

1 HB588
2 118808-8
3 By Representative Johnson
4 RFD: Government Operations
5 First Read: 17-FEB-10

1
2 ENROLLED, An Act,

3 Relating to the sale of preneed funeral or cemetery
4 merchandise and services; to amend Sections 27-17A-3,
5 27-17A-10, 27-17A-11, 27-17A-12, 27-17A-13, 27-17A-14,
6 27-17A-15, 27-17A-22, 27-17A-25, 27-17A-30, 27-17A-31,
7 27-17A-32, 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43,
8 27-17A-44, 27-17A-50, and 27-17A-55, Code of Alabama 1975, and
9 to add Sections 27-17A-5 and 27-17A-26 to the Code of Alabama
10 1975; to clarify that a preneed contract is not an insurance
11 contract; to require any person selling funeral or cemetery
12 services on a preneed basis to obtain a certificate of
13 authority from the Department of Insurance; to require the
14 quarterly submission of a statement of preneed financial
15 transactions to the Commissioner of Insurance; to change the
16 renewal and expiration dates for a preneed certificate of
17 authority; to clarify the amount of a bond used as an
18 alternative to a trusting requirement and require an initial
19 bond to be based on the amount of preneed liability expected
20 to be incurred within the next 12 months; to require the
21 commissioner, at least annually, to inspect the preneed
22 records of any person lawfully, or suspected of unlawfully,
23 writing preneed contracts; to authorize the commissioner to
24 charge an inspection fee of up to \$250; to increase the
25 penalties for a willful violation from a Class B misdemeanor

1 to a Class C felony; to authorize the commissioner to use
2 funds available from all sources in the enforcement of this
3 act; to create the Alabama Funeral and Cemetery Preneed
4 Consumer Protection Fund for the protection of consumers who
5 purchase preneed contracts after April 30, 2002; to provide
6 that funds received for funeral and cemetery merchandise
7 placed in storage prior to death need not be placed in trust;
8 to subject cemetery authorities to the act; to require any
9 person receiving funds from the sale of a preneed contract to
10 contribute those funds to a trust fund, life insurance
11 contract, or annuity contract; to prohibit a seller of preneed
12 services from sharing in the discharge of the responsibilities
13 of the trustee, except for appointing an adviser; to require
14 any payments received on a preneed contract written after
15 April 30, 2002, to be deposited into an approved trust; to
16 require preneed cemetery merchandise and services funds remain
17 in trust until cancellation or fulfillment; to remove the
18 requirement that certification of a responsible officer of a
19 preneed cemetery authority be given under oath; and to require
20 a cemetery authority to place funds collected for the
21 construction of a mausoleum, columbarium, or below ground
22 crypt into a preconstruction trust until such time as
23 construction is complete.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 27-17A-3 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§27-17A-3.

4 "(a) Nothing in this chapter shall be construed to
5 prohibit the funding of funeral and cemetery preneed contracts
6 with life insurance contracts. Life insurance contracts used
7 to fund preneed contracts shall conform with the provisions of
8 this title as they relate to life insurance and shall cover at
9 a minimum the ~~retail amount of the preneed contract at the~~
10 ~~time of purchase~~ funding requirements provided in Sections
11 27-17A-31 and 27-17A-42.

12 "(b) Nothing in this chapter shall be construed to
13 prohibit a seller from distributing portions of payments
14 received by the seller into a life insurance contract or
15 annuity contract, or both, in lieu of trust funding for the
16 purpose of satisfying the funding requirements of a seller as
17 provided in this chapter.

18 "(c) Nothing in this chapter shall prohibit a
19 seller, or any other person, from receiving commissions earned
20 and payable in regard to funding preneed contracts with life
21 insurance contracts or annuity contracts, or both, provided
22 the seller or other person holds a valid and lawful license to
23 sell or solicit life insurance in this state."

24 Section 2. Section 27-17A-5 is added to the Code of
25 Alabama 1975, to read as follows:

1 (a) A preneed contract is not an insurance contract.

2 (b) A preneed contract does not include a contract
3 for the sale of interment rights or cemetery grave spaces or
4 lots.

5 (c) A preneed contract does not include a contract
6 for the sale of cemetery merchandise when delivery to the
7 purchaser is made within 120 days after the date of contract.

8 (d) An outer burial container shall only be
9 installed at time of need.

10 Section 3. Sections 27-17A-10, 27-17A-11, 27-17A-12,
11 27-17A-13, 27-17A-14, 27-17A-15, 27-17A-22, and 27-17A-25 of
12 the Code of Alabama 1975, are amended to read as follows:

13 "§27-17A-10.

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

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

19 "(2) The provisions of subdivision (1) do not apply
20 to any legal reserve insurance company or to any trust company
21 or to any national or state bank or savings and loan
22 association having trust powers which company, bank, or
23 association receives any money in trust pursuant to the sale
24 of a preneed contract.

1 "(c) (1) No person that is an individual may obtain
 2 or hold a certificate of authority under this article for the
 3 preneed sale of funeral services or merchandise, or both, or
 4 cemetery services or merchandise, or both, unless the person
 5 ~~or its agent, in the case of a corporate entity,~~ holds a
 6 current license as a funeral director or a funeral
 7 ~~establishment,~~ from the Alabama Board of Funeral Service or is
 8 a cemetery authority.

9 "(2) No person that is a business entity may obtain
 10 or hold a certificate of authority under this article for the
 11 preneed sale of funeral services or merchandise, or both, or
 12 cemetery services or merchandise, or both, unless the person
 13 satisfies one of the following requirements:

14 "a. Holds an interest in real property licensed as a
 15 funeral establishment by the Alabama Board of Funeral Service.

16 "b. Owns a controlling interest of greater than 50
 17 percent in another person that is a business entity and holds
 18 an interest in real property licensed as a funeral
 19 establishment by the Alabama Board of Funeral Service.

20 "c. Employs or has as an officer, partner,
 21 shareholder, or member a person licensed as a funeral director
 22 by the Alabama Board of Funeral Service.

23 "d. Is a cemetery authority.

1 "(d) The provisions of this section do not apply to
2 a cemetery authority owned or operated by a governmental
3 agency or a religious institution.

4 "§27-17A-11.

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

19 "(b) The quarterly and annual statement shall
20 include all of the following:

21 "(1) The types of preneed contracts proposed to be
22 written and the type of funding ~~vehicle~~ to be used.

23 "(2) The name and address of the place of business
24 of the person offering to write preneed contracts.

1 ~~"(3) Evidence that the person offering the statement~~
2 ~~has the following qualifications:~~

3 ~~"a. Has the ability to discharge his or her~~
4 ~~liabilities as they become due in the normal course of~~
5 ~~business and has sufficient funds available during the~~
6 ~~calendar year to perform his or her obligations under the~~
7 ~~contract.~~

8 ~~"b. Has complied with the trust requirements for the~~
9 ~~funds received under contracts issued by himself or herself as~~
10 ~~hereinafter described.~~

11 ~~"c. Has disbursed interest, dividends, or accretions~~
12 ~~earned by trust funds, in accordance with this article and~~
13 ~~rules promulgated hereunder.~~

14 ~~"d. Has complied with this chapter and any rules of~~
15 ~~the commissioner.~~

16 ~~"(4) Any other information considered necessary by~~
17 ~~the commissioner to meet the commissioner's responsibilities~~
18 ~~under this chapter.~~

19 "(3) All of the following about preneed activity
20 subject to this chapter:

21 "a. As to funeral or cemetery merchandise and
22 services:

23 "1. The name, physical address, and phone number of
24 the funeral establishment or cemetery authority.

25 "2. The name of the beneficiary.

1 "3. The contract number.

2 "4. The name of the trustee or insurance company, or
3 both.

4 "5. The quarterly report provided to the funeral
5 establishment by an insurance company or a trust company.

6 "b. As relating to a cemetery property sales log.

7 "1. The name, physical address, and phone number of
8 the cemetery authority.

9 "2. The name of the owner of the interment rights.

10 "3. The contract number.

11 "4. The name of the trustee or insurance company, or
12 both.

13 "5. The quarterly report provided to the cemetery by
14 an insurance company or a trust company.

15 "(6) The amount of any endowment trust fund
16 quarterly deposit.

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

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

1 certificate of authority shall be accompanied by the
2 appropriate fee as determined by the commissioner not to
3 exceed seventy-five dollars (\$75).

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

20 "(e) Upon the commissioner being satisfied that the
21 statement and matters which may accompany it meet the
22 requirements of this article and of its rules, the
23 commissioner shall issue or renew the certificate of
24 authority.

1 "(f) The certificate of authority shall expire
2 annually ~~on June 1~~ at midnight on September 30, unless
3 renewed, or at such other time or times as the commissioner
4 may provide by rule.

5 "(g) On or before ~~April~~ June 1 of each year, the
6 certificate holder shall file with the commissioner in the
7 form prescribed by the commissioner a full and true statement
8 as to the activities of any trust, including trust statements,
9 established by it pursuant to this article for the preceding
10 calendar year.

11 "(h) In addition to any other penalty that may be
12 provided for under this article, the commissioner may levy a
13 fine not to exceed fifty dollars (\$50) per day for each day
14 the certificate holder fails to file its annual statement, and
15 the commissioner may levy a fine not to exceed fifty dollars
16 (\$50) per day for each day the certificate holder fails to
17 file the quarterly ~~statement of activities of the trust~~. Upon
18 notice to the certificate holder by the commissioner that the
19 certificate holder has failed to file the annual statement or
20 the quarterly ~~statement of activities of the trust~~, the
21 certificate holder's authority to sell preneed contracts shall
22 cease while the default continues.

23 "(i) To facilitate uniformity in ~~financial~~
24 ~~statements and to facilitate analysis~~ examinations, the
25 commissioner may by rule adopt a form for financial

1 statements. The basis of accounting for the form shall be
2 either generally accepted accounting principles in the United
3 States or in accordance with the otherwise comprehensive basis
4 of accounting, and may have the following exceptions:

5 "(1) Liability pre-act preneed contracts may be
6 reported at the current vendor costs of merchandise plus
7 freight.

8 "(2) Current revenue may include earned
9 administrative revenue. Administrative revenue is considered
10 earned after the 30th day after the date of the contract.
11 Administrative revenue shall be calculated at a rate up to 25
12 percent of collections of preneed contracts written on or
13 after May 1, 2002, excluding cash advanced items.

14 "(3) The statutory accounting basis of accounting,
15 as prescribed by rule of the department.

16 "(j) The commissioner may authorize the transfer of
17 certificates of authority and establish fees for the transfer
18 in an amount not to exceed one hundred dollars (\$100). Upon
19 receipt of an application for transfer, the commissioner may
20 grant a temporary certificate of authority to the proposed
21 transferee, based upon criteria established by the
22 commissioner by rule, which criteria shall promote the
23 purposes of this article in protecting the consumer. A
24 temporary certificate of authority shall expire 60 days after
25 issuance unless renewed by the commissioner.

1 "§27-17A-12.

2 "(a) Preneed contract forms and related forms shall
3 be filed with and approved by the commissioner.

4 "(b) Specific disclosure regarding the certificate
5 holder's requirement to place certain preneed funds received
6 in trust or insurance, or both, is required in the preneed
7 contract.

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

13 "§27-17A-13.

14 "(a) Except as provided in Sections 27-17A-3 and
15 27-17A-14, every preneed contract shall require the moneys
16 paid to the seller or trustee to be placed in trust in
17 accordance with Article 3, for funeral merchandise and
18 services, or Article 4, for cemetery merchandise and services.

19 "(b) ~~Although this~~ This chapter does not apply to
20 preneed contracts and preneed trust funds entered into prior
21 to May 1, 2002, ~~a preneed provider which contends that a~~
22 ~~preneed trust fund which was in effect prior to May 1, 2002,~~
23 ~~complies with this chapter with respect to the contracts~~
24 ~~entered into prior to May 1, 2002, may provide to the~~
25 ~~commissioner documentary proof thereof. Upon the commissioner~~

1 ~~determining that compliance has been established, the~~
2 ~~pre-existing preneed trust fund assets may be merged with or~~
3 ~~into the trust fund required under this chapter or continued~~
4 ~~as the trust fund and that determination by the commissioner~~
5 ~~shall be noted on the certificate of authority, and thereafter~~
6 ~~all preneed contracts covered by the trust fund, including~~
7 ~~those entered into prior to May 1, 2002, shall be subject to~~
8 ~~this chapter. A preneed provider may merge a preneed trust~~
9 ~~fund in effect before May 1, 2002, with or into a trust fund~~
10 ~~required under this chapter.~~

11 "§27-17A-14.

12 "(a) As an alternative to the trust requirement of
13 Section 27-17A-13, the details of which are set forth in
14 Articles 3 and 4, a preneed provider ~~may~~, with the prior
15 approval of the commissioner, may purchase a surety bond in an
16 amount not less than the aggregate value of outstanding
17 liabilities on undelivered preneed contracts for merchandise,
18 services, and cash advances. For the purposes of this section,
19 the term "outstanding liabilities" means the original retail
20 amount of services and cash advances and the actual cost to
21 the entity to provide the undelivered merchandise sold on ~~the~~
22 contract preneed contracts written after April 30, 2002.

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

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

4 "(c) (1) The amount of the bond shall be based on a
5 report documenting the outstanding liabilities of the preneed
6 provider, shall be prepared by the preneed provider using
7 generally accepted accounting principles, and shall be signed
8 by the chief executive officer or chief financial officer of
9 the preneed provider. The report shall be compiled as of the
10 end of the preneed provider's fiscal year and updated
11 annually.

12 "(2) The amount of the initial surety bond of a
13 newly authorized preneed provider with no outstanding preneed
14 liability shall be set by the commissioner in an amount
15 certified by the preneed provider as the amount of outstanding
16 preneed liability expected to be incurred by the provider
17 within the next 12 months.

18 "(d) The amount of the bond shall be increased or
19 decreased at the time of renewal as necessary to correlate
20 with changes in the outstanding liabilities as reported by the
21 preneed provider pursuant to subdivision (1) of subsection
22 (c). Further, the commissioner may order the bond to be
23 increased as necessary to correlate with changes in the
24 outstanding liabilities of bonded contracts due to increases
25 in the consumer price index.

1 "(e) If the preneed provider fails to maintain a
2 bond pursuant to this section the preneed provider shall cease
3 the offering for sale and sale of preneed merchandise,
4 services, and cash advances.

5 "(f) No surety bond used to comply with this section
6 shall be canceled or subject to cancellation unless at least
7 60 days' advance notice thereof, in writing, is filed with the
8 commissioner, by the surety company. The cancellation of the
9 bond shall not relieve the obligation of the surety company
10 for claims arising out of contracts issued or otherwise
11 covered before cancellation of the bond. In the event that
12 notice of termination of the bond is filed with the
13 commissioner, the certificate holder insured thereunder shall,
14 within 30 days of the filing of the notice of termination with
15 the commissioner, provide the commissioner with a replacement
16 bond or with evidence which is satisfactory to the
17 commissioner demonstrating that the provisions of this chapter
18 have been fully complied with. If within 30 days of filing of
19 the notice of termination with the commissioner no replacement
20 bond acceptable to the commissioner or no evidence
21 satisfactory to the commissioner demonstrating that the
22 provisions of this chapter have been complied with is filed
23 with the commissioner, the commissioner shall suspend the
24 license of the certificate holder until the certificate holder
25 files a replacement bond acceptable to the commissioner or

1 demonstrates to the satisfaction of the commissioner that it
2 has complied with the provisions of this chapter.

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

10 "§27-17A-15.

11 "(a) The commissioner ~~shall, as often as he or she~~
12 ~~may deem necessary, examine the business~~ may inspect the
13 preneed contracts, preneed contract trust fund records, and at
14 need records of any person writing preneed contracts under
15 this chapter ~~to the extent applicable. The examination shall~~
16 ~~be made by designated representatives or examiners of the~~
17 ~~Department of Insurance. The cost of the inspection may not~~
18 exceed two hundred fifty dollars (\$250) and shall be paid by
19 the seller.

20 "(b) If the inspection shows that a seller is not in
21 compliance with this chapter or any rules adopted pursuant to
22 this chapter, the commissioner may examine the business of any
23 person writing preneed contracts. The examination shall be
24 performed by designated representatives of the commissioner or
25 examiners employed by the Department of Insurance.

1 "(c) The commissioner may examine the business of
2 any person who is writing preneed contracts without a valid
3 certificate of authority or suspected of writing preneed
4 contracts without a valid certificate of authority.

5 "~~(b)~~ (d) The written report of each inspection and
6 examination, when completed, shall be filed in the office of
7 the commissioner and, when so filed, shall not constitute a
8 public record.

9 "~~(c)~~ (e) Any person being examined shall produce,
10 upon request, all records of the person. The designated
11 representative of the commissioner may at any time examine the
12 preneed records and affairs of the person, whether in
13 connection with a formal examination or not.

14 "~~(d)~~ (f) The commissioner may waive the examination
15 requirements of this section if the certificate holder submits
16 audited financial statements.

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

22 "§27-17A-22.

23 "Any officer or director, or person occupying
24 similar status or performing similar functions, ~~of~~ whether a
25 certificate holder or not, who fails to make ~~required~~ deposits

1 ~~to any trust fund~~ required by this chapter; any director,
2 officer, agent, or employee of ~~a certificate holder~~ any of the
3 foregoing who makes any unlawful withdrawal of funds from any
4 such account or who knowingly discloses to the commissioner or
5 an employee thereof any false report made pursuant to this
6 chapter; or any person who willfully violates ~~any of the~~
7 ~~provisions of~~ this chapter commits a Class ~~B~~ misdemeanor C
8 felony, punishable as provided by law.

9 §27-17A-25.

10 "(a) All fees collected by the commissioner pursuant
11 to this chapter, excluding fees collected pursuant to Section
12 27-17A-26, shall be deposited into the State Treasury to the
13 credit of the Insurance Department Fund.

14 "(b) All fines collected by the commissioner
15 pursuant to this chapter shall be deposited into the State
16 Treasury to the credit of the State General Fund.

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

21 Section 4. Section 27-17A-26 is added to the Code of
22 Alabama 1975, to read as follows:

23 §27-17A-26.

24 (a) There is created a fund in the State Treasury,
25 designated as the Alabama Funeral and Cemetery Preneed

1 Consumer Protection Fund. Monies in the fund shall be used for
2 the protection of consumers who purchased preneed services
3 after April 30, 2002. All moneys in the fund are hereby
4 appropriated, as a continuing appropriation, to the
5 commissioner for use in implementing this chapter.

6 (b) Within 60 days after the end of each calendar
7 quarter, for each preneed contract written during the quarter
8 and not canceled within 30 days after the date of execution,
9 each certificate holder shall pay to the fund an amount
10 established by the commissioner. The amount may not exceed
11 twenty dollars (\$20) per preneed contract written. The amount
12 may be included in the total cost of a preneed contract and
13 later deducted for deposit into the fund.

14 (c) All monies received by the commissioner pursuant
15 to this section shall be deposited into the fund.

16 (d) (1) Upon the commencement of a liquidation
17 proceeding against a certificate holder, the department may
18 use up to 50 percent of the balance of the fund not already
19 committed to a prior liquidation proceeding solely for the
20 purpose of providing restitution to preneed contract
21 purchasers and their estates due to the failure of a
22 certificate holder to provide benefits pursuant to a preneed
23 contract or to refund the appropriate principal amount
24 pursuant to the cancellation of a preneed contract. The

1 balance of the fund shall be determined as of the date of the
2 delinquency proceeding.

3 (2) If a liquidation proceeding is not commenced,
4 the commissioner may use the fund to provide restitution to
5 any consumer, owner, or beneficiary of a preneed contract or
6 similar regulated arrangement under this chapter. The
7 commissioner may also provide payments from the fund if a
8 certificate holder has breached a preneed contract by failing
9 to provide benefits or an appropriate refund or if a provider,
10 who is a former certificate holder, or an establishment, which
11 has been regulated under this chapter, has sold a preneed
12 contract and has failed to fulfill the arrangement or provide
13 an appropriate refund because of a lack of adequate funds.

14 (3) To determine whether to make payments from the
15 fund and which party should be responsible for such payments,
16 the department shall consider whether a certificate holder or
17 previous provider has been acquired by a successor and whether
18 the successor should be responsible for the liabilities of the
19 defaulting entity.

20 a. With respect to preneed contracts funded by life
21 insurance, payments from the fund shall be made if the insurer
22 is insolvent, but only to the extent that funds are not
23 available through the liquidation proceeding of the insurer,
24 or if the certificate holder is unable to perform under the
25 contract and the insurance proceeds are not sufficient to

1 cover the cost of the merchandise and services contracted for.
2 In no event shall the commissioner approve payments in excess
3 of the insurance policy limits unless the commissioner
4 determines that at the time of sale of the preneed contract,
5 the insurance policy would have paid for the services and
6 merchandise contracted for. Such monetary relief shall be in
7 an amount as the department may determine and shall be payable
8 in such manner and upon such conditions and terms as the
9 department may prescribe. Such monetary relief shall be
10 approved by the commissioner.

11 b. With respect to preneed contracts funded pursuant
12 to Section 27-17A-13 or Section 27-17A-14, restitution may not
13 exceed, as to any single contract or arrangement, the lesser
14 of the gross amount paid under the contract or four percent of
15 the uncommitted assets of the fund.

16 c. With respect to preneed contracts funded by life
17 insurance policies, restitution may not exceed, as to any
18 single contract or arrangement, the lesser of the face amount
19 of the policy, the actual cost of the arrangement contracted
20 for, or four percent of the uncommitted assets of the fund.

21 (4) The total of all restitution made to all
22 applicants under this subsection in a single fiscal year may
23 not exceed the greater of 30 percent of the uncommitted assets
24 of the fund as of the end of the most recent fiscal year or
25 one hundred twenty thousand dollars (\$120,000).

1 (5) The department, upon order of the commissioner,
2 may use monies in the fund to contract with independent
3 vendors to administer this subsection.

4 (e) All monies deposited into the fund, together
5 with all accumulated income, shall be used only for the
6 purposes provided in this section and may not be subject to
7 any lien, charge, judgment, garnishment, or creditor claim
8 against a certificate holder, trustee utilized by a
9 certificate holder, company providing a surety bond, or
10 purchaser of a preneed contract. No preneed contract purchaser
11 shall have any vested rights in the fund.

12 (f) If restitution is paid to a preneed contract
13 purchaser, or his or her estate, pursuant to this section the
14 amount of restitution paid may not exceed the gross amount of
15 the principal payments made by the purchaser on a contract.

16 (g) If the department makes payments from the fund
17 to a purchaser, or his or her estate, the department shall be
18 subrogated to the rights of the purchaser under the contract
19 and any amounts collected by the department shall be deposited
20 into the fund.

21 (h) Notwithstanding the fee structure provided in
22 subsection (b), the department shall annually review the
23 financial status of the fund and, if the uncommitted fund
24 balance exceeds three million dollars (\$3,000,000), the
25 department, by rule, may lower the required payments to the

1 fund to an amount not less than one dollar (\$1) per preneed
2 contract written.

3 (i) The department shall adopt rules as necessary
4 for the implementation of this section. The rules shall
5 provide for all of the following:

6 (1) Forms for filing claims against the fund.

7 (2) Procedures for filing claims against the fund.

8 (3) The information and supporting documentation
9 required to be provided by claimants to support claims against
10 the fund.

11 (4) Procedures for investigating claims against the
12 fund.

13 (5) Criteria for determining whether a claim is
14 allowable and in what amount.

15 (6) Forms and procedures for use by preneed
16 licensees in making remittances to the fund as required by
17 this chapter.

18 Section 5. Sections 27-17A-30, 27-17A-31, 27-17A-32,
19 27-17A-40, 27-17A-41, 27-17A-42, 27-17A-43, 27-17A-44,
20 27-17A-50, and 27-17A-55 of the Code of Alabama 1975, are
21 amended to read as follows:

22 "§27-17A-30.

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

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

3 "§27-17A-31.

4 "(a) Any person who is paid, collects, or receives
 5 funds under a preneed contract for funeral services or funeral
 6 merchandise shall deposit ~~in this state~~ into an approved trust
 7 an amount at least equal to the sum of 75 percent of the
 8 purchase price collected for all funeral services and funeral
 9 merchandise sold and facilities rented other than outer burial
 10 containers, 60 percent of the purchase price collected for
 11 outer burial containers, and 100 percent of the purchase price
 12 collected for all cash advance items sold. For any preneed
 13 contract written after April 30, 2002, and for the purposes of
 14 this chapter, the contract purchaser and the seller recognize
 15 that the seller has incurred certain expenses and provided
 16 certain benefits to the contract purchaser and the contract
 17 purchaser recognizes that the seller, to cover costs
 18 associated with the sale of the preneed contract, and except
 19 for cash advance items, may realize up to 25 percent of the
 20 total preneed contract purchase price as income.

21 "(b) For any payment received on a preneed contract
 22 written after April 30, 2002, all ~~All~~ deposits shall be made
 23 within 30 days after the end of the calendar ~~month~~ ~~quarter~~
 24 month in which the preneed contract is paid in full, unless,
 25 prior to that time, all liabilities of the seller under the

1 preneed contract to deliver the specific funeral merchandise
2 or funeral services, or both, or the specific cash advances,
3 identified by the preneed provider as properly allocated to
4 the payment, have been satisfied, or the preneed contract is
5 validly cancelled. For any payment received on a preneed
6 contract written after January 1, 2020, all deposits shall be
7 made within 30 days after the end of the calendar year in
8 which the payment is received unless, before that time, all
9 liability of the seller under the preneed contract to deliver
10 the specific funeral merchandise or funeral services, or both,
11 or the specific cash advances, identified by the preneed
12 provider as properly allocated to the payment, have been
13 satisfied or the preneed contract is validly cancelled.

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

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

1 "(e) The trust agreement shall be submitted to the
2 commissioner for approval and filing.

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

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

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

25 "§27-17A-32.

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

20 "(b) The trustee shall make regular valuations of
21 the assets it holds in trust and provide a report of the
22 valuations to the certificate holder at least quarterly. Any
23 person who withdraws appreciation in the value of trust, other
24 than the pro rata portion of such appreciation which may be
25 withdrawn upon the death of a contract beneficiary or upon

1 cancellation of a preneed contract, shall be required to make
2 additional deposits from his or her own funds within 12 months
3 succeeding the withdrawal to restore the aggregate value of
4 assets to the value of funds deposited in trust, but excluding
5 from the funds deposited those funds paid out upon preneed
6 contracts which the person has fully performed or which have
7 been otherwise withdrawn, as provided in this article. The
8 certificate holder shall be liable to third parties to the
9 extent that income from the trust is not sufficient to pay the
10 expenses of the trust.

11 "(c) The trustee of the trust established pursuant
12 to this article shall have all of the following powers:

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

17 ~~"(2) Borrow money up to an aggregate amount of 10~~
18 ~~percent of trust assets, at interest rates then prevailing~~
19 ~~from any individual, bank, insurance company, or other source,~~
20 ~~irrespective of whether any such person is then acting as~~
21 ~~trustee, and to create security interests in no more than 10~~
22 ~~percent of trust assets by mortgage, pledge, or otherwise,~~
23 ~~upon the terms and conditions and for the purposes as the~~
24 ~~trustee may deem advisable.~~

1 "~~(3)~~(2) Commingle the property of the trust with the
2 property of any other preneed funeral, preneed cemetery, or
3 endowment care trust fund established pursuant to this ~~article~~
4 chapter, and make corresponding allocations and divisions of
5 assets, liabilities, income, and expenses. This subsection
6 does not apply to any trust fund established pursuant to
7 Section 27-17A-55.

8 "~~(d)~~(c) Notwithstanding the provisions of Section
9 19-3-125, the trustee ~~may~~, subject to compliance with the
10 requirements set forth below, may invest any portion or all of
11 the funds received under preneed contracts and deposited in
12 trust in life insurance contracts or annuities issued on the
13 lives of preneed contract purchasers or preneed contract
14 beneficiaries, hereinafter, the insured or annuitant, without
15 any obligation to cover at a minimum the retail amount of the
16 preneed contract at the time of purchase of the life insurance
17 contracts or annuities as set forth in Section 27-17A-3.

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

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

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

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

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

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

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

24 " (5) It is the intention of the Legislature that
25 this subsection shall be retroactive and shall apply to all

1 life insurance contracts or annuities issued prior to May 6,
 2 2008.

3 "§27-17A-40.

4 "To comply with the trust requirement of subsection
 5 (a) of Section 27-17A-13, all ~~certificate holders~~ cemetery
 6 authorities providing preneed contracts for cemetery services
 7 or cemetery merchandise shall be subject to this article.

8 "§27-17A-41.

9 "(a) Any person who receives or collects any funds
 10 on account of a preneed contract in this state for cemetery
 11 services or cemetery merchandise, or both, entered into after
 12 ~~May 1~~ April 30, 2002, shall have the obligation to pay over
 13 and contribute into a trust fund, or disperse portions of or
 14 all payments received into a life insurance contract or
 15 annuity contract, or both, as hereinafter described, those
 16 amounts or proportions of the funds as hereinafter provided.

17 "(b) Whether or not the preneed contract provides
 18 for cemetery merchandise or cemetery services, or any
 19 combination thereof, the trust fund shall be referred to in
 20 this section as the Cemetery Merchandise and Services Trust
 21 Fund.

22 "(c) The trustee of the Cemetery Merchandise and
 23 Services Trust Fund shall be qualified as such within the
 24 definition of the trustee.

1 "(d) The trustee shall take title to the property
2 conveyed to the Cemetery Merchandise and Services Trust Fund
3 ~~subject to this section~~ for the purpose of investing,
4 protecting, and conserving the property for the certificate
5 holder, collecting income, and distributing the principal and
6 income as prescribed in this article. A seller is prohibited
7 from sharing in the discharge of these responsibilities,
8 except that a seller may appoint an advisor to the trustee or
9 elect tax free investments. Nothing in this chapter shall
10 prohibit a trustee from electing the qualified funeral trust
11 option under the Internal Revenue Code.

12 "(e) The contract purchaser shall have no interest
13 whatsoever in, or power whatsoever over, the funds deposited
14 in the Cemetery Merchandise and Services Trust Fund.

15 "(f) The party contracting to deliver the cemetery
16 merchandise or cemetery services or cash advances, whether or
17 not a preneed provider, shall be referred to in this section
18 as the "seller."

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

21 "§27-17A-42.

22 "(a) The minimum obligation of the seller under a
23 preneed contract shall be to make contributions into the
24 Cemetery Merchandise and Services Trust Fund or life insurance
25 or annuity in accordance with the following formulae:

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

3 "(2) With respect to outer burial containers, 60
4 percent of the purchase price specified in the preneed
5 contract.

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

8 "(4) With respect to all cash advance items sold,
9 100 percent of the purchase price specified for the same in
10 the preneed contract.

11 "(b) For any contribution received on a preneed
12 contract written after April 30, 2002, all ~~All~~ contributions
13 shall be made to an approved trust fund within 30 days after
14 the end of the calendar ~~month~~ ~~quarter~~ month in which the
15 preneed contract is paid in full, unless, prior to that time,
16 all liabilities of the seller under the preneed contract to
17 deliver the specific cemetery merchandise or cemetery
18 services, or both, or the specific cash advances, identified
19 by the preneed provider as properly allocated to the payment,
20 have been satisfied, or the preneed contract is validly
21 cancelled. All contributions on a preneed contract written
22 after January 1, 2020, shall be made to an approved trust
23 within 30 days after the end of the calendar year in which the
24 contribution is received unless, before that time, all
25 liabilities of the seller under the preneed contract to

1 deliver the specific cemetery merchandise or cemetery
2 services, or both, or the specific cash advances, identified
3 by the preneed provider as properly allocated to the payment,
4 have been satisfied or the preneed contract is validly
5 cancelled. For any preneed contract written after April 30,
6 2002, and for the purposes of this chapter, the contract
7 purchaser and the seller recognize that the seller has
8 incurred certain expenses and provided certain benefits to the
9 contract purchaser and the contract purchaser recognizes that
10 the seller, to cover costs associated with the sale of the
11 preneed contract, and except for cash advance items, may
12 realize up to 25 percent of the total preneed contract
13 purchase price as income.

14 "(c) The trustee shall invest and reinvest the
15 Cemetery Merchandise and Services Trust Fund. The trustee of
16 the trust fund established pursuant to this article shall have
17 all of the following powers:

18 "(1) To make investments and exercise necessary
19 investment powers.

20 "(2) To commingle the property of the Cemetery
21 Merchandise and Services Trust Fund with the property of any
22 other preneed funeral trust fund, endowment care trust fund,
23 or any other preneed cemetery trust fund, or any combination
24 of these, established pursuant to this chapter and make
25 corresponding allocations and divisions of assets,

1 liabilities, income, and expenses. This subsection does not
2 apply to any trust fund established pursuant to Section
3 27-17A-55.

4 "(d) The trustee shall make regular evaluations of
5 the fair market value of assets held in and liabilities, if
6 any, of the Cemetery Merchandise and Services Trust Fund and
7 provide a report of the evaluations to the seller at least
8 quarterly. If the fair market value of the Cemetery
9 Merchandise and Services Trust Fund is less than 100 percent
10 of the aggregate value of the assets deposited in trust, the
11 seller shall not be required to make additional deposits from
12 his or her own funds to restore the aggregate value of assets
13 to the value of funds deposited in trust. Upon receipt of each
14 quarterly report, the seller may submit to the trustee a
15 written and detailed analysis concerning the balance of funds
16 in the Cemetery Merchandise and Services Trust Fund, certified
17 under oath as being true and correct upon information and
18 belief by a responsible officer of the seller.

19 ~~"(e) While the obligation of the seller to make~~
20 ~~contributions to the Cemetery Merchandise and Services Trust~~
21 ~~Fund is set forth in this section, the obligation of the~~
22 ~~seller at the time of making certain withdrawals from the~~
23 ~~Cemetery Merchandise and Services Trust Fund as herein~~
24 ~~provided for shall be calculated with respect to the current~~
25 ~~wholesale cost of cemetery merchandise and current retail~~

1 ~~price of cemetery services and cash advances at the time of~~
2 ~~withdrawal. If the fair market value as reported by the~~
3 ~~trustee exceeds 110 percent of the total of the following, the~~
4 ~~seller shall be entitled to withdraw and retain from the~~
5 ~~merchandise trust fund, the excess funds therein:~~

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

20 ~~"(f) At least annually the seller shall make the~~
21 ~~aforsaid analysis and certification and provide the same to~~
22 ~~the trustee. If the certification discloses that the fair~~
23 ~~market value of the Cemetery Merchandise and Services Trust~~
24 ~~Fund is less than 100 percent of the aggregate calculated~~
25 ~~amount the seller shall from its own funds contribute to the~~

1 ~~Cemetery Merchandise and Services Trust Fund within the 12~~
 2 ~~months succeeding the annual computation the amount necessary~~
 3 ~~to restore the trust fund to an amount equal to not less than~~
 4 ~~100 percent of the aggregate amount so calculated.~~

5 "(e) The funds shall be held in trust, both as to
 6 principal and income earned thereon, and shall remain intact,
 7 except that the cost of the operation of the approved trust
 8 fund authorized by this article may be deducted from the
 9 income earned thereon. The seller shall be liable to third
 10 parties to the extent that income from the trust fund is not
 11 sufficient to pay the expenses of the trust.

12 "§27-17A-43.

13 "(a) Upon cancellation of a preneed contract by
 14 mutual agreement between the seller and purchaser, or upon
 15 unilateral cancellation of a preneed contract by the seller by
 16 reason of default on the part of the purchaser, or other valid
 17 cancellation by reason of transfers to another seller or
 18 otherwise, the seller may, upon submission of a certification
 19 ~~under oath~~ by a responsible officer of the seller to the
 20 trustee, withdraw from the Cemetery Merchandise and Services
 21 Trust Fund ~~and retain an amount equal to the amount of all~~
 22 ~~funds contributed to the trust fund with respect to the~~
 23 ~~preneed contract~~ the amount allocable to that specific preneed
 24 contract, including any income or appreciation, or both. Any
 25 trustee accepting preneed contract proceeds under this article

1 may rely on the seller's certification ~~under oath~~ as required
2 herein to be made, and shall not be liable to anyone for such
3 reliance.

4 "(b) At such time as the seller undertakes to
5 perform its obligations under a preneed contract by delivery
6 or installation, or both, of cemetery merchandise and the
7 provision of cemetery services and disbursement on account of
8 cash advances, or otherwise, upon certification to the trustee
9 ~~under oath~~ by a responsible officer of the seller that the
10 obligations of the seller under the contract have been
11 completely fulfilled, the seller may withdraw from the
12 Cemetery Merchandise and Services Trust Fund ~~and retain an~~
13 ~~amount equal to the current wholesale cost to the fund with~~
14 ~~respect to the preneed contract~~ the amount allocable to that
15 specific preneed contract, including any income or
16 appreciation, or both.

17 "(c) At such time as the seller has fulfilled all of
18 its obligations under all preneed contracts with respect to
19 which funds have been contributed to ~~the~~ an approved trust
20 fund, and certification ~~under oath~~ to the trustee by a
21 responsible officer of the seller of those facts, the seller
22 may withdraw from the trust fund and retain all of the
23 remaining assets thereof, should any assets remain in trust.

24 "§27-17A-44.

1 "(a) Without limiting in any way the liability of
2 the seller under a preneed contract to perform its obligations
3 thereunder, including, without limitation, the obligation to
4 deliver the cemetery merchandise, and for installation thereof
5 if it is to be included in the preneed contract, the seller
6 shall not be required to place in trust proceeds paid under
7 the contract for cemetery merchandise placed in storage
8 pursuant to this section.

9 "(b) If the trust proceeds have previously been paid
10 the seller may withdraw the principal amount there, at such
11 time as the cemetery merchandise, if comprised of materials
12 designed to withstand prolonged, protected storage without
13 deterioration, is placed in storage with a responsible third
14 party bonded and insured for the wholesale value thereof and
15 evidenced by a receipt specifically identifying the item, the
16 specific preneed contract, the location of the item, and the
17 identity and address of the bonding and insuring parties.

18 "§27-17A-50.

19 "(a) No cemetery authority may directly or
20 indirectly require or direct the investment, reinvestment, or
21 retention by a qualified trustee of any part of an endowment
22 care trust in any asset or business in which the cemetery
23 authority or any officer, director, owner, partner, or
24 employee of the cemetery authority has a financial interest.
25 Nothing contained in this subsection shall prevent the

1 trustee, subject to the provisions regarding investment and
2 reinvestment of the trust estate as are contained in the
3 governing instrument creating the trust, from investing,
4 reinvesting, or retaining any asset or business in which the
5 cemetery authority or any officer, director, owner, partner,
6 or employee of the cemetery authority has an insubstantial or
7 nonmaterial financial interest, provided that the trustee, in
8 the exercise of the trustee's discretion, deems the
9 investment, reinvestment, or retention to be for the best
10 interest of the trust estate.

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

15 "(c) For the purposes of this section, net income
16 does not include capital gains or losses. All capital gains
17 and losses shall be recorded to corpus, which is the sum of
18 deposits made by a cemetery into an endowment care fund
19 pursuant to Section 27-17A-49, and all capital gains or
20 losses. Capital gains taxes, if any, may be paid from the
21 corpus.

22 "§27-17A-55.

23 ~~"A cemetery authority shall start construction of~~
24 ~~that section of a mausoleum or bank of below-ground crypts in~~
25 ~~which sales, contracts for sale, reservations for sale, or~~

1 ~~agreements for sale are being made, within five years after~~
2 ~~the date of the first sale or when 75 percent of the mausoleum~~
3 ~~or below-ground crypts have been sold and the purchase price~~
4 ~~has been received, whichever occurs first. The construction~~
5 ~~shall be completed within six years after the date of the~~
6 ~~first sale made. Extensions for completion, not to exceed one~~
7 ~~year, may be granted by the commissioner for good cause shown.~~
8 ~~If the units have not been completely constructed at the time~~
9 ~~of need or the time specified herein, unless otherwise~~
10 ~~specified in the preneed contract, all moneys paid shall be~~
11 ~~refunded upon request, plus interest earned thereon if~~
12 ~~deposited by the cemetery authority in an escrow or trust~~
13 ~~fund, and if not so deposited in an escrow or trust fund~~
14 ~~earning interest, then plus interest in an amount equal to the~~
15 ~~interest or discount which would have been earned thereon had~~
16 ~~the funds been invested in United States Treasury Bills having~~
17 ~~a 90-day maturity.~~

18 "(a) A cemetery authority which plans to offer for
19 sale space in a section of a mausoleum, columbarium, or bank
20 of below-ground crypts prior to construction shall establish a
21 preconstruction trust by written instrument. The
22 preconstruction trust shall be administered by a corporate
23 trustee and operated in conformity with Section 27-17A-42. The
24 preconstruction trust shall be separate from any other trust
25 that may be required by this chapter. The written instrument

1 by which the trustee of the preconstruction trust agrees to
2 act as trustee shall contain a statement that an approved
3 trust is created pursuant to the requirements of this section.
4 The approved trust shall be subject to examination by the
5 commissioner.

6 "(b) Before a sale, contract for sale, reservation
7 for sale, or agreement for sale in a mausoleum section,
8 columbarium, or bank of below-ground crypts may be made, the
9 cemetery authority shall compute the amount to be deposited to
10 the preconstruction trust. The total amount to be deposited in
11 an approved trust for each unit of the project shall be
12 computed by dividing the cost of the project plus 10 percent
13 of the cost, as computed by a licensed contractor, engineer,
14 architect, or other person with expertise in the development
15 of such property, by the number of crypts in the section or
16 bank of below-ground crypts or the number of niches in the
17 columbarium. When payments are received in installments, the
18 percentage of the installment payment placed in trust shall be
19 identical to the percentage which the payment received bears
20 to the total cost of the contract, including other merchandise
21 and services purchased. Deposits into the preconstruction
22 trust shall be made within 30 days after the end of the month
23 in which payment is received on preneed contracts written on
24 or after the effective date of this amendatory act.

1 "(c) When the cemetery authority delivers a
2 completed crypt or niche acceptable to the purchaser in lieu
3 of the crypt or niche purchased prior to construction, all
4 sums deposited to the preconstruction trust for that purchaser
5 shall be paid to the cemetery authority.

6 "(d) Subject to the approval of the department, each
7 cemetery authority, at the time of establishment of the
8 preconstruction trust, may negotiate a procedure for
9 withdrawal of the escrowed funds as a part of the construction
10 cost of the mausoleum section, columbarium, or bank of
11 below-ground crypts contemplated. Upon completion of the
12 mausoleum section, columbarium, or bank of below-ground
13 crypts, the cemetery authority shall certify completion to the
14 trustee and may withdraw all funds deposited to the account
15 thereof.

16 "(e) If the mausoleum section, columbarium, or bank
17 of below-ground crypts is not completed within the time limits
18 provided in this section, the trustee shall contract for and
19 cause the project to be completed. The trustee shall pay the
20 costs related to completion from trust funds deposited to the
21 account of the project, paying any balance, less costs and
22 expenses, to the cemetery authority. A refund shall apply only
23 to the extent that there are funds remaining in excess of the
24 costs to complete the facilities prior to any payments being
25 made to the cemetery authority.

1 "(f) On or before July 1 of each year, the trustee
2 shall file with the Department of Insurance, in a form
3 prescribed by rule of the department, a complete and true
4 statement of the activities of any trust established pursuant
5 to this chapter for the preceding calendar year.

6 "(g) In lieu of payments to a preconstruction trust,
7 a cemetery authority may deliver to the department a
8 performance bond in an amount and by a surety company
9 acceptable to the Department of Insurance."

10 Section 6. The provisions of this act are
11 self-executing. This act may not be interpreted as giving the
12 Commissioner of Insurance any additional regulatory authority,
13 nor authority to adopt any rules, except as expressly provided
14 in this act.

15 Section 7. The Mobile Memorial Gardens is
16 specifically exempt from the requirements and provisions of
17 this amendatory act to Title 27, Chapter 17A, Code of Alabama
18 1975.

19 Section 8. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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6

President and Presiding Officer of the Senate

7

House of Representatives

8

I hereby certify that the within Act originated in
9 and was passed by the House 13-APR-10.

10

11

Greg Pappas
Clerk

12

13

14

15

Senate

22-APR-10

Amended and Passed

16

House

22-APR-10

Concurred in Sen-
ate Amendment

17