

70: 1269

RECEIVED
MAR 21 3 14 PM '83
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1269

(By Mrs. Theiling + Mr. Livens)

— ● —

Passed March 9, 1983

In Effect Ninety Days From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1269

(By MRS. THEILING and MR. GIVENS)

[Passed March 9, 1983; 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 for a legislative declaration of policy and intent; providing for the definition of certain terms with respect thereto; requiring all persons selling preneed burial contracts to obtain certificates of authority so to do; the authority of the department of labor with respect thereto; requiring the payment of certain fees and establishing a special account into which such fees are to be paid; providing for the application for certificates of authority and the contents thereof; requiring the annual reports and the annual renewal for the certificates of authority; requiring all agents and employees who sell preneed burial contracts for a certificate holder to be licensed; providing for the disposition of all sums collected by a certificate holder pursuant to a preneed burial contract and requiring that a certain portion of such proceeds be held in trust; procedures for the administration of such trusts; requiring the department to promulgate rules and regulations; establishing procedures for the withdrawal of such funds from such trust accounts; permitting the cancellation of such contracts by the purchaser thereof and providing for the return of all funds placed in the trust account pursuant to such

canceled contract; providing for the disposition of the income of such contracts; providing for the appointment, qualification and removal of the trustees; requiring such trustees to post bond and establishing the penal sum of such bonds; establishing the type of investments in which trust assets may be placed; allowing contract buyers to make the contract irrevocable in certain instances; providing for the form and content of all such contracts; requiring the department of labor to administer and enforce the provisions of this article and requiring such department to prepare and furnish all forms necessary to such administration and enforcement; limiting and restricting the rights of certificate holders and licensees to solicit the sale of any such contracts; establishing certain disciplinary proceedings to be conducted by such department and for the revocation of certification or licensure for certain violations of the provisions of this article; granting authority to the department to liquidate any holder of a certificate for certain violations of the provisions of this article or of the rules and regulations promulgated thereunder; providing for certain civil and criminal penalties for such violations; providing for civil action and injunctive proceedings in favor of any aggrieved consumer or contract purchaser and awarding attorney's fees and costs in certain cases with respect thereto; and providing for the severability of the provisions of said article.

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, hold,
2 control or manage funds or proceeds received from the sale
3 of, or from a contract to sell, funeral services, funeral goods,
4 burial goods or any one or combination of them, where pay-
5 ments for same are made either outright or on an installment
6 basis, prior to the death of the person or persons so pur-
7 chasing them, or for whom they are purchased, unless that

8 person holds, controls or manages those funds subject to the
9 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
12 a 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 dis-
15 position of human remains, so that at all times members of the
16 public may have an opportunity to arrange and pay for funer-
17 als for themselves and their families in advance of need while
18 at the same time providing all possible safeguards whereunder
19 such prepaid funds cannot be dissipated, whether intentionally
20 or not, in order that such funds are available for the payment of
21 funeral services so arranged. Further, it is the legislative intent
22 that no person may offer, sell or negotiate for the sale of a
23 preneed funeral service contract through anyone who is not
24 licensed under this article.

§47-14-2. Definitions.

1 As used in this article, unless the context otherwise re-
2 quires:

3 (1) "Burial goods" means all merchandise supplied in regard
4 to burial, or entombment in a mausoleum or inurnment in a
5 columbarium, but does not include those services actually
6 performed by a cemetery acting only as such, or the sale by
7 any person of cemetery lots, land or interest therein, services
8 incidental thereto, or the sale by any person of markers, me-
9 morials, monuments, equipment, crypts, urns, burial vaults or
10 vaults constructed or to be constructed in a mausoleum or
11 columbarium.

12 (2) "Contract beneficiary" means any person specified or
13 implied in a preneed funeral contract, upon whose death fun-
14 eral services, funeral goods or burial goods shall be performed,
15 provided or delivered.

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

20 (4) "Contract seller" or "seller" means a person, his agent
21 or his employee, who sells, makes available or provides pre-
22 need funeral contracts.

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

24 (6) "Funds" means moneys or other consideration received
25 pursuant to the sale of a preneed funeral contract, including
26 interest accrued or earned thereon.

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

37 (8) "Funeral services" means those services usually perform-
38 ed by a funeral service licensee, including, but not limited to,
39 care and preparation of human remains and coordinating rites
40 and ceremonies in connection with the disposition of human
41 remains carried out at the request of any individual responsible
42 for funeral and disposition arrangements.

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

49 (10) "Person who makes a preneed funeral contract avail-
50 able" means a person who, while not directly selling the con-
51 tents of a preneed funeral contract to the public through his
52 efforts, makes such contracts available to the public but shall
53 not include manufacturers of funeral goods or burial goods.

54 (11) "Personal residence" means any residential building in
55 which one temporarily or permanently maintains his abode in-
56 cluding, but not limited to, hotels, motels, apartments, nursing

57 homes, convalescent homes, homes for the aged and public
58 and private institutions.

59 (12) "Preneed funeral contract" means any contract, agree-
60 ment, mutual understanding, series or combination of con-
61 tracts, agreements and mutual understandings, other than a
62 contract of insurance, under which, for a specified consider-
63 ation paid in advance of death in a lump sum or by install-
64 ments, a person promises to furnish or make available or pro-
65 vide funeral services, funeral goods or burial goods for use at
66 a time determinable by the death of the "contract beneficiary"
67 who is either named or implied.

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

e
OK
DZK
EN

72 (14) "Trustee" means any natural person, partnership or
73 corporation, including any bank, trust company, savings and
74 loan association or credit union, which receives money pur-
75 suant to any agreement or contract made pursuant to the pro-
76 visions of this article.

**§47-14-3. Certificate of authority required; fees to go to depart-
ment 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 pre-
3 need funeral contract unless such person has obtained a certi-
4 ficate of authority or renewal thereof from the department:

OK
DZK
EN

5 *Provided*, That no bank, trust company, savings and loan asso-
6 ciation or other financial institution regulated by this state or
7 insured by an agency of the United States federal government
8 is required to obtain a certificate of authority.

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

12 (c) Any person desiring to obtain a certificate of authority
13 shall file with the department, upon forms provided by the
14 department, a completed application, together with a one

15 hundred dollar application fee for his original certificate of
16 authority. The fee shall be payable to a special revenue ac-
17 count to be known as the "Preneed Burial Contract Regulation
18 Fund" for the purpose of administering the provisions of this
19 article. The original application or a renewal application shall
20 contain at least the following information:

21 (1) The name and address of each person owning ten per-
22 cent or more interest in the applicant;

23 (2) The experience of the applicant;

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

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

37 (d) Each certificate of authority holder shall renew its
38 certificate of authority according to the schedule established
39 by this article. The fee for renewal shall be two hundred
40 dollars, payable to the "Preneed Burial Contract Regulation
41 Fund" established by this section.

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

45 (1) An identification of all outstanding preneed funeral con-
46 tracts, the dates upon which the contracts were entered, the
47 names of all parties involved in such contracts or having any
48 right thereunder, including, but not limited to, the beneficiary,
49 the amount paid on each contract and, if payments are not

50 completed, the amounts owing and the present balance of funds
51 applicable to each such contract.

52 (2) The name of the contract seller and the name of the
53 provider of services and goods and a statement that the pro-
54 vider has sufficient funds available to perform all of its obliga-
55 tions under its contracts.

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

61 (4) Any changes or amendments in any contracts or obliga-
62 tions of the seller and provider that occurred since the date of
63 the last report.

64 (5) Such other information as may be considered neces-
65 sary by the department in order to meet its responsibilities
66 under this article.

67 This annual report shall be required of any person who sells,
68 provides or makes preneed funeral contracts available or re-
69 ceives moneys or other consideration therefor from the public.

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

72 (g) Every application, request for renewal and statement
73 filed with either of the foregoing shall be sworn by the appli-
74 cant or certificate holder. If the certificate holder is a partner-
75 ship, it shall be sworn by each member thereof. If the certifi-
76 cate holder is a corporation, it shall be sworn by the president
77 and secretary thereof.

78 (h) Upon the department's being satisfied that the state-
79 ment and matters which may accompany it meet the require-
80 ments of this article and of its rules and regulations and, if
81 by investigation by the department of the principals, including
82 directors, officers, stockholders, employees and agents of such

83 person, nothing is found to warrant denial of the certificate,
84 the department shall issue to such person the certificate of
85 authority or renewal thereof.

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

97 (2) The certificate holder shall make all books and records
98 pertaining to preneed funeral contracts available to the de-
99 ~~partment of~~ examination. The department may not more fre-
100 quently than once in any calendar year, unless pursuant to an
101 order of court for good cause shown, during ordinary business
102 hours, cause to be examined the books, records and accounts
103 of the certificate holder with respect to funds received by said
104 certificate holder and for that purpose may require the at-
105 tendance of and examine, under oath, all persons whose testi-
106 mony he may require.

for
OK
EN

107 (3) The certificate holder shall pay for the cost of any
108 examination which is not the first one in that calendar year,
109 including the salary and traveling expenses paid to the person
110 making the examination during the time spent in making the
111 examination and in traveling to and returning from the point
112 where the records are kept and all other expenses necessarily
113 incurred in the examination. The department shall assess and
114 collect a fee for each such examination, based on the certifi-
115 cate holder's total outstanding preneed funeral service con-
116 tracts and the cost of such examination, but the cost to the
117 person being audited shall not be more than a total cost of
118 five hundred dollars for each such examination. This fee shall
119 be payable to the "Preneed Burial Contract Regulation Fund"
120 established in 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. The fee for such
4 license and the annual renewal thereof shall be twenty-five
5 dollars. These fees shall be payable to the "Preneed Burial
6 Contract Regulation Fund" established by section three of this
7 article. The commissioner shall not issue such license without
8 requiring an applicant for the license, or if the applicant is a
9 corporation, its individual agents, to provide proof to warrant
10 its issuance by presenting with the application affidavits from
11 his employer stating that, to the employer's best information,
12 knowledge and belief the applicant merits a license. The acts
13 of the agent shall be considered acts of the employer. The de-
14 partment may require the applicant to pass a written exami-
15 nation to ascertain if the applicant has sufficient knowledge of
16 the industry and the provisions of this article to properly carry
17 on the business covered by this article.

**§47-14-5. Disposition of proceeds; trusts; procedure for adminis-
tration; department to promulgate rules and regulations.**

1 (a) All sums paid or collected on such contracts entered in-
2 to after the effective date of this article shall be handled in the
3 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 over-
7 head, an amount not to exceed ten percent of the total amount
8 agreed to be paid by the contract buyer as reflected in the pre-
9 need funeral contract. Such ten percent or other amount is
10 exempt from the trust and refunding provisions of this article;

11 (2) All of the funds collected under the contract, less the
12 amount authorized to be deducted under subdivision (1) of this
13 section, shall be deposited under the provisions of subdivision
14 (3) hereof;

15 (3) Unless otherwise specifically exempt under this article,
16 all funds paid to or collected by any person from a preneed

17 funeral contract shall, within thirty days after receipt thereof
18 by such a person, be deposited in this state (i) in the name of
19 a trustee who is a contract seller, provider or person making
20 the preneed funeral contract available, in a state or federally
21 chartered and insured bank, savings institution, building and
22 loan institution located in this state or in a state or federally
23 chartered credit union located in this state, or (ii) under the
24 terms of a trust instrument entered into with a national or state
25 bank having trust powers or a trust company located in this
26 state.

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

32 (c) All deposits shall be placed in an account with a trustee
33 in the name of the contract seller, provider or person making
34 the contract available, as set forth in the contract, to whom the
35 contract buyer makes payment. Records shall be maintained
36 as to each contract showing the amount paid, the amount de-
37 posited and the amount invested with respect to any particular
38 buyer's contract.

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

41 (e) All accounts of money deposited in any bank, savings
42 institution, building and loan association or credit union in
43 accordance with the provisions of this article are subject to
44 periodic examination by the department of banking of this
45 state.

46 (f) The department shall promulgate rules and regulations
47 in accordance with chapter twenty-nine-a of this code for the
48 purpose of administering the provisions of this article: *Pro-*
49 *vided*, That the department shall, by such rules and regula-
50 tions, require the contract seller to secure a fidelity bond of
51 sufficient surety to guarantee that a contract purchaser who
52 cancels a contract under the provisions of this article receives
53 all of the moneys paid into any trust account.

§47-14-6. Withdrawal of funds.

1 (a) Disbursements of funds discharging any preneed funeral
2 contract shall be made by the trustee to the person named
3 in the contract upon receipt of a certified photostatic copy
4 of the death certificate of the contract beneficiary and evidence
5 satisfactory to the trustee that the preneed funeral service
6 or preneed burial supply contract has been fully performed.
7 In the event that, after the death of the contract beneficiary,
8 the contract services or goods are not provided because they
9 are not desired by the heirs or by the personal representative
10 of the contract beneficiary, the trustee shall have authority
11 to expend one hundred percent of the amount placed in the
12 trust account and paid on the contract, in any general locality
13 within or outside of this state, which shall be the burial location
14 of the contract beneficiary. If the service and goods are not
15 provided upon the death of the contract beneficiary because
16 of actions of the seller, provider or person making the preneed
17 funeral contract available, then all of the funds held on
18 deposit shall in ten days be refunded to the contract buyer
19 or his legal representative who also has available any other
20 remedy set forth in this article.

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

31 (c) If the contract buyer is more than one hundred eighty
32 days in default with respect to any payment or installment
33 due on or pursuant to the preneed funeral contract, the con-
34 tract 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 can-
39 cel the contract unless the contract is in default as to the
40 buyer's 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, building and loan
3 association, credit union or in a common trust fund as
4 permitted in this article, or are part of a commingled com-
5 mon trust fund as permitted in this article, the income from
6 a contract deposit shall accrue to the individual account until
7 such time as the burial goods, funeral goods and funeral
8 services for the contract beneficiary are required to be de-
9 livered and returned by reason of such beneficiary's death.

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

13 (1) If the cost of the goods and services contracted for
14 at the time of such beneficiary's death exceeds the amount
15 paid under the contract, then the provider may have and use
16 the principal and so much of the interest as may be neces-
17 sary to defray such additional cost over and above the
18 contract cost: *Provided*, That, to the extent that the cost
19 of goods and services provided exceeds the principal and
20 interest thereon, the provider shall provide and make available
21 the goods and services contracted for at no additional cost
22 to the contract purchaser or to the heirs or personal representa-
23 tive of the contract beneficiary;

24 (2) To the extent the principal and interest thereon exceed
25 the cost of the goods and services contracted for, than the
26 provider may retain only so much of the principal and
27 interest necessary to defray the total of such cost and the
28 balance shall be returned to the estate of the contract bene-
29 ficiary or to the contract buyer as may be proper under the

30 provisions of this article or the rules and regulations of the
31 department.

32 (c) The trustee for the trust shall make annual valuations
33 of assets held in trust. No person may withdraw income from
34 the trust, except for the purpose of executing the terms of
35 the contract and to disburse the trust proceeds as provided in
36 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 con-
tract allowed; credit life insurance allowed; successor
in interest defined.**

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

11 (b) A contract seller, provider or person making the pre-
12 need 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 indi-
17 vidual trustee shall be a resident of this state and shall hold
18 office subject to the direction of the seller. Not more than one
19 member of the board of trustees of a trust fund may have a
20 proprietary interest in the seller appointing trustees or in any
21 certificate of authority holder who is placing funds in such trust.

22 Individual trustees of a trust fund shall file a fidelity bond
23 with a corporate surety thereon which is licensed to do busi-
24 ness in this state with the department of labor in an amount

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

40 (c) All trustees under the terms of this article are subject
41 to the following investment standards: In acquiring, investing,
42 reinvesting, exchanging, retaining, selling and managing prop-
43 erty for the benefit of others, trustees have the responsibilities
44 which customarily attach to such offices and to the type of
45 estates entrusted to their care and shall exercise the judgment
46 and care under the circumstances then prevailing which men
47 of prudence, discretion and intelligence exercise in the man-
48 agement of their own affairs, not in regard to speculation but
49 in regard to the permanent disposition of their funds, consider-
50 ing the probable income as well as the probable safety of their
51 capital.

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

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

59 (f) Each contract buyer shall pay a fee of five dollars to the
60 contract seller, who in turn will forward such sum to the de-
61 partment within ten days after execution of the preneed funer-
62 al contract. The contract shall be recorded in the department.

63 Within ten days after receiving the fee, the department will
 64 notify the contract purchaser, by mail, of the recording. The
 65 fees shall be placed by the department in an account under the
 66 department's control entitled "Preneed Guarantee Fund," and
 67 the income thereon shall accrue to the fund. The department
 68 may use ~~some~~ income, if necessary in its discretion, to enforce
 69 this article.

such
 OK
 EHX
 EH

70 In the event any buyer of any preneed funeral contract is
 71 unable to receive the benefits of his contract, or to receive the
 72 funds due by reason of his cancellation thereof, such buyer
 73 may apply to the department on a form supplied by the de-
 74 partment. Upon the finding of the department that said bene-
 75 fits or return of payment is not available to the buyer, the de-
 76 partment will cause to be paid to the said buyer from the
 77 "Preneed Guarantee Fund" the amount actually paid by the
 78 buyer under his or her contract. If the seller's liability for de-
 79 fault is subsequently proven, any award made by a court of
 80 law shall be made payable to the "Preneed Burial Contract
 81 Regulation Fund" established in section three of this article.

82 (g) Notwithstanding the provisions of subsection (g), sec-
 83 tion five of this article, delivery of funeral or burial goods
 84 prior to the death of the person for whose benefit they are
 85 purchased does not constitute performance or fulfillment,
 86 either wholly or in part, of any preneed contract or series of
 87 contracts.

88 (h) The contract buyer may, on acceptance in writing by
 89 a transferee, transfer the obligations of the seller, provider or
 90 person making the preneed funeral contract available to other
 91 persons within or without this state. The funds on deposit
 92 for the contract on any future payments, if any, by the con-
 93 tract buyer shall then be transferred to and deposited under
 94 applicable state law, if any, in the state wherein the contract
 95 buyer resides or to a state where the obligations of the pro-
 96 vider of the funeral service and goods will be fulfilled.

97 Upon such transfer, the contract buyer and transferee shall,
 98 in writing, release the contract seller, provider or person mak-
 99 ing the preneed funeral contract available and the trusts, as
 100 applicable, for any further liability under such contract.

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

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

may
OK
LTX
EX.

121 (j) In the event any certificate of authority holder or any-
122 one in violation of the article who has outstanding preneed
123 funeral contracts and is not the current holder of a certificate
124 of authority sells its business, through the sale of assets or
125 stock, which is involved in the fulfillment of obligations under
126 preneed funeral contracts, the buyer of such business is a
127 "successor in interest" and is covered not only by this article
128 but shall assume the obligations of seller under seller's out-
129 standing preneed funeral contracts regardless of whether seller
130 made known to buyer the existence of such contract or con-
131 tracts.

§47-14-9. Forms and rules.

1 The administration and enforcement of the provisions of this
2 article are vested in the department. The department shall
3 prepare and furnish all forms necessary under this article, in-
4 cluding forms for applications for certificates of authority,
5 for renewals thereof, for annual statements, for other required
6 reports and for preneed funeral contracts. The department shall

7 promulgate, in accordance with 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 act-
2 ing in behalf of any such person may not:

3 (1) Directly or indirectly call upon individuals or persons
4 in hospitals, rest homes, nursing homes or similar institutions
5 for the purpose of soliciting preneed funeral contracts or mak-
6 ing funeral or final disposition arrangements without first hav-
7 ing been specifically requested by such person to do so;

8 (2) Directly or indirectly employ any agent, assistant, em-
9 ployee, independent contracting person or any other person to
10 call upon individuals or persons in hospitals, rest homes, nurs-
11 ing homes or similar institutions for the purpose of soliciting
12 preneed funeral contracts or making funeral or final disposition
13 arrangements without first having been specifically requested
14 by such person to do so;

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

19 (4) Solicit or accept or pay any consideration for recom-
20 mending or causing a dead human body to be provided fun-
21 eral services and funeral and burial goods by specific per-
22 sons, or the services of a specific crematory, mausoleum or
23 cemetery except where such arrangement is the subject of a
24 preneed funeral contract;

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

29 (b) Notwithstanding any other provision of law to the con-
30 trary, nothing in this article shall be construed to restrict the
31 right of a person to lawfully advertise, to use direct mail or
32 otherwise communicate in a manner not within the above pro-

33 hibition of solicitation or to solicit the business of anyone re-
34 sponding to such communication or otherwise initiating dis-
35 cussion 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, di-
40 vulge the real reason for the contract or solicitation.

41 (e) The department may adopt rules regulating the solici-
42 tation of preneed contracts by certificate holders or registrants
43 to protect the public from solicitation practices which utilize
44 undue influence or which take undue advantage of a person's
45 ignorance or emotional vulnerability.

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

1 (a) The following acts constitute grounds for which the dis-
2 ciplinary actions in subsection (b) may be taken against any
3 person holding a certificate of authority or license pursuant to
4 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 funeral contracts revoked, suspended or otherwise
11 acted against, including denial of licensure, by a licensing au-
12 thority of another jurisdiction;

13 (4) Being convicted or found guilty of a crime in any juris-
14 diction which directly relates to the sale of preneed funeral
15 contracts;

16 (5) Making or filing a report required by this article which
17 the certificate holder knows to be false or knowingly failing
18 to make or 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 department;

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

28 (10) Not maintaining the funds received under the contracts
29 as required by this article;

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

33 (12) Failing to renew or qualify for renewal of its certifi-
34 cate of authority or license;

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

39 (14) Soliciting by the certificate holder, its agents, em-
40 ployees or representatives through the use of fraud, undue in-
41 fluence, misrepresentation or overreaching or other forms of
42 vexatious conduct as defined by law, this article or the rules
43 and regulations of the department as to preneed funeral con-
44 tracts.

45 (b) Upon the violation of any of the provisions of this
46 article, determined in an administrative hearing after notice and
47 an opportunity to be heard, the department may institute revo-
48 cation proceedings regarding a license to operate a funeral
49 home or a certificate of authority to sell preneed funeral con-
50 tracts, or both the license and the certificate of authority or
51 file a complaint in a court of competent jurisdiction setting
52 forth the relevant facts and praying for the issuance of an
53 order to show cause why the license to operate a funeral home
54 or the certificate of authority to sell preneed funeral contracts,
55 or both the license and the certificate should not be revoked.

56 (1) Upon application for such rule to show cause, the court

57 may, in its discretion, issue an injunction restraining the de-
58 fendant from transacting further business until further order
59 of the court.

60 (2) Upon return of such order to show cause, the court shall
61 hear and try the issue forthwith. If the court determines that
62 the person so charged as defendant in such proceeding has not
63 been guilty of the omission, failure or violation alleged in the
64 complaint by the department, the court shall dismiss such com-
65 plaint. If the court finds that the charges of the department are
66 supported by the evidence, it may enter an order directing the
67 revocation of a license to operate a funeral home or of a certi-
68 ficate of authority to sell preneed funeral contracts, or the re-
69 vocation of both the license and the certificate of authority.

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 fol-
80 lowing 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 or
84 license;

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

88 (4) Issuance of a reprimand; or

89 (5) Placement of the licensee or certificate holder on pro-
90 bation for a period of time and subject to such conditions as
91 the 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 on behalf of
97 the certificate holder shall be treated as acts or omissions of
98 the certificate holder.

99 (f) Subject to the provisions of subsection (b), section
100 seven of this article, all prices or quotations of prices con-
101 tained in any preneed funeral contract shall be fully and
102 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 pur-
4 chaser. 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 at-
10 torney'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 in-
13 curred 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 sum
16 of reasonable costs incurred in the action, plus a reasonable
17 legal fee for the hours actually spent on the case as sworn to
18 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.

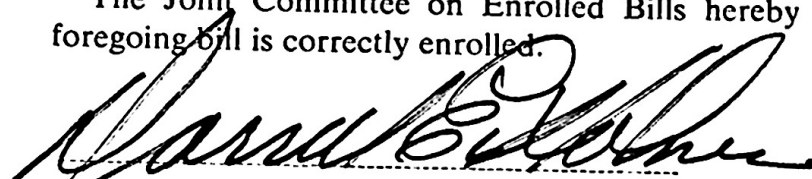
1 Any person who receives, holds, manages or controls any
2 funds or proceeds realized from the writing and issuing of a

3 preneed funeral contract or disburses such funds or proceeds
4 in any manner other than as authorized or required by this
5 article or who has violated any of the provisions of this
6 article or the rules and regulations promulgated hereunder
7 is guilty of a misdemeanor, and, upon conviction thereof,
8 shall be punished by a fine of not less than one hundred nor
9 more than one thousand dollars for each occurrence, or
10 imprisoned in the county jail for a term not to exceed one
11 year or both fined and imprisoned.

§47-14-14. Severability.

1 If any section, subsection, subdivision, subparagraph, sen-
2 tence or clause of this article is adjudged to be unconstitutional
3 or invalid, such invalidation shall not affect the validity of the
4 remaining portions of this article, and, to this end, the pro-
5 visions of this article are hereby declared to be severable.

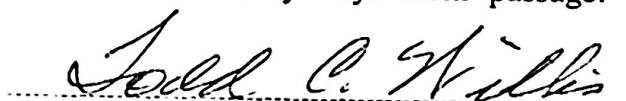
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

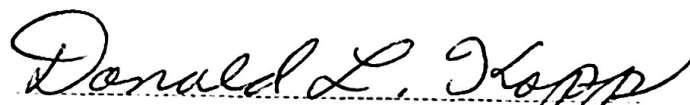

Chairman Senate Committee



Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

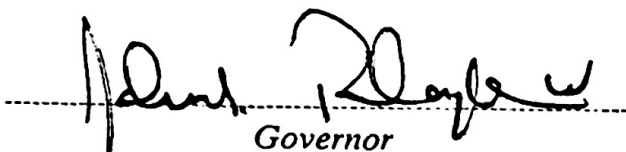

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 25
day of March, 1983.


Governor

RECEIVED

83 MAR 28 P 4: 18

OFFICE
SECY. OF STATE