



**ALABAMA FUNERAL SERVICE**

**STATUTORY LAWS**

**Title 34 Chapter 13  
Code of Alabama, 1975**

**ALABAMA PRENEED  
FUNERAL AND CEMETERY  
ACT OF 2023**

October 2023

Alabama Funeral Services Statutes and Rules  
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**Article 1**

**GENERAL PROVISIONS**

**Section 34-13-1**

**DEFINITIONS.**

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

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

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

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

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

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

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

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



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

(9) **BASIC SERVICES FEE.** The fee for the professional services of the funeral director and staff that is added to the total cost of the funeral arrangements. The term includes a charge for services performed in conducting the arrangements conference, planning the funeral, securing the necessary permits, preparing the notices, and coordinating the cemetery or crematory arrangements.

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

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

(12) **BOARD.** The Alabama Board of Funeral Services.

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

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

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

- |                                    |                             |
|------------------------------------|-----------------------------|
| a. Cemetery or crematory services. | h. Obituary notices.        |
| b. Pallbearers.                    | i. Funeral programs.        |
| c. Public or other transportation. | j. Gratuities.              |
| d. Clergy honoraria.               | k. Death certificates.      |
| e. Flowers.                        | l. Outer burial containers. |
| f. Musicians or singers.           | m. Cemetery plots.          |
| g. Nurses.                         | n. Escorts.                 |

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

(17) **CEMETERY.** A place established, maintained, managed, operated, or improved which is dedicated to and used or intended to be used for the permanent interment of human remains and

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their memorialization. It may be either land or earth interment; a columbarium; a mausoleum for vault or crypt entombment; a structure or place used or intended to be used for the interment of cremated remains; cryogenic storage; or any combination of one or more thereof.

(18) CEMETERY AUTHORITY. Any individual, person, firm, profit or nonprofit corporation, trustee, partnership, society, religious society, church association or denomination, municipality, or other group or entity, however organized, insofar as they or any of them may now or hereafter establish, own, operate, lease, control, or manage one or more cemeteries, burial parks, mausoleums, columbariums, or any combination or variation thereof, or hold lands or structures for burial grounds or burial purposes in this state and engage in the operation of a cemetery, including any one or more of the following: The care and maintenance of a cemetery; the interment, entombment, and memorialization of the human dead in a cemetery; the sale, installation, care, maintenance, or any combination thereof, with respect to monuments, markers, foundations, memorials, burial vaults, urns, crypts, mausoleums, columbariums, flower vases, floral arrangements, and other cemetery accessories for installation or use within a cemetery; and the supervision and conduct of funeral and burial services within the bounds of the cemetery.

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

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

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

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

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

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

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

(26) CREMATION. The technical irreversible process, using heat, flames, or chemical agents, that reduces human remains to bone fragments. The reduction takes place through heat and

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evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments. Cremation is a process and is a method of final disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- a. The funeral service, which may take place at a funeral home, church, or other place.
- b. The committal service or disposition, which may take place by the grave, tomb, mausoleum, or crematory where the body of the decedent is to be buried or cremated.

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

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

(44) **FUNERAL DIRECTING.** The practice of directing or supervising funerals, the practice of preparing dead human bodies for burial by means other than embalming, or the preparation for the final disposition of dead human bodies; the making of funeral arrangements or providing for funeral services or the making of financial arrangements for the rendering of these services; the provision or maintenance of a place for the preparation for final disposition of dead human bodies; the use of the terms funeral director, undertaker, mortician, funeral parlor, or any other term from which can be implied the practice of funeral directing; or the holding out to the public that one is a funeral director or engaged in a practice described in this subdivision.

(45) **FUNERAL DIRECTOR.** A person required to be licensed to practice the profession of funeral directing under the laws of this state, who consults with the public, who plans details of funeral services with members of the family and minister or any other person responsible for such planning, or who directs, is in charge, or apparent charge of, and supervises funeral service in a funeral home, church, or other place; who enters into the making, negotiation, or completion of financial arrangements for funeral services, or who uses in connection with the profession of funeral directing the terms funeral director, undertaker, funeral counselor, mortician, or any other term or picture or combination thereof when considered in context in which used, from which can be implied the practicing of the profession of funeral directing or that the person using such term or picture can be implied to be holding himself or herself out to the public as being engaged in the profession of funeral directing; and for all purposes under Alabama law, a funeral director is considered a professional. For the purposes of this chapter, the term does not include any cemetery authority.

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

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- a. A preparation room equipped with sanitary nonporous floor and wall and necessary drainage and ventilation, and containing operating embalming equipment, necessary approved tables, instruments, hot and cold running water, containers or receptacles for soiled linen or clothing, and supplies for the preparation and embalming of dead human bodies for burial, cremation, and transportation.
- b. A display room containing a stock of adult caskets and funeral supplies displayed in full size, cuts, photographs, or electronic images. At no time shall less than eight different adult size caskets be on the premises.
- c. At least one operating funeral coach or hearse properly licensed and equipped for transporting human remains in a casket or urn.
- d. If engaged in the practice of cremation, the establishment shall satisfy all crematory requirements provided in this chapter and have on site an adequate supply of urns for display and sale.
- e. A room suitable for public viewing or other funeral services that is a minimum of 1,000 square feet.
- f. An office for holding arrangement conferences with relatives or authorizing agents.

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

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

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

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

(51) HOLDING ROOM. Either of the following:

- a. A room within a funeral establishment that satisfies the requirements of a branch location as provided in this chapter or board rule, for the retention of human remains before final disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(67) **MORTUARY SCIENCE.** The scientific, professional, and practical aspects, with due consideration given to accepted practices, covering the care, preparation for burial, or transportation of dead human bodies, which shall include the preservation and sanitation of the bodies and restorative art and those aspects related to public health, jurisprudence, and good business administration.

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

- a. A preparation room equipped with sanitary nonporous floor and walls, operating embalming equipment, and necessary drainage and ventilation, and containing necessary approved tables, instruments, hot and cold running water, containers or receptacles for soiled linen or clothing, and supplies for the preparation and embalming of dead human bodies for burial, cremation, and transportation.
- b. At least one operating motor vehicle properly licensed and equipped for transporting human remains in a casket or urn.
- c. If engaged in the practice of cremation, the establishment shall satisfy all requirements for a crematory provided in this chapter.

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

(70) **OPERATOR.** A person, corporation, firm, legal representative, managing funeral director, general manager, or other organization owning or operating a funeral establishment or cemetery.

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

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

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

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- (74) **PREARRANGEMENT.** Completing the details for selection of merchandise or services on a preneed basis, which may or may not include prefunding or prepayment.
- (75) **PREDEVELOPED.** Designated areas or buildings within a cemetery that have been mapped and planned for future construction but are not yet completed.
- (76) **PREDEVELOPED INTERMENT SPACE.** An interment space that is planned for future construction but is not yet completed.
- (77) **PREFUND.** Completing the financial details of a prearrangement, which include prefunding or prepayment.
- (78) **PRENEED.** Any time prior to death.
- (79) **PRENEED CONTRACT.** A written contract to purchase funeral merchandise, funeral services, cemetery merchandise, or cemetery services from the seller on a preneed basis.
- (80) **PRENEED CONTRACT TRUST FUND.** The funds received pursuant to a preneed contract which are required by law to be held in trust until the merchandise or services purchased pursuant to the contract are delivered or provided or until otherwise lawfully withdrawn.
- (81) **PRENEED SALES AGENT.** A person who is in the business of selling preneed contracts.
- (82) **PROCESSING or PULVERIZATION.** The reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments or granulated particles by manual or mechanical means.
- (83) **PROVIDER.** The person, who may or may not be the seller, who actually provides merchandise and services under the terms of a preneed contract.
- (84) **PURCHASE PRICE.** The amount paid by the purchaser for merchandise and services purchased under a preneed contract, exclusive of finance charges, sales tax, charges relating to interment rights, arrangement conference fees, or charges for credit life insurance.
- (85) **PURCHASER.** The person who purchases a preneed contract either on his or her behalf or on behalf of a third-party beneficiary.
- (86) **RELIGIOUS INSTITUTION.** An organization formed primarily for religious purposes which has applied and qualified for exemption from federal income tax as an exempt organization under 26 U.S.C. § 501(c)(3).
- (87) **SCATTERING.** The lawful dispersion of cremated remains.
- (88) **SELLER.** Any person offering or selling merchandise or services on a preneed basis, including, but not limited to, funeral establishments, cemetery authorities, crematory authorities, and memorial retailers.



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

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

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

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

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

(94) URN. A receptacle designed to encase cremated remains.

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

(Acts 1975, No. 214, p. 705, §2; Acts 1983, No. 83-746, p. 1235, §1; Act 2002-239, p. 498, §1; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2016-265, p. 652, §1; Act 2017-433, §1; Act 2022-339, §1; Act 2023-94, §1.)

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**Section 34-13-2**

**PURPOSE OF CHAPTER.**

It is declared and established that the procedures for making final disposition of human dead, including embalming, funeral directing, cremating, disposing, and burying of deceased human remains, are so affected with the public interest as to require regulation and control of these occupations and that, additionally, regulation and control are necessary for the prevention of the spread of infectious and contagious diseases and for the protection of the health and welfare of the people of the state, and that this chapter and rules authorized to be made are necessary to effectuate its purpose; and this chapter shall be construed liberally and in a manner to carry out its obvious intents and purposes.

*(Acts 1975, No. 214, p. 705, §1; Act 2022-339, §1.)*

**Section 34-13-3**

**CONSTRUCTION AND APPLICATION OF CHAPTER.**

Nothing in this chapter shall be construed to give any cemetery or cemetery authority or any other person or entity the right to enter into or engage in any funeral home operation or the practice of embalming or funeral directing or any related funeral home or funeral directing activities. Nor shall this chapter include any temporary or occasional or extra help to assist in the conduct of a funeral employed on such basis by a funeral director, provided such funeral is under the direct supervision of a licensed funeral director. Nor shall this chapter require an out-of-state student to obtain an Alabama apprenticeship for the purposes of attending mortuary school in the state, as long as the student has an existing active apprenticeship or internship in his or her state of residence.

*(Acts 1975, No. 214, p. 705, §11; Act 2017-433, §1; Act 2018-450, §1)*

**Section 34-13-4**

**PUBLICATION OF STATUTES AND REGULATIONS.**

Upon request, the board shall distribute to each licensee and other persons as may be interested therein, in hard copy form, and shall maintain in electronic format on the website of the board, this chapter together with all rules adopted pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter.

*(Acts 1975, No. 214, p. 705, §35; Acts 1981, No. 81-200, p. 234, §4; Acts 1983, No. 83-746, p. 1235, §1; Act 2014-125, p. 206, §1.; Act 2022-339)*

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**Section 34-13-5**

**COURTS HAVING JURISDICTION; INITIATION OF PROCEEDINGS.**

District courts shall have jurisdiction in all criminal prosecutions arising under this chapter. The district attorney is authorized to institute criminal prosecutions for violations of this chapter by information, or prosecutions may be instituted by indictment or by complaint verified before any magistrate.

(Acts 1975, No. 214, p. 705, §38; Act 2018-450, §1.)

**Section 34-13-6**

**RECOURSE BY A LICENSEE AGAINST UNREASONABLE ORDERS OR WRONGFUL INTERPRETATIONS BY THE BOARD.**

In the event a licensee under this chapter should have cause to believe that the board, or a member or members thereof, has used the powers of the board to promulgate orders or rulings or requirements not intended by this chapter and that such orders or rulings or requirements are used to subject the licensee to unreasonable and wrongful interpretations of this chapter by the board or that the board or a member or members thereof have imposed the powers of the board or the wrongful interpretations of this chapter upon the licensee to such extent that it constitutes harassment of the licensee, then the licensee may take an appeal for relief to the Circuit Court of Montgomery County as prescribed in Section 34-13-31.

(Acts 1975, No. 214, p. 705, §47; Act 2014-125, p. 206, §1; Act 2018-450, §1.)

**Section 34-13-7**

**EMBEZZLEMENT, ABSTRACTING, OR WILLFULLY MISAPPLYING MONEYS COLLECTED; BRIBERY.**

Any person who embezzles, abstracts, or willfully misapplies any of the monies, funds, security, or credit of the board or who misuses any of the funds or fees so collected, by virtue of this chapter, and any person who, with like intent, aids or abets any person in violation of this chapter shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500) nor exceeding five thousand dollars (\$5,000) and imprisonment in the penitentiary for a period of not less than one year and not more than five years, and the principal offenders and those aiding and abetting same may be charged in the same count, and separate offenses may be charged, in separate counts, in the same indictment and tried together. Any person found guilty of offering or of accepting a bribe whereupon any person is illegally licensed to practice as a licensee regulated by this chapter in this state shall be punished by a fine of not less than five hundred dollars (\$500) nor exceeding ten thousand dollars (\$10,000) and may be imprisoned in the penitentiary for a period of one to three years, and the principal offenders and

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those aiding and abetting same may be charged in the same count and separate offenses may be charged in separate counts in the same indictment and tried together.

*(Acts 1975, No. 214, p. 705, §48; Act 2011-623, p. 1439, §1; Act 2022-339, §1.)*

**Section 34-13-8**

**CERTIFIED COPY OF OFFICIAL DOCUMENTS.**

On application of any person and payment of the cost thereof, the executive director of the board shall furnish, under the seal of the board and signed by the executive director, a certified copy of any license, rule, regulation, or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, rule, or order and that such is effective as of the date of such certificate.

*(Acts 1975, No. 214, p. 705, §51; Act 2017-433, §1.)*

**Section 34-13-9**

**PRICING REQUIREMENTS**

(a) Pricing of services and merchandise offered by a licensee shall comply with rules established by the Federal Trade Commission.

(b) Each funeral establishment shall have a card or brochure in each full-size and cut casket and a clear statement on each photograph and electronic image of a casket stating the unit price of that casket.

*(Acts 1975, No. 214, p. 705, §52; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2022-339, §1.)*

**Section 34-13-10**

**VIOLATIONS**

Unless otherwise provided herein, violation of any part of this chapter shall be a Class A misdemeanor which may be prosecuted and shall be punishable as such under the laws of Alabama.

*(Acts 1975, No. 214, p. 705, §53; Acts 1981, No. 81-200, p. 234, §4; Act 2017-433, §1.)*

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**Section 34-13-11**

**AUTHORIZING AGENT; RIGHT OF DISPOSITION**

(a) A person, who is at least 18 years of age and of sound mind, may enter into a contract to act as authorizing agent and direct the location, manner, and conditions of disposition of deceased remains and arrange for funeral and burial goods and services to be provided upon death. Except as otherwise provided in subsection (b), the right to control the disposition of the remains of a deceased person as an authorizing agent, including the location, manner, and conditions of disposition and arrangements for funeral and burial goods and services to be provided, shall vest in the following persons in the priority listed and the order named, provided the person is at least 18 years of age and of sound mind:

(1) The person designated by the decedent as authorized to direct disposition pursuant to Public Law No. 109-163, Section 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving on active duty in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard.

(2)a. The person designated by the decedent in an affidavit executed in accordance with paragraph b.

b. Any person, at least 18 years of age and of sound mind, may authorize another person to control the disposition of his or her remains pursuant to an affidavit executed before a notary public in substantially the following form:

State of Alabama

County of \_\_\_\_\_

I, \_\_\_\_\_ designate \_\_\_\_\_ to control the disposition of my remains upon my death. I \_\_\_ have \_\_\_ have not attached specific directions concerning the disposition of my remains. If specific directions are attached, the designee shall substantially comply with those directions, provided the directions are lawful and there are sufficient resources in my estate to carry out those directions.

Subscribed and sworn to before me this \_\_\_ day of the month of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_ (signature of notary public)

(3) The surviving spouse.

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(4) The sole surviving child of the decedent or, if there is more than one surviving child, a majority of the surviving children. Less than a majority of the surviving children may be vested with the rights of this section if reasonable efforts have been made to notify all surviving children of the instructions and a majority of the surviving children are not aware of any opposition to the instructions.

(5) The sole surviving grandchild of the decedent or, if there is more than one surviving grandchild, a majority of the surviving grandchildren. Less than a majority of the surviving grandchildren may be vested with the rights of this section if reasonable efforts have been made to notify all surviving grandchildren of the instructions and a majority of the surviving grandchildren are not aware of any opposition to the instructions.

(6) The surviving parent or parents of the decedent. If one surviving parent is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts in locating the absent surviving parent have been unsuccessful.

(7) The surviving sibling of the decedent or, if there is more than one surviving sibling, a majority of the surviving siblings. Less than a majority of the surviving siblings may be vested with the rights and duties of this section if reasonable efforts have been made to notify all surviving siblings of the instructions and a majority of the surviving siblings are not aware of any opposition to the instructions.

(8) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, a majority of the surviving grandparents. Less than a majority of the surviving grandparents may be vested with the rights and duties of this section if reasonable efforts have been made to notify all surviving grandparents of the instructions and a majority of the surviving grandparents are not aware of any opposition to the instructions.

(9) The guardian of the decedent at the time of the death of the decedent, if a guardian had been appointed.

(10) The personal representative of the estate of the decedent.

(11) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(12) The public officer, administrator, or employee responsible for arranging the final disposition of the remains of the decedent if the disposition of the remains is the responsibility of the state or a political subdivision of the state.

(13) Any other person willing to assume the responsibility of acting on and arranging the final disposition of the remains of the decedent, including the funeral director that has

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custody of the body, in the absence of any person specified in subdivisions (1) to (12), inclusive. The person shall attest in writing that good faith efforts to contact the persons specified in subdivisions (1) to (12), inclusive, have been unsuccessful.

(b) The right of disposition shall be forfeited and passed to the next qualifying person listed in subsection (a), in any of the following circumstances:

(1) The person is charged with murder or manslaughter in connection with the death of the decedent and the charges are known by the mortician. If the charges against the person are dismissed or the person is acquitted of the charges, the right of disposition shall be reinstated.

(2) The person does not exercise his or her right of disposition within two days after notification of the death of the decedent or within three days after the death of the decedent, whichever is earlier.

(3) If the person is the spouse of the decedent and a petition to dissolve the marriage was pending at the time of death of the decedent.

(4) If the judge of probate court determines, pursuant to subsection (c), that the person entitled to the right of disposition and the decedent were estranged at the time of death. For the purposes of this subdivision, estranged means a physical and emotional separation that has existed for such a period of time that an absence of affection, trust, and regard for the decedent is clearly demonstrated.

(c) Notwithstanding subsections (a) and (b), the judge of probate of the county of residence of the decedent may award the right of disposition to the person the judge of probate determines to be the most fit and appropriate to manage the right of disposition and may make decisions regarding the remains of the decedent if the persons possessing the right of disposition do not agree. If two or more persons who possess an equal right of disposition are not able by majority vote to agree upon the disposition of the remains of the decedent, any of those persons or the funeral establishment with custody of the remains may file a petition asking the judge of probate to make a determination in the matter. In making such a determination, the judge of probate shall consider all of the following:

(1) The reasonableness and practicality of the proposed funeral and disposition arrangements.

(2) The degree of the personal relationship between the decedent and each person possessing a right of disposition.

(3) The financial ability and willingness of each person possessing a right of disposition to pay the cost of the funeral and disposition arrangements.

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(4) The convenience and needs of other family members and friends who wish to pay their respects and the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.

(5) The desires of the decedent.

(d) Absent negligence, wantonness, recklessness, or deliberate misconduct in the event of a dispute regarding the right of disposition, a licensee may not be held liable for refusing to accept remains, for interring, or for otherwise disposing of the remains of a decedent or for completing arrangements for the final disposition of remains unless and until the licensee receives an order from the judge of probate, or other written agreement signed by all persons possessing a right of disposition, regarding the final disposition of the remains. If a licensee retains remains for final disposition during a disagreement, the licensee may embalm or refrigerate and shelter the body, or both, to preserve the body pending the final decision of the judge of probate. The licensee may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition cost. If a licensee files a petition pursuant to subsection (c), the licensee may add any associated legal fees and court costs to the cost of final disposition. This section may not be construed to require or impose a duty upon a licensee to bring an action pursuant to this section. A licensee and its employees may not be held criminally or civilly liable for not bringing an action pursuant to this section.

(e) Except to the degree that it may be considered by the judge of probate pursuant to subdivision (3) of subsection (c), the fact that a person has paid or has agreed to pay for all or a part of funeral and final disposition arrangements does not give that person a greater voice in right of disposition decisions than he or she would have had otherwise. The personal representative of the estate of a decedent, by virtue of being the personal representative, does not have a greater voice in right of disposition decisions than he or she would have had otherwise.

*(Act 2002-239, p. 498, §3; Act 2010-701, p. 1699, §1; Act 2011-623, p. 1439, §1; Act 2017-433, §1; Act 2022-339, §1 .)*

### **Section 34-13-12**

#### **TRUTHFULNESS OF DOCUMENTARY INFORMATION; RIGHTS AND OBLIGATIONS OF FUNERAL ESTABLISHMENT; LIABILITY.**

(a) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition by his or her signature shall attest to the truthfulness of any facts set forth in the document including, but not limited to, the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of and the authority of the person to order the disposition. A licensee may rely on a funeral service agreement, contract, or disposition authorization in carrying out the instructions of the person the licensee reasonably believes to hold the right of disposition. A licensee is not responsible for contacting or independently investigating the existence of any next-of-kin or relative of a decedent. If there is more than one person in a class with equal priority and the licensee has no knowledge of any objection by any other member



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of that class, the licensee may rely upon and act according to the instructions of the first person in the class to make funeral and disposition arrangements.

(b) Absent negligence, wantonness, recklessness, or deliberate misconduct, no licensee who relies in good faith upon the instructions of a person who claims a right of disposition shall be subject to criminal or civil liability, or be subject to disciplinary action, for carrying out the disposition of the remains in accordance with those instructions.

*(Act 2002-239, p. 498, §3; Act 2011-623, p. 1439, §1; Act 2022-339 §1.)*

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**Article 2**

**BOARD OF FUNERAL SERVICE**

**Section 34-13-20**

**CREATION; COMPOSITION; QUALIFICATIONS OF MEMBERS; APPOINTMENT AND REMOVAL FROM BOARD.**

a) There is established the Alabama Board of Funeral Services, consisting of 14 members, each of whom shall be citizens of the United States and residents of the State of Alabama. The membership of the board shall be divided into two distinct divisions, the funeral division and the preneed division, with each division having jurisdiction over its respective areas of service.

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

(c)(1) Commencing on January 1, 2019, as the terms of the members serving on the board on August 1, 2017, expire, the membership of the funeral division of the board shall be reconstituted to consist of seven professional members and two consumer members. Each professional member of the funeral division of the board shall be a citizen of the United States, a resident of Alabama, and licensed and in good standing with the board as an embalmer or funeral director at the time of appointment and during the entire term of office. Professional members of the funeral division of the board shall be appointed by the Governor pursuant to subsection (e). As the terms of the members serving on the board on October 1, 2023, expire, the professional membership of the funeral division of the board shall be appointed to reflect the following:

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

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

(2) Commencing on October 1, 2023, the preneed division of the board shall be created to consist of four professional members and one consumer member. Two professional members shall be licensed funeral directors and two professional members shall be licensed preneed sales agents employed by a cemetery. Each professional member of the preneed division of the board shall hold a current license from the board to practice as a preneed sales agent, shall have been

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actively engaged in preneed sales or direct management of preneed sales in the state for the last five consecutive years immediately preceding appointment, and shall be employed by a certificate of authority license holder in this state at the time of appointment to the board. Two of these professional members shall also hold a current certificate of authority to sell preneed services and merchandise. The initial appointment of two of the preneed sales agents appointed pursuant to this subdivision shall expire on December 31, 2025, and for the other two, shall expire on December 31, 2026. Thereafter, the preneed sales agent members shall serve pursuant to subsection (e). Professional members of the board shall be appointed by the Governor pursuant to subsection (e).

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

(d) Commencing in October of 2018, and each October thereafter of a year where at least one professional member term on either division of the board has expired, all licensed funeral directors and licensed embalmers for a funeral division board member, and all licensed preneed sales agents for a preneed division board member, shall meet in Montgomery, at a time and place fixed by the respective division of the board, for the purpose of nominating and submitting the names of three licensed persons for each position on the board to the Governor. The Governor shall promptly appoint one of the three persons so nominated to serve as a professional member of the board.

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

(2) A vacancy on the board for any reason shall be filled by appointment of the Governor for the unexpired term. The appointee shall serve until his or her successor is nominated and appointed pursuant to subsection (d). If a member is appointed to fill an unexpired term of less than two years, the time may not be counted toward the maximum eight years of service.

(3) Only one professional funeral division board member and one professional preneed division board member of a division may reside in each district created by Section 34-13-21.

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

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

- a. The refusal or inability to perform board duties in an efficient, responsible, or professional manner.
- b. The misuse of his or her position on the board to obtain financial gain or seek personal advantage for himself, herself, or another person.
- c. A final adjudication or determination of guilt by any lawful authority of the board member or sanction of the board member for the violation of any law the board determines is substantially related to any practice governed by this chapter.
- d. The revocation or suspension of the license of a professional member of the board.

(2) Any board member who fails to qualify after appointment shall automatically become ineligible to serve as a member of the board and a new member, properly qualified, shall be appointed in the same manner as the original appointment and shall serve the remainder of the term of the vacating board member.

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

(g)(1) The status of any person or entity properly licensed by the Alabama Board of Funeral Service on October 1, 2023, shall continue under the Alabama Board of Funeral Services.

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

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

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

(4) The Code Commissioner, pursuant to Section 29-5A-22, at times determined appropriate, shall implement this statutory name change in applicable sections of this code.

(Acts 1975, No. 214, p. 705, §3; Acts 1983, No. 83-746, p. 1235, §1; Act 2009-12, p. 22, §3; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2018-451, §1; Act 2023-94, §1.)

### **Section 34-13-21**

#### **MEMBERSHIP DISTRICTS.**

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

(Acts 1975, No. 214, p. 705, §4; Act 2017-433, §1; Act 2023-94, §1.)

### **Section 34-13-22**

#### **MEETINGS; QUORUM.**

(a) The Alabama Board of Funeral Services shall hold not less than one joint meeting of both divisions quarterly for the purpose of reviewing financial, budgetary, and employment matters. The quarterly meetings to be held at a time and place as the board may determine after notice of the meeting has been given in the manner prescribed herein at least 15 days prior to the meeting. The board may hold other meetings as the board may deem necessary. A majority of the appointed members shall constitute a quorum authorized to transact general business in the name of the board. Upon the executive director serving on October 1, 2023, leaving office, two-thirds of the appointed members of each division shall constitute a quorum for the purposes of selecting an executive director and establishing fees.

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

(Acts 1975, No. 214, p. 705, §5; Acts 1983, No. 83-746, p. 1235, §1; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2018-450, §1; Act 2023-94, §1.)

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**Section 34-13-23**

**OFFICERS; RULEMAKING AUTHORITY; COMPENSATION; EXECUTIVE DIRECTOR; DISPOSITION OF FUNDS; FUNERAL BOARD PROPERTY ACQUISITION FUND.**

(a)(1) The board shall select from its own membership a chair and adopt rules for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the death care industry in the State of Alabama as the board may deem expedient and consistent with the laws of this state and for the public good.

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

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

(b) The treasurer shall give bond to the State of Alabama in the sum of ten thousand dollars (\$10,000), and any premium payable for the bond shall be paid from the funds of the board. The bond shall be deposited with the Treasurer of the State of Alabama.

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

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

(e) The executive director shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number and date of the license, and the date of each renewal. Upon request to do so, the executive director shall supply a list of all persons and establishments holding a license under this chapter,

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then in force, giving the names of the persons, their business addresses, and the numbers of their licenses.

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

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

(h) All fees and fines received under this chapter shall be paid into a special fund in the State Treasury to be known as the Alabama State Funeral Service Fund, which is hereby created, for the necessary and proper expenses of the board, and for a reasonable reserve for future use by the board. All monies in the fund are hereby appropriated, as a continuing appropriation, to the board to be used for carrying out this chapter. Commencing on October 1, 2023, the name of the fund shall be changed to the Alabama Board of Funeral Services Fund.

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

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

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

(l)(1) The board may acquire and hold, in its own name, real property by purchase, gift, lease, lease with the option to purchase, or other lawful means, except eminent domain, which real property may be used by the board to carry out its responsibilities. The board may also transfer, sell, convey, or cause to be conveyed real property and any improvements thereon, subject to the requirements of this section. In purchasing any real property, maintaining real property, or making improvements thereto, the board may expend any funds contained in the Funeral Board Property Acquisition Fund established in subdivision (2), and any obligations created in connection with the purchase or improvement of the real property shall not create debts, obligations, or liabilities

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of the state. As used in this subsection, "real property" shall include land, lots, and all things and interests, including leasehold interests, pertaining thereto, and all other things annexed or attached to the land which would pass to a vendee by conveyance of the land or lot, including mineral, gas, and oil interests. All sales or leases made by the board of any real property owned or held by the board shall be subject to the requirements of Article 3, Chapter 15, Title 9. Notwithstanding the foregoing, the proceeds from the sale of real property owned by the board which are distributed pursuant to Section 9-15-83 shall be paid to the board and deposited into the property acquisition fund.

(2) There is established the Funeral Board Property Acquisition Fund within the State Treasury. Any funds received by the board pursuant to this section shall be deposited into the property acquisition fund and shall be held by the board in trust for carrying out the purposes of the property acquisition fund. Amounts in the property acquisition fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12. Not later than May 1, 2022, the executive director shall transfer from the Alabama State Funeral Services Fund to the property acquisition fund an amount determined by vote of the board for the purchase of real property. Thereafter, the board shall annually, during the month of October, transfer an amount between two percent and seven percent of the receipts of the board from the previous fiscal year to the property acquisition fund.

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

(Acts 1975, No. 214, p. 705, §6; Acts 1981, No. 81-200, p. 234, §4; Acts 1995, No. 95-517, p. 1047, §1; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2018-451, §1; Act 2022-339, §1; Act 2023-94, §1.)

## **Section 34-13-24**

### **OATH OF MEMBERS.**

Each member of the board, and member of any committee or subcommittee established by the board, after appointment and before entering upon his or her duties, shall make oath before some officer competent to administer oaths, that he or she is legally qualified to become a member of the board, committee, or subcommittee under this chapter and that he or she will faithfully perform the duties of the office, a copy of which shall be filed in the office of the Secretary of State.

(Acts 1975, No. 214, p. 705, §7; Act 2022-339, §1.)



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**Section 34-13-25**

**HEARINGS TO BE PUBLIC; RECORD OF PROCEEDINGS.**

All hearings provided for by this chapter shall be conducted pursuant to the Alabama Administrative Procedure Act.

*(Acts 1975, No. 214, p. 705, §31; Act 2017-433, §1.)*

**Section 34-13-26**

**RULEMAKING AUTHORITY; ESTABLISHMENT AND CONDUCT OF COMMITTEES AND SUBCOMMITTEES.**

(a) The board shall adopt and enforce for the protection of the public health, safety, and welfare reasonable rules pursuant to the Alabama Administrative Procedure Act.

(b) The board may establish committees and subcommittees, hold hearings, conduct investigations, subpoena witnesses, subpoena documents, administer oaths, and take testimony in order to carry out this chapter.

(c) A committee or subcommittee established by the board may conduct meetings, hold hearings, conduct investigations, subpoena witnesses, subpoena documents, administer oaths, and take testimony to carry out matters related to this chapter and may perform any other duty prescribed by the board. Each committee and subcommittee shall report any findings and recommendations to the board for approval.

*(Acts 1975, No. 214, p. 705, §34; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2022-339, §1.)*

**Section 34-13-27**

**SEAL; SCOPE OF RULES.**

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

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

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

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(3) The sanitary condition and physical facilities of funeral homes, mortuaries, and funeral establishments where the profession of embalming and funeral directing is carried on, with particular regard to plumbing, sewage, disinfecting, ventilation, and equipment.

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

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

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

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

*(Acts 1975, No. 214, p. 705, §§8, 34; Act 2022-339, §1; Act 2023-94, §1.)*

**SECTION 34-13-28 ANNUAL REPORT.**

Repealed by Act 2011-623, p. 1439, §2, effective October 1, 2011.

*(Acts 1975, No. 214, p. 705, §36; Acts 1981, No. 81-200, p. 234, §4.)*

**Section 34-13-29**

**AUDIT AND PAYMENT OF EXPENSES.**

All necessary expenses incurred in giving examinations to applicants and incidental to the renewal of licenses and all necessary expenses incurred in education and enforcing this chapter shall be audited by the Department of Examiners of Public Accounts and paid from the funds provided for in this chapter in the same manner as other claims against the state are paid after due approval thereof by the chair and executive director of the board.

*(Acts 1975, No. 214, p. 705, §37; Act 2017-433, §1.)*

**SECTION 34-13-30.1 ADDED BY ACT 2023-94**

(a) Beginning with the 2024 fiscal year, the Department of Insurance may transfer to the board quarterly, for deposit by the board into the Alabama Board of Funeral Services Fund, the total amount of three hundred thousand dollars (\$300,000) per fiscal year, to defray costs associated with the administration and operation of the Alabama Preneed Funeral and Cemetery Act of 2023 by the board.

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(b) Unless extended by an act of the Legislature, this section shall be repealed at the end of the 2027 fiscal year.

(Act 2023-94, §10.)

**Section 34-13-31**

**APPEAL FROM DECISION OF BOARD.**

(a) Whenever, by decision, final order, or other final determination upon any public hearing provided for by this chapter, a party to such hearing shall feel aggrieved, an appeal may be taken to the Circuit Court of Montgomery County, Alabama.

(b) On taking and perfecting an appeal to the Circuit Court of Montgomery County, Alabama, the court shall proceed as in other cases.

(c) All appeals shall be taken within 30 days from the date of the order entered of the board which is the basis of the appeal and shall be granted as a matter of right and be deemed perfected by filing with the board a bond for security of costs of the appeal. Upon filing of a verified petition and hearing thereon, the court, in its discretion, may stay the order appealed from pending final judicial review. No new or additional evidence may be introduced in the circuit court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, rule, or ruling appealed from. The court shall otherwise hear the case upon the record as certified to the court by the executive director of the board and shall set aside the order, rule, or action appealed from if the court finds that the board erred to the prejudice of the appellant's substantial rights in its application of the law; or, the order, decision, or award was procured by fraud or was based upon a finding of facts contrary to the substantial weight of the evidence, or that the order was arbitrary, capricious, or inconsistent with respect to any of the material issues involved; or that the board failed in its order to find sufficient facts as to each material issue involved to enable the court to determine the basis for the conclusion of the board. The court, instead of setting aside the order, shall remand the case to the board for further proceedings in conformity with the direction of the court. The court, in advance of judgment and upon a sufficient showing, may remand the cause to the board for the purpose of taking additional testimony or other proceedings.

(d) An appeal may be taken from the judgment decree or any appealable order of the circuit court to the Supreme Court of this state. Appeals to the Supreme Court shall be taken, perfected, heard, and determined in the manner prescribed by law and the Alabama Rules of Appellate Procedure for taking, perfecting, hearing, and determining appeals to the Supreme Court.

*(Acts 1975, No. 214, p. 705, §32; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

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**Article 3**

**LICENSES, EXAMINATIONS, REGISTRATION**

**Division 1  
General Provisions**

**Section 34-13-50**

**BOARD RECOGNITION OF SCHOOLS AND COLLEGES.**

The Alabama Board of Funeral Service shall recognize and approve and accept applicants for examination from only those established embalming schools or colleges which are recognized by the board. The board shall recognize and approve any embalming school or college approved by the American Board of Funeral Service Education, and any additional embalming schools or colleges which offer courses of study which generally include the subjects set out in Section 34-13-94. The Alabama Board of Funeral Service shall not examine or issue an embalmer's license to any person who does not hold a certificate of graduation from an embalming school or college meeting the criteria or standards as defined in this section. The board may not examine or issue a funeral director's license to any person who has not completed a course of instruction in funeral arts at an accredited mortuary or funeral service school or college meeting the criteria or standards defined in this section.

*Acts 1975, No. 214, p. 705, §20; Act 2011-623, p. 1439, §1; Act 2012-423, p. 1142, §1.)*

**Section 34-13-51**

**RECIPROCITY OF LICENSES.**

(a) The board may recognize and issue, without examination and upon payment of a fee not in excess of five hundred dollars (\$500) for each license, a reciprocal license for the practice of funeral directing or embalming to any person licensed as a funeral director or embalmer by any state, if the board makes an individual determination that the qualifications of the applicant meet or exceed the minimum qualifications required for funeral directors or embalmers in this state and that a written examination of such applicant would be superfluous.

(b) Applications shall be made on forms prescribed and furnished by the board. An applicant holding a funeral director or embalmer license from another state, and applying for a funeral director or embalmer license in Alabama shall be considered for licensing by reciprocity.

(c) Commencing on October 1, 2017, in addition to the requirements of subsections (a) and (b), an applicant for a funeral director or embalmer license shall submit to the board a form, sworn to by

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the applicant, that contains the name, date of birth, and Social Security number of the applicant, and two complete sets of fingerprints, for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history record check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history record check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received pursuant to this subsection confidential, except that information received and relied upon in denying the issuance of a funeral director or embalmer license may be disclosed if necessary to support the denial.

(d) The board, at the time of the application, shall make a reasonable determination that the applicant is a legal resident of the United States or legally present in this state. The board reserves the right to require applicants for reciprocity to submit to a personal interview or a written examination relating to the law as it pertains to the regulation of the funeral service profession in Alabama.

(e) The board shall issue a special work permit to a qualified funeral director or embalmer when the board determines that the applicant satisfies all requirements for reciprocity and a fee, not exceeding one hundred dollars (\$100), is received by the board. A special work permit shall expire on the date of the next regular board meeting occurring after issuance.

*(Acts 1975, No. 214, p. 705, §19; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Act 2006-598, p. 1635, §1; Act 2008-91, p. 118, §3; Act 2011-623, p. 1439, §1; Act 2017-433, §1.)*

## **Section 34-13-52**

### **EXECUTION AND DISPLAY OF LICENSES.**

(a) Licenses under this chapter shall be granted to individuals upon the qualification and successful examination of the individual applicant and shall specify the name to whom it is issued. A license, registration, or certificate granted under this chapter shall be on public display.

(b) A funeral establishment license issued under this chapter shall include the name of the funeral establishment, the name of the managing funeral director, and the name of the managing embalmer. The license shall be on public display.

(c) Every license, certification, and registration issued under this chapter shall be signed by the chair and executive director and shall be displayed in the place of business or employment of the licensee.

(d) Any person engaged in a business, profession, or practice licensed and regulated pursuant to this chapter shall do each of the following:

(1) Possess on his or her person, or be able to promptly produce, a legible and current board issued wallet license when performing any duty regulated pursuant to this chapter.

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(2) Upon the request of a board member, the executive director, an associate executive director, or a designated and appropriately identified employee of the board, promptly produce his or her legible and current board issued wallet license.

(Acts 1975, No. 214, p. 705, §21; Act 2011-623, p. 1439, §1; Act 2017-433, §1; Act 2022-339, §1.)

**Section 34-13-53**

**RENEWAL OF LICENSES; AUTHORIZATION; ATTESTATION OF IDENTITY; RECORDS.**

(a)(1) Every license, certificate, or registration issued by the board under this chapter shall be renewed biennially, unless otherwise provided by this chapter, upon submission by the licensee or registrant of a renewal application and a renewal fee established by board rule, not exceeding five hundred dollars (\$500), for each license or certificate issued, unless otherwise provided by this chapter.

(b) All licenses and certificates granted under this chapter shall expire on October 1, following their issuance or renewal, unless otherwise provided by this chapter, and shall become invalid unless renewed as provided in this section and other requirements of the board are met. In addition to payment of a renewal fee, each licensee shall satisfy continuing education requirements prescribed by rule of the board pursuant to subsection (d).

(c). There shall be no proration of licenses.

(d)(1) Commencing in 2014, and for each licensing period thereafter, the board may require persons seeking renewal of a license, or multiple licenses, under this chapter to complete board approved continuing education of not less than eight hours biennially. The board may approve continuing education providers and courses offered by institutions of higher learning, specialty societies, associations, or professional organizations or by other organizations the board deems appropriate.

(2) Any person who holds an inactive license or who is over the age of 65, with at least 10 years of experience in the funeral service industry, is exempt from the continuing education requirement.

(3) Continuing education providers shall pay a biennial administrative fee established by board rule, not exceeding two hundred fifty dollars (\$250).

(4) The board may adopt rules to implement and ensure compliance with this section.

(e) Ninety days before the expiration date of a license, the board shall inform the licensee that his or her license renewal is due. Unless otherwise provided by this chapter, a renewal is past due if

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the renewal application is not received and the renewal fee is not paid 30 calendar days before the expiration date of the license.

(f) At the time, or before, a licensee changes place of employment, residence address, or makes any other change in status which is of record at the board office, the licensee shall report such change of status, by a method prescribed by the board, to the executive director.

*(Acts 1975, No. 214, p. 705, §22; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Acts 1983, No. 83-746, p. 1235, §1; Act 2002-239, p. 498, §2; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2014-302, p. 1095, §1; Act 2017-433, §1; Act 2022-339.)*

### **Section 34-13-54**

#### **TRANSFERABILITY.**

No license granted under or regulated by this chapter shall be transferable or assignable, unless otherwise authorized by this chapter.

*(Acts 1975, No. 214, p. 705, §10; Act 2017-433, §1; Act 2022-339, §1.)*

### **Section 34-13-55**

#### **RENEWAL OF PAST DUE LICENSE, CERTIFICATE, OR REGISTRATION; REACTIVATION.**

(a) When a license, certificate, or registration renewal is past due, the board may renew the license, certificate, or registration if application for renewal is made within a period of 30 days from the date of becoming past due and is accompanied by payment of all past due penalties and fees. The past due penalties to be paid to the board shall not exceed one hundred dollars (\$100).

(b) After the 30-day period has elapsed, a license may be reinstated with application for reactivation, payment of all fees and penalties, and approval by the board. The original application of the applicant seeking reactivation must be in the possession of the board.

*(Acts 1975, No. 214, p. 705, §24; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Act 2011-623, p. 1439, §1; Act 2017-433, §1; Act 2022-339, §1.)*

### **Section 34-13-56**

#### **GROUND FOR REVOCATION, SUSPENSION, OR REFUSAL TO ISSUE OR RENEW LICENSES, ETC.; HEARING; FINES.**

(a) The board may refuse to license any person, entity, or establishment for violation of this chapter. If the board refuses to issue, grant, or renew a license based on a violation of this chapter, including, but not limited to, violations listed in subsection (c), the licensee or prospective licensee may request a public hearing before the board to appeal the action of the

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board. The request for a public hearing shall be submitted to the board in writing within 14 calendar days after the date of the refusal. Upon request, the board shall provide the licensee or prospective licensee with 20 days' notice of the public hearing by United States certified mail. The public hearing shall be conducted pursuant to Section 34-13-26.

(b) A public hearing conducted pursuant to Section 34-13-26 shall be provided by the board to any licensee for whom the board is considering the probation, suspension, or revocation of a license.

(c) The board may suspend, revoke, or place on probation a license if the licensee is found guilty of any of the following:

(1) Conviction of a crime involving moral turpitude, as defined by this chapter, including, but not limited to, any crime where the individual has to register as a sex offender in any jurisdiction.

(2) Unprofessional conduct, which is defined to include any of the following:

a. Misrepresentation or fraud in the conduct of the business or the profession of any license issued pursuant to this chapter.

b. False or misleading advertising as a licensee under this chapter or knowingly engaging in any advertising which is misleading or inaccurate.

c. Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, from medical professionals or clergy, whether the solicitation occurs after death or while death is impending.

d. Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending.

e. Employment by the licensee of a person or persons to be used for the purpose of obtaining or soliciting business, whether the solicitation occurs after death or while death is impending.

f. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time or on commission, for the purpose of calling upon individuals or institutions where a death has occurred or is imminent by whose influence dead human bodies may be turned over to a particular funeral director or embalmer or funeral establishment, or both.

g. The buying of business by the licensee or his or her agents, assistants, or employees.

h. Gross immorality.



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- i. Aiding or abetting an unlicensed person, establishment, or entity in violation of this chapter.
- j. Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relative of a deceased whose body has not yet been interred or otherwise disposed of.
- k. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or cemetery.
- l. Any violation of this chapter or order or rule of the board.
- m. Any violation of state law or municipal or county ordinance or regulation affecting the handling, custody, care, disposition, or transportation of dead human bodies.
- n. Fraud or misrepresentation in obtaining a license.
- o. Refusing to promptly surrender the custody of a dead human body, upon the express order and payment for services rendered of the person lawfully entitled to the custody thereof.
- p. Performing services in a professional capacity as a licensee for any unlicensed funeral establishment operating in violation of this chapter.
- q. Being intoxicated or under the influence of illegal drugs while on duty or while performing any duty or responsibility prescribed by this chapter.
- r. Willfully retaining or willfully failing to account for any property of a decedent.
- s. Knowingly and willfully signing any documentation as having embalmed or prepared a body for burial when, in fact, the services were not performed by the licensee.
- t. Failure to give full cooperation to the board or its designees, agents, or other representatives in the performance of official duties of the board.
- u. Failing to furnish any relevant papers or documents requested by or for the board.
- v. Failing to furnish, in writing, an adequate explanation relating to a matter contained in a complaint filed with the board against the licensee.
- w. Failing to respond to a subpoena issued by the board, without good cause shown, whether or not the licensee is the party charged in any proceeding before the board.

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x. Not providing reasonable access to the board or an authorized agent or representative of the board for the performance of reviews, investigations, or inspections at facilities or places utilized by the licensee in the practice of funeral service, funeral directing, or in performing any other activity regulated by the board.

y. Failing to provide information within a specific time as required by the board or an authorized agent or representative of the board.

z. Failing to cooperate with the board or an authorized agent or representative of the board in the investigation of any alleged misconduct or interfering with a board investigation through the willful misrepresentation of facts.

aa. Deceiving or attempting to deceive the board regarding any matter under investigation, including the altering or destroying of any records.

bb. Failure, without good cause, to cooperate with any request from the board to appear before the board.

cc. Violating any statute, ordinance, or rule of the state or any board, agency, or political subdivision of the state affecting the registration of deaths, the handling, custody, care, disposition, or transportation of dead human bodies, or the sale of funeral services or funeral merchandise.

dd. Demonstrating bad faith, incompetence, or untrustworthiness or dishonest, fraudulent, or improper dealing or any other violation of this chapter or any rule adopted by the board or by the Federal Trade Commission relative to the practice of any activity regulated by the board.

ee. Any other reason as determined by the board that would render an individual unsuitable for licensure or certification by the board.

ff. A licensee accepting funds for a preneed contract or other prepayment of funeral or disposition expenses without a certificate of authority to sell preneed contracts or, if registered to sell preneed contracts, failing to deposit the funds with a qualified trustee or to timely remit premium payments from the consumer to the insurer.

gg. Using any funeral merchandise previously sold without prior written permission of the person selecting or paying for the use of the merchandise. A previously used casket shell may be used for the viewing of remains if a new interior or interior insert is installed before each usage of the casket shell.

(d) In addition to the disciplinary actions authorized in subsection (c), the board may levy and collect administrative fines for violations of this chapter or the rules of the board in an amount

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not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each violation, unless otherwise provided for in this chapter or by rule of the board.

*(Acts 1975, No. 214, p. 705, §25; Acts 1995, No. 95-517, p. 1047, §2; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2022-339, §1.)*

**Section 34-13-56.1**

**UNLAWFUL PRACTICE WITHOUT A LICENSE.**

(a) It is unlawful for any person or entity, for hire or profit, to engage in, or hold himself, herself, or itself out as qualified to engage in any business, profession, or practice regulated and licensed under this chapter without a valid license, certification, or registration issued by the board.

(b) Any person or entity who has been found to have engaged in the unlawful unlicensed practice of any activity regulated by the board pursuant to this chapter shall be subject to a fine of not more than two thousand five hundred dollars (\$2,500) for each violation and other sanctions authorized by this chapter.

*(Act 2017-433, §2; Act 2022-339.)*

**Section 34-13-57**

**EXECUTIVE DIRECTOR TO PROVIDE NOTICE OF EXAMINATION.**

Fifteen days before an examination, the executive director shall provide to all applicants and all funeral establishments in the state, in electronic format and on the website of the board, a notice listing the names of all persons admitted by the board to take the examination and setting out the time and place of the examination.

*(Acts 1975, No. 214, p. 705, §39; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

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**Division 2.**  
**FUNERAL DIRECTORS**

**Section 34-13-70**

**LICENSE REQUIRED; FILING OF APPLICATION; FEE; CRIMINAL HISTORY BACKGROUND CHECK.**

(a) No person shall engage in, or attempt to engage in, the practice or profession or business of a funeral director unless licensed to do so by the board. The board may issue licenses to funeral directors.

(b) Any person desiring to engage in the business, profession, or practice of funeral director shall make application to the board and shall accompany his or her application by a fee to be established by the board, not to exceed five hundred dollars (\$500).

(c) Commencing on October 1, 2017, in addition to the requirements of subsection (b), an applicant for a funeral director license shall submit to the board a form, sworn to by the applicant, that contains the name, date of birth, and Social Security number of the applicant, and two complete sets of fingerprints, for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history record check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history record check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received pursuant to this subsection confidential, except that information received and relied upon in denying the issuance of a funeral director license may be disclosed if necessary to support the denial.

*(Acts 1975, No. 214, p. 705, §§9, 40; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Acts 1991, No. 91-196, p. 360, §3; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

**Section 34-13-71**

**FORM AND CONTENTS OF APPLICATION; INTERVIEW.**

An application for a license as a funeral director shall be in writing and verified on a form provided by and addressed to the board and filed with the executive director. The application shall specify the address of the applicant and shall be accompanied by the affidavits of at least two licensed embalmers or funeral directors to the effect that the applicant is of good character and has qualified himself or herself to become licensed as prescribed by this chapter. The board may require an applicant for license as a funeral director to submit to a personal interview.

*(Acts 1975, No. 214, p. 705, §12; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

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**Section 34-13-72**

**QUALIFICATIONS OF APPLICANTS; EXAMINATION REQUIREMENTS; FEE.**

(a) An applicant for a funeral director's license is entitled to an examination if he or she satisfies all of the following:

- (1) Is a citizen of the United States or legally present in this state.
- (2) Is at least 18 years of age.
- (3) Has completed an apprenticeship in accordance with this chapter and rule of the board.
- (4) Has completed a course of instruction in an accredited mortuary or funeral service school or college which has been approved by the board pursuant to Section 34-13-50, or has completed a bachelor's degree program from an accredited school.
- (5) Has completed an examination on state funeral service laws and rules.

(b) The board may certify an applicant to take an examination for a funeral director's license after verifying that the applicant has completed a course of instruction as defined in this chapter.

(c) The board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination. In no event shall the fee exceed fifty dollars (\$50) above the actual cost of preparing and administering the examination.

*(Acts 1975, No. 214, p. 705, §13; Acts 1983, No. 83-746, p. 1235, §1; Act 2008-91, p. 118, §3; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2022-339, §1.)*

**Section 34-13-73**

**SCOPE OF EXAMINATION.**

(a) The applicant for a funeral director's license, before the application is granted, shall successfully pass an examination upon, but not limited to, the following subjects: Funeral directing; funeral service management and administration; merchandising; cremation and other forms of disposition; funeral service psychology and counseling; funeral service law and ethics; any other courses of instruction related to the American Board of Funeral Service Education curriculum; and other courses of instruction in fundamental subjects as may be prescribed by the board. The examination shall be prepared and graded as prescribed by rule of the board. The board may review and adopt, in whole or in part, examination questions, forms, examinations, and passing criteria proposed by the American Board of Funeral Service Education, or a successor organization, and may use the uniform nationwide conditions of the International Conference of Funeral Service Examining Boards, or other organization approved by the board.

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- (b) All examination papers shall be kept on file by the board for at least three years.
- (c) To constitute a passing grade, an applicant shall earn a score adopted by rule of the board.
- (d) If the board is satisfied that an applicant has the requisite qualifications to practice the occupation of funeral directing, a license shall be issued authorizing the applicant to practice such occupation until October 1 of that year, at which time the license may be renewed as prescribed in this chapter.
- (e) The board may delegate the responsibility of conducting or administering a license examination to any qualified person or entity who is not a member of the board.
- (f) An applicant may take the required license examination during the time that his or her application for license is pending.

*(Acts 1975, No. 214, p. 705, §14; Act 2009-12, p. 22, §3; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2022-339, §1.)*

**Section 34-13-74**

**APPLICATION BY SURVIVING SPOUSE UPON DEATH OF FUNERAL DIRECTOR;  
OPERATION UNDER SPECIAL PERMIT BY OPERATOR.**

- (a) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the surviving spouse, or a surviving child of legal age, may make application for examination as a funeral director. The application shall be in writing, on a form prescribed by the board, and shall state the facts pertaining to the case. The board may certify the applicant for the examination prescribed for funeral directors, in which event the requirements with respect to prior experience and apprenticeship shall be waived.
- (b) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the board may issue a special operating permit to the operator of the licensed funeral business for a period of up to 12 months, with the board having the right to extend the permit an additional reasonable time to afford the operator the opportunity of obtaining a licensed funeral director for the business. The operator shall pay a fee for the issuance of the special operating permit in an amount not exceeding one hundred dollars (\$100).
- (c) All human remains embalmed for a funeral establishment operating under a special operating permit and all funeral directing operations carried on under the permit shall be in conformance with all the requirements of this chapter which are not in conflict with this section.

*(Acts 1975, No. 214, p. 705, §45; Act 2011-623, p. 1439, §1; Act 2017-433, §1.)*

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**Division 3.**

**EMBALMERS.**

**Section 34-13-90**

**LICENSE REQUIRED; FEES.**

(a) No person shall follow, engage in, or hold himself or herself out as engaged in the practice as an embalmer unless licensed to do so by the Alabama Board of Funeral Service. The board is granted authority to issue licenses to embalmers.

(b) All persons shall qualify for examination in accordance with this chapter and shall be licensed as an embalmer only after due examination by the board and the payment of an examination and license fee to be established by the board, not to exceed five hundred dollars (\$500).

(c) In addition, the board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination. In no event shall the fee exceed fifty dollars (\$50) above the actual cost of preparing and administering such exam.

*(Acts 1975, No. 214, p. 705, §10; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Acts 1991, No. 91-196, §3; Act 2011-623, p. 1439, §1.)*

**Section 34-13-91**

**APPLICATION FOR EXAMINATION; INTERVIEW; CRIMINAL HISTORY BACKGROUND CHECK.**

(a) The applicant for an embalmer's license shall make application to the board. The application shall be in writing and verified on a form provided by and addressed to the board and shall be accompanied by the prescribed fee and by affidavits of at least two licensed embalmers to the effect that the applicant is of good moral character and has met all qualifications required for examination for license as prescribed by this chapter. The board may require an applicant for an embalmer's license to submit to a personal interview.

(b) Commencing on October 1, 2017, in addition to the requirements of subsection (a), an applicant for an embalmer license shall submit to the board a form, sworn to by the applicant, that contains the name, date of birth, and Social Security number of the applicant, and two complete sets of fingerprints, for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history record check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history record check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received

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pursuant to this subsection confidential, except that information received and relied upon in denying the issuance of an embalmer license may be disclosed if necessary to support the denial.

*(Acts 1975, No. 214, p. 705, §16; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

**Section 34-13-92**

**QUALIFICATIONS OF APPLICANTS; EXAMINATION REQUIREMENTS; FEE.**

(a) In order to qualify for a license as an embalmer, the applicant shall satisfy all of the following:

- (1) Be a citizen of the United States or legally present in this state.
- (2) Be over 18 years of age.
- (3) Be of good character.
- (4) Have completed an apprenticeship in accordance with this chapter or rule of the board.
- (5) Have completed a course of instruction in an embalming school or college which has been approved by the board as defined in Section 34-13-50.

(b) The board may certify an applicant to take an examination for an embalmer's license after verifying that the applicant has graduated from an accredited mortuary or funeral service school or college meeting the criteria or standards defined in this chapter.

(c) The board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination. In no event shall the fee exceed fifty dollars (\$50) above the actual cost of preparing and administering the examination.

*(Acts 1975, No. 214, p. 705, §17; Acts 1983, No. 83-746, p. 1235, §1; Act 2008-91, p. 118, §3; Act 2014-125, p. 206, §1; Act 2022-339, §1.)*

**Section 34-13-93**

**EXAMINATION OF APPLICANT FOR LICENSE.**

The board may hold a public examination at least once each quarter for the purpose of examining applicants for an embalmer's license, at such time and place as the board may determine. Notice of the time and place of the meeting shall be provided electronically to the various applicants and shall be available on the website of the board at least 15 days before the meeting or examination.

*(Acts 1975, No. 214, p. 705, §15; Act 2014-125, p. 206, §1.)*



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**Section 34-13-94**

**SCOPE AND CONDUCT OF EXAMINATION.**

(a) The board shall examine applicants for an embalmer's license in all of the following subjects:

(1) Embalming.

(2) Restorative Art.

(3) Sciences related to embalming including, but not limited to: Pathology, Anatomy, Physiology, Microbiology, and Chemistry.

(4) The preparation of unembalmed human remains for final disposition, including the removal of medical devices, and identification viewing for cremation or other forms of disposition that do not require embalming.

(5) Other courses of instruction related to the American Board of Funeral Service Education curriculum or other courses of instruction in fundamental subjects as may be prescribed by the board.

(b) All examination papers shall be kept on file by the board for at least three years.

(c) To constitute a passing grade, an applicant shall earn a score adopted by rule of the board.

(d) The board may issue an embalmer's license to an applicant who receives a passing grade on a recognized national embalmer's examination approved by the board.

(e) If the board is satisfied that the applicant has the requisite qualifications to practice the occupation of embalming, a license shall be issued to him or her authorizing him or her to practice such occupation until October 1 of that year, at which time the license may be renewed as prescribed in this chapter.

(f) The board may delegate the responsibility of conducting or administering a license examination to any qualified person or entity who is not a member of the board.

(g) An applicant may take the required license examination during the time that his or her application for license is pending.

*(Acts 1975, No. 214, p. 705, §18; Act 2009-12, p. 22, §3; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2022-339, §1.)*

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**Division 4.**

**FUNERAL ESTABLISHMENTS.**

**Section 34-13-110**

**OPERATION THROUGH LICENSED DIRECTOR OR EMBALMER; NAME REQUIREMENTS; ADVERTISING CREMATION OR CREMATION SERVICES.**

(a) Any person, corporation, partnership, society or group owning or operating a funeral establishment coming within this chapter may do so only through the services of a licensed funeral director or embalmer. No person not licensed as a funeral director or embalmer shall be permitted to perform the functions of a funeral director or embalmer as herein defined or hold himself or herself out to the public as such by reason of his or her ownership in a funeral establishment or by reason of his or her ownership of stock owned in or office held in a corporation to own or operate a funeral establishment. After September 10, 1975, no firm or corporation authorized to own and operate a funeral establishment may change or amend its name or charter so as to include in its firm or corporate name the name of any person who is not individually licensed as a funeral director in this state; provided, that this sentence shall not be applicable to the name of any firm or corporation owning or operating a funeral establishment on September 10, 1975, so long as such firm or corporation remains under the same ownership.

(b) If the business card of a funeral establishment contains the name of an individual, the individual shall be licensed by the board in accordance with this chapter, unless otherwise provided by this chapter or board rule.

(c)(1) Any funeral establishment advertising cremation or cremation services that does not own a crematory shall include the following disclaimer in a clear and conspicuous manner on all advertisements and printed material: "This establishment does not own a crematory."

(2) For the purposes of this subsection, an advertisement shall include, but is not limited to, a notice or announcement in a public medium, including the Internet, promoting the funeral establishment and any printed material containing the name of the funeral establishment.

*(Acts 1975, No. 214, p. 705, §40; Act 2017-433, §1.)*

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**Section 34-13-111**

**LICENSE REQUIRED; INSPECTIONS; TRANSFER OF LICENSE; CHANGE OF OWNERSHIP.**

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

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

(c) The board shall set a fee, not exceeding one hundred fifty dollars (\$150), that shall be in addition to the license fee for the first inspection of any funeral establishment seeking a license under Section 34-13-72 made for the purpose of determining whether the funeral establishment has fulfilled the requirements for licensure pursuant to this chapter. The board shall set a fee, not exceeding one hundred fifty dollars (\$150), for each reinspection necessitated by failure of any funeral establishment to pass the first inspection. The board, or a representative of the board, shall annually conduct at least one unannounced inspection of each funeral establishment and branch, with an inspection fee of not more than one hundred dollars (\$100). The inspection fee shall be submitted to the board within 45 days after the inspection. Any funeral establishment that does not submit the inspection fee within 45 days shall be charged a late penalty fee, as established by the board. A funeral establishment, or branch thereof, that is used for the preparation, disposition, and care of dead human bodies shall meet and conform to this chapter and to such other lawful standards and requirements as may be determined by rule of the board in furtherance of this chapter; and, for failure to do so, the board may revoke the funeral establishment license in accordance with the procedure set forth in this chapter.

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

(e) Any change in ownership of a funeral establishment shall be immediately reported to the board on a form provided by the board. The new owner of the establishment shall comply with Section 34-13-112 and Section 34-13-113 and shall provide to the board a signed copy of the asset purchase agreement with dollar amounts redacted. The fee for a change of ownership application is two hundred fifty dollars (\$250).

*(Acts 1975, No. 214, p. 705, §44; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Acts 1983, No. 83-746, p. 1235, §1; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1.)*

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**Section 34-13-112**

**EMPLOYMENT OF EMBALMER OR DIRECTOR BY OTHER ESTABLISHMENTS;  
SUPERVISION AND CONTROL; LICENSING OF ESTABLISHMENT NOT TO  
LICENSE EMBALMER OR DIRECTOR.**

(a) All applications for a license to operate a funeral establishment shall show that a managing funeral director and managing embalmer are employed by the establishment. All applications for a license to operate a crematory shall show that a managing cremationist is employed by the establishment. This section shall not be construed to require a full-time licensed embalmer at each funeral establishment. No funeral establishment shall be licensed except upon the basis of employing a managing funeral director who lives within 75 miles of the funeral establishment. All embalming shall be performed under a licensed embalmer. A licensed embalmer is not restricted from working for more than one funeral establishment.

(b) No managing funeral director, based upon whose license or licenses a funeral establishment license has been issued, may serve as the regularly employed managing funeral director at another funeral establishment owned by a different person, firm, or corporation at the same time for the purpose of qualifying the other establishment under this chapter.

(c) It is declared to be the legislative intent of this chapter that every funeral establishment in this state shall be operated under the full charge, control, and supervision of a managing funeral director and a managing embalmer. This section shall not preclude an unlicensed person from being in charge of the bookkeeping or records of such an establishment. The name of the licensed person to be in charge of each funeral establishment shall be stated on the application for all licenses or renewal of the licenses.

(d) The issuance of a license to operate a funeral establishment to a person who is not individually licensed as a funeral director or embalmer does not entitle the person to practice embalming or funeral directing, as defined by this chapter, it being the intent of this chapter that such practice may be performed only through individually licensed funeral directors and embalmers; and, in addition to all other grounds for suspension of a funeral establishment license as enumerated in this chapter, a funeral establishment license shall be revoked by the board upon hearing thereon if any person, whether owner, officer, stockholder, or otherwise, who is connected with the funeral home shall perform any of the functions of a funeral director or embalmer as defined herein or shall hold himself or herself out as a funeral director.

*(Acts 1975, No. 214, p. 705, §43; Act 2017-433, §1.)*

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**Section 34-13-113**

**APPLICATION FOR LICENSE; INSPECTION OF ESTABLISHMENT; ISSUANCE OF LICENSE.**

(a) Application for a license to operate a funeral establishment shall be made in writing on a form provided by the board. The application shall be verified by the applicant or, if the applicant is a corporation, firm, or other organization, by an officer or member thereof, and shall be accompanied by an application fee established by the board not to exceed five hundred dollars (\$500) and proof of liability insurance as provided in subsection (e). The application shall disclose all of the following:

(1) The name and address of the establishment.

(2) That the establishment is operated by a managing funeral director and a managing embalmer or a person licensed both as a funeral director and embalmer.

(3) A description and photographs of the buildings, equipment, and facilities of the establishment.

(4) That the establishment has a sanitary, properly equipped embalming room, a room suitable for public viewing or other funeral services that is a minimum of 1,000 square feet, an office for arrangement conferences with relatives or authorized representatives, and a display room containing a stock of adult caskets and funeral supplies displayed in full size, cuts, photographs, or electronic images. At no time shall less than eight different adult full size caskets and at least one operating and properly licensed funeral coach or hearse equipped for transporting human remains in a casket or urn be on the premises. A funeral establishment, that has more than one location under the same ownership wherein the profession of funeral directing is practiced, is not required to maintain more than one preparation room upon satisfying requirements prescribed by the board.

(5) Such other information as may be required by the board.

(b) Upon receipt of the application, the board shall make inspection of the funeral establishment. If the board determines that the establishment meets the qualifications prescribed by law, it shall issue a license to operate a funeral establishment.

(c) Application for a license to operate a mortuary service shall be made in writing on a form provided by the board. The application shall be verified by the applicant or, if the applicant is a corporation, firm, or other organization, by an officer or member thereof, and shall be accompanied by an application fee established by the board not to exceed five hundred dollars (\$500) and proof of liability insurance as provided in subsection (e). The application shall disclose all of the following:

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- (1) The name and address of the proposed mortuary service.
- (2) That the mortuary service applicant is operated by a licensed embalmer or a person licensed both as a funeral director and embalmer.
- (3) A description and photographs of the buildings, equipment, and facilities of the mortuary service applicant.
- (4) That the mortuary service applicant has a sanitary, properly equipped embalming room.
- (5) Such other information as may be required by the board.

(d) Upon receipt of the application, the board shall make inspection of the premises of the mortuary service applicant. If the board determines that the mortuary service applicant meets the qualifications prescribed by law, the board shall issue a license to operate a mortuary service.

(e) Commencing on October 1, 2023, each application for license to operate a funeral establishment or to operate a mortuary service shall include proof of general liability insurance in an amount of at least one million dollars (\$1,000,000). Upon request of the board, proof of continuing coverage shall also be provided for the renewal of either license.

*(Acts 1975, No. 214, p. 705, §41; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Act 2011-623, p. 1439, §1; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2022-339.)*

### **Section 34-13-114**

#### **REISSUING LICENSE UPON CHANGE OF NAME.**

(a) An operator of a funeral establishment licensed under subsections (a) and (b) of Section 34-13-113 who desires to change the name of the establishment may have his or her license reissued, in the changed name, upon application to the board and payment of a fee not exceeding seventy-five dollars (\$75).

(b) An operator of a mortuary service licensed under subsections (c) and (d) of Section 34-13-113 who desires to change the name of the mortuary service may have his or her license reissued, in the changed name, upon application to the board and payment of a fee set by the board.

*(Acts 1975, No. 214, p. 705, §23; Act 2011-623, p. 1439, §1.)*

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**Section 34-13-115**

**REVOCAION, SUSPENSION, OR REFUSAL TO RENEW LICENSE.**

(a) The board may revoke, suspend, place on probation, or refuse to renew a license issued to an operator of a funeral establishment or mortuary service as provided in this chapter.

(b) If, upon a complaint made to the board or otherwise, the board has reason to believe that the operator of a funeral establishment or mortuary service has failed to comply with this chapter or the rules of the board, the board shall conduct an investigation. If it appears to the board that there is reasonable ground to believe that the operator has failed so to comply, the board shall conduct a hearing on the matter. Notice of the time and place of the hearing, setting forth the respects in which failure to comply is charged, shall be sent to the operator no later than 15 days prior to the date set for the hearing. The operator may have the assistance of counsel at the hearing.

(c) If the board finds that the operator has failed to comply with this chapter or the rule of the board, the board may revoke, suspend, or refuse to renew the license.

*(Acts 1975, No. 214, p. 705, §33; Act 2011-623, p. 1439, §1; Act 2017-433, §1.)*

**Section 34-13-116**

**PENALTY FOR FAILURE TO REGISTER.**

Any person, firm, partnership, society, group, or corporation who has control of a funeral home, mortuary, chapel, funeral establishment, crematory, or mortuary service and fails to register same according to this chapter, upon conviction, may be fined not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each violation, and each day that the funeral home, mortuary, chapel, funeral establishment, crematory, or mortuary service is operated shall be deemed to be a separate and distinct violation of this chapter.

*(Acts 1975, No. 214, p. 705, §42; Act 2011-623, p. 1439, §1; Act 2017-433, §1.)*

**Section 34-13-117**

**DISPOSITION OF REMAINS.**

Disposition of human remains shall occur within 48 hours after the time of death or the time the body is released by the coroner or a medical examiner, unless the body has been embalmed by a licensed embalmer in this state, with permission from the authorizing agent, or the body is kept under refrigeration. No public viewing of un-embalmed bodies shall be permitted 24 hours after death has occurred. Nothing in this section shall prevent a licensed establishment from requiring identification before disposition.

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*(Act 2017-433, §2.)*

**Division 4A.**

**CREMATION SERVICES**

**Section 34-13-120**

**LICENSE REQUIRED; CREMATORY REQUIREMENTS; APPLICATION AND INSPECTION; RECORDS; VIOLATIONS; RULEMAKING AUTHORITY.**

(a) No person, firm, corporation, association, entity, or funeral establishment, or branch thereof, may operate a crematory for the purpose of cremating dead human bodies, unless licensed by the board as a funeral establishment and the crematory being registered with the board and inspected by the board before any cremations of human remains are performed.

(b) A crematory shall satisfy all of the following requirements and have the following minimum equipment, facilities, and personnel:

(1) Registered with the board.

(2) Inspected by the board before performing any cremations.

(3) Fixed on the premises of a funeral establishment. For the purposes of this subdivision, fixed means permanently attached to the real property where the establishment is situated.

(4) Owned by the same individual, partnership, or corporation as the funeral establishment.

(5) Under the full charge and supervision of a managing cremationist who is licensed by the board as both a funeral director and cremationist and listed on the application as the managing cremationist. No managing cremationist may serve as the regularly employed managing cremationist at another crematory which is owned by a different person, firm, or corporation at the same time for the purpose of qualifying the other crematory under this chapter.

(6) Subject to all local, state, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the board, the Alabama Department of Public Health, the Environmental Protection Agency, the Alabama Department of Environmental Management, and other appropriate local, state, or federal agencies.

(7) Have a holding room within the crematory facility designated for the retention of human remains before and after cremation.



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(8) Have at least one of each of the following:

- a. An operable refrigeration unit for the storage of human remains.
- b. An operable cremation chamber for the cremation of human remains.
- c. An operable processor for reducing identifiable bone fragments.
- d. An operable ventilation unit in conjunction with the processor.
- e. A hand washing sink with hot and cold running water.

(9) Have all other necessary equipment and supplies, in working condition, needed to complete the cremation process.

(10) Have nonporous floors in the holding room, refrigeration unit, and around the cremation chamber.

(11) Maintained in a clean, orderly, and sanitary manner.

(c) The application to operate a crematory shall be made in writing on a form prescribed by the board. The application shall be verified by the applicant or, if the applicant is a corporation, firm, or other organization, by an officer or member thereof, and shall be accompanied by an initial application fee established by the board not to exceed five hundred dollars (\$500)

(d) Upon receipt of the application, the board shall make inspection of the crematory. No crematory shall operate unless the crematory facility and funeral establishment have been inspected and approved as meeting all requirements of this chapter and rules of the board.

(e) Each funeral establishment and crematory which performs cremations shall maintain the following records:

- (1) A cremation log containing any information required by the board.
- (2) A copy of the cremation authorization form and the state identification form.
- (3) A copy of the affidavit attesting to each cremation performed and, if the cremation is performed for another funeral establishment or entity, the identity of that funeral establishment or entity.

(f) The board shall inspect the records and premises of any funeral establishment operating a crematory. In making inspections, the board shall have access to all records, the crematory building, the cremation chambers, and the holding room for human remains before and after cremation. No prior notification of the inspection is required to be given to the funeral

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establishment. If any funeral establishment performing cremation services fails to allow an inspection or any part thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee, as the board may deem reasonable and necessary to the extent of the law. The board shall conduct annually at least one unannounced inspection of each licensed funeral establishment performing cremation services.

(g) Each funeral establishment performing cremation services shall keep records as required by the board to assure compliance with all laws relating to the disposition of human remains, and shall file annually with the board on October 1 a cremation report in the form prescribed by the board, describing the operations of the licensee, including the number of cremations, the disposition thereof, and any other information the board may require. Records required by the board shall be kept for four years by the funeral establishment.

(h) Each funeral establishment performing cremations shall maintain and submit a copy of the service, maintenance, or inspection reports of work completed or performed on the cremation chamber to the board within 30 days after completion.

(i) A funeral establishment or branch thereof, that has a crematory for cremating dead human remains shall at all times comply with this chapter and any board rule adopted pursuant to this chapter. Failure to comply, as determined by the board, may result in the revocation of the license of the funeral establishment, or branch thereof, pursuant to this chapter.

(j) The board shall adopt and enforce rules as reasonable and necessary for the operation of crematories in the state and to protect the health, welfare, and safety of the people of this state.

(k) A crematory facility licensed by the board may be used only for the cremation of human remains.

(l) A funeral establishment or crematory operating in the state before October 1, 2017, shall file with the board all new forms as required by this section, and shall be exempt from any new crematory facility requirements of this chapter that become effective on August 1, 2017. If major structural renovations are made to the crematory facility, the cremation chamber is relocated, or the funeral establishment is closed and reopened, the affected crematory facility shall satisfy all requirements relating to crematory facilities as provided in this chapter. Each cremationist licensed by the board on August 1, 2017, shall have until October 1, 2018, to satisfy the requirements of Section 34-13-120.01.

*(Act 2002-239, p. 498, §3; Act 2011-623, p. 1439, §1; Act 2017-433, §1.)*

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**Section 34-13-120.1**

**LICENSE REQUIREMENTS; CERTIFICATION.**

No person may conduct, maintain, manage, or operate a cremation facility unless licensed to do so by the board. The board may issue a license to practice as a cremationist after the applicant has satisfied all of the following requirements:

- (1) Is at least 21 years of age.
  - (2) Is a citizen of the United States or legally present in this state.
  - (3) Is a high school graduate or the equivalent.
  - (4) Has successfully completed a crematory operator training course approved by the board.
  - (5) Has completed a course in universal precaution and blood-borne pathogens approved by the board.
  - (6) Has submitted a completed application and supporting documents, as required by the board, and a fee established by the board that does not exceed three hundred dollars (\$300).
  - (7) Has successfully completed an examination on Alabama funeral service laws and rules.
  - (8) Has submitted to the board a form, sworn to by the applicant, that contains the name, date of birth, and Social Security number of the applicant, and two complete sets of fingerprints, for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history record check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history record check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received pursuant to this subsection confidential, except that information received and relied upon in denying the issuance of a cremationist license may be disclosed if necessary to support the denial.
- (b) Each new employee of a crematory required to be licensed under this section shall be certified within one year after his or her employment. A copy of all certified cremationist certificates shall be posted in the crematory and available for inspection at any time.
- (c) Each funeral establishment performing cremation shall certify by affidavit to the board that each cremationist conducting cremations at the funeral establishment has satisfied all requirements of this chapter to be licensed as a cremationist and received adequate and appropriate training or experience in the practice of cremation.

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*(Act 2017-433, §2.)*

**Section 34-13-121**

**CREMATION PROCEDURES; AUTHORIZATION; IDENTIFICATION OF REMAINS; RECORDS.**

(a) Human remains shall not be cremated under either of the following circumstances:

(1) Within 24 hours after the time of death, unless death was a result of an infectious, contagious, or communicable disease and unless the disease is verified and the time requirement waived by a medical examiner, county health director, county coroner, or attending physician where the death occurred.

(2) Without a completed cremation authorization form approved by the board and signed by the authorizing agent and a completed state identification form. A copy of the cremation authorization shall be presented with the body to the crematory before any cremation process may be initiated.

(b) All cremations of human remains performed in this state shall be arranged through a funeral establishment licensed by the board pursuant to this chapter.

(c) Whenever a crematory is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the human remains shall be placed and kept in refrigeration in accordance with this chapter.

(d) A crematory may not accept human remains from another funeral establishment without all of the following:

(1) The remains shall be accompanied by a completed cremation authorization form signed by an authorizing agent.

(2) A state identification form with the signature of the releasing party.

(3) An undetachable ankle bracelet identifying the remains.

(4) The remains shall be delivered or immediately placed in a combustible cremation container marked with identifying information of the human remains contained within. Human remains may not be removed from the cremation container and the cremation container shall be cremated with the human remains, unless the cremation container is metal and the authorizing agent has been informed in writing that the crematory does not cremate metal containers.

(e) A cremation container shall be all of the following:

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- a. Composed of readily combustible materials suitable for cremation.
- b. Able to be closed in order to provide a complete covering for the human remains.
- c. Resistant to leakage or spillage.
- d. Rigid enough for handling with ease.
- e. Able to provide protection for the health, safety, and personal integrity of crematory personnel.
- f. Equipped with a covering that clearly identifies the name and date of death of the decedent.

(f) It shall be disclosed to the family member serving as the authorizing agent that he or she, or his or her designee, may witness the transportation of the human remains to be cremated to the crematory. Every funeral establishment performing cremation services that prohibits relatives or the responsible party from viewing the cremation process shall disclose this fact in writing to the person or persons entitled to custody of the remains prior to the signing of any contract.

(g) An authorizing agent has the duty to inform the funeral director of the presence of a pacemaker or other potentially hazardous implant, including any toxic or explosive-type sealed implants in the human remains. The funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory. Should the cremationist discover the presence of a pacemaker or other hazardous implants in the human remains, the cremationist shall arrange for the removal of the pacemaker or other hazardous implant.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber, without the prior written consent of the authorizing agent, is prohibited. Any funeral establishment performing cremations in accordance with this chapter may cremate only dead human remains.

(i) Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber and placed in a separate container and may not be commingled with cremated remains of another person nor shall cremated remains of a dead human be divided or separated without the prior written consent of the authorizing agent.

(j) Each funeral establishment and crematory which offers or performs cremations shall complete a state identification form. The form shall accompany the human remains in all phases of transportation, cremation, and return of cremated remains. All human remains to be cremated shall have the state identification form and a undetachable ankle bracelet identifying the remains.

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(k) Upon completion of the cremation process, the cremationist shall attest to the identity of the cremated remains and the date, time, and place the cremation process occurred on a form prescribed by the board.

(l) Each crematory shall maintain the internal identification system prescribed by the board to ensure the ability to identify the human remains in the possession of the crematory throughout all phases of the cremation process. Upon completion of the cremation process, a copy of the state identification form shall be issued to the family certifying the identity of the cremated remains being issued to the family or funeral establishment.

*(Act 2002-239, p. 498, §3; Act 2017-433, §1.)*

**Section 34-13-122**

**DISPOSITION OF CREMATED REMAINS.**

(a) The authorizing agent shall provide a signed statement to the funeral establishment handling the cremation arrangements specifying the ultimate disposition of the cremated remains. A copy of this statement shall be retained by the funeral establishment for a period of five years.

(b) Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

(c) The authorizing agent is responsible for the disposition of the cremated remains. If, after 60 days from the date of cremation, the authorizing agent or his or her representative has not specified the ultimate disposition or claimed the cremated remains, the funeral establishment or entity in possession of the cremated remains may dispose of the cremated remains in a dignified and humane manner and in accordance with any state, county, or municipal laws or provisions regarding the disposal of cremated remains. For purposes of this section, a dignified and humane manner of disposition includes, but is not limited to, placement in an appropriate mausoleum, crypt, vault, columbarium niche, or inground site. A record of this disposition shall be maintained by the entity making the disposition for a period of five years. Upon disposing of cremated remains in accordance with this section, the funeral establishment or entity in possession of the cremated remains shall be discharged from any legal obligation or liability concerning the cremated remains.

(d) Before the disposition of unclaimed cremated remains, the funeral establishment shall use best efforts to determine whether the remains belong to a United States military veteran who is eligible for burial in a veterans cemetery. For this purpose, the funeral establishment is authorized to disclose identifying information to the United States Department of Veterans Affairs, the Alabama Department of Veterans Affairs, or to a veterans service organization or a nonprofit organization approved by the Alabama Department of Veterans Affairs.

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(e) The remains of an eligible veteran may be transported to a state or national veterans cemetery for interment or released for interment to a veterans service organization or a nonprofit organization approved by the Alabama Department of Veterans Affairs.

(Act 2002-239, p. 498, §3; Act 2023-491, §1.)

**Section 34-13-123**

**VIOLATIONS**

The board may refuse to grant, refuse to renew, suspend, or revoke the license of, or fine a cremationist or crematory, after proper hearing and notice is provided to the licensee, upon the board finding the licensee is guilty of any of the following:

- (1) Any violation of this chapter or order or rule of the board.
- (2) The performance of a cremation service by a person who is not licensed as a cremationist and who has not completed a training program as required by this chapter.
- (3) Operating a building or structure within this state as a crematory without being licensed under this chapter.
- (4) Violating any cremation procedure required by this chapter or rule of the board.
- (5) Performing a cremation without receipt of a cremation authorization form signed by the authorizing agent.
- (6) Signing a cremation authorization form with the actual knowledge that the form contains false or incorrect information.
- (7) Accepting human remains from another funeral establishment without a completed cremation authorization form signed by the authorizing agent, a state identification form with the signature of the releasing party, and an undetachable ankle bracelet identifying the remains.
- (8) Failure to maintain the internal identification system as required by the board.
- (9) Failure to maintain identifying paperwork with the appropriate signatures.
- (10) Failure to file an annual cremation report in the form required by the board.
- (11) Failure to maintain a current cremation log.

(Act 2017-433, §2.)

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**Division 5.**

**APPRENTICES**

**Section 34-13-130**

**APPRENTICE REQUIREMENTS; APPLICATION; COURSE OF APPRENTICESHIP.**

(a) Every person desiring to engage as an apprentice shall satisfy all of the following:

(1) Make application as a funeral director's apprentice or an embalmer's apprentice to the board upon a form provided by the board. The applicant shall submit to the board a form, sworn to by the applicant, that contains the name, date of birth, and Social Security number of the applicant, and two complete sets of fingerprints, for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history record check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history record check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received pursuant to this subsection confidential, except that information received and relied upon in denying the issuance of an apprentice certification may be disclosed if necessary to support the denial.

(2) Be over the age of 18.

(3) Hold a high school certificate or the equivalent.

(4) Be of good moral character.

(b) Each application shall be verified by the oath of the applicant and be accompanied by a fee to be established by the board, not to exceed fifty dollars (\$50).

(c) The executive director, whenever it appears to him or her that no reason exists for the denial of an application and that the application is regular upon its face, may issue to the applicant a certificate of apprenticeship, without submitting the application to the board. If, however, any doubt exists as to the qualifications of the applicant, the application shall be submitted to the board and may be accepted or rejected by a majority of the board.

(d) The course of an apprenticeship shall be in accordance with this chapter or prescribed by rule of the board and performed in Alabama under the supervision of a funeral director or embalmer, respectively, licensed by the board.

*(Acts 1975, No. 214, p. 705, §26; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Act 2011-623, p. 1439, §1; Act 2017-433, §1; Act 2022-339, §1.)*



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**Section 34-13-131**

**ANNUAL RENEWAL OF CERTIFICATE.**

- (a) A certificate of apprenticeship issued in accordance with renewed annually in accordance with Section 34-13-53.
- (b) (1) If an apprentice fails to renew their apprentice certification in accordance with this chapter, the certification may be reinstated with application for reactivation, payment of all fees and penalties, and approval by the board within a period prescribed by the board.  
  
(2) Only one course of apprenticeship shall be allowed, and not more than two reactivations shall be granted by the board during the course of the apprenticeship.  
  
(3) The board may allow an apprentice credit under a reactivation for time served under a previous certificate.

*(Acts 1975, No. 214, p. 705, §27; Acts 1981, No. 81-200, p. 234, §4; Acts 1981, No. 81-709, p. 1190, §1; Act 2017-433, §1; Act 2022-339, §1.)*

**Section 34-13-132**

**ANNUAL REPORT OF APPRENTICES.**

All apprentices registered as provided in this chapter shall be under the supervision and control of the board and shall include with their annual renewal case reports, an annual report and skills evaluation on a form prescribed by the board. The information contained in the report shall be certified to as correct by the funeral director or embalmer by whom the apprentice has been employed during his or her apprenticeship period.

*(Acts 1975, No. 214, p. 705, §28; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2022-339, §1.)*

**Section 34-13-133**

**LEAVE OF ABSENCE.**

The board has power to grant leaves of absence and to grant extensions thereof to apprentices registered under the provisions of this chapter. However, no credit shall be given to an apprentice upon his or her apprenticeship for the period during which he or she is absent from duty on leave, and no more than an aggregate of 12 months' leave of absence shall be granted to any apprentice during the term of his or her apprenticeship. Application for leave of absence and for extension thereof shall be made by the apprentice upon a form provided by and addressed to the board. Upon the termination of a leave of absence or any extension thereof, the apprentice shall report to the board the fact that he or she has resumed his or her duties as an apprentice and certified to by the funeral director under whom he or she has resumed his or her duties or by the embalmer under

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whom he or she is apprenticed, confirming this fact. Failure to so report within 30 days after the expiration date of any leave of absence or extension thereof shall automatically cancel the registration of the apprentice.

*(Acts 1975, No. 214, p. 705, §29.)*

**Section 34-13-134**

**Grounds for suspension, revocation, etc., of certificates; reactivation.**

The board has power to suspend, revoke, or place on probation a certificate of apprenticeship where the apprentice is guilty of any of the following acts or omissions:

- (1) Failure to devote not less than an average of 30 hours per week to the duties of his or her apprenticeship.
- (2) Failure to make an annual report to the board as required by this chapter.
- (3) Absence from duty except on vacation for an aggregate of more than 10 days in any six months or 20 days in any year, without leave of absence granted by the board.
- (4) Gross immorality.
- (5) Being on duty as an apprentice while under the influence of liquor or illegal drugs.
- (6) Disobedience of proper orders or instructions of his or her superiors.
- (7) Violation of this chapter or any rule of the board adopted pursuant to this chapter.
- (8) Soliciting business for a funeral director or for any embalmer.
- (9) Fraud or misrepresentation in obtaining a certificate as an apprentice.

*(Acts 1975, No. 214, p. 705, §30; Act 2014-125, p. 206, §1; Act 2017-433, §1; Act 2022-339, §1.)*

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**ARTICLE 4**  
**DONOR EYE ENUCLEATION LICENSES.**

**SECTION 34-13-150**

**ISSUANCE.**

Repealed by Act 2011-623, p. 1439, §2, effective October 1, 2011.

(Acts 1976, No. 586, p. 798, §1.)

**SECTION 34-13-151**

**PROMULGATION OF STANDARDS, PROCEDURES, REGULATIONS, ETC., BY  
BOARD OF FUNERAL SERVICE.**

Repealed by Act 2011-623, p. 1439, §2, effective October 1, 2011.

(Acts 1976, No. 586, p. 798, §§2, 4.)

**SECTION 34-13-152**

**COMPLIANCE BY LICENSEE WITH UNIFORM ANATOMICAL GIFT ACT.**

Repealed by Act 2011-623, p. 1439, §2, effective October 1, 2011.

(Acts 1976, No. 586, p. 798, §3.)

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**ARTICLE 5**

**ALABAMA PRENEED FUNERAL AND CEMETERY ACT OF 2023.**

**DIVISION 1**

**GENERAL PROVISIONS.**

**SECTION 34-13-170**

**SHORT TITLE.**

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

(b)(1) The Alabama Board of Funeral Services succeeds to and is vested with the powers, duties, and functions of the Department of Insurance relating to the regulation of endowment care, preneed sales contracts, and the licensing of preneed sales agents.

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

(3) The status of any person properly licensed by the Department of Insurance under the former Chapter 17A of Title 27, on the October 1, 2023, shall continue under the board.

(4) The administrative rules of the Department of Insurance existing on the October 1, 2023, shall remain in effect as administrative rules of the board until added, amended, or repealed by the board.

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

(6) The transfer of the regulation of preneed contracts and the licensing of preneed sales agents from the Department of Insurance to the board shall not affect the rights of any person held before the October 1, 2023, as those rights relate to any preneed trust funds, endowment care trust funds, or any other funds held in trust pursuant to the Alabama Preneed Funeral and Cemetery Act.

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(Act 2002-74, p. 221, §1; Act 2023-94, §3.)

**SECTION 34-13-171**

**FUNDING OF PRENEED CONTRACTS; PREMIUM PAYMENTS; COMMISSIONS;  
PRENEED SELLER AS BENEFICIARY OR ASSIGNEE.**

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

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

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

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §1; Act 2023-94, §3.)

**SECTION 34-13-172**

**SALE OF FUNERAL MERCHANDISE, ETC.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §3.)

**DIVISION 2**

**CERTIFICATE OF AUTHORITY.**

**SECTION 34-13-190**

**CERTIFICATE REQUIRED.**

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

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

(2) Any preneed transaction in which a buyer pays to the seller before need, in whole or in part, a purchase price for funeral or cemetery merchandise and services, and in which the seller is not obligated to deliver the contracted for merchandise or to perform the services until need, in whole or in part, shall be evidenced by a written preneed contract satisfying the requirements of this chapter and signed by the seller and the purchaser. No person may receive or accept any form of consideration in such a transaction without a fully signed written preneed contract. A transaction not evidenced by a signed written preneed contract shall be voidable at the election of the buyer and, if such election is made, the seller shall refund to the buyer the entire amount paid by the buyer together with interest thereon at the legal rate within 30 days after notice to the seller.

(3) The provisions of subdivision (1) do not apply to the purchase of a life insurance policy or annuity, the benefits of which are assigned to a funeral home or cemetery authority, or the benefits of which are to be paid to a funeral home or cemetery authority named as beneficiary of the policy or annuity, as long as the purchaser and funeral home or cemetery authority acknowledge in writing that no preneed contract is entered as a result of the purchase or assignment of the life insurance policy or annuity at the time the policy or annuity is purchased. Benefits from a life insurance policy or annuity issued under this subdivision shall only be paid to a funeral home or cemetery authority that provides funeral or cemetery merchandise and services at the death of the insured whether or not the funeral home or cemetery has been named as an assignee or the beneficiary of the policy or annuity. If the amount of the policy or annuity proceeds exceeds the actual funeral costs at the time of need, the excess amount shall be paid to a designated beneficiary, other than a funeral home or cemetery authority, or to the estate of the insured or annuitant.

(4) Subdivision (1) does not apply to any legal reserve insurance company or to any trust company or to any national or state bank or savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

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(c)(1) No person may obtain a certificate of authority under this chapter for the preneed sale of funeral services or cemetery services unless the person or its agent, in the case of a corporate entity, holds a license as a funeral director or a funeral establishment, or is a cemetery authority and qualifies as an applicant for a certificate of authority pursuant to all of the following standards and qualifications:

- a. The applicant shall be at least the legal age of majority in this state.
- b. The applicant shall be in good standing with the board.
- c. The applicant may not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter or a crime involving moral turpitude, as defined by this chapter.
- d. The applicant shall be of good moral character and submit to a criminal history background check pursuant to subdivision (2).

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

(d) This section does not apply to a cemetery authority owned or operated by a governmental agency or a religious institution or to those cemeteries that do not charge fees or sell plots, interment rights, or any related cemetery merchandise.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §1; Act 2023-94, §5.)

**SECTION 34-13-191**

**APPLICATION FOR CERTIFICATE; STATEMENTS; ISSUANCE; EXPIRATION; TRANSFER.**

(a) An application to the board for a certificate of authority shall be accompanied by the statement and other matters described in this section in the form prescribed by the board.

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Annually thereafter, or within an extension of time therefor, as the board for good cause may grant, the person authorized to engage in the sale of preneed contracts shall file with the board a full and true statement of his or her financial condition, transactions, and affairs, prepared on a basis as adopted by a rule of the board, as of the preceding fiscal period or at such other time or times as the board may provide by rule, together with information and data which may be required by the board.

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

- (1) The types of preneed contracts proposed to be written and the type of funding vehicles to be used.
- (2) The name and address of the place of business of the person offering to write preneed contracts.
- (3) Evidence that the person offering the statement has all the following qualifications:
  - a. Has the ability to discharge his or her preneed liabilities as they become due in the normal course of business and has sufficient funds available during the calendar year to perform his or her obligations under the contract.
  - b. Has complied with the trust requirements for the funds received under contracts issued by himself or herself as hereinafter described.
  - c. Has disbursed interest, dividends, or accretions earned by trust funds, in accordance with this chapter and rules adopted hereunder.
  - d. Has complied with this chapter and any rules of the board.
- (4) Any other information considered necessary by the board to meet the board's responsibilities under this chapter.

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

(d)(1) An application to the board for an initial certificate of authority shall be accompanied by an application fee in an amount to be determined by the board, not to exceed one hundred ninety-eight dollars (\$198). Thereafter, each annual application for renewal of a certificate of authority shall be accompanied by the appropriate fee as determined by the board not to exceed ninety-nine dollars (\$99).

- (2) Any person or entity that is part of a common business enterprise that has a certificate of authority issued pursuant to this chapter and elects to operate under a name other than that of the common business enterprise shall submit an application on a form prescribed by the board to become a branch registrant. Upon the approval of the board that the entity qualifies to sell preneed contracts under this chapter except for the requirements of paragraph a. of subdivision (3) of subsection (b) and if the certificate holder meets the



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requirements of paragraph a., a branch registration shall be issued. Each branch registrant may operate under the certificate of authority of the common business enterprise upon the payment of a fee established by the board not to exceed one hundred ninety-eight dollars (\$198) accompanying the application on September 1 annually.

(e) Upon the board being satisfied that the statement and matters that accompany the statement meet the requirements of this chapter and of its rules, the board shall issue or renew the certificate of authority.

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

(g) On or before a date adopted by the board each year, the certificate holder shall file with the board in the form prescribed by the board a full and true statement as to the activities of any trust established by it pursuant to this chapter for the preceding calendar year.

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

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

(1) No valid complaint has been filed since the last audit.

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

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

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

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

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(6) The preneed entity agrees to file reports of its preneed activity on a form, in a format, and as often as prescribed by the board.

(j) The board may authorize the transfer of certificates of authority and establish fees for the transfer in an amount not to exceed one hundred thirty-two dollars (\$132). Upon receipt of an application for transfer, the board may grant a temporary certificate of authority to the proposed transferee, based upon criteria established by the board by rule, which criteria shall promote the purposes of this chapter in protecting the consumer. A temporary certificate of authority shall expire 60 days after issuance unless renewed by the board.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §1; Act 2023-94, §5.)

**SECTION 34-13-192**

**REPORT OF PRENEED CONTRACT ACTIVITY; WRITTEN LOGS.**

(a) On or before July 1, each year, the certificate holder shall file a report of its preneed contract activity on a form or in a format prescribed by the board. The information reported shall include the total number of preneed contracts in force at the end of the previous calendar year, the total number of preneed contracts sold during the previous calendar year, the total number of preneed contracts fulfilled during the previous calendar year, the total number of preneed contracts in force at the end of the previous calendar year, and such other information as may be required by the board. The report shall be organized by type of funding, including life insurance, annuity, trust, letter of credit, or surety bond. The report shall also provide a certification by the trustee of the amount of assets held by the trust at the beginning of the reporting period and at the end of the reporting period, together with the amount of deposits and withdrawals during the reporting period. If a certificate holder twice defaults in complying with the requirements of this subsection, the board may require that the certificate holder thereafter submit the report within 45 days after the end of each calendar quarter and shall continue so reporting for a time to be determined by the board.

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

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

(d) The board may maintain a statewide database of preneed contracts reported to the board pursuant to subsection (a). The board may make information in this database searchable by the public by means of unique identifiers, or any other means, that the board determines respects the privacy of those involved while also protecting consumers from financial waste by allowing

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families to determine if a deceased loved one has an existing preneed contract. Any preneed consumer who does not wish for his or her information to appear in this searchable database may opt out by following a process established by the board.

(Act 2014-216, p. 653, §2; Act 2023-192, §5.)

**SECTION 34-13-193**

**PRENEED CONTRACT FORMS; DISCLOSURE; APPROVAL.**

- (a) Preneed contract forms and related forms shall be filed with and approved by the board.
- (b) Specific disclosure regarding whether, consistent with the requirements of this chapter, the certificate holder is placing certain preneed funds received with the contract in trust, in an annuity, or in insurance, is required in the preneed contract.
- (c) Preneed contracts that have been submitted to the board shall be deemed to have been approved by the board in the event that the board fails to notify the certificate holder that approval has been denied within 30 days following submission to the board.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

**SECTION 34-13-194**

**MONIES TO BE PLACED IN TRUST; COMPLIANCE BY PRE-EXISTING PRENEED CONTRACTS.**

- (a) Except as provided in Sections 34-13-171 and 34-13-195, every preneed contract shall require the monies paid to the seller or trustee to be placed in trust in accordance with Division 3, for funeral merchandise and services sold by funeral establishments or third party sellers, or Division 4, for cemetery merchandise and services sold by cemetery authorities.
- (b) Although this chapter does not apply to preneed contracts entered into prior to May 1, 2002, a preneed provider that contends that a preneed trust fund that was in effect prior to May 1, 2002, complies with this chapter with respect to the contracts entered into prior to May 1, 2002, may provide to the board documentary proof thereof. Upon the board determining that compliance has been established, the pre-existing preneed trust fund assets may be merged with or into the trust fund required under this chapter or continued as the trust fund, and that determination by the board shall be noted on the certificate of authority, and thereafter all preneed contracts covered by the trust fund, including those entered into prior to May 1, 2002, shall be subject to this chapter.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

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**SECTION 34-13-195**

**SURETY BOND.**

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

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

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

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

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

(f) No surety bond used to comply with this section shall be canceled or subject to cancellation unless at least 60 days' advance notice thereof, in writing, is filed with the board by the surety company. The cancellation of the bond shall not relieve the obligation of the surety company for claims arising out of contracts issued or otherwise covered before cancellation of the bond. In the event that notice of termination of the bond is filed with the board, the certificate holder insured thereunder, within 30 days of the filing of the notice of termination with the board, shall provide the board with a replacement bond or with evidence that is satisfactory to the board demonstrating that this chapter has been fully complied with. If within 30 days of filing of the notice of termination with the board no replacement bond acceptable to the board or no evidence satisfactory to the board demonstrating that this chapter has been complied with is filed with the

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board, the board shall suspend the license of the certificate holder until the certificate holder files a replacement bond acceptable to the board or demonstrates to the satisfaction of the board that it has complied with this chapter.

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

**SECTION 34-13-196**

**EXAMINATION BY COMMISSIONER.**

(a) The board, as often as deemed necessary, shall examine the business of any person writing, or holding himself or herself out to be writing, preneed contracts under this chapter to the extent applicable. The examination shall be made by designated representatives employed or contracted by the board.

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

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

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

(e) The person examined shall pay the examination expenses, travel expense, and per diem subsistence allowance provided for examiners and incurred by the board's representatives or examiners in connection with an examination as prescribed by rule of the board.

(f) Whenever any special examination of the premises, facilities, books, or records of a licensee is necessary based on the failure of the licensee to comply with this chapter or rule adopted by the board, the board shall charge a fee based on the cost of the special examination, including, but not limited to, the prorated compensation of board employees involved in the special examination and any expenses incurred.

(g) If the board finds that a certificate of authority holder or licensee has failed to operate in accordance with this chapter and, by his or her action, has created a deficit of preneed funds entrusted to him or her by the consumer, the board may do any of the following:

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- (1) Bring an action for injunctive relief against the responsible licensee or the holder of the certificate of authority in the Circuit Court of Montgomery County.
- (2) Issue an emergency suspension of all licenses held by the holder of the certificate of authority, and its associated personnel, in accordance with the Administrative Procedure Act.
- (3) Take any other disciplinary action authorized by this chapter.

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

**SECTION 34-13-197**

**INACTIVE CERTIFICATE HOLDER; SURRENDER OF LICENSE.**

- (a) A certificate holder shall be considered inactive upon the acceptance of the surrender of its license by the board or upon the nonreceipt by the board of the certificate of authority renewal application and fees.
- (b) A certificate holder shall cease all preneed sales to the public upon becoming inactive. The certificate holder shall collect and deposit into trust all of the funds paid toward preneed contracts sold prior to becoming inactive.
- (c) Any certificate holder desiring to surrender its license to the board shall first do all of the following:
  - (1) File notice with the board.
  - (2) Submit copies of its existing trust agreements.
  - (3) Submit a sample copy of each type of preneed contract sold.
  - (4) Resolve to the satisfaction of the board all findings and violations resulting from the last examination conducted.
  - (5) Pay all outstanding fines and invoices due the board.
  - (6) Submit its current certificate of authority.
- (d) Upon receipt of the notice, the board shall review the certificate holder's trust funds, trust agreements, and evidence of all outstanding preneed contracts.
- (e) After a review to the satisfaction of the board, the board shall terminate the certificate of authority by an order that shall set forth the conditions of termination established by the board to ensure that the preneed funds will be available for their intended purpose.

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

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

(h) Other terms of revocation or suspension ordered pursuant to this chapter may apply.

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

**SECTION 34-13-198**

**DISSOLUTION OR LIQUIDATION OF CERTIFICATE HOLDER.**

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

(1) The certificate holder is impaired or insolvent.

(2) The certificate holder has refused to submit, or has withheld, any of its books, records, accounts, or affairs to examination by the board.

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

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

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

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

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

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

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

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**SECTION 34-13-199**

**PRENEED SALES AGENT.**

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

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

(c) A certificate holder shall be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales agents who are affiliated with the certificate holder and who perform any type of preneed-related activity on behalf of the certificate holder. In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each certificate holder shall also be subject to discipline if its preneed sales agents or funeral directors acting as preneed sales agents violate this chapter.

(d) A preneed sales agent and a funeral director acting as a preneed sales agent may sell, offer, and execute preneed contracts on behalf of all properly licensed entities owned or operated by the sponsoring certificate holder.

(e) An individual may begin operating as a preneed sales agent as soon as a completed application for registration, as set forth in subsection (g), is approved by the board.

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

a. The applicant must be at least 18 years of age.

b. The applicant must be in good standing with the board.

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

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

(2) An applicant for licensure as a preneed sales agent shall submit to the board, on a form sworn to by the applicant, his or her name, date of birth, Social Security number, and two complete sets of fingerprints for completion of a criminal history background check. The board shall submit the fingerprints to the Alabama State Law Enforcement Agency for a state criminal history background check. The fingerprints shall be forwarded by the agency to the Federal Bureau of Investigation for a national criminal history background check. Costs associated with conducting a criminal history background check shall be paid by the applicant. The board shall keep information received pursuant to this subdivision confidential, except that information received and



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relied upon in denying the issuance of a certificate of authority may be disclosed if necessary to support the denial. All character information, including the information obtained through the criminal history background checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(g) An application for registration as a preneed sales agent shall be submitted to the board with an application fee determined by the board, but not to exceed thirty-three dollars (\$33), by the certificate holder in a form that has been prescribed by board rule. The application shall contain, at a minimum, all of the following:

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

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

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

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

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

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

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

(j) Upon approval of an application that complies with all of the requirements of subsection (g), the board shall register the applicant. The board, in accordance with this chapter, shall provide for annual renewal of registration upon receipt of a renewal application and a renewal fee not to exceed thirty-three dollars (\$33) as set by the board.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

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**SECTION 34-13-200**

**PROHIBITED ACTIVITIES.**

No person shall engage in this state in any trade practice which is addressed in the Alabama Deceptive Trade Practices Act Chapter 19 of Title 8, or as determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice.

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

**SECTION 34-13-201**

**HEARING; PROCEDURES; PENALTIES.**

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

(b) A statement of charges, notice, or order or other process under this chapter may be served by anyone authorized by the board. Service may be made either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy of the statement to the person affected by the statement, notice, or order or other process at the person's residence or principal office or place of business. The verified return by the person serving the statement, notice, or order or other process, setting forth the manner of the service, shall be proof of the service, and the return postcard receipt for the statement, notice, or order or other process, certified and mailed as provided in this subsection, shall be proof of service of the statement, notice, or order or other process.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

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**SECTION 34-13-202**

**FINE IN LIEU OF SUSPENSION OR REVOCATION OF CERTIFICATE.**

(a) If the board finds that one or more grounds exist for the discretionary suspension or revocation of a certificate of authority or establishment license issued under this chapter, the board, in lieu of the suspension or revocation, may impose a fine upon the certificate holder in an amount not to exceed one thousand dollars (\$1,000) for each nonwillful violation and in an amount not to exceed ten thousand dollars (\$10,000) for each willful violation.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

**SECTION 34-13-203**

**VIOLATIONS AND PENALTIES.**

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

a. Commits a Class B felony as to each contract on which the payments collected equal or exceed, in the aggregate, two thousand five hundred dollars (\$2,500).

b. Commits a Class C felony as to each contract on which the payments collected are between, in the aggregate, five hundred dollars (\$500) and two thousand five hundred dollars (\$2,500).

c. Commits a Class A misdemeanor as to each contract on which the payments collected do not exceed, in the aggregate, five hundred dollars (\$500).

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

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

a. Commits a Class B felony as to each contract on which the amount due for deposit in trust equals or exceeds, in the aggregate, two thousand five hundred dollars (\$2,500).

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

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

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

a. Commits a Class B felony if the aggregate amount withdrawn in any single transaction or series of related transactions equals or exceeds two thousand five hundred dollars (\$2,500).

b. Commits a Class C felony if the aggregate amount withdrawn in any single transaction or series of related transactions is less than two thousand five hundred dollars (\$2,500).

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

(d) A person commits a Class C felony if any of the following occur:

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

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

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

(e) Except as otherwise provided in this chapter, the willful violation of this chapter is a Class A misdemeanor.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

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**SECTION 34-13-204**

**CIVIL ACTIONS; LIABILITY.**

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

**SECTION 34-13-205**

**CONSTRUCTION OF CHAPTER.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §5.)

**SECTION 34-13-206**

**DISPOSITION OF FUNDS.**

(a) All fees collected by the board pursuant to this chapter shall be deposited into the Alabama State Funeral Services Fund.

(b) All fines collected by the board pursuant to this chapter shall be deposited into the Alabama State Funeral Services Fund.

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §5.)

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**DIVISION 3**

**FUNERAL MERCHANDISE AND SERVICES TRUST FUND.**

**SECTION 34-13-230**

**APPLICABILITY OF ARTICLE.**

To comply with the trust requirement of subsection (a) of Section 34-13-194, all certificate holders providing preneed contracts for funeral services or funeral merchandise shall be subject to this chapter.

(Act 2002-74, p. 221, §1; Act 2023-94, §7.)

**SECTION 34-13-231**

**DEPOSITS INTO TRUST; TRUSTEE RESPONSIBILITIES; INTERESTS IN FUNDS.**

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

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

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

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

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

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

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

(h) In no event may the funds be loaned to a certificate holder, an affiliate of a certificate holder, or any person directly or indirectly engaged in the burial, funeral home, or cemetery business. Furthermore, the certificate holder's interest in the trust shall not be pledged as collateral for any loans, debts, or liabilities of the certificate holder and shall not be transferred to any person without the prior written approval from the board and the trustee. Even though the certificate holder shall be deemed and treated as the settlor and beneficiary of the trust for all purposes, all of the trust funds are exempt from all claims of creditors of the certificate holder except as to the claims of the contract purchaser, his or her representative, or the board.

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §7.)

**SECTION 34-13-232**

**RIGHTS OF SELLER; POWERS AND DUTIES OF TRUSTEE.**

(a) If amounts paid by the purchaser under a preneed contract for funeral merchandise have previously been deposited in trust, the seller may withdraw the principal amount and trust appreciation attributable to the delivered item at such time as the funeral merchandise is delivered or installed or, if comprised of materials designed to withstand prolonged, protected storage without deterioration, the merchandise is placed in storage with a responsible third party bonded and insured for the wholesale value thereof and evidenced by a receipt specifically identifying the item, the specific preneed contract, the location of the item, and the identity and address of the bonding and insuring parties. For purposes of this subsection only, caskets and alternative containers may not be held in storage by the seller or a third party storage facility prior to the death of the funeral beneficiary.

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(b) The trustee shall make regular valuations of the assets it holds in trust and provide a report of the valuations to the certificate holder at least quarterly. At all times, the certificate holder must be able to determine the amount held in trust attributable to each contract holder. For all contracts effective on or after January 1, 2015, the determination shall be based upon the fair market value of the trust at the time and the proportionate share of the fair market value attributable to each contract holder. For all contracts in effect before January 1, 2015, the valuation of each contract may be calculated using any valuation method that had been previously approved by the Commissioner of the Department of Insurance or the Department of Insurance before January 1, 2015. Any person who withdraws appreciation in the value of trust, other than the pro rata portion of the appreciation which may be withdrawn upon the death of a contract's funeral beneficiary or upon cancellation of a preneed contract, shall be required to make additional deposits from his or her own funds to restore the aggregate value of assets to the value of funds deposited in trust, but excluding from the funds deposited those funds paid out upon preneed contracts that the person has fully performed or that have been otherwise withdrawn, as provided in this chapter. The certificate holder shall be liable to third parties to the extent that income from the trust is not sufficient to pay the expenses of the trust.

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

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

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

(d) Notwithstanding Section 19-3-125, the trustee, subject to compliance with the requirements set forth below, may invest any portion or all of the funds received under preneed contracts and deposited in trust in life insurance contracts or annuities issued on the lives of preneed contract purchasers or preneed contract beneficiaries, hereinafter, the insured or annuitant, without any obligation to cover at a minimum the retail amount of the preneed contract at the time of purchase of the life insurance contracts or annuities as set forth in Section 34-13-171.

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

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

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



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

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

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

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

(5) It is the intention of the Legislature that this subsection shall be retroactive and shall apply to all life insurance contracts or annuities issued prior to May 6, 2008.

(Act 2002-74, p. 221, §1; Act 2008-271, p. 393, §1; Act 2014-216, p. 653, §3; Act 2023-94, §7.)

**SECTION 34-13-233**

**RIGHTS OF PURCHASER; CANCELLATION OF CONTRACT; REVOCABILITY.**

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

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

(c) Upon breach of contract or failure of the certificate holder to provide funeral merchandise or services under a preneed contract, the contract purchaser shall be entitled to a refund of 100

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percent of all money paid on the contract. The refund shall be made within 30 days after receipt by the certificate holder of the contract purchaser's written request for refund.

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

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

(f) In the event that the preneed contract is made irrevocable pursuant to subsection (e), the authorizing agent shall have the right to appoint a provider other than the seller of the preneed contract. In the event that a provider is appointed pursuant to this subsection, the seller shall transfer to the appointed provider the amount paid by the purchaser to the seller and those amounts deposited into trust, less a reasonable transfer fee determined by the board. In the event the preneed contract was funded by an insurance or annuity policy, the seller shall cancel and relinquish any assignment of benefits or beneficiary status under the policy or annuity contract, and deliver the policy, if in the custody of the preneed seller, to the policy owner or his or her legal representative, and the seller may collect a reasonable transfer fee as determined by rule of the board. No transfer hereunder shall occur without the acceptance of the appointed provider.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §7.)

**SECTION 34-13-234**

**DISBURSEMENT OF FUNDS.**

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

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

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

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

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

(f) In the event that the preneed contract is made irrevocable pursuant to subsection (e), the authorizing agent shall have the right to appoint a provider other than the seller of the preneed contract. In the event that a provider is appointed pursuant to this subsection, the seller shall transfer to the appointed provider the amount paid by the purchaser to the seller and those amounts deposited into trust, less a reasonable transfer fee determined by the board. In the event the preneed contract was funded by an insurance or annuity policy, the seller shall cancel and relinquish any assignment of benefits or beneficiary status under the policy or annuity contract, and deliver the policy, if in the custody of the preneed seller, to the policy owner or his or her legal representative, and the seller may collect a reasonable transfer fee as determined by rule of the board. No transfer hereunder shall occur without the acceptance of the appointed provider.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §7.)

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**DIVISION 4**

**CEMETERY MERCHANDISE AND SERVICES TRUST FUND.**

**SECTION 34-13-260**

**APPLICABILITY OF ARTICLE.**

To comply with the trust requirement of subsection (a) of Section 34-13-194, all certificate holders who are cemetery authorities providing preneed contracts for cemetery services or cemetery merchandise shall be subject to this chapter.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-261**

**TRUST FUND; TRUSTEE; INTERESTS OF PURCHASER; SELLER.**

- (a) Any person who receives or collects any funds on account of a preneed contract in this state for cemetery services or cemetery merchandise, or both, entered into after May 1, 2002, shall have the obligation to pay over and contribute into a trust fund as hereinafter described, those amounts or proportions of the funds as hereinafter provided.
- (b) Whether or not the preneed contract provides for cemetery merchandise or cemetery services, or any combination thereof, the trust fund shall be referred to in this section as the Cemetery Merchandise and Services Trust Fund.
- (c) The trustee of the Cemetery Merchandise and Services Trust Fund shall be qualified as such within the definition of the trustee.
- (d) The trustee shall take title to the property conveyed to the Cemetery Merchandise and Services Trust Fund subject to this section.
- (e) The contract purchaser shall have no interest whatsoever in, or power whatsoever over, the funds deposited in the Cemetery Merchandise and Services Trust Fund.
- (f) The party contracting to deliver the cemetery merchandise or cemetery services or cash advances, whether or not a preneed provider, shall be referred to in this section as the "seller."
- (g) The seller shall be the beneficiary of the Cemetery Merchandise and Services Trust Fund.

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

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**SECTION 34-13-262**

**TRUST CONTRIBUTIONS; TRUSTEE RESPONSIBILITIES; WITHDRAWALS;  
ANALYSIS AND CERTIFICATION BY SELLER.**

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

- (1) With respect to all cemetery merchandise, 110 percent of wholesale cost.
- (2) With respect to outer burial containers, 60 percent of the purchase price specified in the preneed contract.
- (3) With respect to cemetery services, 60 percent of the purchase price specified in the preneed contract.
- (4) With respect to all cash advance items sold, 100 percent of the purchase price specified for the same in the preneed contract.
- (5) With respect to caskets, 75 percent of the purchase price.

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

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

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

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

(f) While the obligation of the seller to make contributions to the Cemetery Merchandise and Services Trust Fund is set forth in this section, the obligation of the seller at the time of making certain withdrawals from the Cemetery Merchandise and Services Trust Fund as herein provided

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shall be calculated with respect to the current wholesale cost of cemetery merchandise and current retail price of cemetery services and cash advances at the time of withdrawal. If the fair market value as reported by the trustee exceeds 110 percent of the total of the following, the seller shall be entitled to withdraw and retain from the merchandise trust fund, the excess funds therein: 110 percent of the current wholesale cost of the liability to deliver all cemetery merchandise, 60 percent of the current retail price for all cemetery services, 60 percent of the current retail price of outer burial containers, 75 percent of the current retail price of caskets, and 100 percent of the current retail price of all cash advances, for the total of all preneed contracts for which the purchasers have paid in full, all calculated as of the time of withdrawal; and concerning the total of all preneed contracts for which the purchasers have not paid in full, 25 percent of the total of the following: 110 percent of the current wholesale cost of the liability to deliver all cemetery merchandise, 60 percent of the current retail price for all cemetery services, and 100 percent of the current retail price of all cash advances, all calculated as of the time of withdrawal.

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

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-263**

**CANCELLATION OF CONTRACT; WITHDRAWAL FROM TRUST FUND.**

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

(b) At such time as the seller undertakes to perform its obligations under a preneed contract by delivery or installation, or both, of cemetery merchandise and the provision of cemetery services and disbursement on account of cash advances, or otherwise, upon certification to the trustee

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under oath by a responsible officer of the seller that the obligations of the seller under the contract have been completely fulfilled, the seller may withdraw from the Cemetery Merchandise and Services Trust Fund and retain an amount equal to the current wholesale cost to the fund with respect to the preneed contract.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-264**

**RIGHTS OF SELLER.**

If the amounts paid by the purchaser under a preneed contract for cemetery merchandise have previously been deposited in trust, the seller may withdraw the principal amount there, at the time the cemetery merchandise is delivered or installed or, if comprised of materials designed to withstand prolonged, protected storage without deterioration, at the time the merchandise is placed in storage with a responsible third party bonded and insured for the wholesale value thereof and evidenced by a receipt specifically identifying the item, the specific preneed contract, the location of the item, and the identity and address of the bonding and insuring parties. For purposes of this section only, caskets and alternative containers may not be held in storage by the seller or a third party storage facility prior to the death of the funeral beneficiary.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-265**

**ENDOWMENT CARE FUND.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

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**SECTION 34-13-266**

**ENDOWMENT CARE CEMETERIES.**

Any cemetery now existing or hereafter established, excluding those operated by governmental agencies or religious institutions, may be qualified as an endowment care cemetery, except those cemeteries that do not charge fees or sell plots, interment rights, or any related cemetery services.

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-267**

**ESTABLISHMENT AND MANAGEMENT OF ENDOWMENT CARE FUND.**

(a) Every cemetery authority operating an endowment care cemetery shall establish an endowment care fund which shall be placed with and held by a bank, trust company, savings and loan association, or other financial institution authorized to provide trust services under Title 5, as amended, or under the applicable laws of the United States or any other state, or a board of trustees, consisting of at least three members, who shall reside in the State of Alabama, one of whom is engaged in outside cemetery management, and each of whom shall be bonded to honestly perform the duties of trustee under a formal trust agreement.

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

- (1) The report is prepared by a certified public accountant authorized to practice in Alabama.
- (2) The report evidences that the review made the subject of the report by the accountant encompasses each endowment care fund for which the board of trustees acts as trustee.
- (3) The report notes relating to the endowment care fund or funds are in a form that is reasonably acceptable to the board.



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

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

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

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

(f) As often as the board may deem necessary, the board may examine the records or facilities, or both, of any cemetery authority operating an endowment care cemetery.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-268**

**MAINTENANCE OF RECORDS.**

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

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

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**SECTION 34-13-269**

**ENDOWMENT CARE FUND DEPOSITS; QUALIFICATION AS ENDOWMENT CARE CEMETERY.**

(a) From the sale price of each plot, crypt, or niche sold by the cemetery authority of an endowment care cemetery, the cemetery authority shall pay an amount, not less than as determined in accordance with the following schedule, to the trustee of the endowment care fund, which payment shall be paid over to the trustee not more than four months after the close of the month in which the total or final payment on the sale has been received:

- (1) Fifteen percent of the net sales price of each grave or lawn crypt space.
- (2) Five percent of the net sales price of each mausoleum crypt or niche.
- (3) If a cemetery authority donates or gives a free space, mausoleum, or niche, a minimum of fifty dollars (\$50) shall be paid to the endowment care fund.
- (4) The amount received for special care funds, gifts, grants, contribution devises, or bequests made with respect to the separate or special care of a particular lot, grave, crypt, niche, mausoleum, monument, or marker or that of a particular family, as distinguished from the general endowed care of a cemetery or of a garden.

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

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

- (1) Not already placed, a cemetery authority shall within 90 days of May 1, 2002, have placed the entire principal of any endowment care fund in its possession, custody, or control, into the hands of a qualified trustee designated by it, to be administered as set forth in this chapter; and principal of its endowment care fund, or the aggregate principal of its endowment care funds, if more than one, shall have a fair market value on either May 1, 2002, or on the date of transfer to the trustee of not less than twenty-five thousand dollars (\$25,000); or the cemetery authority shall substitute 25 percent for each percentage of each sale for the next five years or five thousand dollars (\$5,000) per year, whichever is greater, until the balance of twenty-five thousand dollars (\$25,000) is reached. In such case, the entire amount of twenty-five thousand dollars (\$25,000) shall be paid into the fund before the end of the fifth year, and no interest may be removed from the fund until the twenty-five thousand dollars (\$25,000) minimum has been reached.

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(2) A cemetery authority shall at all times after May 1, 2002, comply with the minimum requirements for payments to the trustee for endowment care.

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

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

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-270**

**FINANCIAL INTEREST IN ASSET OR BUSINESS IN WHICH ENDOWMENT CARE TRUST INVESTS, ETC.; DISPOSITION OF FUNDS.**

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

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

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(c) For the purposes of this section, net income does not include realized or unrealized capital gains or losses. All realized capital gains and losses shall be recorded to corpus, which is the sum of deposits made by a cemetery authority into an endowment care fund, pursuant to Section 34-13-269, and all realized capital gains or losses. Capital gains taxes, if any, may be paid from the corpus. Unrealized capital gains and losses, if any, shall be recorded as an adjustment to the fair market value of the endowment care fund.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-271**

**PROPRIETY OF EXPENDITURES; INCOME PAYMENTS TO CEMETERY AUTHORITY.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-272**

**DISCLOSURE OF ACTIVITIES AND STATEMENT OF INVESTMENTS.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-273**

**DISPOSAL OF ASSETS OR INVESTMENTS.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

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**SECTION 34-13-274**

**ANNUAL REPORT.**

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-275**

**CONSTRUCTION OF MAUSOLEUM, ETC.**

A cemetery authority shall start construction of that section of a mausoleum or bank of below-ground crypts in which sales, contracts for sale, reservations for sale, or agreements for sale are being made, within five years after the date of the first sale or when 75 percent of the mausoleum or below-ground crypts have been sold and the purchase price has been received, whichever occurs first. The construction shall be completed within six years after the date of the first sale made. Extensions for completion, not to exceed one year, may be granted by the board for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, unless otherwise specified in the preneed contract, all monies paid shall be refunded upon request, plus interest earned thereon if deposited by the cemetery authority in an escrow or trust fund, and if not so deposited in an escrow or trust fund earning interest, then plus interest in an amount equal to the interest or discount that would have been earned thereon had the funds been invested in United States Treasury Bills having a 90-day maturity.

(Act 2002-74, p. 221, §1; Act 2014-216, p. 653, §3; Act 2023-94, §9.)

**SECTION 34-13-276**

**RULES AND REGULATIONS.**

(a) Each cemetery authority shall adopt rules and regulations for the mutual protection of the cemetery owners and the owners of interment rights in the cemetery. All owners of interment rights and other persons within the cemetery shall be subject to these rules and regulations as they now exist and as they may be amended or altered by the cemetery. The cemetery authority shall enforce these rules and regulations and, at any time and without prior notice to any owners, may adopt new rules and regulations or amend, modify, or repeal any rules and regulations.

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

(Act 2002-74, p. 221, §1; Act 2023-94, §9.)

**SECTION 34-13-277**

**JURISDICTION OF COMMISSIONER.**

The board shall have the same jurisdiction over funeral establishments, funeral directors, cemetery authorities, or third party sellers who sell preneed contracts without a preneed certificate of authority as the board has over those preneed sellers who possess a preneed certificate of authority.

(Act 2014-216, p. 653, §4; Act 2023-94, §9.)

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