WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Com. Rule for
HOUSE BILL No. 1269.

(By Mrs. Theiling and Mr. Dickens)

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, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for 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, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent that no person may offer, sell or negotiate for the sale of a preneed funeral 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, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(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 but shall not include any person other than a natural person.
(4) "Contract seller" or "seller" means a person, his agent or his employee, who sells, makes available or provides preneed funeral contracts.

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

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

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

(8) "Funeral services" means those services usually performed by a 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 any individual responsible for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in this state who is engaged in the selling of, making available of or providing of "preneed funeral contracts," 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 but shall not include manufacturers of funeral goods or burial goods.

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

(12) "Preneed funeral contract" means any contract, agree-
ment, mutual understanding, series or combination of con-
tracts, agreements and mutual understandings, other than a
contract of insurance, under which, for a specified consider-
ation paid in advance of death in a lump sum or by install-
ments, a person promises to furnish or make available or pro-
vide 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.

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

(a) No person may receive, hold, control or manage any
funds or other thing of value tendered as payment on any pre-
need funeral contract unless such person has obtained a certi-
icate of authority or renewal thereof from the department:
Provided, That no bank, trust company, savings and loan asso-
ciation 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 one
hundred dollar application fee for his original certificate of
authority. The fee shall be payable to a special revenue ac-
count 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 per-
cent or more interest in the applicant;

(2) The experience of the applicant;

(3) 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

(4) 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 in-
to, 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 two hundred
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 con-
tracts, 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 services and goods and a statement that the pro-
vider has sufficient funds available to perform all of its obliga-
tions 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 to each such contract.

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

(5) Such other information as may be considered neces-
sary 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 re-
ceives 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) Every application, request for renewal and statement
filed with either of the foregoing shall be sworn by the appli-
cant or certificate holder. If the certificate holder is a partner-
ship, it shall be sworn by each member thereof. If the certifi-
cate holder is a corporation, it shall be sworn by the president
and secretary thereof.

(h) Upon the department’s being satisfied that the state-
ment and matters which may accompany it meet the require-
ments 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 of 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. The fee for such license and the annual renewal thereof shall be twenty-five dollars. These fees shall be payable to the "Prenedd 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; department to promulgate rules and regulations.

(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 (i) in the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state, or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state.

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

(c) All deposits 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.

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

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

(f) The department shall promulgate rules and regulations in accordance with chapter twenty-nine-a of this code for the purpose of administering the provisions of this article: Provided, That the department shall, by such rules and regulations, require the contract seller to secure a fidelity bond of sufficient surety to guarantee that a contract purchaser who cancels a contract under the provisions of this article receives all of the moneys paid into any trust account.
§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 services 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 have authority to expend one hundred percent of the amount placed in the trust account and paid on the contract, in any general locality within or outside of this state, which shall be the burial location of the contract beneficiary. If the service and goods are not provided upon the death of the contract beneficiary because of actions of the seller, provider or person making the preneed funeral contract available, then all of the funds held on deposit shall in ten days be refunded to the contract buyer or his legal representative who also has available any other remedy set forth in this article.

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

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.
(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

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

§47-14-7. Income on trust accounts.

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

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

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

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

(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 disburse the trust proceeds 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 con­
tract allowed; credit life insurance allowed; successor
in interest defined.

(a) A contract seller, provider or person making the pre­
need funeral contract available may not enforce a preneed
funeral contract made in violation of this article, but a con­
tact 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 pre­
need 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 indi­
vidual 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 busi­
ness 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 respect-
ing 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 prop-
erty 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 man-
agement of their own affairs, not in regard to speculation but
in regard to the permanent disposition of their funds, consider-
ing the probable income as well as the probable safety of their
capital.

(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 such sum to the de-
partment 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 some 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) Notwithstanding the provisions of subsection (g), section five of this article, 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 or 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, if requested by the contract buyer where the contract is to be paid in installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of the total cost of the insurance.

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


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, in accordance with 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, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

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

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

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

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

(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above pro-
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33 prohibition 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 cer-
47 tificate; 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
6 (1) Violating any provisions of this article;
7
8 (2) Attempting to procure or procuring a certificate of
9 authority or license under this article by bribery or fraudulent
10 misrepresentation;
11
12 (3) Having had any certificate of authority or license to sell
13 preneed funeral contracts revoked, suspended or otherwise
14 acted against, including denial of licensure, by a licensing au-
15 thority of another jurisdiction;
16
17 (4) Being convicted or found guilty of a crime in any jurisdic-
18 tion which directly relates to the sale of preneed funeral
19 contracts;
20
21 (5) Making or filing a report required by this article which
22 the certificate holder knows to be false or knowingly failing
23 to make or file a report required by this article;
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25 (6) Advertising goods or services in a manner which is
26 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) Knowingly 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 and regulations 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 regarding a license to operate a funeral home or a certificate of authority to sell preneed funeral contracts, or both the license and the certificate of authority or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority to sell preneed funeral contracts, or both the license and the certificate should not be revoked.

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

(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the 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 revocation of a license to operate a funeral home or of a certificate of authority to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority.

(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 county where there are separate violations;

(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and 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 on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

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

§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.

Any person who receives, holds, manages or controls any 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 , 1983.

Governor