WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 280

(By Mr. Heck)

PASSED March 13, 1982
In Effect sixty 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,
where payments for 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 to
the limitations and regulations prescribed by this article.

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, so as to be 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 service contract through
anyone who is not licensed under this article.

§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.
(2) “Contract beneficiary” means any person specified or
implied in a preneed funeral contract, upon whose death
funeral services, funeral goods or burial goods shall 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.
(4) “Contract seller” means a person, his agent or his
employee, who sells, makes available or provides preneed
funeral contracts.
(5) “Department” means the state department of labor.
(6) “Funds” means moneys or other consideration
received pursuant to the sale of a preneed funeral contract.
(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
or final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, including the sale by the cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a funeral service licensee, 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 an individual or individuals 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," defined herein, or is the recipient of funds paid for such purpose.

(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.

(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, other than a contract of insurance, 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.

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

§47-14-3. Certificate of authority required; fees to go to department of labor; 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 department: 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 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 department.

(c) Any person desiring to obtain a certificate of authority shall file with the department, upon forms provided by the department, a completed application, together with a fifty dollar application fee for his original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" 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 if other than an individual;

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

(3) The experience of the applicant;

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

(5) The types of preneed funeral contracts proposed to be
written or otherwise dealt in 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 twenty-five dollars, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

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

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the beneficiary, the amount paid 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 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.

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

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

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

This annual report shall be required of any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public.
(f) An original certificate of authority expires on the thirty-first day of December following its issuance.

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

(h) Upon the department's being satisfied that the statement and matters which may accompany it meet the requirements of this article and of its rules and regulations and, if by investigation by the department of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the department shall issue to such person 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 beneficiary as to each contract, the name of the trustee holding trust funds received under each contract and such other records as the department may require to enable it to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept until twelve months after termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the department for examination. The department 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 he 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
department 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 five hundred dollars for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section.

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

No agent or employee of a contract seller may sell preneed funeral contracts in this state without first obtaining from the department a license for such purpose and paying a license fee of ten dollars. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established by section three of this article. The commissioner 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 department 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 carry on the business covered by this article.

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

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

(1) The contract seller or other person collecting the funds may retain for his own use and benefits and for the purpose of covering his selling expenses, servicing costs, and general overhead, an amount not to exceed ten percent of the total amount agreed to be paid by the contract buyer as reflected in the preneed funeral contract. 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 section, shall be deposited under the provisions of subdivision (3) hereof;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person from a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state (a) in the name of a trustee who is a 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 (b) 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 or (c) under the terms of a trust instrument established pursuant to the laws of this state.

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

(d) All deposits 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. Records shall be maintained as to each contract showing the amount paid, the amount deposited and the amount invested with respect to any particular buyer’s contract.

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

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

§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 
service or preneed burial supply contract has been fully 
performed. In the event that, after the death of the contract 
beneficiary, the contract service or goods are not provided 
because they are not desired by the heirs or by the personal 
representative of the contract beneficiary, the trustee shall 
return, within thirty days after receipt of a written request 
therefor, one hundred percent of the amount placed in the 
trust account and paid on the contract to the contract 
purchaser or to the contract beneficiaries, his 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 returned 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 on 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.

§47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract 
are placed in a bank, savings institution, savings 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 shall accrue to the individual account until it reaches an amount equal to the selling price under the contract.

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

(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 and to pay the contract buyer as provided in 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.

(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 department 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 shall file a fidelity bond
with a corporate surety thereon which is licensed to do
business in this state with the department of labor 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 department of
labor 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
department a bond as required by this section. If the trustees
are individuals, the commissioner 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 department as required by this section.

(c) All trustees under the terms of this article are subject to
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. Within the
limitations of the foregoing standard, trustees are authorized
to acquire and retain every kind of property, real, personal
and mixed, and every kind of investment, specifically
including, but not limited to, bonds, debentures and other
corporate obligations, savings accounts in insured savings
and loan associations, stocks, preferred or common,
securities of any open-end or closed-end management type of
investment fund or investment trust and participations in
common trust funds, which men of prudence, discretion and
intelligence would acquire or retain for their own account.
(d) No preneed funeral contract may restrict any contract buyer who, for the purpose of receiving public assistance, may make his or her contract irrevocable in accordance with the laws and regulations of this state.

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

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

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

(g) 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 to and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.
Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, for any further liability under such contract. Nothing in this article or in any preneed 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 this 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 the article who has outstanding preneed funeral contracts and is not the current holder of a certificate of authority sells its business, through 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 or not seller made known to buyer the existence of such contract or contracts.


1 The administration and enforcement of the provisions of this article are vested in the department. The department 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
department shall promulgate, under the provisions of chapter
twenty-nine-a of this code, such rules and regulations as may
be necessary to effectuate the purpose of this article.

§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 or similar institutions for the purpose
of soliciting preneed funeral contracts 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 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 dead human bodies for purpose of providing
funeral services, final disposition, burial or funeral goods
when such solicitation occurs where death is reasonably
pending or after death;
(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) Be involved in solicitation which comprises an
uninvited invasion of personal privacy or in solicitation by
phone or at the personal residence of a person unless the
solicitation has been previously and expressly requested by
the person solicited.
(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 department may adopt rules regulating the solicitation of preneed contracts by certificate holders or registrants to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, misleading, which utilizes undue influence or which takes undue advantage of a person's ignorance or emotional vulnerability.

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

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

(1) Violating any provisions of this article;

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

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

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

(5) Making or filing a report required by this article which the certificate holder knows to be false or failing to make or file a report required by this article;

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

(7) Engaging in fraud, deceit or misrepresentation in the conduct of business of the certificate holder;

(8) Failing to comply with a lawful order of the department;

(9) Making 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) Not maintaining the funds received under the contracts as required by this article;
(11) Failing 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) Failing to renew or qualify for renewal of its certificate of authority or license;
(13) Failing to produce records in connection with the certificate holder's business or has otherwise failed to comply with the provisions of this article or any rule promulgated by the department pursuant to this article; or
(14) Soliciting 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 rules of the department as to preneed funeral contracts.

(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 department may institute revocation proceedings 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 business and affairs of such certificate holder should not be liquidated and a receiver appointed by the court to accomplish such purpose,

(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 issues 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 department, the court shall dismiss such complaint. If the court finds that the charges of the department are supported by the evidence, it may enter an order directing the liquidation of such business of the certificate holder and shall appoint a receiver who shall, under such conditions as may be prescribed by the court, take into his possession the assets of the certificate holder for the purpose of liquidation.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors, filing of claims and all other details necessary and essential to an estate in receivership.
(c) When the department finds any certificate holder or licensee guilty of any of the acts set forth in 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 one thousand dollars for each count where there are separate violations;
4. Issuance of a reprimand; or
5. Placing the licensee or certificate holder on probation for a period of time and subject to such conditions as the department 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.

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

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

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

(a) The failure of a certificate holder or licensee to comply with the provisions of this article gives rise to a civil cause of action in favor of any aggrieved consumer 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.

§47-14-13. Penalty.
(a) Any person, as defined herein, who:
(1) Receives, holds, manages or controls any funds or proceeds realized from the writing and issuing of a preneed funeral contract as defined herein; or
(2) Disburses such funds or proceeds in any manner other than as required by this article; or
(b) Who has violated any of the provisions of this article or the rules and regulations promulgated hereunder shall be guilty of a felony and shall be punished by a fine of not less than one hundred nor more than one thousand dollars for each occurrence, or imprisoned in the county jail for a term not to exceed one year or both.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take 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 is disapproved this the 31

day of March, 1982.

Governor