice.

17           Section 27-17A-20.

18          (a) Whenever the commissioner has reason to believe  
19          that any person has engaged, or is engaging, in this state in  
20          any unfair method of competition or any unfair or deceptive  
21          act or practice as defined in this article, or is engaging in  
22          the sale of preneed contracts without being properly licensed  
23          as required by this article, or is otherwise acting in  
24          violation of this chapter, and that a proceeding by the  
25          commissioner in respect thereto would be in the interest of

1 the public, the commissioner shall institute a proceeding in  
2 accordance with this section.

3 (b) A statement of charges, notice, or order or  
4 other process under this chapter may be served by anyone duly  
5 authorized by the commissioner. Service may be made either in  
6 the manner provided by law for service of process in civil  
7 actions or by certifying and mailing a copy of the statement  
8 to the person affected by the statement, notice, or order or  
9 other process at his or her or its residence or principal  
10 office or place of business. The verified return by the person  
11 so serving the statement, notice, or order or other process,  
12 setting forth the manner of the service, shall be proof of the  
13 service; and the return postcard receipt for the statement,  
14 notice, or order or other process, certified and mailed as  
15 provided in this subsection, shall be proof of service of the  
16 statement, notice, or order or other process.

17 (c) The commissioner shall conduct or cause to have  
18 conducted a hearing in accordance with Article 1 of Chapter 2  
19 of Title 27, and shall, during the conduct of the hearing,  
20 have those powers necessary to enforce this chapter; however,  
21 the penalties for failure to comply with a subpoena or with an  
22 order directing discovery shall be limited to a fine not to  
23 exceed one thousand dollars (\$1,000) per violation.

24 Section 27-17A-21.

1           (a) If the commissioner finds that one or more  
2 grounds exist for the discretionary suspension or revocation  
3 of a certificate of authority issued under this article, the  
4 commissioner may, in lieu of the suspension or revocation,  
5 impose a fine upon the certificate holder in an amount not to  
6 exceed one thousand dollars (\$1,000) for each nonwillful  
7 violation and in an amount not to exceed ten thousand dollars  
8 (\$10,000) for each willful violation.

9           (b) The commissioner may grant not more than 30 days  
10 from the date of the order for the payment of any fine.

11           Section 27-17A-22.

12           Any officer or director, or person occupying similar  
13 status or performing similar functions, of a certificate  
14 holder who fails to make required deposits to any trust fund  
15 required by this chapter; any director, officer, agent, or  
16 employee of a certificate holder who makes any unlawful  
17 withdrawal of funds from any such account or who knowingly  
18 discloses to the commissioner or an employee thereof any false  
19 report made pursuant to this chapter; or any person who  
20 willfully violates any of the provisions of this chapter  
21 commits a Class B misdemeanor, punishable as provided by law.

22           Section 27-17A-23.

23           The Attorney General or any person may bring a civil  
24 action against a person or company violating the provisions of  
25 this chapter in the appropriate court of the county in which

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

9 Section 27-17A-24.

10 The provisions of this chapter are cumulative to  
11 rights under the general civil and common law, and no action  
12 of the commissioner may abrogate the rights to damages or  
13 other relief in any court.

14 Section 27-17A-25.

15 (a) All fees collected by the commissioner pursuant  
16 to this chapter shall be deposited into the State Treasury to  
17 the credit of the Insurance Department Fund.

18 (b) All fines collected by the commissioner pursuant  
19 to this chapter shall be deposited into the State Treasury to  
20 the credit of the State General Fund.

21 Article 3. Funeral Merchandise and Services Trust  
22 Fund.

23 Section 27-17A-30.

24 To comply with the trust requirement of subsection  
25 (a) of Section 27-17A-13, all certificate holders providing

1 preneed contracts for funeral services or funeral merchandise  
2 shall be subject to this article.

3 Section 27-17A-31.

4 (a) Any person who is paid, collects, or receives  
5 funds under a preneed contract for funeral services or funeral  
6 merchandise shall deposit in this state an amount at least  
7 equal to the sum of 75 percent of the purchase price collected  
8 for all funeral services and funeral merchandise sold and  
9 facilities rented other than outer burial containers, 60  
10 percent of the purchase price collected for outer burial  
11 containers, and 100 percent of the purchase price collected  
12 for all cash advance items sold.

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

21 (c) The trustee shall take title to the property  
22 conveyed to the trust for the purpose of investing,  
23 protecting, and conserving it for the certificate holder;  
24 collecting income; and distributing the principal and income  
25 as prescribed in this article.



1           (d) The certificate holder is prohibited from  
2 sharing in the discharge of these responsibilities, except  
3 that the certificate holder may appoint an adviser to the  
4 trustee.

5           (e) The trust agreement shall be submitted to the  
6 commissioner for approval and filing.

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

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

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

1 all purposes, all of the trust funds are exempt from all  
 2 claims of creditors of the certificate holder except as to the  
 3 claims of the contract purchaser, his or her representative,  
 4 or the commissioner.

5 Section 27-17A-32.

6 (a) Without limiting in any way the liability of the  
 7 seller under a preneed contract to perform its obligations  
 8 thereunder, including, without limitation, the obligation to  
 9 deliver the funeral merchandise, and for installation thereof  
 10 if it is to be included in the preneed contract, the seller  
 11 shall not be required to place in trust proceeds paid under  
 12 the contract for funeral merchandise. If the trust proceeds  
 13 have previously been paid, the seller may withdraw the  
 14 principal amount there, at such time as the funeral  
 15 merchandise, if comprised of materials designed to withstand  
 16 prolonged, protected storage without deterioration, is placed  
 17 in storage with a responsible third party bonded and insured  
 18 for the wholesale value thereof and evidenced by a receipt  
 19 specifically identifying the item, the specific preneed  
 20 contract, the location of the item, and the identity and  
 21 address of the bonding and insuring parties. For purposes of  
 22 this subsection only, caskets and alternative containers may  
 23 not be delivered prior to death.

24 (b) The trustee shall make regular valuations of the  
 25 assets it holds in trust and provide a report of the

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

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

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

20 (2) Borrow money up to an aggregate amount of 10  
21 percent of trust assets, at interest rates then prevailing  
22 from any individual, bank, insurance company, or other source,  
23 irrespective of whether any such person is then acting as  
24 trustee, and to create security interests in no more than 10  
25 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) Commingle the property of the trust with the  
4 property of any other preneed funeral or endowment care trust  
5 established pursuant to this article and make corresponding  
6 allocations and divisions of assets, liabilities, income, and  
7 expenses.

8 Section 27-17A-33.

9 (a) A purchaser, by providing written notice to the  
10 certificate holder, may cancel a preneed contract within 30  
11 days of the date that the contract was executed provided that  
12 the funeral merchandise and funeral services have not yet been  
13 used. Upon providing the notice, the purchaser shall be  
14 entitled to a complete refund of the amount paid, except for  
15 the amount allocable to any funeral merchandise or funeral  
16 services that have been used, and shall be released from all  
17 obligations under the contract. This subsection shall apply to  
18 all items that are purchased as part of a preneed contract.

19 (b) After 30 days from the date the preneed contract  
20 was executed, a purchaser, by providing written notice to the  
21 certificate holder, may cancel the funeral services, funeral  
22 merchandise, facilities, and cash advance items portions of a  
23 preneed contract at any time, and shall be entitled to the  
24 refund defined in the preneed contract allocable to those  
25 items. Any accumulated earnings allocable to the preneed

1 contract shall be paid to the certificate holder upon the  
2 cancellation.

3 (c) Upon breach of contract or failure of the  
4 certificate holder to provide funeral merchandise or services  
5 under a preneed contract, the contract purchaser shall be  
6 entitled to a refund of 100 percent of all money paid on the  
7 contract. The refund shall be made within 30 days after  
8 receipt by the certificate holder of the contract purchaser's  
9 written request for refund.

10 (d) If a purchaser is 90 days past due in making  
11 payments on a preneed contract, the contract shall be  
12 considered to be in default, and the certificate holder shall  
13 be entitled to cancel the contract and withdraw all funds in  
14 trust. Upon making the withdrawal, the certificate holder  
15 shall refund to the purchaser the amount defined in the  
16 preneed contract in the event of default of the purchaser,  
17 provided that the certificate holder has provided the  
18 purchaser with 30 days' written notice of its intention to  
19 exercise any of its rights under this provision.

20 (e) All preneed contracts are cancelable and  
21 revocable as provided in this section during the lifetime of  
22 the purchaser, provided that a preneed contract does not  
23 restrict any contract purchaser who is a qualified applicant  
24 for, or a recipient of, supplemental security income,

1 temporary cash assistance, or Medicaid from making his or her  
2 contract irrevocable.

3 (f) In the event that the preneed contract is made  
4 irrevocable pursuant to subsection (e), the purchaser or the  
5 authorizing agent shall have the right to appoint a provider  
6 other than the seller of the preneed contract. In the event  
7 that a provider is appointed pursuant to this subsection, the  
8 seller shall transfer to the appointed provider the amount  
9 paid by the purchaser less a reasonable transfer fee  
10 determined by the seller. No transfer hereunder shall occur  
11 without the acceptance of the appointed provider.

12 (g) All refunds required to be made under this  
13 section to a purchaser who has canceled a contract must be  
14 made within 30 days after the date the written notice of  
15 cancellation is received by the certificate holder.

16 Section 27-17A-34.

17 (a) Disbursement of funds discharging any preneed  
18 contract for funeral services or funeral merchandise fulfilled  
19 after the effective date of the act providing this Chapter 17A  
20 shall be made by the trustee to the certificate holder upon  
21 ~~receipt of satisfactory evidence as established by the trustee~~  
22 ~~that the preneed contract has been performed in whole or in~~  
23 part trustee to the certificate holder upon receipt by the  
24 trustee of a certification of the certificate holder that the  
25 preneed contract has been performed in whole or in part. Any

1 trustee accepting preneed contract proceeds under this article  
 2 may rely upon the certification of the certificate holder as  
 3 herein required to be made, and shall not be liable to anyone  
 4 for such reliance. If the contract is only partially  
 5 performed, the disbursement shall only cover that portion of  
 6 the contract performed. In the event of any contract default  
 7 by the contract purchaser, or in the event that the funeral  
 8 merchandise or funeral service contracted for is not provided,  
 9 the trustee shall return, within 30 days after its receipt of  
 10 a written request therefor, 100 percent of the funds paid on  
 11 the contract and the income and accretion thereon to the  
 12 certificate holder or to its assigns, subject to the  
 13 provisions of Section 27-17A-33.

14 (b) If the preneed contract so provides, the trustee  
 15 may distribute trust income allocable to the preneed contract  
 16 to the certificate holder on an annual basis, so long as the  
 17 distribution is consistent with subsection (b) of Section  
 18 27-17A-32.

19 Article 4. Cemetery Merchandise and Services Trust  
 20 Fund.

21 Section 27-17A-40.

22 To comply with the trust requirement of subsection  
 23 (a) of Section 27-17A-13, all certificate holders providing  
 24 preneed contracts for cemetery services or cemetery  
 25 merchandise shall be subject to this article.

1           Section 27-17A-41.

2           (a) Any person who receives or collects any funds on  
3 account of a preneed contract in this state for cemetery  
4 services or cemetery merchandise, or both, entered into after  
5 the effective date of this act shall have the obligation to  
6 pay over and contribute into a trust fund as hereinafter  
7 described, those amounts or proportions of the funds as  
8 hereinafter provided.

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

13           (c) The trustee of the Cemetery Merchandise and  
14 Services Trust Fund shall be qualified as such within the  
15 definition of the trustee.

16           (d) The trustee shall take title to the property  
17 conveyed to the Cemetery Merchandise and Services Trust Fund  
18 subject to this section.

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

22           (f) The party contracting to deliver the cemetery  
23 merchandise or cemetery services or cash advances, whether or  
24 not a preneed provider, shall be referred to in this section  
25 as the "seller."



1           (g) The seller shall be the beneficiary of the  
2 Cemetery Merchandise and Services Trust Fund.

3           Section 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 of  
14 the purchase price specified in the preneed contract.

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

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

1 have been satisfied, or the preneed contract is validly  
2 cancelled.

3 (c) The trustee shall invest and reinvest the  
4 Cemetery Merchandise and Services Trust Fund.

5 (d) The trustee shall make regular evaluations of  
6 the fair market value of assets held in and liabilities, if  
7 any, of the Cemetery Merchandise and Services Trust Fund and  
8 provide a report of the evaluations to the seller at least  
9 quarterly. Upon receipt of each quarterly report, the seller  
10 may submit to the trustee a written and detailed analysis  
11 concerning the balance of funds in the Cemetery Merchandise  
12 and Services Trust Fund, certified under oath as being true  
13 and correct upon information and belief by a responsible  
14 officer of the seller.

15 (e) While the obligation of the seller to make  
16 contributions to the Cemetery Merchandise and Services Trust  
17 Fund is set forth in this section, the obligation of the  
18 seller at the time of making certain withdrawals from the  
19 Cemetery Merchandise and Services Trust Fund as herein  
20 provided for shall be calculated with respect to the current  
21 wholesale cost of cemetery merchandise and current retail  
22 price of cemetery services and cash advances at the time of  
23 withdrawal. If the fair market value as reported by the  
24 trustee exceeds 110 percent of the total of the following, the

1 seller shall be entitled to withdraw and retain from the  
2 merchandise trust fund, the excess funds therein.

3 (f) One hundred and ten percent of the current  
4 wholesale cost of the liability to deliver all cemetery  
5 merchandise, 60 percent of the current retail price for all  
6 cemetery services, and 100 percent of the current retail price  
7 of all cash advances, for the total of all preneed contracts  
8 for which the purchasers have paid in full, all calculated as  
9 of the time of withdrawal; and concerning the total of all  
10 preneed contracts for which the purchasers have not paid in  
11 full, 25 percent of the total of the following: 110 percent of  
12 the current wholesale cost of the liability to deliver all  
13 cemetery merchandise, 60 percent of the current retail price  
14 for all cemetery services, and 100 percent of the current  
15 retail price of all cash advances, all calculated as of the  
16 time of withdrawal.

17 (g) At least annually the seller shall make the  
18 aforesaid analysis and certification and provide the same to  
19 the trustee. If the certification discloses that the fair  
20 market value of the Cemetery Merchandise and Services Trust  
21 Fund is less than 100 percent of the aggregate calculated  
22 amount the seller shall from its own funds contribute to the  
23 Cemetery Merchandise and Services Trust Fund within the 12  
24 months succeeding the annual computation the amount necessary

1 to restore the trust fund to an amount equal to not less than  
 2 100 percent of the aggregate amount so calculated.

3 Section 27-17A-43.

4 (a) Upon cancellation of a preneed contract by  
 5 mutual agreement between the seller and purchaser, or upon  
 6 unilateral cancellation of a preneed contract by the seller by  
 7 reason of default on the part of the purchaser, or other valid  
 8 cancellation by reason of transfers to another seller or  
 9 otherwise, the seller may, upon submission of a certification  
 10 under oath by a responsible officer of the seller to the  
 11 trustee, withdraw from the Cemetery Merchandise and Services  
 12 Trust Fund and retain an amount equal to the amount of all  
 13 funds contributed to the trust fund with respect to the  
 14 preneed contract. Any trustee accepting preneed contract  
 15 proceeds under the provisions of this article may rely on the  
 16 seller's certification under oath as required herein to be  
 17 made, and shall not be liable to anyone for such reliance.

18 (b) At such time as the seller undertakes to perform  
 19 its obligations under a preneed contract by delivery or  
 20 installation, or both, of cemetery merchandise and the  
 21 provision of cemetery services and disbursement on account of  
 22 cash advances, or otherwise, upon certification to the trustee  
 23 under oath by a responsible officer of the seller that the  
 24 obligations of the seller under the contract have been  
 25 completely fulfilled, the seller may withdraw from the

1 Cemetery Merchandise and Services Trust Fund and retain an  
 2 amount equal to the current wholesale cost to the fund with  
 3 respect to the preneed contract.

4 (c) At such time as the seller has fulfilled all of  
 5 its obligations under all preneed contracts with respect to  
 6 which funds have been contributed to the trust fund, and  
 7 certification under oath to the trustee by a responsible  
 8 officer of the seller of those facts, the seller may withdraw  
 9 from the trust fund and retain all of the remaining assets  
 10 thereof.

11 Section 27-17A-44.

12 (a) Without limiting in any way the liability of the  
 13 seller under a preneed contract to perform its obligations  
 14 thereunder, including, without limitation, the obligation to  
 15 deliver the cemetery merchandise, and for installation thereof  
 16 if it is to be included in the preneed contract, the seller  
 17 shall not be required to place intrust proceeds paid under the  
 18 contract for cemetery merchandise.

19 (b) If the trust proceeds have previously been paid  
 20 the seller may withdraw the principal amount there, at such  
 21 time as the cemetery merchandise, if comprised of materials  
 22 designed to withstand prolonged, protected storage without  
 23 deterioration, is placed in storage with a responsible third  
 24 party bonded and insured for the wholesale value thereof and  
 25 evidenced by a receipt specifically identifying the item, the

1 specific preneed contract, the location of the item, and the  
2 identity and address of the bonding and insuring parties.

3 Section 27-17A-45.

4 An endowment care fund and all payments or  
5 contributions to it are expressly permitted as and for  
6 charitable and eleemosynary purposes. No payment, gift, grant,  
7 bequest, or other contribution for endowment care is invalid  
8 by reason of any indefiniteness or uncertainty of the persons  
9 designated as beneficiaries in the instruments creating the  
10 fund, nor is the fund or any contributions to it invalid as  
11 violating any law against perpetuities, or the suspension of  
12 the power of alienation of title to property.

13 Section 27-17A-46.

14 Any cemetery now existing or hereafter established,  
15 excluding those operated by governmental agencies or religious  
16 institutions, shall be an endowment care cemetery, except  
17 those which do not charge fees.

18 Section 27-17A-47.

19 (a) Every cemetery authority operating an endowment  
20 care cemetery shall establish an endowment care fund which  
21 shall be placed with and held by a bank, trust company,  
22 savings and loan association, or other financial institution  
23 authorized to provide trust services under the provisions of  
24 Title 5 of this code, as amended, or under the applicable laws  
25 of the United States or any other state, or a board of

1 trustees, consisting of at least three members, who shall  
2 reside in the State of Alabama, one of whom is engaged in  
3 outside cemetery management, and each of whom shall be bonded  
4 to honestly perform the duties of trustee under a formal trust  
5 agreement.

6 (b) The amount of each bond shall be a minimum of  
7 twenty-five thousand dollars (\$25,000). The corporate trustee  
8 or board of trustees shall be referred to as a "qualified  
9 trustee." ~~The qualified trustee of the endowment care fund of  
10 the cemetery authority, in acquiring, investing, reinvesting,  
11 exchanging, retaining, selling and managing property, tangible  
12 or intangible, for any trust, shall exercise the judgment and  
13 care under the circumstances then prevailing, which men of  
14 prudence, discretion, and intelligence exercise in the  
15 management of their own affairs, not in regard to speculation,  
16 but in regard to the permanent disposition of their funds,  
17 considering the probable income as well as the probable safety  
18 of their capital. Unless otherwise specified in this article or  
19 in the terms of the trust instrument, the trustee of any trust  
20 established under or pursuant to this article shall have all  
21 powers granted to trustees under the provisions of Article 14,  
22 Chapter 3, Title 19 of the Code of Alabama. The incorporation  
23 herein of such powers shall not be deemed to imply any duties  
24 of trustees of trusts established under or pursuant to this  
25 article not expressly delineated in this article.~~

1           (c) The cemetery authority may employ a person to  
2 advise the trustee in the management of the fund.

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

9           Section 27-17A-48.

10          (a) Each cemetery authority shall maintain at each  
11 place of business a list of the names and addresses of its  
12 owners and directors, which shall be available to the public.

13          (b) Each cemetery authority shall maintain a record  
14 of all property owners by name and last known address with a  
15 description of merchandise and location of burial lots,  
16 crypts, or niches. A plat map shall be maintained for each  
17 cemetery location at the cemetery business office. A book or  
18 file shall be kept as to the date, location by lot, and space  
19 number of each person interred or entombed in the cemetery. A  
20 written copy of the cemetery rules and regulations shall be  
21 maintained at each location and made available to the public  
22 upon request.

23          Section 27-17A-49.

24          (a) From the sale price of each plot, crypt, or  
25 niche sold by the cemetery authority, of an endowment care



1 cemetery, it shall pay an amount, not less than as determined  
2 in accordance with the following schedule, to the trustee of  
3 the endowment care fund, which the payment shall be paid over  
4 to the trustee not more than four months after the close of  
5 the month in which the total or final payment on the sale has  
6 been received:

7 (1) ~~Ten~~Fifteen percent of the sale price of each  
8 grave or lawn crypt space, ~~maximum requirement not to exceed~~  
9 ~~one hundred dollars (\$100)~~.

10 (2) Five percent of the sale price of each mausoleum  
11 crypt or niche, ~~maximum requirement not to exceed two hundred~~  
12 ~~dollars (\$200)~~.

13 (3) The amount received for special care funds,  
14 gifts, grants, contribution devises, or bequests made with  
15 respect to the separate or special care of a particular lot,  
16 grave, crypt, niche, mausoleum, monument, or marker or that of  
17 a particular family, as distinguished from the general endowed  
18 care of a cemetery or of a garden.

19 (b) In addition to subsection (a), a cemetery  
20 authority may receive, and transfer to the trustee, as a part  
21 of or incident to the endowment care fund, any property, real,  
22 personal or mixed, bequeathed, devised, given, or otherwise  
23 contributed to it for endowment care purposes. Any contractual  
24 endowment care deposits shall fall under this article.

1           (c) Any cemetery authority which is organized and  
2 engaged in business prior to the effective date of this  
3 chapter shall qualify as an endowment care cemetery if the  
4 following occur:

5           (1) Not already placed, it shall within 90 days of  
6 the effective date of this chapter have placed the entire  
7 principal of any endowment care fund in its possession,  
8 custody, or control, into the hands of a qualified trustee  
9 designated by it, to be administered as set forth in this  
10 article; and principal of its endowment care fund, or the  
11 aggregate principal of its endowment care funds, if more than  
12 one, shall have a fair market value on either the effective  
13 date of this chapter or on the date of transfer to the trustee  
14 of not less than twenty-five thousand dollars (\$25,000); or it  
15 shall substitute 25 percent for each percentage of each sale  
16 for the next five years or five thousand dollars (\$5,000) per  
17 year, whichever is greater, until the balance of twenty-five  
18 thousand dollars (\$25,000) is reached. In such case, the  
19 entire amount of twenty-five thousand dollars (\$25,000) shall  
20 be paid into the fund before the end of the fifth year, and no  
21 interest may be removed from the fund until the twenty-five  
22 thousand dollars (\$25,000) minimum has been reached.

23           (2) It shall at all times after the effective date  
24 of this chapter comply with the minimum requirements for  
25 payments to the trustee for endowment care.

1           (d) Any cemetery authority organizing a cemetery  
2 after the effective date of this chapter, whether it be by  
3 incorporation, association, individually, or by any other  
4 means, or having its first burial after the effective date of  
5 this chapter, before disposing of any burial lot or right or  
6 making any sale thereof or making its first burial, or both,  
7 shall cause to be deposited with a qualified trustee, in cash,  
8 the sum of twenty-five thousand dollars (\$25,000) in the  
9 endowment care fund.

10           (e) When a cemetery authority has placed with a  
11 trustee, pursuant to this article, a sum of money in excess of  
12 the aggregate which would be required only under subsection  
13 (a), the cemetery authority shall not be required under this  
14 article to make further payments to the trustee until such  
15 time thereafter as, taking into account all sales of plots,  
16 crypts, and niches in the cemetery property since the first of  
17 the sales, the aggregate of payments to the trustee if made in  
18 accordance with subsection (a) would equal the applicable  
19 minimum amount paid to the trustee under subdivision (1) of  
20 subsection (c), or subsection (d) of this section.

21           (f) Any deposit previously made, or represented to  
22 be made to an existing endowment care fund which exceeds 10  
23 percent of the gross selling price of all plots, crypts, and  
24 niches sold since representation of endowment care shall be

1 made a permanent part of the endowment care fund and  
2 transferred to the qualified trustee under this article.

3 Section 27-17A-50.

4 (a) No cemetery authority may directly or indirectly  
5 require or direct the investment, reinvestment, or retention  
6 by a qualified trustee of any part of an endowment care trust  
7 in any asset or business in which the cemetery authority or  
8 any officer, director, owner, partner, or employee of the  
9 cemetery authority has a financial interest. Nothing contained  
10 in this subsection shall prevent the trustee, subject to the  
11 provisions regarding investment and reinvestment of the trust  
12 estate as are contained in the governing instrument creating  
13 the trust, from investing, reinvesting, or retaining any asset  
14 or business in which the cemetery authority or any officer,  
15 director, owner, partner, or employee of the cemetery  
16 authority has an insubstantial or nonmaterial financial  
17 interest, provided that the trustee, in the exercise of the  
18 trustee's discretion, deems the investment, reinvestment, or  
19 retention to be for the best interest of the trust estate.

20 (b) The net income from the endowment care fund, to  
21 the extent that the same is distributed from the fund, shall  
22 be used exclusively for covering the costs of endowment care  
23 of the cemetery.

24 Section 27-17A-51.

1           The trustee shall not be required to inquire into  
 2           the propriety of the expenditures made by the cemetery  
 3           authority in connection with endowment care of the cemetery,  
 4           and it shall not be held responsible in any manner whatsoever  
 5           for and on account of payments of the income from the  
 6           endowment care fund made to the cemetery authority.

7           Section 27-17A-52.

8           The trustee shall, not less than annually, file with  
 9           the cemetery authority an account which shall include a  
 10          complete disclosure of all activity since the previous account  
 11          and a statement detailing fund investments.

12          Section 27-17A-53.

13          To the extent that any endowment care trust existing  
 14          at the effective date of this chapter includes investments or  
 15          assets, the retention of which the trustee in the free  
 16          exercise of its discretion deems not in the best interest of  
 17          the trust estate, the trustee shall dispose of the investments  
 18          or assets as soon as practicable without undue sacrifice to  
 19          the trust estate, and in any event within two years after the  
 20          effective date of this chapter.

21          Section 27-17A-54.

22          An annual report of the endowment care fund shall be  
 23          made to the commissioner by each cemetery authority within 90  
 24          days of the close of each calendar year. This report shall  
 25          include the qualified trustee's name or names, the bond

1 numbers if individual trustees or the name and address of the  
2 financial institution in which the fund is maintained, and the  
3 affidavit of the cemetery authority affirming compliance with  
4 this article. Prior to the sale or transfer of a cemetery, the  
5 cemetery authority shall report and document to the  
6 commissioner that the endowment care fund is currently funded  
7 in accordance with this article.

8 Section 27-17A-55.

9 A cemetery authority shall start construction of  
10 that section of a mausoleum or bank of belowground crypts in  
11 which sales, contracts for sale, reservations for sale, or  
12 agreements for sale are being made, within five years after  
13 the date of the first sale or when 75 percent of the mausoleum  
14 or belowground crypts have been sold and the purchase price  
15 has been received, whichever occurs first. The construction  
16 shall be completed within six years after the date of the  
17 first sale made. Extensions for completion, not to exceed one  
18 year, may be granted by the commissioner for good cause shown.  
19 If the units have not been completely constructed at the time  
20 of need or the time specified herein, unless otherwise  
21 specified in the preneed contract, all moneys paid shall be  
22 refunded upon request, plus interest earned thereon if  
23 deposited by the cemetery authority in an escrow or trust  
24 fund, and if not so deposited in an escrow or trust fund  
25 earning interest, then plus interest in an amount equal to the

1 interest or discount which would have been earned thereon had  
 2 the funds been invested in United States Treasury Bills having  
 3 a 90-day maturity.

4 Section 27-17A-56.

5 ~~(a) The Legislature finds and declares that acts of~~  
 6 ~~vandalism and other illegal acts, rather than the failure to~~  
 7 ~~provide adequate security to prevent such acts, are the~~  
 8 ~~proximate cause of injury and property damage resulting from~~  
 9 ~~the acts of vandalism or other illegal acts.~~

10 ~~(b) Notwithstanding any other law to the contrary,~~  
 11 ~~no cemetery authority, nor any officer, director, shareholder,~~  
 12 ~~partner, employee, agent, or representative of a cemetery~~  
 13 ~~authority shall be liable to anyone, in tort, contract, or~~  
 14 ~~otherwise, for any damage or injury to any person or property~~  
 15 ~~in, on, entering into, or leaving any cemetery, where the~~  
 16 ~~damage or injury results from any act of vandalism or other~~  
 17 ~~illegal act.~~

18 (c) Cemetery rules and regulations are adopted for  
 19 the mutual protection of the cemetery owners and the owners of  
 20 interment rights in the cemetery. All owners of interment  
 21 rights and other persons within the cemetery shall be subject  
 22 to these rules and regulations as they now exist and as they  
 23 may be amended or altered by the cemetery. The cemetery  
 24 authority has the right to enforce these rules and  
 25 regulations. The cemetery authority expressly reserves the

1 right, at any time and without prior notice to any owners, to  
2 adopt new rules and regulations or to amend, modify, or repeal  
3 any section, paragraph, or sentence of these rules and  
4 regulations.

5 (d) This section shall not apply to the officers,  
6 directors, shareholders, partners, employees, agents, or  
7 representatives of a cemetery authority who intentionally  
8 commit an act of vandalism or other illegal act.

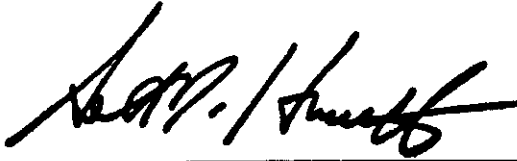
9 Section 2. The provisions of this act are severable.  
10 If any part of this act is declared invalid or  
11 unconstitutional, that declaration shall not affect the part  
12 which remains.

13 Section 3. Although this bill would have as its  
14 purpose or effect the requirement of a new or increased  
15 expenditure of local funds, the bill is excluded from further  
16 requirements and application under Amendment 621 because the  
17 bill defines a new crime or amends the definition of an  
18 existing crime.

19 Section 4. This act shall become effective on the  
20 first day of the third month following its passage and  
21 approval by the Governor, or its otherwise becoming law.



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Speaker of the House of Representatives



President and Presiding Officer of the Senate

House of Representatives

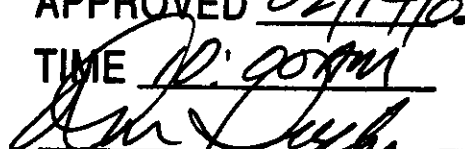
I hereby certify that the within Act originated in and was passed by the House 17-JAN-2002, as amended.

Greg Pappas  
Clerk

Senate

\_\_\_\_\_  
31-JAN-2002  
\_\_\_\_\_

Passed

APPROVED 02/14/02  
TIME 12:00pm  
  
GOVERNOR