

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 482 Department or Agency Department of Insurance*

Rule No. Chapter 482-3-004

Rule Title: Preneed Contract Funding and Trusts

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? N/A*

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? N/A*

Is there another, less restrictive method of regulation available that could adequately protect the public? N/A*

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? N/A*

Is the increase in costs, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A*

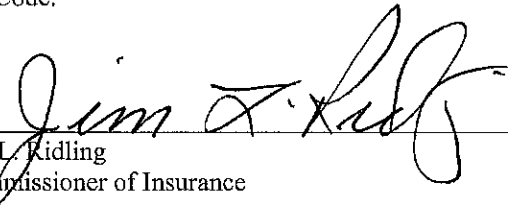
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? N/A*

Does the proposed rule have an economic impact? N/A*

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Sections 27-2-17 and 27-7-43, Code of Alabama 1975, and that it complies with all applicable filing requirements of the Alabama Insurance Code.*

Signature of certifying officer 
Jim L. Kidling
Commissioner of Insurance

Date: September 19, 2014

*Note: *The Alabama Department of Insurance is exempt from the Alabama Administrative Procedures Act pursuant to Section 41-22-2(e), Code of Alabama 1975.*

Alabama Department of Insurance

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Insurance

RULE NO. & TITLE: Chapter 482-3-004: Preneed Contract Funding and Trusts

INTENDED ACTION: New rule.

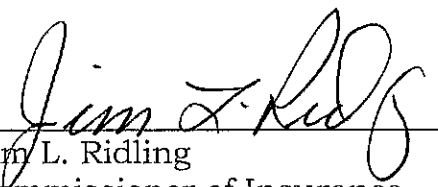
SUBSTANCE OF PROPOSED ACTION: The Commissioner of Insurance is proposing the adoption of a new regulation setting forth the standards and requirements relating to funding methods for preneed contracts for funeral and cemetery merchandise and services and operations of endowment care cemeteries by cemetery authorities.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may submit data, views, or arguments in writing at any time prior to the date stated below to the Alabama Department of Insurance, Attention: Legal Division, Post Office Box 303351, Montgomery, Alabama 36130-3351, or orally by appearing at the public hearing, Suite 502, RSA Tower, 201 Monroe Street, Montgomery, Alabama, beginning at 10 a.m., November 13, 2014.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

November 4, 2014

CONTACT PERSON AT AGENCY: Kathleen Healey
Associate Counsel



Jim L. Ridling
Commissioner of Insurance

ALABAMA DEPARTMENT OF INSURANCE
PRENEED REGULATION

CHAPTER 482-3-004

PRENEED CONTRACT FUNDING AND TRUSTS

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1 **482-3-004-.01 Authority and Purpose.**

2 (1) This Chapter is adopted pursuant to Ala. Code §§ 27-2-17 and 27-
3 17A-1 to -57 (2014).

4 (2) This Chapter sets forth rules, standards and requirements relating
5 to funding methods for preneed contracts for funeral and cemetery merchandise
6 and services and operation of endowment care cemeteries by cemetery
7 authorities under the Alabama Preneed Funeral and Cemetery Act of 2002, as
8 amended. This Chapter operates in conjunction with Chapters 482-3-002, 482-
9 3-003, and 482-3-005.

10 **Author:** Commissioner of Insurance

11 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

12 **History:** New _____, effective January 1, 2015

13 **482-3-004-.02 Funding methods.**

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

16 (a) A funeral or cemetery merchandise and services trust.

17 (b) Life insurance or annuities sold in conjunction with the preneed
18 contract.

19 (c) A preneed seller's current revenues if the seller has in force an
20 approved surety bond.

21 (d) A preneed seller's current revenues if the seller has in force an
22 approved letter of credit.

23 (2) If a preneed seller is funding preneed contracts through the use of a
24 trust, the timing and percentage of trust deposits must be consistent for all
25 preneed contracts sold. The Commissioner must approve any subsequent change in
26 the method on such terms and conditions as the Commissioner may prescribe.

1 (3) Preneed contract forms must identify the funding method being used
2 and contain provisions pertinent to that method, and not include references to
3 or provisions relevant only to another funding method.

4 (4) A preneed seller must maintain a detailed and accurate record of
5 funds collected in payment for preneed contracts and disbursements of those
6 funds as pertinent to the funding method used.

7 **Author:** Commissioner of Insurance

8 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

9 **History:** New _____, effective January 1, 2015

10 **482-3-004-.03 Merchandise and Services trusts.**

11 (1) A merchandise and services trust agreement must be approved by the
12 Commissioner prior to use. The trust must be irrevocable.

13 (2) On or after January 1, 2015, funds collected for preneed funeral
14 merchandise and services contracts shall be trusted in a funeral merchandise
15 and services trust. Funds collected for preneed cemetery merchandise and
16 services contracts shall be trusted in a cemetery merchandise and services
17 trust. Sellers that offer both preneed funeral merchandise and services
18 contracts and cemetery merchandise and services contracts shall include
19 caskets on the preneed funeral merchandise and services contract form and
20 trust accordingly as provided in this Chapter.

21 **Author:** Commissioner of Insurance

22 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

23 **History:** New _____, effective January 1, 2015

1 **482-3-004-.04 Funeral Merchandise and Services Trust - deposits.**

2 (1) Any person who is paid, collects or receives funds under a preneed
3 contract for funeral merchandise and services to be funded by trust shall
4 timely deposit in trust an amount determined as follows:

5 (a) 75% of the amount collected on the purchase price for all funeral
6 services and funeral merchandise sold, transportation and facilities rented,
7 other than outer burial containers.

8 (b) 60% of the amount collected on the purchase price for outer burial
9 containers.

10 (c) 110% of the wholesale cost of memorials from the amount collected
11 on the purchase price of memorials.

12 (d) 100% of the amount collected on the purchase price for all cash
13 advance items sold.

14 (2) Deposits in trust must occur on the following schedule:

15 (a) For all preneed contracts entered into between May 1, 2002 (the
16 effective date of the Act) and December 31, 2014, the proper total amount
17 determined by application of the provisions in paragraph (1) shall be
18 deposited in trust within thirty (30) days after the end of the calendar
19 month in which the preneed contract is paid in full unless, before that time,
20 the preneed contract has been cancelled or the seller has discharged its
21 liabilities to provide the merchandise or perform the services specified in
22 the contract.

23 (b) For preneed contracts entered into on or after January 1, 2015, the
24 seller's obligation to make trust deposits shall commence not later than
25 thirty (30) calendar days after the end of the calendar month in which the
26 sum of the monies collected on the preneed contract exceeds the amount that

1 is not required to be deposited in trust. The seller shall thereafter
2 deposit the appropriate amount in trust not later than thirty (30) days after
3 the end of the month in which each payment on the preneed contract is
4 collected.

5 (c) For preneed contracts entered into on or after January 1, 2015, at
6 its option, and as an alternative to the schedule in subparagraph (b), a
7 preneed seller may elect to make deposits in trust as payments are received
8 on a preneed contract not later than thirty (30) days after the end of the
9 calendar month in which a payment is collected. In such event, at a minimum,
10 the amount of the deposit must equal the amount determined by application of
11 paragraph (1). The seller must uniformly apply either the schedule in
12 subparagraph (b) or the alternate schedule in this subparagraph to all
13 preneed contracts sold on or after January 1, 2015.

14 **Author:** Commissioner of Insurance
15 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
16 **History:** New _____, effective January 1, 2015

17 **482-3-004-.05 Funeral Merchandise and Services Trust - administration,**
18 **withdrawals.**

19 (1) At all times, the certificate holder shall be able to determine the
20 amount held in trust attributable to each contract holder.

21 (2) For all contracts entered into on or after January 1, 2015, the
22 determination shall be based upon the fair market value of the trust at the
23 time of determination and the proportionate share of the fair market value
24 attributable to each contract holder.

25 (3) For all contracts in effect before January 1, 2015, the valuation
26 of each contract may be calculated using any valuation method that had been
27 approved by the Commissioner.

1 (4)(a) For a withdrawal from the trust based on performance of a
2 preneed contract, the certificate holder must present valid proof of death to
3 the trustee of the trust. Such proof may take the following forms:

- 4 1. A copy of the published obituary; or
- 5 2. A copy of the burial transit permit; or
- 6 3. A working copy of the death certificate or coroner's report.

7 (b) For a withdrawal from the trust for merchandise which has been
8 delivered and installed, or services performed, the certificate holder must
9 present to the trustee any two of the following:

- 10 1. A written statement from an authorized representative of the
11 cemetery authority certifying to delivery of the merchandise; or
- 12 2. A photograph of the merchandise as installed in the cemetery space;
13 or
- 14 3. A copy of the paid-in-full invoice for purchase of the merchandise.

15 (5) In the event a trusted preneed contract has been cancelled or
16 transferred to another provider, before any withdrawals from trust may be
17 made, the certificate holder must present to the trustee a written notice
18 signed by the purchaser stating that the contract has been cancelled or
19 transferred upon the purchaser's request.

20 (6) In the case of a trust withdrawal upon fulfillment or cancellation
21 of a preneed contract entered into on or after January 1, 2015, the amount
22 withdrawn may not exceed the amount attributable to that preneed contract in
23 proportion to the total amount held in trust for all preneed contracts as of
24 the date of the withdrawal. In the event of a contract cancellation after the
25 expiration of thirty (30) days from contract execution, default by purchaser,
26 or transfer of the contract to another provider, the seller may only retain

1 an amount not exceeding 20% of the contract purchase price withdrawn from the
2 trust at the time of the cancellation, default by purchaser or transfer, and
3 the balance in trust exceeding such 20% must be paid to the contract
4 purchaser or transferred to the new provider's trust.

5 (7) No amount representing earnings or gain on trust assets may be
6 withdrawn from the trust except at the time of fulfillment, cancellation,
7 transfer or default.

8 **Author:** Commissioner of Insurance

9 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

10 **History:** New _____, effective January 1, 2015

11 **482-3-004-.06 Cemetery Merchandise and Services Trust - deposits.**

12 (1) Any person who is paid, collects or receives funds under a cemetery
13 preneed contract to be funded by trust shall deposit in trust an amount as
14 follows:

15 (a) 110% percent of wholesale cost for all cemetery merchandise.

16 (b) 60% of the purchase price specified in the preneed contract for
17 outer burial containers.

18 (c) 60% of the purchase price specified in the preneed contract for
19 cemetery services.

20 (d) 100% of the purchase price specified for all cash advance items
21 sold in the preneed contract.

22 (e) 75% of the purchase price for caskets.

23 (2) For all preneed contracts entered into prior to January 1, 2015,
24 the required deposits to trust shall be made within 30 days after the end of
25 the calendar month in which the preneed contracts is paid in full, unless,
26 prior to that time, all liabilities of the seller under the preneed contract

1 to deliver the specific cemetery merchandise or cemetery services, or both,
2 or the specific cash advances, identified as properly allocated to the
3 payment, have been satisfied, or the preneed contract is validly cancelled.

4 (3) For preneed contracts entered into on or after January 1, 2015, the
5 seller's obligation to make trust deposits shall commence not later than
6 thirty (30) calendar days after the end of the calendar month in which the
7 sum of the monies collected on the preneed contract exceeds the amount that
8 is not required to be deposited in trust. The seller shall thereafter
9 deposit the appropriate amount in trust not later than thirty (30) days after
10 the end of the month in which each payment on the preneed contract is
11 collected.

12 (4) At the time of fulfillment of the preneed contract, the seller may
13 withdraw the principal amount in trust, less any loss of the value of the
14 principal, attributable to items or services fulfilled, delivered, or
15 performed on the contract.

16 (5) In order to withdraw amounts representing earnings or gain
17 attributable to trust assets or amounts otherwise exceeding the amount needed
18 to perform preneed contracts:

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

- 21 1. 110% of the current wholesale cost of all cemetery merchandise.
- 22 2. 60% of the current retail price of all cemetery services.
- 23 3. 60% of the current retail price of all outer burial containers.
- 24 4. 75% of the current retail price of all caskets.
- 25 5. 100% of the current retail price of all cash advances.

1 (b) The fair market value of the trust representing all contracts that
2 are not paid-in-full must exceed 25 percent of the total sum of the
3 following:

4 1. 110% percent of the current wholesale cost of the liability to
5 deliver all cemetery merchandise (including caskets and outer burial
6 containers).

7 2. 60% of the current retail price of all cemetery services.

8 3. 100% of the current retail price of all cash advances.

9 (6) An analysis using the formula in paragraph (5) shall be made
10 annually by the seller, certified under oath by the seller, and provided to
11 the trustee. If the certified analysis evidences an excess in trust beyond
12 the amount calculated under paragraph (5), the certificate holder may
13 withdraw and retain all or part of that excess. If such analysis evidences
14 that the fair market value of the trust is less than 100% of the aggregate
15 calculated amount, within twelve (12) months thereafter, the certificate
16 holder shall, from its own funds, contribute the amount necessary to restore
17 the trust fund to an amount not less than 100% of the aggregate amount
18 calculated.

19 (7) If the amount paid by the purchaser under a preneed contract for
20 cemetery merchandise has been previously been deposited in trust, the seller
21 may withdraw the principal amount, less any loss of the value of the
22 principal, at the time the cemetery merchandise is delivered or installed or
23 the merchandise is placed in storage with a responsible third party bonded
24 and insured for the wholesale value. Such merchandise can only be comprised
25 of materials designed to withstand prolonged, protected storage without
26 deterioration, and cannot be caskets or alternative containers. If the
27 merchandise is stored, a record specifically identifying each item, the

1 specific preneed contract number, the location of the site, and the identity
2 and address of the bonding and insuring parties, must be attached to the
3 purchaser's record.

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

8 **Author:** Commissioner of Insurance
9 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
10 **History:** New _____, effective January 1, 2015

11 **482-3-004-.07 Use of surety bond in lieu of trusting.**

12 (1) A surety bond may be used in lieu of establishing and maintaining a
13 merchandise and services trust. The surety bond, its form, and amount must
14 be approved by the Commissioner prior to use and written through an insurance
15 company authorized to transact surety insurance in Alabama.

16 (2) The amount of the initial surety bond must be not less than the
17 aggregate value of outstanding liabilities on undelivered preneed contracts
18 of the certificate holder as of the end its last fiscal year. For purposes
19 of determining the amount of the surety bond, "outstanding liabilities" means
20 the original retail amount of services and cash advances and the actual cost
21 to the certificate holder to provide the undelivered merchandise sold on each
22 contract written after April 30, 2002. The surety bond shall be in an amount
23 sufficient to cover the outstanding liability at the time each contract is
24 executed.

25 (3) After initial approval, the amount of the bond shall be increased
26 or decreased as necessary to correlate with changes in the outstanding

1 liabilities for the previous calendar quarter and the projected liability for
2 the immediately following quarter.

3 **Author:** Commissioner of Insurance
4 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
5 **History:** New _____, effective January 1, 2015

6 **482-3-004-.08 Use of letter of credit in lieu of trusting.**

7 (1) A letter of credit may be used in lieu of establishing and
8 maintaining a merchandise and services trust. The letter of credit, its
9 form, and amount must be approved by the Commissioner prior to use.

10 (2) The letter of credit must be "evergreen," meaning it will not
11 expire without an affirmative action by the issuer of the letter of credit.
12 The amount of the letter of credit shall be determined in the same manner as
13 indicated in Rule 482-3-004-.07 for the amount of surety bonds.

14 **Author:** Commissioner of Insurance
15 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
16 **History:** New _____, effective January 1, 2015

17 **Rule 482-3-004-.09 Pre-act Trusts.**

18 (1) A preneed merchandise and services trust established for funds
19 collected on preneed contracts entered into prior to May 1, 2002, may not be
20 merged with a trust established for preneed contracts entered into on and
21 after May 1, 2002, without the express permission of the Commissioner.

22 (2) To approve the merger of the trusts, the Commissioner must be
23 satisfied that the minimum amounts required to be trusted under the law have
24 been trusted on the contracts entered into prior to the law.

25 **Author:** Commissioner of Insurance
26 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
27 **History:** New _____, effective January 1, 2015

1 **482-3-004-.10 Endowment Care Fund.**

2 (1) Each endowment care cemetery must establish and maintain an
3 irrevocable trust known as an endowment care fund irrespective of whether the
4 cemetery authority holds a certificate of authority to sell preneed contracts.
5 Each cemetery authority that operated an endowment care cemetery and sold
6 interment rights on or after the effective date of the Act (May 1, 2002) and
7 had an existing fund or trust for endowment care shall transfer the assets of
8 such fund or trust into an endowment care fund to be administered according to
9 the Act and this Chapter.

10 (2) The endowment care fund shall be placed with and held by a bank,
11 trust company, savings and loan association, or other financial institution
12 authorized to provide trust services under the provisions of Alabama Code or
13 under the applicable laws of the United States or any other state, or a board
14 of trustees. The endowment care fund trust agreement must be filed with and
15 approved by the Commissioner.

16 (3) If used, a board of trustees shall consist of at least three members,
17 who shall each reside in Alabama and at least one of whom is engaged in outside
18 cemetery management. Each such member shall be bonded to honestly perform the
19 duties of trustee under the trust agreement as approved by the Commissioner.
20 Effective July 1, 2014, a person serving on a board of trustees for cemetery
21 authority may not also serve as a trustee of an endowment care fund for the
22 cemetery authority.

23 (4) A board of trustees in existence as of July 1, 2014, may thereafter
24 continue to serve as the trustee of an endowment care fund if, unless exempted
25 by the Commissioner as provided in paragraph (5), each member of the board of
26 trustees shall furnish a bond in the amount of \$100,000 or the amount in each
27 endowment care fund for which the board acts as trustee as of December 31,
28 2014, whichever amount is greater. The amount of the bonds shall be increased

1 on January 1 of each succeeding year to equal the amount in each endowment care
2 fund as of the immediately preceding December 31. The bond, its form, and
3 amount must be approved by the Commissioner prior to use and written through an
4 insurance company authorized to transact surety insurance in Alabama.

5 (5) The Commissioner shall exempt a board of trustees from a bond
6 requirement in paragraph (4) if the board of trustees provides to the
7 commissioner an annual audit that satisfies all the following:

8 (a) The report is prepared by a certified public accountant authorized to
9 practice in Alabama.

10 (b) The report evidences that the review made subject of the report by
11 the accountant encompasses each endowment care fund for which the board acts as
12 trustee.

13 (c) The report notes relating to the endowment care fund or funds are in
14 a form that is reasonably acceptable to the Commissioner.

15 (d) The report does not evidence any material violation of or
16 noncompliance relating to an endowment care fund.

17 (6) An endowment care fund report in a form approved by the Commissioner
18 shall be filed by the trustee with the Commissioner within ninety (90) days
19 after the close of each calendar year. Such report shall include a complete
20 disclosure of all activity concerning the fund since the previous report and a
21 statement detailing fund investments.

22 (7) The Commissioner has the authority to examine the records or
23 facilities of any cemetery authority operating an endowment care cemetery as
24 often as the Commissioner may require.

25 (8) Net income from an endowment care fund, to the extent that it is
26 distributed from the fund, shall be used exclusively to pay for costs of the

1 endowment care cemetery. "Net income" does not include realized or unrealized
2 capital gains or losses. All realized capital gains or losses should be
3 recorded to the fund corpus. For purposes of this subpart, corpus is the sum of
4 the deposits made by the cemetery authority into an endowment care fund and all
5 realized capital gains or losses. Capital gains taxes, if any, may be paid from
6 the corpus. Unrealized capital gains and losses, if any, shall be recorded as
7 an adjustment to the fair market value of the endowment care fund.

8 (9) Except as permitted under paragraph (10), a deposit to an endowment
9 care fund cannot be withdrawn from the endowment care fund upon later
10 cancellation of the transaction or in the event of a later discovered
11 calculation error or other error resulting in an excess deposit over that
12 required or for any other reason outside the scope of Ala. Code § 27-17A-50(b)
13 (2014).

14 (10)(a) A cemetery authority may recognize and apply a "credit" against
15 future required deposits to the endowment care fund in the following instances:

16 1. When the cemetery authority permits a purchaser to cancel a
17 transaction giving arise to a deposit in the endowment care fund and the
18 cemetery authority has refunded one hundred (100) percent of the transaction
19 purchase price (to include any amount allocated to endowment care) to the
20 purchaser; or

21 2. As a result of a calculation error or other error, the amount
22 contributed to the endowment care fund for a transaction exceeds what is
23 required under Ala. Code § 27-17A-49(a) (2014) or a greater amount, if any, as
24 may be required by the transaction.

25 (b) In these instances, the cemetery authority may decrease the amount of
26 a subsequent deposit into the endowment care fund by the amount of the
27 contribution actually made for a cancelled transaction or the excess amount

1 deposited in error. This type of adjustment should not be reflected as a
2 "withdrawal" from the endowment care fund in the cemetery authority's records.

3 (c) Whether to recognize a "credit" in these instances is at the election
4 of the cemetery authority. The "credit," however, must be recognized not later
5 than four (4) calendar months after the date of the event (cancellation or
6 discovery of an error) giving rise to the "credit."

7 (d) Each cemetery authority using this "credit" method must maintain
8 detailed records that identify the specific contracts involved in any
9 adjustment by "credit" to endowment care fund deposits and, upon examination,
10 or otherwise upon request, must be able to furnish the Department's examiners
11 or representatives with a summary of all endowment care fund adjustments during
12 the period covered by the examination or request.

13 (11) For preneed contracts entered into on or after January 1, 2015, a
14 cemetery authority providing a free or complimentary interment right in any
15 grave space, crypt or niche shall timely make an endowment care fund deposit
16 for such free or complimentary interment right. The amount of such deposit
17 shall be determined by calculating the average sale price of interment rights
18 in grave spaces, crypts or niches sold over the prior calendar year and
19 applying the proper percentage specified in Ala. Code §27-17A-49(a) (2014).
20 Such calculation shall be done as of the date the cemetery authority provides
21 the complimentary or free interment right.

22 **Author:** Commissioner of Insurance

23 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

24 **History:** New _____, effective January 1, 2015

1 **482-3-004-.11 Using life insurance or annuities to fund a preneed contract**
2 **for funeral or cemetery merchandise and services.**

3 (1) The offering and sale of life insurance or annuities intended to
4 fund future performance of funeral or cemetery preneed contracts must comply
5 with all applicable sections of the Alabama insurance code [Ala. Code Tit.
6 27] and applicable insurance regulations.

7 (2) Life insurance or annuities may only be offered through insurance
8 companies authorized by the Commissioner to engage in the business of life
9 insurance in Alabama. All policy and related forms must have been reviewed
10 and approved by the Commissioner prior to use.

11 (3) Except as provided in paragraph (4), any registered preneed sales
12 agent or other employee of a preneed provider who engages in the
13 solicitation, negotiation, or sale of an individual life insurance policy or
14 annuity contract must be actively licensed as an insurance producer qualified
15 in the life line and as to the type of annuity offered, and must be properly
16 appointed by the insurance company whose product is being offered. A business
17 entity certificate holder may hold a business entity producer license, but at
18 least one employee of that entity must hold an individual producer license
19 and be designated by the entity as the person responsible for the entity's
20 compliance with insurance laws. Appropriate licensing and insurer appointment
21 are required in order to receive payment of commissions for the sale of life
22 insurance or annuities.

23 (4) A registered preneed sale agent or other employee of a preneed
24 provider need not hold an insurance producer license if:

25 (a) The life insurance product being offered is group life insurance;

26 (b) The agent's or employee's insurance-related activity is strictly
27 limited to obtaining information needed to enroll a preneed contract

1 beneficiary in a group insurance plan or to issue that person a certificate
2 of insurance under a group insurance plan; and

3 (c) The agent or employee is not paid a commission for the activity.

4 (5) Life insurance or annuities sold to fund a preneed contract must
5 ultimately cover, at a minimum, the retail amount of the preneed contract at
6 the time of the preneed contract's purchase.

7 (6) The preneed contract must disclose that individual or group life
8 insurance or an annuity is the preneed contract funding mechanism. The
9 preneed contract shall not state, represent, or tend to cause confusion that
10 the contract is trust-funded or that the preneed provider will be placing any
11 portion of the contract's purchase price in a trust.

12 (7) The requirements of Alabama Insurance Regulation, Chapter 482-1-
13 078, apply to the sale of individual or group life insurance or an annuity
14 incident to sale of a preneed contract. Premium payments for life insurance
15 or an annuity consideration must be made to the order of the insurance
16 company, not the preneed provider. If payment is tendered to the certificate
17 holder authorized by the insurance company to receive payments, the
18 certificate holder must furnish a receipt complying with Rule 482-1-078-.05.
19 The certificate holder shall immediately remit funds collected as premium
20 payments to the insurance company.

21 (8) A certificate holder may be designated as a beneficiary of life
22 insurance coverage or an annuity but should not be granted ownership or
23 control rights over the policy or annuity. The coverage or coverage plan
24 should permit a preneed contract beneficiary to transfer the coverage or its
25 financial equivalent to another preneed provider in the event the preneed
26 contract is cancelled or the original provider is unable or unwilling to
27 perform the preneed contract.

1 **Author:** Commissioner of Insurance
2 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
3 **History:** New _____, effective January 1, 2015

4 **482-3-004-.12 Investment in life insurance and annuities by preneed funeral**
5 **merchandise and services trusts.**

6 (1) In order for a funeral merchandise and service trust to invest in
7 life insurance and annuities as provided in Ala. Code § 27-17A-32(d) (2014),
8 the trust agreement must include language that permits such investment by the
9 trustee. A preneed contract for which a trust invests in insurance policies
10 or annuities as allowed by Ala. Code § 27-17A-32(d) (2014) is a trust-funded
11 contract for purposes of the Act and this Chapter.

12 (2) A trustee of a funeral merchandise and services trust has a limited
13 insurable interest in the life of a preneed contract purchaser or a preneed
14 contract beneficiary. The extent of the insurable interest of the trustee is
15 limited to the lesser of \$20,000 or 100% of the purchase price of the preneed
16 contract.

17 (3) If so authorized by the trust agreement, the trustee of a funeral
18 merchandise and services trust may invest any portion or all of the funds
19 deposited in trust for preneed contracts in life insurance contract or
20 annuities issued on the lives of the preneed contract purchasers or preneed
21 contract beneficiaries if the following requirements are met:

22 (a) The insurer is properly licensed by the Commissioner and by the
23 insurer's domiciliary jurisdiction.

24 (b) Prior to the investment, the insured or annuitant consents, in
25 writing, to the investment in a life insurance contract or annuity on the
26 person's life.

1 (4) Written consent must be made by a document separate from the
2 preneed contract. Preneed providers, trustees, and insurance companies may
3 not rely or act on "consent" contained within a preneed contract signed by
4 the contract purchaser or beneficiary. The form of consent must substantially
5 conform to the form developed by the Department and published on the
6 Department's website. Any other type of consent form used must be submitted
7 for review and approval by the Commissioner prior to use.

8 (5) The insurance company has the responsibility for complying with
9 consent requirements for life insurance policies or annuities for a preneed
10 trust. A preneed provider, through its preneed sales agents, may present a
11 consent form to a prospective preneed contract purchaser as part of the
12 preneed contract sales process. The provider and its employees or agents
13 shall not misrepresent the nature or terms of the consent form or the nature
14 of the transaction. In connection with obtaining execution of the consent
15 form, preneed sales agents or other employees or agents of the preneed
16 provider shall not engage in activities constituting the sale, solicitation
17 or negotiation of insurance for which licensing as an insurance producer is
18 required. Consumer inquiries about the nature or effect of the consent, if
19 not otherwise answered on the face of the consent form, must be referred to
20 the insurance company.

21 (6) Consent must be obtained from the preneed contract beneficiary to
22 the extent that a preneed contract purchaser identified in a preneed contract
23 is not also identified as the beneficiary of that contract. The contract
24 purchaser, if different, may not give consent on the beneficiary's behalf
25 except in the specific instances provided for in Ala. Code §§ 27-14-6(a)(1),
26 -(2), or -(3) (2007). The person from whom consent is obtained must be of
27 competent legal capacity to contract.

1 (7) The preneed trust or trustee electing to invest in life insurance
2 policies or annuities as allowed will be shown as the owner and beneficiary
3 of the policies or annuities.

4 (8) Neither the insurance company nor the funeral merchandise and
5 services trustee may pay a certificate holder or the holder's employees or
6 agents a commission or any other form of compensation relating, directly or
7 indirectly, to life insurance or annuities sold to a funeral merchandise and
8 services trust as a trust investment.

9 (9) An insurance company may not pay a funeral merchandise and services
10 trust or the trustee of such a trust a commission, rebate, or financial
11 inducement of any kind directly or indirectly relating to life insurance or
12 annuities sold to the trust as a trust investment.

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

24 **Author:** Commissioner of Insurance
25 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
26 **History:** New _____, effective January 1, 2015

1 **482-3-004-.13 Severability and effective date.**

2 (1) The provisions of this Chapter are severable. If any portion of this
3 Chapter or the application of a provision to any person or circumstance is held
4 invalid, the remainder of this Chapter, or the application of the provision to
5 a person or persons or circumstances other than those to which it is held
6 invalid, shall not be affected.

7 (2) This Chapter shall be effective January 1, 2015, upon its approval by
8 the Commissioner of Insurance and upon its having been on file as a public
9 document in the office of the Secretary of State for ten days.

10 **Author:** Commissioner of Insurance

11 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

12 **History:** New _____, effective January 1, 2015