

ALABAMA BOARD OF FUNERAL SERVICE

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: 395-X-2-.03 Fees

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being amended to administrative rules under the Alabama Board of Funeral Services to account for preneed fees that were charged under DOI and now by ABFS.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Written, verbal, or electronic mail comments will be accepted by the Board until:
Time: 4:30 p.m., Wednesday, March 6, 2024
Place: 4276 Lomac Street, Montgomery, AL 36106
Email: charles.perine@fsb.alabama.gov
Phone: 334-242-4049

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, March 6, 2024

CONTACT PERSON AT AGENCY:

Charles M. Perine

Charles M. Perine

Charles Perine

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

395-X-2-.03

Fees.

~~(1)~~1. The fees to be charged by the Board:

FEE TYPE/PURPOSE	AMOUNT
APPLICATION	
Funeral Director Application Fee	\$230.00
Embalmer Application Fee	\$230.00
<u>Cremationist Application Fee</u>	<u>\$150.00</u>
<u>Reciprocity Funeral Director Application Fee</u>	<u>\$300.00</u>
<u>Reciprocity Embalmer Application Fee</u>	<u>\$300.00</u>
<u>Reciprocity Funeral Director Special Work Permit Application Fee</u>	<u>\$50.00</u>
<u>Reciprocity Embalmer Special Work Permit Application</u>	<u>\$50.00</u>
<u>Apprentice Funeral Director /Application Fee</u>	<u>\$50.00</u>
<u>Apprentice Embalmer Application Fee</u> per certificate	\$50.00
Funeral Establishment Application Fee	\$500.00
<u>Crematory Registration Application Fee</u>	<u>\$200.00</u>
<u>Funeral Establishment Change of Ownership Application Fee</u>	<u>\$250.00</u>
<u>Continuing Education Provider Administrative Fee</u>	<u>\$200.00</u>
<u>Certificate of Authority (COA) Application Fee</u>	<u>\$198.00</u>
<u>Branch Registration Application Fee (COA)</u>	<u>\$198.00</u>
<u>Transfer of Certificate of Authority - Ownership Application Fee</u>	<u>\$132.00</u>
<u>Transfer of Branch Registration Application Fee (COA-Ownership)</u>	<u>\$132.00</u>
<u>Preneed Sales Agent Application Fee</u>	<u>\$33.00</u>
RENEWAL	
Funeral Director / Embalmer / Practical Embalmer Renewal Fee per license	\$230.00
<u>Cremationist Renewal Fee</u>	<u>\$150.00</u>
<u>Apprentice Funeral Director / Embalmer Renewal Fee per certificate</u>	<u>\$50.00</u>
Funeral Establishment Renewal Fee per establishment	\$500.00
Funeral <u>Certificate of Authority (COA)</u> Director Apprentice /	<u>\$99.00</u>
<u>Branch Registration (COA)</u> Embalmer Apprentice	<u>\$198.00</u>

Preneed Sales Agent		\$33.00	
Late Renewal Fee or Lapsed Penalty per license		\$50.00	
Renewal Fee per certificate		\$100.00	
INSPECTION / EXAMINATION			
Funeral Establishment Original Inspection Fee		\$150.00	
Funeral Establishment Re-Inspection Fee		\$150.00	
Funeral Establishment Annual Inspection Fee		\$100.00	
Late Penalty for Past Due Inspection Fee		\$150.00	
COA/Branch Special Preneed Examination Fee		\$335 per day plus expenses per §34-13-196	
COA/Branch Annual Preneed Mini Examination Fee		\$335 per day plus expenses per §34-13-196	
EXAM			
Laws, Rules, Regulation Exam per exam		\$50.00	
Alabama Funeral Director Exam per exam		\$100.00	
Alabama Embalmer Exam per exam		\$100.00	
OTHER			
Funeral Establishment - License Transfer (Temporary Location)		\$25.00	
Funeral Establishment Change of Ownership Application Fee		\$250.00	
Funeral Establishment - Reissued License Due to Name Change	\$25.00		
Special Operating Permit Application Fee		\$50.00	
Late Replacement Wall Certificate per certificate		Renewal Fee	
Replacement Wall Certificate per certificate		\$15.00	
Replacement Wallet or Wall License		\$100.00	
or Lapsed Penalty per license		\$15.00	
Reciprocity COA Certificate holder fails to file annual statement		\$50 per license	\$300.00 day
Licenses Application Fee			
Reciprocity COA Certificate holder fails to file statement of activities of the trust		\$50 per permit	\$50.00 day
Special Work Permit Application Fee			

Crematory Registration Application Fee	\$200.00	Current fee charged by Alabama Law Enforcement Agency
Cremationist Application Fee	\$150.00	
Cremationist Renewal Fee	\$150.00	
Background Check Application Fee		
Continuing Education Provider Administrative Fee	\$200.00	
Replacement Wall Certificate per certificate	\$15.00	
Replacement Wallet or Wall License per license	\$15.00	
Laws, Rules, Regulation Exam per exam	\$50.00	
Alabama Funeral Director Exam per exam	\$100.00	
Alabama Embalmer Exam per exam	\$100.00	

(2) All application fees paid to the board are non-refundable.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-51, 34-13-53, 34-13-55, 34-13-70, 34-13-72, 34-13-74, 34-13-90, 34-13-92, 34-13-111, 34-13-113, 34-13-114, 34-13-120, 131.34-13-120.1, 34-13-130, 34-13-[131](#), [34-13-191](#), [34-13-196](#), [34-13-199](#).

History: Originally filed as Rule No. 395-X-2-.04 entitled "Cost of Renewal License." **Amended:** Filed April 5, 1983; August 9, 1985. **Amended:** Filed May 3, 2002; effective June 7, 2002. **Amended:** Filed May 14, 2003; effective June 18, 2003.

Amended: Filed January 30, 2012; effective March 5, 2012.

Amended: Filed June 6, 2014; effective July 11, 2014. **Amended:** Filed September 12, 2017; effective October 27, 2017. **Amended:**

Published July 29, 2022; effective September 12, 2022. **Amended:** [Published](#) ; effective .

ALABAMA BOARD OF FUNERAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: Chapter 395-X-8 General Purpose, Scope, Authority,
and Definitions

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being added to administrative rules under the Alabama Board of Funeral Services from DOI with technical changes.

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**ALABAMA BOARD OF FUNERAL SERVICES
ADMINISTRATIVE CODE**

**CHAPTER 395-X-8
GENERAL PURPOSE, SCOPE, AUTHORITY, AND DEFINITIONS**

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395-X-8-.01	Purpose, Scope And Authority.
395-X-8-.02	Definitions
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395-X-8-.01 **Purpose, Scope And Authority..**

(1) The purpose of this chapter is to formalize the practice within the Alabama Board of Funeral Services preceding the effective date of this chapter and set various fees and fine amounts authorized in Code of Ala. 1975, §34-13-170 to -277 (2023), a part of the Alabama Preneed Funeral and Cemetery Act, Code of Ala. 1975, §§34-13-170 to -277, et seq. (2023), adjusted according to Alabama Act No. 2023-94.

(2) This chapter shall apply to all persons subject to the Alabama Preneed Funeral and Cemetery Act.

(3) This chapter is adopted pursuant to Code of Ala. 1975, §§34-13-26 and 34-13-27 (2023).

Author: Charles M. Perine

Statutory Authority: Code of Ala.1975, §§34-13-26, 34-13-27.

History: New Rule: Published _____; effective _____.

395-X-8-.02 **Definitions.**

The definitions set forth in §34-13-1, Code of Ala. 1975, apply in this Chapter, together with the following definitions:

1. **Board.** The Alabama Board of Funeral Services.
2. **Department.** The Alabama Department of Insurance.
3. **GAAP (Generally Accepted Accounting Principles).** Uniform minimum standards of, and guidelines to, financial accounting and reporting. The Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) are authorized to establish these principles.
4. **FINANCIAL STATEMENT.** The written disclosure of financial information by an applicant for or holder of a preneed

certificate of authority according to accounting principles and in a form prescribed by this Chapter.

5. **PRENEED CONTRACT.** As defined in Code of Ala. 1975 §34-13-1 and Rule 395-X-9-.01.
6. **PRINCIPAL.** In reference to a preneed contract, the total sum of deposits on the individual items in the contract. In reference to a trust, the total sum of deposits in trust for all preneed contracts.
7. **THE ACT.** The Alabama Preneed Funeral and Cemetery Act of 2023, Code of Ala. 1975, §§34-13-170 to -277 (2023).

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27.

History: New Rule: Published _____; effective _____.

395-X-8-.03 Severability & Effective Date.

(1) If any rule or portion of a rule or its applicability to any person or circumstance is held invalid by a court, the remainder of Rule 395-X-8, 395-X-9, 395-X-10, 395-X-11, and 395-X-12 or the applicability of the provision to other persons or circumstances shall not be affected.

(2) Rule 395-X-8, 395-X-9, 395-X-10, 395-X-11, and 395-X-12 shall become effective on the first date eligible in accordance with the provisions of the Administrative Procedures Act.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27

History: New Rule: Published _____; effective _____.

ALABAMA BOARD OF FUNERAL SERVICES - PRENEED DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: Chapter 395-X-9 Preneed Contracts and Certificate of Authority

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being added to administrative rules under the Alabama Board of Funeral Services from DOI with changes.

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Charles M. Perine

Charles Perine

(Signature of officer authorized
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ALABAMA BOARD OF FUNERAL SERVICES - PRENEED DIVISION
ADMINISTRATIVE CODE

CHAPTER 395-X-9
PRENEED CONTRACTS AND CERTIFICATE OF AUTHORITY

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395-X-9-.01 Preneed Contract - Defined.

1. For purposes of this Chapter, a preneed contract is a written contract:
 - a. entered into on a preneed basis (before the death of the contract purchaser or beneficiary);
 - b. under which the purchaser pays or agrees to pay to the seller, before need and in whole or part, a purchase price for funeral merchandise and services or cemetery merchandise and services; and
 - c. the seller's responsibility to deliver the contracted-for merchandise or perform the services, in whole or in part, is deferred until need.

2. The Following arrangements or transactions create a preneed contract:
 - a. Transactions which combine a current sale with an agreement for delivery or performance at need and in which the purchaser assumes a current obligation to pay for future delivery or performance.
 - b. Transactions in connection with selection of funeral or cemetery merchandise or services which result in a preneed provider being designated, on a preneed basis, as a beneficiary or assignee of a financial instrument intended to provide funds for payment of merchandise and service costs at need (i.e., a life insurance policy or annuity, or a deposit of funds like a bank account or certificate of deposit), whether revocable or irrevocable, unless, the preneed seller and the purchaser acknowledge in writing that there is no agreement concerning the purchase of funeral or cemetery merchandise and services entered into as a result of the purchase or assignment of the life insurance policy or annuity at the time of such purchase or assignment.
 - c. Any transaction or series of transactions which employ any artifice or scheme to evade, or have the effect of evading the requirements of, this Chapter and the Act.
 - d. Any transaction in which a seller delivers the merchandise into some warehouse-type or other storage arrangement controlled by the seller until need.
 - e. Any transaction deferring delivery or performance until need or until completion of installment payments.
 - f. Any transaction involving vaults or other outer burial containers which, by their nature, require future service in the form of reopening, cleaning and/or repair or replacement, placement of the casket, sealing, closing and covering.
 - g. Any transaction involving any type of funeral or cemetery services that are not capable of being performed until need.
3. Except as provided in the preceding section, the following arrangements or transactions do not result in a preneed contract subject to this Chapter even if entered into on a preneed basis:

- a. A retail sale of merchandise and immediate services – delivery or installation – directly relating to that merchandise where:
1. The purchaser pays immediately or agrees to an installment payment plan.
 2. The seller delivers the merchandise to the purchaser immediately or within a contractually-defined reasonable time after payment not tied to need or to completion of installment payments. The purchaser must have legal title to and possession of the merchandise upon delivery into a storage arrangement controlled by the purchase or by virtue of installation on property under the purchaser's control (such as a cemetery space). Provided, that the seller may retain a security interest in the merchandise in a transaction involving an installment payment arrangement where merchandise will be delivered before completion of payments.
 3. No future service relating to the merchandise will be required to realize effective use of the merchandise.

Non-inclusive examples of such transactions include caskets and memorials and related services such as delivery and installation of the merchandise.

- b. A prearrangement through which the purchaser specifies certain merchandise and services to be purchased at need, the seller agrees to sell that merchandise and those services at need with or without a preneed agreement on price (or an agreement about how a price will be determined at need), provided that the prearrangement contains no provisions for prefunding or prepayment.
- c. The sale of an interment right in a grave space, crypt, or mausoleum provided that the purchaser receives evidence of ownership of the right upon payment and the sale is not accompanied by the sale of any merchandise or service.
- d. Sale of a "return of mortal remains plan," addressed in Rule 395-X-9-.02, in conjunction with a preneed contract.

4. A contract or agreement that is not a preneed contract shall not represent that portions of a purchaser's payments are being placed in trust (except as necessary to comply with the requirements concerning cemetery endowment care funds) unless such deposits have been made in fact or otherwise represent or imply that the contract complies with the Act.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.02 Sale Of "Return Of Mortal Remains" Plans..

1. For purposes of this Chapter, a "return of a mortal remains plan" refers to a contract or agreement by whatever title or name, sold in conjunction with a preneed contract, in which a third party provider other than the preneed contract seller agrees, in exchange for a cost paid by or for the plan beneficiary, to cause transportation of the decedent's remains in the event the decedent dies outside the scope of any radius clause or geographical limitation expressed in a preneed contract for funeral or cemetery merchandise or services. The plan may or may not:
 - a. be a "membership"-type arrangement;
 - b. provide that the agreement provider will arrange and pay for services actually provided by others;
 - c. provide that the agreement provider will directly perform services; or
 - d. include services like embalming or other body preparation and merchandise such as a shipping container.
2. A return of mortal remains plan may be offered in conjunction with the sale of a preneed contract. A foreign (non-Alabama) business entity shown as the provider or seller in the agreement must have registered through the office of the Alabama Secretary of State as and to the extent required by the Alabama Business and Nonprofit Entity Code, Code Of Ala. 1975, et. seq. §10A-1-1.01 (2010).

3. A preneed provider offering a return of mortal remains plan shall have in effect a written agreement with the plan provider which describes the terms, conditions, and restrictions under which the preneed provider can offer the plan to prospective purchasers. The agreement should include provisions describing the manner in which the cost of the plan is remitted to the plan provider; expressing the amount to be paid to the preneed provider by the plan provider for having sold a plan (or the formula from which that amount can be determined); identifying any third-party provider relied upon to perform the benefits called for in the plan; and any insurance company provider insurance to be used in paying for or defraying the cost of performance of the plan benefits.
4. A preneed provider's sale of a return of mortal remains plan must be documented separately from the preneed contract. The return of mortal remains plan shall not be listed as merchandise, a service, or otherwise in the preneed contract, and the plan's cost shall not be included as part of the total cost of the preneed contract.
5. The price of the plan shall be collected from the purchaser at the time of sale or paid in installments by agreement distinct from the preneed contract. In the event of an installment sale, and if applicable under the agreement between the plan provider and preneed provider, the preneed provider shall disclose that the plan does not become effective until the entire plan price is collected. The plan price shall not be financed as part of the price of the preneed contract.
6. A preneed provider shall account for amounts paid by preneed contract purchasers for return of mortal remains plans separately from amounts paid for preneed contracts. No portion of the payments shall be deposited in a preneed merchandise and services trust or otherwise treated as preneed contract payments. Funds collected as payment for a return of mortal remains plan shall be immediately remitted to the plan provider.
7. The provider or seller of the return of mortal remains plan must furnish the following to the preneed provider for use with prospective purchasers of the plan:
 - a. A form of brochure or flier describing the benefits to be provided, the terms, conditions, and limitation applicable to the plan, and the price of the plan.

- b. The form by which the purchaser buys, applies for, joins, or enrolls in the plan. The form shall identify the price of the plan to the purchaser and, if applicable, shall describe the terms of any installment payment arrangement.
 - c. The form of certificate or other evidence of coverage or entitlement to benefits to be provided to the purchaser.
 - d. If not included in the certificate, a description of the benefits to be provided, the terms, conditions, and limitations applicable to the plan, and the manner in which claims for benefits are submitted.
 - e. All forms shall clearly identify the entity which is undertaking to provide or arrange for the provision of any services or merchandise described as benefits in the plan and shall state the entity's mailing and physical addresses, voice and facsimile telephone numbers, electronic mail address, and, if applicable, website address.
8. If the return of mortal remains plan provider relies on the preneed provider to deliver documentation to a purchaser, the preneed provider shall promptly deliver that documentation to the purchaser.
9. Copies of complete return of mortal remains plan transaction documents as described above shall be maintained by the preneed provider as part of a purchaser's preneed contract file. The documentation shall be made available to the Board as part of a preneed examination or otherwise upon request.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.03 Preneed Contract - Filing And Approval..

1. A preneed contract must be on a written or preprinted contract form, approved by the Board, that is completely filled in and signed by the purchaser and the preneed seller.

2. Preneed contract forms, including forms based on templates supplied by the Board, shall be filed for approval with the Board, in a format and manner prescribed by the Board, and the forms approved before use. A filed contract form may be used beginning thirty (30) days after its filing date unless the Board has disapproved its use during the 30-day period. Any revisions to a preneed contract form must be filed with and approved by the Board prior to use. Revisions required as a result of this Chapter shall be filed within sixty (60) days of the effective date of this Chapter.
3. In order to be approved by the Board, a preneed contract form must adhere to the minimum requirements set forth in Rules 395-X-9-.04 and 395-X-9-.05, as applicable.
4. It shall be the responsibility of the Certificate of Authority holder to maintain proof of approval of any preneed contract form(s) used by the Certificate of Authority holder.
5. Nothing in this section shall prohibit a trust or insurance company from filing a contract for approval on behalf of the certificate holder.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

**395-X-9-.04 Preneed Contract - Minimum Requirements -
Funeral Providers..**

1. On or after January 1, 2015, a preneed contract for funeral merchandise and services must have, at a minimum, the following required disclosures:
 - a. A thirty (30) day refund provision in the event of a cancellation. In the event of a cancellation prior to thirty (30) days the purchaser shall be entitled to a complete refund of the amount paid. In the event of a cancellation after the expiration of the thirty (30) days, the seller shall be entitled to a cancellation fee not to exceed twenty percent (20%) of the purchase price collected, and the balance of payments exceeding twenty percent (20%) shall be refunded to purchaser. If the contract is funded by life insurance or an annuity, any cancellation after thirty (30) days will

entitle the purchaser to be paid the cash value of the life insurance policy or annuity contract or other refunds per the terms of the policy unless the purchaser elects to maintain the life insurance policy or annuity contract by continuing payment of premiums to the issuing insurance company.

- b. An acknowledgement from the purchaser that purchaser has reviewed a current general price list, casket price list, and outer burial container price list prior to signing the contract.
- c. A disclosure as to which method of funding the seller is using to fund the preneed contract. Regardless of the method of preneed contract funding, the disclosure should include language to the effect that if the purchaser has not completed all required payments when the contract turns at-need, the outstanding balance according to the terms of the contract is immediately due to the provider servicing the contract. In the event that individual or group life insurance funding is being used as an alternative to a trust, the disclosure must comply with the provisions of Rule 395-X-11-.10. In the event that the trustee is purchasing life insurance on the contract purchaser or beneficiary, written consent must be made through a document separate from the preneed contract under Rule 395-X-11-.11.
- d. An explanation that an "irrevocable option" provision in the contract, when signed by the purchaser, is used when the purchaser is a recipient of or is seeking to qualify for public assistance for such programs as Medicaid and Supplemental Security Income. The purchaser must acknowledge that the purchaser is aware that the contract is revocable unless and until the "irrevocable option" is signed. The purchaser must further acknowledge that an "irrevocable option" is not required to be signed in order to execute the contract.
- e. In the event the contract contains a transfer provision, the seller shall be entitled to a reasonable fee for a transfer. The "reasonable fee" shall be no more than the cancellation fee allowed under (a) of this subsection.
- f. An acknowledgment by purchaser that cash advance item(s) not guaranteed at the listed contract price

are clearly denoted as subject to change and the difference is due, if any, at the time of contract fulfillment.

- g. Provision in the event of a purchaser default. After ninety (90) days or more past due, seller must give thirty (30) days written notice to purchaser to cure any default. At the expiration of thirty (30) days, seller shall be entitled to cancel the contract and withdraw funds in trust. The seller shall refund to purchaser the amount collected less a "reasonable fee" of no more than the cancellation fee under (a) of this subsection.
 - h. Breach of contract provision where the purchaser shall be entitled to a refund of 100 percent of all money paid on the contract in the event of a breach of contract by the seller.
 - i. If the seller's practice is to install vaults or outer burial containers before need, the additional provisions described in Rule 395-X-9-.06.
 - j. If merchandise and services are to be provided as complimentary or free of charge, such merchandise and services must be itemized on the preneed contract and noted as "no charge."
2. Preneed contracts shall be sequentially numbered in a uniform manner. A sworn statement shall be submitted to the board by the certificate holder annually with each renewal explaining the numbering system and affirming that no contracts exist within any numerical gap.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-171 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.05 Preneed Contract - Minimum Requirements - Cemetery Providers..

- 1. On or after January 1, 2015, a preneed contract for cemetery merchandise and services must have, at a minimum, the following required disclosures:

- a. A thirty (30) day refund provision in the event of a cancellation. In the event of a cancellation prior to thirty (30) days for contracts funded by trust, letter of credit or surety bond, purchaser shall be entitled to a complete refund of the amount paid. The contract shall further provide that the purchaser is entitled to a refund of all money paid on the contract in the event of a breach of contract by the seller.
 - b. A disclosure as to which method of funding the seller is using to fund the preneed contract.
 - c. If the seller's practice is to install vaults or outer burial containers before need, the additional provisions described in Rule 395-X-9-.06.
 - d. If merchandise and services are to be provided as complimentary or free of charge, such merchandise and services must be itemized on the preneed contract and noted as "no charge."
2. Preneed contracts shall be sequentially numbered in a uniform manner. A sworn statement shall be submitted to the board by the certificate holder annually with each renewal explaining the numbering system and affirming that no contracts exist within any numerical gap.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.06 **Installation Of Vaults Or Outer Burial Containers Before Need.**

1. The sale of a vault or outer burial container on a preneed basis is a preneed contract even if the contract provides for installation of the vault or outer burial container before need.
2. On or after January 1, 2015, where a provider's practice is to install vaults or outer burial containers before need, the preneed contract must grant to the preneed contract purchaser the sole option to have a contracted-for vault or outer burial container installed before need or at need and must otherwise conform to the requirements in this Rule.

3. On or after the effective date amending this section, the preneed contract must contain a conspicuously-displayed provision, to be signed by the purchaser separate from signing the contract as a whole, in the following or substantially similar terms:

It is the Seller's practice to install a vault prior to need unless the Purchaser elects to have the vault installed at the time of need.

The Seller has explained if I elect to install my vault prior to need, the vault may not be in the condition of a new or properly stored vault including but not limited to water damage, cracking, defective seal, and other deterioration which may require the vault to be replaced.

_____ I elect to
have my vault installed prior to need.

_____ I elect not to
have my vault installed prior to need.

4. The preneed contract must clearly distinguish between service fees to install the vault/outer burial container before need and fees for re-opening the previously installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. The disclosed fee for installing a vault/outer burial container before need must be described in the preneed contract using the term "vault installation fee," "burial (or grave) space excavation fee," or other words reasonable descriptive of the nature of the services being performed. The fee may not be described by use of the word, "interment."
5. The amount of the disclosed fee to install a vault/outer burial container before need shall not exceed fifty percent (50%) of the total amount (expressed in dollars) of that fee and the disclosed fee charged for opening the installed vault/outer burial container, placing the casket, and closing and covering the vault/outer burial container at need. This allowed allocation notwithstanding, the Board may require a provider to increase the amounts trusted for opening/closing services at interment in the event (i) a provider ceases performing the service using its own employees and equipment in favor of contracting with third parties to perform the service, or (ii) as a condition for

the Board's approval of an application by the provider to transfer or to surrender of a certificate of authority or branch registration, or (iii) if the provider's financial condition warrants an increase in the trust amount.

6. The preneed contract shall specify a time period within which the vault/outer burial container will be installed before need (if so elected by the purchaser).
7. The preneed contract shall provide that, in the case a purchaser elects preneed vault/outer burial container installation, the preneed provider bears any risk of damage to the vault/outer burial container when installed and will provide and install a new vault/outer burial container of comparable quality at no cost to the preneed contract purchaser or beneficiary if required by the circumstances at the time of interment.
8. No other preneed contract provisions can conflict with, qualify, defeat, or diminish the contractual option granted to the preneed contract purchaser/beneficiary.
9. At the time the preneed contract is negotiated, the preneed seller must furnish the contract purchaser a disclosure substantially in the form of the model disclosure developed by the Board and published on the Board's website. The actual form of the disclosure must have been submitted to and approved by the Board before use. The original disclosure signed by the preneed contract purchaser(s) and the responsible preneed sales agent must be retained by the preneed provider as part of the preneed contract file. The preneed contract purchaser(s) must be furnished a copy of the signed disclosure at the time the preneed contract is finalized.
10. Any preneed provider offering installation of a vault/outer burial container before need must implement a program to instruct its preneed sales agents about properly explaining installation of vaults/outer burial containers before need and answering purchaser inquiries about installation before or at need. The program must include reasonable measures for monitoring preneed sales agents' actual explanation methods to purchaser. The program must be maintained in a form that can be produced to the Board for review upon request.
11. The vault/outer burial container must be installed within thirty (30) days prior to the time the first trust deposit is required to be made under the contract in accordance

with state law. If the contract is funded by another method, the vault/outer burial container must be installed within thirty (30) days from the date of the preneed contract.

12. Any preneed provider offering installation of a vault/outer burial container before need must maintain records sufficient to permit the Board's examiners to verify that vaults/outer burial containers contracted for installation before need have been installed.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.07 **Certificate Of Authority - Required.**

1. Every preneed seller subject to the Act must have a valid preneed certificate of authority to sell preneed contracts and to collect payments for preneed contracts. Each branch affiliated with a certificate holder must have a valid branch registration.
2. The certificate of authority or branch registration, as applicable, shall be prominently displayed in a public area of the certificate holder's or branch registrant's facility. In the event a certificate of authority or branch registration is surrendered, non-renewed, suspended or revoked, the certificate or branch registration shall not be displayed and must be returned to the Board.
3. On or before July 1st of each year, every certificate holder shall file an application for renewal which shall include the certificate holder's annual statement and, if applicable, statement of trust activities as required in Section 34-13-191(g).
4. A certificate holder shall be subject to a fine for each day after July 1 the certificate holder fails to file its annual statement or, if applicable, statement of trust activities as provided in Section 34-13-191(h). The amount of the fine is set forth in Rule 395-X-2-.03.
5. Upon notice to the certificate holder by the Board of the failure of the certificate holder to file the annual statement or, if applicable, statement of trust activities, the certificate holder's authority to sell preneed

contracts shall be suspended as provided in Section 34-13-191(h).

6. A certificate of authority expires on October 1 unless properly renewed as provided in this rule as provided in Section 34-13-53 and 34-13-191(h).

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-16-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.08 **Certificate Of Authority - Financial Requirements..**

1. An applicant for a preneed certificate of authority must meet, and a certificate holder must maintain, the financial requirements set forth in this Rule demonstrating its ability to discharge its liabilities as they become due in the normal course of business, and must have sufficient funds available to perform its obligations under its existing preneed contracts.
2. Unless exempted under paragraph (8), a preneed seller must file with the Board a financial statement in order to apply for a certificate of authority or renew an existing certificate of authority. The financial statement shall, at the preneed seller's option, be
 - a. a financial statement accompanied by a compilation, review or audit report from a licensed certified public accountant prepared in conformity with GAAP, or
 - b. a financial statement in the form furnished by the Board and published on the Board's website using the alternate basis of accounting described in paragraph (5).
3. The financial statement must be for the preneed seller holding a certificate of authority or the applicant seeking a certificate of authority. Information in the financial statement must be accurate and contain all relevant notes and disclosures appropriate to the accounting basis used. The financial statement must be signed by the certificate holder or applicant and, if prepared by a certified public accountant or public accountant, by the accountant.
4. Financial statements prepared in conformity with GAAP that are consolidated must include supplementary consolidating

schedules to provide supporting detail for each consolidated financial statement presented.

5. The financial statement form developed by the Board reflects a basis of accounting adopted by the Board as an alternative to GAAP reporting. This alternative basis differs from the measurements and disclosures required by GAAP in the following respects:
 - a. GAAP requires consolidation of certain equity investments and of variable interest entities under FIN 46(R), entitled Consolidation of Variable Interest Entities. The Board requires that only the primary reporting entity's accounts and activities be reported. Investment in trusts are to be marked-to-market as of the financial statement date. Closely-held investments should be recorded using the equity method.
 - b. Deferred revenue for preneed contracts incurred prior to May 1, 2002 (the Act's effective date), is to be equal to the current cost of providing the preneed services and merchandise.
 - c. A noncurrent receivable is to be recorded for the face amount of life insurance policies used to fund preneed contracts, with the offset being a credit to deferred revenue.
6. The financial statement of an applicant or certificate holder (in the case of annual renewals) must demonstrate the following levels of equity determined on the basis of the accounting method used in the financial statement:
 - a. An applicant or certificate holder with total preneed deferred revenue of \$100,000 or less must have a minimum of \$10,000 equity.
 - b. An applicant or certificate holder with total preneed deferred revenue of \$100,001 or greater must have equity in an amount not less than ten percent (10%) of the total preneed deferred revenue.
7. On either a financial statement prepared using GAAP or the alternative form, the Board will disregard any figure included for "good will" as an intangible asset in determining whether the statutory requirements or equity requirements in Rule 395-X-9-.08(6) above are met. The Board may assess other forms of intangible assets against the statutory requirements and equity requirements in Rule 395-X-9-.08(6).

8. (a) If, based on the accounting method used in its financial statement, the certificate holder or applicant does not meet the requirements of paragraph (6), the certificate holder or applicant may voluntarily submit to the Board additional evidence or enter into written agreements intended to demonstrate the certificate holder's or applicant's ability to meet the requirements of Code OF Ala. 1975, §34-13-191, and as a condition for receiving and/or retaining a certificate of authority.

(b) The Board, in his discretion, may issue or renew a certificate of authority if the Board determines based on such additional information or agreement(s) that the applicant or certificate holder meets the requirements of Code OF Ala. 1975, §34-13-191, in which event the certificate may be expressly conditioned on satisfactory continued compliance with any and all terms or conditions set forth in any agreement(s) entered into by the person or entity receiving the certificate.

9. The Board may exempt a certificate holder from filing financial statements and from the equity requirements in 395-X-9-.08(6) at renewal, provided that the following conditions are met:

a. The certificate holder demonstrates that 100% of the net amount of each of the certificate holder's preneed contract(s) are funded by trust or life insurance.

b. At minimum, the certificate holder must submit the following documentation to the Board on or before July 1st of each year for the Board's approval:

i. A written request for an exemption from filing financial statements at renewal.

ii. An annual financial summary which must include the certificate holder's:

1. Total Assets
2. Total Liabilities
3. Equity
4. Total net amount of Preneed Contracts
5. Total amount of Preneed Contract Funds collected.
6. Total funded amount of Preneed Contract Funds.

- iii. A sworn written statement affirming the accuracy of the submitted information.
- c. If payments are being made by the purchaser to the seller, the seller must submit 100% of the payment collected to the trust or insurance company within the required timeframe established by law to be eligible for exemption of financial statements and equity requirements.
- d. An exemption will not be granted if the certificate holder has any preneed contracts, that fall under the jurisdiction of the board, that are not 100% funded by trust or insurance.
- e. For the purpose of this chapter, assets, liabilities and equity shall be defined according to GAAP, except as modified in 395-X-9-.08(5).

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.09 Transfer Of Certificate Of Authority Or Branch Registration..

1. A transaction which has the effect of transferring a certificate of authority or branch registration must be authorized by the Board prior to the closing of the transaction. Without limitation, authorization is required for the sale of a certificate of authority or branch registration, the sale of a certificate holder's business or assets to the extent the transaction includes transfer of the certificate of authority or branch registration, and sale of all or a controlling interest in any business entity certificate holder or branch registrant.
2. Prior to the closing of the transaction which will give rise to a transfer, the certificate holder shall give notice of the proposed transaction in a form prescribed by the Board and provide the following to the Board:
 - a. A copy of any fully signed letter of intent with any exhibits, attachments, or schedules referenced in the letter of intent.

- b. A copy of the fully signed purchase agreement or other form of contract which describes the terms of the transaction which will result in a transfer with any exhibits, attachments, or schedules referenced in the agreement or contract. Any such purchase agreement or contract must be conditioned upon approval of the Board to the transfer and must specifically address the parties' agreements concerning performance of preneed contracts previously sold, but unperformed, by the certificate holder. If the proposed transaction will result in a change of ownership of the certificate holder, the agreement or contract must provide that preneed contract holders will be notified in writing of the change of ownership within ninety (90) days after the transfer is complete.
- c. If not otherwise addressed by the purchase agreement or contract, evidence acceptable to the Board that all required amounts have been deposited in trust and that the certificate holder's interest in each trust will be conveyed to the purchaser or transferee as part of the transaction without a diminution or pay out of trust assets or gain on such assets to the transferring certificate holder or another as part of the transaction.
- d. Any other documentation requested by the Board of the seller or purchaser in order for the Board to make a determination on the proposed transfer.

For sale or transfer of endowment care cemeteries, all payments required to be paid to the endowment care trust fund must be paid to date. The endowment care trust must continue to hold the trust funds after the sale or transfer. No funds held by the endowment care trust may be withdrawn as a result of a sale or transfer.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.10 **Surrender Of Certificate Of Authority..**

1. Surrender of a certificate of authority must be accepted by the Board to be effective.

2. The certificate holder shall give prior notice of the surrender in a form prescribed by the Board and provide the following to the Board:
 - a. Copies of the certificate holder's existing trust agreements if not already on file with the Board.
 - b. A sample copy of each form of preneed contract sold.
 - c. The certificate holder's report of the status of all outstanding preneed contracts sold current to the proposed time of the surrender.
 - d. The trustee's report of the status of all trusts current to the time of submission.
 - e. The certificate of authority.
3. Surrender shall not be authorized in the following events:
 - a. Findings or violations identified in the immediately preceding examination remain have not been resolved to the Board's reasonable satisfaction.
 - b. Any previously-imposed fines, assessments, or examination expenses remain unpaid in whole or in part.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.11 **Effect Of Certificate Surrender Or Other Inactivity..**

1. For purposes of this Rule, "inactivity" means surrender of a certificate of authority, expiration of a certificate due to non-renewal, or revocation of a certificate, and also includes assumed inactivity due to the following circumstances:
 - a. The certificate holder has ceased transacting business, either in general, or with respect to the

particular business that is the subject of the certificate.

- b. The certificate holder has filed a petition for relief under Chapter 7 of the United States Bankruptcy Code or a bankruptcy court with jurisdiction has ordered relief according to said Chapter 7.
 - c. If the certificate has been suspended, the holder has failed to reinstate the certificate in the time set forth in the order of suspension or, if not so addressed in the order, within six months after the date of the order of suspension.
2. In the event of inactivity, a certificate of authority shall be canceled and of no further force and effect, and the certificate holder shall cease all sales of preneed contracts and collection of payments for preneed contracts. The certificate holder shall immediately collect and deposit in trust that portion of funds paid toward preneed contracts sold before inactivity which are to be trusted in accordance with the Act, including, where applicable, contributions to a cemetery endowment care fund.
 3. In the event of inactivity, all existing trusts and, if applicable, any cemetery endowment care fund shall be held intact and in trust, and shall not be disbursed except as allowable under the Act.
 4. In the event of inactivity, as long there are preneed funds in trust or preneed contracts in force that are not fulfilled, a former certificate holder shall timely and properly file on an annual basis an inactive certificate holder report and any required attachments in accordance with instructions of the Board posted on the Board's website.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-197 to 34-13-277.

History: New Rule: Published _____; effective _____.

395-X-9-.12 Preneed Sales Agents.

1. Each employee or agent selling preneed contracts or who execute contracts on behalf of a certificate holder must be

registered by that certificate holder as a preneed sales agent (PSA). To sell preneed contracts, every certificate holder must have at least one PSA registered. The fee for issuing or renewing a certificate of authority does not include payment for any PSA registrations.

2. Application for registration shall be made on the form published on the Board's website. Each PSA registration requires payment of a registration fee, which is to be paid with the initial registration and annually thereafter. Each PSA registration must be renewed annually. The fees for PSA initial registration and annual renewal are set forth in Rule 395-X-2-.03.
3. A PSA registration is not active if the registrant is not affiliated with any certificate holder.
4. An individual may be registered as a preneed sales agent on behalf of more than one certificate holder if the individual has received written consent of all certificate holders. The consent must be filed with the application for PSA registration.
5. The certificate holder shall notify the Board within 30 days after a registered PSA's affiliation with a certificate holder has terminated.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-9-.13 Response To Requests For Information; Effect Of Pending Administrative Action..

1. If records, information, and/or a response are requested in writing of any applicant for or holder of a preneed certificate of authority by any duly appointed employee, examiner, or agent of the Board, the requested records, information, or response shall be provided within ten (10) business days of receipt of the request unless the request specifies another time not less than ten (10) business days from receipt. A failure to timely respond to a request shall be deemed a violation of this chapter unless the Board or the person making the request grants an extension in writing or the applicant or certificate holder can demonstrate to the satisfaction of the Board that there is reasonable justification for failure to timely respond.

2. If the Board has notified an applicant for or holder of a preneed certificate of authority of any administrative action, that action must be addressed and/or resolved to the Board's satisfaction before the Board will:
 - a. issue a certificate of authority or branch registration,
 - b. renew a certificate or branch registration,
 - c. approve a proposed transfer of a certificate or branch registration, or
 - d. enter an order of termination on an application for voluntary surrender of a preneed certificate.

3. For purposes of this Rule, "administrative action" includes:
 - a. A pending administrative complaint alleging violation(s) of the Act and/or violations of the Alabama Insurance Code in connection with activities engaged in under or pursuant to a certificate of authority or without a certificate of authority in violation of the Act.
 - b. Failure to comply with requirements imposed in a prior settlement agreement, consent order, or final adjudicated order in an administrative complaint proceeding or court action.
 - c. A preneed examination which has identified issues to be addressed in order to bring the certificate holder into compliance with the Act and subsequent regulation.
 - d. Payment of or compliance with a payment arrangement for all examination invoices and/or amounts otherwise imposed by prior settlement agreement, consent order, or final adjudicated order in or in lieu of an administrative complaint proceeding, to include, where applicable, deposits in a merchandise and services trust and/or cemetery endowment care trust.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

ALABAMA BOARD OF FUNERAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: Chapter 395-X-10 Preneed Examinations

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being added to administrative rules under the Alabama Board of Funeral Services from DOI with changes.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Written, verbal, or electronic mail comments will be accepted by the Board until:
Time: 4:30 p.m., Wednesday March 6, 2024
Place: 4276 Lomac Street, Montgomery, AL 36106
Email: charles.perine@fsb.alabama.gov
Phone: 334-242-4049

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, March 6, 2024

CONTACT PERSON AT AGENCY:

Charles M. Perine

Charles M. Perine

Charles Perine

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**ALABAMA BOARD OF FUNERAL SERVICES
ADMINISTRATIVE CODE**

**CHAPTER 395-X-10
PRENEED EXAMINATIONS**

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395-X-10-.01 **Examinations, Generally..**

1. The Board has the power to examine the books and records of any certificate holder or endowment care cemetery operating in the State. Examination authority extends to an endowment care cemetery irrespective of whether the cemetery authority is also a preneed certificate holder.
2. Prior to a routine Preneed Mini Examination or Special Preneed examination, a questionnaire will be provided for completion by an authorized representative of the certificate holder or cemetery authority.
3. Prior to a Special Preneed examination, the certificate holder or cemetery authority will be issued a call letter given notice of the examination and listing the types of records that must be made available during the examination. Additional records or information may be requested during the examination or at any time before or after the examination.
4. Any forms, reports or other documentation in response to or part of the examination, examination report, or subsequent corrective action report, shall be signed by an authorized representative of the certificate holder or cemetery authority.
5. Upon conclusion of an examination, the certificate holder or cemetery authority will be provided an examination report which specifies any deficiencies or violations found by the examiner. The Board will schedule an exit conference to

review the examination report and any findings either as part of the examination or at a later time.

6. If deficiencies or violations are found during the exam, the examiner may give the COA holder a specific period of time, to be set by the inspector, to correct the deficiencies or violations. Following the duration of such period the COA holder may be re-examined. If the same violations remain, the COA holder will be notified to appear before the Board to answer charges of violating the state preneed law. If the examination report specifies issues for correction, the certificate holder or cemetery authority shall have twenty (20) days from the date of the report within which to object to the issues identified in the report. Any objection to the examination report must be in writing and specifically state the objections the certificate holder or cemetery authority has to the findings of the report.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to 34-13-277.

History: New Rule: Published _____; effective _____.

395-X-10-.02 Examination Penalties.

(a). Any violation under this section is a violation of minimum standards and a threat to the health, safety, and welfare of the public. A Certificate of Authority holder licensed by the board shall pay a fine to the board for each violation found during an examination. If the examiner or a representative of the board finds a violation during an exam, he or she may immediately issue a citation listing each violation and fine for each violation or submit the matter to the board in accordance with the administrative procedures act. After a citation, has been issued, the Certificate of Authority holder shall either pay the amount of the fine to the board or submit a written request for an administrative hearing before the board. A request for an administrative hearing before the board shall be received by the board not later than 30 calendar days after the day the citation is issued. Failure to either pay the fine or timely request an administrative hearing before the board shall cause additional disciplinary action to be taken against the licensee. The requirements for examination and the citation fines per violation(s) for violations under this section are as follows:

Minimum Standards	Fine for Violating
Documentation	
a. Failure to provide any required documentation.	\$200.00
b. Evidence of any discrepancies in or between the company's documents, reports, etc.	\$200.00
Certificates and Licenses	
a. Failure to maintain current and active certificate of authority.	\$1,000.00 per day
b. Failure to register Preneed Sales Agent.	\$1,000.00 per day
c. Failure to notify the board of a cancellation of a registration of a Preneed Sales Agent.	\$200.00
d. Failure to publicly display the certificate of authority or preneed sales agent license in the establishment.	\$500.00
e. Failure of the certificate of authority to address the violations and make the necessary corrections from the last examination.	\$200.00 per day
Preneed Contracts	
a. Failure to provide examiner access to all preneed and at-need contract files.	\$500.00
b. Evidence of any obvious issues or discrepancies between the contract files sample and the company's records. (e.g. preneed log, funds collected, etc.)	\$200.00
c. Use of any contract forms not approved by the board.	\$200.00
d. Adding at-need fees to preneed contracts.	Double the charge amount up to \$10,000.00
e. Increasing the cost of merchandise (unless an upgrade was made at the time of need).	Double the charge amount up to \$10,000.00
Preneed Log	
a. Failure to format and complete preneed log in compliance with applicable statutes or regulations.	\$500.00

Transferred Contracts	
a. Failure to remove transferred contracts from the preneed log.	\$200.00
b. Failure to properly account for transferred contracts.	\$200.00
c. Failure to trust the funds affiliated with transferred contracts in a timely manner.	\$200.00
d. Failure to report transferred contracts on the required filings to the board.	\$200.00
Trust	
a. Failure to use a current approved trust to fund preneed.	\$1,000.00
b. Failure to fund contracts using the trust option in a manner that aligns with the relevant requirements in effect at the time of the contract, both appropriately and in a timely fashion.	\$500.00
c. Failure to appropriately disclose if trust originated life insurance is involved.	\$200.00
d. Failure to trust sufficient amounts for each contract.	\$1,000.00 per formula category
e. Failure to maintain fair market value reports provided by the trustee.	\$200.00
f. Failure to submit the required certification to the trustee in support of any withdrawal pursuant to a cancellation.	\$200.00
g. Failure to support withdrawals due to fulfillment by a certification from the seller, affirming that all obligations under the contract have been fulfilled.	\$200.00
General Price List	
a. Failure to maintain publicly available establishment pricing that complies with the rules established by the Federal Trade Commission.	\$500.00
Merchandise	
a. Failure to provide evidence of delivery or installation of merchandise.	\$200.00

b. Storing merchandise not suitable for prolonged storage or using a method of storage that does not protect the merchandise from deterioration.	\$200.00
c. Using a third-party for storage of merchandise who is not bonded and insured.	\$200.00
d. Failure to maintain receipts or records from the third-party storing the merchandise that indicate the item being stored, the specific preneed contract for which the merchandise is being stored, the or the precise location of the merchandise being stored, or doesn't indicate the identity and address of the bonding or insuring parties.	\$200.00
e. Storing caskets or alternative containers. \$500.00 per casket or alternative container	\$500.00 per casket or alternative container
Cemetery	
a. Failure to maintain a log of burial space, niche, and crypt sales.	\$500.00
b. Failure to maintain a plat map for each cemetery location.	\$500.00
c. Failure to maintain a book or file that reflects by date, the location by lot and space number of each person entombed or interred in the cemetery.	\$200.00
d. Failure to maintain a publicly available written copy of cemetery rules and regulations.	\$200.00
e. Failure to entrust the appropriate amount to the endowment care fund in a manner that aligns with the relevant requirements in effect at the time of the contract, both appropriately and in a timely fashion.	\$500.00

(b). If the board finds a Certificate of Authority holder guilty of any violation of Chapter 13, Title 34, Code of Alabama 1975 or Chapter 395 of the administrative code, including but not limited to, any violation of subsection (a) and the infractions therein, the board may refuse to grant, refuse to renew, or suspend or revoke a license, after proper hearing and notice to the licensee, upon the licensee being found guilty of any violation of this chapter. The board may levy and collect administrative fines for any violation of this chapter, or the rules or regulations of the board, in an amount not to exceed one thousand dollars (\$1,000) for each no willful violation and in an amount not to exceed ten thousand dollars (\$10,000) for each willful violation. Repeat violators will be subject to further disciplinary action by the Board in accordance with the Code of Alabama, 1975, Title 34 Chapter 13.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-56, 34-13-202.

History: New Rule: Published _____; effective _____.

ALABAMA BOARD OF FUNERAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: Chapter 395-X-11 Preneed Contract Funding and Trusts

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:
Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being added to administrative rules under the Alabama Board of Funeral Services from DOI with changes.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:
Written, verbal, or electronic mail comments will be accepted by the Board until:
Time: 4:30 p.m., Wednesday March 6 , 2024
Place: 4276 Lomac Street, Montgomery, AL 36106
Email: charles.perine@fsb.alabama.gov
Phone: 334-242-4049

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Wednesday, March 6, 2024

CONTACT PERSON AT AGENCY:
Charles M. Perine

Charles M. Perine

Charles Perine

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

ALABAMA BOARD OF FUNERAL SERVICES
ADMINISTRATIVE CODE

CHAPTER 395-X-11
PRENEED CONTRACT FUNDING AND TRUSTS

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395-X-11-.01 **Funding Methods.**

1. The following are available for use as the funding methods to defray the cost of future performance of preneed contracts:

- a. A funeral or cemetery merchandise and services trust.
- b. Life insurance or annuities sold in conjunction with the preneed contract.
- c. A preneed seller's current revenues if the seller has in force an approved surety bond.
- d. A preneed seller's current revenues if the seller has in force an approved letter of credit.

2. If a preneed seller is funding preneed contracts through the use of a trust, the timing and percentage of trust deposits must be consistent for all preneed contracts sold. The Board must approve any subsequent change in the method on such terms and conditions as the Board may prescribe.
3. Preneed contract forms must identify the funding method being used and contain provisions pertinent to that method, and not include references to or provisions relevant only to another funding method.
4. A preneed seller must maintain a detailed and accurate record of funds collected in payment for preneed contracts and disbursements of those funds as pertinent to the funding method used.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-11-.02 Merchandise and Services Trusts.

1. A merchandise and services trust agreement must be approved by the Board prior to use. The trust must be irrevocable.
2. On or after January 1, 2015, funds collected for preneed funeral merchandise and services contracts shall be trusted in a funeral merchandise and services trust. Funds collected for preneed cemetery merchandise and services contracts shall be trusted in a cemetery merchandise and services trust. Sellers that offer both preneed funeral merchandise and services contracts and cemetery merchandise and services contracts shall include caskets on the preneed funeral merchandise and services contract form and trust accordingly as provided in this Chapter.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277

History: New Rule: Published _____; effective _____.

**Funeral Merchandise And Services Trust -
Deposits.**

1. Any person who is paid, collects or receives funds under a preneed contract for funeral merchandise and services to be funded by trust shall timely deposit in trust an amount determined as follows:
 - a. 75% 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.
 - b. 60% of the amount collected on the purchase price for outer burial containers.
 - c. 110% of the wholesale cost of memorials from the amount collected on the purchase price of memorials.
 - d. 100% of the amount collected on the purchase price for all cash advance items sold.

2. Deposits in trust must occur on the following schedule:
 - a. For all preneed contracts entered into between May 1, 2002 (the effective date of the Act) and December 31, 2014, the proper total amount determined by application of the provisions in paragraph (1) shall be deposited in trust within thirty (30) days after the end of the calendar month in which the preneed contract is paid in full unless, before that time, the preneed contract has been cancelled or the seller has discharged its liabilities to provide the merchandise or perform the services specified in the contract.
 - b. For preneed contracts entered into on or after January 1, 2015, the seller's obligation to make trust deposits shall commence not later than thirty (30) calendar 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. The seller shall thereafter deposit the appropriate amount in trust not later than thirty (30) days after the end of the month in which each payment on the preneed contract is collected.
 - c. For preneed contracts entered into on or after January 1, 2015, at its option, and as an alternative to the schedule in subparagraph (b), a preneed seller may elect to make deposits in trust as payments are received on a

preneed contract not later than thirty (30) days after the end of the calendar month in which a payment is collected. In such event, at a minimum, the amount of the deposit must equal the amount determined by application of paragraph (1). The seller must uniformly apply either the schedule in subparagraph (b) or the alternate schedule in this subparagraph to all preneed contracts sold on or after January 1, 2015.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-11-.04 Funeral Merchandise And Services Trust - Administration, Withdrawals..

1. At all times, the certificate holder shall be able to determine the amount held in trust attributable to each contract holder.
2. For all contracts entered into on or after January 1, 2015, the determination shall be based upon the fair market value of the trust at the time of determination and the proportionate share of the fair market value attributable to each contract holder.
3. For all contracts in effect before January 1, 2015, the valuation of each contract may be calculated using any valuation method that had been approved by the Board.
4. (a) For a withdrawal from the trust based on performance of a preneed contract, the certificate holder must present valid proof of death to the trustee of the trust. Such proof may take the following forms:
 - i. A copy of the published obituary; or
 - ii. A copy of the burial transit permit; or
 - iii. A working copy of the death certificate or coroner's report.
- b. For a withdrawal from the trust for merchandise which has been delivered and installed, or services performed, the certificate holder must present to the trustee any two of the following:

- i. A written statement from an authorized representative of the cemetery authority certifying to delivery of the merchandise; or
 - ii. A photograph of the merchandise as installed in the cemetery space; or
 - iii. A copy of the paid-in-full invoice for purchase of the merchandise.
5. In the event a trusted preneed contract has been cancelled or transferred to another provider, before any withdrawals from trust may be made, the certificate holder must present to the trustee a written notice signed by the purchaser stating that the contract has been cancelled or transferred upon the purchaser's request.
6. In the case of a trust withdrawal upon fulfillment or cancellation of a preneed contract entered into on or after January 1, 2015, the amount withdrawn may not exceed the amount attributable to that preneed contract in proportion to the total amount held in trust for all preneed contracts as of the date of the withdrawal. In the event of a contract cancellation after the expiration of thirty (30) days from contract execution, default by purchaser, or transfer of the contract to another provider, the seller may only retain an amount not exceeding 20% of the contract purchase price withdrawn from the trust at the time of the cancellation, default by purchaser or transfer, and the balance in trust exceeding such 20% must be paid to the contract purchaser or transferred to the new provider's trust.
7. No amount representing earnings or gain on trust assets may be withdrawn from the trust except at the time of fulfillment, cancellation, transfer or default.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

**Cemetery Merchandise And Services Trust -
Deposits..**

1. Any person who is paid, collects or receives funds under a cemetery preneed contract to be funded by trust shall deposit in trust an amount as follows:
 - a. 110% of wholesale cost for all cemetery merchandise.
 - b. 60% of the purchase price specified in the preneed contract for outer burial containers.
 - c. 60% of the purchase price specified in the preneed contract for cemetery services.
 - d. 100% of the purchase price specified for all cash advance items sold in the preneed contract.
 - e. 75% of the purchase price for caskets.
2. For all preneed contracts entered into prior to January 1, 2015, the required deposits to trust 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 as properly allocated to the payment, have been satisfied, or the preneed contract is validly cancelled.
3. For preneed contracts entered into on or after January 1, 2015, the seller's obligation to make trust deposits shall commence not later than thirty (30) calendar 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. The seller shall thereafter deposit the appropriate amount in trust not later than thirty(30) days after the end of the month in which each payment on the preneed contract is collected.
4. At the time of fulfillment of the preneed contract, the seller may withdraw the principal amount in trust, less any loss of the value of the principal, attributable to items or services fulfilled, delivered, or performed on the contract.
5. In order to withdraw amounts representing earnings or gain attributable to trust assets or amounts otherwise exceeding the amount needed to perform preneed contracts:

(a) The fair market value of the trust representing all contracts that are paid-in-full must exceed 110 percent of the total sum of the following:

1. 110% of the current wholesale cost of all cemetery merchandise.
2. 60% of the current retail price of all cemetery services.
3. 60% of the current retail price of all outer burial containers.
4. 75% of the current retail price of all caskets.
5. 100% of the current retail price of all cash advances.

b. The fair market value of the trust representing all contracts that are not paid-in-full must exceed 25% of the total sum of the following:

1. 110% of the current wholesale cost of the liability to deliver all cemetery merchandise (including caskets and outer burial containers).
2. 60% of the current retail price of all cemetery services.
3. 100% of the current retail price of all cash advances.

6. An analysis using the formula in paragraph (5) shall be made annually by the seller, certified under oath by the seller, and provided to the trustee. If the certified analysis evidences an excess in trust beyond the amount calculated under paragraph (5), the certificate holder may withdraw and retain all or part of that excess. If such analysis evidences that the fair market value of the trust is less than 100% of the aggregate calculated amount, within twelve(12) months thereafter, the certificate holder shall, from its own funds, contribute the amount necessary to restore the trust fund to an amount not less than 100% of the aggregate amount calculated.
7. If the amount paid by the purchaser under a preneed contract for cemetery merchandise has been previously been deposited in trust, the seller may withdraw the principal amount, less any loss of the value of the principal, at the time the

cemetery merchandise is delivered or installed or the merchandise is placed in storage with a responsible third party bonded and insured for the wholesale value. Such merchandise can only be comprised of materials designed to withstand prolonged, protected storage without deterioration, and cannot be caskets or alternative containers. If the merchandise is stored, a record specifically identifying each item, the specific preneed contract number, the location of the site, and the identity and address of the bonding and insuring parties, must be attached to the purchaser's record.

8. Any withdrawal from the trust must be made under oath by an officer of the certificate holder and attested before a notary public. The sworn statement shall certify that the contract has been cancelled, partially fulfilled by delivery or installation, or completely fulfilled.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277

History: New Rule: Published _____; effective _____.

395-X-11-.06 Use Of Surety Bond In Lieu Of Trusting..

1. A surety bond may be used in lieu of establishing and maintaining a merchandise and services trust. The surety bond, its form, and amount must be approved by the Board prior to use and written through an insurance company authorized to transact surety insurance in Alabama.
2. The amount of the initial surety bond must be not less than the aggregate value of outstanding liabilities on undelivered preneed contracts of the certificate holder as of the end its last fiscal year. For purposes of determining the amount of the surety bond, "outstanding liabilities" means the original retail amount of services and cash advances and the actual cost to the certificate holder 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.
3. After initial approval, the amount of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities for the previous

calendar quarter and the projected liability for the immediately following quarter.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-11-.07 Use Of Letter Of Credit In Lieu Of Trusting..

1. A letter of credit may be used in lieu of establishing and maintaining a merchandise and services trust. The letter of credit, its form, and amount must be approved by the Board prior to use.
2. The letter of credit must be "evergreen," meaning it will not expire without an affirmative action by the issuer of the letter of credit. The amount of the letter of credit shall be determined in the same manner as indicated in Rule 395-X-11-.06 for the amount of surety bonds.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-11-.08 Pre-Act Trusts..

1. A preneed merchandise and services trust established for funds collected on preneed contracts entered into prior to May 1, 2002, may not be merged with a trust established for preneed contracts entered into on and after May 1, 2002, without the express permission of the Board.
2. To approve the merger of the trusts, the Board must be satisfied that the minimum amounts required to be trusted under the law have been trusted on the contracts entered into prior to the law.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-11-.09 Endowment Care Fund.

1. Each endowment care cemetery must establish and maintain an irrevocable trust known as an endowment care fund irrespective of whether the cemetery authority holds a certificate of authority to sell preneed contracts. Each cemetery authority that operated an endowment care cemetery and sold interment rights on or after the effective date of the Act (May 1, 2002) and had an existing fund or trust for endowment care shall transfer the assets of such fund or trust into an endowment care fund to be administered according to the Act and this Chapter.
2. The endowment care fund 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 the provisions of Alabama Code or under the applicable laws of the United States or any other state, or a board of trustees. The endowment care fund trust agreement must be filed with and approved by the Board.
3. If used, a board of trustees shall consist of at least three members, who shall each reside in Alabama and at least one of whom is engaged in outside cemetery management. Each such member shall be bonded to honestly perform the duties of trustee under the trust agreement as approved by the Board. Effective July 1, 2014, a person serving on a board of trustees for cemetery authority may not also serve as a trustee of an endowment care fund for the cemetery authority.
4. A board of trustees in existence as of July 1, 2014, may thereafter continue to serve as the trustee of an endowment care fund if, unless exempted by the Board as provided in paragraph (5), each member of the board of trustees shall furnish a bond in the amount of \$100,000 or the amount in each endowment care fund for which the board acts as trustee as of December 31, 2014, whichever amount is greater. 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 bond, its form, and amount must be approved by the Board prior to use and written through an insurance company authorized to transact surety insurance in Alabama.
5. The Board shall exempt a board of trustees from a bond requirement in paragraph (4) if the board of trustees

provides to the Board an annual audit that satisfies all the following:

- a. The report is prepared by a certified public accountant authorized to practice in Alabama.
 - b. The report evidences that the review made subject of the report by the accountant encompasses each endowment care fund for which the board acts as trustee.
 - c. The report notes relating to the endowment care fund or funds are in a form that is reasonably acceptable to the Board.
 - d. The report does not evidence any material violation of or noncompliance relating to an endowment care fund.
6. An endowment care fund report in a form approved by the Board shall be filed by the trustee with the Board within ninety (90) days after the close of each calendar year. Such report shall include a complete disclosure of all activity concerning the fund since the previous report and a statement detailing fund investments.
 7. The Board has the authority to examine the records or facilities of any cemetery authority operating an endowment care cemetery as often as the Board may require.
 8. Net income from an endowment care fund, to the extent that it is distributed from the fund, shall be used exclusively to pay for costs of the endowment care cemetery. "Net income" does not include realized or unrealized capital gains or losses. All realized capital gains or losses should be recorded to the fund corpus. For purposes of this subpart, corpus is the sum of the deposits made by the cemetery authority into an endowment care fund 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.
 9. Except as permitted under paragraph (10), a deposit to an endowment care fund cannot be withdrawn from the endowment care fund upon later cancellation of the transaction or in the event of a later discovered calculation error or other error resulting in an excess deposit over that required or for any other reason outside the scope of Code of Ala. 1975, §34-13-270(b).

10. (a) A cemetery authority may recognize and apply a "credit" against future required deposits to the endowment care fund in the following instances:
 - i. When the cemetery authority permits a purchaser to cancel a transaction giving rise to a deposit in the endowment care fund and the cemetery authority has refunded one hundred (100) percent of the transaction purchase price (to include any amount allocated to endowment care) to the purchaser; or
 - ii. As a result of a calculation error or other error, the amount contributed to the endowment care fund for a transaction exceeds what is required under Code of Ala. 1975, §34-13-269(a) (2014) or a greater amount, if any, as may be required by the transaction.
 - b. In these instances, the cemetery authority may decrease the amount of a subsequent deposit into the endowment care fund by the amount of the contribution actually made for a cancelled transaction or the excess amount deposited in error. This type of adjustment should not be reflected as a "withdrawal" from the endowment care fund in the cemetery authority's records.
 - c. Whether to recognize a "credit" in these instances is at the election of the cemetery authority. The "credit," however, must be recognized not later than four (4) calendar months after the date of the event (cancellation or discovery of an error) giving rise to the "credit."
 - d. Each cemetery authority using this "credit" method must maintain detailed records that identify the specific contracts involved in any adjustment by "credit" to endowment care fund deposits and, upon examination, or otherwise upon request, must be able to furnish the Board's examiners or representatives with a summary of all endowment care fund adjustments during the period covered by the examination or request.
11. For preneed contracts entered into on or after January 1, 2015, a cemetery authority providing a discounted, free or complimentary interment right in any grave space, crypt or niche shall timely make an endowment care fund deposit for such discounted, free or complimentary interment right. The amount of such deposit shall be determined by the sale price of interment rights in grave spaces, crypts or niches as of

the date of the sale and applying the proper percentage specified in Code of Ala. 1975, §34-13-269(a).

12. On or after October 1, 2023 for preneed contracts in which a cemetery authority provides a discounted interment right in any grave space, crypt, or niche, the cemetery authority shall timely make a deposit to the endowment care fund for such discounted interment right. The amount of such deposit shall be determined by the net sale price of interment rights in grave spaces, crypts or niches as of the date of the sale and applying the proper percentage specified in Code of Ala. 1975, §34-13-269(a).
13. On or after October 1, 2023, 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.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

**395-X-11-.10 Using Life Insurance Or Annuities To Fund A
Preneed Contract For Funeral Or Cemetery
Merchandise And Services..**

1. The offering and sale of life insurance or annuities intended to fund future performance of funeral or cemetery preneed contracts must comply with all applicable sections of the Alabama insurance code [Ala. Code Tit. 27] and applicable insurance regulations.
2. Life insurance or annuities may only be offered through insurance companies authorized by the Board to engage in the business of life insurance in Alabama. All policy and related forms must have been reviewed and approved by the Board prior to use.
3. Except as provided in paragraph (4), any registered preneed sales agent or other employee of a preneed provider who engages in the solicitation, negotiation, or sale of an individual life insurance policy or annuity contract must be actively licensed as an insurance producer qualified in the life line and as to the type of annuity offered, and must be properly appointed by the insurance company whose product is being offered. A business entity certificate holder may hold a business entity producer license, but at least one

employee of that entity must hold an individual producer license and be designated by the entity as the person responsible for the entity's compliance with insurance laws. Appropriate licensing and insurer appointment are required in order to receive payment of commissions for the sale of life insurance or annuities.

4. A registered preneed sale agent or other employee of a preneed provider need not hold an insurance producer license if:
 - a. The life insurance product being offered is group life insurance;
 - b. The agent's or employee's insurance-related activity is strictly limited to obtaining information needed to enroll a preneed contract beneficiary in a group insurance plan or to issue that person a certificate of insurance under a group insurance plan; and
 - c. The agent or employee is not paid a commission for the activity.
5. Life insurance sold to fund a preneed contract must cover not less than the initial retail price of the preneed contract. This does not prohibit the use of life insurance products which have graded or limited death benefit features. Annuities sold to fund a preneed contract must ultimately cover not less than the initial retail price of the preneed contract. Preneed contracts funded by a combination of annuity and life insurance must ultimately cover not less than the initial retail price of the preneed contract. The life insurance or annuity contract written or assigned to fund the preneed contract must be written or assigned at the time the preneed contract is executed.
6. The preneed contract must disclose that individual or group life insurance or an annuity is the preneed contract funding mechanism. The preneed contract shall not state, represent, or tend to cause confusion that the contract is trust-funded or that the preneed provider will be placing any portion of the contract's purchase price in a trust.
7. The requirements of Alabama Insurance Regulation, Chapter 482-1-078, apply to the sale of individual or group life insurance or an annuity incident to sale of a preneed contract. Premium payments for life insurance or an annuity consideration must be made to the order of the insurance company, not the preneed provider. If payment is tendered to the preneed provider authorized by the insurance company to

receive payments, the preneed provider must furnish a receipt complying with Rule 482-1-078-.05. The preneed provider shall immediately remit funds collected as premium payments to the insurance company.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

**395-X-11-.11 Investment In Life Insurance And Annuities By
Prened Funeral Merchandise And Services
Trusts..**

1. In order for a funeral merchandise and service trust to invest in life insurance and annuities as provided in Code of Ala. 1975, §34-13-232(d), the trust agreement must include language that permits such investment by the trustee. A preneed contract for which a trust invests in insurance policies or annuities as allowed by Code of Ala. 1975, §34-13-232(d) is a trust-funded contract for purposes of the Act and this Chapter.
2. A trustee of a funeral merchandise and services trust has a limited insurable interest in the life of a preneed contract purchaser or a preneed contract beneficiary. The extent of the insurable interest of the trustee is limited to the lesser of \$20,000 or 100% of the purchase price of the preneed contract.
3. If so authorized by the trust agreement, the trustee of a funeral merchandise and services trust may invest any portion or all of the funds deposited in trust for preneed contracts in life insurance contract or annuities issued on the lives of the preneed contract purchasers or preneed contract beneficiaries if the following requirements are met:
 - a. The insurer is properly licensed by the Board and by the insurer's domiciliary jurisdiction.
 - b. Prior to the investment, the insured or annuitant consents, in writing, to the investment in a life insurance contract or annuity on the person's life.
4. Written consent must be made by a document separate from the preneed contract. Prened providers, trustees, and insurance companies may not rely or act on "consent" contained within

a preneed contract signed by the contract purchaser or beneficiary. The form of consent must substantially conform to the form developed by the Board and published on the Board's website. Any other type of consent form used must be submitted for review and approval by the Board prior to use.

5. The insurance company has the responsibility for complying with consent requirements for life insurance policies or annuities for a preneed trust. A preneed provider, through its preneed sales agents, may present a consent form to a prospective preneed contract purchaser as part of the preneed contract sales process. The provider and its employees or agents shall not misrepresent the nature or terms of the consent form or the nature of the transaction. In connection with obtaining execution of the consent form, preneed sales agents or other employees or agents of the preneed provider shall not engage in activities constituting the sale, solicitation or negotiation of insurance for which licensing as an insurance producer is required. Consumer inquiries about the nature or effect of the consent, if not otherwise answered on the face of the consent form, must be referred to the insurance company.
6. Consent must be obtained from the preneed contract beneficiary to the extent that a preneed contract purchaser identified in a preneed contract is not also identified as the beneficiary of that contract. The contract purchaser, if different, may not give consent on the beneficiary's behalf except in the specific instances provided for in Code of Ala. 1975, §§27-14-6(a)(1), -(2), or -(3) (2007). The person from whom consent is obtained must be of competent legal capacity to contract.
7. The preneed trust or trustee electing to invest in life insurance policies or annuities as allowed will be shown as the owner and beneficiary of the policies or annuities.
8. Neither the insurance company nor the funeral merchandise and services trustee may pay a certificate holder or the holder's employees or agents a commission or any other form of compensation relating, directly or indirectly, to life insurance or annuities sold to a funeral merchandise and services trust as a trust investment.
9. An insurance company may not pay a funeral merchandise and services trust or the trustee of such a trust a commission, rebate, or financial inducement of any kind directly or indirectly relating to life insurance or annuities sold to the trust as a trust investment.

10. Any trustee electing to use the investment mechanism allowed and any insurance company electing to sell life insurance or annuities to trusts will furnish to the Board and the trust beneficiary for transmittal to the Board a complete and accurate accounting of the trust's investments in life insurance policies and annuities if requested by the Board as part of the Board's examination or its regulatory responsibilities. Each preneed provider that is beneficiary of a funeral merchandise and services trust which invests in life insurance or annuities shall require the trustee to maintain a complete and accurate accounting of the trust's investments in life insurance policies and annuities and to furnish the information to the Board upon request.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

ALABAMA BOARD OF FUNERAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: Chapter 395-X-12 Required Funeral and Cemetery
Transaction Records

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

Due to the passage of Alabama Preneed Funeral and Cemetery Act of 2023, SB131 (Act No. 2023-94 effective 10/1/2023), the board began regulating preneed funeral and cemetery services. The administrative rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board. This rule is being added to administrative rules under the Alabama Board of Funeral Services from DOI with changes.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Written, verbal, or electronic mail comments will be accepted by the Board until:
Time: 4:30 p.m., Wednesday March 6, 2024
Place: 4276 Lomac Street, Montgomery, AL 36106
Email: charles.perine@fsb.alabama.gov
Phone: 334-242-4049

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, March 6, 2024

CONTACT PERSON AT AGENCY:

Charles M. Perine

Charles M. Perine

Charles Perine

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**ALABAMA BOARD OF FUNERAL SERVICES
ADMINISTRATIVE CODE**

**CHAPTER 395-X-12
REQUIRED FUNERAL AND CEMETERY TRANSACTION RECORDS**

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395-X-12-.01 Records Availability.

Certificate holders selling preneed contracts for funeral and cemetery merchandise and services shall maintain accurate and up-to-date types of records specified in this Chapter in a manner so as to be readily retrievable and made available to the Board and his designees for examination or other purposes.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

**395-X-12-.02 Preneed Contract Log; Cemetery Property Sales
Log - Required..**

1. Each certificate holder selling funeral preneed contracts shall have and maintain a preneed contract log that includes the information set forth in Rule 395-X-12-.03 for each preneed contract sold.
2. Each certificate holder selling cemetery preneed contracts shall have and maintain a cemetery property sales log that includes the information set forth in Rule 395-X-12-.04 for each preneed contract sold.

3. Each certificate holder offering both funeral and cemetery preneed contracts shall have and maintain a preneed contract log and a cemetery property sales log.
4. Each log must be formatted so that:
 - a. The company name is on each page of the log.
 - b. Each page of the log is sequentially numbered at the bottom.
 - c. The log is typed or printed legibly.
 - d. If the log is not being created using a computer spreadsheet, all contract items shall be completed using black or blue ink, except the columns for the current payment status, amount in trust, and cumulative amount in trust, may be written in pencil until the contract is paid in full.
 - e. The log can be copied and scanned.
5. Use of the Board's sample log forms published on the Board's website will be deemed compliance with this Rule. The certificate holder may create its own form of a log as long as all information categories in Rule 395-X-12-.03 or Rule 395-X-12.04, as applicable, appear and the log is formatted as provided in paragraph (4). The certificate holder shall perform such staff training and engage in such oversight as may be necessary to reasonably assure that the log is maintained accurately and updated.
6. Each log must be readily accessible and updated to current status on a not less than quarterly basis.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-12-.03 Preneed Contract Log - Required Content..

1. If the Board's sample log form is not used, any substitute form of preneed contract log shall include the following information categories:
 - a. Sequentially ordered contract number.
 - b. Name of purchaser.
 - c. Name of beneficiary (i.e., the person for whom the contract will cover at the time of need).
 - d. Date of contract.
 - e. Net amount of contract (contract price after insurance credits and all discounts).
 - f. Itemization of purchase price of merchandise and services collected under the contract.

- g. Amount to be trusted (if applicable).
- h. Type of payments (paid-in-full or installments).
- i. Cumulative amount trusted for merchandise and services as of the paid-in-full date.
- j. Face amount of insurance sold (if applicable).
- k. Paid-in-full amount or cumulative installment payments.
- l. Partial delivery (yes/no).
- m. Date delivered.
- n. Date of burial (at need).
- o. Date contract voided or cancelled.
- p. Last payment date.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-12-.04 Cemetery Property Sales Log - Required Content.

1. If the Board's sample log form is not used, any substitute form of cemetery property sales log shall include the following information categories:
 - a. Sequentially ordered contract number.
 - b. Property owner.
 - c. Date of contract.
 - d. Net amount of contract (contract price after all discounts; if complimentary or free so designate on the log).
 - e. Itemization of purchase price of merchandise and services collected under the contract.
 - f. Amount to be trusted (if applicable).
 - g. Paid-in -full amount or cumulative installment payments.
 - h. Paid-in-full date.
 - i. Cumulative amount due endowment care trust.
 - j. Cumulative amount of endowment care contributions.
 - k. Date of endowment care contributions.
 - l. Date of burial (at need).
 - m. Date contract voided or cancelled.
 - n. Last payment date.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-12-.05**Additional Required Preneed Records..**

1. A certificate holder shall maintain detailed records for each preneed contract written. The detailed records shall include, but not be limited to, a preneed contract file that includes all supporting documentation, such as the preneed contract; copies of insurance policies, annuity contracts or proof of deposits in trust; copies of any documentation requesting or authorizing withdrawals from a merchandise and services trust; notices of fulfillment and cancellation; and all correspondence to and from the preneed entity to the purchaser including copies of default notices or cancellation letters. The certificate holder must have available this information on all preneed contracts sold since May 1, 2002.
2. Funeral merchandise and services certificate holders shall maintain the following:
 - a. The preneed contract log required in paragraph (1) of Rule 395-X-12.02.
 - b. Preneed files and at-need files.
 - c. Monthly death reports.
 - d. Funeral services log or list.
 - e. Manual cash receipts for preneed and at-need.
 - f. Accounts receivable.
 - g. The current and historical versions of the dated price lists of available services and merchandise required by Code of Ala. 1975, §34-13-9 (2014).
 - h. Advertising
 - i. Bank records and statements.
 - j. Cash disbursement records.
 - k. Balance sheet and financial records.
 - l. Any changes in ownership and control.
 - m. All wholesale price lists utilized.
 - n. For funeral merchandise and services trusts:
 - i. Quarterly trust statements.
 - ii. Trust transmittal records.
 - iii. Copy of merchandise and services trust agreement.
 - o. For contracts secured under a surety bond:
 1. The bond(s).
 2. Detailed bond reports.
 3. Wholesale price of merchandise.
 - p. For contracts funded by life insurance or annuities:
 1. Policy transaction status reports
3. Cemetery merchandise and services certificate holders shall maintain the following:
 - a. The cemetery property sales log required in paragraph (2) of Rule 395-X-12-.02.
 - b. Preneed contract files and at-need files.

- c. Interment log or list.
- d. Manual cash receipts for preneed and at-need.
- e. Plot maps and Cemetery rules and regulations.
- f. Pre-construction plans and sales.
- g. The current and historical versions of the dated price lists of available burial services and merchandise required by Code of Ala. 1975, §8-30-2 (2002).
- h. Advertising.
- i. Bank records and statements.
- j. Cash disbursement records.
- k. Balance sheet and financial records.
- l. Stored preneed merchandise.
- m. Any changes in ownership and control.
- n. All wholesale price lists utilized.
- o. For cemetery merchandise and services trusts:
 - 1. Quarterly trust statements.
 - 2. Trust transmittal records.
 - 3. Copy of merchandise and services trust agreement.
- p. For contracts secured under a surety bond:
 - 1. The bond(s).
 - 2. Detailed bond reports.
 - 3. Wholesale prices of merchandise.
- q. For contracts funded by life insurance or annuities:
 - 1. Policy status reports.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.

395-X-12-.06 Required Endowment Care Cemetery Records..

- 1. In addition to statutory requirements, endowment care cemeteries shall maintain the following records:
 - a. Cemetery property sales log as required in paragraph (2) of Rule 395-X-12-.02
 - b. At-need files.
 - c. Interment log or list.
 - d. Manual cash receipts.
 - e. Plot maps and Cemetery rules and regulations.
 - f. Pre-construction plans and sales.
 - g. The current and historical versions of the dated price lists of available burial services and merchandise required by Ala. Code §8-30-2 (2002).
 - h. Advertising
 - i. Bank records and statements.
 - j. Cash disbursement records.
 - k. Balance sheet and financial records.

- l. Stored preneed merchandise.
- m. Any changes in ownership and control.
- n. Endowment care trust fund board members, if applicable.
- o. Bond records or exemption notice from the Board, if applicable.
- p. Quarterly trust statements.
- q. Trust transmittals.
- r. Copy of endowment care trust agreement(s).

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

History: New Rule: Published _____; effective _____.