WEST VIRGINIA CODE: §47-14-8

§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the preneed funeral contract available may not enforce a preneed funeral contract made in violation of this article, but a contract buyer or his heirs or legal representative may recover all amounts paid under his contract and all accrued income on such amount where the contract seller, provider or person making the preneed funeral contract available has violated the provisions of this article as to such contract. The right of such recovery is in addition to the remedy provided for in section twelve of this article.

(b) A contract seller, provider or person making the preneed funeral contract available may appoint a board of at least three individual trustees under a trust instrument, if the trustee is other than a chartered state or national bank or trust company under the supervision of the Division of Banking of this state, to serve as trustees of its trust funds. Each individual trustee shall be a resident of this state and shall hold office subject to the direction of the seller. Not more than one member of the board of trustees of a trust fund may have a proprietary interest in the seller appointing trustees or in any certificate of authority holder who is placing funds in such trust.

Individual trustees of a trust fund established under the provisions of this article shall file a fidelity bond with a corporate surety thereon which is licensed to do business in this state with the division in an amount equal to the funds in trust, guaranteeing payment of damages occasioned by breach of the trustees' fiduciary duties. The trustees of one or more trust funds need file only one such bond. The aggregate liability of the surety shall in no case exceed the face amount of the bond. The division or any aggrieved person claiming against any bond required by this section may maintain an action against the trustee and the surety. Individual trustees shall take no action respecting trust funds unless there is on file with the division a bond as required by this section. If the trustees are individuals, the division may suspend the certificate of authority of any contract seller, provider or person making the preneed funeral contract available having trust funds with respect to which there is no bond on file with the division as required by this section.

(c) All trustees subject to the provisions of this article shall comply with the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, trustees have the responsibilities which customarily attach to such offices and to the type of estates entrusted to their care and shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering

www.Legislature

the probable income as well as the probable safety of their capital.

(d) No preneed funeral contract may restrict any contract buyer who may make his or her contract irrevocable in accordance with the laws and regulations of this state. Irrevocable preneed contracts may be transferred pursuant to the provisions of this section.

(e) All preneed funeral contracts must be in writing and no contract form may be used without prior approval of the division.

(f) Each contract buyer shall pay a contract recording fee of $5 to the contract seller. Beginning on July 1, one 1995, the contract buyer shall pay a fee of $10 to the contract seller. Beginning on January 1, 1996, the contract buyer shall pay a fee of$15 to the contract seller. Beginning on January 1, 1997, the contract buyer shall pay a fee of$20 to the contract seller. The contract seller is to forward such sum and a copy of the contract to the division within ten days after its execution. The division shall record the contract. Within ten days after receiving the fee, the division will notify the contract buyer, by mail, of the recording. Forty percent of the contract recording fees fee shall be placed by the division in an account under the division's control entitled "Preneed Guarantee Fund", and the income thereon shall accrue to the fund. The division may use such income, if necessary in its discretion, to enforce this article. For fiscal years beginning after June 30, 1996, no expenditures or disbursements may be made from the "Preneed Burial Contract Regulation Fund" and the "Preneed Guarantee Fund" created in this article except by appropriation by the Legislature. The remaining sixty percent of the contract recording fee shall be placed by the division in the "Preneed Burial Contract Regulation Fund" as provided in section three of this article.

In the event any contract buyer of any preneed funeral contract is unable to receive the benefits of the contract, or to receive the funds due by reason of his cancellation thereof, such buyer may apply therefor to the division on a form supplied by the division. Upon the finding of the division that said benefits or return of payment is not available to the buyer, the division will cause to be paid to the said buyer from the "Preneed Guarantee Fund" the amount actually paid by the buyer under the contract to the extent funds are available in the "Preneed Guarantee Fund". In the event multiple claims are made and there are insufficient funds in the "Preneed Guarantee Fund" to satisfy all claims in full, payments from the "Preneed Guarantee Fund" shall be made on a pro rata basis. If the seller's liability for default is subsequently proven, any judgment resulting therefrom shall, to the extent that it is for amounts paid from the "Preneed Guarantee Fund", be ordered payable to the "Preneed Guarantee Fund".

(g) Notwithstanding any other provision of this article to the contrary, delivery of funeral or burial goods prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series of contracts.

(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral contract available to

other persons within or without this state. The funds on deposit for the contract and any future payments, if any, by the contract buyer shall then be transferred and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, from further liability under such contract.

Nothing in this article or in any preneed funeral contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifically provided herein and except that if the assignee is a resident of this state or the contract is to be fulfilled by the assignee in this state, the assignee must hold a certificate of authority under this article. If the contract is to be fulfilled in another state, the assignee must in all respects be in compliance with the preneed funeral law of that state, if any.

(i) Notwithstanding any other law of this state, a contract seller, provider or person making the preneed funeral contract available may, if requested by the contract buyer where the contract is to be paid in installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of the total cost of the insurance.

(j) In the event any certificate of authority holder or anyone in violation of this article who has outstanding preneed funeral contracts and is not the current holder of a certificate of authority sells its business, through the sale of assets or stock, which is involved in the fulfillment of obligations under preneed funeral contracts, the buyer of such business is a "successor in interest" and is covered not only by this article but shall assume the obligations of seller under seller's outstanding preneed funeral contracts regardless of whether seller made known to buyer the existence of such contract or contracts.

WV Legislature