WEST VIRGINIA CODE CHAPTER 47 ARTICLE 14

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§47-14-1. Declaration of policy; legislative intent.

It is contrary to public policy for any person to receive, hold, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for the same are made either outright or on an installment basis, prior to the death of the person or persons so purchasing them, or for whom they are purchased, unless that person holds, controls or manages those funds subject pursuant to the limitations prescribed by this article and the legislative rules promulgated pursuant thereto.

It is the legislative intent that the provisions of this article shall be construed as a limitation upon the manner in which a person is permitted to accept funds in prepayment of funeral services to be performed in the future, or funeral or burial goods to be used in connection with the funeral or final disposition of human remains, so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent that no person may offer, sell or negotiate for the sale of a preneed funeral contract through anyone who is not licensed pursuant to the provisions of this article.

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§47-14-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Burial goods" means all merchandise supplied in regard to burial, or entombment in a mausoleum or inurnment in a columbarium, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interests therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(2) "Contract beneficiary" means any person specified or implied in a preneed funeral contract, upon whose death funeral services, funeral goods or burial goods are to be performed, provided or delivered.

(3) "Contract buyer" means any person, whether or not a contract beneficiary, who purchases goods or services pursuant to a preneed funeral contract but does not include any person other than a natural person.

(4) "Contract seller" or "seller" means a person, his agent or his employee who sells, makes available or provides preneed funeral contracts.

(5) "Division" means the consumer protection division of the office of the Attorney General.

(6) "Funds" means moneys or other consideration, other than premiums for insurance policies or annuities paid to a life insurance company, received pursuant to the sale of a preneed funeral contract, including interest accrued or earned thereon.

(7) "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by the cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a licensed funeral establishment or director including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in this state who is engaged in the selling of, making available of or providing of preneed funeral contracts, as defined herein, or who is the recipient of funds paid for such purpose.

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(10) "Person who makes a preneed funeral contract available" means a person who, while not directly selling the contents of a preneed funeral contract to the public through his efforts, makes such contracts available to the public, but does not include manufacturers of funeral goods or burial goods.

(11) "Personal residence" means any residential building in which one temporarily or permanently maintains his abode including, but not limited to, hotels, motels, apartments, nursing homes, convalescent homes, homes for the aged and public and private institutions.

(12) "Preneed funeral contract" means any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, including a contract that is financed by the purchase of an insurance policy or annuity, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary who is either named or implied therein.

(13) "Provider" means a person who, though not necessarily a party to a preneed funeral contract, makes the services or goods referred to in such a contract available to the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, savings and loan association or credit union, which receives money pursuant to any agreement or contract made pursuant to the provisions of this article. The term "trustee" does not include an insurance company licensed pursuant to chapter thirty-three of this code.

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§47-14-3. Certificate of authority required; fees to go to division; special account established; duties of certificate holder.

(a) No person may receive, hold, control or manage any funds or other thing of value tendered as payment on any preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this state or insured by an agency of the United States federal government or life insurance companies licensed pursuant to the provisions of chapter thirty-three of this code is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division.

(c) Any person desiring to obtain a certificate of authority shall file with the division, upon forms provided by the division, a completed application, together with a $200 application fee for the original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" to be used for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the division may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to negotiate preneed funeral contracts and, in the case of a funeral service provider, to provide the funeral services, funeral goods or burial goods as specified therein; and

(4) The types of preneed funeral contracts proposed to be written or otherwise used and copies of any writings used pursuant thereto; and if a person is a party to or bound by any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be $200 per each entity, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

(e) Each certificate of authority holder shall file with the division a biennial report which shall contain the following:

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(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered into by the parties, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the contract beneficiary, the amount paid and interest earned on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The date on which any insurance policy or annuity was purchased to fund a preneed funeral contract, the amount paid for each such insurance policy or annuity and the present value of each such insurance policy or annuity.

(3) The name of the contract seller and the name of the provider of the services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(4) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust requirements of this article, and the name and address of the present depository or holder of such funds and a statement of all the amounts thereof itemized as to each such contract.

(5) Any changes or amendments in any contracts or obligations of the seller and provider which have occurred since the date of the last report.

(6) Such other information as may be considered necessary by the division in order to meet its responsibilities under this article.

Any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public or who otherwise holds or performs such contracts with or without a certificate of authority is required to file a biennial report with the division as prescribed in this subsection. Beginning with the year one thousand nine hundred ninety-five, the reporting period for which a biennial report is to be made pursuant to this section shall be a calendar year ending on December 31, every other year. All such reports shall be filed with the division no later than the thirty-first day of March of the year following the reporting period.

(f) Beginning with the calendar year one thousand nine hundred ninety-five, the certificate of authority shall expire on June 30 following its issuance: Provided, That a temporary certificate of authority may be issued by the division for a period not to exceed six months for purposes of implementing the change in the certificate of authority reporting period for the year one thousand nine hundred ninety-five. The fee for such temporary certificate shall be $100.

(g) Every application, request for renewal and statement filed with the division shall be sworn to by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn to by each member thereof. If the certificate holder is a corporation, it shall

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be sworn to by the president and secretary thereof.

(h) Upon the satisfaction of the division, based upon the application statements and any other information that the applicant meets the requirements of this article and of the rules promulgated by the division and, if upon investigation by the division of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the division shall issue the certificate of authority or renewal thereof.

(i) (1) The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, the name of the contract beneficiary of each contract, the name of the trustee holding trust funds received under each contract and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the division for examination. The division may not more frequently than once in any calendar year, unless pursuant to an order of court for good cause shown, during ordinary business hours, cause to be examined the books, records and accounts of the certificate holder with respect to funds received by said certificate holder and for that purpose may require the attendance of and examine, under oath, all persons whose testimony the division may require.

(3) The certificate holder shall pay for the cost of any examination which is not the first one in that calendar year, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept and all other expenses necessarily incurred in the examination. The division shall assess and collect a fee for each such examination, based on the certificate holder's total outstanding preneed funeral service contracts and the cost of such examination, but the cost to the person being audited shall not be more than a total cost of $500 for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section.

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§47-14-4. Agents and employees; licenses required; fee to go to division.

No agent or employee of a contract seller may sell preneed funeral contracts in this state without having first obtained a license from the division. The fee for such license and the annual renewal thereof is $25. These fees shall be payable to the "Preneed Burial Contract Regulation Fund" established by section three of this article. The division shall not issue such license without requiring an applicant for the license, or if the applicant is a corporation, its individual agents, to provide proof to warrant its issuance by presenting with the application affidavits from his employer stating that, to the employer's best information, knowledge and belief, the applicant merits a license. The acts of the agent shall be considered acts of the employer. The division may require the applicant to pass a written examination to ascertain if the applicant has sufficient knowledge of the industry and the provisions of this article to properly engage in the business governed by the provisions of this article.

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§47-14-5. Disposition of proceeds; trusts; procedure for administration; division to promulgate rules.

(a) All sums paid or collected on such preneed funeral contracts entered into after June 7, 1983, shall be handled in the following manner:

(1) The contract seller or other person collecting the funds may retain for his own use and benefit and for the purpose of covering selling expenses, servicing costs and general overhead, an amount not to exceed ten percent of the total original amount agreed to be paid by the contract buyer as reflected in the original preneed funeral contract. Upon retaining such amount, no further deduction from any sums collected pursuant to the contract for such purposes shall be made by any such seller or person or their assignees or transferees. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;

(2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision (1) of this subsection, shall be deposited under the provisions of subdivision (3) of this subsection;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person as the result of a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state: (i) In the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state; or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state. In the event a preneed funeral contract is funded by the purchase of an insurance policy or an annuity, the premiums paid on such insurance policy or annuity shall be deposited with an insurer licensed pursuant to the provisions of chapter thirty-three of this code.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder be placed in a common or commingled trust fund in this state under a single trust instrument.

(c) All deposits, other than for insurance policies or annuities, shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract, to whom the contract buyer makes payment. Each trustee shall maintain records showing the trust's investment and, as to each contract showing the amount paid, the amount of interest earned and the current balance with respect to any particular buyer's contract.

(d) All funds required to be deposited and covered by this article shall remain in this state.

(e) All accounts of money deposited in any bank, savings institution, building and loan

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association or credit union in accordance with the provisions of this article are subject to periodic examination by the Division of Banking of this state.

(f) The division shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of administering the provisions of this article.

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§47-14-6. Withdrawal of funds.

(a) Disbursements of funds discharging any preneed funeral contract shall be made by the trustee to the person named in the contract upon receipt of a certified photostatic copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral contract has been fully performed. In the event that, after the death of the contract beneficiary, the contract services or goods are not desired by the heirs or by the personal representative of the contract beneficiary, the party obligated to provide the funeral services, funeral goods or burial goods under the contract shall have authority to provide such services or goods despite the desires to the contrary expressed by such heirs or personal representative. If the service and goods are not provided upon the death of the contract beneficiary because of actions of the seller, provider or person making the preneed funeral contract available, then all of the funds held on deposit shall in ten days be refunded to the contract buyer or his legal representative who also has available any other remedy set forth in this article.

(b) Any contract buyer or legally authorized person, acting in his behalf, may cancel a preneed funeral contract prior to the death of the contract beneficiary by notifying in writing the contract seller or present obligor of the provisions thereof, if a different person, of such desire to cancel. The seller or obligor shall, in ten days after receipt of such notice, notify the trustee of such cancellation and the trustee shall within thirty days after receipt of written notification pay to the contract buyer, or his legal representative all funds placed in the trust account and paid on the contract.

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.

(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

(e) Payment by any depository or any trustee made in good faith pursuant to the terms of this section shall forever relieve such depository or trustee, as such, for any further liability for such funds under the contract and in law.

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§47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund as permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit, except as otherwise provided herein, shall accrue to the credit of the individual account of such contract until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.

(b) Upon the death of such contract beneficiary, the total amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost: Provided, That to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the heirs or personal representative of the contract beneficiary;

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the legislative rules promulgated by the division.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract, disbursing the trust proceeds as provided in this article and paying costs incidental to the trust, including, but not limited to, reasonable trust fees and tax assessments.

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§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 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

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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

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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.

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§47-14-9. Forms and rules.

The administration and enforcement of the provisions of this article are vested in the division. The division shall prepare and furnish all forms necessary under this article, including forms for applications for certificates of authority, for renewals thereof, for annual statements, for other required reports and for preneed funeral contracts. The division shall promulgate, in accordance with the provisions of chapter twenty-nine-a of this code, legislative rules as may be necessary to effectuate the purpose of this article.

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§47-14-10. Solicitation.

(a) Any contract seller or agent or employee or person acting in behalf of any such person may not:

(1) Directly or indirectly call upon individuals or persons in hospitals, rest homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(2) Directly or indirectly employ any agent, assistant, employee, independent contracting person or any other person to call upon individuals or persons in hospitals, rest homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial or funeral goods for such person;

(4) Solicit or accept or pay any consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons or the services of a specific crematory, mausoleum or cemetery except where such arrangement is the subject of a preneed funeral contract;

(5) Solicit by telephone call or by visit to a personal residence, unless such solicitation has been previously requested by the person solicited or by a family member residing at such residence.

(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(c) Nothing herein shall be construed to prohibit general advertising.

(d) Anyone making a personal or written solicitation for a preneed funeral contract shall, at the very first instance, divulge the real reason for the contract or solicitation.

(e) The division may promulgate legislative rules regulating the solicitation of preneed contracts by certificate holders or registrants to protect the public from solicitation practices which utilize undue influence or which take undue advantage of a person's ignorance or emotional vulnerability.

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§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.

(a) No person shall:

(1) Violate any provisions of this article;

(2) Attempt to procure or procure a certificate of authority or license under this article by bribery or fraudulent misrepresentation;

(3) Have had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

(4) Have been convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

(5) Make or file a report required by this article which the certificate holder knows to be false or knowingly fail to make or file a report required by this article;

(6) Advertise goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

(7) Engage in fraud, deceit or misrepresentation in the conduct of business governed by the provisions of this article;

(8) Fail to comply with a lawful order of the division;

(9) Knowingly make any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;

(10) Fail to maintain the funds received under the contracts as required by this article;

(11) Fail to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Fail to renew or qualify for renewal of its certificate of authority or license;

(13) Fail to produce records in connection with the certificate holder's business or otherwise fail to comply with the provisions of this article or any rule promulgated by the division pursuant to this article; or

(14) Solicit by the certificate holder, its agents, employees or representatives through the use of fraud, undue influence, misrepresentation or overreaching or other forms of vexatious conduct as defined by law, this article or the legislative rules promulgated by the division.

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(b) Upon the violation of any of the provisions of this article, determined in an administrative hearing after notice and an opportunity to be heard, the division may institute revocation proceedings regarding a license to operate a funeral establishment or a certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate of authority or license, or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate should not be revoked or the person should not be enjoined from engaging in business governed by the provisions of this article.

(1) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining the defendant from transacting further business until further order of the court.

(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the division, the court shall dismiss such complaint. If the court finds that the charges of the division are supported by the evidence, it may enter an order directing the revocation of a license to operate a funeral home or of a certificate of authority or license to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority or license, or permanently enjoining the person from engaging in business governed by the provisions of this article until its requirements are met. The court shall have the authority to order the liquidation of the business upon a finding that the person engaged therein is in violation of any provision of this article.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors for the filing of claims and otherwise direct all other matters necessary and essential to govern an estate in receivership.

(c) When the division finds that any person has violated the provisions of subsection (a) of this section after an administrative hearing or finds that any funeral services or funeral or burial goods are offered for sale when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed $1,000 for each county where there are separate violations;

(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and

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subject to such conditions as the division may specify.

(d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article. Such priority constitutes a statutory lien at the time the contract was executed to the extent payments on the contract were made and interest has accrued.

(e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.

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§47-14-12. Civil action; attorney's fees.

(a) The failure of a certificate holder, a licensee or of any other person engaged in the sale of preneed funeral contracts without a certificate of authority or license required pursuant to the provisions of this article to comply with the provisions of this article gives rise to a civil cause of action in favor of the division, any aggrieved consumer, contract guarantor or contract purchaser. Upon entry of a judgment for damages in favor of the plaintiff, the trial court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(b) The prevailing party, after judgment in trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(c) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings and appeals to the trial judge who presided over the civil case.

(d) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(e) Any award of attorney's fees or costs shall become part of the judgment and subject to execution as the law allows.

(f) The division shall deposit any penalties or attorney's fees recovered by the division in the "Preneed Burial Contract Regulation Fund" for the purpose of administering and enforcing the provisions of this article.

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§47-14-13. Penalty.

(a) Any person who willfully and knowingly conceals or embezzles any funds paid as the result of a preneed funeral contract is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of not less than three years and fined not more than 10,000.

(b) Except as provided by subsection (a) of this section, any person who violates any provision of this article or the legislative rules promulgated hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $500 nor more than $5,000 for each occurrence, or confined in jail for a term not to exceed one year, or both fined and confined.

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§47-14-14. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or otherwise invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

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