

110. 280-Ver  
082-011

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982



ENROLLED

*Committee Substitute for*

SENATE BILL NO. 280

(By Mr. Heck)



PASSED March 13, 1982

In Effect ninety days from Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 280**  
(BY MR. HECK, *original sponsor*)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preneed burial contracts; providing declaration of policy; providing definitions; requiring certificate of authority; relating to license for agents and employees of a contract seller; providing for disposition of proceeds; providing for withdrawal of funds; relating to income on trust accounts; setting forth miscellaneous provisions; creating "preneed guarantee fund"; authorizing state department of labor to administer and enforce article; providing for forms and rules; regulating solicitation; providing disciplinary proceedings; providing for revocation; providing penalties; permitting civil action and providing for damages; and stating legislative intent.

*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 amended and reenacted to read as follows:

**ARTICLE 14. PRENEED BURIAL CONTRACTS.**

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

- 1 It is contrary to public policy for any person to receive,
- 2 hold, control or manage funds or proceeds received from the
- 3 sale of, or from a contract to sell, funeral services, funeral
- 4 goods or burial goods or any one or combination of them,

5 where payments for same are made either outright or on an  
6 installment basis, prior to the death of the person or persons  
7 so purchasing them, or for whom they are purchased, unless  
8 that person holds, controls or manages those funds subject to  
9 the limitations and regulations prescribed by this article.

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

**§47-14-2. Definitions.**

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

3 (1) "Burial goods" means all merchandise supplied in  
4 regard to burial, or entombment in a mausoleum or  
5 inurnment in a columbarium.

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

10 (3) "Contract buyer" means any person, whether or not a  
11 contract beneficiary, who purchases goods or services  
12 pursuant to a preneed funeral contract.

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

16 (5) "Department" means the state department of labor.

17 (6) "Funds" means moneys or other consideration  
18 received pursuant to the sale of a preneed funeral contract.

19 (7) "Funeral goods" means those items of merchandise  
20 sold or offered for sale directly to the public by any person  
21 which will be used in connection with a funeral or alternative

22 or final disposition of human remains, but does not include  
23 those services actually performed by a cemetery acting only  
24 as such, including the sale by the cemetery of lands or  
25 interests therein, services incidental thereto, markers,  
26 memorials, monuments, equipment, crypts, vaults or vaults  
27 constructed or to be constructed in a mausoleum or  
28 columbarium.

29 (8) "Funeral services" means those services usually  
30 performed by a funeral service licensee, including, but not  
31 limited to, care and preparation of human remains and  
32 coordinating rites and ceremonies in connection with the  
33 disposition of human remains carried out at the request of an  
34 individual or individuals responsible for funeral and  
35 disposition arrangements.

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

42 (10) "Person who makes a preneed funeral contract  
43 available" means a person who, while not directly selling the  
44 contents of a preneed funeral contract to the public through  
45 his efforts, makes such contracts available to the public.

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

51 (12) "Preneed funeral contract" means any contract,  
52 agreement, mutual understanding, series or combination of  
53 contracts, agreements and mutual understandings, other than  
54 a contract of insurance, under which, for a specified  
55 consideration paid in advance of death in a lump sum or by  
56 installments, a person promises to furnish or make available  
57 or provide funeral services, funeral goods or burial goods for  
58 use at a time determinable by the death of the "contract  
59 beneficiary" who is either named or implied.

60 (13) "Provider" means a person who, though not a party to  
61 a preneed funeral contract does, through his efforts, make the  
62 services or goods referred to in such a contract available to  
63 the public pursuant to such a contract.

64 (14) "Trustee" means any natural person, partnership or  
65 corporation, including any bank, trust company, savings and  
66 loan association or credit union, which receives money  
67 pursuant to any agreement or contract made pursuant to the  
68 provisions of this article.

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

1 (a) No person may receive, hold, control or manage any  
2 funds or other thing of value tendered as payment on any  
3 preneed funeral contract unless such person has obtained a  
4 certificate of authority or renewal thereof from the  
5 department: *Provided*, That no bank, trust company, savings  
6 and loan association or other financial institution regulated  
7 by this state or insured by an agency of the United States  
8 federal government is required to obtain a certificate of  
9 authority.

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

14 (c) Any person desiring to obtain a certificate of authority  
15 shall file with the department, upon forms provided by the  
16 department, a completed application, together with a fifty  
17 dollar application fee for his original certificate of authority.  
18 The fee shall be payable to a special revenue account to be  
19 known as the "Preneed Burial Contract Regulation Fund" for  
20 the purpose of administering the provisions of this article.  
21 The original application or a renewal application shall contain  
22 at least the following information:

23 (1) The name and address of each person owning ten  
24 percent or more interest in the applicant if other than an  
25 individual;

26 (2) The current financial statement of the applicant  
27 covering the twelve months immediately prior to the date of  
28 his application;

29 (3) The experience of the applicant;

30 (4) Such other information as the department may require  
31 to determine to its satisfaction that the applicant possesses  
32 the ability, experience, financial stability and integrity to deal  
33 in preneed funeral contracts; and

34 (5) The types of preneed funeral contracts proposed to be

35 written or otherwise dealt in and copies of any writings used  
36 pursuant thereto; and if a person is a party to or bound by any  
37 such contract, an itemization of all outstanding preneed  
38 funeral contracts, the dates upon which such contracts were  
39 entered into, the names of all parties involved in such  
40 contracts or having any right thereunder, the amount paid  
41 toward each contract and, if payments are not completed, the  
42 amounts owing on each contract and the present depository  
43 or holder of all such funds.

44 (d) Each certificate of authority holder shall renew its  
45 certificate of authority according to the schedule established  
46 by this article. The fee for renewal shall be twenty-five  
47 dollars, payable to the "Preneed Burial Contract Regulation  
48 Fund" established by this section.

49 (e) Each certificate of authority holder shall file with the  
50 department an annual report with its request for renewal  
51 which shall contain the following:

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

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

63 (3) A statement that the contract seller and the person  
64 receiving funds paid thereunder have complied with the trust  
65 requirements of this article and of the present depository or  
66 holder of such funds and a statement of the amounts thereof  
67 itemized as per each contract.

68 (4) Any changes or amendments in any contract or  
69 obligations of the seller and provider that occurred since the  
70 date of the last report.

71 (5) Such other information as may be considered  
72 necessary by the department in order to meet its  
73 responsibilities under this article.

74 This annual report shall be required of any person who  
75 sells, provides or makes preneed funeral contracts available  
76 or receives moneys or other consideration therefor from the  
77 public.

78 (f) An original certificate of authority expires on the  
79 thirty-first day of December following its issuance.

80 (g) Each statement shall be sworn by the certificate  
81 holder. If the certificate holder is a partnership, it shall be  
82 sworn by each member thereof. If the certificate holder is a  
83 corporation, it shall be sworn by the president and secretary  
84 thereof.

85 (h) Upon the department's being satisfied that the  
86 statement and matters which may accompany it meet the  
87 requirements of this article and of its rules and regulations  
88 and, if by investigation by the department of the principals,  
89 including directors, officers, stockholders, employees and  
90 agents of such person, nothing is found to warrant denial of  
91 the certificate, the department shall issue to such person the  
92 certificate of authority or renewal thereof.

93 (i) (1) The certificate holder shall keep accurate accounts,  
94 books and records in this state of all transactions, copies of all  
95 contracts, dates and amounts of payments made and  
96 accepted thereon, the name and address of each contract  
97 buyer, the name of the beneficiary as to each contract, the  
98 name of the trustee holding trust funds received under each  
99 contract and such other records as the department may  
100 require to enable it to determine whether such certificate  
101 holder is complying with the provisions of this article. Such  
102 records must be kept until twelve months after termination of  
103 the applicable preneed contract.

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

114 (3) The certificate holder shall pay for the cost of any  
115 examination which is not the first one in that calendar year,  
116 including the salary and traveling expenses paid to the  
117 person making the examination during the time spent in  
118 making the examination and in traveling to and returning  
119 from the point where the records are kept and all other  
120 expenses necessarily incurred in the examination. The

121 department shall assess and collect a fee for each such  
122 examination, based on the certificate holder's total  
123 outstanding preneed funeral service contracts and the cost of  
124 such examination, but the cost to the person being audited  
125 shall not be more than a total cost of five hundred dollars for  
126 each such examination. This fee shall be payable to the  
127 "Preneed Burial Contract Regulation Fund" established in  
128 this section.

**§47-14-4. Agents and employees; licenses required; fee to go to department of labor.**

1 No agent or employee of a contract seller may sell preneed  
2 funeral contracts in this state without first obtaining from the  
3 department a license for such purpose and paying a license  
4 fee of ten dollars. This fee shall be payable to the "Preneed  
5 Burial Contract Regulation Fund" established by section  
6 three of this article. The commissioner shall not issue such  
7 license without requiring an applicant for the license, or if the  
8 applicant is a corporation, its individual agents, to provide  
9 proof to warrant its issuance by presenting with the  
10 application affidavits from his employer stating that, to the  
11 employer's best information, knowledge and belief the  
12 applicant merits a license. The acts of the agent shall be  
13 considered acts of the employer. The department may require  
14 the applicant to pass a written examination to ascertain if the  
15 applicant has sufficient knowledge of the industry and the  
16 provisions of this article to properly carry on the business  
17 covered by this article.

**§47-14-5. Disposition of proceeds; trusts; procedure for administration.**

1 (a) All sums paid or collected on such contracts entered  
2 into after the effective date of this article shall be handled in  
3 the following manner:

4 (1) The contract seller or other person collecting the funds  
5 may retain for his own use and benefits and for the purpose of  
6 covering his selling expenses, servicing costs, and general  
7 overhead, an amount not to exceed ten percent of the total  
8 amount agreed to be paid by the contract buyer as reflected in  
9 the preneed funeral contract. Such ten percent or other  
10 amount is exempt from the trust and refunding provisions of  
11 this article;

12 (2) All of the funds collected under the contract, less the  
13 amount authorized to be deducted under subdivision (1) of



14 this section, shall be deposited under the provisions of  
15 subdivision (3) hereof;

16 (3) Unless otherwise specifically exempt under this  
17 article, all funds paid to or collected by any person from a  
18 preneed funeral contract shall, within thirty days after receipt  
19 thereof by such a person, be deposited in this state (a) in the  
20 name of a trustee who is a seller, provider or person making  
21 the preneed funeral contract available in a state or federally  
22 chartered and insured bank, savings institution, building and  
23 loan institution located in this state or in a state or federally  
24 chartered credit union located in this state, or (b) under the  
25 terms of a trust instrument entered into with a national or  
26 state bank having trust powers or a trust company located in  
27 this state or (c) under the terms of a trust instrument  
28 established pursuant to the laws of this state.

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

34 (c) All trustees receiving funds covered by this article  
35 shall be required to have a certificate of authority from this  
36 state if the trustee is other than a chartered state or federal  
37 bank. All trust instruments shall be submitted to and  
38 approved by the department.

39 (d) All deposits shall be placed in an account with a  
40 trustee in the name of the contract seller, provider or person  
41 making the contract available, as set forth in the contract, to  
42 whom the contract buyer makes payment. Records shall be  
43 maintained as to each contract showing the amount paid, the  
44 amount deposited and the amount invested with respect to  
45 any particular buyer's contract.

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

48 (f) All accounts of money deposited in any bank, trust  
49 company or savings and loan association in accordance with  
50 the provisions of this article are subject to periodic  
51 examination by the department of banking of this state.

**§47-14-6. Withdrawal of funds.**

1 (a) Disbursements of funds discharging any preneed  
2 funeral contract shall be made by the trustee to the person  
3 named in the contract upon receipt of a certified photostatic  
4 copy of the death certificate of the contract beneficiary and

5 evidence satisfactory to the trustee that the preneed funeral  
6 service or preneed burial supply contract has been fully  
7 performed. In the event that, after the death of the contract  
8 beneficiary, the contract service or goods are not provided  
9 because they are not desired by the heirs or by the personal  
10 representative of the contract beneficiary, the trustee shall  
11 return, within thirty days after receipt of a written request  
12 therefor, one hundred percent of the amount placed in the  
13 trust account and paid on the contract to the contract  
14 purchaser or to the contract beneficiaries, his heirs or  
15 personal representative. If the service and goods are not  
16 provided upon the death of the contract beneficiary because  
17 of actions of the seller, provider or person making the  
18 preneed funeral contract available, then all of the funds held  
19 on deposit shall in ten days be returned to the contract buyer  
20 or his legal representative who also has available any other  
21 remedy set forth in this article.

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

32 (c) If the contract buyer is more than one hundred eighty  
33 days in default on the preneed funeral contract, the contract  
34 seller or provider may, on ten days' prior written notice,  
35 cancel the contract. All funds in the trust account shall be  
36 refunded to the contract purchaser or to the estate of the  
37 contract beneficiary.

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

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

**§47-14-7. Income on trust accounts.**

1 (a) Whether the payments on a preneed funeral contract  
2 are placed in a bank, savings institution, savings and loan

3 association, credit union or in a common trust fund as  
4 permitted in this article, or are part of a commingled common  
5 trust fund as permitted in this article, the income from a  
6 contract deposit shall accrue to the individual account until it  
7 reaches an amount equal to the selling price under the  
8 contract.

9 (b) When the trust account reaches an amount equal to  
10 one hundred percent of the full contract price, all further  
11 income paid on trust funds shall be paid to the contract  
12 buyer.

13 (c) The trustee for the trust shall make annual valuations  
14 of assets held in trust. No person may withdraw income from  
15 the trust, except for the purpose of executing the terms of the  
16 contract and to pay the contract buyer as provided in  
17 subsection (b) of this section.

**§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; creditor life  
insurance allowed; successor in interest defined.**

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

11 (b) A contract seller, provider or person making the  
12 preneed funeral contract available may appoint a board of at  
13 least three individual trustees under a trust instrument, if the  
14 trustee is other than a chartered state or national bank or trust  
15 company under the supervision of the department of banking  
16 of this state, to serve as trustees of its trust funds. Each  
17 individual trustee shall be a resident of this state and shall  
18 hold office subject to the direction of the seller. Not more  
19 than one member of the board of trustees of a trust fund may  
20 have a proprietary interest in the seller appointing trustees or

21 in any certificate of authority holder who is placing funds in  
22 such trust.

23 Individual trustees of a trust fund shall file a fidelity bond  
24 with a corporate surety thereon which is licensed to do  
25 business in this state with the department of labor in an  
26 amount equal to the funds in trust, guaranteeing payment of  
27 damages occasioned by breach of the trustees' fiduciary  
28 duties. The trustees of one or more trust funds need file only  
29 one such bond. The aggregate liability of the surety shall in no  
30 case exceed the face amount of the bond. The department of  
31 labor or any aggrieved person claiming against any bond  
32 required by this section may maintain an action against the  
33 trustee and the surety. Individual trustees shall take no action  
34 respecting trust funds unless there is on file with the  
35 department a bond as required by this section. If the trustees  
36 are individuals, the commissioner may suspend the  
37 certificate of authority of any contract seller, provider or  
38 person making the preneed funeral contract available having  
39 trust funds with respect to which there is no bond on file with  
40 the department as required by this section.

41 (c) All trustees under the terms of this article are subject to  
42 the following investment standards: In acquiring, investing,  
43 reinvesting, exchanging, retaining, selling and managing  
44 property for the benefit of others, trustees have the  
45 responsibilities which customarily attach to such offices and  
46 to the type of estates entrusted to their care and shall exercise  
47 the judgment and care under the circumstances then  
48 prevailing which men of prudence, discretion and  
49 intelligence exercise in the management of their own affairs,  
50 not in regard to speculation but in regard to the permanent  
51 disposition of their funds, considering the probable income  
52 as well as the probable safety of their capital. Within the  
53 limitations of the foregoing standard, trustees are authorized  
54 to acquire and retain every kind of property, real, personal  
55 and mixed, and every kind of investment, specifically  
56 including, but not limited to, bonds, debentures and other  
57 corporate obligations, savings accounts in insured savings  
58 and loan associations, stocks, preferred or common,  
59 securities of any open-end or closed-end management type of  
60 investment fund or investment trust and participations in  
61 common trust funds, which men of prudence, discretion and  
62 intelligence would acquire or retain for their own account.

63 (d) No preneed funeral contract may restrict any contract  
64 buyer who, for the purpose of receiving public assistance,  
65 may make his or her contract irrevocable in accordance with  
66 the laws and regulations of this state.

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

70 (f) Each contract buyer shall pay a fee of five dollars to the  
71 contract seller, who in turn will forward the money to the  
72 department within ten days after execution of the preneed  
73 funeral contract. The contract shall be recorded in the  
74 department. Within ten days after receiving the fee, the  
75 department will notify the contract purchaser, by mail, of the  
76 recording. The fees shall be placed by the department in an  
77 account under the department's control entitled "Preneed  
78 Guarantee Fund," and the income thereon shall accrue to the  
79 fund. The department may use such income, if necessary in  
80 its discretion, to enforce this article.

81 In the event any buyer of any preneed funeral contract is  
82 unable to receive the benefits of his contract, or to receive the  
83 funds due by reason of his cancellation thereof, such buyer  
84 may apply to the department on a form supplied by the  
85 department. Upon the finding of the department that said  
86 benefits or return of payment is not available to the buyer, the  
87 department will cause to be paid to the said buyer from the  
88 "Preneed Guarantee Fund" the amount actually paid by the  
89 buyer under his or her contract. If the seller's liability for  
90 default is subsequently proven, any award made by a court of  
91 law shall be made payable to the "Preneed Burial Contract  
92 Regulation Fund" established in section three of this article.

93 (g) Delivery of funeral or burial goods prior to the death of  
94 the person for whose benefit they are purchased does not  
95 constitute performance or fulfillment, either wholly or in  
96 part, of any preneed contract or series of contracts.

97 (h) The contract buyer may, on acceptance in writing by a  
98 transferee, transfer the obligations of the seller, provider or  
99 person making the preneed funeral contract available to other  
100 persons within or without this state. The funds on deposit for  
101 the contract and any future payments, if any, by the contract  
102 buyer shall then be transferred to and deposited under  
103 applicable state law, if any, in the state wherein the contract  
104 buyer resides or to a state where the obligations of the  
105 provider of the funeral service and goods will be fulfilled.

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

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

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

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

**§47-14-9. Forms and rules.**

1 The administration and enforcement of the provisions of  
 2 this article are vested in the department. The department  
 3 shall prepare and furnish all forms necessary under this  
 4 article, including forms for applications for certificates of  
 5 authority, for renewals thereof, for annual statements, for

6 other required reports and for preneed funeral contracts. The  
7 department shall promulgate, under the provisions of chapter  
8 twenty-nine-a of this code, such rules and regulations as may  
9 be necessary to effectuate the purpose of this article.

**§47-14-10. Solicitation.**

- 1 (a) Any contract seller or agent or employee or person  
2 acting in behalf of any such person may not:
- 3 (1) Directly or indirectly call upon individuals or persons  
4 in hospitals, rest homes or similar institutions for the purpose  
5 of soliciting preneed funeral contracts without first having  
6 been specifically requested by such person to do so;
- 7 (2) Directly or indirectly employ any agent, assistant,  
8 employee, independent contracting person or any other  
9 person to call upon individuals or persons in hospitals, rest  
10 homes or similar institutions for the purpose of soliciting  
11 preneed funeral contracts or making funeral or final  
12 disposition arrangements without first having been  
13 specifically requested by such person to do so;
- 14 (3) Solicit dead human bodies for purpose of providing  
15 funeral services, final disposition, burial or funeral goods  
16 when such solicitation occurs where death is reasonably  
17 pending or after death;
- 18 (4) Solicit or accept or pay any consideration for  
19 recommending or causing a dead human body to be provided  
20 funeral services and funeral and burial goods by specific  
21 persons, or the services of a specific crematory, mausoleum  
22 or cemetery except where such arrangement is the subject of  
23 a preneed funeral contract;
- 24 (5) Be involved in solicitation which comprises an  
25 uninvited invasion of personal privacy or in solicitation by  
26 phone or at the personal residence of a person unless the  
27 solicitation has been previously and expressly requested by  
28 the person solicited.
- 29 (b) Notwithstanding any other provision of law to the  
30 contrary, nothing in this article shall be construed to restrict  
31 the right of a person to lawfully advertise, to use direct mail or  
32 otherwise communicate in a manner not within the above  
33 prohibition of solicitation or to solicit the business of anyone  
34 responding to such communication or otherwise initiating  
35 discussion of the goods or services being offered.
- 36 (c) Nothing herein shall be construed to prohibit general  
37 advertising.

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

41 (e) The department may adopt rules regulating the  
42 solicitation of preneed contracts by certificate holders or  
43 registrants to protect the public from solicitation which is  
44 intimidating, overreaching, vexatious, fraudulent,  
45 misleading, which utilizes undue influence or which takes  
46 undue advantage of a person's ignorance or emotional  
47 vulnerability.

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

1 (a) The following acts constitute grounds for which the  
2 disciplinary actions in subsection (b) may be taken against  
3 any person holding a certificate of authority or license  
4 pursuant to this article:

- 5 (1) Violating any provisions of this article;
- 6 (2) Attempting to procure or procuring a certificate of  
7 authority or license under this article by bribery or fraudulent  
8 misrepresentation;
- 9 (3) Having had any certificate of authority or license to sell  
10 preneed contracts revoked, suspended or otherwise acted  
11 against, including denial of licensure, by a licensing authority  
12 of another jurisdiction;
- 13 (4) Being convicted or found guilty of a crime in any  
14 jurisdiction which directly relates to the sale of preneed  
15 contracts;
- 16 (5) Making or filing a report required by this article which  
17 the certificate holder knows to be false or failing to make or  
18 file a report required by this article;
- 19 (6) Advertising goods or services in a manner which is  
20 fraudulent, false, deceptive or misleading in form or content;
- 21 (7) Engaging in fraud, deceit or misrepresentation in the  
22 conduct of business of the certificate holder;
- 23 (8) Failing to comply with a lawful order of the  
24 department;
- 25 (9) Making any false or misleading statement, oral or  
26 written, directly or indirectly, regarding the sale of services or  
27 merchandise in connection with the conduct of the certificate  
28 holder's business;
- 29 (10) Not maintaining the funds received under the  
30 contracts as required by this article;



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

34 (12) Failing to renew or qualify for renewal of its  
35 certificate of authority or license;

36 (13) Failing to produce records in connection with the  
37 certificate holder's business or has otherwise failed to comply  
38 with the provisions of this article or any rule promulgated by  
39 the department pursuant to this article; or

40 (14) Soliciting by the certificate holder, its agents,  
41 employees or representatives through the use of fraud, undue  
42 influence, misrepresentation or overreaching or other forms  
43 of vexatious conduct as defined by law, this article or the  
44 rules of the department as to preneed funeral contracts.

45 (b) Upon the violation of any of the provisions of this  
46 article, determined in an administrative hearing after notice  
47 and an opportunity to be heard, the department may institute  
48 revocation proceedings or file a complaint in a court of  
49 competent jurisdiction setting forth the relevant facts and  
50 praying for the issuance of an order to show cause why the  
51 business and affairs of such certificate holder should not be  
52 liquidated and a receiver appointed by the court to  
53 accomplish such purpose.

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

58 (2) Upon return of such order to show cause, the court  
59 shall hear and try the issues forthwith. If the court determines  
60 that the person so charged as defendant in such proceeding  
61 has not been guilty of the omission, failure or violation  
62 alleged in the complaint by the department, the court shall  
63 dismiss such complaint. If the court finds that the charges of  
64 the department are supported by the evidence, it may enter  
65 an order directing the liquidation of such business of the  
66 certificate holder and shall appoint a receiver who shall,  
67 under such conditions as may be prescribed by the court,  
68 take into his possession the assets of the certificate holder for  
69 the purpose of liquidation.

70 (3) In any such order of liquidation or in any order or  
71 orders thereafter entered, the court shall provide a notice to  
72 creditors, filing of claims and all other details necessary and  
73 essential to an estate in receivership.

74 (c) When the department finds any certificate holder or  
75 licensee guilty of any of the acts set forth in subsection (a) of  
76 this section after an administrative hearing, or finds that any  
77 funeral services or funeral or burial goods are offered for sale  
78 when the offer is not a bona fide offer to sell such services or  
79 goods, it may enter an order imposing one or more of the  
80 following penalties:

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

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

85 (3) Imposition of an administrative fine not to exceed one  
86 thousand dollars for each count where there are separate  
87 violations;

88 (4) Issuance of a reprimand; or

89 (5) Placing the licensee or certificate holder on probation  
90 for a period of time and subject to such conditions as the  
91 department may specify.

92 (d) All preneed funeral contract buyers have a priority in  
93 claims against the provider, to the extent that their interest is  
94 set forth in this article.

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

99 (f) All prices or quotations of prices contained in any  
100 preneed funeral contract shall be fully and clearly stated.

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

1 (a) The failure of a certificate holder or licensee to comply  
2 with the provisions of this article gives rise to a civil cause of  
3 action in favor of any aggrieved consumer or contract  
4 purchaser. Upon entry of a judgment for damages in favor of  
5 the plaintiff, the trial court shall award punitive damages in  
6 the amount of three times the actual damages awarded in the  
7 judgment.

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

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

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

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

**§47-14-13. Penalty.**

1 (a) Any person, as defined herein, who:

2 (1) Receives, holds, manages or controls any funds or  
3 proceeds realized from the writing and issuing of a preneed  
4 funeral contract as defined herein; or

5 (2) Disburses such funds or proceeds in any manner other  
6 than as required by this article; or

7 (b) Who has violated any of the provisions of this article or  
8 the rules and regulations promulgated hereunder shall be  
9 guilty of a felony and shall be punished by a fine of not less  
10 than one hundred nor more than one thousand dollars for  
11 each occurrence, or imprisoned in the county jail for a term  
12 not to exceed one year or both.

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

*R. P. Bayla*

Chairman Senate Committee

*Tommy E. Whitlow*

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*Jodd C. Watts*

Clerk of the Senate

*C. A. Blankenship*

Clerk of the House of Delegates

*Warren R. McInnis*

President of the Senate

*W. H. Lee, Jr.*

Speaker House of Delegates

The within *is disapproved* this the *31*

day of *March*, 1982.

*Philip A. Beale*

Governor

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SECY. OF STATE