

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

*Committee Substitute For*  
HOUSE BILL No. 841

(By Mr. *Schupbach* and Mr. *Folger*)



PASSED March 12, 1965

In Effect ninety days from Passage



FILED IN THE OFFICE OF  
JOE F. BURDETT  
SECRETARY OF STATE  
THIS DATE 3-19-65

148 #

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 841**  
(Originating in the Committee on the Judiciary.)

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[Passed March 12, 1965; in effect ninety days from passage.]

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AN ACT to repeal article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article fourteen of said chapter, relating to the regulation of payments made under pre-need burial contracts.

*Be it enacted by the Legislature of West Virginia:*

That article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article fourteen of said chapter be enacted in lieu thereof, to read as follows:

**Article 14. Pre-Need Burial Contracts.**

**Section 1. Legislative Finding.**—It is hereby deter-

2 mined and declared as a matter of legislative finding  
3 (a) that the public has a vital interest in proper dis-  
4 position of deceased persons; (b) that pre-need contracts  
5 for furnishing of burial merchandise and services re-  
6 lating to the embalming, cremation or other services  
7 associated with the actual interment of dead human  
8 bodies, wherein delivery or performance is not immedi-  
9 ately required, is a proper subject for the exercise of  
10 the police powers of this state; and (c) that the proper  
11 exercise of such police powers is regulatory rather than  
12 prohibitory.

**Sec. 2. Pre-Need Contracts; Money Paid Thereunder**  
2 **to Be Deposited within Ten Days.**—Any person, associa-  
3 tion, partnership, firm or corporation who shall receive  
4 any money under any agreement, contract or plan en-  
5 tered into after the effective date of this article, for the  
6 final disposition of a deceased person, or for the embalm-  
7 ing, cremation or other services relating to the actual in-  
8 terment of a dead human body, or for funeral or burial  
9 services, or for the furnishing of funeral or burial mer-  
10 chandise, including vaults and other outside burial re-

11 ceptacles, where<sup>in</sup> the said embalming, cremation or other  
12 services or the delivery of funeral or burial merchandise  
13 or the furnishing of professional services by a funeral  
14 director or embalmer or both is not immediately required  
15 but shall be required at an undetermined future time, is  
16 hereby declared to be trustee thereof, and shall deposit  
17 any and all such money paid thereunder in a bank, trust  
18 company, or savings and loan association, insured by an  
19 agency of the United States federal government, and  
20 which is authorized to do business in this state, and sub-  
21 ject to the terms of the said agreement, contract or plan  
22 for the benefit of the purchaser of the same, or of a  
23 third party beneficiary of the purchaser's designation,  
24 which are not inconsistent with the provisions of this  
25 article. Said agreement, contract or plan shall be re-  
26 corded within ten days in the office of the clerk of the  
27 county court in the county of residence of the purchaser.

28 All such money shall be so deposited within ten days  
29 of payment, and shall be held by such bank, trust com-  
30 pany or savings and loan<sup>s</sup> association in a separate  
31 interest-bearing account in the name of the trustee, as

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32 trustee, and shall be held in trust subject to the provisions  
33 of this article. The trustee at the time of making de-  
34 posit shall furnish to the depositary the name of each  
35 payor, and the amount of payment on each such account  
36 for which deposit is being so made. Said trustee shall file  
37 with the clerk of the county court in which said county  
38 the trustee is doing business a blanket corporate surety  
39 bond on or before the tenth day of January of each year,  
40 in an amount sufficient to cover all contracts then of  
41 record.

**Sec. 3. Funds Shall Remain on Deposit unless With-**  
2 **drawn by Purchaser.**—All payments made under said  
3 agreement, contract or plan and any earnings or interest  
4 thereon shall remain with such bank, trust company, or  
5 savings and loan association until the death of the person  
6 for whose funeral or burial the funds were paid:  
7 *Provided*, That said funds shall be released to the pur-  
8 chaser of the merchandise or services under said agree-  
9 ment, contract or plan, who shall be entitled to receive  
10 the same, or his or her legal representative, at any time,  
11 upon written demand upon said bank, trust company,

12 or savings and loan association and upon ten days' notice,  
13 in writing, to the other party to the agreement: *Pro-*  
14 *vided further*, That if the agreement, contract or plan  
15 provided for forfeiture and retention of any or all pay-  
16 ments by reason of default in payment upon and accord-  
17 ing to the terms thereof, then upon any such default  
18 and forfeiture the trustee may withdraw such deposits:  
19 *And provided further*, That nothing herein contained pro-  
20 hibits the change of depositary by the trustee and the  
21 transfer of trust funds from one depositary to another.

**Sec. 4. Payment of Funds by Bank, Trust Company, or**  
2 **Savings and Loan Association.**—If any balance remains  
3 in said account upon the death of the purchaser or third  
4 party beneficiary, as the case may be, the same shall  
5 not be paid by such bank, trust company or savings and  
6 loan association, to the trustee until the expiration of at  
7 least ten days after the death of the purchaser or other  
8 beneficiary for whom such funds were deposited. Such  
9 funds shall not be paid by said bank, trust company or  
10 savings and loan association until a certified copy of the  
11 death certificate of such person shall have been furnished

12 to said bank, trust company or savings and loan associ-  
13 ation. The payment of such funds and accumulated inter-  
14 est shall relieve the bank, trust company or savings and  
15 loan association of any further liability for such funds  
16 or interest. Any balance remaining in said fund after  
17 payment for the merchandise and services as set forth  
18 in said agreement, contract, or plan shall inure to the  
19 benefit of the estate of the purchaser or other beneficiary,  
20 as the case may be, under said agreement, contract, or  
21 plan, and shall be paid over to the estate by the trustee,  
22 aforesaid.

**Sec. 5. Expenses in Custody and Administration of**  
2 **Funds.** — This shall not be construed to prohibit the  
3 trustee and trustee's depository from being reimbursed  
4 and receiving from such funds their reasonable expenses  
5 in the custody and administration of such funds and the  
6 usual and reasonable compensation for their services as  
7 such trustee and trustee's depository: *Provided*, That the  
8 combined expenses and compensation shall not exceed  
9 the total of five per cent of the principal fund and five  
10 per cent of the earnings of the fund so deposited under  
11 each such agreement, contract or plan.

**Sec. 6. Forfeiture of Payments.**—It is unlawful for  
2 any such agreement, contract or plan to provide for for-  
3 feiture and retention of payments upon any such agree-  
4 ment, contract or plan as and for liquidated damages for  
5 default therein in excess of twenty-five per cent of the  
6 payments made or thirty-five dollars whichever sum is  
7 the larger.

**Sec. 7. Provisions of This Article Cannot Be Waived**  
2 **by Contract.**—Any provision of any such agreement or  
3 contract whereby a person who pays money under or in  
4 connection therewith waives any provision of this article  
5 shall be void.

**Sec. 8. Examination of Deposits.**—All accounts of  
2 money deposited in any bank, trust company or savings  
3 and loan association in accordance with the provision  
4 of this article shall be subject to periodic examination  
5 under the supervision of the department of banking of  
6 this state.

**Sec. 9. Article Not Applicable to Sale of Lots, Graves,**  
2 **Mausoleums, or Monuments.**—This article shall not ap-

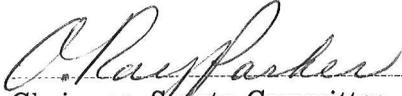
3 ply to the sale of lots, graves, mausoleums, or monu-  
4 ments.

**Sec. 10. Penalties; Jurisdiction.**—Every person who  
2 shall violate any provision of this article shall be deemed  
3 guilty of a misdemeanor, and, upon conviction, shall be  
4 fined not less than one hundred dollars nor more than  
5 five hundred dollars or shall be imprisoned for not less  
6 than ten days nor more than ninety days, or both. There  
7 shall be a separate fine and/or imprisonment for each  
8 violation of this article. Justices of the peace shall have  
9 concurrent jurisdiction with the circuit, criminal, and  
10 intermediate courts to enforce the misdemeanor penalties  
11 of the chapter.

**Sec. 11. Additional Remedies.**—In addition to other  
2 remedies, an action of injunction may be brought and  
3 maintained by the state of West Virginia to enjoin the  
4 violation of this article.

**Sec. 12. Constitutionality.**—The provisions of this ar-  
2 ticle shall be separable, and in case any provision or  
3 part thereof shall be held to be unconstitutional or invalid  
4 for any reason, the same shall not be held to affect any  
5 other paragraph, provision or part of this article.

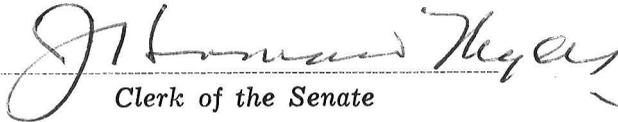
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

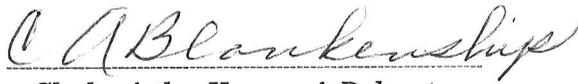
  
Chairman Senate Committee

  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within approved this the 19  
day of March, 1965.

  
Governor

