



Dear Funeral Service Colleagues:

I'm Charlotte A. Clark-Frieson, Alabama licensed funeral director/embalmer operating a funeral home located in Roanoke, Randolph County, Alabama. This letter is going out to Black Funeral Directors in Alabama.

It recently came to my attention that a new Preneed Funeral and Cemetery Act has been drafted to soon come before the Alabama Legislature. **(If you want a copy of it, text me your email address and I will see that you get one).**

I don't know about you, but I strongly oppose NOT ONLY THE NEW law but the PRESENT law, for a number of reasons. We have had to operate under the Preneed Funeral and Cemetery Act for 19 years. And I am a firm believer that law did not work FOR US. But, I also believe we must act together to fight this.

I have written a position paper that I feel represents many of the concerns you may have... but there again, it may NOT represent your concerns. Or you may be alright with the law. You may or may not want to sign on to my position paper. But SURELY you MUST have SOME opinion about this! Once completed, I plan to distribute this paper to SOME of the members of the State Legislature, to new media, and anyone else who has an interest in this.

But, I have talked to a few of our colleagues who feel frustrated and intimidated by this law. My position is that NOTHING should be changed until a fair representation of black funeral homes have had a chance to review it and express their position. I also feel that the law needs to be "fixed" across the board, before it continues in effect under new Administration.

If you believe as I believe, please get in touch with me. I hope that we can have a Zoom call soon, to discuss ways to respond. I am open to modifying the Position Paper that I wrote if you have strong feelings you believe should be considered. But, we have to move quickly, because the proposed new law is destined to be introduced and voted on during the 2021 Legislative session.

This will be our ONLY OPPORTUNITY to get out in front of this law, BEFORE it is passed and we're having to struggle under it for another 19 years.

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The Case Against **The Alabama Preneed Funeral and Cemetery Act of 2021**

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BAD bills are introduced in State Legislatures nearly every day. Whether in a state house or in the halls of Congress, lawmakers regularly write bills that restrict freedom, raise taxes and **enact harmful regulations**.

Often, special interests spend a lot of time and money trying to get these BAD bills passed.

Speaking not only for myself, but on behalf of a sub-section of those citizens – Black Funeral Directors, and Funeral Home Owner/Operators in Alabama – who will be MOST adversely affected by this BAD piece of legislation – the same can certainly be said of the proposed legislation titled above.

In this position paper, I would like to take as much time and space as necessary to discuss the relevant issues.

The Funeral Service Profession

Simply stated, the funeral home industry is made up of companies and organizations that provide services related to death: funerals, cremation or burial, and memorials. This includes for example funeral homes, coffins, crematoria, cemeteries, and headstones. But, to avoid minimizing what Funeral Homes do, let's be clear: this is not all we do for those who call upon us at the very worst time of our lives.

Anybody who is in the business, or close to the business knows, it is a very expensive business to own and operate. But, contrary to what outsiders OR overseers may believe, that does not mean that industry executives and workers are rolling in money. Quite to the contrary,

money may walk in through the front door, but a huge amount of it runs right out the back door. Much of the costs charged to families who use our services arise from Alabama State licensing fees, meeting the requirements for continuing education, local privilege licenses, County taxes, Alabama State use taxes, and excessive fines when and if any of us are unlucky enough to get cited for any reason – burdens that we’ve had to bear – I believe – mainly because of the title we hold – Licensed Funeral Director.

Funeral Homes and their Owners Get “PAINTED” with a Bad Brush

In the 1980’s the funeral home industry got painted with a “BAD” paint-brush – one that colored the entire industry as “shady” “opportunistic” deceivers who, by and large, took financial advantage of bereaved families because of the vulnerabilities they experienced after the death of a loved one. And these negative perceptions have managed to “stick” up to this present day. But it is my sincere belief that blacks in the funeral industry were unfairly included based on the bad behavior of a few bad actors.

At that time, the funeral industry came under harsh criticism, and was investigated by news media outlets, government agencies and consumer groups – but mainly the Federal Trade Commission (FTC). I distinctly remember back in the 80s, talk show host, Phil Donahue hosting a show wherein one of his guests – a white woman – vented her anger over the charges she had incurred for her husband’s funeral – however it seems that her main complaint was that she was charged “sales tax” on her husband’s funeral. The country was outraged.

For many reasons, **I can’t believe – don’t believe** – that there were a large number of black funeral directors – certainly not in Alabama – perpetrating these acts. My main reason is that black citizens across the board (but especially black families in Alabama), did not and still do

not have access to the kind of money or material resources that puts them in position to be likely victims of this kind of financial exploitation.

It just doesn't, because the overwhelming majority of black families in the State of Alabama live in poverty. Therefore, it follows, any funeral home business whose clients are minorities couldn't possibly perpetrate this level of crimes. Intuitively I know that it just wouldn't have been statistically possible.

It has been my experience that most black funeral home owner/operators took pride in the opportunity to serve their communities, and in the case of my funeral home... often took huge financial "hits" because many of the families simply could not afford to pay for the services. We never engaged in the aggressive collection efforts that many other creditors did, because WE KNEW, our population of clients were usually financially destitute and it was pointless to do that. It was very simple: we didn't take people to Small Claims Court to recover our money; we didn't force people to probate estates because in the majority of cases there was no estate to probate; we didn't make them sign over their property or put up collateral because in most cases they didn't have anything to sign over. We just understood and worked under the assumption that if a bill didn't get paid within that year, it more than likely wouldn't be paid, and was written off— PERIOD.

But, none-the-less, the ensuing investigation of our industry ultimately resulted in the April 30, 1984 passage of a sweeping law entitled the "Federal Trade Commission Funeral Rule."

As a result of the FTC Funeral Rule, we as an industry have had the FTC Funeral Rule as another big bat over our heads, for the last 37 years. Presently, you can research our industry at any given time, and most of the material published about us, STILL paints us with that ugly brush of being "Crooks" "Cunning Deceivers" and "Cheaters." This idea has

been repeated, and is constantly evident in many of the oppressive laws and regulations that are put in place which imply that we have to be “whipped” into compliance.

For most of us, the practices that gave rise to the FTC Funeral Rule, are long in our rear-view mirror. But, unfortunately, (I believe) we are still painted with that same “ugly brush” that portrays us as an industry as “crooks.” Complying with this rule is very costly to the industry, in terms of the printed price list and written disclosure requirements which must be printed in large enough quantities so that whoever walks into your Funeral Home can receive one.

Sadly and unfortunately, we are STILL painted with that same bad brush today. And one of my biggest regrets is that we BLACK FUNERAL DIRECTORS, get dumped into that same barrel with the rotten apples – again because of that title “Licensed Funeral Director.”

The Concept Of Preneed Is Born

The term “**Preneed**” was first used in 1945. It was used as a way of expressing this idea of buying and paying for one’s funeral before death – before it was needed.

Thus the phrase was born: “Preneed Funeral Arrangements” a type of **arrangement** where you pay for funeral products and services in advance. You enter into a **preneed** contract with a particular funeral provider, such as a funeral home or cremation service.

My first real-life encounters with Preneed, however was during the period of the late 1980s and early 1990s, when “Preneed” became sort of a “buzz” word among Funeral Directors.

Personally, for me, it was about that time that things took a turn and the cost to provide funerals began to increase. These costs had to be passed on to the consumer. As black business owners, usually located

in historically black communities, and serving 99.999% black client/families we don't have to tell you, most black funeral directors were serving one of the lowest economic demographics in the entire United States. It was not uncommon for consumers to encounter great difficulty paying for the services, so as a consequence our funeral home often ended up with a lot of uncollected revenue on the books – and everybody in business knows that's **NOT** good business. I can't speak for anybody else, but we LOST money big-time. All Funeral Directors began and continued to seek ways to help our families better prepare for what we in Black America call their "Home Going." At that time, the sale of Pre-Arranged Funerals or Preneed was not regulated, and no Funeral Directors –black OR white – had anyone holding a bat over their heads, telling them how to do it.

There were no hard and fast rules, so you were pretty much autonomous as to how you handled your Preneeds. We took our cues from industry publications, usually written by the moguls, "those who wrote the book" on these subjects, and drew from the "best practices" learned through our research. I know personally, we went to an attorney and had a Pre-Need contract drawn up, and this was what we used. We put into place some internal controls, and kept on working. Though we learned some tough lessons along the way, we NEVER HAD AN ISSUE! NEVER!

Then later on (still in the 90s), the idea of the Funeral Home entity itself serving as an insurance agent, and writing products underwritten by insurance companies came in vogue, and we joined up with Southland National Insurance Corporation in Birmingham. They had a great product, and a great lady – whose name I can't remember right now – who came to our funeral home, worked with us, trained us, and helped get us oriented to the process. Subsequently we expanded into the

province of becoming licensed life insurance agents so that we could write as individual agents.

Again, we learned some tough lessons along the way, BUT WE NEVER HAD AN ISSUE! NEVER!

The Alabama Preneed Funeral and Cemetery Act

That is... until 2002, when under the pretense of protecting consumers, **WE BLACK Funeral Directors in Alabama** were BLINDSIDED by the Alabama Preneed Funeral and Cemetery Act. This act was Alabama's first attempt at regulating the sale of Preneed Funerals. **AND I DARE SAY, A MISERABLE ONE.**

So while still under the general regulation of the Alabama Board of Funeral Service, the Preneed component of Funeral Service was now under regulation of the Alabama Department of Insurance. One (1) professional group – one (1) industry, under the control of two separate and distinct State Agencies. Two (2) sets of rules and regulations to comply with; two (2) sets of licenses and fees to pay; two (2) sets of time-tables governing ONE profession accountable to two (2) State agencies.

Under this law, any Alabama funeral home desiring to sell Preneed, now came under the oversight of the Alabama Department Of Insurance. A “Preneed Division” was set up, which over time, I came to regard as the Funeral Home Police Department, because for some of us, that is exactly how they functioned As “Funeral Police.”

Simply stated, this law, which we have operated under for 19 long – arduous years, mandated that the funeral home apply to the Alabama Insurance Commissioner for a license called the Certificate Of Authority (COA). So, every funeral home that desires to sell/write Preneed must have their (COA). Presently, the application for the (COA) now stands

at \$180.00. In conjunction with that, a designee had to be licensed as an insurance producer and this person also had to pay another special fee to get a special license called the Preneed Sales Agent (PSA) license. This license requires an additional \$35.00 fee ANNUALLY. Pursuant to getting the COA a TON of paperwork is required; criminal background checks and a host of other requirements had to be met.

But, for the black Funeral Home the biggest hurdle is the requirement that intricate Financial Statements be submitted. The format of the Financial Statement provided by the Insurance Department is called a GAAP form. My first encounter with the GAAP form was intimidating – at best.

Upon further examination and research, I concluded that the 19-page document that I received from the Department Of Insurance, is totally inappropriate for the way it was being applied by the Department Of Insurance. Funeral Homes were being handled and evaluated like insurance companies – which we are NOT – and thus, required to meet the same rigorous requirements as publicly traded – fortune 500 companies, who have to disclose their financial information in order to be publicly traded – when many of us are simply “mom & pop” businesses serving our small communities... many located in small rural areas; and like youngsters – very harshly disciplined for the least infraction.

It goes without saying, I knew in my heart of hearts for years, that the extent of most African American funeral home record-keeping, was probably gathering up all your bank statements at the end of the year, and taking them to somebody who prepared your taxes for your business. Few of us operate on such a sophisticated financial level that we could hire trained accountants to prepare intricate financial statements just to satisfy the Alabama Department of Insurance. So,

the most obvious and outstanding problem with the current law is that for most black funeral home owners, it has merely served as another **“Jim Crow Law”** or **“Black Code”** that strenuously discouraged black business owners from even applying for a COA, and thus excluded many black business owners from benefitting from the ability to produce income via the sale of Preneed.

Such a degree of unnecessary invasion of financial privacy has been viewed by most African American Directors as extreme overreach, and a real impediment to their desire to enter the Preneed markets in Alabama. In many instances, we felt that was by design. That was the plan... To impede, discourage, and exclude our segment of the industry.

In my own case, we paid out more money trying to get and stay qualified to write Preneed, than we made the whole time. For the number of Preneed Contracts we wrote, we truly believe no more than a 100.00 permit should have sufficed.

The regulations and requirements set forth by the Department Of Insurance, have placed us in DIRECT COMPETITION WITH, WHILE BEING SUBORDINATE TO Insurance Companies, but, never took into account the Nature of Funeral Service as a profession.

I’m sure other African-American Directors have objections that are equally as critical AND important as mine, that can help strengthen this argument against this law and amplify this discussion. However, I would like to enumerate my personal objections to this CURRENT law is it now functions.

(1) It causes Funeral Homes to come under the regulation of two (2) separate and distinct state agencies, which without a doubt means more money to practice a profession that most of us enjoy and love. It now becomes an albatross around the neck.

(2) The funeral industry in Alabama has become the MOST OVER-REGULATED and OVER -POLICED industry in the state. We are treated like hardened criminals, and I certainly don't think any of us have DESERVED this kind of treatment.

(3) Financial requirements are too difficult and this systematically excludes many black businesses from participation.

(4) Reeks of "Jim Crowism" and functions as a "Black Code" because the impact to the industry disproportionately forces black businesses out of the game

(5) Placed in direct competition with/ while subordinate to Insurance businesses – we are not Insurance Companies.

(6) Makes it extremely hard to do what funeral homes do – SELL FUNERALS.

How Has the Law Operated In Alabama?

In this section I believe we need to elaborate on specific "HORROR" stories, or use direct quotes here from those who are willing to go on record, as to incidents they encountered.

What The New Law Is About?

Briefly stated, the proposed law will shift the oversight of Preneed Sales, from the Department Of Insurance to The Alabama Board Of Funeral Service.

In addition to regulating Funeral Homes, Cemeteries will be added to the category of companies that will now come under oversight by the Alabama Board Of Funeral Service.

Some Alternative Ideas From A Black Funeral Director's Perspective

- Any new Preneed law conceived in Alabama must be constructed on the premise that offering Preneed is a service every community expects their Funeral Home to be able to provide.
- Any new law that addresses Preneed, should provide for any licensed funeral establishment who desires to sell Preneed, to be able to do so.
- It is not appropriate to attempt to address any licensee's moral fitness to market Preneed. If a licensee has met the requirements of funeral establishment, there should be nothing barring that individual from marketing Preneed.
- There should be both simplicity and uniformity built into any requirements concerning the sale of Preneed. (i.e. One (1) uniform preneed contract to be used by all sellers).
- Any new law should include State-sponsored compliance training program. To ensure fairness, anyone subjected to operate under a new statute should be given the opportunity to train, and receive a proper orientation to whatever new requirements are put in place.
- So as to insure equity, any new law should set licenses, fees, etc., on the basis of the size of the facility, or annual case numbers, or some other quantifiable basis. I have never believed it to be fair to require the same money out of every establishment, because all over the State of Alabama, businesses performance, revenue, and demographics dictate a company's financial capacity.
- In its present form, Alabama's law governing the sale of Preneed, presumes that all Directors would automatically act "dirty" in our

dealings and thus sets us up for entrapment. Thus, we are presumed guilty of some kind of crime before the word “Go.”

- The law is both accusatory and punitive in nature versus being fair to those who must exist and operate under its rigid requirements. It is invasive in that it opens the door for a State agency to violate our financial privacy, which is a protected Constitutional Right.

Proposed Action

In Summary: The Alabama Preneed Funeral and Cemetery Act has existed under the pretense of “consumer protection”, but it has **NOT** served the State Of Alabama as a good or effective law, for many reasons. It perpetrates the continuation of the bad paint brush

It has created a system of exclusion that for 19 years, adversely impacted Black Funeral Home Businesses all over the State. It has not functioned as intended. We do not believe that the law served so much to protect consumers, as it served to promote and facilitate excessive policing of the Funeral Home Industry. I do not believe that Policing the industry with a missionary zeal equates to Consumer Protection.

If one visits the Federal Trade Commission’s site at the following link, <https://www.ftc.gov/about-ftc/bureaus-offices>

Under the Sub-Section entitled “**Bureaus**” you might find these words: “By enforcing the antitrust laws, the Bureau promotes competition and protects consumers' freedom to choose goods and services in an open marketplace at a price and quality that fit their needs.”

The relevance of this is as follows: Perhaps without intending to, by establishing Alabama Preneed Funeral and Cemetery Act as a Law, (I personally believe that) the State of Alabama engaged in a State-supported mechanism through which it systematically excluded African

American Funeral Homes, and discouraged them from participating in the sale of Preneed Funerals. At the same time, the State of Alabama also effectively denied and infringed on consumers' "freedom to choose goods and services in an open marketplace at a price and quality that fit their needs." As an example, as a funeral home owner, operating in Alabama, it is my desire for my own funeral home to provide final services when I pass away. As a citizen and a consumer, I should enjoy that LEGAL RIGHT to choose the funeral home I WANT to provide services for me. Yet under Alabama's current law, if my company doesn't hold a COA, I couldn't legally choose my own funeral home and pay my own funeral home before need, and set up a Preneed for myself, because my business is not qualified to sell Preneed. This then, leads to the question: "What would one do in this situation? Should I then set out to my competitor or a colleague in a neighboring city, diverting this revenue-generating opportunity and the opportunity to secure this future business, to another establishment? Not only "No" – But "Hell No." What sane business owner/operator would do such a thing? Not I. No matter what the law says. That is why most of us are in business... to seize every opportunity generate revenue for our businesses. What provisions are in place for situations like this? How does Alabama's current Preneed law provide for "the consumer's right to choose?"

Thus, we are calling on every Black Funeral Home in the State Of Alabama, to reach out to your representatives in the Alabama State House and DEMAND that this bill NOT be brought to the floor for a vote, until such time as Black Funeral Home owners and directors have had an equal opportunity to weigh in on the development of a completely new Preneed Law, that will be equitable, and REALLY WORK for all groups concerned – even if it means cross-sections from all communities coming together to craft a new law that is specific to the demographics in THIS state. Not something that was a carbon copy of

some law out in Arizona that is not applicable to the State of Alabama. It should **BY NO MEANS** be voted on during the 2021 Legislative Session.

I also believe at this point in time, we desperately need an attorney **RIGHT NOW** to work with us. I personally have felt the need for legal counsel ever since my company was subjected to a retaliatory audit – which I believe was a consequence of my writing a letter to the Alabama Insurance Commission to express my dissent with the rigorous qualifications we were forced to meet in order to engage in this aspect of funeral service.

In the process of conducting research and speaking with other African American Colleagues about the issues addressed herein, I have heard other “horror stories” about the **wrath** of the Alabama Department Of Insurance which can come down on you with a vengeance if you merely object to anything they do. I strongly believe that this retaliatory conduct is not only egregious from a legal standpoint, but it violates our basic Civil and Human Rights as individuals to Freedom of Speech, and seeks to limit our ability to express dissent against these discriminatory practices. These audits were an act of retaliation, and the resulting fees were punishment for speaking up to various individuals in the Department Of Insurance.

The question: Will it be the same under the new Alabama Preneed Funeral and Cemetery Act of 2021?

It is essential that we be immediately supplied with the following information:

1. **The time-table for introduction of this pending legislation**
2. **The proposed date this legislation will be introduced**
3. **The Sponsor of this legislation**

4. The Author of this legislation and the author's qualifications to write laws

5. The Interests that are driving this legislation

While we are not opposed to oversight, we certainly are opposed to a law that gives a State Agency the free reign to abuse, and discriminate against us. We are opposed to a law that gives a State Agency a license to retaliate against anybody who raises questions, or objects to unfair treatment. That is not about protecting consumers. That is not a law. That is abuse.

We need a law that will not only provide the necessary oversight of our industry, we also need a law that will WORK FOR US – AND ALLOW US TO WORK. We need a law is NOT designed to work against us.

We need a law that will allow us to practice this trade with the professionalism and dignity we all inherently desire to bring to the table. We also need a law that will – facilitate our prosperity – and not gouge our limited resources.

We realize that to craft such a law will take additional time, study and resources. But, for Black undertakers in Alabama, that would be preferred over merely taking a carbon copy of somebody else's law, and trying to make it fit an economically oppressed demographic such as Black citizens in Alabama. Square Peg – Round Hole.

I do not want to die and leave my business to my children who will have to struggle another 19 years under such oppressive laws. I know they won't survive, because they will not be willing to go through the labyrinth or regulations we older ones have had to go through to enjoy the privilege of practicing this profession.

I'm tired of being painted with the "ugly" paint brush, because I have never misplaced or mismanaged anybody's money. MOST of the families I serve are deeply appreciative of the care we provide to their

loved ones and to them. They express their appreciation in many ways. When or if they over-pay us for funeral expenses, we PROMPTLY refund their overpayment – and they are appreciative of that as well. Why are all of us being made to pay for the errors and omissions of a few bad apples?

Tell me, who do you know, that appreciates being made to pay for their own ass-whipping?