

SB131 ENROLLED



1 D78YTH-3
2 By Senators Figures, Gudger, Jones, Hatcher, Williams,
3 Sessions, Scofield, Butler, Barfoot, Singleton, Shelnut,tt,
4 Smitherman
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 22-Mar-23
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SB131 Enrolled

1 Enrolled, An Act,

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4 Relating to the Alabama Board of Funeral Service; to
5 amend Section 34-13-1, as amended by Act 2022-339, 2022
6 Regular Session, Sections 34-13-20, 34-13-21, and 34-13-22,
7 Sections 34-13-23 and 34-13-27, as amended by Act 2022-339,
8 2022 Regular Session, Code of Alabama 1975, to rename the
9 Alabama Board of Funeral Service as the Alabama Board of
10 Funeral Services and to provide further for definitions and
11 the membership of the board; to add Article 5 to Chapter 13,
12 Title 34, Code of Alabama 1975, by amending and renumbering
13 Sections 27-17A-1, 27-17A-3, 27-17A-4, 27-17A-10 to 27-17A-25,
14 inclusive, 27-17A-30 to 27-17A-34, inclusive, and 27-17A-40 to
15 27-17A-57, inclusive, as Sections 34-13-170 to 34-13-172,
16 inclusive, 34-13-190 to 34-13-206, inclusive, 34-13-230 to
17 34-13-234, inclusive, and 34-13-260 to 34-13-277, inclusive,
18 Code of Alabama 1975; to establish the Alabama Preneed Funeral
19 and Cemetery Act of 2023; to transfer the existing Preneed
20 Funeral and Cemetery Act, and the regulation of preneed
21 contracts, from the Commissioner and Department of Insurance
22 to the Alabama Board of Funeral Service; to authorize the
23 Department of Insurance to temporarily transfer certain funds
24 to the board to defray costs associated with the
25 administration and operation of the Alabama Preneed Funeral
26 and Cemetery Act of 2023; and in connection therewith would
27 have as its purpose or effect the requirement of a new or
28 increased expenditure of local funds within the meaning of



SB131 Enrolled

29 Section 111.05 of the Constitution of Alabama of 2022.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

31 Section 1. Sections 34-13-1, as amended by Act
32 2022-339, 2022 Regular Session, Sections 34-13-20, 34-13-21,
33 and 34-13-22, and Sections 34-13-23 and 34-13-27, as amended
34 by Act 2022-339, 2022 Regular Session, of the Code of Alabama
35 1975, are amended to read as follows:

36 "§34-13-1

37 (a) For purposes of this chapter, the following terms
38 have the following meanings:

39 (1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY SCIENCE. A
40 school or college approved by the American Board of Funeral
41 Service Education, or a successor organization, which
42 maintains a course of instruction of not less than 48 calendar
43 weeks or four academic quarters or college terms and which
44 gives a course of instruction in the fundamental subjects
45 related to funeral service and mortuary science education as
46 approved by the American Board of Funeral Service Education,
47 or a successor organization, and other courses of instruction
48 in fundamental subjects as may be prescribed by the Alabama
49 Board of Funeral Service.

50 (2) ALKALINE HYDROLYSIS. The technical process that
51 reduces human remains to bone fragments using heat, water, and
52 chemical agents.

53 (3) ALTERNATIVE CONTAINER. A nonmetal receptacle or
54 enclosure, without ornamentation or a fixed interior lining,
55 which is designed for the encasement of human remains and
56 which is made of cardboard, pressed-wood, composition



SB131 Enrolled

57 materials, with or without an outside covering, pouches of
58 canvas, or other materials.

59 ~~(3)~~ (4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION. The
60 national academic accreditation agency for college and
61 university programs in funeral service and mortuary science
62 education. The accrediting function of the American Board of
63 Funeral Service Education is recognized by the United States
64 Department of Education and the Council on Higher Education
65 Accreditation.

66 ~~(4)~~ (5) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.
67 Any person engaged in the study of the art of embalming under
68 the instructions and supervision of a licensed embalmer
69 practicing in this state.

70 ~~(5)~~ (6) APPRENTICE FUNERAL DIRECTOR or FUNERAL
71 DIRECTOR'S APPRENTICE. Any person operating under or in
72 association with a funeral director for the purpose of
73 learning the business or profession of funeral director, to
74 the end that he or she may become licensed under this chapter.

75 (7) AT NEED. At the time of death or immediately
76 following death.

77 ~~(6)~~ (8) AUTHORIZING AGENT. A person at least 18 years of
78 age, except in the case of a surviving spouse or parent, who
79 is legally entitled to order the cremation or final
80 disposition of particular human remains.

81 (9) BASIC SERVICES FEE. The fee for the professional
82 services of the funeral director and staff that is added to
83 the total cost of the funeral arrangements. The term includes
84 a charge for services performed in conducting the arrangements



SB131 Enrolled

85 conference, planning the funeral, securing the necessary
86 permits, preparing the notices, and coordinating the cemetery
87 or crematory arrangements.

88 (10) BELOW-GROUND CRYPT. A preplaced enclosed chamber,
89 usually constructed of reinforced concrete, poured in place or
90 a precast unit installed in quantity, either side-by-side or
91 multiple depth, and covered by earth or sod and known also as
92 a lawn crypt or turf-top crypt.

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

96 ~~(7)~~ (12) BOARD. The Alabama Board of Funeral Service.

97 (13) BRANCH. Any person or entity that is part of a
98 common business enterprise that has a certificate of authority
99 issued pursuant to Article 5 and elects to operate under a
100 name other than that of the common business enterprise.

101 (14) BURIAL. The placement of human remains in a grave
102 space or lawn crypt.

103 ~~(8)~~ (15) CASH ADVANCE ITEMS. Any item of service or
104 merchandise described to a purchaser using the term cash
105 advance, accommodation, cash disbursement, or similar term. A
106 cash advance item is also any item obtained from a third party
107 and paid for by a funeral provider on behalf of a purchaser.
108 Cash advance items include, but are not limited to, all of the
109 following:

- 110 a. Cemetery or crematory services.
- 111 b. Pallbearers.
- 112 c. Public or other transportation.



SB131 Enrolled

113 d. Clergy honoraria.

114 e. Flowers.

115 f. Musicians or singers.

116 g. Nurses.

117 h. Obituary notices.

118 i. Funeral programs.

119 j. Gratuities.

120 k. Death certificates.

121 l. Outer burial containers.

122 m. Cemetery plots.

123 n. Escorts.

124 ~~(9)~~ (16) CASKET. A rigid container designed for the
125 encasement of human remains which is usually constructed of
126 wood, metal, or similar material and ornamented and lined with
127 fabric.

128 ~~(10)~~ (17) CEMETERY. A place established, maintained,
129 managed, operated, or improved which is dedicated to and used
130 or intended to be used for the permanent interment of human
131 remains and their memorialization. It may be either land or
132 earth interment; a columbarium; a mausoleum for vault or crypt
133 entombment; a structure or place used or intended to be used
134 for the interment of cremated remains; cryogenic storage; or
135 any combination of one or more thereof.

136 ~~(11)~~ (18) CEMETERY AUTHORITY. Any individual, person,
137 firm, profit or nonprofit corporation, trustee, partnership,
138 society, religious society, church association or
139 denomination, municipality, or other group or entity, however
140 organized, insofar as they or any of them may now or hereafter



SB131 Enrolled

141 establish, own, operate, lease, control, or manage one or more
142 cemeteries, burial parks, mausoleums, columbariums, or any
143 combination or variation thereof, or hold lands or structures
144 for burial grounds or burial purposes in this state and engage
145 in the operation of a cemetery, including any one or more of
146 the following: The care and maintenance of a cemetery; the
147 interment, entombment, and memorialization of the human dead
148 in a cemetery; the sale, installation, care, maintenance, or
149 any combination thereof, with respect of monuments, markers,
150 foundations, memorials, burial vaults, urns, crypts,
151 mausoleums, columbariums, flower vases, floral arrangements,
152 and other cemetery accessories for installation or use within
153 a cemetery; and the supervision and conduct of funeral and
154 burial services within the bounds of the cemetery.

155 (19) CEMETERY MERCHANDISE. Any personal property
156 offered for sale, contracted for sale, or sold for use in
157 connection with the burial, final disposition,
158 memorialization, interment, entombment, or inurnment of human
159 remains by a cemetery authority. The term specifically
160 includes, but is not limited to, the casket, the alternative
161 container, the outer burial container, and the memorial,~~and~~
162 ~~interment rights.~~

163 (20) CEMETERY SERVICES. At need or preneed services
164 provided by a cemetery authority for interment, entombment,
165 inurnment, and installation of cemetery merchandise.

166 (21) CERTIFICATE HOLDER. A funeral establishment,
167 cemetery authority, third-party seller, or any other person to
168 whom a valid certificate of authority to sell preneed



SB131 Enrolled

169 contracts has been granted by the board.

170 (22) COLUMBARIUM. A structure or room or space in a
171 building or structure used or intended to be used for the
172 inurnment of cremated remains.

173 ~~(12)~~ (23) CONVICTION. The entry of a plea of guilty or a
174 guilty verdict rendered by any court of competent
175 jurisdiction, excluding traffic violations.

176 ~~(13)~~ (24) CREMATED REMAINS. Human remains recovered
177 after the completion of the cremation process, including
178 pulverization, which leaves only bone fragments reduced to
179 unidentifiable dimensions, and the residue of any foreign
180 materials that were cremated with the human remains.

181 (25) CREMATED REMAINS CONTAINER. A receptacle in which
182 cremated remains are placed.

183 ~~(14)~~ (26) CREMATION. The technical irreversible process,
184 using heat, flames, or chemical agents, that reduces human
185 remains to bone fragments. The reduction takes place through
186 heat and evaporation. Cremation shall include the processing,
187 and may include the pulverization, of the bone fragments.
188 Cremation is a process and is a method of final disposition.

189 ~~(15)~~ (27) CREMATIONIST. A person licensed by the board
190 to perform the procedure of cremation.

191 ~~(16)~~ (28) CREMATION CHAMBER. The retort or vessel used
192 to reduce human remains to bone fragments.

193 ~~(17)~~ (29) CREMATION CONTAINER. The container in which
194 human remains are transported to a crematory, in which human
195 remains are placed upon arrival at a crematory, or for storage
196 and placement in a cremation chamber for cremation.



SB131 Enrolled

197 ~~(18)~~ (30) CREMATORY. A building or portion of a building
198 that houses a cremation chamber and that may house a holding
199 facility for purposes of cremation and as part of a funeral
200 establishment.

201 (31) CREMATORY AUTHORITY. Any person who owns or
202 controls a crematory.

203 (32) DEATH CERTIFICATE. A legal document containing
204 vital statistics pertaining to the life and death of the
205 deceased.

206 (33) DECEASED or DECEDENT. One who is no longer living.

207 ~~(19)~~ (34) EMBALMER. Any person engaged, or holding
208 himself or herself out as engaged, in the business, practice,
209 science, or profession of embalming, whether on his or her own
210 behalf or in the employ of a registered and licensed funeral
211 director.

212 ~~(20)~~ (35) EMBALMING. The practice, science, or
213 profession, as commonly practiced, of preserving,
214 disinfecting, and preparing by application of chemicals or
215 other effectual methods, human dead for burial, cremation, or
216 transportation.

217 (36) ENCASEMENT. The placement of human remains in a
218 rigid container including, but not limited to, a casket or
219 urn.

220 (37) ENDOWMENT CARE. The maintenance and repair of all
221 places in a cemetery, subject to the rules of the cemetery
222 authority. The term may also be referred to as endowed care,
223 perpetual care, improvement care, or permanent care.

224 (38) ENDOWMENT CARE TRUST FUND. An irrevocable trust



SB131 Enrolled

225 fund set aside by law with a trustee, along with the income
226 therefrom, to provide for the endowment care of a cemetery.

227 (39) ENTOMBMENT. The act of placing human remains in a
228 mausoleum crypt.

229 (40) FINAL DISPOSITION. The lawful disposal of human
230 remains whether by interment, cremation, or other method.

231 ~~(21)~~ (41) FUNERAL. A ceremony for celebrating,
232 sanctifying, or remembering the life of a person who has died.
233 A funeral may be divided into the following two parts:

234 a. The funeral service, which may take place at a
235 funeral home, church, or other place.

236 b. The committal service or disposition, which may take
237 place by the grave, tomb, mausoleum, or crematory where the
238 body of the decedent is to be buried or cremated.

239 ~~(22)~~ (42) FUNERAL ARRANGEMENTS. The completing of
240 funeral service arrangements, cremation arrangements, and the
241 financial details of a funeral at the time of death. The term
242 includes the collection of vital statistic information, death
243 certificate information, obituary and funeral notice
244 completion, the completion of a statement of funeral goods and
245 services selected, organizing of funeral and memorial services
246 for families, and the ordering of cash advance items.

247 (43) FUNERAL BENEFICIARY. The person or persons who
248 will receive the benefit of the funeral and cemetery goods and
249 services to be delivered under a preneed contract at the time
250 of his, her, or their death.

251 ~~(23)~~ (44) FUNERAL DIRECTING. The practice of directing
252 or supervising funerals, the practice of preparing dead human



SB131 Enrolled

253 bodies for burial by means other than embalming, or the
254 preparation for the final disposition of dead human bodies;
255 the making of funeral arrangements or providing for funeral
256 services or the making of financial arrangements for the
257 rendering of these services; the provision or maintenance of a
258 place for the preparation for final disposition of dead human
259 bodies; the use of the terms funeral director, undertaker,
260 mortician, funeral parlor, or any other term from which can be
261 implied the practice of funeral directing; or the holding out
262 to the public that one is a funeral director or engaged in a
263 practice described in this subdivision.

264 ~~(24)~~ (45) FUNERAL DIRECTOR. A person required to be
265 licensed to practice the profession of funeral directing under
266 the laws of this state, who consults with the public, who
267 plans details of funeral services with members of the family
268 and minister or any other person responsible for such
269 planning, or who directs, is in charge, or apparent charge of,
270 and supervises funeral service in a funeral home, church, or
271 other place; who enters into the making, negotiation, or
272 completion of financial arrangements for funeral services, or
273 who uses in connection with the profession of funeral
274 directing the terms funeral director, undertaker, funeral
275 counselor, mortician, or any other term or picture or
276 combination thereof when considered in context in which used,
277 from which can be implied the practicing of the profession of
278 funeral directing or that the person using such term or
279 picture can be implied to be holding himself or herself out to
280 the public as being engaged in the profession of funeral



SB131 Enrolled

281 directing; and for all purposes under Alabama law, a funeral
282 director is considered a professional. For the purposes of
283 this chapter, the term does not include any cemetery
284 authority.

285 ~~(25)~~ (46) FUNERAL ESTABLISHMENTS. The term includes any
286 funeral home or mortuary service located at a specific street
287 address where the profession of funeral directing, embalming,
288 or cremation is practiced in the care, planning, and
289 preparation for burial, cremation, or transportation of human
290 dead. A funeral establishment shall consist of and maintain
291 all of the following facilities:

292 a. A preparation room equipped with sanitary nonporous
293 floor and wall and necessary drainage and ventilation, and
294 containing operating embalming equipment, necessary approved
295 tables, instruments, hot and cold running water, containers or
296 receptacles for soiled linen or clothing, and supplies for the
297 preparation and embalming of dead human bodies for burial,
298 cremation, and transportation.

299 b. A display room containing a stock of adult caskets
300 and funeral supplies displayed in full size, cuts,
301 photographs, or electronic images. At no time shall less than
302 eight different adult size caskets be on the premises.

303 c. At least one operating funeral coach or hearse
304 properly licensed and equipped for transporting human remains
305 in a casket or urn.

306 d. If engaged in the practice of cremation, the
307 establishment shall satisfy all crematory requirements
308 provided in this chapter and have on site an adequate supply



SB131 Enrolled

309 of urns for display and sale.

310 e. A room suitable for public viewing or other funeral
311 services that is a minimum of 1,000 square feet.

312 f. An office for holding arrangement conferences with
313 relatives or authorizing agents.

314 (47) FUNERAL SERVICE. At need or preneed services
315 provided by a funeral establishment in connection with funeral
316 directing, final disposition of human remains, or installation
317 of memorials.

318 ~~(26)~~ (48) FUNERAL SUPPLIES or FUNERAL MERCHANDISE. Any
319 item offered for sale, contracted for sale, or sold for use in
320 connection with funeral directing or funeral services when
321 sold by a funeral director including, but not limited to,
322 caskets, alternative containers, outer burial containers,
323 urns, memorials, clothing used to dress human dead when sold
324 by a funeral director, and all equipment and accoutrements
325 normally required for the preparation for burial or funeral
326 and other disposition of human dead.

327 (49) GRAVE SPACE. A space of ground in a cemetery that
328 is used or intended to be used for in-ground burial.

329 ~~(27)~~ (50) GROSS IMMORALITY. Willful, flagrant, or
330 shameful immorality or showing a moral indifference to the
331 opinions of the good and respectable members of the community
332 and to the just obligations of the position held by the
333 offender.

334 ~~(28)~~ (51) HOLDING ROOM. Either of the following:

335 a. A room within a funeral establishment that satisfies
336 the requirements of a branch location as provided in this



SB131 Enrolled

337 chapter or board rule, for the retention of human remains
338 before final disposition.

339 b. A room within a crematory facility, designated for
340 the retention of human remains before and after cremation,
341 that is not accessible to the public.

342 (52) HUMAN REMAINS. The body of a decedent in any stage
343 of decomposition, including cremated remains.

344 (53) INTERMENT. The final disposition of human remains
345 by burial, burial at sea, entombment, or inurnment.

346 (54) INTERMENT RIGHT. The right to inter human remains
347 in a particular interment space in a cemetery.

348 (55) INTERMENT SPACE. A space intended for the final
349 disposition of human remains including, but not limited to, a
350 grave space, mausoleum crypt, niche, and below-ground crypt.

351 (56) INURNMENT. The act of placing cremated remains in
352 a receptacle including, but not limited to, an urn and
353 depositing it in a niche.

354 (57) LICENSEE. Any individual, firm, corporation,
355 partnership, joint venture, or limited liability company which
356 obtains a license, certificate, or registration in accordance
357 with this chapter.

358 ~~(29)~~ (58) MANAGING CREMATIONIST. A licensed funeral
359 director and cremationist who has full charge, control, and
360 supervision of all activities involving cremation at a funeral
361 establishment or crematory.

362 ~~(30)~~ (59) MANAGING EMBALMER. A licensed embalmer who has
363 full charge, control, and supervision of all activities
364 involving the preparation room and embalming.



SB131 Enrolled

365 ~~(31)~~ (60) MANAGING FUNERAL DIRECTOR. A licensed funeral
366 director who has full charge, control, and supervision of all
367 activities involving funeral directing for a funeral
368 establishment.

369 (61) MAUSOLEUM. A chamber or structure used or intended
370 to be used for entombment.

371 (62) MAUSOLEUM CRYPT. A chamber of a mausoleum of
372 sufficient size for entombment of human remains.

373 (63) MEMORIAL. Any product, other than a mausoleum or
374 columbarium, used for identifying an interment space or for
375 commemoration of the life, deeds, or career of some decedent
376 including, but not limited to, a monument, marker, niche
377 plate, urn garden plaque, crypt plate, cenotaph, marker bench,
378 and vase.

379 (64) MEMORIAL RETAILER. Any person offering or selling
380 memorials at retail to the public.

381 (65) MEMORIALIZATION. Any permanent system designed to
382 mark or record the names and other data pertaining to a
383 decedent.

384 ~~(32)~~ (66) MORAL TURPITUDE. Any unlawful sexual or
385 violent act, or any act involving theft, theft of services,
386 theft by deception, extortion, receiving stolen property,
387 identity theft, forgery, fraud, tampering with records,
388 bribery, perjury, or any similar act in any jurisdiction.

389 ~~(33)~~ (67) MORTUARY SCIENCE. The scientific,
390 professional, and practical aspects, with due consideration
391 given to accepted practices, covering the care, preparation
392 for burial, or transportation of dead human bodies, which



SB131 Enrolled

393 shall include the preservation and sanitation of the bodies
394 and restorative art and those aspects related to public
395 health, jurisprudence, and good business administration.

396 ~~(34)~~ (68) MORTUARY SERVICE. A location with a specific
397 street address where embalming or cremation, or both, is
398 practiced for a licensed funeral establishment and where no
399 services or merchandise are sold directly or at retail to the
400 public. A mortuary service shall consist of and maintain all
401 of the following facilities:

402 a. A preparation room equipped with sanitary nonporous
403 floor and walls, operating embalming equipment, and necessary
404 drainage and ventilation and containing necessary approved
405 tables, instruments, hot and cold running water, containers or
406 receptacles for soiled linen or clothing, and supplies for the
407 preparation and embalming of dead human bodies for burial,
408 cremation, and transportation.

409 b. At least one operating motor vehicle properly
410 licensed and equipped for transporting human remains in a
411 casket or urn.

412 c. If engaged in the practice of cremation, the
413 establishment shall satisfy all requirements for a crematory
414 provided in this chapter.

415 (69) NICHE. A space usually within a columbarium used
416 or intended to be used for inurnment of cremated remains.

417 ~~(35)~~ (70) OPERATOR. A person, corporation, firm, legal
418 representative, managing funeral director, general manager, or
419 other organization owning or operating a funeral establishment
420 or cemetery.



SB131 Enrolled

421 (71) OUTER BURIAL CONTAINER. A rigid container that is
422 designed for placement in the grave space around the casket or
423 the urn including, but not limited to, containers commonly
424 known as burial vaults, grave boxes, and grave liners.

425 (72) PERSON. Any individual, firm, corporation,
426 partnership, joint venture, limited liability company,
427 association, trustee, government or governmental subdivision,
428 agency, or other entity, or any combination thereof.

429 ~~(36)~~ (73) PRACTICAL EMBALMER. Any person who has been
430 actively and continuously engaged or employed in the practice
431 of embalming under the supervision of a licensed embalmer for
432 four consecutive years immediately preceding May 1, 1975, and
433 has been issued a license as a practical embalmer under the
434 grandfather provisions of this chapter.

435 (74) PREARRANGEMENT. The term applied to completing the
436 details for selection of merchandise or services on a preneed
437 basis, which may or may not include prefunding or prepayment.

438 (75) PREDEVELOPED. Designated areas or buildings within
439 a cemetery that have been mapped and planned for future
440 construction but are not yet completed.

441 (76) PREDEVELOPED INTERMENT SPACE. An interment space
442 that is planned for future construction but is not yet
443 completed.

444 (77) PREFUND. The term applied to completing the
445 financial details of a prearrangement, which include
446 prefunding or prepayment.

447 (78) PRENEED. Any time prior to death.

448 (79) PRENEED CONTRACT. A written contract to purchase



SB131 Enrolled

449 funeral merchandise, funeral services, cemetery merchandise,
450 or cemetery services from the seller on a preneed basis.

451 (80) PRENEED CONTRACT TRUST FUND. The funds received
452 pursuant to a preneed contract which are required by law to be
453 held in trust until the merchandise or services purchased
454 pursuant to the contract are delivered or provided or until
455 otherwise lawfully withdrawn.

456 (81) PRENEED SALES AGENT. A person who is in the
457 business of selling preneed contracts.

458 ~~(37)~~ (82) PROCESSING or PULVERIZATION. The reduction of
459 identifiable bone fragments after the completion of the
460 cremation process to unidentifiable bone fragments or
461 granulated particles by manual or mechanical means.

462 (83) PROVIDER. The person, who may or may not be the
463 seller, who actually provides merchandise and services under
464 the terms of a preneed contract.

465 (84) PURCHASE PRICE. The amount paid by the purchaser
466 for merchandise and services purchased under a preneed
467 contract, exclusive of finance charges, sales tax, charges
468 relating to interment rights, arrangement conference fees, or
469 charges for credit life insurance.

470 (85) PURCHASER. The person who purchases a preneed
471 contract either on his or her behalf or on behalf of a
472 third-party beneficiary.

473 (86) RELIGIOUS INSTITUTION. An organization formed
474 primarily for religious purposes which has applied and
475 qualified for exemption from federal income tax as an exempt
476 organization under Section 501(c)(3) of the Internal Revenue



SB131 Enrolled

477 Code of 1986, as amended.

478 (87) SCATTERING. The lawful dispersion of cremated
479 remains.

480 (88) SELLER. Any person offering or selling merchandise
481 or services on a preneed basis including, but not limited to,
482 funeral establishments, cemetery authorities, crematory
483 authorities, and memorial retailers.

484 (89) SPECIAL CARE. Any care provided, or to be
485 provided, that is supplemental to, or in excess of, endowment
486 care, in accordance with the specific directions of any donor
487 of funds for those purposes.

488 (90) SUCCESSOR-IN-INTEREST. A person who lawfully
489 follows another in ownership or control of property or rights.

490 ~~(38)~~ (91) TEMPORARY CONTAINER. A receptacle for cremated
491 remains, usually composed of cardboard, plastic, or similar
492 material, that can be closed in a manner that prevents the
493 leakage or spillage of the cremated remains or the entrance of
494 foreign material, and is a single container of sufficient size
495 to hold the cremated remains until an urn is acquired or the
496 cremated remains are scattered or buried.

497 (92) THIRD-PARTY SELLER. Any person, who is not a
498 funeral establishment or a cemetery authority, engaged in the
499 sale of preneed funeral merchandise or cemetery merchandise.

500 (93) TRUSTEE. Any person, state or national bank, trust
501 company, or federally insured savings and loan association
502 lawfully appointed as fiduciary over funds deposited by one or
503 more purchasers of a preneed contract or deposited pursuant to
504 an endowment care trust fund. The term does not refer to a



SB131 Enrolled

505 board of trustees.

506 ~~(39)~~ (94) URN. A receptacle designed to encase cremated
507 remains.

508 (b) Nothing in this chapter shall require a funeral
509 director or funeral establishment to have or provide a chapel
510 or to restrict the conduct of funeral services from a church
511 or chapel."

512 "§34-13-20

513 (a) There is established the Alabama Board of Funeral
514 ~~Service Services~~, consisting of ~~nine~~ 14 members, each of whom
515 shall be citizens of the United States and residents of the
516 State of Alabama. The membership of the board shall be divided
517 into two distinct divisions, the funeral division and the
518 preneed division, with each division having jurisdiction over
519 their respective areas of service.

520 (b) The appointing authorities shall coordinate their
521 appointments to assure board membership is inclusive and
522 reflects the racial, gender, geographic, ~~urban/rural~~ urban,
523 rural, and economic diversity of the state.

524 (c) (1) Commencing on January 1, 2019, as the terms of
525 the members serving on the board on August 1, 2017, expire,
526 the membership of the funeral division of the board shall be
527 reconstituted to consist of seven professional members and two
528 consumer members.

529 ~~(1)~~ Each professional member of the funeral division of
530 the board shall be a citizen of the United States, a resident
531 of Alabama, and licensed and in good standing with the board
532 as an embalmer or funeral director at the time of appointment



SB131 Enrolled

533 and during the entire term of office. Professional members of
534 the board shall be appointed by the Governor pursuant to
535 subsection (e). As the terms of the members serving on the
536 board on October 1, 2023, expire, the professional membership
537 of the board shall be appointed to reflect the following:

538 a. ~~Four~~ Three of the professional members of the board
539 shall hold a current license from the board to practice
540 embalming in the state, shall have been actively practicing
541 embalming in the state for the last 10 consecutive years
542 immediately preceding appointment, and shall be engaged in the
543 practice of embalming at the time of appointment to the board.

544 b. ~~Three~~ Four of the professional members of the board
545 shall hold a current license from the board to practice
546 funeral directing in the state, shall have been actively
547 engaged in funeral directing in the state for the last 10
548 consecutive years immediately preceding appointment, and shall
549 be the operator of a funeral establishment in this state at
550 the time of appointment to the board.

551 (2) Commencing on October 1, 2023, the preneed division
552 of the board shall be created to consist of four professional
553 members and one consumer member. Two professional members
554 shall be licensed funeral directors and two professional
555 members shall be licensed preneed sales agents employed by a
556 ceemetery. Each professional member of the preneed division of
557 the board shall hold a current license from the board to
558 practice as a preneed sales agent, shall have been actively
559 engaged in preneed sales or direct management of preneed sales
560 in the state for the last five consecutive years immediately



SB131 Enrolled

561 preceding appointment, and shall be employed by a certificate
562 of authority license holder in this state at the time of
563 appointment to the board. Two of these professional members
564 shall also hold a current certificate of authority to sell
565 preneed services and merchandise. The initial appointment of
566 two of the preneed sales agents appointed pursuant to this
567 paragraph shall expire on December 31, 2025, and for the other
568 two, shall expire on December 31, 2026. Thereafter, the
569 preneed sales agent members shall serve pursuant to subsection
570 (e). Professional members of the board shall be appointed by
571 the Governor pursuant to subsection (e).

572 ~~(2)~~ (3) Each consumer member of the board shall
573 represent the public in general and shall have been a citizen
574 of the United States and a resident of Alabama for the last 10
575 consecutive years immediately preceding appointment and during
576 the entire term of office. A consumer member of the board may
577 not have held, nor currently hold, a license or certification
578 issued by the board, be employed at any time by, or
579 professionally or financially associated with, the holder of a
580 license or certificate issued by the board, or be related
581 within the third degree of consanguinity or affinity to the
582 holder of a license or certificate issued by the board. ~~One~~
583 Two consumer ~~member~~ members of the board shall be appointed by
584 the Lieutenant Governor and one consumer member shall be
585 appointed by the Speaker of the House of Representatives
586 pursuant to a procedure adopted by rule of the board.

587 (d) Commencing in October of 2018, and each October
588 thereafter of a year where at least one professional member

SB131 Enrolled



589 term on either division of the board has expired, ~~or is vacant~~
590 ~~for any reason,~~ all licensed funeral directors and licensed
591 embalmers for a funeral division member, and all licensed
592 preneed sales agents for a preneed division member, shall meet
593 in Montgomery, at a time and place fixed by the respective
594 division of the board, for the purpose of nominating and
595 submitting the names of three licensed persons for each
596 position on the board to the Governor. The Governor shall
597 promptly appoint one of the three persons so nominated to
598 serve as a professional member of the board.

599 (e) (1) Professional and consumer members of the board
600 shall serve staggered terms of four years each to provide
601 continuity of service on the board. If an appointment is not
602 made before the expiration of a term, the board member then
603 serving may continue to serve until a successor has been
604 appointed. A board member may not serve more than two full
605 consecutive terms on the board.

606 (2) ~~A board member who is appointed to fill a vacancy~~
607 ~~which occurs before the expiration of the term of the vacating~~
608 ~~member shall serve the remaining portion of the term to which~~
609 ~~the former member was appointed.~~ A vacancy on the board for
610 any reason shall be filled by appointment of the Governor for
611 the unexpired term. The appointee shall serve until his or her
612 successor is nominated and appointed pursuant to subsection
613 (d). If a member is appointed to fill an unexpired term of
614 less than two years, the time may not be counted toward the
615 maximum eight years of service.

616 (3) ~~Not more than~~ Only one professional funeral



SB131 Enrolled

617 division member and one professional preneed division member
618 of ~~the board~~ a division may reside in ~~the same~~ each district
619 ~~as~~ created by Section 34-13-21.

620 (4) At each meeting where nominations are made for the
621 professional members of the funeral division of the board,
622 only one licensed funeral director or licensed embalmer
623 employed by the same funeral establishment may vote. At each
624 meeting where nominations are made for the professional
625 members of the preneed division of the board, only one
626 licensed preneed sales agent employed by the same certificate
627 of authority holder may vote.

628 (f) (1) In accordance with applicable law, in addition
629 to a board member resigning from the board in writing, a board
630 member may be removed from the board for any of the following
631 grounds:

632 a. The refusal or inability to perform board duties in
633 an efficient, responsible, or professional manner.

634 b. The misuse of his or her position on the board to
635 obtain financial gain or seek personal advantage for himself,
636 herself, or another person.

637 c. A final adjudication or determination of guilt by
638 any lawful authority of the board member or sanction of the
639 board member for the violation of any law the board determines
640 is substantially related to any practice governed by this
641 chapter.

642 d. The revocation or suspension of the license of a
643 professional member of the board.

644 (2) Any board member who fails to qualify after



SB131 Enrolled

645 appointment shall automatically become ineligible to serve as
646 a member of the board and a new member, properly qualified,
647 shall be appointed in the same manner as the original
648 appointment and shall serve the remainder of the term of the
649 vacating board member.

650 (3) If a consumer board member fails to attend two or
651 more meetings within a year, without a valid excuse as
652 determined by the board, he or she shall be removed from the
653 board. A new consumer board member shall be appointed in the
654 same manner as the original appointment and shall serve the
655 remainder of the term.

656 (g) (1) The status of any person or entity properly
657 licensed by the Alabama Board of Funeral Service on the
658 effective date of this act shall continue under the Alabama
659 Board of Funeral Services.

660 (2) All the rights, duties, property, real or personal,
661 and all other effects existing in the name of the Alabama
662 Board of Funeral Service shall be transferred to the Alabama
663 Board of Funeral Services. Any reference to the Alabama Board
664 of Funeral Service in any existing law, contract, or other
665 instrument, shall be deemed a reference to the Alabama Board
666 of Funeral Services.

667 (3) A reasonable transition period for the name change
668 shall be allowed to permit an orderly and cost-effective
669 transition, relating particularly to the use of equipment and
670 supplies, all letterhead, business cards, forms, and any other
671 materials in use by the board containing the name Alabama
672 Board of Funeral Service shall continue to be used by the

SB131 Enrolled



673 Alabama Board of Funeral Services until the supplies are
674 exhausted. Replacement supplies shall contain the name of the
675 Alabama Board of Funeral Services.

676 (4) The Code Commissioner, pursuant to Section 29-7-8,
677 at times determined appropriate, shall implement this
678 statutory name change in applicable sections of this code."

679 "§34-13-21

680 There are created, for the purpose of this chapter,
681 seven geographical districts which shall be identical with the
682 seven congressional districts as fixed and established by
683 Section 17-14-70, as may be amended. It is the purpose and
684 intention of this section to provide that not more than one
685 professional member of each division of the board shall be
686 selected from each district and that three nominees to the
687 Governor for appointment to the board shall be made from each
688 district. The ~~two~~ three consumer members of the board may not
689 reside in the same congressional district."

690 "§34-13-22

691 (a) The Alabama Board of Funeral~~Service~~ Services shall
692 hold not less than one joint meeting of both divisions
693 quarterly,~~such meeting~~ for the purpose of reviewing
694 financial, budgetary, and employment matters. The quarterly
695 meetings to be held at ~~such a~~ time and place as the board may
696 determine after notice of ~~such the~~ meeting has been given in
697 the manner prescribed herein at least 15 days prior to ~~such~~
698 the meeting. The board may hold ~~such~~ other meetings as ~~it the~~
699 board may deem necessary. A majority of the appointed members
700 shall constitute a quorum authorized to transact general



SB131 Enrolled

701 business in the name of the board. ~~The board shall not meet on~~
702 ~~the premises of any embalming school or college of mortuary~~
703 ~~science; and, if any such meeting is held, all the proceedings~~
704 ~~of such meeting shall be void~~ Upon the executive director
705 serving on the effective date of the act amending this
706 subsection leaving office, two-thirds of the appointed members
707 of each division shall constitute a quorum for the purposes of
708 selecting an executive director and establishing fees.

709 (b) Additionally, each division of the board shall hold
710 at least one division meeting quarterly."

711 "§34-13-23

712 (a) (1) The board ~~appointed under this chapter and each~~
713 ~~successor thereto may~~ shall select from its own membership a
714 chair and to adopt rules for the transaction of its business
715 and for the betterment and promotion of the standards of
716 service and practice to be followed in the death care industry
717 in the State of Alabama as the board may deem expedient and
718 consistent with the laws of this state and for the public
719 good.

720 (2) The chair shall preside at all meetings of the
721 board unless otherwise ordered, and he or she shall exercise
722 and perform all duties and functions incident to the office of
723 chair.

724 (3) The board may also select from its own membership a
725 vice chair, a secretary, and a treasurer. No two offices shall
726 be held by the same person.

727 (b) The treasurer shall give bond to the State of
728 Alabama in the sum of ten thousand dollars (\$10,000), and any



SB131 Enrolled

729 premium payable for the bond shall be paid from the funds of
730 the board. The bond shall be deposited with the Treasurer of
731 the State of Alabama.

732 (c) A board member shall be reimbursed for necessary
733 travel expenses, per diem, and the necessary expenses incident
734 to his or her attendance upon the business of the board, and,
735 in addition thereto, shall receive compensation in the amount
736 of seventy-five dollars (\$75) for every day not to exceed 20
737 days per year actually spent by the member upon the business
738 of the board. The board may employ in the unclassified service
739 an executive director and up to four associate executive
740 directors who shall each receive and be paid an annual salary
741 to be fixed by the board pursuant to Section 36-6-6. The
742 salary shall be paid on a semimonthly basis. In addition, the
743 executive director and associate executive directors shall
744 each receive his or her necessary travel and other incidental
745 expenses as are incurred in the performance of duties, and all
746 expenses, per diem, and compensation shall be paid out of the
747 receipts of the board. At no time shall the operation of the
748 board be an expense to the state.

749 (d) The executive director of the board shall have
750 complete supervision and be held responsible for the direction
751 of the office of the board, shall have supervision over
752 employees, field inspections, ~~audits~~ examinations, and
753 enforcement of this chapter, and shall be responsible and
754 answerable to the board. The associate executive directors
755 shall assist the executive director and perform such other
756 duties as may be assigned to him or her by the executive



SB131 Enrolled

757 director.

758 (e) The executive director shall keep a record in which
759 shall be registered the name and business address of every
760 person to whom licenses have been granted in accordance with
761 this chapter, the number and date of the license and the date
762 of each renewal. Upon request to do so, the executive director
763 shall supply a list of all persons and establishments holding
764 a license under this chapter, then in force, giving the names
765 of the persons, their business addresses, and the numbers of
766 their licenses.

767 (f) It shall be the duty of the executive director to
768 prepare under the direction of the board and cause to be
769 printed all forms required by this chapter to be prescribed by
770 the board. All notices required to be mailed by this chapter
771 shall be directed to the last known address of the party to
772 whom the notice is sent.

773 (g) The executive director shall serve at the pleasure
774 of the board and shall perform duties as may be necessary for
775 the proper functioning of the board as the board may determine
776 or as may be prescribed in this chapter. During the employment
777 of the executive director, he or she may not be employed by
778 any funeral establishment.

779 (h) All fees and fines received under this chapter
780 shall be paid into a special fund in the State Treasury to be
781 known as the Alabama State Funeral Service Fund, which is
782 hereby created, for the necessary and proper expenses of the
783 board, and for a reasonable reserve for future use by the
784 board. All monies in the fund are hereby appropriated, as a



SB131 Enrolled

785 continuing appropriation, to the board to be used for carrying
786 out this chapter. Commencing on October 1, 2023, the name of
787 the fund shall be changed to the Alabama Board of Funeral
788 Services Fund.

789 (i) Each member of the board, the executive director,
790 the associate executive directors, designated employees, and
791 independent contractors of the board appropriately identified
792 are authorized at any given time to enter the office,
793 premises, establishment, or place of business where any
794 practice or activity regulated by this chapter is carried on,
795 or advertised as being carried on, to investigate complaints
796 or perform ~~audits~~ examinations or inspections. Each on-site
797 inspection shall include an inspection of the license,
798 certification, and registration of each licensee and
799 apprentice trainee operating therein.

800 (j) All members of the board or designated employees of
801 the board may serve and execute any process issued by any
802 court under this chapter and execute any papers, orders, or
803 process issued by the board or any officer or member of the
804 board under this chapter.

805 (k) The board may employ clerical assistants and
806 employees as necessary to carry out this chapter, and the
807 terms and conditions of employment shall be determined by the
808 board. The board may establish and equip an office from which
809 this chapter may be carried out.

810 (l) (1) The board may acquire and hold, in its own name,
811 real property by purchase, gift, lease, lease with the option
812 to purchase, or other lawful means, except eminent domain,



SB131 Enrolled

813 which real property may be used by the board to carry out its
814 responsibilities. The board may also transfer, sell, convey,
815 or cause to be conveyed real property and any improvements
816 thereon, subject to the requirements of this section. In
817 purchasing any real property, maintaining real property, or
818 making improvements thereto, the board may expend any funds
819 contained in the Funeral Board Property Acquisition Fund
820 established in subdivision (2), and any obligations created in
821 connection with the purchase or improvement of the real
822 property shall not create debts, obligations, or liabilities
823 of the state. As used in this subsection, real property shall
824 include land, lots, and all things and interests, including
825 leasehold interests, pertaining thereto, and all other things
826 annexed or attached to the land which would pass to a vendee
827 by conveyance of the land or lot, including mineral, gas, and
828 oil interests. All sales or leases made by the board of any
829 real property owned or held by the board shall be subject to
830 the requirements of Article 3, Chapter 15, Title 9.

831 Notwithstanding the foregoing, the proceeds from the sale of
832 real property owned by the board which are distributed
833 pursuant to Section 9-15-83 shall be paid to the board and
834 deposited into the property acquisition fund.

835 (2) There is established the Funeral Board Property
836 Acquisition Fund within the State Treasury. Any funds received
837 by the board pursuant to this section shall be deposited into
838 the property acquisition fund and shall be held by the board
839 in trust for carrying out the purposes of the property
840 acquisition fund. Amounts in the property acquisition fund



SB131 Enrolled

841 shall be budgeted and allotted in accordance with Sections
842 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.
843 Not later than May 1, 2022, the executive director shall
844 transfer from the Alabama State Funeral Service Fund to the
845 property acquisition fund an amount determined by vote of the
846 board for the purchase of real property. Thereafter, the board
847 shall annually, during the month of October, transfer an
848 amount between two percent and seven percent of the receipts
849 of the board from the previous fiscal year to the property
850 acquisition fund.

851 (3) At the end of each fiscal year, any unencumbered
852 and unexpended balance in the property acquisition fund shall
853 not revert to the State General Fund but shall carry over to
854 the next fiscal year."

855 "§34-13-27

856 (a) The board shall adopt a common seal, which may be
857 altered as often as the board may desire, and the funeral
858 division of the board may adopt and enforce, for the
859 protection of the public health, safety, and welfare,
860 reasonable rules relating to all of the following:

861 (1) The practice of the profession of embalming,
862 including, but not limited to, solicitation of business.

863 (2) The practice of the profession of funeral
864 directing, including, but not limited to, solicitation of
865 business.

866 (3) The sanitary condition and physical facilities of
867 funeral homes, mortuaries, and funeral establishments where
868 the profession of embalming and funeral directing is carried



SB131 Enrolled

869 on, with particular regard to plumbing, sewage, disinfecting,
870 ventilation, and equipment.

871 (4) Carrying out generally the various provisions of
872 this chapter for the protection of the peace, health, safety,
873 and welfare of the public.

874 (5) Carrying out a program for training of apprentice
875 embalmers and apprentice funeral directors.

876 (6) The sale of goods, services, and merchandise and
877 the operation of entities and establishments regulated by the
878 board.

879 (b) The preneed division of the board may adopt and
880 enforce, for the protection of the public health, safety, and
881 welfare, reasonable rules relating to the sale of preneed
882 merchandise and services."

883 Section 2. The following heading is added to Division
884 1, commencing with Section 34-13-170, of Article 5, Chapter
885 13, Title 34, Code of Alabama 1975:

886 "Article 5. Alabama Preneed Funeral and Cemetery Act of
887 2023.

888 "Division 1. General Provisions."

889 Section 3. Sections 27-17A-1, 27-17A-3, and 27-17A-4 of
890 the Code of Alabama 1975, are amended and renumbered as
891 Division 1 of Article 5 of Chapter 13 of Title 34, Code of
892 Alabama 1975, to read as follows:

893 "~~§27-17A-1~~§34-13-170

894 (a) This ~~chapter~~ article shall be known and may be
895 cited as the Alabama Preneed Funeral and Cemetery Act of 2023.

896 (b) (1) The Alabama Board of Funeral Services succeeds



897 to and is vested with the powers, duties, and functions of the
898 Department of Insurance relating to the regulation of
899 endowment care, preneed sales contracts, and the licensing of
900 preneed sales agents.

901 (2) All records of the Department of Insurance relating
902 to the regulation of preneed sales contracts, endowment care,
903 and the licensing of preneed sales agents are transferred to
904 the board.

905 (3) The status of any person properly licensed by the
906 Department of Insurance under the former Chapter 17A of Title
907 27, on the effective date of the act adding this subdivision,
908 shall continue under the board.

909 (4) The administrative rules of the Department of
910 Insurance existing on the effective date of the act adding
911 this subdivision shall remain in effect as administrative
912 rules of the board until added, amended, or repealed by the
913 board.

914 (5) The existence and functioning of the Alabama
915 Preneed Funeral and Cemetery Act, created and functioning
916 pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is
917 continued as the Alabama Preneed Funeral and Cemetery Act of
918 2023, under this article. All rights, duties, and obligations
919 existing in the name of the Department of Insurance, relating
920 to endowment care, preneed sales contracts, and preneed sales
921 agent licenses, shall continue under the board. Any reference
922 to the Department of Insurance in any existing law, contract,
923 or other instrument relating to endowment care, preneed sales
924 contracts, and preneed sales agent licenses, shall be deemed a



SB131 Enrolled

925 reference to the board.

926 (6) The transfer of the regulation of preneed contracts
927 and the licensing of preneed sales agents from the Department
928 of Insurance to the board shall not affect the rights of any
929 person held before the effective date of the act adding this
930 subdivision, as those rights relate to any preneed trust
931 funds, endowment care trust funds, or any other funds held in
932 trust pursuant to the Alabama Preneed Funeral and Cemetery
933 Act."

934 ~~"§27-17A-3~~§34-13-171

935 (a) Nothing in this chapter shall be construed to
936 prohibit the funding of preneed contracts with multiple
937 insurance or annuity contracts. Life insurance and annuity
938 contracts used to fund preneed contracts shall conform with
939 ~~the provisions of this title~~ Title 27 as they relate to life
940 insurance and annuities and shall cover not less than the
941 initial retail price of the preneed contract.

942 (b) The initial premium payment for a life insurance
943 policy or annuity contract shall be made payable to the
944 issuing insurance company and the preneed seller shall remit
945 the payment to the insurance company within 10 business days
946 after the insurance application is signed by the parties. If a
947 preneed contract provides for installment payments, each
948 premium payment shall be made payable to the insurance company
949 and, if collected by the preneed seller, shall be remitted to
950 the insurance company within 10 business days after receipt by
951 the preneed seller.

952 (c) Nothing in this chapter shall prohibit a seller, or



SB131 Enrolled

953 any other person, from receiving commissions earned and
954 payable in regard to funding preneed contracts with life
955 insurance or annuity contracts, provided the seller or other
956 person holds a valid insurance producer license in this state
957 and is appointed by the insurance company paying the
958 commission.

959 (d) A preneed seller may be identified as the
960 beneficiary or assignee of the death benefit proceeds of a
961 life insurance policy or annuity contract sold as a future
962 funding mechanism for a preneed contract, but may not be the
963 owner of the policy or annuity contract or exercise any
964 ownership rights in the policy or annuity. If the preneed
965 contract is cancelled before or after the death of the funeral
966 beneficiary, the preneed seller shall cancel and relinquish
967 any assignment of benefits or beneficiary status under the
968 policy or annuity contract, and deliver the policy or
969 contract, if in the custody of the preneed seller, to the
970 policy owner or his or her legal representative."

971 "~~§27-17A-4~~§34-13-172

972 Nothing in this chapter shall be construed to prohibit
973 cemetery authorities from selling funeral merchandise, funeral
974 establishments from selling cemetery merchandise, or
975 third-party sellers from selling either funeral merchandise or
976 cemetery merchandise, or both. Provided, the required amount
977 of the purchase price to be placed into trust shall be
978 governed by the appropriate section of this chapter."

979 Section 4. The following heading is added to Division
980 2, commencing with Section 34-13-190, of Article 5, Chapter



SB131 Enrolled

981 13, Title 34, Code of Alabama 1975:

982 "Division 2. Certificate of Authority."

983 Section 5. Sections 27-17A-10, 27-17A-11, 27-17A-11.1,
984 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-16,
985 27-17A-17, 27-17A-18, 27-17A-19, 27-17A-20, 27-17A-21,
986 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of the Code of
987 Alabama 1975, are amended and renumbered as Division 2 of
988 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to
989 read as follows:

990 "~~§27-17A-10~~§34-13-190

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

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

996 (2) Any preneed transaction in which a buyer pays to
997 the seller before need, in whole or in part, a purchase price
998 for funeral or cemetery merchandise and services, and in which
999 the seller is not obligated to deliver the contracted for
1000 merchandise or to perform the services until need, in whole or
1001 in part, shall be evidenced by a written preneed contract
1002 satisfying the requirements of this chapter and signed by the
1003 seller and the purchaser. No person may receive or accept any
1004 form of consideration in such a transaction without a fully
1005 signed written preneed contract. A transaction not evidenced
1006 by a signed written preneed contract shall be voidable at the
1007 election of the buyer and, if such election is made, the
1008 seller shall refund to the buyer the entire amount paid by the



SB131 Enrolled

1009 buyer together with interest thereon at the legal rate within
1010 30 days after notice to the seller.

1011 (3) The provisions of subdivision (1) do not apply to
1012 the purchase of a life insurance policy or annuity, the
1013 benefits of which are assigned to a funeral home ~~and/or~~ or
1014 cemetery authority, or the benefits of which are to be paid to
1015 a funeral home ~~and/or~~ or cemetery authority named as
1016 beneficiary of the policy or annuity, as long as the purchaser
1017 and funeral home ~~and/or~~ or cemetery authority acknowledge in
1018 writing that no preneed contract is entered as a result of the
1019 purchase or assignment of the life insurance policy or annuity
1020 at the time the policy or annuity is purchased. Benefits from
1021 a life insurance policy or annuity issued under this
1022 subdivision shall only be paid to a funeral home ~~and/or~~ or
1023 cemetery authority which provides funeral or cemetery
1024 merchandise and services at the death of the insured whether
1025 or not such funeral home ~~and/or~~ or cemetery has been named as
1026 an assignee or the beneficiary of the policy or annuity. If
1027 the amount of the policy or annuity proceeds shall exceed the
1028 actual funeral costs at the time of need, ~~such~~ the excess
1029 amount ~~must~~ shall be paid to a designated beneficiary, other
1030 than a funeral home ~~and/or~~ or cemetery authority, or to the
1031 estate of the insured or annuitant.

1032 (4) ~~The provisions of subdivision~~ Subdivision (1) ~~do~~
1033 does not apply to any legal reserve insurance company or to
1034 any trust company or to any national or state bank or savings
1035 and loan association having trust powers which company, bank,
1036 or association receives any money in trust pursuant to the



SB131 Enrolled

1037 sale of a preneed contract.

1038 (c) (1) No person may obtain a certificate of authority
1039 under this ~~article~~ chapter for the preneed sale of funeral
1040 services or cemetery services unless the person or its agent,
1041 in the case of a corporate entity, holds a license as a
1042 funeral director or a funeral establishment, or is a cemetery
1043 authority ~~-~~ and qualifies as an applicant for a certificate of
1044 authority pursuant to the following standards and
1045 qualifications:

1046 a. The applicant shall be at least the legal age of
1047 majority in this state.

1048 b. The applicant shall be in good standing with the
1049 board.

1050 c. The applicant may not have any felony or misdemeanor
1051 convictions that relate to any activity regulated by this
1052 chapter or a crime involving moral turpitude, as defined by
1053 this chapter.

1054 d. The applicant shall be of good moral character and
1055 submit to a criminal history background check pursuant to
1056 subdivision (2).

1057 (2) An applicant for a certificate of authority shall
1058 submit to the board, on a form sworn to by the applicant, his
1059 or her name, date of birth, Social Security number, and two
1060 complete sets of fingerprints for completion of a criminal
1061 history background check. The board shall submit the
1062 fingerprints to the Alabama State Law Enforcement Agency for a
1063 state criminal history background check. The fingerprints
1064 shall be forwarded by the agency to the Federal Bureau of



1065 Investigation for a national criminal history background
1066 check. Costs associated with conducting a criminal history
1067 background check shall be paid by the applicant. The board
1068 shall keep information received pursuant to this subdivision
1069 confidential, except that information received and relied upon
1070 in denying the issuance of a certificate of authority may be
1071 disclosed if necessary to support the denial. All character
1072 information, including the information obtained through the
1073 criminal history background checks, shall be considered in
1074 licensure decisions to the extent permissible by all
1075 applicable laws.

1076 (d) ~~The provisions of this~~ This section ~~do~~ does not
1077 apply to a cemetery authority owned or operated by a
1078 governmental agency or a religious institution or to those
1079 cemeteries that do not charge fees or sell plots, interment
1080 rights, or any related cemetery merchandise."

1081 "~~§27-17A-11~~§34-13-191

1082 (a) An application to the ~~commissioner~~ board for a
1083 certificate of authority shall be accompanied by the statement
1084 and other matters described in this section in the form
1085 prescribed by the ~~commissioner~~ board. Annually thereafter,
1086 ~~within six months after the end of its fiscal period,~~ or
1087 within an extension of time therefor, as the ~~commissioner~~
1088 board for good cause may grant, the person authorized to
1089 engage in the sale of preneed contracts shall file with the
1090 ~~commissioner~~ board a full and true statement of his or her
1091 financial condition, transactions, and affairs, prepared on a
1092 basis as adopted by a rule of the ~~commissioner~~ board, as of



SB131 Enrolled

1093 the preceding fiscal period or at such other time or times as
1094 the ~~commissioner~~ board may provide by rule, together with
1095 information and data which may be required by the ~~commissioner~~
1096 board.

1097 (b) The statement shall include all of the following:

1098 (1) The types of preneed contracts proposed to be
1099 written and the type of funding ~~vehiele~~ vehicles to be used.

1100 (2) The name and address of the place of business of
1101 the person offering to write preneed contracts.

1102 (3) Evidence that the person offering the statement has
1103 the following qualifications:

1104 a. Has the ability to discharge his or her preneed
1105 liabilities as they become due in the normal course of
1106 business and has sufficient funds available during the
1107 calendar year to perform his or her obligations under the
1108 contract.

1109 b. Has complied with the trust requirements for the
1110 funds received under contracts issued by himself or herself as
1111 hereinafter described.

1112 c. Has disbursed interest, dividends, or accretions
1113 earned by trust funds, in accordance with this ~~article~~ chapter
1114 and rules ~~promulgated~~ adopted hereunder.

1115 d. Has complied with this chapter and any rules of the
1116 ~~commissioner~~ board.

1117 (4) Any other information considered necessary by the
1118 ~~commissioner~~ board to meet the ~~commissioner's~~ board's
1119 responsibilities under this chapter.

1120 (c) If the person is an individual, the statement shall



SB131 Enrolled

1121 be sworn by him or her; if a firm or association, by all
1122 members thereof; or, if a corporation, by any officer of the
1123 corporation.

1124 (d) (1) An application to the ~~commissioner~~ board for an
1125 initial certificate of authority shall be accompanied by an
1126 application fee in an amount to be determined by the
1127 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~
1128 ~~(\$150)~~ one hundred ninety-eight dollars (\$198). Thereafter,
1129 each annual application for renewal of a certificate of
1130 authority shall be accompanied by the appropriate fee as
1131 determined by the ~~commissioner~~ board not to exceed
1132 ~~seventy-five dollars (\$75)~~ ninety-nine dollars (\$99).

1133 (2) Any person or entity that is part of a common
1134 business enterprise that has a certificate of authority issued
1135 pursuant to this ~~article~~ chapter and elects to operate under a
1136 name other than that of the common business enterprise shall
1137 submit an application on a form ~~adopted~~ prescribed by the
1138 ~~commissioner~~ board to become a branch registrant. Upon the
1139 approval of the ~~commissioner~~ board that the entity qualifies
1140 to sell preneed contracts under this ~~article~~ chapter except
1141 for the requirements of subparagraph 1., of paragraph a. of
1142 subdivision (3) of subsection (b) and if the certificate
1143 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,
1144 a branch registration shall be issued. Each branch registrant
1145 may operate under the certificate of authority of the common
1146 business enterprise upon the payment of a fee established by
1147 the ~~commissioner~~ board not to exceed ~~one hundred fifty dollars~~
1148 ~~(\$150)~~ one hundred ninety-eight dollars (\$198) accompanying



SB131 Enrolled

1149 the application on ~~July~~ September 1 annually.

1150 (e) Upon the ~~commissioner~~ board being satisfied that
1151 the statement and matters which may accompany ~~it~~ the statement
1152 meet the requirements of this ~~article~~ chapter and of its
1153 rules, the ~~commissioner~~ board shall issue or renew the
1154 certificate of authority.

1155 (f) The certificate of authority shall expire annually
1156 on ~~September~~ October 1, unless renewed, or at such other time
1157 or times as the ~~commissioner~~ board may provide by rule.

1158 (g) On or before ~~July 1 of~~ a date adopted by the board
1159 each year, the certificate holder shall file with the
1160 ~~commissioner~~ board in the form prescribed by the ~~commissioner~~
1161 board a full and true statement as to the activities of any
1162 trust established by it pursuant to this ~~article~~ chapter for
1163 the preceding calendar year.

1164 (h) In addition to any other penalty that may be
1165 provided for under this ~~article~~ chapter, the ~~commissioner~~
1166 board may levy a fine not to exceed fifty dollars (\$50) per
1167 day for each day the certificate holder fails to file its
1168 annual statement, and the ~~commissioner~~ board may levy a fine
1169 not to exceed fifty dollars (\$50) per day for each day the
1170 certificate holder fails to file the statement of activities
1171 of the trust. Upon notice to the certificate holder by the
1172 ~~commissioner~~ board that the certificate holder has failed to
1173 file the annual statement or the statement of activities of
1174 the trust, the certificate holder's authority to sell preneed
1175 contracts shall cease while the default continues.

1176 (i) To facilitate uniformity in financial statements



SB131 Enrolled

1177 and to facilitate analysis, the ~~commissioner~~ board may by rule
1178 adopt a form for financial statements. The holder of a
1179 certificate of authority may submit a written request to the
1180 ~~commissioner~~ board to exempt the holder from filing financial
1181 statements at renewal. The ~~commissioner~~ board may waive the
1182 requirement for filing a financial statement at renewal if all
1183 of the following are satisfied:

1184 (1) No valid complaint has been filed since the last
1185 ~~examination~~ audit.

1186 (2) No administrative action against the preneed entity
1187 has been instituted since the last ~~examination~~ audit.

1188 (3) The certificate holder certifies that all
1189 outstanding preneed contracts written by the holder since
1190 April 30, 2002, are fully funded in accordance with this
1191 chapter.

1192 (4) The certificate holder certifies that it will fully
1193 fund all preneed contracts with life insurance, annuity, or
1194 will deposit 100 percent of all funds collected on all preneed
1195 contracts in trust within 30 days after the end of the
1196 calendar month in which the funds are collected.

1197 (5) The preneed entity has provided to the ~~department~~
1198 board in a timely manner all required and requested records.

1199 (6) The preneed entity agrees to file ~~quarterly~~ reports
1200 of its preneed activity on a form ~~or,~~ in a format, and as
1201 often as prescribed by the ~~commissioner~~ board.

1202 (j) The ~~commissioner~~ board may authorize the transfer
1203 of certificates of authority and establish fees for the
1204 transfer in an amount not to exceed ~~one hundred dollars (\$100)~~



SB131 Enrolled

1205 one hundred thirty-two dollars (\$132). Upon receipt of an
1206 application for transfer, the ~~commissioner~~ board may grant a
1207 temporary certificate of authority to the proposed transferee,
1208 based upon criteria established by the ~~commissioner~~ board by
1209 rule, which criteria shall promote the purposes of this
1210 ~~article~~ chapter in protecting the consumer. A temporary
1211 certificate of authority shall expire 60 days after issuance
1212 unless renewed by the ~~commissioner~~ board."

1213 "~~§27-17A-11.1~~ §34-13-192

1214 (a) On ~~a semi-annual basis, within 45 days after the~~
1215 ~~end of each second calendar reporting period~~ or before July 1,
1216 each year, the certificate holder shall file a report of its
1217 preneed contract activity on a form or in a format prescribed
1218 by the ~~commissioner~~ board. The information reported shall
1219 include the total number of preneed contracts in force at the
1220 end of the previous ~~reporting period~~ calendar year, the total
1221 number of preneed contracts sold during the ~~reporting period~~
1222 previous calendar year, the total number of preneed contracts
1223 fulfilled during the ~~reporting period~~ previous calendar year,
1224 the total number of preneed contracts in force at the end of
1225 the ~~reporting period~~ previous calendar year, and such other
1226 information as may be required by the ~~commissioner~~ board. The
1227 report shall be organized by type of funding including, life
1228 insurance, annuity, trust, letter of credit, or surety bond.
1229 The report shall also provide a certification by the trustee
1230 of the amount of assets held by the trust at the beginning of
1231 the reporting period and at the end of the reporting period,
1232 together with the amount of deposits and withdrawals during



SB131 Enrolled

1233 the reporting period. If a certificate holder shall twice
1234 default in complying with the requirements of this subsection,
1235 the ~~commissioner~~ board may require that the certificate holder
1236 thereafter submit the report within 45 days after the end of
1237 each calendar quarter and shall continue so reporting for a
1238 time to be determined by the ~~commissioner~~ board.

1239 (b) The certificate holder shall maintain a written log
1240 of preneed sales. The log shall be on a form or in a format
1241 prescribed by the ~~commissioner~~ board, shall detail all
1242 information required by the ~~commissioner~~ board, and shall be
1243 available for inspection at any time by the ~~commissioner~~
1244 board.

1245 (c) Each cemetery authority shall maintain a written
1246 log of the sale of cemetery interment rights. The log shall be
1247 on a form or in a format prescribed by the ~~commissioner~~ board
1248 and shall detail all information required by the ~~commissioner~~
1249 board.

1250 (d) The board may maintain a statewide database of
1251 preneed contracts reported to the board pursuant to subsection
1252 (a). The board may make information in this database
1253 searchable by the public by means of unique identifiers, or
1254 any other means, that the board determines respects the
1255 privacy of those involved while also protecting consumers from
1256 financial waste by allowing families to determine if a
1257 deceased loved one has an existing preneed contract. Any
1258 preneed consumer who does not wish for his or her information
1259 to appear in this searchable database may opt out by following
1260 a process established by the board."



SB131 Enrolled

1261 "~~§27-17A-12~~§34-13-193

1262 (a) Preneed contract forms and related forms shall be
1263 filed with and approved by the ~~commissioner~~ board.

1264 (b) Specific disclosure regarding whether, consistent
1265 with the requirements of this chapter, the certificate holder
1266 is placing certain preneed funds received with the contract in
1267 trust, in an annuity, or in insurance, is required in the
1268 preneed contract.

1269 (c) Preneed contracts which have been submitted to the
1270 ~~commissioner~~ board shall be deemed to have been approved by
1271 the ~~commissioner~~ board in the event that the ~~commissioner~~
1272 board fails to notify the certificate holder that approval has
1273 been denied within 30 days following submission to the
1274 ~~commissioner~~ board."

1275 "~~§27-17A-13~~§34-13-194

1276 (a) Except as provided in Sections ~~27-17A-3 and~~
1277 ~~27-17A-14~~ 34-13-171 and 34-13-195, every preneed contract
1278 shall require the monies paid to the seller or trustee to be
1279 placed in trust in accordance with ~~Article 3~~ Division 3, for
1280 funeral merchandise and services sold by funeral
1281 establishments or third party sellers, or ~~Article 4~~ Division
1282 4, for cemetery merchandise and services sold by cemetery
1283 authorities.

1284 (b) Although this chapter does not apply to preneed
1285 contracts entered into prior to May 1, 2002, a preneed
1286 provider which contends that a preneed trust fund which was in
1287 effect prior to May 1, 2002, complies with this chapter with
1288 respect to the contracts entered into prior to May 1, 2002,



SB131 Enrolled

1289 may provide to the ~~commissioner~~ board documentary proof
1290 thereof. Upon the ~~commissioner~~ board determining that
1291 compliance has been established, the pre-existing preneed
1292 trust fund assets may be merged with or into the trust fund
1293 required under this chapter or continued as the trust fund and
1294 that determination by the ~~commissioner~~ board shall be noted on
1295 the certificate of authority, and thereafter all preneed
1296 contracts covered by the trust fund, including those entered
1297 into prior to May 1, 2002, shall be subject to this chapter."

1298 "~~§27-17A-14~~ §34-13-195

1299 (a) As an alternative to the trust requirement of
1300 Section ~~27-17A-13~~ 34-13-194, the details of which are set
1301 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed
1302 provider ~~may~~, with the prior approval of the ~~commissioner~~
1303 board, may purchase a surety bond in an amount not less than
1304 the aggregate value of outstanding liabilities on undelivered
1305 preneed contracts for merchandise, services, and cash
1306 advances. For the purposes of this section, the term
1307 outstanding liabilities means the original retail amount of
1308 services and cash advances and the actual cost to the entity
1309 to provide the undelivered merchandise sold on each contract
1310 written after April 30, 2002. The surety bond shall be in an
1311 amount sufficient to cover the outstanding liability at the
1312 time each contract is executed.

1313 (b) The bond shall be made payable to the State of
1314 Alabama for the benefit of the ~~commissioner~~ board and of all
1315 purchasers of preneed merchandise, services, and cash
1316 advances. The bond shall be issued by an insurance company



SB131 Enrolled

1317 licensed in the State of Alabama and authorized to issue
1318 surety bonds and approved by the ~~commissioner~~ board.

1319 (c) The amount of the bond shall be based on a report
1320 documenting the outstanding liabilities of the preneed
1321 provider for the previous calendar quarter and the projected
1322 liability for the immediately following quarter, shall be
1323 prepared by the preneed provider using generally accepted
1324 accounting principles, and shall be signed by the chief
1325 executive officer or chief financial officer of the preneed
1326 provider. The report shall be compiled as of the end of the
1327 preneed provider's fiscal year and updated quarterly.

1328 (d) The amount of the bond shall be increased or
1329 decreased as necessary to correlate with changes in the
1330 outstanding liabilities. Further, the ~~commissioner~~ board may
1331 order the bond to be increased as necessary to correlate with
1332 changes in the outstanding liabilities of bonded contracts due
1333 to increases in the consumer price index.

1334 (e) If the preneed provider fails to maintain a bond
1335 pursuant to this section the preneed provider shall cease the
1336 offering for sale and sale of preneed merchandise, services,
1337 and cash advances as provided by rule of the board.

1338 (f) No surety bond used to comply with this section
1339 shall be canceled or subject to cancellation unless at least
1340 60 days' advance notice thereof, in writing, is filed with the
1341 ~~commissioner~~, board by the surety company. The cancellation of
1342 the bond shall not relieve the obligation of the surety
1343 company for claims arising out of contracts issued or
1344 otherwise covered before cancellation of the bond. In the



SB131 Enrolled

1345 event that notice of termination of the bond is filed with the
1346 ~~commissioner~~ board, the certificate holder insured thereunder
1347 ~~shall~~, within 30 days of the filing of the notice of
1348 termination with the ~~commissioner~~ board, shall provide the
1349 ~~commissioner~~ board with a replacement bond or with evidence
1350 which is satisfactory to the ~~commissioner~~ board demonstrating
1351 that ~~the provisions of~~ this chapter ~~have~~ has been fully
1352 complied with. If within 30 days of filing of the notice of
1353 termination with the ~~commissioner~~ board no replacement bond
1354 acceptable to the ~~commissioner~~ board or no evidence
1355 satisfactory to the ~~commissioner~~ board demonstrating that ~~the~~
1356 ~~provisions of~~ this chapter ~~have~~ has been complied with is
1357 filed with the ~~commissioner~~ board, the ~~commissioner~~ board
1358 shall suspend the license of the certificate holder until the
1359 certificate holder files a replacement bond acceptable to the
1360 ~~commissioner~~ board or demonstrates to the satisfaction of the
1361 ~~commissioner~~ board that it has complied with ~~the provisions of~~
1362 this chapter.

1363 (g) Upon prior approval by the ~~commissioner~~ board, the
1364 preneed provider may file with the ~~commissioner~~ board a letter
1365 of credit in the amount of the outstanding liabilities in lieu
1366 of a surety bond, in the form and subject to the terms and
1367 conditions evidencing the financial responsibility of the
1368 party or parties issuing the letter of credit, and otherwise,
1369 as may be prescribed by the ~~commissioner~~ board."

1370 "~~§27-17A-15~~ §34-13-196

1371 (a) The ~~commissioner shall~~ board, as often as ~~he or she~~
1372 ~~may deem~~ deemed necessary, ~~examine~~ shall examine the business



SB131 Enrolled

1373 of any person writing, or holding himself or herself out to be
1374 writing, preneed contracts under this chapter to the extent
1375 applicable. The examination shall be made by designated
1376 representatives employed or ~~examiners of the Department of~~
1377 ~~Insurance~~ contracted by the board.

1378 (b) The written report of each examination, when
1379 completed, shall be filed in the office of the ~~commissioner~~
1380 board and, when so filed, shall not constitute a public
1381 record.

1382 (c) Any person being examined shall produce, upon
1383 request, all records of the person. The designated
1384 representative of the ~~commissioner~~ board may at any time
1385 examine the records and affairs of the person, whether in
1386 connection with a formal examination or not.

1387 (d) The ~~commissioner may~~ board shall waive the
1388 examination requirements of this section if the certificate
1389 holder submits audited financial statements. Upon receipt of a
1390 verifiable complaint, the board may perform a target market
1391 conduct examination as a part of an investigation.

1392 (e) The person examined shall pay the examination
1393 expenses, travel expense, and per diem subsistence allowance
1394 provided for examiners and incurred by the ~~commissioner's~~
1395 board's representatives or examiners in connection with an
1396 examination ~~in accordance with Section 27-2-25~~ as prescribed
1397 by rule of the board.

1398 (f) Whenever any special examination of the premises,
1399 facilities, books, or records of a licensee is necessary based
1400 on the failure of the licensee to comply with this chapter or

SB131 Enrolled



1401 rule adopted by the board, the board shall charge a fee based
1402 on the cost of the special examination including, but not
1403 limited to, the prorated compensation of board employees
1404 involved in the special examination and any expenses incurred.

1405 (g) If the board finds that a certificate of authority
1406 holder or licensee has failed to operate in accordance with
1407 this chapter and, by their action, has created a deficit of
1408 preneed funds entrusted to them by the consumer, then the
1409 board may:

1410 (1) Bring an action for injunctive relief against the
1411 responsible licensee or the holder of the certificate of
1412 authority in the Circuit Court of Montgomery County.

1413 (2) Issue an emergency suspension of all licenses held
1414 by the holder of the certificate of authority, and its
1415 associated personnel, in accordance with the Administrative
1416 Procedure Act.

1417 (3) Take any other disciplinary action authorized by
1418 this chapter."

1419 ~~"§27-17A-16~~§34-13-197

1420 (a) A certificate holder shall be considered inactive
1421 upon the acceptance of the surrender of its license by the
1422 ~~commissioner~~ board or upon the nonreceipt by the ~~commissioner~~
1423 board of the certificate of authority renewal application and
1424 fees.

1425 (b) A certificate holder shall cease all preneed sales
1426 to the public upon becoming inactive. The certificate holder
1427 shall collect and deposit into trust all of the funds paid
1428 toward preneed contracts sold prior to becoming inactive.



SB131 Enrolled

1429 (c) Any certificate holder desiring to surrender its
1430 license to the ~~commissioner~~ board shall first do all of the
1431 following:

1432 (1) File notice with the ~~commissioner~~ board.

1433 (2) Submit copies of its existing trust agreements.

1434 (3) Submit a sample copy of each type of preneed
1435 contract sold.

1436 (4) Resolve to the ~~commissioner's~~ satisfaction of the
1437 board all findings and violations resulting from the last
1438 examination conducted.

1439 (5) Pay all outstanding fines and invoices due the
1440 ~~commissioner~~ board.

1441 (6) Submit its current certificate of authority.

1442 (d) Upon receipt of the notice, the ~~commissioner~~ board
1443 shall review the certificate holder's trust funds, trust
1444 agreements, and evidence of all outstanding preneed contracts.

1445 (e) After a review to the ~~commissioner's~~ satisfaction
1446 of the board, the ~~commissioner~~ board shall terminate the
1447 certificate of authority by an order which shall set forth the
1448 conditions of termination established by the ~~commissioner~~
1449 board to ensure that the preneed funds will be available for
1450 their intended purpose.

1451 (f) The trust fund of the certificate holder shall be
1452 held intact and in trust after the certificate holder has
1453 become inactive, and the funds in that trust shall be
1454 disbursed in accordance with the requirements of the written
1455 contracts until the funds have been exhausted.

1456 (g) The ~~commissioner~~ board shall continue to have



SB131 Enrolled

1457 jurisdiction over the inactive certificate holder as if the
1458 certificate were active and to require the reports and inspect
1459 the records as the ~~commissioner~~ board deems appropriate so
1460 long as there are funds in trust or preneed contracts that are
1461 not fulfilled.

1462 (h) ~~In addition to any other~~ Other terms of revocation
1463 or suspension ordered pursuant to ~~Chapter 13 of Title 34, the~~
1464 ~~provisions of~~ this chapter may ~~also~~ apply. -"

1465 "~~§27-17A-17~~ §34-13-198

1466 ~~(a) Any dissolution or liquidation of a certificate~~
1467 ~~holder shall be deemed to be the liquidation of an insurance~~
1468 ~~company and shall be conducted under the supervision of the~~
1469 ~~commissioner, who shall have all powers with respect thereto~~
1470 ~~granted to the commissioner under Chapter 32 with respect to~~
1471 ~~the liquidation of insurance companies.~~

1472 ~~(b) The commissioner may apply for an order directing~~
1473 ~~the commissioner to liquidate a certificate holder upon any~~
1474 ~~one or more grounds set out in Section 27-32-6 or when, in the~~
1475 ~~commissioner's opinion, the continued operation of the~~
1476 ~~certificate holder would be hazardous either to purchasers,~~
1477 ~~beneficiaries, or to the people of this state.~~

1478 The board may fine and revoke, suspend, or place on
1479 probation the certificate of authority and the establishment
1480 license of a certificate holder on any of the following
1481 grounds:

1482 (1) The certificate holder is impaired or insolvent.

1483 (2) The certificate holder has refused to submit, or
1484 has withheld, any of its books, records, accounts, or affairs



1485 to examination by the board.

1486 (3) The certificate holder has concealed or removed
1487 records or preneed assets, or both.

1488 (4) The certificate holder has failed to comply with an
1489 order of the board.

1490 (5) The certificate holder has transferred, or
1491 attempted to transfer, substantially its entire property or
1492 business, or has entered into any transaction the effect of
1493 which is to merge substantially its entire property or
1494 business with that of any other certificate holder, person,
1495 corporation, or entity without first having obtained the
1496 written approval of the board.

1497 (6) The certificate holder has willfully violated its
1498 articles of incorporation or any law of this state, including
1499 any rule of the board.

1500 (7) The certificate holder has an officer, director, or
1501 manager who has refused to be examined under oath concerning
1502 the affairs of the certificate holder.

1503 (8) If the board determines that the continued preneed
1504 sales of the certificate holder would be hazardous to
1505 purchasers, beneficiaries, or residents of this state."

1506 ~~"§27-17A-18~~§34-13-199

1507 (a) All individuals who offer preneed contracts to the
1508 public, or who execute preneed contracts on behalf of a
1509 certificate holder, shall be registered with the ~~commissioner~~
1510 board as preneed sales agents, pursuant to this ~~article~~
1511 chapter.

1512 (b) All preneed sales agents and funeral directors



SB131 Enrolled

1513 acting as preneed sales agents shall be affiliated with the
1514 certificate holder that they are representing.

1515 (c) A certificate holder shall be responsible for the
1516 activities of all preneed sales agents and all funeral
1517 directors acting as preneed sales agents, who are affiliated
1518 with the certificate holder and who perform any type of
1519 preneed-related activity on behalf of the certificate holder.
1520 In addition to the preneed sales agents and funeral directors
1521 acting as preneed sales agents, each certificate holder shall
1522 also be subject to discipline if its preneed sales agents or
1523 funeral directors acting as preneed sales agents violate ~~any~~
1524 ~~provision of~~ this ~~article~~ chapter.

1525 (d) A preneed sales agent and a funeral director acting
1526 as a preneed sales agent ~~shall be authorized to~~ may sell,
1527 offer, and execute preneed contracts on behalf of all properly
1528 licensed entities owned or operated by the sponsoring
1529 certificate holder.

1530 (e) An individual may begin ~~functioning~~ operating as a
1531 preneed sales agent as soon as a completed application for
1532 registration, as set forth in subsection (g), is ~~sent to the~~
1533 ~~commissioner~~ approved by the board.

1534 (f) (1) The qualifications for a preneed sales agent are
1535 as follows:

1536 ~~(1)~~ a. The applicant must be at least 18 years of age.

1537 ~~(2)~~ b. The applicant must be in good standing with the
1538 ~~commissioner~~ board.

1539 ~~(3)~~ c. The applicant ~~must~~ may not have any felony or
1540 misdemeanor convictions that relate to any activity regulated



1541 by this chapter or a crime involving moral turpitude, as
1542 defined by this chapter.

1543 d. The applicant shall be of good moral character and
1544 submit to a criminal history background check pursuant to
1545 subdivision (2).

1546 (2) An applicant for licensure as a preneed sales agent
1547 shall submit to the board, on a form sworn to by the
1548 applicant, his or her name, date of birth, Social Security
1549 number, and two complete sets of fingerprints for completion
1550 of a criminal history background check. The board shall submit
1551 the fingerprints to the Alabama State Law Enforcement Agency
1552 for a state criminal history background check. The
1553 fingerprints shall be forwarded by the agency to the Federal
1554 Bureau of Investigation for a national criminal history
1555 background check. Costs associated with conducting a criminal
1556 history background check shall be paid by the applicant. The
1557 board shall keep information received pursuant to this
1558 subdivision confidential, except that information received and
1559 relied upon in denying the issuance of a certificate of
1560 authority may be disclosed if necessary to support the denial.
1561 All character information, including the information obtained
1562 through the criminal history background checks, shall be
1563 considered in licensure decisions to the extent permissible by
1564 all applicable laws.

1565 (g) An application for registration as a preneed sales
1566 agent shall be submitted to the ~~commissioner~~ board with an
1567 application fee determined by the ~~commissioner~~ board, but not
1568 to exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars



SB131 Enrolled

1569 (\$33), by the certificate holder in a form that has been
1570 prescribed by ~~commissioner~~ board rule ~~and approved by the~~
1571 ~~commissioner~~. The application shall contain, at a minimum, all
1572 of the following:

1573 (1) The name, address, Social Security number, and date
1574 of birth of the applicant and any other information as the
1575 ~~commissioner~~ board may reasonably require of the applicant.

1576 (2) The name, address, and license number of the
1577 sponsoring certificate holder.

1578 (3) A representation, signed by the applicant, that the
1579 applicant meets the requirements set forth in subsection (f).

1580 (4) A representation, signed by the certificate holder,
1581 that the applicant is authorized to offer, sell, and sign
1582 preneed contracts on behalf of the certificate holder, and
1583 that the certificate holder has trained the applicant in ~~the~~
1584 ~~provisions of~~ this ~~article~~ chapter relating to preneed sales,
1585 the provisions of the certificate holder's preneed contract,
1586 and the nature of the merchandise, services, or burial rights
1587 sold by the certificate holder.

1588 (5) A statement indicating whether the applicant has
1589 any type of working or agency relationship with any other
1590 certificate holder or insurance company.

1591 (h) An individual may be registered as a preneed sales
1592 agent on behalf of more than one certificate holder, provided
1593 that the individual has received the written consent of all
1594 certificate holders.

1595 (i) A certificate holder who has registered a preneed
1596 sales agent shall notify the ~~commissioner~~ board within 30 days



SB131 Enrolled

1597 after the individual's status as a preneed sales agent has
1598 been terminated.

1599 (j) Upon ~~receipt~~ approval of an application that
1600 complies with all of the requirements of subsection (g), the
1601 ~~commissioner board~~ shall register the applicant. The
1602 ~~commissioner shall by rule~~ board, in accordance with this
1603 chapter, shall provide for annual renewal of registration upon
1604 receipt of a renewal application and a renewal fee not to
1605 exceed ~~twenty-five dollars (\$25)~~ thirty-three dollars (\$33) as
1606 set by the ~~commissioner board~~."

1607 "~~§27-17A-19~~§34-13-200

1608 No person shall engage in this state in any trade
1609 practice which is addressed in the Alabama Deceptive Trade
1610 Practices Act ~~(Section 8-19-1 et seq.)~~ Chapter 19 of Title 8,
1611 or as determined pursuant to this chapter to be, an unfair
1612 method of competition or an unfair or deceptive act or
1613 practice."

1614 "~~§27-17A-20~~§34-13-201

1615 (a) Whenever the ~~commissioner board~~ has reason to
1616 believe that any person has engaged, or is engaging, in this
1617 state in any unfair method of competition or any unfair or
1618 deceptive act or practice as defined in this ~~article~~ chapter,
1619 or is engaging in the sale of preneed contracts without being
1620 properly licensed as required by this ~~article~~ chapter, or is
1621 otherwise acting in violation of this chapter, and that a
1622 proceeding by the ~~commissioner board~~ in respect thereto would
1623 be in the interest of the public, the ~~commissioner board~~ shall
1624 institute a proceeding in accordance with this section.



SB131 Enrolled

1625 (b) A statement of charges, notice, or order or other
1626 process under this chapter may be served by anyone duly
1627 authorized by the ~~commissioner~~ board. Service may be made
1628 either in the manner provided by law for service of process in
1629 civil actions or by certifying and mailing a copy of the
1630 statement to the person affected by the statement, notice, or
1631 order or other process at his or her or its residence or
1632 principal office or place of business. The verified return by
1633 the person so serving the statement, notice, or order or other
1634 process, setting forth the manner of the service, shall be
1635 proof of the service; and the return postcard receipt for the
1636 statement, notice, or order or other process, certified and
1637 mailed as provided in this subsection, shall be proof of
1638 service of the statement, notice, or order or other process.

1639 (c) The ~~commissioner~~ board shall conduct or cause to
1640 have conducted a hearing in accordance with ~~Article 1 of~~
1641 ~~Chapter 2~~ this chapter, and shall, during the conduct of the
1642 hearing, have those powers necessary to enforce this chapter
1643 and rules of the board; however, the penalties for failure to
1644 comply with a subpoena or with an order directing discovery
1645 shall be limited to a fine not to exceed one thousand dollars
1646 (\$1,000) per violation. In accordance with Section 36-12-40,
1647 evidence introduced and presented in a hearing conducted under
1648 this chapter shall be deemed a public writing."

1649 "~~§27-17A-21~~ §34-13-202

1650 (a) If the ~~commissioner~~ board finds that one or more
1651 grounds exist for the discretionary suspension or revocation
1652 of a certificate of authority or establishment license issued



SB131 Enrolled

1653 under this ~~article~~ chapter, the ~~commissioner may~~ board, in
1654 lieu of the suspension or revocation, may impose a fine upon
1655 the certificate holder in an amount not to exceed one thousand
1656 dollars (\$1,000) for each nonwillful violation and in an
1657 amount not to exceed ten thousand dollars (\$10,000) for each
1658 willful violation.

1659 (b) The ~~commissioner~~ board may grant not more than 30
1660 days from the date of the order for the payment of any fine."

1661 "~~§27-17A-22~~§34-13-203

1662 (a) (1) A person who knowingly receives payments for a
1663 preneed contract without having a valid certificate of
1664 authority:

1665 a. Commits a Class B felony, ~~punishable as provided by~~
1666 ~~law~~, as to each contract on which the payments collected equal
1667 or exceed, in the aggregate, two thousand five hundred dollars
1668 (\$2,500).

1669 b. Commits a Class C felony, ~~punishable as provided by~~
1670 ~~law~~, as to each contract on which the payments collected are
1671 between, in the aggregate, five hundred dollars (\$500) and two
1672 thousand five hundred dollars (\$2,500).

1673 c. Commits a Class A misdemeanor, ~~punishable as~~
1674 ~~provided by law~~, as to each contract on which the payments
1675 collected do not exceed, in the aggregate, five hundred
1676 dollars (\$500).

1677 (2) In addition to the criminal penalty imposed under
1678 subdivision (1), upon conviction of an offense under
1679 subdivision (1), a person may not thereafter obtain a
1680 certificate of authority or register as a preneed sales agent.



SB131 Enrolled

1681 (b) (1) A person who willfully fails to timely deposit
1682 the amount required to be so deposited under this chapter in a
1683 preneed merchandise and services trust or endowment care
1684 trust:

1685 a. Commits a Class B felony, ~~punishable as provided by~~
1686 ~~law~~, as to each contract on which the amount due for deposit
1687 in trust equals or exceeds, in the aggregate, two thousand
1688 five hundred dollars (\$2,500).

1689 b. Commits a Class C felony, ~~punishable as provided by~~
1690 ~~law~~, as to each contract on which the amount due for deposit
1691 in trust is less than, in the aggregate, two thousand five
1692 hundred dollars (\$2,500).

1693 (2) In addition to the criminal penalty imposed under
1694 subdivision (1), upon conviction of an offense under
1695 subdivision (1), the certificate of authority or preneed sales
1696 agent registration held by the person shall be automatically
1697 revoked and the person may not thereafter obtain a certificate
1698 of authority or register as a preneed sales agent.

1699 (c) (1) A person who knowingly withdraws funds or assets
1700 from a preneed merchandise and services trust or endowment
1701 care trust in a manner or under circumstances not authorized
1702 by this chapter or rule of the board:

1703 a. Commits a Class B felony, ~~punishable as provided by~~
1704 ~~law~~, if the aggregate amount withdrawn in any single
1705 transaction or series of related transactions equals or
1706 exceeds two thousand five hundred dollars (\$2,500).

1707 b. Commits a Class C felony, ~~punishable as provided by~~
1708 ~~law~~, if the aggregate amount withdrawn in any single



SB131 Enrolled

1709 transaction or series of related transactions is less than two
1710 thousand five hundred dollars (\$2,500).

1711 (2) In addition to the criminal penalty imposed under
1712 subdivision (1), upon conviction of an offense under
1713 subdivision (1), the certificate of authority or preneed sales
1714 agent registration held by the person shall be automatically
1715 revoked and the person may not thereafter obtain a certificate
1716 of authority or register as a preneed sales agent.

1717 (d) A person commits a Class C felony, ~~punishable as~~
1718 ~~provided by law~~, if any of the following occur:

1719 (1) The person knowingly delivers to the ~~commissioner~~
1720 board any official form, report, record, data, or other
1721 document required by the ~~commissioner~~ board containing a false
1722 statement or false information concerning a matter material to
1723 the ~~commissioner~~ board in the exercise of ~~his or her~~ its
1724 authority to administer and enforce this chapter.

1725 (2) Incident to, or during the course of, an
1726 examination, inspection, investigation, or other inquiry
1727 authorized by this chapter, the person knowingly makes
1728 available to a representative of the ~~commissioner~~ board any
1729 official form, report, record, data, or other document
1730 required by the ~~commissioner~~ board containing a false
1731 statement or false information concerning a matter material to
1732 the purpose of the examination, inspection, investigation, or
1733 inquiry.

1734 (3) With respect to the business records of a person
1735 engaging in, or who has at any time engaged in, the sale of a
1736 preneed contract, a person, with a purpose to use deception as



SB131 Enrolled

1737 defined in subdivision (1) of Section 13A-8-1, makes false
1738 entries in ~~such~~ the records or alters, erases, obliterates,
1739 deletes, or removes a correct entry in ~~such~~ the records, fails
1740 to make a correct entry in ~~such~~ the records, or prevents the
1741 making of a correct entry, or causes the omission of a correct
1742 entry in ~~such~~ the records.

1743 (e) Except as otherwise provided in this ~~section~~
1744 chapter, the willful violation of this chapter is a Class A
1745 misdemeanor, ~~punishable as provided by law~~.

1746 ~~(f) The duties and authority of the insurance fraud~~
1747 ~~unit created under Section 27-12A-40, including the powers of~~
1748 ~~the unit's investigators, shall extend to investigations into~~
1749 ~~violations of this section."~~

1750 "~~§27-17A-23~~ §34-13-204

1751 The ~~commissioner~~ board, the Attorney General, or any
1752 person may bring a civil action against a person or company
1753 violating this chapter or rule of the board in Montgomery
1754 County or the appropriate court of the county in which the
1755 alleged violator resides or has his or her or its principal
1756 place of business or in the county wherein the alleged
1757 violation occurred. Upon adverse adjudication, the defendant
1758 shall be liable for actual damages caused by the violation.
1759 The court, as provided by common law, may award punitive
1760 damages and may provide equitable relief as it deems proper or
1761 necessary, including enjoining the defendant from further
1762 violation of this chapter or rule of the board."

1763 "~~§27-17A-24~~ §34-13-205

1764 The provisions of this chapter are cumulative to rights



SB131 Enrolled

1765 under the general civil and common law, and no action of the
1766 ~~commissioner board~~ may abrogate the rights to damages or other
1767 relief in any court."

1768 "~~§27-17A-25~~§34-13-206

1769 (a) All fees collected by the ~~commissioner board~~
1770 pursuant to this chapter shall be deposited into the ~~State~~
1771 ~~Treasury to the credit of the Insurance Department~~ Alabama
1772 State Funeral Service Fund.

1773 (b) All fines collected by the ~~commissioner board~~
1774 pursuant to this chapter shall be deposited into the ~~State~~
1775 ~~Treasury to the credit of the State General~~ Alabama State
1776 Funeral Service Fund.

1777 (c) The ~~commissioner board~~ may use funds available from
1778 any source including, but not limited to, grants,
1779 appropriations, and gifts, for any purpose in the enforcement
1780 of this chapter."

1781 Section 6. The following heading is added to Division
1782 3, commencing with Section 34-13-230, of Article 5, Chapter
1783 13, Title 34, Code of Alabama 1975:

1784 "Division 3. Funeral Merchandise and Services Trust
1785 Fund."

1786 Section 7. Sections 27-17A-30, 27-17A-31, 27-17A-32,
1787 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are
1788 amended and renumbered as Division 3 of Article 5 of Chapter
1789 13 of Title 34, Code of Alabama 1975, to read as follows:

1790 "~~§27-17A-30~~§34-13-230

1791 To comply with the trust requirement of subsection (a)
1792 of Section ~~27-17A-13~~ 34-13-194, all certificate holders



SB131 Enrolled

1793 providing preneed contracts for funeral services or funeral
1794 merchandise shall be subject to this ~~article~~ chapter."

1795 "~~§27-17A-31~~§34-13-231

1796 (a) Any person who is paid, collects, or receives funds
1797 under a preneed contract for funeral services or funeral
1798 merchandise to be funded by trust shall deposit in trust an
1799 amount at least equal to the sum of 75 percent of the amount
1800 collected on the purchase price for all funeral services and
1801 funeral merchandise sold, transportation, and facilities
1802 rented other than outer burial containers, 60 percent of the
1803 amount collected on the purchase price for outer burial
1804 containers, 110 percent of the wholesale cost of memorials
1805 from the amount collected on the purchase price of memorials,
1806 and 100 percent of the amount collected on the purchase price
1807 for all cash advance items sold.

1808 (b) All deposits shall be made within 30 days after the
1809 end of the calendar month in which the preneed contract is
1810 paid in full, unless, prior to that time, all liabilities of
1811 the seller under the preneed contract to deliver the specific
1812 funeral merchandise or funeral services, or both, or the
1813 specific cash advances, identified by the preneed provider as
1814 properly allocated to the payment, have been satisfied, or the
1815 preneed contract is validly cancelled.

1816 (c) The trustee shall take title to the property
1817 conveyed to the trust for the purpose of investing,
1818 protecting, and conserving it for the certificate holder;
1819 collecting income; and distributing the principal and income
1820 as prescribed in this ~~article~~ chapter.



SB131 Enrolled

1821 (d) The certificate holder is prohibited from sharing
1822 in the discharge of these responsibilities, except that the
1823 certificate holder may appoint an adviser to the trustee or
1824 elect tax free investments. Nothing in this chapter shall
1825 prohibit a trustee from electing the qualified funeral trust
1826 option under the Internal Revenue Code.

1827 (e) The trust agreement shall be submitted to the
1828 ~~commissioner~~ board for approval and filing.

1829 (f) The funds shall be held in trust, both as to
1830 principal and income earned thereon, and shall remain intact,
1831 except that the cost of the operation of the trust or trust
1832 account authorized by this section may be deducted from the
1833 income earned thereon.

1834 (g) The contract purchaser shall have no interest
1835 whatsoever in, or power whatsoever over, funds deposited in
1836 trust pursuant to this section.

1837 (h) In no event may ~~such~~ the funds be loaned to a
1838 certificate holder, an affiliate of a certificate holder, or
1839 any person directly or indirectly engaged in the burial,
1840 funeral home, or cemetery business. Furthermore, the
1841 certificate holder's interest in the trust shall not be
1842 pledged as collateral for any loans, debts, or liabilities of
1843 the certificate holder and shall not be transferred to any
1844 person without the prior written approval from the
1845 ~~commissioner~~ board and the trustee. Even though the
1846 certificate holder shall be deemed and treated as the settlor
1847 and beneficiary of the trust for all purposes, all of the
1848 trust funds are exempt from all claims of creditors of the



SB131 Enrolled

1849 certificate holder except as to the claims of the contract
1850 purchaser, his or her representative, or the ~~commissioner~~
1851 board.

1852 (i) For all preneed contracts written or entered into
1853 on or after January 1, 2015, all required deposits in trust
1854 shall commence not later than 30 days after the end of the
1855 calendar month in which the sum of the monies collected on the
1856 preneed contract exceeds the amount that is not required to be
1857 deposited in trust as determined under subsection (a) unless,
1858 prior to that time, all liabilities of the preneed seller
1859 under the preneed contract have been satisfied, or the preneed
1860 contract is validly cancelled. Further required deposits on
1861 the contract shall thereafter be made not later than 30 days
1862 after the end of the calendar month in which each contract
1863 payment is collected by the seller."

1864 "~~§27-17A-32~~§34-13-232

1865 (a) If amounts paid by the purchaser under a preneed
1866 contract for funeral merchandise have previously been
1867 deposited in trust, the seller may withdraw the principal
1868 amount and trust appreciation attributable to the delivered
1869 item at such time as the funeral merchandise is delivered or
1870 installed or, if comprised of materials designed to withstand
1871 prolonged, protected storage without deterioration, the
1872 merchandise is placed in storage with a responsible third
1873 party bonded and insured for the wholesale value thereof and
1874 evidenced by a receipt specifically identifying the item, the
1875 specific preneed contract, the location of the item, and the
1876 identity and address of the bonding and insuring parties. For



SB131 Enrolled

1877 purposes of this subsection only, caskets and alternative
1878 containers may not be held in storage by the seller or a third
1879 party storage facility prior to the death of the funeral
1880 beneficiary.

1881 (b) The trustee shall make regular valuations of the
1882 assets it holds in trust and provide a report of the
1883 valuations to the certificate holder at least quarterly. At
1884 all times, the certificate holder shall be able to determine
1885 the amount held in trust attributable to each contract holder.
1886 For all contracts effective on or after January 1, 2015, the
1887 determination shall be based upon the fair market value of the
1888 trust at the time and the proportionate share of the fair
1889 market value attributable to each contract holder. For all
1890 contracts in effect before January 1, 2015, the valuation of
1891 each contract may be calculated using any valuation method
1892 that had been previously approved by the ~~commissioner or the~~
1893 ~~department~~ Commissioner or the Department of Insurance before
1894 January 1, 2015. Any person who withdraws appreciation in the
1895 value of trust, other than the pro rata portion of ~~such~~ the
1896 appreciation which may be withdrawn upon the death of a
1897 contract's funeral beneficiary or upon cancellation of a
1898 preneed contract, shall be required to make additional
1899 deposits from his or her own funds to restore the aggregate
1900 value of assets to the value of funds deposited in trust, but
1901 excluding from the funds deposited those funds paid out upon
1902 preneed contracts which the person has fully performed or
1903 which have been otherwise withdrawn, as provided in this
1904 ~~article~~ chapter. The certificate holder shall be liable to



SB131 Enrolled

1905 third parties to the extent that income from the trust is not
1906 sufficient to pay the expenses of the trust.

1907 (c) The trustee of the trust established pursuant to
1908 this ~~article~~ chapter shall have all of the following powers:

1909 (1) Make investments and exercise necessary investment
1910 powers, provided that the ~~commissioner~~ board may by order
1911 require the trustee to liquidate or dispose of any investment
1912 within 30 days after the order.

1913 (2) Commingle the property of the trust with the
1914 property of any other preneed funeral, preneed cemetery, or
1915 endowment care trust established pursuant to this ~~article~~
1916 chapter and make corresponding allocations and divisions of
1917 assets, liabilities, income, and expenses.

1918 (d) Notwithstanding the provisions of Section 19-3-125,
1919 the trustee ~~may~~, subject to compliance with the requirements
1920 set forth below, may invest any portion or all of the funds
1921 received under preneed contracts and deposited in trust in
1922 life insurance contracts or annuities issued on the lives of
1923 preneed contract purchasers or preneed contract beneficiaries,
1924 hereinafter, the insured or annuitant, without any obligation
1925 to cover at a minimum the retail amount of the preneed
1926 contract at the time of purchase of the life insurance
1927 contracts or annuities as set forth in Section ~~27-17A-3~~
1928 34-13-171.

1929 (1) Trust funds shall not be invested by the trustee in
1930 life insurance contracts or annuities unless the following
1931 requirements are met:

1932 a. The company issuing the life insurance contracts or



SB131 Enrolled

1933 annuities is licensed by the Department of Insurance and the
1934 insurance producer or annuity seller is properly licensed
1935 within its domiciliary jurisdiction.

1936 b. Prior to the investment, the insured or annuitant
1937 consents, in writing, to the investment in life insurance
1938 contracts or annuities.

1939 c. For life insurance contracts or annuities issued
1940 prior to May 6, 2008, and currently in force, such contracts
1941 shall be construed to have been an authorized investment by
1942 the trustee under this chapter if the insured or annuitant is
1943 notified in writing of the existence of any such contract and
1944 provided with a copy of the contract.

1945 (2) Upon request, the insured or annuitant shall be
1946 provided with a copy of any life insurance contract or annuity
1947 issued to a preneed trustee at no expense to the insured or
1948 annuitant.

1949 (3) Any life insurance contract or annuity issued in
1950 accordance with this subsection and otherwise in compliance
1951 therewith shall be valid and in full force according to the
1952 terms and conditions thereof.

1953 (4) A trustee that invests all or any portion of the
1954 funds received under preneed contracts and deposited in trust
1955 in life insurance contracts or annuities issued by one company
1956 licensed by the ~~department~~ State Department of Insurance shall
1957 be considered to satisfy the standards and requirements of
1958 Section 19-3-120.2 and Chapter 3B of Title 19.

1959 (5) It is the intention of the Legislature that this
1960 subsection shall be retroactive and shall apply to all life



SB131 Enrolled

1961 insurance contracts or annuities issued prior to May 6, 2008."

1962 "~~§27-17A-33~~§34-13-233

1963 (a) A purchaser, by providing written notice to the
1964 certificate holder, may cancel a preneed contract within 30
1965 days of the date that the contract was executed provided that
1966 the funeral merchandise and funeral services have not yet been
1967 used. Upon providing the notice, the purchaser shall be
1968 entitled to a complete refund of the amount paid, except for
1969 the amount allocable to any funeral merchandise or funeral
1970 services that have been used, and shall be released from all
1971 obligations under the contract. This subsection shall apply to
1972 all items that are purchased as part of a preneed contract.

1973 (b) After 30 days from the date the preneed contract
1974 was executed, a purchaser, by providing written notice to the
1975 certificate holder, may cancel the funeral services, funeral
1976 merchandise, facilities, and cash advance items portions of a
1977 preneed contract at any time, and shall be entitled to the
1978 refund defined in the preneed contract allocable to those
1979 items. Any accumulated earnings allocable to the preneed
1980 contract shall be paid to the certificate holder upon the
1981 cancellation.

1982 (c) Upon breach of contract or failure of the
1983 certificate holder to provide funeral merchandise or services
1984 under a preneed contract, the contract purchaser shall be
1985 entitled to a refund of 100 percent of all money paid on the
1986 contract. The refund shall be made within 30 days after
1987 receipt by the certificate holder of the contract purchaser's
1988 written request for refund.



SB131 Enrolled

1989 (d) If a purchaser is 90 days past due in making
1990 payments on a preneed contract, the contract shall be
1991 considered to be in default, and the certificate holder shall
1992 be entitled to cancel the contract and withdraw all funds in
1993 trust. Upon making the withdrawal, the certificate holder
1994 shall refund to the purchaser the amount defined in the
1995 preneed contract in the event of default of the purchaser,
1996 provided that the certificate holder has provided the
1997 purchaser with 30 days' written notice of its intention to
1998 exercise any of its rights under this provision.

1999 (e) All preneed contracts are cancelable and revocable
2000 as provided in this section during the lifetime of the
2001 purchaser, provided that a preneed contract does not restrict
2002 any contract purchaser who is a qualified applicant for, or a
2003 recipient of, supplemental security income, temporary cash
2004 assistance, or Medicaid from making his or her contract
2005 irrevocable.

2006 (f) In the event that the preneed contract is made
2007 irrevocable pursuant to subsection (e), ~~the purchaser or~~ the
2008 authorizing agent shall have the right to appoint a provider
2009 other than the seller of the preneed contract. In the event
2010 that a provider is appointed pursuant to this subsection, the
2011 seller shall transfer to the appointed provider the amount
2012 paid by the purchaser to the seller and those amounts
2013 deposited into trust, less a reasonable transfer fee
2014 determined by the ~~seller~~ board. In the event the preneed
2015 contract was funded by an insurance or annuity policy, the
2016 seller shall cancel and relinquish any assignment of benefits



SB131 Enrolled

2017 or beneficiary status under the policy or annuity contract,
2018 and deliver the policy, if in the custody of the preneed
2019 seller, to the policy owner or his or her legal
2020 representative, and the seller may collect a reasonable
2021 transfer fee as determined by rule of the board. No transfer
2022 hereunder shall occur without the acceptance of the appointed
2023 provider.

2024 (g) All refunds required to be made under this section
2025 to a purchaser who has canceled a contract must be made within
2026 30 days after the date the written notice of cancellation is
2027 received by the certificate holder."

2028 "~~§27-17A-34~~§34-13-234

2029 (a) Disbursement of funds discharging any preneed
2030 contract for funeral services or funeral merchandise fulfilled
2031 after May 1, 2002, shall be made by the trustee to the
2032 certificate holder upon receipt by the trustee of a
2033 certification of the certificate holder that the preneed
2034 contract has been performed in whole or in part or the preneed
2035 contract has been cancelled. Before the trustee may disburse
2036 any trust funds, the certificate holder shall provide to the
2037 trustee a death certificate or other valid proof of death, a
2038 letter from the preneed contract holder cancelling the preneed
2039 contract or valid proof the contract has been cancelled in
2040 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof
2041 the merchandise has been delivered and installed, and services
2042 have been performed. Any trustee accepting preneed contract
2043 proceeds under this ~~article~~ chapter may rely upon the
2044 certification of the certificate holder accompanied by the



SB131 Enrolled

2045 required proof, and shall not be liable to anyone for such
2046 reliance. If the contract is only partially performed, the
2047 disbursement shall only cover that portion of the contract
2048 performed. In the event of any contract default by the
2049 contract purchaser, or in the event that the funeral
2050 merchandise or funeral service contracted for is not provided,
2051 the trustee shall return, within 30 days after its receipt of
2052 a written request therefor, 100 percent of the funds deposited
2053 into the trust on the contract and the income and accretion
2054 thereon to the certificate holder or to its assigns, subject
2055 to Section ~~27-17A-33~~ 34-13-233.

2056 (b) For all contracts effective on or after January 1,
2057 2015, the amount that may be withdrawn from the trust upon
2058 fulfillment or cancellation of any particular preneed contract
2059 may not exceed the amount attributable to that preneed
2060 contract in proportion to the total amount held in trust for
2061 all preneed contracts as of the date of withdrawal. For all
2062 contracts in effect before January 1, 2015, the valuation of
2063 each contract and the amount that may be withdrawn from the
2064 trust may be calculated using any valuation method that had
2065 been approved by the ~~commissioner or the department~~
2066 Commissioner or the Department of Insurance before January 1,
2067 2015."

2068 Section 8. The following heading is added to Division
2069 4, commencing with Section 34-13-260, of Article 5, Chapter
2070 13, Title 34, Code of Alabama 1975:

2071 "Division 4. Cemetery Merchandise and Services Trust
2072 Fund."



SB131 Enrolled

2073 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,
2074 27-17A-43, 27-17A-44, 27-17A-45, 27-17A-46, 27-17A-47,
2075 27-17A-48, 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52,
2076 27-17A-53, 27-17A-54, 27-17A-55, 27-17A-56, and 27-17A-57 of
2077 the Code of Alabama 1975, are amended and renumbered as
2078 Division 4 of Article 5 of Chapter 13 of Title 34, Code of
2079 Alabama 1975, to read as follows:

2080 "~~§27-17A-40~~§34-13-260

2081 To comply with the trust requirement of subsection (a)
2082 of Section ~~27-17A-13~~ 34-13-194, all certificate holders who
2083 are cemetery authorities providing preneed contracts for
2084 cemetery services or cemetery merchandise shall be subject to
2085 this ~~article~~ chapter."

2086 "~~§27-17A-41~~§34-13-261

2087 (a) Any person who receives or collects any funds on
2088 account of a preneed contract in this state for cemetery
2089 services or cemetery merchandise, or both, entered into after
2090 May 1, 2002, shall have the obligation to pay over and
2091 contribute into a trust fund as hereinafter described, those
2092 amounts or proportions of the funds as hereinafter provided.

2093 (b) Whether or not the preneed contract provides for
2094 cemetery merchandise or cemetery services, or any combination
2095 thereof, the trust fund shall be referred to in this section
2096 as the Cemetery Merchandise and Services Trust Fund.

2097 (c) The trustee of the Cemetery Merchandise and
2098 Services Trust Fund shall be qualified as such within the
2099 definition of the trustee.

2100 (d) The trustee shall take title to the property



SB131 Enrolled

2101 conveyed to the Cemetery Merchandise and Services Trust Fund
2102 subject to this section.

2103 (e) The contract purchaser shall have no interest
2104 whatsoever in, or power whatsoever over, the funds deposited
2105 in the Cemetery Merchandise and Services Trust Fund.

2106 (f) The party contracting to deliver the cemetery
2107 merchandise or cemetery services or cash advances, whether or
2108 not a preneed provider, shall be referred to in this section
2109 as the "seller."

2110 (g) The seller shall be the beneficiary of the Cemetery
2111 Merchandise and Services Trust Fund."

2112 "~~§27-17A-42~~§34-13-262

2113 (a) The obligation of the seller under a preneed
2114 contract shall be to make contributions into the Cemetery
2115 Merchandise and Services Trust Fund in accordance with the
2116 following formulae:

2117 (1) With respect to all cemetery merchandise, 110
2118 percent of wholesale cost.

2119 (2) With respect to outer burial containers, 60 percent
2120 of the purchase price specified in the preneed contract.

2121 (3) With respect to cemetery services, 60 percent of
2122 the purchase price specified in the preneed contract.

2123 (4) With respect to all cash advance items sold, 100
2124 percent of the purchase price specified for the same in the
2125 preneed contract.

2126 (5) With respect to caskets, 75 percent of the purchase
2127 price.

2128 (b) All contributions shall be made within 30 days



SB131 Enrolled

2129 after the end of the calendar month in which the preneed
2130 contract is paid in full, unless, prior to that time, all
2131 liabilities of the seller under the preneed contract to
2132 deliver the specific cemetery merchandise or cemetery
2133 services, or both, or the specific cash advances, identified
2134 by the preneed provider as properly allocated to the payment,
2135 have been satisfied, or the preneed contract is validly
2136 cancelled.

2137 (c) For all preneed contracts entered into on or after
2138 January 1, 2015, all contributions shall be made not later
2139 than 30 days after the end of the calendar month in which the
2140 sum of the monies collected on the preneed contract exceeds
2141 the amount that is not required to be contributed as
2142 determined under subsection (a), unless, prior to that time,
2143 all liabilities of the seller under the preneed contract have
2144 been satisfied, or the preneed contract is validly cancelled.
2145 Further required trust contributions on the contract shall
2146 thereafter be made not later than 30 days after the end of the
2147 calendar month in which each contract payment is collected by
2148 the seller.

2149 (d) The trustee shall invest and reinvest the Cemetery
2150 Merchandise and Services Trust Fund.

2151 (e) The trustee shall make regular evaluations of the
2152 fair market value of assets held in and liabilities, if any,
2153 of the Cemetery Merchandise and Services Trust Fund and
2154 provide a report of the evaluations to the seller at least
2155 quarterly. Upon receipt of each quarterly report, the seller
2156 may submit to the trustee a written and detailed analysis



SB131 Enrolled

2157 concerning the balance of funds in the Cemetery Merchandise
2158 and Services Trust Fund, certified under oath as being true
2159 and correct upon information and belief by a responsible
2160 officer of the seller.

2161 (f) While the obligation of the seller to make
2162 contributions to the Cemetery Merchandise and Services Trust
2163 Fund is set forth in this section, the obligation of the
2164 seller at the time of making certain withdrawals from the
2165 Cemetery Merchandise and Services Trust Fund as herein
2166 provided for shall be calculated with respect to the current
2167 wholesale cost of cemetery merchandise and current retail
2168 price of cemetery services and cash advances at the time of
2169 withdrawal. If the fair market value as reported by the
2170 trustee exceeds 110 percent of the total of the following, the
2171 seller shall be entitled to withdraw and retain from the
2172 merchandise trust fund, the excess funds therein: 110 percent
2173 of the current wholesale cost of the liability to deliver all
2174 cemetery merchandise, 60 percent of the current retail price
2175 for all cemetery services, 60 percent of the current retail
2176 price of outer burial containers, 75 percent of the current
2177 retail price of caskets, and 100 percent of the current retail
2178 price of all cash advances, for the total of all preneed
2179 contracts for which the purchasers have paid in full, all
2180 calculated as of the time of withdrawal; and concerning the
2181 total of all preneed contracts for which the purchasers have
2182 not paid in full, 25 percent of the total of the following:
2183 110 percent of the current wholesale cost of the liability to
2184 deliver all cemetery merchandise, 60 percent of the current



SB131 Enrolled

2185 retail price for all cemetery services, and 100 percent of the
2186 current retail price of all cash advances, all calculated as
2187 of the time of withdrawal.

2188 (g) At least annually the seller shall make the
2189 aforesaid analysis and certification and provide the same to
2190 the trustee. If the certification discloses that the fair
2191 market value of the Cemetery Merchandise and Services Trust
2192 Fund is less than 100 percent of the aggregate calculated
2193 amount the seller shall from its own funds contribute to the
2194 Cemetery Merchandise and Services Trust Fund within the 12
2195 months succeeding the annual computation the amount necessary
2196 to restore the trust fund to an amount equal to not less than
2197 100 percent of the aggregate amount so calculated."

2198 "~~§27-17A-43~~§34-13-263

2199 (a) Upon cancellation of a preneed contract by mutual
2200 agreement between the seller and purchaser, or upon unilateral
2201 cancellation of a preneed contract by the seller by reason of
2202 default on the part of the purchaser, or other valid
2203 cancellation by reason of transfers to another seller or
2204 otherwise, the seller ~~may~~, upon submission of a certification
2205 under oath by a responsible officer of the seller to the
2206 trustee, may withdraw from the Cemetery Merchandise and
2207 Services Trust Fund and retain an amount equal to the amount
2208 of all funds contributed to the trust fund with respect to the
2209 preneed contract. Any trustee accepting preneed contract
2210 proceeds under this ~~article~~ chapter may rely on the seller's
2211 certification under oath as required herein to be made, and
2212 shall not be liable to anyone for such reliance.



SB131 Enrolled

2213 (b) At such time as the seller undertakes to perform
2214 its obligations under a preneed contract by delivery or
2215 installation, or both, of cemetery merchandise and the
2216 provision of cemetery services and disbursement on account of
2217 cash advances, or otherwise, upon certification to the trustee
2218 under oath by a responsible officer of the seller that the
2219 obligations of the seller under the contract have been
2220 completely fulfilled, the seller may withdraw from the
2221 Cemetery Merchandise and Services Trust Fund and retain an
2222 amount equal to the current wholesale cost to the fund with
2223 respect to the preneed contract.

2224 (c) At such time as the seller has fulfilled all of its
2225 obligations under all preneed contracts with respect to which
2226 funds have been contributed to the trust fund, and
2227 certification under oath to the trustee by a responsible
2228 officer of the seller of those facts, the seller may withdraw
2229 from the trust fund and retain all of the remaining assets
2230 thereof."

2231 "~~§27-17A-44~~§34-13-264

2232 If the amounts paid by the purchaser under a preneed
2233 contract for cemetery merchandise have previously been
2234 deposited in trust, the seller may withdraw the principal
2235 amount there, at such time as the cemetery merchandise is
2236 delivered or installed or, if comprised of materials designed
2237 to withstand prolonged, protected storage without
2238 deterioration, the merchandise is placed in storage with a
2239 responsible third party bonded and insured for the wholesale
2240 value thereof and evidenced by a receipt specifically



SB131 Enrolled

2241 identifying the item, the specific preneed contract, the
2242 location of the item, and the identity and address of the
2243 bonding and insuring parties. For purposes of this section
2244 only, caskets and alternative containers may not be held in
2245 storage by the seller or a third party storage facility prior
2246 to the death of the funeral beneficiary."

2247 "~~§27-17A-45~~§34-13-265

2248 An endowment care fund and all payments or
2249 contributions to it are expressly permitted as and for
2250 charitable and eleemosynary purposes. No payment, gift, grant,
2251 bequest, or other contribution for endowment care is invalid
2252 by reason of any indefiniteness or uncertainty of the persons
2253 designated as beneficiaries in the instruments creating the
2254 fund, nor is the fund or any contributions to it invalid as
2255 violating any law against perpetuities, or the suspension of
2256 the power of alienation of title to property."

2257 "~~§27-17A-46~~§34-13-266

2258 Any cemetery now existing or hereafter established,
2259 excluding those operated by governmental agencies or religious
2260 institutions, ~~shall be~~ may be qualified as an endowment care
2261 cemetery, except those cemeteries which do not charge fees or
2262 sell plots, interment rights, or any related cemetery."

2263 "~~§27-17A-47~~§34-13-267

2264 (a) Every cemetery authority operating an endowment
2265 care cemetery shall establish an endowment care fund which
2266 shall be placed with and held by a bank, trust company,
2267 savings and loan association, or other financial institution
2268 authorized to provide trust services under Title 5, as



SB131 Enrolled

2269 amended, or under the applicable laws of the United States or
2270 any other state, or a board of trustees, consisting of at
2271 least three members, who shall reside in the State of Alabama,
2272 one of whom is engaged in outside cemetery management, and
2273 each of whom shall be bonded to honestly perform the duties of
2274 trustee under a formal trust agreement.

2275 (b) Except as specifically provided in this subsection,
2276 commencing on July 1, 2014, a person serving on a board of
2277 trustees or cemetery authority may not also serve as a trustee
2278 of an endowment care fund for the cemetery authority. A board
2279 of trustees in existence on July 1, 2014, may continue to
2280 serve as the trustee of an endowment care fund if the board of
2281 trustees otherwise complies with this subsection. Unless
2282 exempted by the ~~commissioner~~ board pursuant to this
2283 subsection, on or before January 1, 2015, each member of a
2284 board of trustees in existence on July 1, 2014, shall furnish
2285 the bond required by subsection (a) in the greater of one
2286 hundred thousand dollars (\$100,000) or the amount in each
2287 endowment care fund for which the board of trustees acts as
2288 trustee as of December 31, 2014. Thereafter, the amount of the
2289 bonds shall be increased on January 1 of each succeeding year
2290 to equal the amount in each endowment care fund as of the
2291 immediately preceding December 31. The ~~commissioner~~ board
2292 shall exempt a board of trustees from the bond requirement if
2293 the board of trustees provides to the ~~commissioner~~ board an
2294 annual audit report that satisfies all of the following
2295 criteria:

2296 (1) The report is prepared by a certified public



SB131 Enrolled

2297 accountant authorized to practice in Alabama.

2298 (2) The report evidences that the review made the
2299 subject of the report by the accountant encompasses each
2300 endowment care fund for which the board of trustees acts as
2301 trustee.

2302 (3) The report notes relating to the endowment care
2303 fund or funds are in a form that is reasonably acceptable to
2304 the ~~commissioner~~ board.

2305 (4) The report does not evidence any material violation
2306 of or noncompliance with this chapter relating to an endowment
2307 care fund.

2308 (c) The corporate trustee or board of trustees shall be
2309 referred to as a qualified trustee. Unless otherwise specified
2310 in this ~~article~~ chapter or in the terms of the trust
2311 instrument, the trustee of any trust established under or
2312 pursuant to this ~~article~~ chapter shall have all powers granted
2313 to trustees under Article 14 of Chapter 3 of Title 19. The
2314 incorporation herein of such powers shall not be deemed to
2315 imply any duties of trustees of trusts established under or
2316 pursuant to this ~~article~~ chapter not expressly delineated in
2317 this ~~article~~ chapter.

2318 (d) The cemetery authority may employ a person to
2319 advise the trustee in the management of the fund.

2320 (e) The cemetery authority may enter into a contract
2321 with the qualified trustee for the management and investment
2322 of the endowment care fund, which contract may provide for the
2323 payment of income from the fund of reasonable fees or
2324 commissions to the trustee, and its reasonable expenses for



SB131 Enrolled

2325 administering the trust.

2326 (f) As often as ~~he or she~~ the board may deem necessary,
2327 the ~~commissioner~~ board may examine the records or facilities,
2328 or both, of any cemetery authority operating an endowment care
2329 cemetery."

2330 "~~§27-17A-48~~§34-13-268

2331 (a) Each cemetery authority shall comply with this
2332 chapter and maintain at each place of business a list of the
2333 names and addresses of its owners and directors, which shall
2334 be available to the public.

2335 (b) Each cemetery authority shall maintain a record of
2336 all ~~property~~ interment space owners by name and last known
2337 address with a description of merchandise and location of
2338 burial lots, crypts, or niches and the records shall be on a
2339 form or in a format prescribed by the board and shall detail
2340 all information required by the board. A plat map shall be
2341 maintained for each cemetery location at the cemetery business
2342 office. A book or file shall be kept as to the date, location
2343 by lot, and space number of each person interred or entombed
2344 in the cemetery. A written copy of the cemetery rules and
2345 regulations shall be maintained at each location and made
2346 available to the public upon request.-"

2347 "~~§27-17A-49~~§34-13-269

2348 (a) From the sale price of each plot, crypt, or niche
2349 sold by the cemetery authority, of an endowment care cemetery,
2350 it shall pay an amount, not less than as determined in
2351 accordance with the following schedule, to the trustee of the
2352 endowment care fund, which payment shall be paid over to the



SB131 Enrolled

2353 trustee not more than four months after the close of the month
2354 in which the total or final payment on the sale has been
2355 received:

2356 (1) Fifteen percent of the ~~sale~~ net sales price of each
2357 grave or lawn crypt space.

2358 (2) Five percent of the ~~sale~~ net sales price of each
2359 mausoleum crypt or niche.

2360 (3) If a cemetery donates or gives a free space,
2361 mausoleum, or niche, a minimum of fifty dollars (\$50) shall be
2362 paid to the endowment care fund.

2363 ~~(3)~~ (4) The amount received for special care funds,
2364 gifts, grants, contribution devises, or bequests made with
2365 respect to the separate or special care of a particular lot,
2366 grave, crypt, niche, mausoleum, monument, or marker or that of
2367 a particular family, as distinguished from the general endowed
2368 care of a cemetery or of a garden.

2369 (b) In addition to subsection (a), a cemetery authority
2370 may receive, and transfer to the trustee, as a part of or
2371 incident to the endowment care fund, any property, real,
2372 personal, or mixed, bequeathed, devised, given, or otherwise
2373 contributed to it for endowment care purposes. Any contractual
2374 endowment care deposits shall fall under this ~~article~~ chapter.

2375 (c) Any cemetery authority which is organized and
2376 engaged in business prior to May 1, 2002, shall qualify as an
2377 endowment care cemetery if the following occur:

2378 (1) Not already placed, it shall within 90 days of May
2379 1, 2002, have placed the entire principal of any endowment
2380 care fund in its possession, custody, or control, into the



SB131 Enrolled

2381 hands of a qualified trustee designated by it, to be
2382 administered as set forth in this ~~article~~ chapter; and
2383 principal of its endowment care fund, or the aggregate
2384 principal of its endowment care funds, if more than one, shall
2385 have a fair market value on either May 1, 2002, or on the date
2386 of transfer to the trustee of not less than twenty-five
2387 thousand dollars (\$25,000); or it shall substitute 25 percent
2388 for each percentage of each sale for the next five years or
2389 five thousand dollars (\$5,000) per year, whichever is greater,
2390 until the balance of twenty-five thousand dollars (\$25,000) is
2391 reached. In such case, the entire amount of twenty-five
2392 thousand dollars (\$25,000) shall be paid into the fund before
2393 the end of the fifth year, and no interest may be removed from
2394 the fund until the twenty-five thousand dollars (\$25,000)
2395 minimum has been reached.

2396 (2) It shall at all times after May 1, 2002, comply
2397 with the minimum requirements for payments to the trustee for
2398 endowment care.

2399 (d) Any cemetery authority organizing a cemetery after
2400 May 1, 2002, whether it be by incorporation, association,
2401 individually, or by any other means, or having its first
2402 burial after May 1, 2002, before disposing of any burial lot
2403 or right or making any sale thereof or making its first
2404 burial, or both, shall cause to be deposited with a qualified
2405 trustee, in cash, the sum of twenty-five thousand dollars
2406 (\$25,000) in the endowment care fund.

2407 (e) When a cemetery authority has placed with a
2408 trustee, pursuant to this ~~article~~ chapter, a sum of money in



SB131 Enrolled

2409 excess of the aggregate which would be required only under
2410 subsection (a), the cemetery authority shall not be required
2411 under this ~~article~~ chapter to make further payments to the
2412 trustee until such time thereafter as, taking into account all
2413 sales of plots, crypts, and niches in the cemetery property
2414 since the first of the sales, the aggregate of payments to the
2415 trustee if made in accordance with subsection (a) would equal
2416 the applicable minimum amount paid to the trustee under
2417 subdivision (1) of subsection (c), or subsection (d) ~~of this~~
2418 ~~section~~.

2419 (f) Any deposit previously made, or represented to be
2420 made to an existing endowment care fund which exceeds 10
2421 percent of the gross selling price of all plots, crypts, and
2422 niches sold since representation of endowment care shall be
2423 made a permanent part of the endowment care fund and
2424 transferred to the qualified trustee under this ~~article~~
2425 chapter."

2426 "~~§27-17A-50~~§34-13-270

2427 (a) No cemetery authority may directly or indirectly
2428 require or direct the investment, reinvestment, or retention
2429 by a qualified trustee of any part of an endowment care trust
2430 in any asset or business in which the cemetery authority or
2431 any officer, director, owner, partner, or employee of the
2432 cemetery authority has a financial interest. Nothing contained
2433 in this subsection shall prevent the trustee, subject to the
2434 provisions regarding investment and reinvestment of the trust
2435 estate as are contained in the governing instrument creating
2436 the trust, from investing, reinvesting, or retaining any asset



SB131 Enrolled

2437 or business in which the cemetery authority or any officer,
2438 director, owner, partner, or employee of the cemetery
2439 authority has an insubstantial or nonmaterial financial
2440 interest, provided that the trustee, in the exercise of the
2441 trustee's discretion, deems the investment, reinvestment, or
2442 retention to be for the best interest of the trust estate.

2443 (b) The net income from the endowment care fund, to the
2444 extent that the same is distributed from the fund, shall be
2445 used exclusively for covering the costs of endowment care of
2446 the cemetery.

2447 (c) For the purposes of this section, net income does
2448 not include realized or unrealized capital gains or losses.
2449 All realized capital gains and losses shall be recorded to
2450 corpus, which is the sum of deposits made by a cemetery
2451 authority into an endowment care fund, pursuant to Section
2452 ~~27-17A-49~~ 34-13-269, and all realized capital gains or losses.
2453 Capital gains taxes, if any, may be paid from the corpus.
2454 Unrealized capital gains and losses, if any, shall be recorded
2455 as an adjustment to the fair market value of the endowment
2456 care fund."

2457 "~~§27-17A-51~~§34-13-271

2458 The trustee shall not be required to inquire into the
2459 propriety of the expenditures made by the cemetery authority
2460 in connection with endowment care of the cemetery, and it
2461 shall not be held responsible in any manner whatsoever for and
2462 on account of payments of the income from the endowment care
2463 fund made to the cemetery authority."

2464 "~~§27-17A-52~~§34-13-272



SB131 Enrolled

2465 The trustee ~~shall~~, not less than annually, shall file
2466 with the cemetery authority an account which shall include a
2467 complete disclosure of all activity since the previous account
2468 and a statement detailing fund investments."

2469 "~~§27-17A-53~~§34-13-273

2470 To the extent that any endowment care trust existing on
2471 May 1, 2002, includes investments or assets, the retention of
2472 which the trustee in the free exercise of its discretion deems
2473 not in the best interest of the trust estate, the trustee
2474 shall dispose of the investments or assets as soon as
2475 practicable without undue sacrifice to the trust estate, and
2476 in any event within two years after May 1, 2002."

2477 "~~§27-17A-54~~§34-13-274

2478 An annual report of the endowment care fund shall be
2479 made to the ~~commissioner~~ board by each cemetery authority
2480 within 90 days of the close of each calendar year. This report
2481 shall include the qualified trustee's name or names, the bond
2482 numbers if individual trustees or the name and address of the
2483 financial institution in which the fund is maintained, and the
2484 affidavit of the cemetery authority affirming compliance with
2485 this ~~article~~ chapter. Prior to the sale or transfer of a
2486 cemetery, the cemetery authority shall report and document to
2487 the ~~commissioner~~ board that the endowment care fund is
2488 currently funded in accordance with this ~~article~~ chapter."

2489 "~~§27-17A-55~~§34-13-275

2490 A cemetery authority shall start construction of that
2491 section of a mausoleum or bank of below-ground crypts in which
2492 sales, contracts for sale, reservations for sale, or



SB131 Enrolled

2493 agreements for sale are being made, within five years after
2494 the date of the first sale or when 75 percent of the mausoleum
2495 or below-ground crypts have been sold and the purchase price
2496 has been received, whichever occurs first. The construction
2497 shall be completed within six years after the date of the
2498 first sale made. Extensions for completion, not to exceed one
2499 year, may be granted by the ~~commissioner~~ board for good cause
2500 shown. If the units have not been completely constructed at
2501 the time of need or the time specified herein, unless
2502 otherwise specified in the preneed contract, all monies paid
2503 shall be refunded upon request, plus interest earned thereon
2504 if deposited by the cemetery authority in an escrow or trust
2505 fund, and if not so deposited in an escrow or trust fund
2506 earning interest, then plus interest in an amount equal to the
2507 interest or discount which would have been earned thereon had
2508 the funds been invested in United States Treasury Bills having
2509 a 90-day maturity."

2510 "~~§27-17A-56~~§34-13-276

2511 (a) ~~Cemetery~~ Each cemetery shall adopt rules and
2512 regulations ~~are adopted~~ for the mutual protection of the
2513 cemetery owners and the owners of interment rights in the
2514 cemetery. All owners of interment rights and other persons
2515 within the cemetery shall be subject to these rules and
2516 regulations as they now exist and as they may be amended or
2517 altered by the cemetery. The cemetery authority ~~has the right~~
2518 ~~to~~ shall enforce these rules and regulations. ~~The cemetery~~
2519 ~~authority expressly reserves the right~~ and, at any time and
2520 without prior notice to any owners, ~~to~~ may adopt new rules and



SB131 Enrolled

2521 regulations or to amend, modify, or repeal any ~~section,~~
2522 ~~paragraph, or sentence of these~~ rules and regulations.

2523 (b) This section shall not apply to the officers,
2524 directors, shareholders, partners, employees, agents, or
2525 representatives of a cemetery authority who intentionally
2526 commit an act of vandalism or other illegal act.—"

2527 "~~§27-17A-57~~§34-13-277

2528 The ~~commissioner~~ board shall have the same jurisdiction
2529 over funeral establishments, funeral directors, cemetery
2530 authorities, or third party sellers who sell preneed contracts
2531 without a preneed certificate of authority as ~~he or she~~ the
2532 board has over those preneed sellers who possess a preneed
2533 certificate of authority."

2534 Section 10. Beginning with the 2024 fiscal year, the
2535 Department of Insurance may transfer to the Alabama Board of
2536 Funeral Service and Cemetery Service quarterly, for deposit by
2537 the board into the Alabama Board of Funeral Services Fund, the
2538 total amount of three hundred thousand dollars (\$300,000) per
2539 fiscal year, to defray costs associated with the
2540 administration and operation of the Alabama Preneed Funeral
2541 and Cemetery Act of 2023 by the board. Unless extended by an
2542 act of the Legislature, this section shall be repealed at the
2543 end of the 2027 fiscal year.

2544 Section 11. Although this bill would have as its
2545 purpose or effect the requirement of a new or increased
2546 expenditure of local funds, the bill is excluded from further
2547 requirements and application under Section 111.05 of the
2548 Constitution of Alabama of 2022, because the bill defines a



SB131 Enrolled

2549 new crime or amends the definition of an existing crime.

2550 Section 12. This act shall become effective on the

2551 October 1, 2023, following its passage and approval by the

2552 Governor, or its otherwise becoming law.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB131

Senate 06-Apr-23

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

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 18-Apr-23

Senate concurred in House amendment 20-Apr-23

By: Senator Figures