APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 395

Department or Agency: Alabama Board of Funeral Services

Rule No.: Chapter 395-X-10

Rule Title: Preneed Examinations

Intended Action: New

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?	Yes
Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?	No
Is there another, less restrictive method of regulation available that could adequately protect the public?	No
Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved?	No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule?	NA
Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?	Yes
Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule?	No

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Does the proposed rule have an economic impact?	No

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 Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Charles M. Perine

Charles Perine

Date: Wednesday, January 17, 2024

REC'D & FILED
JAN 17, 2024
LEGISLATIVE SVC AGENCY

APA-2

ALABAMA BOARD OF FUNERAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

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

INTENDED ACTION: New

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rules under the Department of Insurance remained effected as administrative rules of the board until added, amended, or repealed by the board.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

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

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

CONTACT PERSON AT AGENCY:
Charles M. Perine

Charles M. Perine
Charles Perine

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

ALABAMA BOARD OF FUNERAL SERVICES
ADMINISTRATIVE CODE

CHAPTER 395-X-10
PRENEED EXAMINATIONS

TABLE OF CONTENTS

395-X-10-.01 Examinations, Generally.
395-X-10-.02 Examination Penalties

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

1. The Board has the power to examine the books and records of any certificate holder or endowment care cemetery operating in the State. Examination authority extends to an endowment care cemetery irrespective of whether the cemetery authority is also a preneed certificate holder.

2. Prior to a routine Preneed Mini Examination or Special Preneed examination, a questionnaire will be provided for completion by an authorized representative of the certificate holder or cemetery authority.

3. Prior to a Special Preneed examination, the certificate holder or cemetery authority will be issued a call letter given notice of the examination and listing the types of records that must be made available during the examination. Additional records or information may be requested during the examination or at any time before or after the examination.

4. Any forms, reports or other documentation in response to or part of the examination, examination report, or subsequent corrective action report, shall be signed by an authorized representative of the certificate holder or cemetery authority.

5. Upon conclusion of an examination, the certificate holder or cemetery authority will be provided an examination report which specifies any deficiencies or violations found by the examiner. The Board will schedule an exit conference to review the examination report and any findings either as part of the examination or at a later time.

6. If deficiencies or violations are found during the exam, the examiner may give the COA holder a specific period of time, to be set by the inspector, to correct the deficiencies or

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

Author: Charles M. Perine
Statutory Authority: Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to 34-13-277.
History: **New Rule:** Published _____; effective _____.

395-X-10-.02 Examination Penalties.
(a). Any violation under this section is a violation of minimum standards and a threat to the health, safety, and welfare of the public. A Certificate of Authority holder licensed by the board shall pay a fine to the board for each violation found during an examination. If the examiner or a representative of the board finds a violation during an exam, he or she may immediately issue a citation listing each violation and fine for each violation or submit the matter to the board in accordance with the administrative procedures act. After a citation, has been issued, the Certificate of Authority holder shall either pay the amount of the fine to the board or submit a written request for an administrative hearing before the board. A request for an administrative hearing before the board shall be received by the board not later than 30 calendar days after the day the citation is issued. Failure to either pay the fine or timely request an administrative hearing before the board shall cause additional disciplinary action to be taken against the licensee. The requirements for examination and the citation fines per violation(s) for violations under this section are as follows:

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

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

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

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

Author: Charles M. Perine

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

History: **New Rule:** Published _____; effective _____.