

1 SB306  
2 209180-1  
3 By Senator Figures  
4 RFD: Banking and Insurance  
5 First Read: 04-MAR-21

8 SYNOPSIS: Under existing law, the Alabama Board of  
9 Funeral Service licenses and regulates funeral  
10 establishments, funeral directors, and embalmers.

11 This bill would establish the Alabama  
12 Preneed Funeral and Cemetery Act of 2021, and would  
13 transfer the regulation of preneed contracts  
14 pursuant to the Preneed Funeral and Cemetery Act  
15 from the Commissioner and the Department of  
16 Insurance to the board.

17 This bill would also provide for the  
18 licensing and regulation of cemetery authorities  
19 and cemeteries by the board.

20 Amendment 621 of the Constitution of Alabama  
21 of 1901, now appearing as Section 111.05 of the  
22 Official Recompilation of the Constitution of  
23 Alabama of 1901, as amended, prohibits a general  
24 law whose purpose or effect would be to require a  
25 new or increased expenditure of local funds from  
26 becoming effective with regard to a local  
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of  
2 specified exceptions; it is approved by the  
3 affected entity; or the Legislature appropriates  
4 funds, or provides a local source of revenue, to  
5 the entity for the purpose.

6 The purpose or effect of this bill would be  
7 to require a new or increased expenditure of local  
8 funds within the meaning of the amendment. However,  
9 the bill does not require approval of a local  
10 governmental entity or enactment by a 2/3 vote to  
11 become effective because it comes within one of the  
12 specified exceptions contained in the amendment.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 Relating to the Alabama Board of Funeral Service; to  
19 amend Sections 34-13-1, 34-13-2, 34-13-4, 34-13-7, 34-13-9,  
20 34-13-11, 34-13-12, 34-13-20, 34-13-22, 34-13-23, 34-13-26,  
21 34-13-27, 34-13-52, 34-13-53, 34-13-54, 34-13-55, 34-13-56,  
22 34-13-56.1, 34-13-111, and 34-13-113, Code of Alabama 1975; to  
23 add Article 5 to Chapter 13, Title 34, Code of Alabama 1975,  
24 by amending and renumbering Sections 27-17A-1, 27-17A-3,  
25 27-17A-4, 27-17A-10 to 27-17A-16, inclusive, 27-17A-18 to  
26 27-17A-25, inclusive, 27-17A-30 to 27-17A-34, inclusive, and  
27 27-17A-40 to 27-17A-44, inclusive, as Sections 34-13-170,

1 34-13-172, 34-13-173, 34-13-190 to 34-13-197, inclusive,  
2 34-13-199 to 34-13-206, inclusive, 34-13-230 to 34-13-234,  
3 inclusive, 34-13-260 to 34-13-264, inclusive, Code of Alabama  
4 1975, and adding Sections 34-13-171 and 34-13-198 to the Code  
5 of Alabama 1975; to add Article 6 to Chapter 13, Title 34,  
6 Code of Alabama 1975, by amending and renumbering Sections  
7 27-17A-46 to 27-17A-56, inclusive, as Sections 34-13-295 to  
8 34-13-302, inclusive, and Sections 34-13-310 and 34-13-311,  
9 Code of Alabama 1975; and adding Sections 34-13-290 to  
10 34-13-294, inclusive, 34-13-303 to 34-13-308, inclusive, and  
11 34-13-312 to 34-13-315, inclusive, to the Code of Alabama  
12 1975; to establish the Alabama Preneed Funeral and Cemetery  
13 Act of 2021; to transfer the existing Preneed Funeral and  
14 Cemetery Act, and the regulation of preneed contracts, from  
15 the Commissioner and Department of Insurance to the Alabama  
16 Board of Funeral Service; to provide for the licensing and  
17 regulation of cemetery authorities and cemeteries by the  
18 board; to make corresponding technical changes; and to repeal  
19 Sections 27-17A-2, 27-17A-17, 27-17A-45, and Section  
20 27-17A-57, Code of Alabama 1975, relating to definitions, the  
21 dissolution or liquidation of a certificate holder, the  
22 endowment care fund, and the jurisdiction of the Commissioner  
23 of Insurance relating to preneed contracts, respectively; and  
24 in connection therewith would have as its purpose or effect  
25 the requirement of a new or increased expenditure of local  
26 funds within the meaning of Amendment 621 of the Constitution  
27 of Alabama of 1901, now appearing as Section 111.05 of the

1 Official Recompilation of the Constitution of Alabama of 1901,  
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-13-1, 34-13-2, 34-13-4,  
5 34-13-7, 34-13-9, 34-13-11, 34-13-12, 34-13-20, 34-13-22,  
6 34-13-23, 34-13-26, 34-13-27, 34-13-52, 34-13-53, 34-13-54,  
7 34-13-55, 34-13-56, 34-13-56.1, 34-13-111, and 34-13-113, of  
8 the Code of Alabama 1975, are amended to read as follows:

9 "§34-13-1.

10 "(a) For purposes of this chapter, the following  
11 terms shall have the following meanings:

12 "(1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY  
13 SCIENCE. A school or college approved by the Alabama Board of  
14 Funeral Service and which maintains a course of instruction of  
15 not less than 48 calendar weeks or four academic quarters or  
16 college terms and which gives a course of instruction in the  
17 fundamental subjects including, but not limited to, the  
18 following:

19 "a. Mortuary management and administration.

20 "b. Legal medicine and toxicology as it pertains to  
21 funeral directing.

22 "c. Public health, hygiene, and sanitary science.

23 "d. Mortuary science, to include embalming  
24 technique, in all its aspects; chemistry of embalming, color  
25 harmony; discoloration, its causes, effects, and treatment;  
26 treatment of special cases; restorative art; funeral  
27 management; and professional ethics.

- 1 "e. Anatomy and physiology.
- 2 "f. Chemistry, organic and inorganic.
- 3 "g. Pathology.
- 4 "h. Bacteriology.
- 5 "i. Sanitation and hygiene.
- 6 "j. Public health regulations.
- 7 "k. Other courses of instruction in fundamental
- 8 subjects as may be prescribed by the Alabama Board of Funeral
- 9 Service.

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

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

19 "~~(3)~~(4) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION.  
20 That funeral service educational organization which is an  
21 agency granted official recognition by the United States  
22 Secretary of Education and which is composed of members  
23 representing the American Association of College of Mortuary  
24 Science, the Conference of Funeral Service Examining Board of  
25 the United States, Inc., the National Association of Colleges  
26 of Mortuary Science, and the University Mortuary Science  
27 Education Association and which has as its object the

1 furtherance of education in the field of funeral service and  
2 in fields necessary to, or allied with, the field of funeral  
3 service, and further to formulate standards of funeral service  
4 education and to grant accreditation to qualified schools and  
5 colleges of mortuary science and to do all things incidental  
6 to the foregoing.

7 "~~(4)~~(5) APPRENTICE EMBALMER or EMBALMER'S  
8 APPRENTICE. Any person engaged in the study of the art of  
9 embalming under the instructions and supervision of a licensed  
10 embalmer practicing in this state.

11 "~~(5)~~(6) APPRENTICE FUNERAL DIRECTOR or FUNERAL  
12 DIRECTOR'S APPRENTICE. Any person operating under or in  
13 association with a funeral director for the purpose of  
14 learning the business or profession of funeral director, to  
15 the end that he or she may become licensed under this chapter.

16 "(7) ARRANGEMENT CONFERENCE FEE. The charge to the  
17 purchaser in conjunction with the arrangement conference  
18 conducted by a cemetery authority.

19 "(8) AT NEED. At the time of death or immediately  
20 following death.

21 "~~(6)~~(9) AUTHORIZING AGENT. A person at least 18  
22 years of age, except in the case of a surviving spouse or  
23 parent, who is legally entitled to order the cremation or  
24 final disposition of particular human remains.

25 "(10) BASIC SERVICES FEE. The fee for the  
26 professional services of the funeral director and staff that  
27 is added to the total cost of the funeral arrangements. The

1 term includes a charge for services performed in conducting  
2 the arrangements conference, planning the funeral, securing  
3 the necessary permits, preparing the notices, and coordinating  
4 the cemetery or crematory arrangements.

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

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

13 "~~(7)~~(13) BOARD. The Alabama Board of Funeral  
14 Service.

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

19 "(15) BURIAL. The placement of human remains in a  
20 grave space or lawn crypt.

21 "~~(8)~~(16) CASH ADVANCE ITEMS. Any item of service or  
22 merchandise described to a purchaser using the term cash  
23 advance, accommodation, cash disbursement, or similar term. A  
24 cash advance item is also any item obtained from a third party  
25 and paid for by a funeral provider on behalf of a purchaser.  
26 Cash advance items include, but are not limited to, all of the  
27 following:



- 1 "a. Cemetery or crematory services.
- 2 "b. Pallbearers.
- 3 "c. Public, or other, transportation.
- 4 "d. Clergy honoraria.
- 5 "e. Flowers.
- 6 "f. Musicians or singers.
- 7 "g. Nurses.
- 8 "h. Obituary notices.
- 9 "i. Funeral programs.
- 10 "j. Gratuities.
- 11 "k. Death certificates.
- 12 "l. Outer burial containers.
- 13 "m. Cemetery plots.
- 14 "n. Escorts.

15 "~~(9)~~(17) CASKET. A rigid container that is designed  
16 for the encasement of human remains, usually constructed of  
17 wood, metal, or similar material, and ornamented and lined  
18 with fabric.

19 "~~(10)~~(18) CEMETERY. A place established, maintained,  
20 managed, operated, or improved and which is dedicated to and  
21 used or intended to be used for the permanent interment of  
22 human remains and their memorialization. It may be either land  
23 or earth interment; a columbarium; a mausoleum for vault or  
24 crypt entombment; a structure or place used or intended to be  
25 used for the interment of cremated remains; cryogenic storage;  
26 or any combination of one or more thereof.

1           "~~(11)~~(19) CEMETERIAN or CEMETERY AUTHORITY. Any  
2 individual, person, firm, profit or nonprofit corporation,  
3 trustee, partnership, society, religious society, church  
4 association or denomination, municipality, or other group or  
5 entity, however organized, insofar as they or any of them may  
6 now or hereafter establish, own, operate, lease, control, or  
7 manage one or more cemeteries, burial parks, mausoleums,  
8 columbariums, or any combination or variation thereof, or hold  
9 lands or structures for burial grounds or burial purposes in  
10 this state and engage in the operation of a cemetery,  
11 including any one or more of the following: The care and  
12 maintenance of a cemetery; the interment, entombment, and  
13 memorialization of the human dead in a cemetery; the sale,  
14 installation, care, maintenance, or any combination thereof,  
15 with respect of monuments, markers, foundations, memorials,  
16 burial vaults, urns, crypts, mausoleums, columbariums, flower  
17 vases, floral arrangements, and other cemetery accessories,  
18 for installation or use within a cemetery; and the supervision  
19 and conduct of funeral and burial services within the bounds  
20 of the cemetery.

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

1           "(21) CEMETERY SALES AGENT. Any person who is  
2 licensed under this chapter to sell cemetery services or  
3 cemetery merchandise.

4           "(22) CEMETERY SERVICES. At need or preneed services  
5 provided by a cemetery authority for interment, entombment,  
6 inurnment, and installation of cemetery merchandise.

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

11           "(24) COLUMBARIUM. A structure or room or space in a  
12 building or structure used or intended to be used for the  
13 inurnment of cremated remains.

14           "(25) CONSUMER PROTECTION FEE. A fee charged for  
15 each final disposition arranged or performed in the state.

16           "~~(12)~~ (26) CONVICTION. The entry of a plea of guilty  
17 or a guilty verdict rendered by any court of competent  
18 jurisdiction, excluding traffic violations.

19           "~~(13)~~ (27) CREMATED REMAINS. Human remains recovered  
20 after the completion of the cremation process, including  
21 pulverization, which leaves only bone fragments reduced to  
22 unidentifiable dimensions, and the residue of any foreign  
23 materials that were cremated with the human remains.

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

26           "~~(14)~~ (29) CREMATION. The technical irreversible  
27 process, using heat, flames, or chemical agents, that reduces

1 human remains to bone fragments. The reduction takes place  
2 through heat and evaporation. Cremation shall include the  
3 processing, and may include the pulverization, of the bone  
4 fragments. Cremation is a process and is a method of final  
5 disposition.

6 "~~(15)~~ (30) CREMATIONIST. A person licensed by the  
7 board to perform the procedure of cremation.

8 "~~(16)~~ (31) CREMATION CHAMBER. The retort or vessel  
9 used to reduce human remains to bone fragments.

10 "~~(17)~~ (32) CREMATION CONTAINER. The container in  
11 which human remains are transported to a crematory, in which  
12 human remains are placed in upon arrival at a crematory, or  
13 for storage and placement in a cremation chamber for  
14 cremation.

15 "~~(18)~~ (33) CREMATORY. A building or portion of a  
16 building that houses a cremation chamber and that may house a  
17 holding facility for purposes of cremation and as part of a  
18 funeral establishment.

19 "(34) CREMATORY AUTHORITY. Any person who owns or  
20 controls a crematory.

21 "(35) DEATH CERTIFICATE. A legal document containing  
22 vital statistics pertaining to the life and death of the  
23 deceased.

24 "(36) DECEASED or DECEDENT. One who is no longer  
25 living.

26 "~~(19)~~ (37) EMBALMER. Any person engaged or holding  
27 himself or herself out as engaged in the business, practice,

1 science, or profession of embalming, whether on his or her own  
2 behalf or in the employ of a registered and licensed funeral  
3 director.

4 "~~(20)~~(38) EMBALMING. The practice, science, or  
5 profession, as commonly practiced, of preserving,  
6 disinfecting, and preparing by application of chemicals or  
7 other effectual methods, human dead for burial, cremation, or  
8 transportation.

9 "(39) ENCASEMENT. The placement of human remains in  
10 a rigid container including, but not limited to, a casket or  
11 urn.

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

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

20 "(42) ENTOMBMENT. The act of placing human remains  
21 in a mausoleum crypt.

22 "(43) FINAL DISPOSITION. The lawful disposal of  
23 human remains whether by interment, cremation, or other  
24 method.

25 "~~(21)~~(44) FUNERAL. A ceremony for celebrating,  
26 sanctifying, or remembering the life of a person who has died.  
27 A funeral may be divided into the following two parts:

1           "a. The funeral service, which may take place at a  
2 funeral home, church, or other place.

3           "b. The committal service or disposition, which may  
4 take place by the grave, tomb, mausoleum, or crematory where  
5 the body of the decedent is to be buried or cremated.

6           "~~(22)~~ (45) FUNERAL ARRANGEMENTS. The completing of  
7 funeral service arrangements, cremation arrangements, and the  
8 financial details of a funeral at the time of death. The term  
9 includes the collection of vital statistic information, death  
10 certificate information, obituary and funeral notice  
11 completion, the completion of a statement of funeral goods and  
12 services selected, organizing of funeral and memorial services  
13 for families, and the ordering of cash advance items.

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

18           "~~(23)~~ (47) FUNERAL DIRECTING. The practice of  
19 directing or supervising funerals, the practice of preparing  
20 dead human bodies for burial by means other than embalming, or  
21 the preparation for the disposition of dead human bodies; the  
22 making of funeral arrangements or providing for funeral  
23 services or the making of financial arrangements for the  
24 rendering of these services; the provision or maintenance of a  
25 place for the preparation for disposition of dead human  
26 bodies; or the use of the terms funeral director, undertaker,  
27 mortician, funeral parlor, or any other term from which can be

1 implied the practice of funeral directing; or the holding out  
2 to the public that one is a funeral director or engaged in a  
3 practice described in this subdivision.

4 "~~(24)~~(48) FUNERAL DIRECTOR. A person required to be  
5 licensed to practice the profession of funeral directing under  
6 the laws of this state, who consults with the public, who  
7 plans details of funeral services with members of the family  
8 and minister or any other person responsible for such  
9 planning, or who directs, is in charge, or apparent charge of,  
10 and supervises funeral service in a funeral home, church, or  
11 other place; who enters into the making, negotiation, or  
12 completion of financial arrangements for funeral services, or  
13 who uses in connection with the profession of funeral  
14 directing the terms funeral director, undertaker, funeral  
15 counselor, mortician, or any other term or picture or  
16 combination thereof when considered in context in which used,  
17 from which can be implied the practicing of the profession of  
18 funeral directing or that the person using such term or  
19 picture can be implied to be holding himself or herself out to  
20 the public as being engaged in the profession of funeral  
21 directing; and for all purposes under Alabama law, a funeral  
22 director is considered a professional. For the purposes of  
23 this chapter, the term does not include any cemetery  
24 authority.

25 "~~(25)~~(49) FUNERAL ESTABLISHMENTS. The term includes  
26 any funeral home or mortuary service located at a specific  
27 street address where the profession of funeral directing,

1       embalming, or cremation is practiced in the care, planning,  
2       and preparation for burial, cremation, or transportation of  
3       human dead. A funeral establishment shall consist of and  
4       maintain all of the following facilities:

5               "a. A preparation room equipped with sanitary  
6       nonporous floor and walls, necessary drainage and ventilation,  
7       and containing operating embalming equipment, necessary  
8       approved tables, instruments, hot and cold running water,  
9       containers or receptacles for soiled linen or clothing, and  
10       supplies for the preparation and embalming of dead human  
11       bodies for burial, cremation, and transportation.

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

16              "c. At least one operating funeral coach or hearse  
17       properly licensed and equipped for transporting human remains  
18       in a casket or urn.

19              "d. If engaged in the practice of cremation, the  
20       establishment shall satisfy all crematory requirements  
21       provided in this chapter and have on site an adequate supply  
22       of urns for display and sale.

23              "e. A room suitable for public viewing or other  
24       funeral services that is ~~able to accommodate a minimum of 100~~  
25       ~~people~~ a minimum of 1,000 square feet.

26              "f. An office for holding arrangement conferences  
27       with relatives or authorizing agents.



1           "(50) FUNERAL SERVICE. At need or preneed services  
2 provided by a funeral establishment in connection with funeral  
3 directing, interment of human remains, or installation of  
4 memorials.

5           "~~(26)~~ (51) FUNERAL SUPPLIES or FUNERAL MERCHANDISE.  
6 ~~Caskets made of any material for use in the burial or~~  
7 ~~transportation of human dead; outer receptacles, Any item~~  
8 ~~offered for sale, contracted for sale, or sold for use in~~  
9 ~~connection with funeral directing when sold by a funeral~~  
10 ~~director,~~ including, but not limited to, caskets, alternative  
11 containers, outer burial vaults and containers, urns, for  
12 ~~cremated human remains, memorials, clothing used to dress~~  
13 ~~human dead when sold by a funeral director,~~ and all equipment  
14 and accouterments normally required for the preparation for  
15 burial or funeral and other disposition of human dead.

16           "(52) GENERAL MANAGER. A person hired by a cemetery  
17 authority who has full charge, control, and supervision of all  
18 activities involving cemetery services.

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

21           "~~(27)~~ (54) GROSS IMMORALITY. Willful, flagrant, or  
22 shameful immorality or showing a moral indifference to the  
23 opinions of the good and respectable members of the community  
24 and to the just obligations of the position held by the  
25 offender.

26           "~~(28)~~ (55) HOLDING ROOM. Either of the following:

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

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

8            "(56) HUMAN REMAINS. The body of a decedent in any  
9 stage of decomposition, including cremated remains.

10           "(57) INTERMENT. The final disposition of human  
11 remains by burial, burial at sea, entombment, or inurnment.

12           "(58) INTERMENT RIGHT. The right to inter human  
13 remains in a particular interment space in a cemetery.

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

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

21           "(61) LICENSEE. Any individual, firm, corporation,  
22 partnership, joint venture, or limited liability company which  
23 obtains a license in accordance with this chapter.

24           ~~"(29)~~ (62) MANAGING CREMATIONIST. A licensed funeral  
25 director and cremationist who has full charge, control, and  
26 supervision of all activities involving cremation at a funeral  
27 establishment or crematory.

1           "~~(30)~~(63) MANAGING EMBALMER. A licensed embalmer who  
2 has full charge, control, and supervision of all activities  
3 involving the preparation room and embalming.

4           "~~(31)~~(64) MANAGING FUNERAL DIRECTOR. A licensed  
5 funeral director who has full charge, control, and supervision  
6 of all activities involving funeral directing for a funeral  
7 establishment.

8           "(65) MAUSOLEUM. A chamber or structure used or  
9 intended to be used for entombment.

10          "(66) MAUSOLEUM CRYPT. A chamber of a mausoleum of  
11 sufficient size for entombment of human remains.

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

18          "(68) MEMORIAL RETAILER. Any person offering or  
19 selling memorials at retail to the public.

20          "(69) MEMORIALIZATION. Any permanent system designed  
21 to mark or record the names and other data pertaining to a  
22 decedent.

23          "~~(32)~~(70) MORAL TURPITUDE. Any unlawful sexual or  
24 violent act, or any act involving theft, theft of services,  
25 theft by deception, extortion, receiving stolen property,  
26 identity theft, forgery, fraud, tampering with records,  
27 bribery, perjury, or any similar act in any jurisdiction.

1           "~~(33)~~(71) MORTUARY SCIENCE. The scientific,  
2 professional, and practical aspects, with due consideration  
3 given to accepted practices, covering the care, preparation  
4 for burial, or transportation of dead human bodies, which  
5 shall include the preservation and sanitation of the bodies  
6 and restorative art and those aspects related to public  
7 health, jurisprudence, and good business administration.

8           "~~(34)~~(72) MORTUARY SERVICE. A location with a  
9 specific street address where embalming or cremation, or both,  
10 is practiced for a licensed funeral establishment and where no  
11 services or merchandise are sold directly or at retail to the  
12 public. A mortuary service shall consist of and maintain all  
13 of the following facilities:

14           "a. A preparation room equipped with sanitary  
15 nonporous floor and walls, operating embalming equipment, and  
16 necessary drainage and ventilation and containing necessary  
17 approved tables, instruments, hot and cold running water,  
18 containers or receptacles for soiled linen or clothing, and  
19 supplies for the preparation and embalming of dead human  
20 bodies for burial, cremation, and transportation.

21           "b. At least one operating motor vehicle properly  
22 licensed and equipped for transporting human remains in a  
23 casket or urn.

24           "c. If engaged in the practice of cremation, the  
25 establishment shall satisfy all requirements for a crematory  
26 provided in this chapter.

1           "(73) NICHE. A space usually within a columbarium  
2 used or intended to be used for inurnment of cremated remains.

3           "~~(35)~~(74) OPERATOR. A person, corporation, firm,  
4 legal representative, managing funeral director, general  
5 manager, or other organization owning or operating a funeral  
6 establishment or cemetery.

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

11           "(76) PERSON. Any individual, firm, corporation,  
12 partnership, joint venture, limited liability company,  
13 association, trustee, government or governmental subdivision,  
14 agency, or other entity, or any combination thereof.

15           "~~(36)~~(77) PRACTICAL EMBALMER. Any person who has  
16 been actively and continuously engaged or employed in the  
17 practice of embalming under the supervision of a licensed  
18 embalmer for four consecutive years immediately preceding May  
19 1, 1975, and has been issued a license as a practical embalmer  
20 under the grandfather provisions of this chapter.

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

25           "(79) PREDEVELOPED. Designated areas or buildings  
26 within a cemetery that have been mapped and planned for future  
27 construction but are not yet completed.

1           "(80) PREDEVELOPED INTERMENT SPACE. An interment  
2 space that is planned for future construction but is not yet  
3 completed.

4           "(81) PREFUND. The term applied to completing the  
5 financial details of a prearrangement, which include  
6 prefunding or prepayment.

7           "(82) PRENEED. Any time prior to death.

8           "(83) PRENEED CONTRACT. A written contract to  
9 purchase funeral merchandise, funeral services, cemetery  
10 merchandise, or cemetery services from the seller on a preneed  
11 basis.

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

17           "(85) PRENEED SALES AGENT. A person who is in the  
18 business of selling preneed contracts.

19           ~~"(37)~~ (86) PROCESSING or PULVERIZATION. The reduction  
20 of identifiable bone fragments after the completion of the  
21 cremation process to unidentifiable bone fragments or  
22 granulated particles by manual or mechanical means.

23           "(87) PROVIDER. The person, who may or may not be  
24 the seller, who actually provides merchandise and services  
25 under the terms of a preneed contract.

26           "(88) PURCHASE PRICE. The amount paid by the  
27 purchaser for merchandise and services purchased under a

1 preneed contract, exclusive of finance charges, sales tax,  
2 charges relating to interment rights, arrangement conference  
3 fees, or charges for credit life insurance.

4 "(89) PURCHASER. The person who purchases a preneed  
5 contract either on his or her behalf or on behalf of a  
6 third-party beneficiary.

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

12 "(91) SCATTERING. The lawful dispersion of cremated  
13 remains.

14 "(92) SELLER. Any person offering or selling  
15 merchandise or services on a preneed basis including, but not  
16 limited to, funeral establishments, cemetery authorities,  
17 crematory authorities, memorial retailers, and direct  
18 disposers.

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

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

25 ~~(38)~~(95) TEMPORARY CONTAINER. A receptacle for  
26 cremated remains, usually composed of cardboard, plastic, or  
27 similar material, that can be closed in a manner that prevents

1 the leakage or spillage of the cremated remains or the  
2 entrance of foreign material, and is a single container of  
3 sufficient size to hold the cremated remains until an urn is  
4 acquired or the cremated remains are scattered or buried.

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

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

14 ~~"(39) (98)~~ URN. A receptacle designed to encase  
15 cremated remains.

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

20 "§34-13-2.

21 "It is declared and established that the procedures  
22 for making final disposition of human dead, including  
23 embalming ~~and,~~ funeral directing, cremating, disposing, and  
24 burying of deceased remains, are so affected with the public  
25 interest as to require regulation and control of ~~such included~~  
26 these occupations and that, additionally, ~~such~~ regulation and  
27 control are necessary for the prevention of the spread of



1 infectious and contagious diseases, for the protection of the  
2 health and welfare of the people of the state, and that ~~all of~~  
3 ~~the provisions of~~ this chapter and ~~regulations~~ rules  
4 authorized to be made are necessary to effectuate its purpose;  
5 and ~~all of the provisions of~~ this chapter shall be construed  
6 liberally and in a manner to carry out its obvious intents and  
7 purposes.

8 "§34-13-4.

9 "Upon request, the board shall distribute to ~~funeral~~  
10 ~~directors, embalmers, and apprentices~~ each licensee and such  
11 other persons as may be interested therein, in hard copy form,  
12 and shall maintain in electronic format on the website of the  
13 board, ~~the provisions of~~ this chapter together with all rules  
14 ~~and regulations prescribed, adopted, or promulgated~~ pursuant  
15 to this chapter, together with a complete and current list of  
16 all persons and establishments licensed under this chapter.

17 "§34-13-7.

18 "Any person who embezzles, abstracts, or willfully  
19 misapplies any of the ~~moneys~~ monies, funds, security, or  
20 credit of the board or who misuses any of the funds or fees so  
21 collected, by virtue of this chapter, and any person who, with  
22 like intent, aids or abets any person in violation of this  
23 chapter shall be guilty of a felony and, upon conviction,  
24 shall be punished by a fine of not less than five hundred  
25 dollars (\$500) nor exceeding five thousand dollars (\$5,000)  
26 and imprisonment in the penitentiary for a period of not less  
27 than one year and not more than five years, and the principal

1 offenders and those aiding and abetting same may be charged in  
2 the same count, and separate offenses may be charged, in  
3 separate counts, in the same indictment and tried together.  
4 Any person found guilty of offering or of accepting a bribe  
5 whereupon any person is illegally licensed to practice  
6 embalming, to practice funeral directing, to cremate remains,  
7 to sell preneed services and merchandise, or to operate a  
8 funeral establishment or a cemetery in this state shall be  
9 punished by a fine of not less than five hundred dollars  
10 (\$500) nor exceeding ten thousand dollars (\$10,000) and may be  
11 imprisoned in the penitentiary for a period of one to three  
12 years, and the principal offenders and those aiding and  
13 abetting same may be charged in the same count and separate  
14 offenses may be charged in separate counts in the same  
15 indictment and tried together.

16 "§34-13-9.

17 "Funeral service, cemetery service, cemetery  
18 merchandise, and funeral merchandise pricing shall conform to  
19 rules established by the Federal Trade Commission and each  
20 funeral establishment shall have a card or brochure in each  
21 full-size and cut casket, and a clear statement on each  
22 photograph and electronic image of a casket, stating the unit  
23 price of that casket.

24 "§34-13-11.

25 "(a) A person, who is at least 18 years of age and  
26 of sound mind, may enter into a contract to act as authorizing  
27 agent and direct the location, manner, and conditions of

1 disposition of deceased remains and arrange for funeral and  
2 cemetery goods and services to be provided upon death. Except  
3 as otherwise provided in subsection (b), the right to control  
4 the disposition of the remains of a deceased person as an  
5 authorizing agent, including the location, manner, and  
6 conditions of disposition and arrangements for funeral and  
7 cemetery goods and services to be provided, shall vest in the  
8 following persons in the priority listed and the order named,  
9 provided the person is at least 18 years of age and of sound  
10 mind:

11 "(1) The person designated by the decedent as  
12 authorized to direct disposition pursuant to Public Law No.  
13 109-163, Section 564, as listed on the decedent's United  
14 States Department of Defense Record of Emergency Data, DD Form  
15 93, or its successor form, if the decedent died while serving  
16 on active duty in any branch of the United States Armed  
17 Forces, United States Reserve Forces, or National Guard.

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

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

25 ""State of Alabama

26 "County of \_\_\_\_\_

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

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

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

12                    "(3) The surviving spouse.

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

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

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

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

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

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

24           "(10) The personal representative of the estate of  
25 the decedent.

26           "(11) The person in the classes of the next degree  
27 of kinship, in descending order, under the laws of descent and

1 distribution to inherit the estate of the decedent. If there  
2 is more than one person of the same degree, any person of that  
3 degree may exercise the right of disposition.

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

9 "(13) Any other person willing to assume the  
10 responsibility of acting on and arranging the final  
11 disposition of the remains of the decedent, including the  
12 funeral director that has custody of the body, in the absence  
13 of any person specified in subdivisions (1) to (12),  
14 inclusive. The person shall attest in writing that good faith  
15 efforts to contact the persons specified in subdivisions (1)  
16 to (12), inclusive, have been unsuccessful.

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

20 "(1) The person is charged with first or second  
21 degree murder or voluntary manslaughter in connection with the  
22 death of the decedent and the charges are known by the  
23 mortician. If the charges against the person are dismissed or  
24 the person is acquitted of the charges, the right of  
25 disposition shall be reinstated.

26 "(2) The person does not exercise his or her right  
27 of disposition within two days after notification of the death

1 of the decedent or within three days after the death of the  
2 decedent, whichever is earlier.

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

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

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

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

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

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

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

13           "(5) The desires of the decedent.

14           "(d) Absent negligence, wantonness, recklessness, or  
15 deliberate misconduct in the event of a dispute regarding the  
16 right of disposition, a ~~funeral establishment~~ licensee may not  
17 be held liable for refusing to accept remains, for interring,  
18 or for otherwise disposing of the remains of a decedent or for  
19 completing arrangements for the final disposition of remains  
20 unless and until the ~~funeral establishment~~ licensee receives  
21 an order from the judge of probate, or other written agreement  
22 signed by all persons possessing a right of disposition,  
23 regarding the final disposition of the remains. If a ~~funeral~~  
24 ~~establishment~~ licensee retains remains for final disposition  
25 during a disagreement, the ~~funeral establishment~~ licensee may  
26 embalm or refrigerate and shelter the body, or both, to  
27 preserve the body pending the final decision of the judge of



1 probate. The ~~funeral establishment~~ licensee may add the cost  
2 of embalming or refrigeration and sheltering, or both, to the  
3 final disposition cost. If a ~~funeral establishment~~ licensee  
4 files a petition pursuant to subsection (c), the ~~funeral~~  
5 ~~establishment~~ licensee may add any associated legal fees and  
6 court costs to the cost of final disposition. This section may  
7 not be construed to require or impose a duty upon a ~~funeral~~  
8 ~~establishment~~ licensee to bring an action pursuant to this  
9 section. A ~~funeral establishment~~ licensee and its employees  
10 may not be held criminally or civilly liable for not bringing  
11 an action pursuant to this section.

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

22 "§34-13-12.

23 "(a) Any person signing a funeral service agreement,  
24 cremation authorization form, cemetery agreement, or any other  
25 authorization for disposition by his or her signature shall  
26 attest to the truthfulness of any facts set forth in the  
27 document including, but not limited to, the identity of the

1 decedent whose remains are to be buried, cremated, or  
2 otherwise disposed of and the authority of the person to order  
3 the disposition. A ~~funeral establishment~~ licensee may rely on  
4 a funeral service agreement, cemetery agreement, contract, or  
5 authorization in carrying out the instructions of the person  
6 the ~~funeral establishment~~ licensee reasonably believes to hold  
7 the right of disposition. A ~~funeral establishment~~ licensee is  
8 not responsible for contacting or independently investigating  
9 the existence of any next-of-kin or relative of a decedent. If  
10 there is more than one person in a class with equal priority  
11 and the ~~funeral establishment~~ licensee has no knowledge of any  
12 objection by any other member of that class, the ~~funeral~~  
13 ~~establishment~~ licensee may rely upon and act according to the  
14 instructions of the first person in the class to make funeral  
15 and disposition arrangements.

16 "(b) Absent negligence, wantonness, recklessness, or  
17 deliberate misconduct, no ~~funeral establishment or funeral~~  
18 ~~director~~ licensee who relies in good faith upon the  
19 instructions of a person who claims a right of disposition  
20 shall be subject to criminal or civil liability, or be subject  
21 to disciplinary action, for carrying out the disposition of  
22 the remains in accordance with those instructions.

23 "§34-13-20.

24 "(a) There is established the Alabama Board of  
25 Funeral Service, consisting of nine members, each of whom  
26 shall be citizens of the United States and residents of the  
27 State of Alabama.

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

5           "(c) Commencing on January 1, 2019, as the terms of  
6 the members serving on the board on August 1, 2017, expire,  
7 the membership of the board shall be reconstituted to consist  
8 of seven professional members and two consumer members.

9           "(1) Each professional member of the board shall be  
10 a citizen of the United States, a resident of Alabama, and  
11 licensed and in good standing with the board as an embalmer or  
12 funeral director at the time of appointment and during the  
13 entire term of office. Professional members of the board shall  
14 be appointed by the Governor pursuant to subsection (e). As  
15 the terms of the members serving on the board on the effective  
16 date of the act adding this sentence expire, the professional  
17 membership of the board shall be appointed to reflect the  
18 following:

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

25           "b. ~~Three~~ Four of the professional members of the  
26 board shall hold a current license from the board to practice  
27 funeral directing in the state, shall have been actively

1 engaged in funeral directing in the state for the last 10  
2 consecutive years immediately preceding appointment, and shall  
3 be the operator of a funeral establishment in this state at  
4 the time of appointment to the board. Two of these four  
5 professional members shall also hold a current certificate of  
6 authority to sell preneed services and merchandise.

7 "(2) Each consumer member of the board shall  
8 represent the public in general and shall have been a citizen  
9 of the United States and a resident of Alabama for the last 10  
10 consecutive years immediately preceding appointment and during  
11 the entire term of office. A consumer member of the board may  
12 not have held, nor currently hold, a license or certification  
13 issued by the board, be employed at any time by, or  
14 professionally or financially associated with, the holder of a  
15 license or certificate issued by the board, or be related  
16 within the third degree of consanguinity or affinity to the  
17 holder of a license or certificate issued by the board. One  
18 consumer member of the board shall be appointed by the  
19 Lieutenant Governor and one consumer member shall be appointed  
20 by the Speaker of the House of Representatives pursuant to a  
21 procedure adopted by rule of the board.

22 "(d) Commencing in October of 2018, and each October  
23 thereafter of a year where at least one professional member  
24 term on the board has expired, or is vacant for any reason,  
25 all licensed funeral directors and licensed embalmers shall  
26 meet in Montgomery, at a time and place fixed by the board,  
27 for the purpose of nominating and submitting the names of

1 three licensed persons for each position on the board to the  
2 Governor. The Governor shall promptly appoint one of the three  
3 persons so nominated to serve as a professional member of the  
4 board.

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

12 "(2) A board member who is appointed to fill a  
13 vacancy which occurs before the expiration of the term of the  
14 vacating member shall serve the remaining portion of the term  
15 to which the former member was appointed. If a member is  
16 appointed to fill an unexpired term of less than two years,  
17 the time may not be counted toward the maximum eight years of  
18 service.

19 "(3) Not more than one professional member of the  
20 board may reside in the same district as created by Section  
21 34-13-21.

22 "(4) At each meeting where nominations are made for  
23 the professional members of the board, only one licensed  
24 funeral director or licensed embalmer employed by the same  
25 funeral establishment may vote.

26 "(f) (1) In accordance with applicable law, in  
27 addition to a board member resigning from the board in

1 writing, a board member may be removed from the board for any  
2 of the following grounds:

3 "a. The refusal or inability to perform board duties  
4 in an efficient, responsible, or professional manner.

5 "b. The misuse of his or her position on the board  
6 to obtain financial gain or seek personal advantage for  
7 himself, herself, or another person.

8 "c. A final adjudication or determination of guilt  
9 by any lawful authority of the board member or sanction of the  
10 board member for the violation of any law the board determines  
11 is substantially related to any practice governed by this  
12 chapter.

13 "d. The revocation or suspension of the license of a  
14 professional member of the board.

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

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

27 "§34-13-22.

1           "The Alabama Board of Funeral Service shall hold not  
2 less than one meeting quarterly, such meeting to be held at  
3 such time and place as the board may determine after notice of  
4 such meeting has been given in the manner prescribed herein at  
5 least 15 days prior to such meeting. The board may hold such  
6 other meetings as it may deem necessary. A majority of the  
7 appointed members shall constitute a quorum authorized to  
8 transact business in the name of the board. ~~The board shall  
9 not meet on the premises of any embalming school or college of  
10 mortuary science; and, if any such meeting is held, all the  
11 proceedings of such meeting shall be void.~~

12           "§34-13-23.

13           "(a) (1) The board appointed under this chapter and  
14 each successor thereto is authorized to select from its own  
15 membership a chair and to adopt ~~and promulgate such rules and  
16 regulations~~ for the transaction of its business and for the  
17 betterment and promotion of the standards of service and  
18 practice to be followed in the funeral and cemetery service  
19 profession in the State of Alabama as the board may deem  
20 expedient and consistent with the laws of this state and for  
21 the public good.

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

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

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

9           "(c) ~~Board members~~ A board member shall be  
10 reimbursed for ~~their~~ necessary ~~traveling~~ travel expenses, per  
11 diem, and the necessary expenses incident to ~~their~~ his or her  
12 attendance upon the business of the board, and, in addition  
13 thereto, ~~they~~ shall receive compensation in the ~~sum of fifty~~  
14 ~~dollars (\$50) per diem~~ amount of seventy-five dollars (\$75)  
15 for every day not to exceed 20 days per year actually spent by  
16 the member upon the business of the board. The board may  
17 employ an executive director and associate executive ~~director~~  
18 directors who shall each receive and be paid an annual salary  
19 to be fixed by the board, but not to exceed the salary level  
20 established and paid to cabinet officers in the state  
21 government. The salary shall be paid on a semimonthly basis.  
22 In addition, the executive director and associate executive  
23 ~~director~~ directors shall each receive his or her necessary  
24 ~~traveling~~ travel and other incidental expenses as are incurred  
25 in the performance of duties, and all expenses, per diem, and  
26 compensation shall be paid out of the receipts of the board.  
27 At no time shall the operation of the board be an expense to



1 the state, and at no time shall expenses of the board exceed  
2 the receipts of the board.

3 "(d) The executive director of the board shall have  
4 complete supervision and be held responsible for the direction  
5 of the office of the board, shall have supervision over  
6 employees, field inspection inspections, audits, and  
7 enforcement of this chapter, and shall be responsible and  
8 answerable to the board. The associate executive ~~director~~  
9 directors shall assist the executive director and perform such  
10 other duties as may be assigned to him or her by the ~~board~~  
11 executive director.

12 "(e) The executive director shall keep a record in  
13 which shall be registered the name and business address of  
14 every person to whom licenses have been granted in accordance  
15 with this chapter, the number and date of the license and the  
16 date of each renewal. Upon request to do so, the executive  
17 director shall supply ~~each person licensed for the practice of~~  
18 ~~embalming and funeral directing~~ with a list of all persons and  
19 establishments holding a license under this chapter, then in  
20 force, giving the names of the persons, their business  
21 addresses, and the numbers of their licenses.

22 "(f) It shall be the duty of the executive director  
23 to prepare under the direction of the board and cause to be  
24 printed all forms required by this chapter to be prescribed by  
25 the board. All notices required to be mailed by this chapter  
26 shall be directed to the last known ~~post office~~ address of the  
27 party to whom the notice is sent.

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

7           "(h) All fees and fines received under this chapter  
8 shall be paid into a special fund in the State Treasury to be  
9 known as the Alabama State Funeral ~~Directors and Embalmers~~  
10 Service Fund, which is hereby created, for the necessary and  
11 proper expenses of the board, and for a reasonable reserve for  
12 future use by the board. All ~~moneys~~ monies in the fund are  
13 hereby appropriated, as a continuing appropriation, to the  
14 board to be used for carrying out this chapter.

15           "(i) Each member of the board, the executive  
16 director, the associate executive ~~director~~ directors,  
17 designated employees, and independent contractors of the board  
18 appropriately identified are authorized at any given time ~~on~~  
19 ~~complaint or~~ to conduct investigations of complaints, audits,  
20 and for inspection purposes to enter the office, premises,  
21 establishment, or place of business of any funeral service,  
22 cemetery service, or preneed sales licensee in the State of  
23 Alabama or any office, premises, establishment, or place where  
24 the practice of funeral service, cemetery service, or preneed  
25 sales is carried on, or where the practice is advertised as  
26 being carried on, for the purpose of investigating, auditing,  
27 or inspecting the office, premises, records, or establishment

1 and for the purpose of inspecting the license and registration  
2 of any ~~funeral service~~ licensee and or apprentice trainee  
3 operating therein.

4 "(j) All members of the board or designated  
5 employees of the board may serve and execute any process  
6 issued by any court under this chapter and ~~to~~ serve and  
7 execute any papers, orders, or process issued by the board or  
8 any officer or member ~~thereof~~ of the board under this chapter.

9 "(k) The board may employ clerical assistants and  
10 employees ~~or other help~~ as necessary to carry out this  
11 chapter, and the terms and conditions of employment shall be  
12 determined by the board. The board may establish and equip an  
13 office from which this chapter may be carried out.

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

1 property shall include land, lots, and all things and  
2 interests, including leasehold interests, pertaining thereto,  
3 and all other things annexed or attached to the land which  
4 would pass to a vendee by conveyance of the land or lot,  
5 including mineral, gas, and oil interests. All sales or leases  
6 made by the board of any real property owned or held by the  
7 board shall be subject to the requirements of Article 3,  
8 commencing with Section 9-15-70, Chapter 15, Title 9.  
9 Notwithstanding the foregoing, the proceeds from the sale of  
10 real property owned by the board which are distributed  
11 pursuant to Section 9-15-83, shall be paid to the board and  
12 deposited into the property acquisition fund.

13 "(2) There is established the Funeral Board Property  
14 Acquisition Fund within the State Treasury. Any funds received  
15 by the board pursuant to this section shall be deposited into  
16 the property acquisition fund and shall be held by the board  
17 in trust for carrying out the purposes of the property  
18 acquisition fund. Not later than the effective date of the act  
19 adding this subdivision, the executive director shall transfer  
20 from the Alabama State Funeral Service Fund to the property  
21 acquisition fund an amount determined by vote of the board for  
22 the purchase of real property. Thereafter, the board shall  
23 annually, during the month of October, transfer an amount  
24 between two percent and seven percent of the receipts of the  
25 board from the previous fiscal year to the property  
26 acquisition fund.

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

5           "§34-13-26.

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

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

14           "(c) Unless provided otherwise by the board, a  
15 committee or subcommittee established by the board may conduct  
16 meetings, hold hearings, conduct investigations, subpoena  
17 witnesses, subpoena documents, administer oaths, take  
18 testimony, and perform other duties as prescribed by the board  
19 relating to this chapter. Each committee and subcommittee  
20 shall report any findings and recommendations to the board for  
21 approval.

22           "§34-13-27.

23           "The board shall adopt a common seal, which may be  
24 altered as often as the board may desire, and may adopt and  
25 enforce, for the protection of the public health, safety, and  
26 welfare, reasonable rules ~~and regulations~~ relating to all of  
27 the following:

1           "(1) The practice of the profession of embalming,  
2 including, but not limited to, solicitation of business~~7.~~.

3           "(2) The practice of the profession of funeral  
4 directing, including, but not limited to, solicitation of  
5 business~~7.~~.

6           "(3) The sanitary condition and physical facilities  
7 of funeral homes, mortuaries, and funeral establishments where  
8 the profession of embalming and funeral directing is carried  
9 on, with particular regard to plumbing, sewage, disinfecting,  
10 ventilation, and equipment~~7.~~.

11           "(4) Carrying out generally the various provisions  
12 of this chapter for the protection of the peace, health,  
13 safety, and welfare of the public~~7.~~and.

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

16           "(6) All activity relating to the sale of preneed  
17 funeral services, preneed funeral merchandise, preneed  
18 cemetery services, preneed cemetery merchandise, and cemetery  
19 endowment care, the operation of cemeteries, funeral homes,  
20 and crematories, and funeral service and cemetery service.

21           "§34-13-52.

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

1           "(b) A funeral establishment license issued under  
2 this chapter shall include the name of the funeral  
3 establishment, the name of the managing funeral director, the  
4 name of the managing embalmer, and the certificate of  
5 authority license number, if applicable. The license shall be  
6 on public display.

7           "(c) Every license issued under this chapter shall  
8 be signed by the chair and executive director and shall be  
9 displayed in the place of business or employment of the  
10 licensee.

11           "(d) Any person engaged in the business, profession,  
12 or practice of funeral directing, embalming, cremation,  
13 preneed sales, or cemetery sales shall do each of the  
14 following:

15           "(1) Possess on his or her person, or be able to  
16 promptly produce, a legible and current ~~Alabama funeral~~  
17 ~~director's~~ board issued wallet license when performing the  
18 duties of a funeral director, embalmer, cremationist, preneed  
19 sales agent, or cemeterian.

20           "(2) Upon the request of a board member, the  
21 executive director, ~~the~~ an associate executive director, or a  
22 designated and appropriately identified employee of the board,  
23 promptly produce his or her legible and current Alabama  
24 funeral director wallet license certificate.

25           ~~"(e) Any person engaged in the business, profession,~~  
26 ~~or practice of embalming shall do each of the following:~~

1           ~~"(1) Possess on his or her person, or be able to~~  
2 ~~promptly produce, a legible and current Alabama embalmer's~~  
3 ~~wallet license when performing the duties of an embalmer.~~

4           ~~"(2) Upon the request of a board member, the~~  
5 ~~executive director, the associate executive director, or a~~  
6 ~~designated and appropriately identified employee of the board,~~  
7 ~~promptly produce his or her legible and current Alabama~~  
8 ~~embalmer wallet license certificate.~~

9           ~~"(f) Any person engaged in the business, profession,~~  
10 ~~or practice of cremation shall do each of the following:~~

11           ~~"(1) Possess on his or her person, or be able to~~  
12 ~~promptly produce, a legible and current Alabama cremationist's~~  
13 ~~wallet license when performing the duties of a cremationist.~~

14           ~~"(2) Upon the request of a board member, the~~  
15 ~~executive director, the associate executive director, or a~~  
16 ~~designated and appropriately identified employee of the board,~~  
17 ~~promptly produce his or her legible and current Alabama~~  
18 ~~cremationist wallet license certificate.~~

19           ~~"§34-13-53.~~

20           ~~"(a) (1) Before October 1, 2018, every licensed~~  
21 ~~funeral director, licensed embalmer, and licensed operator~~  
22 ~~shall pay annually a fee for renewal of his or her license.~~  
23 ~~The renewal fees shall be set by the board at a rate not to~~  
24 ~~exceed one hundred fifty dollars (\$150) for licensed embalmers~~  
25 ~~and funeral directors and five hundred dollars (\$500) for~~  
26 ~~licensed operators.~~



1           "~~(2)~~(a) (1) Commencing on October 1, 2018, every  
2 funeral director, embalmer, cremationist, and establishment  
3 license or registration issued by the board under this chapter  
4 shall be renewed biennially upon submission by the licensee or  
5 registrant of a renewal application and a renewal fee  
6 established by board rule, not exceeding five hundred dollars  
7 (\$500), for each licensed cremationist, embalmer, funeral  
8 director, and funeral establishment.

9           "(2) Commencing on September 1, 2021, every cemetery  
10 authority, general manager, cemetery sales agent, certificate  
11 of authority, and preneed sales agent license or registration  
12 issued by the board under this chapter shall be renewed  
13 annually upon submission by the licensee or registrant of a  
14 renewal application and a renewal fee established by board  
15 rule, not exceeding one thousand dollars (\$1,000), for each  
16 cemetery authority, cemetery sales agent, certificate of  
17 authority, and preneed sales agent.

18           "(b) (1) All funeral director, embalmer,  
19 cremationist, and funeral establishment licenses granted under  
20 this chapter shall expire on October 1, following their  
21 issuance or renewal, and shall become invalid unless renewed  
22 as provided in this section and other requirements of the  
23 board are met. In addition to payment of a renewal fee, each  
24 licensee shall satisfy continuing education requirements  
25 prescribed by rule of the board pursuant to subsection ~~(c)~~(d).

26           "(2) All cemetery authority, general manager,  
27 cemetery sales agent, certificate of authority, and preneed

1 sales agent licenses granted under this chapter shall expire  
2 on October 1, following their issuance or renewal, and shall  
3 become invalid unless renewed as provided in this section and  
4 consistent with other requirements of the board. In addition  
5 to payment of a renewal fee, each licensee shall satisfy  
6 continuing education requirements prescribed by rule of the  
7 board pursuant to this chapter.

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

9 "~~(c)~~(d) (1) Commencing in 2014, and for each  
10 licensing period thereafter, the board may require persons  
11 seeking renewal of a cremationist, embalmer, or funeral  
12 director license under this chapter to complete board approved  
13 continuing education of not less than eight hours biennially.  
14 The board may approve continuing education providers and  
15 courses offered by institutions of higher learning, specialty  
16 societies, associations, or professional organizations or by  
17 other organizations the board deems appropriate.

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

22 "(3) An embalmer who is also a licensed funeral  
23 director and who completes the continuing education  
24 requirements for funeral directors is not required to complete  
25 additional continuing education requirements.

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

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

6           "~~(d) The board shall publish on or before August 1  
7 of the expiration year, in printed form, electronic image, in  
8 an online publication, or on the website of the board that is  
9 accessible to each licensed funeral director, licensed  
10 embalmer, licensed cremationist, and licensed establishment,  
11 notice that his or her renewal fee is due and payable and  
12 that, if such fee is not paid by September 30 of that year,  
13 the license shall expire. Information regarding license  
14 renewal dates and fees shall be available in electronic format  
15 on the website of the board.~~

16           "(e) Ninety days before the expiration date of a  
17 license, the board shall inform the licensee that his or her  
18 license renewal is due. Unless otherwise provided by this  
19 chapter, a renewal is past due if the renewal application is  
20 not received and the renewal fee is not paid 30 calendar days  
21 before the expiration date of the license.

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

27           "§34-13-54.

1           ~~"No license to a cremationist, an embalmer, a~~  
2 ~~funeral director, or a funeral establishment~~ granted under or  
3 regulated by this chapter shall be transferable or assignable,  
4 unless otherwise authorized by this chapter.

5           "§34-13-55.

6           "(a) When a ~~licensee, for any reason, has allowed a~~  
7 ~~license to expire~~ renewal is past due, the board may ~~reinstate~~  
8 renew the license if application for ~~reinstatement~~ renewal is  
9 made within a period of 30 days from the date of ~~expiration~~  
10 becoming past due and is accompanied by payment of all past  
11 due penalties and fees, ~~from the time of expiration to date of~~  
12 ~~reinstatement~~. The past due penalties to be paid to the board  
13 shall not exceed one hundred dollars (\$100) ~~to reinstate~~  
14 ~~licenses which have expired.~~

15           "(b) After the 30-day period has elapsed, a license  
16 may be reinstated with application and payment of all fees and  
17 penalties. If it has been more than two years since the  
18 expiration of the license, the license may be reinstated only  
19 by complying with ~~the provisions of this chapter relating as~~  
20 it relates to the issuance of an original license in addition  
21 to payment of all fees and penalties.

22           "§34-13-56.

23           "(a) The board may refuse to license any person,  
24 entity, or establishment for violation of this chapter. If the  
25 board refuses to issue, grant, or renew a license based on a  
26 violation of this chapter, including, but not limited to,  
27 violations listed in subsection (c), the licensee or

1 prospective licensee may request a public hearing before the  
2 board to appeal the action of the board. The request for a  
3 public hearing shall be submitted to the board in writing  
4 within 14 calendar days after the date of the refusal. Upon  
5 request, the board shall provide the licensee or prospective  
6 licensee with 20 days' notice of the public hearing by United  
7 States certified mail. The public hearing shall be conducted  
8 pursuant to Section 34-13-26.

9 "(b) A public hearing conducted pursuant to Section  
10 34-13-26 shall be provided by the board to any licensee for  
11 whom the board is considering the probation, suspension, or  
12 revocation of a license.

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

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

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

22 "a. Misrepresentation or fraud in the conduct of the  
23 business or the profession of ~~a funeral director or embalmer~~  
24 any license issued pursuant to this chapter.

25 "b. False or misleading advertising as a ~~funeral~~  
26 ~~director or embalmer~~ licensee under this chapter or knowingly

1 engaging in any advertising which is misleading or inaccurate  
2 ~~in any material particular.~~

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

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

11 "e. Employment by the licensee of a person or  
12 persons to be used for the purpose of obtaining or soliciting  
13 ~~funeral directing or embalming business,~~ whether the  
14 solicitation occurs after death or while death is impending.

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

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

24 "h. Gross immorality.

25 "i. Aiding or abetting an unlicensed person,  
26 establishment, or entity in ~~the practice of funeral directing,~~

1 ~~embalming, cremation, or conducting business as a funeral~~  
2 ~~establishment or crematory~~ violation of this chapter.

3 "j. Using profane, indecent, or obscene language in  
4 the presence of a dead human body, or within the immediate  
5 hearing of the family or relative of a deceased whose body has  
6 not yet been interred or otherwise disposed of.

7 "k. Solicitation or acceptance by a licensee of any  
8 commission or bonus or rebate in consideration of recommending  
9 or causing a dead human body to be disposed of in any  
10 mausoleum or cemetery.

11 "l. Any violation of this chapter or order or rule  
12 of the board.

13 "m. Any violation of state law or municipal or  
14 county ordinance or regulation affecting the handling,  
15 custody, care, disposition, or transportation of dead human  
16 bodies.

17 "n. Fraud or misrepresentation in obtaining a  
18 license.

19 "o. Refusing to promptly surrender the custody of a  
20 dead human body, upon the express order and payment for  
21 services rendered of the person lawfully entitled to the  
22 custody thereof.

23 "p. Performing services in a professional capacity  
24 as a ~~funeral director or embalmer, or both,~~ licensee for any  
25 unlicensed funeral establishment or cemetery authority  
26 operating in violation of this chapter.

1           "q. Being intoxicated or under the influence of  
2 illegal drugs while on duty ~~at a funeral establishment~~ or  
3 while performing any duty or responsibility for ~~the~~ a funeral  
4 establishment or cemetery authority.

5           "r. Willfully retaining or willfully failing to  
6 account for any property of a decedent.

7           "s. Knowingly and willfully signing any  
8 documentation as having embalmed or prepared a body for burial  
9 when, in fact, the services were not performed by the  
10 licensee.

11           "t. Failure to give full cooperation to the board or  
12 its designees, agents, or other representatives in the  
13 performance of official duties of the board.

14           "u. Not furnishing any relevant papers or documents  
15 requested by or for the board.

16           "v. Not furnishing, in writing, an adequate  
17 explanation relating to a matter contained in a complaint  
18 filed with the board against the licensee.

19           "w. Not responding to a subpoena issued by the  
20 board, without good cause shown, whether or not the licensee  
21 is the party charged in any proceeding before the board.

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



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

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

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

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

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

20           "dd. Demonstrating bad faith, incompetence, or  
21 untrustworthiness or dishonest, fraudulent, or improper  
22 dealing or any other violation of this chapter or any rule  
23 ~~promulgated~~ adopted by the board or ~~promulgated~~ by the Federal  
24 Trade Commission relative to the practice of ~~funeral service~~  
25 ~~or funeral directing~~ any activity regulated by the board.

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

4           "ff. A ~~funeral home or funeral director~~ licensee  
5 accepting funds for a preneed ~~funeral~~ contract or other  
6 prepayment of funeral or disposition expenses without a  
7 certificate of authority to sell preneed funeral contracts or,  
8 if registered to sell preneed ~~funeral~~ contracts, failing to  
9 deposit the funds with a qualified trustee or to timely remit  
10 premium payments from the consumer to the insurer.

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

17           "(d) In addition to the disciplinary actions  
18 authorized in subsection (c), the board may levy and collect  
19 administrative fines for violations of this chapter or the  
20 rules ~~or regulations~~ of the board in an amount not less than  
21 five hundred dollars (\$500) nor more than two thousand five  
22 hundred dollars (\$2,500) for each violation, unless otherwise  
23 provided for in this chapter or by rule of the board.

24           "§34-13-56.1.

25           "(a) It is unlawful for any person or entity, for  
26 hire or profit, to engage in, or hold himself, herself, or  
27 itself out as qualified to engage in any of the following

1 without a valid license, certification, or registration issued  
2 by the board:

3 "(1) The practice of funeral directing.

4 "(2) The practice of embalming.

5 "(3) Practicing as an apprentice.

6 "(4) Operating a crematory.

7 "(5) Practicing as a cremationist.

8 "(6) Practicing as a preneed sales agent.

9 "(7) Practicing as a cemetery sales agent.

10 "(8) Operating as a cemetery authority.

11 "(9) Practicing as a general manager.

12 "(b) Any person or entity who has been found to have  
13 engaged in the unlawful unlicensed ~~practice of funeral~~  
14 ~~directing, embalming, apprenticing, operating a crematory, or~~  
15 ~~cremating~~ practices regulated by this chapter shall be subject  
16 to a fine of not more than two thousand five hundred dollars  
17 (\$2,500) for each violation and other sanctions authorized by  
18 this chapter.

19 "(c) The board shall have the same jurisdiction over  
20 funeral establishments, funeral directors, cemetery  
21 authorities, and third-party sellers who sell preneed  
22 contracts without a preneed certificate of authority as the  
23 board has over those preneed sellers who possess a preneed  
24 certificate of authority.

25 "§34-13-111.

26 "(a) No funeral establishment or branch thereof for  
27 the preparation, disposition, and care of dead human bodies

1 shall be opened or maintained unless licensed by the board. No  
2 funeral establishment or branch shall be moved without  
3 obtaining a new funeral establishment license from the board.

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

10 "(c) The board shall set a fee, not exceeding one  
11 hundred fifty dollars (\$150), that shall be in addition to the  
12 license fee for the first inspection of any funeral  
13 establishment seeking a license under Section 34-13-72 made  
14 for the purpose of determining whether the funeral  
15 establishment has fulfilled the requirements for licensure  
16 pursuant to this chapter. The board shall set a fee, not  
17 exceeding one hundred fifty dollars (\$150), for each  
18 reinspection necessitated by failure of any funeral  
19 establishment to pass the first inspection. The board, or a  
20 representative of the board, shall annually conduct at least  
21 one unannounced inspection of each funeral establishment and  
22 branch, with an inspection fee of not more than one hundred  
23 dollars (\$100). The inspection fee shall be submitted to the  
24 board within 45 days after the inspection. Any funeral  
25 establishment that does not submit the inspection fee within  
26 45 days shall be charged a late penalty fee, as established by  
27 the board. A funeral establishment, or branch thereof, that is

1 used for the preparation, disposition, and care of dead human  
2 bodies shall meet and conform to this chapter and to such  
3 other lawful standards and requirements as may be determined  
4 by rule of the board in furtherance of this chapter; and, for  
5 failure to do so, the board may revoke the funeral  
6 establishment license in accordance with the procedure set  
7 forth in this chapter.

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

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

19 "(f) (1) Each funeral establishment operating under  
20 this chapter shall pay, on a date prescribed by rule of the  
21 board, a consumer protection fee not exceeding fifty dollars  
22 (\$50) for each final disposition arranged or performed by the  
23 funeral establishment. The consumer protection fee applies to  
24 all final dispositions and may be collected directly from the  
25 consumer, submitted to the board quarterly, and deposited into  
26 the Alabama State Funeral Service Fund.

1           "(2) When a final disposition is not arranged by a  
2 funeral establishment operating under this chapter, each  
3 cemetery shall pay, on a date prescribed by rule of the board,  
4 a consumer protection fee not exceeding fifty dollars (\$50)  
5 for each final disposition arranged or performed. The consumer  
6 protection fee may be collected directly from the consumer,  
7 submitted to the board quarterly, and deposited into the  
8 Alabama State Funeral Service Fund.

9           "(3) Failure to remit a consumer protection fee as  
10 required by this subsection shall result in disciplinary  
11 action by the board pursuant to this chapter.

12           "§34-13-113.

13           "(a) Application for a license to operate a funeral  
14 establishment shall be made in writing on a form provided by  
15 the board. The application shall be verified by the applicant  
16 or, if the applicant is a corporation, firm, or other  
17 organization, by an officer or member thereof, and shall be  
18 accompanied by an application fee established by the board not  
19 to exceed five hundred dollars (\$500). The application shall  
20 disclose all of the following:

21           "(1) The name and address of the establishment.

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

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

1           "(4) That the establishment has a sanitary, properly  
2 equipped embalming room, a room suitable for public viewing or  
3 other funeral services that is ~~able to accommodate a minimum~~  
4 ~~of 100 people~~ a minimum of 1,000 square feet, an office for  
5 arrangement conferences with relatives or authorized  
6 representatives, and a display room containing a stock of  
7 adult caskets and funeral supplies displayed in full size,  
8 cuts, photographs, or electronic images. At no time shall less  
9 than eight different adult full size caskets and at least one  
10 operating and properly licensed funeral coach or hearse  
11 equipped for transporting human remains in a casket or urn be  
12 on the premises. A funeral establishment, that has more than  
13 one location under the same ownership wherein the profession  
14 of funeral directing is practiced, is not required to maintain  
15 more than one preparation room upon satisfying requirements  
16 prescribed by the board.

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

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

24           "(c) Application for a license to operate a mortuary  
25 service shall be made in writing on a form provided by the  
26 board. The application shall be verified by the applicant or,  
27 if the applicant is a corporation, firm, or other

1 organization, by an officer or member thereof, and shall be  
2 accompanied by an application fee established by the board not  
3 to exceed five hundred dollars (\$500). The application shall  
4 disclose all of the following:

5 "(1) The name and address of the proposed mortuary  
6 service.

7 "(2) That the mortuary service applicant is operated  
8 by a licensed embalmer or a person licensed both as a funeral  
9 director and embalmer.

10 "(3) A description and photographs of the buildings,  
11 equipment, and facilities of the mortuary service applicant.

12 "(4) That the mortuary service applicant has a  
13 sanitary, properly equipped embalming room.

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

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

21 Section 2. Section 27-17A-1 of the Code of Alabama  
22 1975, is amended and renumbered as part of Division 1 of  
23 Article 5 of Chapter 13 of Title 34, Code of Alabama 1975, to  
24 read as follows:

25 "ARTICLE 5. Alabama Preneed Funeral and Cemetery Act  
26 of 2021.

27 "Division 1. General Provisions.



1           ~~"§27-17A-1.~~ §34-13-170.

2           "(a) This ~~chapter~~ article shall be known and may be  
3           cited as the Alabama Preneed Funeral and Cemetery Act of 2021.

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

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

13           "(3) The status of any person properly licensed by  
14           the Department of Insurance under the former Chapter 17A of  
15           Title 27, on the effective date of the act adding this  
16           subdivision, shall continue under the board.

17           "(4) The administrative rules of the Department of  
18           Insurance existing on the effective date of the act adding  
19           this subdivision shall remain in effect as administrative  
20           rules of the board until added, amended, or repealed by the  
21           board.

22           "(5) The existence and functioning of the Alabama  
23           Preneed Funeral and Cemetery Act, created and functioning  
24           pursuant to Sections 27-17A-1 to 27-17A-57, inclusive, is  
25           continued as the Alabama Preneed Funeral and Cemetery Act of  
26           2021, under this article and Sections 34-13-295 to 34-13-302,  
27           inclusive, and Sections 34-13-309 to 34-13-311, inclusive, of

1 Article 6, relating to the regulation of cemeteries. All  
2 rights, duties, and obligations existing in the name of the  
3 Department of Insurance, relating to endowment care, preneed  
4 sales contracts, and preneed sales agent licenses, shall  
5 continue under the board. Any reference to the Department of  
6 Insurance in any existing law, contract, or other instrument  
7 relating to endowment care, preneed sales contracts, and  
8 preneed sales agent licenses, shall be deemed a reference to  
9 the board.

10 "(6) The transfer of the regulation of preneed  
11 contracts and the licensing of preneed sales agents from the  
12 Department of Insurance to the board shall not affect the  
13 rights of any person held before the effective date of the act  
14 adding this subdivision, as those rights relate to any preneed  
15 trust funds, endowment care trust funds, or any other funds  
16 held in trust pursuant to the Alabama Preneed Funeral and  
17 Cemetery Act."

18 Section 3. Section 34-13-171 is added to the Code of  
19 Alabama 1975, as part of Division 1 of Article 5 of Chapter 13  
20 of Title 34, Code of Alabama 1975, to read as follows:

21 §34-13-171.

22 (a) Commencing January 1, 2022, there is established  
23 under the Alabama Board of Funeral Service the Preneed Funeral  
24 and Cemetery Oversight Committee, for the purpose of  
25 administering subsection (c) of Section 34-13-26, as it  
26 relates to the regulation of preneed sales agents,

1 ceterians, and cemetery authorities. The committee shall be  
2 composed of the following members:

3 (1) Two members who are currently serving members of  
4 the board, licensed by the board as funeral directors and in  
5 good standing with the board, and holders of certificates of  
6 authority to sell preneed funeral services, funeral  
7 merchandise, and cemetery merchandise pursuant to this  
8 chapter.

9 (2) Two members who are owners or licensed general  
10 managers of licensed cemeteries in the state, in good standing  
11 with the board, and holders of certificates of authority to  
12 sell preneed cemetery services, cemetery merchandise, and  
13 funeral merchandise pursuant to this chapter.

14 (3) One consumer member who is currently serving on  
15 the board.

16 (b) (1) The members appointed pursuant to  
17 subdivisions (a) (1) and (a) (3) shall be appointed by the chair  
18 of the board.

19 (2) The members appointed pursuant to subdivision  
20 (a) (2) shall be nominated and appointed by the Governor as  
21 follows: Certificate holder ceterians shall meet in  
22 Montgomery, at a time and place fixed by the executive  
23 director of the board, to nominate and submit the names of  
24 three ceterians to the Governor for each available  
25 ceterian position on the committee, and the Governor shall  
26 select and appoint one nominee for each ceterian position.  
27 The nominating ceterians shall coordinate their nominations

1 to ensure that one cemeterian serving on the committee resides  
2 within the northern half of the state and one resides within  
3 the southern half of the state, as divided by the board, and  
4 neither may reside within the same congressional district.

5 (c) The terms of the cemeterian members on the  
6 committee shall be in accordance with Section 34-13-20(e).

7 (d) Committee members shall be subject to the same  
8 removal and ineligibility requirements as board members under  
9 subdivisions (1) and (2) of Section 34-13-20(f), shall receive  
10 the same compensation and expenses as provided to board  
11 members under Section 34-13-23(c), and may conduct  
12 investigations and serve and execute process in the same  
13 manner for the committee as board members do for the board  
14 under Sections 34-13-23(i) and (j).

15 (e) The committee shall conduct meetings and perform  
16 other duties as prescribed by the board pursuant to Section  
17 34-13-26. The committee shall annually select from its  
18 membership a chair and vice chair. The chair shall preside at  
19 all meetings of the committee, unless otherwise ordered, and  
20 shall exercise and perform all duties and functions incident  
21 to the office of chair. A majority of the members of the  
22 committee shall constitute a quorum for the transaction of  
23 committee business. Every member of the committee, after  
24 appointment and before entering upon his or her duties, shall  
25 make oath before an officer competent to administer oaths,  
26 that he or she is legally qualified to become a member of the  
27 committee and that he or she will faithfully perform the

1 duties of the office. A signed copy of the oath shall be filed  
2 in the office of the Secretary of State.

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

7 ~~"§27-17A-3. §34-13-172.~~

8 "(a) Nothing in this chapter shall be construed to  
9 prohibit the funding of preneed contracts with multiple  
10 insurance or annuity contracts, provided the combined face  
11 amounts of the funding life insurance policies and the  
12 annuity's ultimate death benefits are not less than the  
13 initial purchase price of the preneed contract. This  
14 subsection does not prohibit the use of life insurance and  
15 annuity products which have graded or limited death benefits  
16 features. Life insurance and annuity contracts used to fund  
17 preneed contracts shall conform with the provisions of ~~this~~  
18 ~~title~~ Title 27 as they relate to life insurance and annuities  
19 ~~and shall cover not less than the initial retail price of the~~  
20 ~~preneed contract.~~

21 "(b) The initial premium payment for a life  
22 insurance policy or annuity contract shall be made payable to  
23 the issuing insurance company and the preneed seller shall  
24 remit the payment to the insurance company within 10 business  
25 days after the insurance application is signed by the parties.  
26 If a preneed contract provides for installment payments, each  
27 premium payment shall be made payable to the insurance company

1 and, if collected by the preneed seller, shall be remitted to  
2 the insurance company within 10 business days after receipt by  
3 the preneed seller.

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

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

23 ~~§27-17A-4.~~ §34-13-173.

24 "Nothing in this chapter shall be construed to  
25 prohibit cemetery authorities from selling funeral  
26 merchandise, funeral establishments from selling cemetery  
27 merchandise, or third-party sellers from selling either

1 funeral merchandise or cemetery merchandise, or both.  
2 Provided, the required amount of the purchase price to be  
3 placed into trust shall be governed by the appropriate section  
4 of this chapter.

5 Section 5. Sections 27-17A-10, 27-17A-11,  
6 27-17A-11.1, 27-17A-12, 27-17A-13, 27-17A-14, 27-17A-15, and  
7 27-17A-16 of the Code of Alabama 1975, are amended and  
8 renumbered as part of Division 2 of Article 5 of Chapter 13 of  
9 Title 34, Code of Alabama 1975, to read as follows:

10 "Division 2. Certificate of Authority.

11 ~~"§27-17A-10.~~ §34-13-190.

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

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

17 "(2) Any preneed transaction in which a buyer pays  
18 to the seller before need, in whole or in part, a purchase  
19 price for funeral or cemetery merchandise and services, and in  
20 which the seller is not obligated to deliver the contracted  
21 for merchandise or to perform the services until need, in  
22 whole or in part, shall be evidenced by a written preneed  
23 contract satisfying the requirements of this chapter and  
24 signed by the seller and the purchaser. No person may receive  
25 or accept any form of consideration in such a transaction  
26 without a fully signed written preneed contract. A transaction  
27 not evidenced by a signed written preneed contract shall be

1 voidable at the election of the buyer and, if such election is  
2 made, the seller shall refund to the buyer the entire amount  
3 paid by the buyer together with interest thereon at the legal  
4 rate within 30 days after notice to the seller.

5 "(3) The provisions of subdivision (1) do not apply  
6 to the purchase of a life insurance policy or annuity, the  
7 benefits of which are assigned to a funeral home ~~and/or~~ or  
8 cemetery authority, or the benefits of which are to be paid to  
9 a funeral home ~~and/or~~ or cemetery authority named as  
10 beneficiary of the policy or annuity, as long as the purchaser  
11 and funeral home ~~and/or~~ or cemetery authority acknowledge in  
12 writing that no preneed contract is entered as a result of the  
13 purchase or assignment of the life insurance policy or annuity  
14 at the time the policy or annuity is purchased. Benefits from  
15 a life insurance policy or annuity issued under this  
16 subdivision shall only be paid to a funeral home ~~and/or~~ or  
17 cemetery authority which provides funeral or cemetery  
18 merchandise and services at the death of the insured whether  
19 or not such funeral home ~~and/or~~ or cemetery has been named as  
20 an assignee or the beneficiary of the policy or annuity. If no  
21 preneed contract was entered or executed, and in the event the  
22 amount of the policy or annuity proceeds shall exceed the  
23 actual funeral costs at the time of need, ~~such~~ the excess  
24 amount ~~must~~ shall be paid to a designated beneficiary, other  
25 than a funeral home ~~and/or~~ or cemetery authority, or to the  
26 estate of the insured or annuitant.



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

7           "(c) (1) No person may obtain a certificate of  
8 authority under this ~~article~~ chapter for the preneed sale of  
9 funeral services or cemetery services unless the person or its  
10 agent, in the case of a corporate entity, holds a license as a  
11 funeral director or a funeral establishment, or is a cemetery  
12 authority. and qualifies as an applicant for a certificate of  
13 authority pursuant to the following standards and  
14 qualifications:

15           "a. The applicant shall be at least 18 years of age.

16           "b. The applicant shall be in good standing with the  
17 board.

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

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

25           "(2) An applicant for a certificate of authority  
26 shall submit to the board, on a form sworn to by the  
27 applicant, his or her name, date of birth, Social Security

1 number, and two complete sets of fingerprints for completion  
2 of a criminal history background check. The board shall submit  
3 the fingerprints to the Alabama State Law Enforcement Agency  
4 for a state criminal history background check. The  
5 fingerprints shall be forwarded by the agency to the Federal  
6 Bureau of Investigation for a national criminal history  
7 background check. Costs associated with conducting a criminal  
8 history background check shall be paid by the applicant. The  
9 board shall keep information received pursuant to this  
10 subdivision confidential, except that information received and  
11 relied upon in denying the issuance of a certificate of  
12 authority may be disclosed if necessary to support the denial.  
13 All character information, including the information obtained  
14 through the criminal history background checks, shall be  
15 considered in licensure decisions to the extent permissible by  
16 all applicable laws.

17 " (d) ~~The provisions of this~~ This section ~~do~~ does not  
18 apply to a cemetery authority owned or operated by a  
19 governmental agency or a religious institution or to those  
20 cemeteries that do not charge fees or sell plots, internment  
21 rights, or any related cemetery merchandise.

22 "~~§27-17A-11. §34-13-191.~~

23 " (a) An application to the ~~commissioner~~ board for a  
24 certificate of authority shall be accompanied by the statement  
25 and other matters described in this section in the form  
26 prescribed by the ~~commissioner~~ board. Annually thereafter,  
27 ~~within six months after the end of its fiscal period, or~~

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

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

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

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

17 "(3)a. Evidence that the person offering the  
18 statement has the following qualifications:

19 "~~a.~~1. Has the ability to discharge his or her  
20 preneed liabilities as they become due in the normal course of  
21 business and has sufficient funds available during the  
22 calendar year to perform his or her obligations under the  
23 contract.

24 "~~b.~~2. Has complied with the trust requirements for  
25 the funds received under contracts issued by himself or  
26 herself as hereinafter described.

1           "~~c.~~3. Has disbursed interest, dividends, or  
2 accretions earned by trust funds, in accordance with this  
3 ~~article~~ chapter and rules ~~promulgated~~ adopted hereunder.

4           "~~d.~~4. Has complied with this chapter and any rules  
5 of the ~~commissioner~~ board.

6           "5. The applicant shall be of good moral character  
7 and submit to a criminal history background check pursuant to  
8 paragraph b.

9           "b. An applicant for a certificate of authority  
10 shall submit to the board, on a form sworn to by the  
11 applicant, his or her name, date of birth, Social Security  
12 number, and two complete sets of fingerprints for completion  
13 of a criminal history background check. The board shall submit  
14 the fingerprints to the Alabama State Law Enforcement Agency  
15 for a state criminal history background check. The  
16 fingerprints shall be forwarded by the agency to the Federal  
17 Bureau of Investigation for a national criminal history  
18 background check. Costs associated with conducting a criminal  
19 history background check shall be paid by the applicant. The  
20 board shall keep information received pursuant to this  
21 subdivision confidential, except that information received and  
22 relied upon in denying the issuance of a certificate of  
23 authority may be disclosed if necessary to support the denial.  
24 All character information, including the information obtained  
25 through the criminal history background checks, shall be  
26 considered in licensure decisions to the extent permissible by  
27 all applicable laws.

1           "(4) Any other information considered necessary by  
2 the ~~commissioner~~ board to meet the ~~commissioner's~~ board's  
3 responsibilities under this chapter.

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

8           "(d) (1) An application to the ~~commissioner~~ board for  
9 an initial certificate of authority shall be accompanied by an  
10 application fee, in an amount to be determined by the  
11 ~~commissioner~~ board, not to exceed ~~one hundred fifty dollars~~  
12 ~~(\$150)~~ one thousand dollars (\$1,000). Thereafter, each annual  
13 application for renewal of a certificate of authority shall be  
14 accompanied by the appropriate fee as determined by the  
15 ~~commissioner~~ board not to exceed ~~seventy-five dollars (\$75)~~  
16 one thousand dollars (\$1,000).

17           "(2) Any person or entity that is part of a common  
18 business enterprise that has a certificate of authority issued  
19 pursuant to this ~~article~~ chapter and elects to operate under a  
20 name other than that of the common business enterprise shall  
21 submit an application on a form ~~adopted~~ prescribed by the  
22 ~~commissioner~~ board to become a branch registrant. Upon the  
23 approval of the ~~commissioner~~ board that the entity qualifies  
24 to sell preneed contracts under this ~~article~~ chapter except  
25 for the requirements of subparagraph 1. of paragraph a. of  
26 subdivision (3) of subsection (b) and if the certificate  
27 holder meets the requirements of ~~paragraph a.~~ subparagraph 1.,

1 a branch registration shall be issued. Each branch registrant  
2 may operate under the certificate of authority of the common  
3 business enterprise upon the payment of a fee established by  
4 the ~~commissioner~~ board not to exceed ~~one hundred fifty dollars~~  
5 ~~(\$150)~~ one thousand dollars (\$1,000) accompanying the  
6 application on ~~July~~ September 1 annually.

7 "(e) Upon the ~~commissioner~~ board being satisfied  
8 that the statement and matters which may accompany ~~it~~ the  
9 statement meet the requirements of this ~~article~~ chapter and of  
10 its rules, the ~~commissioner~~ board shall issue or renew the  
11 certificate of authority.

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

16 "(g) On or before July 1 of each year, the  
17 certificate holder shall file with the ~~commissioner~~ board in  
18 the form prescribed by the ~~commissioner~~ board a full and true  
19 statement as to the activities of any trust established by it  
20 pursuant to this ~~article~~ chapter for the preceding calendar  
21 year.

22 "(h) In addition to any other penalty that may be  
23 provided for under this ~~article~~ chapter, the ~~commissioner~~  
24 board may levy a fine not to exceed fifty dollars (\$50) per  
25 day for each day the certificate holder fails to file its  
26 annual statement, and the ~~commissioner~~ board may levy a fine  
27 not to exceed fifty dollars (\$50) per day for each day the

1 certificate holder fails to file the statement of activities  
2 of the trust. Upon notice to the certificate holder by the  
3 ~~commissioner~~ board that the certificate holder has failed to  
4 file the annual statement or the statement of activities of  
5 the trust, the certificate holder's authority to sell preneed  
6 contracts shall cease while the default continues.

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

15 "(1) No valid complaint has been filed since the  
16 last ~~examination~~ audit.

17 "(2) No administrative action against the preneed  
18 entity has been instituted since the last ~~examination~~ audit.

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

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

1           "(5) The preneed entity has provided to the  
2 ~~department~~ board in a timely manner all required and requested  
3 records.

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

7           "(j) The ~~commissioner~~ board may authorize the  
8 transfer of certificates of authority and establish fees for  
9 the transfer in an amount not to exceed ~~one hundred dollars~~  
10 ~~(\$100)~~ one thousand dollars (\$1,000). Upon receipt of an  
11 application for transfer, the ~~commissioner~~ board may grant a  
12 temporary certificate of authority to the proposed transferee,  
13 based upon criteria established by the ~~commissioner~~ board by  
14 rule, which criteria shall promote the purposes of this  
15 ~~article~~ chapter in protecting the consumer. A temporary  
16 certificate of authority shall expire 60 days after issuance  
17 unless renewed by the ~~commissioner~~ board. A certificate of  
18 authority may not be transferred without the written approval  
19 of the board.

20           "~~§27-17A-11.1. §34-13-192.~~

21           "(a) On a ~~semi-annual basis, within 45 days after~~  
22 ~~the end of each second calendar reporting period~~ or before  
23 July 1, each year, the certificate holder shall file a report  
24 of its preneed contract activity on a form or in a format  
25 prescribed by the ~~commissioner~~ board. The information reported  
26 shall include the total number of preneed contracts in force  
27 at the end of the previous ~~reporting period~~ calendar year, the



1 total number of preneed contracts sold during the ~~reporting~~  
2 ~~period~~ previous calendar year, the total number of preneed  
3 contracts fulfilled during the ~~reporting period~~ previous  
4 calendar year, the total number of preneed contracts in force  
5 at the end of the ~~reporting period~~ previous calendar year, and  
6 such other information as may be required by the ~~commissioner~~  
7 board. The report shall be organized by type of funding  
8 including, life insurance, annuity, trust, letter of credit,  
9 or surety bond. The report shall also provide a certification  
10 by the trustee of the amount of assets held by the trust at  
11 the beginning of the reporting period and at the end of the  
12 reporting period, together with the amount of deposits and  
13 withdrawals during the reporting period. ~~If a certificate~~  
14 ~~holder shall twice default in complying with the requirements~~  
15 ~~of this subsection, the commissioner may require that the~~  
16 ~~certificate holder thereafter submit the report within 45 days~~  
17 ~~after the end of each calendar quarter and shall continue so~~  
18 ~~reporting for a time to be determined by the commissioner~~ A  
19 certificate of authority may not be renewed until the  
20 certificate holder has complied with the requirements of this  
21 chapter.

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

1           "~~(c) Each cemetery authority shall maintain a~~  
2 ~~written log of the sale of cemetery interment rights. The log~~  
3 ~~shall be on a form or in a format prescribed by the~~  
4 ~~commissioner and shall detail all information required by the~~  
5 ~~commissioner.~~

6           "~~§27-17A-12. §34-13-193.~~

7           "(a) Preneed contract forms and related forms shall  
8 be filed with and approved by the ~~commissioner~~ board.

9           "(b) Specific disclosure regarding whether,  
10 consistent with the requirements of this chapter, the  
11 certificate holder is placing certain preneed funds received  
12 with the contract in trust, in an annuity, or in insurance, is  
13 required in the preneed contract.

14           "(c) Preneed contracts which have been submitted to  
15 the ~~commissioner~~ board shall be deemed to have been approved  
16 by the ~~commissioner~~ board in the event that the ~~commissioner~~  
17 board fails to notify the certificate holder that approval has  
18 been denied within 30 days following submission to the  
19 ~~commissioner~~ board.

20           "~~§27-17A-13. §34-13-194.~~

21           "(a) Except as provided in Sections ~~27-17A-3 and~~  
22 ~~27-17A-14~~ 34-13-172 and 34-13-195, every preneed contract  
23 shall require the monies paid to the seller or trustee to be  
24 placed in trust in accordance with ~~Article 3~~ Division 3, for  
25 funeral merchandise and services sold by funeral  
26 establishments or third party sellers, or ~~Article 4~~ Division

1 4, for cemetery merchandise and services sold by cemetery  
2 authorities.

3 "(b) Although this chapter does not apply to preneed  
4 contracts entered into prior to May 1, 2002, a preneed  
5 provider which contends that a preneed trust fund which was in  
6 effect prior to May 1, 2002, complies with this chapter with  
7 respect to the contracts entered into prior to May 1, 2002,  
8 may provide to the ~~commissioner~~ board documentary proof  
9 thereof. Upon the ~~commissioner~~ board determining that  
10 compliance has been established, the pre-existing preneed  
11 trust fund assets may be merged with or into the trust fund  
12 required under this chapter or continued as the trust fund and  
13 that determination by the ~~commissioner~~ board shall be noted on  
14 the certificate of authority, and thereafter all preneed  
15 contracts covered by the trust fund, including those entered  
16 into prior to May 1, 2002, shall be subject to this chapter.

17 "~~§27-17A-14.~~§34-13-195.

18 "(a) As an alternative to the trust requirement of  
19 Section ~~27-17A-13~~ 34-13-194, the details of which are set  
20 forth in ~~Articles 3 and 4~~ Divisions 3 and 4, a preneed  
21 provider ~~may~~, with the prior approval of the ~~commissioner~~  
22 board, may purchase a surety bond in an amount not less than  
23 the aggregate value of outstanding liabilities on undelivered  
24 preneed contracts for merchandise, services, and cash  
25 advances. For the purposes of this section, the term  
26 outstanding liabilities means the original retail amount of  
27 services and cash advances and the actual cost to the entity

1 to provide the undelivered merchandise sold on each contract  
2 written after April 30, 2002. The surety bond shall be in an  
3 amount sufficient to cover the outstanding liability at the  
4 time each contract is executed.

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

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

20 "(d) The amount of the bond shall be increased or  
21 decreased as necessary to correlate with changes in the  
22 outstanding liabilities. Further, the ~~commissioner~~ board may  
23 order the bond to be increased as necessary to correlate with  
24 changes in the outstanding liabilities of bonded contracts due  
25 to increases in the consumer price index.

26 "(e) If the preneed provider fails to maintain a  
27 bond pursuant to this section the preneed provider shall

1 surrender its certificate of authority and cease the offering  
2 for sale and sale of preneed merchandise, services, and cash  
3 advances as provided by this chapter or rule of the board. The  
4 board, by rule, may levy fines and take remedial action  
5 requiring the preneed provider to correct any funding  
6 deficiencies.

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

1 certificate holder files a replacement bond acceptable to the  
2 ~~commissioner~~ board or demonstrates to the satisfaction of the  
3 ~~commissioner~~ board that it has complied with ~~the provisions of~~  
4 this chapter.

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

12 "~~§27-17A-15. §34-13-196.~~

13 "(a) The ~~commissioner shall~~ board, as often as ~~he or~~  
14 ~~she may deem~~ deemed necessary, ~~examine~~ shall audit the  
15 business of any person writing preneed contracts under this  
16 chapter to the extent applicable. The ~~examination~~ audit shall  
17 be made by designated representatives employed or ~~examiners of~~  
18 ~~the Department of Insurance~~ contracted by the board.

19 "(b) The written report of each ~~examination~~ audit,  
20 when completed, shall be filed ~~in the office of the~~  
21 ~~commissioner and, when so filed, shall not constitute a public~~  
22 ~~record~~ with the board.

23 "(c) Any person being ~~examined~~ audited shall  
24 produce, upon request, all records of the person. The  
25 designated representative of the ~~commissioner~~ board may at any  
26 time examine the records and affairs of the person, whether in  
27 connection with a formal ~~examination~~ audit or not.

1           "(d) The ~~commissioner~~ board may waive the  
2 ~~examination~~ audit requirements of this section if the  
3 certificate holder submits audited financial statements.

4           "(e) The person ~~examined~~ audited shall pay the  
5 ~~examination expenses, travel expense and per diem subsistence~~  
6 ~~allowance provided for examiners and incurred by the~~  
7 ~~commissioner's representatives or examiners in connection with~~  
8 ~~an examination in accordance with Section 27-2-25~~ board an  
9 audit fee, in an amount determined by the board, not to exceed  
10 one thousand dollars, (\$1,000) per audit day.

11           "(f) Whenever any special audit of the premises,  
12 facilities, books, or records of a licensee is necessary based  
13 on the failure of the licensee to comply with this chapter,  
14 the board shall charge a fee based on the cost of the special  
15 audit including, but not limited to, the prorated compensation  
16 of board employees involved in the special audit and any  
17 expenses incurred.

18           "(g) The board may suspend the certificate of  
19 authority of any person that fails to pay an audit fee to the  
20 board within 30 days after the invoice date. Upon suspension,  
21 a certificate holder shall immediately cease offering goods  
22 and services on a preneed basis.

23           "(h) The board may conduct and enforce, by all  
24 appropriate and available means, any audit under oath in any  
25 other state or territory of the United States in which an  
26 officer, director, or manager may then presently be, to the

1 full extent permitted by law of the other state or territory,  
2 this special authorization considered.

3 ~~"§27-17A-16. §34-13-197.~~

4 "(a) A certificate holder shall be considered  
5 inactive upon the acceptance of the surrender of its license  
6 by the ~~commissioner~~ board or upon the nonreceipt by the  
7 ~~commissioner~~ board of the certificate of authority renewal  
8 application and fees.

9 "(b) A certificate holder shall cease all preneed  
10 sales to the public upon becoming inactive. The certificate  
11 holder shall collect and deposit into trust all of the funds  
12 paid toward preneed contracts sold prior to becoming inactive.

13 "(c) Any certificate holder desiring to surrender  
14 its license to the ~~commissioner~~ board shall first do all of  
15 the following:

16 "(1) File notice with the ~~commissioner~~ board.

17 "(2) Submit copies of its existing trust agreements.

18 "(3) Submit a sample copy of each type of preneed  
19 contract sold.

20 "(4) Resolve to the ~~commissioner's~~ satisfaction of  
21 the board all findings and violations resulting from the last  
22 ~~examination~~ audit conducted.

23 "(5) Pay all outstanding fines and invoices due the  
24 ~~commissioner~~ board.

25 "(6) Submit its current certificate of authority.



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

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

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

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

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

24           Section 6. Section 34-13-198 is added to the Code of  
25 Alabama 1975, as part of Division 2 of Article 5 of Chapter 13  
26 of Title 34, Code of Alabama 1975, to read as follows:

27           §34-13-198.

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

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

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

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

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

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

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

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

26           (8) The certificate holder has been or is the  
27 subject of an application for the appointment of a receiver,

1 trustee, custodian, or sequestrate of the certificate holder  
2 or its property otherwise than pursuant to this chapter or  
3 rule of the board, but only if the appointment has been made,  
4 or is imminent, and its effect is, or would be, to oust the  
5 courts of this state of jurisdiction under this section.

6 (9) The certificate holder has consented to an order  
7 through a majority of its directors, stockholders, or  
8 subscribers.

9 (10) The certificate holder has failed to pay a  
10 final judgement entered against it in this state upon any  
11 contract issued or assumed by it, within 30 days after the  
12 judgment became final, or within 30 days after the time for  
13 taking an appeal has expired, or within 30 days after  
14 dismissal of an appeal before final termination, whichever  
15 date is the later.

16 (11) If the board determines that the continued  
17 operation of the certificate holder would be hazardous to  
18 purchasers, beneficiaries, or residents of this state.

19 Section 7. Sections 27-17A-18, 27-17A-19, 27-17A-20,  
20 27-17A-21, 27-17A-22, 27-17A-23, 27-17A-24, and 27-17A-25 of  
21 the Code of Alabama 1975, are amended and renumbered as part  
22 of Division 2 of Article 5 of Chapter 13 of Title 34, Code of  
23 Alabama 1975, to read as follows:

24 "~~§27-17A-18.~~ §34-13-199.

25 "(a) All individuals who offer preneed contracts to  
26 the public, or who execute preneed contracts on behalf of a  
27 certificate holder, shall be registered with the ~~commissioner~~

1 board as preneed sales agents, pursuant to this ~~article~~  
2 chapter.

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

6 "(c) A certificate holder shall be responsible for  
7 the activities of all preneed sales agents and all ~~funeral~~  
8 ~~directors~~ cemetery sales agents acting as preneed sales  
9 agents, who are affiliated with the certificate holder and who  
10 perform any type of preneed-related activity on behalf of the  
11 certificate holder. In addition to the preneed sales agents  
12 and ~~funeral directors~~ cemetery sales agents acting as preneed  
13 sales agents, each certificate holder shall also be subject to  
14 discipline if its preneed sales agents or ~~funeral directors~~  
15 cemetery sales agents acting as preneed sales agents violate  
16 ~~any provision of this article~~ chapter.

17 "(d) A preneed sales agent and a ~~funeral director~~  
18 cemetery sales agent acting as a preneed sales agent ~~shall be~~  
19 ~~authorized to~~ may sell, offer, and execute preneed contracts  
20 on behalf of all properly licensed entities owned or operated  
21 by the sponsoring certificate holder.

22 "(e) An individual may begin ~~functioning~~ operating  
23 as a preneed sales agent as soon as a completed application  
24 for registration, as set forth in subsection (g), is ~~sent to~~  
25 ~~the commissioner~~ approved by the board.

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

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

3           "~~(2)~~b. The applicant must be in good standing with  
4 the ~~commissioner~~ board.

5           "~~(3)~~c. The applicant ~~must~~ may not have any felony or  
6 misdemeanor convictions that relate to any activity regulated  
7 by this chapter or a crime involving moral turpitude, as  
8 defined by this chapter.

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

12           "(2) An applicant for licensure as a preneed sales  
13 agent shall submit to the board, on a form sworn to by the  
14 applicant, his or her name, date of birth, Social Security  
15 number, and two complete sets of fingerprints for completion  
16 of a criminal history background check. The board shall submit  
17 the fingerprints to the Alabama State Law Enforcement Agency  
18 for a state criminal history background check. The  
19 fingerprints shall be forwarded by the agency to the Federal  
20 Bureau of Investigation for a national criminal history  
21 background check. Costs associated with conducting a criminal  
22 history background check shall be paid by the applicant. The  
23 board shall keep information received pursuant to this  
24 subdivision confidential, except that information received and  
25 relied upon in denying the issuance of a license may be  
26 disclosed if necessary to support the denial. All character  
27 information, including the information obtained through the

1 criminal history background checks, shall be considered in  
2 licensure decisions to the extent permissible by all  
3 applicable laws.

4 "(g) An application for registration as a preneed  
5 sales agent shall be submitted to the ~~commissioner~~ board with  
6 an application fee determined by the ~~commissioner~~ board, but  
7 not to exceed ~~twenty-five dollars (\$25)~~ five hundred dollars  
8 (\$500), by the certificate holder in a form that has been  
9 prescribed by ~~commissioner~~ board rule ~~and approved by the~~  
10 ~~commissioner~~. The application shall contain, at a minimum, all  
11 of the following:

12 "(1) The name, address, Social Security number, and  
13 date of birth of the applicant and any other information as  
14 the ~~commissioner~~ board may reasonably require of the  
15 applicant.

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

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

21 "(4) A representation, signed by the certificate  
22 holder, that the applicant is authorized to offer, sell, and  
23 sign preneed contracts on behalf of the certificate holder,  
24 and that the certificate holder has trained the applicant in  
25 ~~the provisions of this article~~ chapter relating to preneed  
26 sales, the provisions of the certificate holder's preneed

1 contract, and the nature of the merchandise, services, or  
2 burial rights sold by the certificate holder.

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

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

10 "(i) A preneed sales agent may sell, offer, and  
11 execute the sales of at-need cemetery merchandise and services  
12 provided the certificate holder for which the preneed sales  
13 agent is licensed and registered holds an establishment  
14 license for the cemetery authority and the preneed sales agent  
15 is exempt from the requirements of obtaining a license as a  
16 cemetery sales agent for the cemetery authority.

17 "~~(i)~~ (j) A certificate holder who has registered a  
18 preneed sales agent shall notify the ~~commissioner~~ board within  
19 30 days after the individual's status as a preneed sales agent  
20 has been terminated.

21 "~~(j)~~ (k) Upon receipt of an application that complies  
22 with all of the requirements of subsection (g), the  
23 ~~commissioner~~ board shall register the applicant. The  
24 ~~commissioner~~ board shall by rule provide for annual renewal of  
25 registration and a renewal fee not to exceed ~~twenty-five~~  
26 ~~dollars~~ ~~(\$25)~~ five hundred dollars (\$500) as set by the  
27 ~~commissioner~~ board.

1                   "~~§27-17A-19.~~§34-13-200.

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

8                   "~~§27-17A-20.~~§34-13-201.

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

19                   "(b) A statement of charges, notice, or order or  
20 other process under this chapter may be served by anyone duly  
21 authorized by the ~~commissioner~~ board. Service may be made  
22 either in the manner provided by law for service of process in  
23 civil actions or by certifying and mailing a copy of the  
24 statement to the person affected by the statement, notice, or  
25 order or other process at his or her or its residence or  
26 principal office or place of business. The verified return by  
27 the person so serving the statement, notice, or order or other



1 process, setting forth the manner of the service, shall be  
2 proof of the service; and the return postcard receipt for the  
3 statement, notice, or order or other process, certified and  
4 mailed as provided in this subsection, shall be proof of  
5 service of the statement, notice, or order or other process.

6 "(c) The ~~commissioner~~ board shall conduct or cause  
7 to have conducted a hearing in accordance with ~~Article 1 of~~  
8 ~~Chapter 2~~ this chapter, and shall, during the conduct of the  
9 hearing, have those powers necessary to enforce this chapter  
10 and rules of the board; however, the penalties for failure to  
11 comply with a subpoena or with an order directing discovery  
12 shall be limited to a fine not to exceed ~~one thousand dollars~~  
13 ~~(\$1,000)~~ two thousand five hundred dollars (\$2,500) per  
14 violation. All evidence introduced and presented in a hearing  
15 conducted under this chapter shall be deemed public  
16 information.

17 "~~§27-17A-21. §34-13-202.~~

18 "(a) If the ~~commissioner~~ board finds that one or  
19 more grounds exist for the discretionary suspension or  
20 revocation of a certificate of authority or establishment  
21 license issued under this ~~article~~ chapter, the ~~commissioner~~  
22 ~~may~~ board, in lieu of the suspension or revocation, may impose  
23 a fine upon the certificate holder in an amount not to exceed  
24 ~~one thousand dollars (\$1,000)~~ two thousand five hundred  
25 dollars (\$2,500) for each nonwillful violation and in an amount  
26 not to exceed ten thousand dollars (\$10,000) for each willful  
27 violation.

1                   "(b) The ~~commissioner~~ board may grant not more than  
2 30 days from the date of the order for the payment of any  
3 fine.

4                   "~~§27-17A-22. §34-13-203.~~

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

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

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

16                   "c. Commits a Class A misdemeanor, ~~punishable as~~  
17 ~~provided by law,~~ as to each contract on which the payments  
18 collected do not exceed, in the aggregate, five hundred  
19 dollars (\$500).

20                   "(2) In addition to the criminal penalty imposed  
21 under subdivision (1), upon conviction of an offense under  
22 subdivision (1), a person may not thereafter obtain a  
23 certificate of authority ~~or,~~ register as a preneed sales  
24 agent, register as a cemetery sales agent, or register as the  
25 general manager of a cemetery.

26                   "(b) (1) A person who ~~willfully fails to timely~~  
27 ~~deposit the amount required to be so deposited under this~~

1 ~~chapter in a preneed merchandise and services trust or~~  
2 ~~endowment care trust~~ knowingly receives payments for or  
3 executes a preneed contract without having a valid license as  
4 a preneed sales agent:

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

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

13 "(2) In addition to the criminal penalty imposed  
14 under subdivision (1), upon conviction of an offense under  
15 subdivision (1), ~~the certificate of authority or preneed sales~~  
16 ~~agent registration held by the person shall be automatically~~  
17 ~~revoked and the~~ a person may not thereafter obtain a  
18 certificate of authority or, register as a preneed sales  
19 agent, register as a cemetery sales agent, or register as the  
20 general manager of a cemetery.

21 "(c) (1) A person who willfully fails to timely  
22 deposit an amount required to be deposited under this chapter  
23 in a preneed merchandise and services trust or endowment care  
24 trust:

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

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

4           "(2) In addition to the criminal penalty imposed  
5 under subdivision (1), upon conviction of an offense under  
6 subdivision (1), the certificate of authority or preneed sales  
7 agent registration held by the person shall be automatically  
8 revoked, and the person may not thereafter obtain a  
9 certificate of authority, register as a preneed sales agent,  
10 register as a cemetery sales agent, or register as the general  
11 manager of a cemetery.

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

16           "a. Commits a Class B felony, punishable as provided  
17 by law, if the aggregate amount withdrawn in any single  
18 transaction or series of related transactions equals or  
19 exceeds two thousand five hundred dollars (\$2,500).

20           "b. Commits a Class C felony, punishable as provided  
21 by law, if the aggregate amount withdrawn in any single  
22 transaction or series of related transactions is less than two  
23 thousand five hundred dollars (\$2,500).

24           "(2) In addition to the criminal penalty imposed  
25 under subdivision (1), upon conviction of an offense under  
26 subdivision (1), the certificate of authority or preneed sales  
27 agent registration held by the person shall be automatically

1       revoked, and the person may not thereafter obtain a  
2       certificate of authority or register as a preneed sales agent.

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

5               "(1) The person knowingly delivers to the  
6       ~~commissioner~~ board any official form, report, record, data, or  
7       other document required by the ~~commissioner~~ board containing a  
8       false statement or false information concerning a matter  
9       material to the ~~commissioner~~ board in the exercise of his ~~or~~  
10      ~~her~~ its authority to administer and enforce this chapter.

11              "(2) Incident to, or during the course of, an  
12      ~~examination~~ audit, inspection, investigation, or other inquiry  
13      authorized by this chapter, the person knowingly makes  
14      available to a representative of the ~~commissioner~~ board any  
15      official form, report, record, data, or other document  
16      required by the ~~commissioner~~ board containing a false  
17      statement or false information concerning a matter material to  
18      the purpose of the ~~examination~~ audit, inspection,  
19      investigation, or inquiry.

20              "(3) With respect to the business records of a  
21      person engaging in, or who has at any time engaged in, the  
22      sale of a preneed contract, a person, with a purpose to use  
23      deception as defined in subdivision (1) of Section 13A-8-1,  
24      makes false entries in ~~such~~ the records or alters, erases,  
25      obliterates, deletes, or removes a correct entry in ~~such~~ the  
26      records, fails to make a correct entry in ~~such~~ the records, or

1 prevents the making of a correct entry, or causes the omission  
2 of a correct entry in ~~such~~ the records.

3 ~~"(e)(f)~~ Except as otherwise provided in this ~~section~~  
4 chapter, the willful violation of this chapter is a Class A  
5 misdemeanor, ~~punishable as provided by law.~~

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

10 "(g) In addition to the powers conferred by this  
11 chapter and the fines specified in Chapter 30 of Title 8, or  
12 otherwise provided by this chapter, the board may levy a fine,  
13 not to exceed two thousand five hundred dollars (\$2,500), for  
14 each separate violation of this chapter or rule of the board.

15 ~~"§27-17A-23. §34-13-204.~~

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

1                   "~~§27-17A-24.~~§34-13-205.

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

6                   "~~§27-17A-25.~~§34-13-206.

7                   "(a) All fees collected by the ~~commissioner board~~  
8 pursuant to this chapter shall be deposited into the ~~State~~  
9 ~~Treasury to the credit of the Insurance Department Fund~~  
10 Alabama State Funeral Service Fund.

11                   "(b) All fines collected by the ~~commissioner board~~  
12 pursuant to this chapter shall be deposited into the ~~State~~  
13 ~~Treasury to the credit of the State General Fund~~ Alabama State  
14 Funeral Service Fund.

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

19                   Section 8. Sections 27-17A-30, 27-17A-31, 27-17A-32,  
20 27-17A-33, and 27-17A-34 of the Code of Alabama 1975, are  
21 amended and renumbered as Division 3 of Article 5 of Chapter  
22 13 of Title 34, Code of Alabama 1975, to read as follows:

23                   "Division 3. Funeral Merchandise and Services Trust  
24 Fund.

25                   "~~§27-17A-30.~~§34-13-230.

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

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

3 ~~"§27-17A-31. §34-13-231.~~

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

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

24 "(c) The trustee shall take title to the property  
25 conveyed to the trust for the purpose of investing,  
26 protecting, and conserving it for the certificate holder;



1 collecting income; and distributing the principal and income  
2 as prescribed in this ~~article~~ chapter.

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

9 "(e) The trust agreement shall be submitted to the  
10 ~~commissioner~~ board for approval and filing.

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

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

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

1 certificate holder shall be deemed and treated as the settlor  
2 and beneficiary of the trust for all purposes, all of the  
3 trust funds are exempt from all claims of creditors of the  
4 certificate holder except as to the claims of the contract  
5 purchaser, his or her representative, or the ~~commissioner~~  
6 board.

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

19 ~~"§27-17A-32. §34-13-232.~~

20 "(a) If amounts paid by the purchaser under a  
21 preneed contract for funeral merchandise have previously been  
22 deposited in trust, the seller may withdraw the principal  
23 amount and trust appreciation attributable to the delivered  
24 item at such time as the funeral merchandise is delivered or  
25 installed or, if comprised of materials designed to withstand  
26 prolonged, protected storage without deterioration, the  
27 merchandise is placed in storage with a responsible third

1 party bonded and insured for the wholesale value thereof and  
2 evidenced by a receipt specifically identifying the item, the  
3 specific preneed contract, the location of the item, and the  
4 identity and address of the bonding and insuring parties. For  
5 purposes of this subsection only, caskets and alternative  
6 containers may not be held in storage by the seller or a third  
7 party storage facility prior to the death of the funeral  
8 beneficiary.

9 "(b) The trustee shall make regular valuations of  
10 the assets it holds in trust and provide a report of the  
11 valuations to the certificate holder at least quarterly. At  
12 all times, the certificate holder shall be able to determine  
13 the amount held in trust attributable to each contract holder.  
14 For all contracts effective on or after January 1, 2015, the  
15 determination shall be based upon the fair market value of the  
16 trust at the time and the proportionate share of the fair  
17 market value attributable to each contract holder. For all  
18 contracts in effect before January 1, 2015, the valuation of  
19 each contract may be calculated using any valuation method  
20 that had been previously approved by the ~~commissioner or the~~  
21 ~~department~~ Commissioner or the Department of Insurance before  
22 January 1, 2015. Any person who withdraws appreciation in the  
23 value of trust, other than the pro rata portion of ~~such~~ the  
24 appreciation which may be withdrawn upon the death of a  
25 contract's funeral beneficiary or upon cancellation of a  
26 preneed contract, shall be required to make additional  
27 deposits from his or her own funds to restore the aggregate

1 value of assets to the value of funds deposited in trust, but  
2 excluding from the funds deposited those funds paid out upon  
3 preneed contracts which the person has fully performed or  
4 which have been otherwise withdrawn, as provided in this  
5 ~~article~~ chapter. The certificate holder shall be liable to  
6 third parties to the extent that income from the trust is not  
7 sufficient to pay the expenses of the trust.

8 "(c) The trustee of the trust established pursuant  
9 to this ~~article~~ chapter shall have all of the following  
10 powers:

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

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

20 "(d) Notwithstanding the provisions of Section  
21 19-3-125, the trustee ~~may~~, subject to compliance with the  
22 requirements set forth below, may invest any portion or all of  
23 the funds received under preneed contracts and deposited in  
24 trust in life insurance contracts or annuities issued on the  
25 lives of preneed contract purchasers or preneed contract  
26 beneficiaries, hereinafter, the insured or annuitant, without  
27 any obligation to cover at a minimum the retail amount of the

1 preneed contract at the time of purchase of the life insurance  
2 contracts or annuities as set forth in Section ~~27-17A-3~~  
3 34-13-172.

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

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

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

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

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

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

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

7           "(5) It is the intention of the Legislature that  
8 this subsection shall be retroactive and shall apply to all  
9 life insurance contracts or annuities issued prior to May 6,  
10 2008.

11           "~~§27-17A-33.~~ §34-13-233.

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

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

1 allocable to those items. Any accumulated earnings allocable  
2 to the preneed contract shall be paid to the certificate  
3 holder upon the cancellation.

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

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

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

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

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

22                 "~~§27-17A-34.~~ §34-13-234.

23                 "(a) Disbursement of funds discharging any preneed  
24                 contract for funeral services or funeral merchandise fulfilled  
25                 after May 1, 2002, shall be made by the trustee to the  
26                 certificate holder upon receipt by the trustee of a  
27                 certification of the certificate holder that the preneed



1 contract has been performed in whole or in part or the preneed  
2 contract has been cancelled. Before the trustee may disburse  
3 any trust funds, the certificate holder shall provide to the  
4 trustee a death certificate or other valid proof of death, a  
5 letter from the preneed contract holder cancelling the preneed  
6 contract or valid proof the contract has been cancelled in  
7 accordance with Section ~~27-17A-33~~ 34-13-233, or valid proof  
8 the merchandise has been delivered and installed, and services  
9 have been performed. Any trustee accepting preneed contract  
10 proceeds under this ~~article~~ chapter may rely upon the  
11 certification of the certificate holder accompanied by the  
12 required proof, and shall not be liable to anyone for such  
13 reliance. If the contract is only partially performed, the  
14 disbursement shall only cover that portion of the contract  
15 performed. In the event of any contract default by the  
16 contract purchaser, or in the event that the funeral  
17 merchandise or funeral service contracted for is not provided,  
18 the trustee shall return, within 30 days after its receipt of  
19 a written request therefor, 100 percent of the funds deposited  
20 into the trust on the contract and the income and accretion  
21 thereon to the certificate holder or to its assigns, subject  
22 to Section ~~27-17A-33~~ 34-13-233.

23 " (b) For all contracts effective on or after January  
24 1, 2015, the amount that may be withdrawn from the trust upon  
25 fulfillment or cancellation of any particular preneed contract  
26 may not exceed the amount attributable to that preneed  
27 contract in proportion to the total amount held in trust for

1 all preneed contracts as of the date of withdrawal. For all  
2 contracts in effect before January 1, 2015, the valuation of  
3 each contract and the amount that may be withdrawn from the  
4 trust may be calculated using any valuation method that had  
5 been approved by the ~~commissioner or the department~~  
6 Commissioner or the Department of Insurance before January 1,  
7 2015."

8 Section 9. Sections 27-17A-40, 27-17A-41, 27-17A-42,  
9 27-17A-43, and 27-17A-44, of the Code of Alabama 1975, are  
10 amended and renumbered as Division 4 of Article 5 of Chapter  
11 13 of Title 34, Code of Alabama 1975, to read as follows:

12 "Division 4. Cemetery Merchandise and Services Trust  
13 Fund.

14 ~~"§27-17A-40. §34-13-260.~~

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

20 ~~"§27-17A-41. §34-13-261.~~

21 "(a) Any person who receives or collects any funds  
22 on account of a preneed contract in this state for cemetery  
23 services or cemetery merchandise, or both, entered into after  
24 May 1, 2002, shall have the obligation to pay over and  
25 contribute into a trust fund as hereinafter described, those  
26 amounts or proportions of the funds as hereinafter provided.

1           "(b) Whether or not the preneed contract provides  
2 for cemetery merchandise or cemetery services, or any  
3 combination thereof, the trust fund shall be referred to in  
4 this section as the Cemetery Merchandise and Services Trust  
5 Fund.

6           "(c) The trustee of the Cemetery Merchandise and  
7 Services Trust Fund shall be qualified as such within the  
8 definition of the trustee.

9           "(d) The trustee shall take title to the property  
10 conveyed to the Cemetery Merchandise and Services Trust Fund  
11 subject to this section.

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.~~ §34-13-262.

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

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

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

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

6           "(4) With respect to all cash advance items sold,  
7 100 percent of the purchase price specified for the same in  
8 the preneed contract.

9           "(5) With respect to caskets, 75 percent of the  
10 purchase price.

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

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

1 Further required trust contributions on the contract shall  
2 thereafter be made not later than 30 days after the end of the  
3 calendar month in which each contract payment is collected by  
4 the seller.

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

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

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

1 merchandise trust fund, the excess funds therein: 110 percent  
2 of the current wholesale cost of the liability to deliver all  
3 cemetery merchandise, 60 percent of the current retail price  
4 for all cemetery services, 60 percent of the current retail  
5 price of outer burial containers, 75 percent of the current  
6 retail price of caskets, and 100 percent of the current retail  
7 price of all cash advances, for the total of all preneed  
8 contracts for which the purchasers have paid in full, all  
9 calculated as of the time of withdrawal; and concerning the  
10 total of all preneed contracts for which the purchasers have  
11 not paid in full, 25 percent of the total of the following:  
12 110 percent of the current wholesale cost of the liability to  
13 deliver all cemetery merchandise, 60 percent of the current  
14 retail price for all cemetery services, and 100 percent of the  
15 current retail price of all cash advances, all calculated as  
16 of the time of withdrawal.

17 "(g) At least annually the seller shall make the  
18 aforesaid analysis and certification and provide the same to  
19 the trustee. If the certification discloses that the fair  
20 market value of the Cemetery Merchandise and Services Trust  
21 Fund is less than 100 percent of the aggregate calculated  
22 amount the seller shall from its own funds contribute to the  
23 Cemetery Merchandise and Services Trust Fund within the 12  
24 months succeeding the annual computation the amount necessary  
25 to restore the trust fund to an amount equal to not less than  
26 100 percent of the aggregate amount so calculated.

27 "~~§27-17A-43.~~ §34-13-263.

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

15           "(b) At such time as the seller undertakes to  
16 perform its obligations under a preneed contract by delivery  
17 or installation, or both, of cemetery merchandise and the  
18 provision of cemetery services and disbursement on account of  
19 cash advances, or otherwise, upon certification to the trustee  
20 under oath by a responsible officer of the seller that the  
21 obligations of the seller under the contract have been  
22 completely fulfilled, the seller may withdraw from the  
23 Cemetery Merchandise and Services Trust Fund and retain an  
24 amount equal to the current wholesale cost to the fund with  
25 respect to the preneed contract.

26           "(c) At such time as the seller has fulfilled all of  
27 its obligations under all preneed contracts with respect to

1 which funds have been contributed to the trust fund, and  
2 certification under oath to the trustee by a responsible  
3 officer of the seller of those facts, the seller may withdraw  
4 from the trust fund and retain all of the remaining assets  
5 thereof.

6 ~~"§27-17A-44. §34-13-264.~~

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

22 Section 10. Sections 34-13-290, 34-13-291,  
23 34-13-292, 34-13-293, and 34-13-294 are added to the Code of  
24 Alabama 1975, as part of Article 6 of Chapter 13 of Title 34,  
25 Code of Alabama 1975, to read as follows:

26 ARTICLE 6. REGULATION OF CEMETERIES.

27 §34-13-290. Cemetery operations.



1           This chapter applies to cemeterians and cemetery  
2 authorities and does not apply to any cemetery owned and  
3 operated by a governmental agency or a religious institution  
4 and any cemetery which does not charge fees or sell plots,  
5 internment rights, or any related cemetery merchandise.

6           §34-13-291. Initial license; cemetery authority.

7           (a) No legal entity may operate a cemetery authority  
8 without first obtaining a cemetery establishment license  
9 issued by the board.

10          (b) An applicant for a cemetery establishment  
11 license shall file a written application with the board on  
12 forms provided by the board.

13          (c) A cemetery establishment license is not  
14 transferable. At least 30 days before a cemetery authority  
15 changes ownership, or before more than 50 percent change in  
16 equity ownership occurs, the person acquiring the ownership or  
17 control shall submit a completed application for a cemetery  
18 establishment license to the board and shall satisfy the  
19 ownership requirements provided in Section 34-13-292.

20          §34-13-292. Existing companies; effect of chapter.

21          (a) A cemetery authority existing on October 1,  
22 2021, may continue in full force and effect after that date,  
23 shall immediately apply for an establishment license, and  
24 shall thereafter be operated in accordance with this chapter.

25          (b) Any person who operates a non-endowment care  
26 cemetery shall register, apply for, and obtain an  
27 establishment license from the board to operate the

1 non-endowment care cemetery. Thereafter, the non-endowment  
2 care cemetery shall be operated in accordance with this  
3 chapter.

4 (c) To obtain or renew a license to operate a  
5 cemetery authority, an applicant shall substantiate, to the  
6 satisfaction of the board, the following:

7 (1) That the applicant is of good moral character  
8 and shall submit to a criminal history background check  
9 pursuant to subdivision (2).

10 (2) An applicant for an establishment license shall  
11 submit to the board, on a form sworn to by the applicant, his  
12 or her name, date of birth, Social Security number, and two  
13 complete sets of fingerprints for completion of a criminal  
14 history background check. The board shall submit the  
15 fingerprints to the Alabama State Law Enforcement Agency for a  
16 state criminal history background check. The fingerprints  
17 shall be forwarded by the agency to the Federal Bureau of  
18 Investigation for a national criminal history background  
19 check. Costs associated with conducting a criminal history  
20 background check shall be paid by the applicant. The board  
21 shall keep information received pursuant to this subdivision  
22 confidential, except that information received and relied upon  
23 in denying the issuance of a cemetery establishment license  
24 may be disclosed if necessary to support the denial. All  
25 character information, including the information obtained  
26 through the criminal history background checks, shall be

1 considered in licensure decisions to the extent permissible by  
2 all applicable laws.

3 (d) An applicant for an original or renewal license  
4 to operate a cemetery authority shall submit all of the  
5 following to the board:

6 (1) A completed application, including a copy of the  
7 current rules of the non-endowment care cemetery.

8 (2) If requested by the board, a current plat of the  
9 land utilized by the non-endowment care cemetery, showing the  
10 location of the non-endowment care cemetery, and each burial  
11 plot and mausoleum, including the status of each, and the  
12 status of each interment space or burial chamber, and any  
13 access roads to the non-endowment care cemetery.

14 (3) A schedule of all charges in accordance with  
15 Section 8-30-2, and as required by board rule, detailing and  
16 itemizing the retail cost of all products, interment rights,  
17 and all merchandise and services offered by the cemetery  
18 authority.

19 (4) Payment of any applicable fees. An application  
20 to the board for an initial cemetery authority license shall  
21 be accompanied by an application fee, in an amount to be  
22 determined by the board, not to exceed one thousand dollars  
23 (\$1,000). Thereafter, on or before September 1 of each year,  
24 the licensee shall pay a license renewal fee, in an amount to  
25 be determined by the board, not to exceed one thousand dollars  
26 (\$1,000).

1           (5) A designation of a point of contact, including  
2 the name of the general manager of the non-endowment care  
3 cemetery.

4           (6) Evidence of satisfactory completion of an  
5 inspection of the non-endowment care cemetery by the board.

6           (e) A non-endowment care cemetery shall publicly  
7 display all current and valid licenses and a current schedule  
8 of all charges.

9           (f) (1) The board may suspend or revoke a  
10 non-endowment care cemetery establishment license if the board  
11 determines that the continued operation of the cemetery  
12 authority is hazardous to purchasers, beneficiaries, or the  
13 people of this state.

14           (2) If the board determines that the continued  
15 operation of the cemetery authority is hazardous to  
16 purchasers, beneficiaries, or the people of this state, the  
17 board may levy a fine, in an amount determined by the board,  
18 not to exceed five hundred dollars (\$500) per day, and may  
19 revoke the establishment license of the non-endowment care  
20 cemetery until the board determines any hazardous conditions  
21 are removed and resolved.

22           (g) In addition to any other penalty imposed by this  
23 chapter, the board may levy a fine, not to exceed fifty  
24 dollars (\$50) per day, for each day a cemetery authority fails  
25 to file any reports or records as required by the board.

26           §34-13-293. Registration and licensing of existing  
27 endowment care cemeteries.

1           (a) Any person who operates an endowment care  
2 cemetery shall register, apply for, and obtain a cemetery  
3 establishment license from the board to operate the endowment  
4 care cemetery. Thereafter, the endowment care cemetery shall  
5 be operated in accordance with this chapter.

6           (b) To obtain or renew a license to operate as an  
7 endowment care cemetery, an applicant shall substantiate, to  
8 the satisfaction of the board, the following:

9           (1) That the applicant is of good moral character  
10 and shall submit to a criminal history background check  
11 pursuant to subdivision (2).

12           (2) An applicant for an endowment care cemetery  
13 establishment license shall submit to the board, on a form  
14 sworn to by the applicant, his or her name, date of birth,  
15 Social Security number, and two complete sets of fingerprints  
16 for completion of a criminal history background check. The  
17 board shall submit the fingerprints to the Alabama State Law  
18 Enforcement Agency for a state criminal history background  
19 check. The fingerprints shall be forwarded by the agency to  
20 the Federal Bureau of Investigation for a national criminal  
21 history background check. Costs associated with conducting a  
22 criminal history background check shall be paid by the  
23 applicant. The board shall keep information received pursuant  
24 to this subdivision confidential, except that information  
25 received and relied upon in denying the issuance of an  
26 endowment care cemetery establishment license may be disclosed  
27 if necessary to support the denial. All character information,

1 including the information obtained through the criminal  
2 history background checks, shall be considered in licensure  
3 decisions to the extent permissible by all applicable laws.

4 (c) An applicant for an original or renewal  
5 endowment care cemetery establishment license shall submit all  
6 of the following to the board:

7 (1) A completed application, including a copy of the  
8 current rules of the endowment care cemetery.

9 (2) A schedule of all charges in accordance with  
10 Section 8-30-2, and as required by board rule, detailing and  
11 itemizing the retail cost of all products, interment rights,  
12 and all services offered by the cemetery authority.

13 (3) Payment of all applicable fees. An application  
14 to the board for an initial license as an endowment care  
15 cemetery shall be accompanied by an application fee, in an  
16 amount to be determined by the board, not to exceed one  
17 thousand dollars (\$1,000). Thereafter, on or before September  
18 1 of each year, each licensed endowment care cemetery shall  
19 pay a license renewal fee, in an amount to be determined by  
20 the board, not to exceed one thousand dollars (\$1,000).

21 (4) A designation of a point of contact, including  
22 the name of the general manager of the endowment care  
23 cemetery.

24 (5) Evidence of satisfactory completion of an  
25 inspection by the endowment care cemetery by the board.

1           (6) Verification, in a manner prescribed by the  
2 board, that the endowment care trust fund of the endowment  
3 care cemetery is active and in good standing.

4           (d) (1) The board may revoke, suspend, place on  
5 probation, or refuse to renew the establishment license of the  
6 endowment care cemetery, if the board determines that the  
7 continued operation of the endowment care cemetery would be  
8 hazardous to purchasers, beneficiaries, or the people of this  
9 state.

10           (2) The board may levy a fine, in an amount  
11 determined by the board, not to exceed five hundred dollars  
12 (\$500) per day, until the board determines the hazardous  
13 conditions are removed and resolved.

14           (e) In addition to any other penalty imposed by this  
15 chapter, the board may levy a fine, not to exceed fifty  
16 dollars (\$50) per day, for each day an endowment care cemetery  
17 fails to file its annual reports as required by this chapter,  
18 and the board may levy a fine, not to exceed fifty dollars  
19 (\$50) per day, for each day an endowment care cemetery fails  
20 to file the statement of activities of the endowment trust.

21           §34-13-294. Licensing a newly established cemetery  
22 authority.

23           (a) No newly established cemetery authority may  
24 operate a cemetery authority, unless otherwise authorized by  
25 this chapter or rule of the board, without first obtaining an  
26 establishment license from the board.

1 (b) A newly established legal entity wanting to  
2 establish a cemetery authority shall first file a written  
3 application with the board, on forms provided by the board.

4 (c) Upon receipt of the application fee, in an  
5 amount to be determined by the board, not to exceed one  
6 thousand dollars (\$1,000), the board shall conduct an  
7 investigation of the applicant that examines all of the  
8 following criteria for approval of the application:

9 (1) The creation of a legal entity to conduct  
10 cemetery business, and its proposed financial structure.

11 (2) Verification, in a manner prescribed by the  
12 board, that the endowment care trust fund of the cemetery is  
13 established in good standing.

14 (3) A plat of the land to be used for the cemetery,  
15 showing the location of the cemetery and the access roads to  
16 the cemetery.

17 (4) A schedule of all charges in accordance with  
18 Section 8-30-2, and as required by board rule, detailing and  
19 itemizing the retail cost of all products, interment rights,  
20 and all merchandise and services to be offered by the cemetery  
21 authority.

22 (5) Payment of all applicable fees.

23 (6) Evidence of satisfactory completion of an  
24 inspection of the cemetery by the board.

25 (7) Submission of documentation from the governing  
26 body of the municipality with jurisdiction over the property  
27 in which the cemetery is to be located, certifying that the



1 applicant has satisfied all municipal and county commission  
2 requirements to operate the cemetery, and that the plans for  
3 the cemetery are in compliance with all municipal and county  
4 zoning requirements.

5 (8) Submission of development plans that are  
6 sufficient to ensure the community that the cemetery will  
7 provide adequate cemetery services and that the property is  
8 suitable for use as a cemetery.

9 (d) The board, upon receipt of the investigation  
10 report, shall grant or refuse to grant the authority to  
11 organize a cemetery to the applicant based upon the criteria  
12 set forth in this chapter or rule of the board.

13 (e) A newly established cemetery authority shall  
14 publicly display all current and valid licenses pursuant to  
15 this chapter or rule of the board.

16 (f) If the board decides to deny an application, the  
17 board shall give written notice of that decision to the  
18 applicant. The notice shall state a time and a place for a  
19 hearing before the board and shall include a summary statement  
20 of the reasons for the proposed denial. The notice shall be  
21 mailed, by certified mail, to the applicant at the address  
22 stated in the application at least 20 days before the date of  
23 the scheduled hearing. The applicant shall pay the costs of  
24 the hearing as assessed by the board, unless the applicant  
25 notifies the board, by certified mail at least five days  
26 before the date of the scheduled hearing, that the applicant

1 waives the hearing. An appeal of the decision of the board  
2 shall be with the Circuit Court of Montgomery County.

3 (g) If the board decides to grant a cemetery  
4 establishment license, the board shall give written notice of  
5 that decision to the applicant. The notice shall also inform  
6 the cemetery authority that a cemetery establishment license  
7 to operate a cemetery shall be issued upon the completion of  
8 all of the following:

9 (1) The establishment of an endowment care trust  
10 fund, and submission to the board of a certificate from the  
11 trust company certifying receipt of the initial deposit  
12 required under this chapter.

13 (2) A description, by metes and bounds, of the  
14 acreage tract of the proposed cemetery, together with  
15 evidence, pursuant to a title insurance policy or  
16 certification by an attorney, that the applicant is the owner  
17 in fee simple of the tract of land.

18 (3) A plat of the cemetery, showing the number and  
19 location of all lots surveyed and permanently staked for sale.

20 (4) Certification after an inspection by the board,  
21 or a representative of the board, that at least two acres of  
22 the proposed cemetery, including a paved road extending from a  
23 public roadway to the developed section, are fully developed  
24 and ready for burials.

25 (h) On or before September 1 of each year, each  
26 licensed cemetery authority shall pay a license renewal fee,

1 in an amount determined by the board, not to exceed one  
2 thousand dollars (\$1,000).

3 (i) The board may revoke, suspend, place on  
4 probation, or refuse to renew a cemetery establishment license  
5 if the board determines that the continued operation of the  
6 cemetery authority would be hazardous to purchasers,  
7 beneficiaries, or to the people of this state.

8 Section 11. Sections 27-17A-46, 27-17A-47,  
9 27-17A-49, 27-17A-50, 27-17A-51, 27-17A-52, 27-17A-53, and  
10 27-17A-54 of the Code of Alabama 1975, are amended and  
11 renumbered as part of Article 6 of Chapter 13 of Title 34,  
12 Code of Alabama 1975, to read as follows:

13 ~~"§27-17A-46~~§34-13-295.

14 "(a) Any cemetery now existing or hereafter  
15 established, excluding those operated by governmental agencies  
16 or religious institutions, shall be may be qualified as an  
17 endowment care cemetery under Section 34-13-297, except those  
18 cemeteries which do not charge fees or sell plots, internment  
19 rights, or any related cemetery merchandise.

20 "(b) If the history of operations and current and  
21 past business practices of a cemetery are not clearly defined  
22 so as to qualify the cemetery for an exemption from this  
23 chapter, the board may determine whether the cemetery  
24 authority in question qualifies for the exemption.

25 "(c) A legal entity or cemetery authority may not  
26 represent to the public that it is operating as an endowment  
27 care cemetery or perpetual care cemetery until it has received

1 a license from the board to operate as an endowment care  
2 cemetery and has satisfied the endowment care trust provisions  
3 specified in Section 34-13-296.

4 ~~"§27-17A-47~~§34-13-296.

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

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

25 ~~"(b)~~ (c) Except as specifically provided in this  
26 subsection, commencing on July 1, 2014, a person serving on a  
27 board of trustees or cemetery authority may not also serve as

1 a trustee of an endowment care fund for the cemetery  
2 authority. A board of trustees in existence on July 1, 2014,  
3 may continue to serve as the trustee of an endowment care fund  
4 if the board of trustees otherwise complies with this  
5 subsection. Unless exempted by the ~~commissioner~~ board pursuant  
6 to this subsection, on or before January 1, 2015, each member  
7 of a board of trustees in existence on July 1, 2014, shall  
8 furnish the bond required by subsection (a) in the greater of  
9 one hundred thousand dollars (\$100,000) or the amount in each  
10 endowment care fund for which the board of trustees acts as  
11 trustee as of December 31, 2014. Thereafter, the amount of the  
12 bonds shall be increased on January 1 of each succeeding year  
13 to equal the amount in each endowment care fund as of the  
14 immediately preceding December 31. The ~~commissioner~~ board  
15 shall exempt a board of trustees from the bond requirement if  
16 the board of trustees provides to the ~~commissioner~~ board an  
17 annual audit report that satisfies all of the following  
18 criteria:

19 "(1) The report is prepared by a certified public  
20 accountant authorized to practice in Alabama.

21 "(2) The report evidences that the review made the  
22 subject of the report by the accountant encompasses each  
23 endowment care fund for which the board of trustees acts as  
24 trustee.

25 "(3) The report notes relating to the endowment care  
26 fund or funds are in a form that is reasonably acceptable to  
27 the ~~commissioner~~ board.

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

4           "~~(c)~~(d) The corporate trustee or board of trustees  
5 shall be referred to as a qualified trustee. Unless otherwise  
6 specified in this ~~article~~ chapter or in the terms of the trust  
7 instrument, the trustee of any trust established under or  
8 pursuant to this ~~article~~ chapter shall have all powers granted  
9 to trustees under Article 14 of Chapter 3 of Title 19. The  
10 incorporation herein of such powers shall not be deemed to  
11 imply any duties of trustees of trusts established under or  
12 pursuant to this ~~article~~ chapter not expressly delineated in  
13 this ~~article~~ chapter.

14           "~~(d)~~(e) The cemetery authority may employ a person  
15 to advise the trustee in the management of the fund.

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

22           "~~(f)~~(g) As often as he or she may deem necessary,  
23 the ~~commissioner~~ board may ~~examine~~ audit the records or  
24 facilities, or both, of any cemetery authority operating an  
25 endowment care cemetery.

26           "(h) If the board determines that the continued  
27 operation of an endowment care cemetery is hazardous to

1 purchasers, beneficiaries, or the public, the board may direct  
2 the trustee of the endowment care fund to release any or all  
3 portions of funds, including any principal amounts held in the  
4 endowment trust, to be distributed and released to the  
5 cemetery authority for the sole purposes of eliminating the  
6 hazardous conditions, and the board may adopt rules to ensure  
7 the released endowment care funds are used for their intended  
8 purposes.

9 ~~"§27-17A-49~~§34-13-297.

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

18 "(1) Fifteen percent of the cemetery's published  
19 retail sale price of each grave or lawn crypt space as  
20 specified in the cemetery's schedule of charges.

21 "(2) Five percent of the cemetery's published retail  
22 sale price of each mausoleum crypt or niche as specified in  
23 the cemetery's schedule of charges.

24 "(3) The amount received for special care funds,  
25 gifts, grants, contribution devises, or bequests made with  
26 respect to the separate or special care of a particular lot,  
27 grave, crypt, niche, mausoleum, monument, or marker or that of

1 a particular family, as distinguished from the general endowed  
2 care of a cemetery or of a garden.

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

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

12 "(1) Not already placed, it shall within 90 days of  
13 ~~May 1, 2002~~ notification and order issued by the board, have  
14 placed the entire principal of any endowment care fund in its  
15 possession, custody, or control, into the hands of a qualified  
16 trustee designated by it, to be administered as set forth in  
17 this ~~article~~ chapter; and principal of its endowment care  
18 fund, or the aggregate principal of its endowment care funds,  
19 if more than one, shall have a fair market value on either ~~May~~  
20 ~~1, 2002~~ notification and order issued by the board, or on the  
21 date of transfer to the trustee of not less than twenty-five  
22 thousand dollars (\$25,000); or it shall substitute 25 percent  
23 for each percentage of each sale for the next five years or  
24 five thousand dollars (\$5,000) per year, whichever is greater,  
25 until the balance of twenty-five thousand dollars (\$25,000) is  
26 reached. In such case, the entire amount of twenty-five  
27 thousand dollars (\$25,000) shall be paid into the fund before



1 the end of the fifth year, and no interest may be removed from  
2 the fund until the twenty-five thousand dollars (\$25,000)  
3 minimum has been reached.

4 "(2) It shall at all times after ~~May 1, 2002~~  
5 notification and order issued by the board, comply with the  
6 minimum requirements for payments to the trustee for endowment  
7 care.

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

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

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

8           "~~§27-17A-50~~§34-13-298.

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

26           "(b) The net income from the endowment care fund, to  
27 the extent that the same is distributed from the fund, shall

1 be used exclusively for covering the costs of endowment care  
2 of the cemetery.

3 "(c) For the purposes of this section, net income  
4 does not include realized or unrealized capital gains or  
5 losses. All realized capital gains and losses shall be  
6 recorded to corpus, which is the sum of deposits made by a  
7 cemetery authority into an endowment care fund, pursuant to  
8 Section ~~27-17A-49~~ 34-13-297, and all realized capital gains or  
9 losses. Capital gains taxes, if any, may be paid from the  
10 corpus. Unrealized capital gains and losses, if any, shall be  
11 recorded as an adjustment to the fair market value of the  
12 endowment care fund.

13 "~~§27-17A-51~~§34-13-299.

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

20 "~~§27-17A-52~~§34-13-300.

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

25 "~~§27-17A-53~~§34-13-301.

26 "To the extent that any endowment care trust  
27 existing on May 1, 2002, includes investments or assets, the

1 retention of which the trustee in the free exercise of its  
2 discretion deems not in the best interest of the trust estate,  
3 the trustee shall dispose of the investments or assets as soon  
4 as practicable without undue sacrifice to the trust estate,  
5 and in any event within two years after May 1, 2002.

6 "~~§27-17A-54~~§34-13-302.

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

18 Section 12. Sections 34-13-303, 34-13-304,  
19 34-13-305, 34-13-306, 34-13-307, 34-13-308, and 34-13-309, are  
20 added to the Code of Alabama 1975, as part of Article 6 of  
21 Chapter 13 of Title 34, Code of Alabama 1975, to read as  
22 follows:

23 §34-13-303. Designation and licensing of a general  
24 manager.

25 (a) Each cemetery authority shall designate a  
26 general manager, who shall be and remain employed by the  
27 cemetery authority at a designated cemetery or cemeteries. A

1 general manager shall be responsible for all of the following  
2 at the designated cemeteries:

3 (1) All activities performed on the premises.

4 (2) Preparing or submitting all reports and  
5 documents prescribed or required by the board.

6 (3) Reporting any significant changes in operations,  
7 management, or pertinent information to the board.

8 (4) Assisting the board in conducting inspections of  
9 the cemeteries.

10 (5) Ensuring all licenses relating to the operation  
11 of each cemetery are renewed timely.

12 (b) The qualifications for licensure as a general  
13 manager are as follows:

14 (1) The applicant may not have any felony or  
15 misdemeanor convictions that relate to any activity regulated  
16 by this chapter or a crime involving moral turpitude, as  
17 defined by this chapter.

18 (2)a. That the applicant shall be of good moral  
19 character and shall submit to a criminal history background  
20 check pursuant to paragraph b.

21 b. An applicant for a general manager license shall  
22 submit to the board, on a form sworn to by the applicant, his  
23 or her name, date of birth, Social Security number, and two  
24 complete sets of fingerprints for completion of a criminal  
25 history background check. The board shall submit the  
26 fingerprints to the Alabama State Law Enforcement Agency for a  
27 state criminal history background check. The fingerprints

1 shall be forwarded by the agency to the Federal Bureau of  
2 Investigation for a national criminal history background  
3 check. Costs associated with conducting a criminal history  
4 background check shall be paid by the applicant. The board  
5 shall keep information received pursuant to this subdivision  
6 confidential, except that information received and relied upon  
7 in denying the issuance of a general manager license may be  
8 disclosed if necessary to support the denial. All character  
9 information, including the information obtained through the  
10 criminal history background checks, shall be considered in  
11 licensure decisions to the extent permissible by all  
12 applicable laws.

13 (c) Upon receipt of an application that complies  
14 with all the requirements of this section, as determined by  
15 the board, the board may license the applicant. The board, by  
16 rule, shall provide for the annual renewal of licensure and a  
17 renewal fee, in an amount determined by the board, not to  
18 exceed five hundred dollars (\$500).

19 (d) An individual may begin operating as the general  
20 manager of a cemetery as soon as a completed application for a  
21 cemetery general manager license is approved by the board.

22 (e) If the board grants a general manager license,  
23 the board shall give written notice of that decision to the  
24 applicant. A general manager license shall be issued to the  
25 applicant upon presentment to the board of a duly executed  
26 statement of employment between the applicant and the cemetery  
27 or cemeteries to be serviced by him or her.

1 (f) If the board denies an application for a general  
2 manager license, the board shall give written notice of that  
3 decision to the applicant. The notice shall state a time and a  
4 place for a hearing before the board and shall include a  
5 summary statement of the reasons for the denial. The notice  
6 shall be mailed, by registered or certified mail, to the  
7 applicant at the address stated in the application at least 30  
8 days before the date of the scheduled hearing. An appeal of  
9 the decision of the board shall be with the Circuit Court of  
10 Montgomery County.

11 (g) (1) A general manager may sell, offer, and  
12 execute the sales of grave spaces, mausoleum crypts, niches,  
13 vaults or any other cemetery merchandise or services under any  
14 plan authorized for the cemetery and on behalf of all cemetery  
15 locations owned or operated by the sponsoring cemetery  
16 authority.

17 (2) A general manager is not required to hold a  
18 license as a cemetery sales agent unless he or she is paid a  
19 commission for the sale of any cemetery property, lots,  
20 rights, merchandise, or services.

21 (h) The sponsoring cemetery authority shall be  
22 responsible for the activities of the general manager. A  
23 cemetery authority shall be subject to discipline if any  
24 person acting as a general manager violates this chapter or  
25 rule of the board.

26 §34-13-304. Licenses for cemetery sales agents.

1 (a) With the exception of the general manager, no  
2 person shall offer to sell niches, memorials, vaults, or any  
3 other cemetery merchandise or services under any plan  
4 authorized for any cemetery, before obtaining a license as a  
5 cemetery sales agent from the board.

6 (b) To obtain a license as a cemetery sales agent, a  
7 person shall file a written application with the board on  
8 forms prescribed by the board. The board may require whatever  
9 information and documentation the board deems necessary to  
10 protect the public interest.

11 (c) The requirements of this section are in addition  
12 to the requirements provided in Chapter 30 of Title 8 for a  
13 salesperson.

14 (d) The qualifications for licensure as a cemetery  
15 sales agent are as follows:

16 (1) The applicant shall be at least 18 years of age.

17 (2) The applicant shall be in good standing with the  
18 board.

19 (3) The applicant may not have any felony or  
20 misdemeanor convictions that relate to any activity regulated  
21 by this chapter or a crime involving moral turpitude, as  
22 defined by this chapter.

23 (4)a. The applicant shall be of good moral character  
24 and shall submit to a criminal history background check  
25 pursuant to paragraph b.

26 b. The applicant shall submit to the board, on a  
27 form sworn to by the applicant, his or her name, date of



1 birth, Social Security number, and two complete sets of  
2 fingerprints for completion of a criminal history background  
3 check. The board shall submit the fingerprints to the Alabama  
4 State Law Enforcement Agency for a state criminal history  
5 background check. The fingerprints shall be forwarded by the  
6 agency to the Federal Bureau of Investigation for a national  
7 criminal history background check. Costs associated with  
8 conducting a criminal history background check shall be paid  
9 by the applicant. The board shall keep information received  
10 pursuant to this subdivision confidential, except that  
11 information received and relied upon in denying the issuance  
12 of a cemetery sales agent license may be disclosed if  
13 necessary to support the denial. All character information,  
14 including the information obtained through the criminal  
15 history background checks, shall be considered in licensure  
16 decisions to the extent permissible by all applicable laws.

17 (d) An application for licensure as a cemetery sales  
18 agent shall be submitted to the board with an application fee,  
19 in an amount to be determined by the board, not to exceed five  
20 hundred dollars (\$500). The application shall contain, at a  
21 minimum, all the following:

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

25 (2) The name, address, and establishment license  
26 number of the sponsoring cemetery authority.

1           (3) An affidavit, signed by the applicant, that the  
2 applicant satisfies the requirements of this chapter.

3           (4) An affidavit, signed by the general manager of  
4 the cemetery, stating all of the following:

5           a. That the cemetery authority has trained the  
6 applicant in the provisions of this chapter relating to the  
7 sale of cemetery services and merchandise, grave spaces,  
8 mausoleum crypts, and niches.

9           b. That the cemetery authority has trained the  
10 applicant in the provisions of the sales contracts of the  
11 cemetery authority, and the nature of the burial rights sold  
12 by the cemetery authority.

13           c. That the applicant is authorized to offer, sell,  
14 and sign preneed sales contracts on behalf of the cemetery  
15 authority.

16           (5) A statement indicating whether the applicant has  
17 any type of working or agency relationship with any other  
18 cemetery authority or funeral home.

19           (e) A cemetery sales agent may be registered as a  
20 cemetery sales agent on behalf of more than one cemetery  
21 authority, provided that he or she has received the written  
22 consent of all cemetery authorities and has filed the written  
23 consent with the board.

24           (f) A cemetery authority shall notify the board  
25 within 30 days after sponsorship of a cemetery sales agent has  
26 been terminated.

1 (g) A cemetery sales agent shall be affiliated with  
2 the cemetery authority that he or she is representing.

3 (h) Upon receipt of an application that complies  
4 with this section, the board shall issue a cemetery sales  
5 agent license to the applicant. The board, by rule, shall  
6 provide for the annual renewal of the license and shall charge  
7 a renewal fee, in an amount to be determined by the board, not  
8 to exceed five hundred dollars (\$500).

9 (i) If the board grants a cemetery sales agent  
10 license, the board shall give written notice of that decision  
11 to the applicant. A cemetery sales agent license shall be  
12 issued to the applicant upon presentment to the board of a  
13 duly executed statement of employment between the applicant  
14 and the cemetery or cemeteries to be serviced by him or her.

15 (j) If the board denies an application for a  
16 cemetery sales agent license, the board shall give written  
17 notice of that decision to the applicant. The notice shall  
18 state a time and a place for a hearing before the board and  
19 shall include a summary statement of the reasons for the  
20 denial. The notice shall be mailed, by registered or certified  
21 mail, to the applicant at the address stated in the  
22 application at least 30 days before the date of the scheduled  
23 hearing. An appeal of the decision of the board shall be with  
24 the Circuit Court of Montgomery County.

25 (k) The cemetery authority shall be responsible for  
26 the activities of all cemetery sales agents and all employees  
27 acting as cemetery sales agents, who are affiliated with the

1 cemetery authority and who perform any type of sales of grave  
2 spaces, mausoleum crypts, or niches on behalf of the cemetery  
3 authority. A cemetery authority shall be subject to discipline  
4 if any person acting as a cemetery sales agent violates this  
5 chapter or rule of the board.

6 (l) A cemetery sales agent may sell, offer, and  
7 execute the sales of grave spaces, mausoleum crypts, niches,  
8 vaults or any other cemetery merchandise or services under any  
9 plan authorized for the cemetery and on behalf of all cemetery  
10 locations owned or operated by the sponsoring cemetery  
11 authority.

12 (m) A cemetery sales agent may sell, offer, and  
13 execute the sales of cemetery merchandise or services on a  
14 preneed basis provided the cemetery authority for which the  
15 cemetery sales agent is licensed holds a current certificate  
16 of authority as authorized by the board and the cemetery sales  
17 agent is exempt from the requirements of obtaining a license  
18 as a preneed sales agent.

19 (n) An individual may begin operating as a cemetery  
20 sales agent as soon as a completed application as a cemetery  
21 sales agent is approved by the board.

22 §34-13-305. Application for a change of control;  
23 filing fee.

24 A person who proposes to acquire ownership of more  
25 than 50 percent of an existing cemetery authority, whether by  
26 purchasing the capital stock of the cemetery authority,  
27 purchasing an owner's interest in the cemetery authority, or

1 otherwise acting to effectively change the control of the  
2 authority, shall first make application on a form prescribed  
3 by the board for a certificate of approval for the proposed  
4 change of control. The application shall contain the name and  
5 address of each proposed new owner. The board shall issue a  
6 certificate of approval only after the board determines that  
7 the proposed new owners are qualified by good moral character,  
8 experience, and financial responsibility to control and  
9 operate the cemetery authority in a legal and proper manner,  
10 and that the interest of the public generally will not be  
11 jeopardized by the proposed change in control. An application  
12 for approval of a change of control shall be completed and  
13 accompanied by a filing fee, in an amount determined by the  
14 board, not to exceed one thousand six hundred dollars  
15 (\$1,600). The board may not approve any change of control  
16 until the applicant has provided sufficient evidence that any  
17 trust accounts, as required by this chapter or rule of the  
18 board, are maintained and funded in the required amounts. If  
19 the cemetery authority has posted a performance bond in lieu  
20 of any trust accounts, as required by this chapter or rule of  
21 the board, then the board may not approve any change of  
22 control until the applicant has provided sufficient evidence  
23 that the performance bond is being appropriately maintained  
24 and is in an amount sufficient to cover all payments made  
25 directly or indirectly by or on account of purchasers who have  
26 not received the purchased property and services.

27 §34-13-306. Applications for license renewal.

1 All applications for a renewal license under this  
2 chapter shall be submitted annually on or before October 1, in  
3 the case of an existing cemetery authority. Before any sale of  
4 cemetery property, in the case of a new cemetery authority, or  
5 a change of ownership or control as provided in Section  
6 34-13-305, an application for transfer and a new establishment  
7 license shall be submitted and approved and a new license  
8 issued.

9 §34-13-307. License not assignable or transferable.

10 No license issued pursuant to this chapter shall be  
11 transferable or assignable and no licensee shall develop or  
12 operate any cemetery, authorized by this chapter, under any  
13 name or at any location other than that contained in the  
14 application for the license.

15 §34-13-308. Individual sales contracts and  
16 purchaser's endowment care and maintenance expectations.

17 At the time of making a sale or receiving the  
18 initial sale deposit under this chapter, the cemetery  
19 authority shall deliver to the person to whom the sale is  
20 made, or who makes the deposit, both of the following:

21 (1) An instrument in writing, in a form approved by  
22 the board, itemizing all merchandise and services sold and a  
23 statement that the net income of the endowment care and  
24 maintenance trust fund shall be used solely for the care and  
25 maintenance of the cemetery, for reasonable costs of  
26 administering the care and maintenance, and for reasonable  
27 costs of administering the trust fund.

1           (2) A copy of the current rules of the cemetery  
2 authority.

3           Section 13. Sections 27-17A-48, 27-17A-55, and  
4 27-17A-56 of the Code of Alabama 1975, are amended and  
5 renumbered as part of Article 6 of Chapter 13 of Title 34,  
6 Code of Alabama 1975, to read as follows:

7           "~~§27-17A-48.~~§34-13-309.

8           "(a) ~~Each~~ In addition to Section 8-30-2, each  
9 cemetery authority shall comply with this chapter and maintain  
10 at each place of business a list of the names and addresses of  
11 its owners and directors, which shall be available to the  
12 public.

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

25           "(c) The cemetery authority shall publicly display  
26 all current and valid licenses as provided in this chapter and  
27 a current schedule of charges shall be available upon request.

1           "(d) In accordance with Section 8-30-2, each  
2 cemetery organized and operating under the laws of this state  
3 shall have a full and complete schedule of all charges for  
4 cemetery services and cemetery merchandise, provided by the  
5 cemetery, plainly printed or typewritten, maintained, made  
6 available to consumers, and subject to inspection. A copy  
7 shall be kept at the usual place for transacting the regular  
8 business of the cemetery.

9           "~~§27-17A-55.~~§34-13-310.

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



1 the funds been invested in United States Treasury Bills having  
2 a 90-day maturity.

3 ~~"§27-17A-56. §34-13-311.~~

4 ~~"(a) Each cemetery authority shall adopt rules.~~  
5 Cemetery rules ~~and regulations~~ are adopted for the mutual  
6 protection of the cemetery owners and the owners of interment  
7 rights in the cemetery. All owners of interment rights and  
8 other persons within the cemetery shall be subject to these  
9 rules ~~and regulations~~ as they now exist and as they may be  
10 amended or altered by the cemetery. The cemetery authority ~~has~~  
11 ~~the right to~~ may enforce these rules ~~and regulations.~~ The  
12 ~~cemetery authority expressly reserves the right~~ and, at any  
13 time and without prior notice to any owners, ~~to~~ may adopt new  
14 rules ~~and regulations~~ or ~~to~~ amend, modify, or repeal any  
15 ~~section, paragraph, or sentence of these rules and~~  
16 ~~regulations.~~

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

21 Section 14. Sections 34-13-312, 34-13-313,  
22 34-13-314, and 34-13-315 are added to the Code of Alabama  
23 1975, as part of Article 6 of Chapter 13 of Title 34, Code of  
24 Alabama 1975, to read as follows:

25 §34-13-312. Timely delivery of cemetery merchandise.

26 (a) The board may adopt rules to ensure the prompt  
27 installation and setting of memorials, grave markers, head

1 stones, and other markers by requiring memorials, grave  
2 markers, head stones, and other markers to be ordered and  
3 installed in a timely manner, as defined by the board.

4 (b) The board may impose a fine, in an amount  
5 determined by the board, not to exceed two hundred dollars  
6 (\$200) per day for each violation, on any seller who violates  
7 the rules adopted by the board pursuant to subsection (a).

8 §34-13-313. Authority of board to investigate  
9 cemetery complaints, practices, and implement resolutions.

10 In addition to any power conferred on the board by  
11 this chapter, the board shall have the following powers and  
12 duties relating to the enforcement of this chapter and any  
13 rule adopted pursuant to this chapter:

14 (1) To investigate, upon its own initiative or upon  
15 a verified complaint in writing, the actions of any person  
16 engaged in the business or acting in the capacity of a  
17 licensee under this chapter. The board may suspend, revoke, or  
18 place on probation the license of any licensee who, in  
19 performing or attempting to perform any of the acts specified  
20 in this chapter or rule of the board, the board determines has  
21 done any of the following:

22 a. Failed to pay a required fee.

23 b. Failed to make a report required by this chapter  
24 or rule of the board.

25 c. Failed to remit any required amount to the care  
26 and maintenance trust fund, merchandise trust fund, or  
27 pre-construction trust fund.

1           d. Made a substantial misrepresentation.

2           e. Made a false statement of a character likely to  
3 influence or persuade.

4           f. Made a continued and flagrant course of  
5 misrepresentation or made false promises through cemetery  
6 sales agents or employees.

7           g. Violated any provision of this chapter or rule  
8 adopted by the board.

9           h. Operated a cemetery in a manner that was  
10 hazardous to a purchaser, beneficiary, or the people of this  
11 state.

12           i. Engaged in any other conduct, whether of the same  
13 or a different character than specified in this section, which  
14 constitutes fraud or dishonest dealing, or has any felony or  
15 misdemeanor convictions that relate to any activity regulated  
16 by this chapter or a crime involving moral turpitude, as  
17 defined by this chapter.

18           (2) To apply to the courts, in its own name, for  
19 injunctive relief to prevent a violation of this chapter or  
20 any rule adopted by the board. A court may grant injunctive  
21 relief regardless of whether criminal prosecution or any other  
22 action is instituted as a result of the violation. A single  
23 violation is sufficient to invoke the injunctive relief  
24 provided by this subdivision. In any action for injunctive  
25 relief, an order or judgment may be entered awarding a  
26 temporary or permanent injunction as deemed proper by the  
27 court; provided, that before any action is brought by the

1 board pursuant to this subdivision, the board shall give a  
2 cemetery authority at least 20 days' notice in writing,  
3 stating the alleged violation and giving the cemetery  
4 authority an opportunity, within that 20-day period, to cure  
5 the violation. In addition to all other means provided by law  
6 for the enforcement of a temporary restraining order,  
7 temporary injunction, or permanent injunction, the court may  
8 impound and appoint a receiver for the property and business  
9 of the cemetery authority including, but not limited to,  
10 books, papers, documents, and records pertaining thereto, or  
11 so much thereof as the court may deem reasonably necessary to  
12 prevent further violation of this chapter or rule of the board  
13 through or by means of the use of the property and business.  
14 The board may institute proceedings against a cemetery  
15 authority, and its owners or officers, when an audit, pursuant  
16 to this chapter or rule of the board, reveals a shortage in  
17 the care and maintenance trust fund, merchandise trust fund,  
18 or mausoleum and below ground crypts pre-construction trust  
19 fund, to recover the shortage.

20 (3) To adopt rules requiring licensees to file with  
21 the board plans and specifications for the minimum quality of  
22 any product sold. The sale of any product for which plans and  
23 specifications required by the rules of the board have not  
24 been filed, or the sale of any product of a lesser quality  
25 than the plans and specifications filed with the board, is a  
26 violation of this chapter.

1           (4) If the board finds that failure by a licensee to  
2 maintain a cemetery properly has caused that cemetery to  
3 become a public nuisance or a health or safety hazard, the  
4 board may do any of the following:

5           a. Bring an action for injunctive relief against the  
6 responsible licensee in the circuit court of the county in  
7 which the cemetery, or any part thereof, is located or in the  
8 Circuit Court of Montgomery County.

9           b. Issue an emergency suspension of all licenses  
10 held by the cemetery, and its associated personnel, in  
11 accordance with the Administrative Procedure Act.

12           §34-13-314. Cemetery inspection and endowment audit  
13 by the board.

14           (a) The board, as often as the board determines  
15 necessary, shall inspect and audit the business of any person  
16 operating a cemetery authority under this chapter. The  
17 inspection and audit shall be performed by representatives of  
18 the board who are employed or contracted by the board.

19           (b) A written report of each inspection and audit  
20 shall be filed with and maintained by the board.

21           (c) Any person, establishment, or entity inspected  
22 and audited, upon request, shall produce all records of the  
23 person, establishment, or entity. The representatives of the  
24 board designated to perform inspections and audits may inspect  
25 and audit the records and affairs of any person,  
26 establishment, or entity operating a cemetery authority under  
27 the jurisdiction of the board at any time, regardless of

1 whether the inspection and audit are in connection with a  
2 formal inspection or audit, or not.

3 (d) Any person, establishment, or entity subject to  
4 a formal inspection and audit pursuant to this section shall  
5 pay the board an audit fee, in an amount determined by the  
6 board, not to exceed one thousand dollars (\$1,000) per audit  
7 day. The scope of informal, formal, and special inspections  
8 and audits shall be established by rule of the board.

9 (e) Whenever the board determines that a special  
10 inspection and audit of the premises, facilities, books, or  
11 records of a cemetery authority is necessary because of the  
12 failure of the cemetery authority to comply with this chapter  
13 or rule adopted by the board, the board shall charge a fee  
14 based on the cost of the special inspection and audit  
15 including, but not limited to, the compensation of any  
16 employees involved in the special audit and any other  
17 reasonable expenses incurred.

18 (f) The board, by rule, may provide for the  
19 suspension or revocation of the cemetery establishment license  
20 of any person, establishment, or entity that fails to submit  
21 levied inspection and audit fees to the board within 30 days  
22 after the invoice date. In addition, the board may levy a  
23 fine, in an amount determined by the board, not to exceed  
24 fifty dollars (\$50) per day for each day the cemetery  
25 authority fails to submit the inspection and audit fees.

26 §34-13-315. Additional penalties and fines.

1 (a) Unless otherwise provided by this chapter, any  
2 person who violates this chapter, or rule adopted by the board  
3 pursuant to this chapter, shall be guilty of a Class A  
4 misdemeanor.

5 (b) (1) Any person who knowingly executes a sales  
6 contract or receives payments for cemetery merchandise or  
7 services without having a valid license as a cemetery sales  
8 agent:

9 a. Shall be guilty of a Class B felony for each  
10 contract for which the amount of the contract, or the sum of  
11 payments received, is greater than two thousand five hundred  
12 dollars (\$2,500).

13 b. Shall be guilty of a Class C felony for each  
14 contract for which the amount of the contract, or the sum of  
15 payments received, is greater than five hundred dollars (\$500)  
16 and equal to or less than two thousand five hundred dollars  
17 (\$2,500).

18 c. Shall be guilty of a Class A misdemeanor for each  
19 contract for which the amount of the contract, or the sum of  
20 payments received, is five hundred dollars (\$500), or less.

21 (2) In addition to the criminal penalty imposed  
22 under subdivision (1), upon conviction of an offense under  
23 subdivision (1), or an equivalent offense in any jurisdiction,  
24 as determined by the board, a person may not thereafter obtain  
25 a certificate of authority from the board or be licensed as a  
26 preneed sales agent, cemetery sales agent, or general manager  
27 by the board.

1           (3) If the board determines that the continued  
2 operation of a cemetery authority is hazardous to purchasers,  
3 beneficiaries, or the people of this state, the board may levy  
4 a fine, in an amount determined by the board, not to exceed  
5 five hundred dollars (\$500) per day, and may revoke the  
6 establishment license of the cemetery authority, until the  
7 board determines that the hazardous conditions are removed and  
8 resolved.

9           (4) In addition to any other penalty provided by  
10 this chapter, or rule adopted by the board pursuant to this  
11 chapter, the board may levy a fine, in an amount determined by  
12 the board, not to exceed fifty dollars (\$50) per day, for each  
13 day a cemetery authority fails to file any reports required by  
14 this chapter or rule of the board, and the board may also levy  
15 a fine, in an amount determined by the board, not to exceed  
16 fifty dollars (\$50) per day, for each day a cemetery authority  
17 fails to satisfy and comply with any order issued by the  
18 board.

19           (5) If a representative of a cemetery authority  
20 offers to sell grave spaces or lots, interment rights, niches,  
21 memorials, vaults, or any other cemetery merchandise or  
22 services under any plan authorized for any cemetery before  
23 obtaining a license from the board as a cemetery sales agent,  
24 the board may levy a fine, not to exceed two thousand five  
25 hundred dollars (\$2,500), on the cemetery authority for each  
26 violation.



1           (6) If a cemetery authority sells interment rights,  
2 gave spaces or lots, niches, memorials, vaults, or any other  
3 cemetery merchandise or services under any plan authorized for  
4 any cemetery before obtaining a cemetery establishment license  
5 from the board, the board may levy a fine, not to exceed two  
6 thousand five hundred dollars (\$2,500), on the cemetery  
7 authority for each violation.

8           Section 15. All laws or parts of laws which conflict  
9 with this act are repealed, and specifically, Section  
10 27-17A-2, Section 27-17A-17, Section 27-17A-45 and Section  
11 27-17A-57, Code of Alabama 1975, relating to definitions as  
12 now appearing in Section 34-13-1, Code of Alabama 1975, the  
13 dissolution or liquidation of a certificate holder, the  
14 endowment care fund now appearing in subsection (b) of Section  
15 34-13-296, Code of Alabama 1975, and the jurisdiction of the  
16 Commissioner of Insurance relating to preneed contracts,  
17 respectively, are repealed.

18           Section 16. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

1                   Section 17. This act shall become effective on the  
2 first day of the first month following its passage and  
3 approval by the Governor, or its otherwise becoming law.