

S. No. 2077
H. No. 6407

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fourteenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

[REPUBLIC ACT No. 9829]

AN ACT ESTABLISHING THE PRE-NEED CODE OF THE
PHILIPPINES

*Be it enacted by the Senate and House of Representatives of
the Philippines in Congress assembled:*

CHAPTER I

GENERAL PROVISIONS

SECTION 1. *Title.* — This Act shall be known as the
“Pre-need Code of the Philippines”.

SEC. 2. *Declaration of Policy.* -- It is the policy of the State to regulate the establishment of pre-need companies and to place their operation on sound, efficient and stable basis to derive the optimum advantage from them in the mobilization of savings and to prevent and mitigate, as far as practicable, practices prejudicial to public interest and the protection of planholders.

The State shall hereby regulate, through an empowered agency, pre-need companies based on prudential principles to promote soundness, stability and sustainable growth of the pre-need industry.

SEC. 3. *Construction.* -- Any doubt in the interpretation and implementation of any provision in this Code shall be interpreted in favor of the rights and interests of the planholder.

SEC. 4. *Definition of Terms.* -- Whenever used in this Code, the following terms shall have their respective meanings:

(a) "Commission" refers to the Insurance Commission.

(b) "Pre-need plans" are contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments, contracts or deeds as may in the future be determined by the Commission.

(c) "Pre-need company" refers to any corporation registered with the Commission and authorized/licensed to sell or offer to sell pre-need plans. The term "pre-need company" also refers to schools, memorial chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.

(d) "Planholder" refers to any natural or juridical person who purchases pre-need plans from a pre-need company for whom or for whose beneficiaries' benefits are to be delivered, as stipulated and guaranteed by the pre-need company. The term includes the assignee, transferee and any successor-in-interest of the planholder.

(e) "Beneficiary" refers to the person designated by the planholder as the recipient of the benefits in the pre-need plan.

(f) "Contract price" refers to the stipulated price in the pre-need plan.

(g) "Benefits" refers to the payment of monetary considerations and/or performance of future services which the pre-need company undertakes to deliver either to the planholder or his beneficiary at the time of actual need or agreed maturity date, as specified in the pre-need plan.

(h) "Sales counselors" refers to natural persons who are engaged in the sale of, or offer to sell, or counsel of prospective planholders for the purpose of selling, whether or not on commission basis, pre-need plans upon the authority of the pre-need company.

(i) "Affiliate of, or affiliated with, a specified person" refers to a person that directly or indirectly, through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Exercising control over a legal entity shall mean any one of the following: (1) owning either solely or together with affiliated persons more than twenty-five percent (25%) of the outstanding capital stock of a legal entity; and (2) being an officer or director of such legal entity.

(j) "Trust fund" refers to a fund set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to planholders and other costs necessary to ensure the delivery of benefits or services to planholders as provided for in the contracts.

(k) "Pre-need reserve liabilities" refers to the measure of the liabilities of the pre-need company for its in-force plans or lapsed plans as of valuation date.

(l) "Liquidity reserve" refers to a portion of the trust fund set aside by the trustee to cover benefits due to planholders for the ensuing year.

(m) "Fixed value plans" refers to pre-need plans whose benefits and costs are fixed and predetermined at the inception or purchase of the plan.

(n) "In-force plan" refers to a plan for which the pre-need company has an outstanding obligation for the delivery of benefits or services or payment of termination value.

(o) "Lapsed plan" refers to a plan that is delinquent in payment of installments provided for in the contract, the delinquency of which extends beyond the grace period provided for in the plan or contract.

(p) "Cancelled plan" refers to a plan that can no longer be reinstated by reason of delinquency in the payment of installments for more than two (2) years or a longer period as provided in the contract, counted from the expiry of the grace period provided for in the plan or contract.

(q) "Scheduled benefit plans" refers to plans the date of availment of the benefits of which is set at the inception or purchase of the plan.

(r) "Contingent benefit plans" refers to plans the timing of the provision of the benefits of which is conditional on the occurrence of the contingency.

(s) "Risk-based capital" refers to a method to measure the minimum amount of capital that a pre-need company needs to support its overall business operation. It is used to set capital requirements, considering the size and degree of risk taken by the pre-need company.

(t) "BSP" refers to "Bangko Sentral ng Pilipinas".

The terms not otherwise defined under this Code shall be construed in their usual and commonly understood trade, business, commercial or investment meaning.

CHAPTER II

AUTHORITY OF THE COMMISSION

SEC. 5. *Supervision.* - All pre-need companies, as defined under this Act, shall be under the primary and exclusive supervision and regulation of the Insurance Commission. The Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component to enable it to effectively and efficiently perform its functions and exercise its powers under this Code.

All positions of the Commission shall be governed by compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas (BSP) and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

The salary and allowances or personal services expense of the employees of the Insurance Commission shall be sourced from the retained amount of the fees, charges and other income derived from the regulation of pre-need companies and from the Insurance Fund under Section 418 of the Insurance Code of the Philippines (Presidential Decree No. 612, as amended) and Section 286 of the National Internal Revenue Code. If the personal services expense cannot be covered by

the retained amount and the Insurance Fund, it shall be appropriated in the General Appropriations Fund.

SEC. 6. *Powers and Functions of the Commission.* — The Commission shall, at all times, act with transparency and dispatch and shall have, among others, the following powers and functions:

- (a) Approve, amend, renew or deny any license, registration or certificate issued under this Code;
- (b) Fix and assess fees and/or charges as it may find reasonable in the exercise of regulation;
- (c) Regulate, supervise and monitor the operations and management of pre-need companies to ensure compliance with the provisions of this Code, existing laws, rules and regulations including, but not limited to:
 - (1) Revoking or nullifying investments made and/or entered into by a pre-need company or a trustee which are contrary to existing laws, rules and regulations;
 - (2) Demanding for the conversion of the investments made by the trustee to cash or other liquid assets to protect the interest of the planholders; and
 - (3) Regulating, investigating or supervising activities of pre-need companies, their officers, employees, sales counselors, consultants or agents;
 - (d) Issue cease and desist orders to prevent fraud and injury to the investing public;
 - (e) Issue *subpoena duces tecum* and *ad testificandum*, order the examination, search and seizure of documents, papers, files, tax returns, books of accounts and other records, in whatever form, of any entity or person under investigation;
 - (f) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(g) Impose sanctions, institute cases and/or prosecute offenders for violation of this Code, related laws, rules, regulations and orders issued pursuant thereto;

(h) Suspend or revoke licenses

(i) Enlist the aid and support of and/or deputize any and all enforcement agencies of the government in the implementation of its powers and in the exercise of its functions under this Code;

(j) Take over pre-need companies which fail to comply with this Code, related laws, rules, regulations and orders issued pursuant thereto, either through the appointment of a conservator, receiver or liquidator;

(k) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

(l) Formulate policies and recommendations on issues concerning the pre-need industry, including proposed legislations;

(m) Retain and utilize, in addition to its annual budget, an amount up to One hundred million pesos (P100,000,000.00) of the fees, charges and other income derived from the regulation of the pre-need companies; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to carry out the express powers granted the Commission to achieve the objectives and purposes of the law.

CHAPTER III

ORGANIZATION, LICENSING AND MANAGEMENT OF PRE-NEED COMPANIES

SEC. 7. *Prerequisites to Incorporation.* – Except upon favorable recommendation of the Commission, the Securities and Exchange Commission (SEC) shall not accept or approve

the articles of incorporation and bylaws of any pre-need company.

A foreign corporation may be allowed to engage in a pre-need business in the Philippines: *Provided*, That it shall comply with the pertinent laws, rules and regulations.

SEC. 8. *Amendment of the Articles of Incorporation and Bylaws.* – Amendments to the articles of incorporation and bylaws of a pre-need company, including merger, consolidation and dissolution, shall not be approved by the SEC without the favorable recommendation from the Commission.

SEC. 9. *Paid-up Capital.* – A pre-need company incorporated after the effectivity of this Code shall have a minimum paid-up capital of One hundred million pesos (P100,000,000.00). Existing pre-need companies shall comply with the following minimum unimpaired paid-up capital:

(a) One hundred million pesos (P100,000,000.00) for companies selling at least three (3) types of plan;

(b) Seventy-five million pesos (P75,000,000.00) for companies selling two (2) types of plan; and

(c) Fifty million pesos (P50,000,000.00) for companies selling a single type of plan.

Existing pre-need companies with traditional education plans shall have a minimum unimpaired paid-up capital of One hundred million pesos (P100,000,000.00).

The Commission may adopt risk-based principles on capital adequacy based on internationally accepted standards. In the exercise of its authority under this paragraph, the Commission may prescribe a higher minimum unimpaired paid-up capital for pre-need companies.

SEC. 10. *Licensing of Pre-need Companies.* – No person shall operate as a pre-need company or engage in the business of a pre-need company unless licensed by the Commission in accordance with this Code.

The license under this section shall expire one (1) year from the time of the registration. It may be renewed upon compliance with the prescribed requirements of the Commission. Such renewal shall be deemed approved if not acted upon within thirty (30) days from the time of filing of the application for renewal.

SEC. 11. *Qualification and Disqualification of Directors and Officers.* - To maintain the quality of management of pre-need companies and afford better protection to planholders and beneficiaries, the Commission shall prescribe, pass upon and review the qualifications and disqualifications of individuals elected or appointed directors or officers of pre-need companies, including its actuaries, and disqualify those found unfit. The Commission may disqualify, suspend or remove any director or officer who commits or omits an act which renders him unfit for the position.

In determining whether an individual is fit and proper to hold the position of a director or officer of a pre-need company, regard shall be given to his integrity, experience, education, training and competence. The following persons, and those determined by the Commission to be unfit, shall in no case be allowed to serve or act in the capacity of an officer, employee, director, consultant or sales counselor of any pre-need company:

(a) Any person convicted of any crime involving any pre-need plan, security or financial product;

(b) Any person convicted of an offense involving moral turpitude or involving fraud or embezzlement, theft, estafa or other fraudulent acts or transactions;

(c) Any person who, by reason of any misconduct, is enjoined by order, judgment or decree by any court, quasi-judicial body or administrative agency of competent jurisdiction from acting as a director, officer, employee, consultant, agent or occupying any fiduciary position;

(d) Any person found by the Commission to have willfully violated or willfully aided, abetted, counseled,

commanded, induced or procured the violation of this Code, the Insurance Code, the Securities Regulation Code or any related laws and any rules or orders thereunder;

(e) Any person judicially declared to be insolvent or incapacitated to contract; and

(f) Any person found guilty by a foreign court, regulatory authority or government agency of the acts or violations similar to any of the acts or misconduct enumerated in the foregoing paragraphs: *Provided*, That conviction in the first instance shall be considered as sufficient ground for disqualification.

SEC. 12. *Independent Directors.* - Pre-need companies shall have at least two (2) independent directors or twenty percent (20%) of the members of the board, whichever is higher. For this purpose, an "independent director" shall refer to a person other than an officer, employee or any person having a fiduciary relation to the pre-need company, its parent or subsidiaries, or any other individual having a relationship therewith, which may interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

SEC. 13. *Investment Restrictions of Directors and Officers.* - No director or officer of any pre-need company shall, after his election or appointment as such, directly or indirectly, for himself or as the representative or agent of others, have an investment in excess of Five million pesos (P5,000,000.00) in any corporation or business undertaking in which the pre-need company's trust fund has an investment in or has a financial interest with. No relatives of directors or officers of the pre-need company within the fourth degree of consanguinity or affinity shall, directly or indirectly, have an investment of more than Five million pesos (P5,000,000.00) in any corporation or business undertaking in which the pre-need company's trust fund has an investment in or has a financial interest with during the incumbency or term of the director or officer involved.

CHAPTER IV

REGISTRATION OF PRE-NEED PLANS

SEC. 14. *Registration of Pre-need Contracts/Plans.* -- Within a period of forty-five (45) days after the grant of a license to do business as a pre-need company, and for every pre-need plan which the pre-need company intends to offer for sale to the public, the pre-need company shall file with the Commission a registration statement for the sale of pre-need plans pursuant to this Code. The Commission shall promulgate rules governing the registration of pre-need plans and the required documents which include, among others, the viability study with certification, under oath, of a pre-need actuary accredited by the Commission, any information brochure, a copy of the pre-need plan, and information and documents necessary to ensure the protection of planholders and the general public. Said rules shall further set forth the conditions under which such registration may be denied, revoked, suspended or withdrawn, and the remedies of pre-need companies in such instances.

SEC. 15. *Registration Requirements.* -- The Commission shall set forth the requirements for registration of pre-need plans and shall require the following documents, among others:

- (a) Duly accomplished Registration Statements;
- (b) Board resolution authorizing the registration of applicant's pre-need plans;
- (c) Opinion of independent counsel on the legality of the issue;
- (d) Audited financial statements;
- (e) Viability study with certification, under oath, of pre-need actuary accredited by the Commission;
- (f) Copy of the proposed pre-need plan; and
- (g) Sample of sales materials.

Such registration statements and sales materials required under this section shall contain the appropriate risk factors as may be determined by the Commission.

SEC. 16. *Accreditation of Actuary.* — The Commission shall have the power to set standards for the accreditation of actuaries directly responsible for the preparation and certification of the viability study of the pre-need plan submitted by the pre-need company for registration or amendment with the Commission. It shall further have the power to define the obligations and liabilities of actuaries accredited by it. No actuary engaged by a pre-need company shall at the same time be a stockholder or serve as a director of the board, chief executive officer or chief financial officer of the company or any such position that the Commission may determine to have an inherent conflict of interest to the position of an actuary.

SEC. 17. *Approval of Contract Forms.* — All forms, including amendments thereto, relating to the pre-need plans shall be approved by the Commission. No pre-need contracts or certificates shall be issued or delivered within the Philippines unless in the form previously approved by the Commission.

SEC. 18. *Pre-need Advertising Rules.* — Pre-need plans shall be advertised and sold in an appropriate non-misleading manner in accordance with the rules to be prescribed by the Commission.

It shall be unlawful for any pre-need company to advertise itself or its pre-need plans unless the Commission has approved such advertising material. The Commission shall have a period of ten (10) working days to approve or deny the advertising material and failure to act within the said period shall cause the advertising material to be approved. For purposes hereof, the Commission shall have the power to define the scope of its advertising rules to appropriately cover advertising or other communications to the public.

Any person who sells or offers to sell any pre-need plan or contract by any means or instruments of communication in violation of this section shall be liable to the person

purchasing such pre-need contract who may sue to recover the consideration paid for such pre-need contract with interest thereon. In addition hereto, the Commission shall have the power to pursue the erring pre-need company in an administrative or criminal proceeding.

A fine of One hundred thousand pesos (P100,000.00) shall be imposed on any pre-need company found to have violated this section: *Provided*, That a second violation of this section shall, in addition to the fine imposed, result in the suspension of the license of the pre-need company.

SEC. 19. *Disclosures to Prospective Planholders.* - No registered pre-need plan shall be sold to prospective planholders unless an information brochure, which has been filed with the Commission, has been provided to the purchaser. The information brochure shall contain an explanation of the principal features of the pre-need plan, a statement that the planholder may avail of a default or reinstatement period within which to reinstate his lapsed plan, and the conditions of the same and the rates of return for scheduled benefit plans and illustrative yields for contingent benefit plans; and such other information that the Commission shall require by rule.

CHAPTER V

LICENSING OF SALES COUNSELORS AND GENERAL AGENTS

SEC. 20. *Licensing of Sales Counselors.* - No sales counselor shall be allowed to solicit, sell or offer to sell pre-need plans under this Code without being licensed as such by the Commission. No license shall be issued unless the following qualifications have been complied with:

(a) The applicant must be of good moral character and must not have been convicted of any crime involving moral turpitude;

(b) The applicant has undergone a training program approved by the Commission and such fact has been certified under oath by a duly authorized representative of a pre-need company; and

(c) The applicant has passed a written examination administered by the Commission: *Provided*, That the administration of the examination may be delegated to an independent organization under the supervision of the Commission.

Such license shall automatically expire every thirtieth (30th) day of June or such date of every year as may be fixed by the Commission and may be accordingly renewed.

SEC. 21. *Denial, Suspension, Revocation of License.* -- An application for the issuance or renewal of a license to act as sales counselor may be denied, or such license, if already issued, shall be suspended or revoked based on the following grounds:

(a) Materially misrepresented statements in the application requirements;

(b) Obtained or attempted to obtain a license by fraud or misrepresentation;

(c) Materially misrepresented the terms and conditions of pre-need plan which he sold or offered to sell;

(d) Solicited, sold or attempted to solicit or sell a pre-need plan by means of false or misleading representation and other fraudulent means;

(e) Terminated for cause from another pre-need company;

(f) Similar grounds found in Section 11 of this Code;

(g) Willfully allowing the use of one's license by a non-licensed or barred individual; and

(h) Analogous circumstances.

SEC. 22. *Licensing of General Agents.* -- If the issuer should contract the services of a general agent to undertake the sales of its plans, such general agent shall be required

to be licensed as such with the Commission, in accordance with the requirements imposed by the Commission.

CHAPTER VI

DEFAULT AND TERMINATION BY PLANHOLDERS

SEC. 23. *Default; Reinstatement Period.* - The pre-need company must provide in all contracts issued to planholders a grace period of at least sixty (60) days within which to pay accrued installments, counted from the due date of the first unpaid installment. Nonpayment of a plan within the grace period shall render the plan a lapsed plan. Any payment by the planholder after the grace period shall be reimbursed forthwith, unless the planholder duly reinstates the plan. The planholder shall be allowed a period of not less than two (2) years from the lapse of the grace period or a longer period as provided in the contract within which to reinstate his plan. No cancellation of plans shall be made by the issuer during such period when reinstatement may be effected.

Within thirty (30) days from the expiration of the grace period and within thirty (30) days from the expiration of the reinstatement period, which is two (2) years from the lapse of the grace period, the pre-need company shall give written notice to the planholder that his plan will be cancelled if not reinstated within two (2) years. Failure to give either of the required notices shall preclude the pre-need company from treating the plans as cancelled.

SEC. 24. *Termination of Pre-need Plans.* - A planholder may terminate his pre-need plan at any time by giving written notice to the issuer.

A pre-need plan shall contain a schedule of termination values to which the planholder is entitled to upon termination. Such schedule of termination value shall be required for all in-force pre-need plans and shall be fair, equitable and in compliance with the Commission issuances. The termination value of the pre-need plan shall be predetermined by the actuary of the pre-need company upon application for

registration of the pre-need plans with the Commission and shall be disclosed in the contract.

CHAPTER VII

CLAIMS SETTLEMENT

SEC. 25. *Unfair Claims Settlement Practices.* -- (a) No pre-need company shall refuse, without just cause, to pay or settle claims arising under coverages provided by its plans nor shall any such company engage in unfair claim settlement practices. Any of the following acts by a pre-need company, if committed without just cause, shall constitute unfair claims settlement practices:

(1) Knowingly misrepresenting to claimants pertinent facts or plan provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its plan;

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its plan;

(4) Failing to provide prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear; or

(5) Compelling planholders to institute suits or recover amounts due under its plan by offering, without justifiable reason, substantially less than the amounts ultimately recovered in suits brought by them.

(b) Evidence as to the number and types of valid and justifiable complaints to the Commission against a pre-need company shall be deemed admissible in an administrative or judicial proceeding brought under this section.

(c) Any violation of this section shall be considered sufficient cause for the suspension or revocation of the company's certificate of authority.

SEC. 26. *Payment of Plan Proceeds.* - In the case of scheduled benefit plans, the proceeds of the plan shall be paid immediately upon maturity of the contract, unless such proceeds are made payable in installments or as an annuity, in which case the installments or annuities shall be paid as they become due. Refusal or failure to pay the claim within fifteen (15) days from maturity or due date will entitle the beneficiary to collect interest on the proceeds of the plan for the duration of the delay at the rate twice the legal interest unless such failure or refusal to pay is based on the ground that the claim is fraudulent: *Provided*, That the planholder has duly complied with the documentary requirements of the pre-need company.

In the case of contingent benefit plans, the benefits shall be paid by the pre-need company thirty (30) days upon submission of all necessary documents.

SEC. 27. *Recovery of Investment.* - The planholder may institute the necessary legal action in court to recover his/her investment in the pre-need company, in case of its insolvency or bankruptcy.

However, in case the insolvency or bankruptcy is a mere cover-up for fraud or illegality, the planholder may institute the legal action directly against the officers and/or controlling owners of the said pre-need company.

SEC. 28. *Consequences of Delay or Default.* - In case of any litigation for the enforcement of any pre-need plan, it shall be the duty of the Commission to determine whether the payment of the claim of the planholder has been unreasonably denied or withheld. If found to have unreasonably denied or withheld the claim, the pre-need company shall be liable to pay damages, consisting of actual damages, attorney's fees and legal interest, to be computed from the date the claim is made until it is fully satisfied: *Provided*, That the failure to pay any such claim within the time prescribed in Section 26 hereof shall be considered *prima facie* evidence of unreasonable delay in payment.

SEC. 29. *Distribution of Profits.* - A pre-need company may declare dividend: *Provided*, That the following shall

remain unimpaired, as certified under oath by the president and the treasurer with respect to items (a) and (b); and in the case of item (c), by the trust officer:

- (a) One hundred percent (100%) of the capital stock;
- (b) An amount sufficient to pay all net losses reported, or in the course of settlement, and all liabilities for expenses and taxes; and
- (c) Trust fund.

Any dividend declared under the preceding paragraph shall be reported to the Commission within thirty (30) days after such declaration.

CHAPTER VIII

TRUST FUND

SEC. 30. *Trust Fund.* - To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission. Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.

Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal

shall be made from the trust fund unless approved by the Commission. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

The trust fund shall at all times be sufficient to cover the required pre-need reserve.

SEC. 31. *Deposits to the Trust Fund.* - (a) The pre-need company shall make monthly deposits to the trust fund in an amount determined by the accredited actuary, sufficient to pay the benefits promised under the contract. For plans paid for in full, the pre-need company shall deposit into the trust fund at least forty-five percent (45%) for life plans and fifty-one percent (51%) for education and pension plans of said full payment or such higher amount as determined by the actuary.

In case of installment payments, the minimum limits of the deposit contributions to the trust fund, unless the viability study done by the actuary requires otherwise, shall be in accordance with the following schedule:

	Life Plans	Other Plans
Collection of the 1 st 20% of Contract Price	5%	5%
Collection of the 2 nd 20% of Contract Price	10%	10%
Collection of the 3 rd 20% of Contract Price	70%	80%
Collection of the 4 th 20% of Contract Price	70%	80%
Collection of the 5 th 20% of Contract Price	70%	80%

Contributions to the trust fund shall not form part of the income or gross receipts of the pre-need company and, therefore, shall not be available for dividend declaration or payment to creditors.

(b) The deposits to the trust fund shall be made within twenty (20) days from the end of each reference month for payments received from plans whether paid for in full or in installments. Failure to make the trust fund deposit shall subject the pre-need company to administrative liability as provided for under this Code.

(c) Should the Commission discover a deficiency in the trust fund, it shall give notice of the same to the pre-need company and require the said company to make additional deposits. The pre-need company shall have thirty (30) days from receipt of notice to make the said deposits and correct the deficiency. Failure to pay the deficiency in spite of notice by the Commission shall subject the pre-need company to the payment of a penalty, in addition to other sanctions imposable under this Code.

(d) For plans sold prior to the effectivity of this law, the minimum contributions to the trust fund shall be governed by rules and regulations in force at the time of sale.

SEC. 32. *Terms and Conditions of a Trust Fund.* - A trust fund must be established separately for each type of pre-need plan with the trust department of a trust company, bank or investment house doing business in the Philippines. No trust fund shall be established by a pre-need company with an affiliate trust entity subject to Section 38 hereof.

The trust agreement shall be submitted to the Commission for approval before execution and shall contain the following salient provisions, among others:

(a) The manner in which the trust fund is to be operated;

(b) Investment powers of the trustee with respect to trust deposits, including the character and kind of investment;

(c) Auditing and settlement of accounts of the trustee with respect to the trust fund;

- (d) Basis upon which the trust fund may be terminated;
- (e) Provisions for withdrawals from the trust fund;
- (f) That the trustee shall submit to the power of the Commission to examine and verify the trust fund;
- (g) An undertaking by the trustee that it shall abide by the rules and regulations of the Commission with respect to the trust fund; and
- (h) An undertaking by the trustee that it shall submit such other data or information as may be prescribed by the Commission.

SEC. 33. *Responsibilities of the Trustee.* – The trustee shall:

(a) Administer and manage the trust fund with utmost good faith, care and prudence required by a fiduciary relationship;

(b) The trustee shall have the exclusive management and control over the funds and the right at any time to sell, convert, invest, change, transfer or otherwise change or dispose of the assets comprising the funds within the parameters prescribed by the pre-need company and provided these parameters are compliant with the Commission's regulations; and

(c) Not use the trust fund to invest in or extend any loan or credit accommodation to the pre-need company, its directors, officers, stockholders, and related interests as well as to persons or enterprises controlling, owned or controlled by, or under common control with said company, its directors, officers, stockholders and related interests except for entities which are direct providers of pre-need companies.

SEC. 34. *Investment of the Trust Fund.* – To ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and likewise obtain sufficient capital growth to meet the growing actuarial

reserve liabilities, all investments of the trust fund/s of a pre-need company shall be limited to the following and subject to limitations, to wit:

(a) Fixed income instruments. - These may be classified into short-term and long-term instruments. The instrument is short-term if the maturity period is three hundred sixty-five (365) days or less. This category includes:

(1) Government securities which shall not be less than ten percent (10%) of the trust fund amount;

(2) Savings/time deposits and unit investment trust funds maintained with and managed by a duly authorized bank with satisfactory examination rating as of the last examination by the BSP;

(3) Commercial papers duly registered with the SEC with a credit rating of "1" for short-term and "AAA" for long-term based on the rating scale of an accredited Philippine Rating Agency or its equivalent at the time of investment.

The maximum exposure to long-term commercial papers shall not exceed fifteen percent (15%) of the total trust fund amount while the exposure to each commercial paper issuer shall not exceed ten percent (10%) of the allocated amount; and

(4) Direct loans to corporations which are financially stable, profitable for the last three (3) years and have a good track record of paying their previous loans.

These loans shall be fully secured by a real estate mortgage up to the extent of sixty percent (60%) of the zonal valuation of the property at the time the loan was granted.

The property shall be covered by a transfer certificate of title registered in the name of the mortgagor and free from liens and encumbrances.

The maximum amount to be allocated for direct loans shall not exceed five percent (5%) of the total trust fund amount while the amount to be granted to each corporate

borrower shall not exceed ten percent (10%) of the amount allocated.

The maximum term of the loan should be no longer than four (4) years.

Direct loans to planholders are exempt from the limitations set forth under this section: *Provided*, That such loans to planholders shall not exceed ten percent (10%) of the total trust fund amount.

(b) Equities. -- Investments in equities shall be limited to stocks listed on the main board of a local stock exchange.

Investments in duly registered collective investment instruments such as mutual funds are allowed hereunder: *Provided*, That such funds are invested only in fixed income instruments and blue chips securities, subject to the limitations prescribed by laws, rules and regulations.

These investments shall include stocks issued by companies that are financially stable, actively traded, possess good track record of growth and have declared dividends for the past three (3) years. Notwithstanding the prohibition against transactions with directors, officers, stockholders and related interests, the trustee may invest in equities of companies related to the trustee provided these companies comply with the foregoing criteria provided in this paragraph for equity investments.

The amount to be allocated for this purpose shall not exceed thirty percent (30%) of the total trust fund while the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount. The investment shall be recorded at the aggregate of the lower of cost or market.

Existing investments which are not in accordance herewith shall be disposed of within three (3) years from the effectivity of this Act.

(c) Real Estate. -- These shall include real estate properties located in strategic areas of cities and first class municipalities. The transfer certificate of title (TCT) shall be in the name of the seller, free from liens and encumbrances

and shall be transferred in the name of the trustee in trust for the planholders unless the seller/transferor is the pre-need company wherein an annotation to the TCT relative to the sale/transfer may be allowed. It shall be recorded at acquisition cost.

However, the real estate shall be appraised every three (3) years by a licensed real estate appraiser, accredited by the Philippine Association of Real Estate Appraisers, to reflect the increase or decrease in the value of the property. In case the appraisal would result in an increase in the value, only sixty percent (60%) of the appraisal increase is allowed to be recorded in the books of the trust fund but in case of decline in value, the entire decline shall be recorded. Appraisal increment should not be used to cover up the required monthly contribution to the trust fund.

The total recorded value of the real estate investment shall not exceed ten percent (10%) of the total trust fund amount of the pre-need company. In the event that the existing real estate investment exceeds the aforesaid limit, the same shall be leveled off to the prescribed limit within three (3) years from the effectivity of this Code.

Investment of the trust fund, which is not in accordance with the preceding paragraphs, shall not be allowed unless the prior written approval of the Commission had been secured: *Provided, further*, That no deposit or investment in any single entity shall exceed fifteen percent (15%) of the total value of the trust fund: *Provided, finally*, That the Commission is authorized to adjust the percentage allocation per category set forth herein not in excess of two percentage (2%) points upward or downward and no oftener than once every five (5) years. The first adjustment hereunder may be made no earlier than five (5) years from the effectivity of this Act. The pre-need company shall not use the trust fund to extend any loan to or to invest in its directors, stockholders, officers or its affiliates.

SEC. 35. Valuation of Reserve Liabilities of the Pre-need Company. - To determine the sufficiency and adequacy of the fund, an annual pre-need reserve valuation report establishing the reserve requirement and contractual

liabilities of the pre-need company shall be made and submitted to the Commission, within one hundred twenty (120) days from end of the calendar year. The valuation report shall contain the assumptions, methodology, formulas used, a summary of the pre-need plans that were subject of valuation and the results of such valuation.

The report shall be duly certified to by a professional as may be determined by the Commission. Upon approval by the Commission of the reserve computation, any deficiency in the fund shall be covered by the pre-need company, in the manner as may be prescribed by the Commission. In case of an excess of the fund over the reserve liability, the excess shall be credited for future deposit requirements.

SEC. 36. *Trust Fund Deficiencies.* – Upon approval by the Commission of the pre-need reserve computation submitted in the preceding section, any deficiency in the trust fund, when compared to the reserve liabilities as reported in the pre-need reserve valuation report, shall be funded by the pre-need company within sixty (60) days from such approval. Failure to cover the deficiency in an appropriate manner within the time required shall subject the pre-need company to the payment of a penalty, in addition to other remedies exercisable by the Commission, as provided for in this Code. Any excess of the trust fund over the actuarial reserve liabilities may be credited to future deposit requirements.

SEC. 37. *Liquidity Reserve.* – The trustee shall at all times maintain a liquidity reserve which shall be sufficient to cover at least fifteen percent (15%) of the trust fund but in no case less than one hundred twenty-five percent (125%) of the amount of the availing plans for the succeeding year. For this purpose, the pre-need company shall timely submit to the trustee a summary of benefits payable for the succeeding year.

The following shall qualify as investments for the liquidity reserve:

(a) Loans secured by a hold-out on assignment or pledge deposits maintained either with the trustee or other banks,

or of deposit substitute of the trustee itself or mortgage and chattel mortgage bonds issued by the trustee;

(b) Treasury notes or bills, other government securities or bonds, and such other evidences or indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

(c) Repurchase agreements with any of those mentioned in Item "b" above, as underlying instruments thereof; and

(d) Savings or time deposits with government-owned banks or commercial banks.

SEC. 38. *Trustees.* – Upon approval of the Commission or when the Commission requires for the protection of planholders, the pre-need company shall entrust the management and administration of the trust fund to any reputable bank's trust department, trust company or any entity authorized to perform trust functions in the Philippines: *Provided*, That no director and/or officer of the pre-need company shall at the same time serve as director and/or officer of the affiliate or related trust entity: *Provided, further*, That no trust fund shall be established by a pre-need company with a subsidiary, affiliate or related trust entity. However, such may be allowed: *Provided*, That the following conditions are complied with:

(a) A written approval of the Commission has been previously obtained; and

(b) Public disclosure of the affiliation with the trust entity be included in all materials in whatever form.

The Commission shall have the authority to prescribe appropriate rules that shall ensure that the yield of the trust fund is maximized, consistent with the requirements of safety and liquidity.

CHAPTER IX

ACTUARIES FOR PRE-NEED COMPANIES

SEC. 39. *Required Actuarial Reports.* - The following documents which are from time to time submitted to the Commission by a pre-need company shall be duly certified by an Insurance Commission accredited actuary:

- (a) Actuarial valuation of all liabilities pertaining to pre-need contracts;
- (b) Asset share studies when applying for approval of new products or enhancement or repricing of existing products;
- (c) Accounts in the financial statement of the pre-need company pertaining to actuarial reserve liabilities and other actuarial reserve items;
- (d) Financial projections showing the probable income and reserve requirements, enumerating the actuarial assumptions and bases of projections; and
- (e) Such other reports as may be required by the Commission.

It shall be the duty of an actuary to immediately report to the Commission any matter contained in, arising out of, or in relation to the above reports requiring intervention of the Commission to protect the interests of planholders: *Provided*, That the actuary shall not be liable to the pre-need company for any acts done under this paragraph, unless there is a clear showing of bad faith, malice or gross negligence.

SEC. 40. *Disaccreditation of an Actuary.* - An actuary shall be discredited by the Commission on the following grounds:

- (a) Failure to adequately perform his required functions and duties under this Code;
- (b) Failure to meet the requirements of Section 11 of this Code;

- (c) Failure to disclose conflict of interest;
- (d) Failure to comply with the Code of Conduct of the Actuarial Society of the Philippines; or
- (e) Such other grounds that may be determined by the Commission.

CHAPTER X

REPORTS AND EXAMINATION

SEC. 41. *Annual Pre-need Reserve Valuation Report.* -- Every pre-need company shall annually determine its reserve requirement and contractual liabilities, and submit to the Commission an annual pre-need reserve valuation report within one hundred twenty (120) days from the end of the fiscal year of the pre-need company. The valuation report shall contain the assumptions, methodology, formulas used, a summary of the pre-need plans that were the subject of the valuation and the results of such valuation. The report should be duly certified by an actuary accredited by the Commission in the case of contingent plans such as memorial/life plans and by the pre-need company's external auditors or by a qualified actuary in the case of scheduled-benefit plans such as pre-need pension and education plans, the liabilities of which are not actuarial in nature. The reserving formula, bases and limits of the assumptions to be used in the valuation of reserves shall be prescribed by the Commission.

The Commission may require any pre-need company to submit an interim pre-need reserve valuation report if any of the following events occurred:

- (a) When there is sufficient evidence that a subsequent event or transaction occurred after the end of the fiscal year and such event would materially affect the computation of the pre-need reserve valuation report submitted; and
- (b) When the company ceased operation six (6) months after the end of the fiscal year.

SEC. 42. *Annual Audited Financial Statements.* — Every pre-need company shall terminate its fiscal period on the thirty-first (31st) day of December every year. Within one hundred twenty (120) days after the calendar or fiscal year, the pre-need company shall render to the Commission annual financial statements signed and sworn to by its chief executive officer, chief finance officer and external auditors in accordance with a uniform accounting system that shall be prescribed by the Commission, showing in such form and details the exact condition of its affairs.

The audited financial statements should be accompanied by the Statement of Management's Responsibility signed under oath by the company's chairman of the board, chief executive officer and chief financial officer, containing the following declaration:

"The management of (name of the pre-need company) is responsible for all information and representations contained in the financial statements for the year(s) ended (date). The financial statements have been prepared in conformity with rules and regulations of the Commission on accounting and reflect amounts that are based on the best estimates and informed judgment of management with an appropriate consideration to materiality."

"In this regard, management maintains a system of accounting and reporting which provides for the necessary internal controls to ensure that transactions are properly authorized and recorded, assets are safeguarded against unauthorized use or disposition and liabilities are recognized. The management likewise discloses to the company's audit committee and to its external auditor: (i) all significant deficiencies in the design or operation of internal controls that could adversely affect its ability to record, process, and report financial data; (ii) material weaknesses in the internal controls; and (iii) any fraud that involves management or other employees who exercise significant roles in internal controls."

"The board of directors reviews the financial statements before such statements are approved and submitted to the stockholders of the company."

"The (name of the auditing firm), the independent auditors appointed by the stockholders, has examined the financial statements of the company in accordance with generally accepted auditing standards in the Philippines and has expressed its opinion on the fairness of the presentation upon completion of such examination, in its report to the board of directors and stockholders."

Any material omission of disclosures, misstatement or misleading information found in the financial statements, whether interim or annual, shall constitute a violation of this Code and the officer signing such statement shall be subject to the penalty provided for under this Code and such other sanctions as may be imposed by the Commission.

SEC. 43. *Annual Statement of Trust Fund.* - Every pre-need company shall file with the Commission an annual statement of its trust fund for each type of plan. Such statement shall be in a form prescribed by the Commission and shall include details as to all of the income, disbursements, assets and liability items of and associated with the said trust fund accounts. Said statement shall be made under oath by two (2) officers of the company and shall be filed simultaneously with the annual statement required by the preceding section.

Where the trust fund is managed and administered by a trustee as provided under Section 30 of this Code, an annual statement of trust fund for each type of plan shall instead be filed with the Commission. It shall include details such as the income, disbursements, assets and liability items, and shall be certified under oath by at least two (2) of the highest ranking officers of the trustee.

SEC. 44. *Publication of Annual Statement.* - Within thirty (30) days after receipt of the annual statement approved by the Commission, every pre-need company shall publish in two (2) newspapers of general circulation a full synopsis of its annual financial statements, including the trust fund annual

statement showing fully the conditions of its business, and setting forth its resources and liabilities in a standardized format to be designed by the Commission.

The Commission may require pre-need companies to create and maintain a website wherein its planholders may readily access updated information pertaining to the status of financial condition and results of information of the company. The sufficiency and truthfulness of the contents of such website shall be the responsibility of the company.

SEC. 45. *Keeping of Records.* — The Commission shall require every pre-need company to keep its books, records, accounts and vouchers in such manner that the Commission's authorized representatives may readily verify the company's annual statements and ascertain whether the company is solvent and has complied with the provisions of this Code or the circulars, instructions, rulings or decisions of the Commission.

SEC. 46. *Examination.* — The Commission shall, at least once a year and whenever it considers that the public interest so demands, cause an examination to be made into the affairs, financial condition and method of business of every pre-need company, and of any other person, firm or corporation managing the fund or affairs and/or property of such pre-need company. Such examination shall be carried in a manner prescribed by the Commission by rule.

CHAPTER XI

FINANCIAL ACCOUNTING STANDARDS

SEC. 47. *Accounting Rules and Regulations for Pre-need Plans.* — The Commission shall have the authority to make, amend and rescind such accounting rules and regulations applicable for pre-need companies. The Commission may prescribe, among other things, the form or forms in which required information shall be set forth, the items or details to be shown in the components of the financial statements, and the recognition and measurement basis to be adopted for each account, after considering the nature of the operation of the pre-need industry. Pre-need companies shall strictly

comply with such accounting rules and regulations as prescribed by the Commission.

CHAPTER XII

SUSPENSION OR REVOCATION OF AUTHORITY

SEC. 48. *Suspension; Grounds.* — If the Commission is of the opinion, upon examination or other evidence, that any pre-need company is in an unsound condition, or that it has failed to comply with the provisions of law or regulations, or that its condition or method of business is such as to render its proceedings hazardous to the public or to its planholders, or that its paid-up capital stock is impaired or deficient, the Commission is authorized to suspend or revoke all certificates of authority granted to such pre-need company, its officers and agents, after due notice or hearing. No new business shall thereafter be done by such company or for such company by its agent in the Philippines.

The Commission may not lift the order of suspension or revocation of the said authority until the concerned pre-need company shall have submitted a viable business plan showing the company's estimated receipts and disbursements, as well as the basis therefor for the next succeeding three (3) years.

CHAPTER XIII

CONSERVATORSHIP AND PROCEEDINGS UPON INSOLVENCY

SEC. 49. *Appointment of Conservator.* — If at any time before or after the suspension or revocation of the license of a pre-need company as provided in Section 27 hereof, the Commission finds that such company is in a state of continuing inability or unwillingness to comply with the requirements of the Code and/or orders of the Commission, a conservator may be appointed to take charge of the assets, liabilities, and the management of such company, collect all moneys and debts due the company and exercise all powers necessary to preserve the assets of the company, reorganize its management, and restore its viability. The conservator shall have the power to overrule or revoke the actions of the

previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or bylaws of the company, to the contrary notwithstanding, and such other powers as the Commission shall deem necessary. The conservator may be another pre-need company, by officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the pre-need company. The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

The conservator appointed shall report and be responsible to the Commission until such time as the Commission is satisfied that the pre-need company can continue to operate on its own and the conservatorship shall likewise be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the pre-need company would be hazardous to planholders and creditors, in which case the provisions of Chapter XVI shall apply.

SEC. 50. Proceedings upon Insolvency. - Whenever, upon examination or other evidence, it shall be disclosed that the condition of any pre-need company is one of insolvency, or that its continuance in business would be hazardous to its planholders and creditors, the Commission shall forthwith order the company to cease and desist from transacting business and shall designate a receiver to immediately take charge of its trust fund, assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its planholders and creditors, and exercise all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the pre-need company.

The Commission shall thereupon determine within thirty (30) days whether the pre-need company may be reorganized or otherwise placed in such condition so that it may be

permitted to resume business with safety to its planholders and creditors and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. In such case, the expenses and fees in the collection and administration of the pre-need company shall be determined by the Commission and shall be paid out of the assets of such company. If the Commission shall determine and confirm within the said period that the pre-need company is insolvent, as defined hereunder, it shall, if the public interest so requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan and implement it immediately. The Commission shall designate a competent and qualified person as liquidator who shall take over the functions of the receiver previously designated and, with all convenient speed, distribute the trust fund exclusively to the planholders in proportion to termination values of their respective pre-need plans, convert the assets of the pre-need company to cash, or sell, assign or otherwise dispose of the same to the planholders, creditors and other parties for the purpose of settling the liabilities or paying the debts of such company and he may, in the name of the company, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of the pre-need company, and to do such other acts as may be necessary to complete the liquidation as ordered by the Commission.

The provisions of any law to the contrary notwithstanding, the actions of the Commission under this section shall be final and executory, and can be set aside by the court upon petition by the company and only if there is convincing proof that the action is plainly arbitrary and made in bad faith. The Commission shall then file the corresponding answer reciting the proceeding taken and praying for the assistance of the court in the liquidation of the company. No restraining order or injunction shall be issued by the court enjoining the Commission from implementing his actions under this section, unless there is convincing proof that the action of the Commission is plainly arbitrary and made in bad faith and the petitioner files a bond in favor of the Commission with the court in an amount fixed by it. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Commission, if he so desires, of a bond in

an amount twice the amount of the bond of the petitioner conditioned that it will pay the damages which the petition may suffer by the refusal or the dissolution of the injunction.

The court shall give preference to all proceedings under this chapter. The Commission shall not be required to pay any fee to any public officer for filing, recording or in any manner authenticating any paper or instrument relating to the proceedings.

As used in this title, the term "insolvency" shall refer to the financial condition of a pre-need company that is generally unable to pay its liabilities as they fall due in the ordinary course of business or that has liabilities that are greater than its assets.

In case of liquidation of a pre-need company, after payment of the cost of the proceedings, including reasonable expenses and fees incurred in the liquidation to be allowed by the court, the Commission shall pay all allowed claims against such company, under order of the court, in accordance with their legal priority.

The receiver or the liquidator, as the case may be, designated under the provisions of this title shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on such receiver or liquidator.

SEC. 51. *Commission's Power to Assume Trustee Functions.* - In cases where the Commission has ordered the liquidation of the pre-need company, the Commission may immediately take custody of the trust fund established by the pre-need company, and the pre-need company shall forthwith deliver custody and an accounting of the same. Henceforth, the Commission shall have the full power and control over the fund to satisfy the pre-need company's obligations to planholders.

SEC. 52. *Liquidation.* - (a) In cases where the Commission determines that the pre-need company shall be liquidated, it shall have the power to commence insolvency

proceedings in the appropriate court which shall have jurisdiction over the assets of the pre-need company, excluding trust fund assets that have been established exclusively for the benefit of planholders.

(b) Proceedings in court shall proceed independently of proceedings in the Commission for the liquidation of claims, and creditors of the pre-need company shall have no personality whatsoever in the Commission proceedings to litigate their claims against the trust funds.

(c) In liquidating claims of planholders, the Commission shall ensure that all planholders receive an equitable distribution of their claims, considering the amounts each has paid into their plans, the termination values due each planholder, the present value of their claims and other equitable considerations. The only other claims which may be satisfied by the Commission out of the trust funds are the claims for trustees' fees which are reasonable and can be shown to have been incurred in the administration of the trust fund, and taxes incurred under trust.

CHAPTER XIV

ADMINISTRATIVE SANCTIONS AND CRIMINAL PENALTIES

SEC. 53. *Administrative Sanctions.* - (a) The Commission, after proper notice and hearing, may impose any or all of the sanctions provided in subparagraph (b) of this section for the following offenses: (1) the making of any untrue statement of a material fact in a registration statement, information brochure and its supporting papers and other reports required to be filed with the Commission; (2) the failure to disclose any material fact required to be stated therein; (3) the refusal to permit any lawful examination into its affairs; and (4) any violation of this Code or its implementing rules and regulations.

(b) The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individual responsible for the violation:

(1) Cease and Desist Order. – The Commission may, *motu proprio* or upon verified complaint by any party, issue a cease and desist order (CDO) against any pre-need company upon proof, after due notice and hearing, of violation of any provision of this Code: *Provided*, That such CDO may be issued *ex parte* if the violation is clearly apparent, injurious to a number of planholders and requires immediate intervention by the Commission. The CDO shall specifically enjoin the pre-need company from performing certain activities and shall impose fines and state the required remedial actions. All proceedings before the issuance of the CDO shall be confidential;

(2) Suspension of License. – The Commission shall issue a suspension order against the pre-need company if it fails to comply with the CDO within thirty (30) days from issuance thereof;

(3) Revocation of License. – The Commission may issue a revocation order of the license of the pre-need company under suspension for a period of ninety (90) days;

(4) A fine of not less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

(5) Disqualification from being an officer, a member of the board of directors or principal stockholders of a pre-need company; or

(6) Other penalties within the power of the Commission under existing laws.

(c) The unauthorized sale of pre-need plans shall subject the issuer to a fine as follows:

(1) First violation – thirty percent (30%) of the aggregate gross pre-need price of the plans sold;

(2) Second violation – forty percent (40%) of the aggregate gross pre-need price of the plans sold; and

(3) Third violation – suspension or revocation of license.

Failure to pay fines within three (3) months from receipt of notice to pay will cause the Commission to issue a suspension order.

SEC. 54. *Criminal Penalties.* – The following acts are criminal in nature:

(a) Selling or offering to sell a pre-need plan by unregistered persons shall be penalized by imprisonment of one (1) year and a fine equivalent to triple the contract price;

(b) Selling or offering to sell an unregistered pre-need plan or any product that has pre-need plan features shall be penalized by imprisonment of one (1) year and a fine equivalent to triple the indicated price;

(c) Soliciting, selling or offering to sell a pre-need plan by means of false or misleading representation and other fraudulent means shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00);

(d) Any negligent act or omission that is prejudicial or injurious to the planholder shall be penalized by imprisonment of one (1) year and one (1) day to six (6) years and a fine in the amount of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00);

(e) Any fraudulent act or omission that is prejudicial or injurious to the planholder shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of One hundred thousand pesos (P100,000.00) to One million pesos (P1,000,000.00); and

(f) Willful violation of the provisions of this Code or orders of the Commission: *Provided*, That repeated violations shall constitute *prima facie* evidence against the offender and shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of One

hundred thousand pesos (P100,000.00) to One million pesos (P1,000,000.00).

Any person who violates any other provisions of this Code or rules and regulations promulgated by the Commission under authority thereof shall, upon conviction, be punished by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than one (1) year nor more than fourteen (14) years, or both, at the discretion of the court. Should the offense be committed by a juridical person, the penalty may, in the discretion of the court, be imposed on such juridical entity and upon the officer or officers of the juridical entity responsible for the violation. If such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

CHAPTER XV

MISCELLANEOUS PROVISIONS

SEC. 55. *Claims.* - The Commission shall have the primary and exclusive power to adjudicate any and all claims involving pre-need plans. If the amount of benefits does not exceed One hundred thousand pesos (P100,000.00), the decision of the Commission shall be final and executory.

SEC. 56. *Review of Commission Orders or Decisions.* - Any person aggrieved by an order or decision of the Commission, whether in relation to its settlement of a claim of a planholder or in the exercise of its regulatory authority, may appeal the order or decision to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

SEC. 57. *Transitory Provisions.* - Any pre-need company who, at the time of the effectivity of this Code has been registered and licensed to sell pre-need plans and similar contracts, shall be considered registered and licensed under the provision of this Code and its implementing rules and regulations and shall be subject to and governed by the provisions hereof: *Provided, however,* That compliance for all

sections with the exception of Section 21, may be deferred for such reasonable time as the Commission may determine but not to exceed one (1) year unless otherwise specifically provided in this Code. With respect to Chapter IV, compliance will cover all new plans sold one hundred twenty (120) days after the effectivity of this law. Violations committed prior to the effectivity of this Code shall be punished in accordance with the provisions of the laws then in force.

The Commission shall constitute forthwith a special team of experts to handle all matters related to the pre-need industry and shall secure and transfer all the files and records of the SEC to the Insurance Commission within ninety (90) days after the effectivity of this Code.

Notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the SEC shall be continued in its full and final conclusion. It shall also assist the Department of Justice in criminal cases involving matters related to the pre-need industry.

SEC. 58. *Implementing Rules and Regulations.* - The Commission shall adopt such rules and regulations for the proper and effective implementation of this Code within sixty (60) days from approval hereof. The Commission shall publish once a week for two (2) consecutive weeks in two (2) newspapers of general circulation the rules and regulations promulgated pursuant to the preceding section.

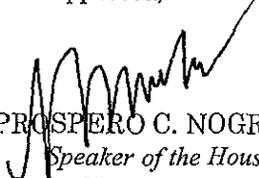
SEC. 59. *Effect on Existing Law.* - Any person, natural or juridical, or pre-need plan, authorized, licensed or registered by the SEC under the Securities Regulation Code shall be deemed to have been licensed or registered under the provisions of this Code. Such person or plan shall, unless otherwise herein provided, be given a period of one (1) year from the effectivity of this Code within which to comply with the same. The rights and remedies provided by this Code shall be in addition to any and all other rights and remedies that exist under existing laws.

SEC. 60. *Separability Clause.* - Should any provision of this Act or the application thereof to any person or circumstance be held invalid, the other provisions or sections of this Act shall not be affected thereby.

SEC. 61. *Repealing Clause.* – All acts, laws, executive orders and/or rules and regulations or any part thereof that are inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SEC. 62. *Effectivity.* – This Act shall take effect upon its approval.

Approved,


PROSPERO C. NOGRALES
*Speaker of the House
of Representatives*

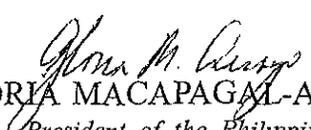

JUAN PONCE ENRILE
President of the Senate

... This Act which is a consolidation of Senate Bill No. 2077 and House Bill No. 6407 was finally passed by the Senate and the House of Representatives on September 30, 2009 and September 29, 2009, respectively.


for: MARILYN B. BARUA-YAP
*Secretary General
House of Representatives*


EMMA LIRIO REYES
Secretary of the Senate

Approved: DEC 03 2009


GLORIA MACAPAGAL-ARROYO
President of the Philippines



O

