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SENATE

RECEIVED BY: 

S. No. 1114

Introduced by Senator Franklin M. Drilon

EXPLANATORY NOTE

Educational, memorial and pension plans have become very popular in the country as evidenced by the fact that the pre-need plan industry has become a multi-billion peso concern in the Philippines with over sixty (60) firms actively engaged in the sale of pre-need plan securities. And, the growth of the industry is to be expected, attracting more Filipino families in saving their hard-earned money for future needs.

With the proliferation of pre-need plan companies, it has become necessary to regulate their activities and assure their liquidity and solvency for the protection of the public. The enactment of a law that would regulate the operation of pre-need plan industry appears imperative.

Thus, this bill seeks to establish a Pre-Need Plan Securities Code to govern the operation of firms which issue, or sell pre-need plans or similar contracts and investments. The salient features of the bill include:

1. Vesting the Insurance Commission with the authority to supervise and regulate the operation of pre-need plan companies. Since a pre-need plan is a contract between the planholder and issuer, there is a need for a third party to ensure that neither party takes advantage of the other and the terms and conditions offered are fair and equitable to both.
2. Creation of a Trust Fund to be administered and managed by a reputable bank authorized to perform trust function in the Philippines.
 - (a) At least 10% of the Fund, but in no case less than P500,000, shall be set aside and maintained as a Liquidity Reserve Fund.
 - (b) Pre-need companies shall set aside 10% of the Fund for lending to Countryside and Business Enterprises established under RA 6810 and low-cost housing programs of the government.
3. Establishment of a Planholders' Protection Fund to compensate planholders for the extraordinary losses or damage they may suffer due to business failure or insolvency of a pre-need plan company.

In view of the foregoing, approval of this bill is earnestly urged.


FRANKLIN M. DRILON

SENATE

S. No. 1114

Introduced by Senator Franklin M. Dilon

**AN ACT
ESTABLISHING THE PRE-NEED PLAN SECURITIES CODE**

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

SECTION 1. *Title.* – This Act shall be known as the “PRE-NEED PLAN SECURITIES CODE”.

SECTION 2. *Definition of Terms.* – Wherever used in this Code, the following terms shall have the respective meanings hereafter set forth, unless the context otherwise requires :

- (a) “Commission” means the Insurance Commission.
- (b) “Pre-need Plans” are contracts which provide for the performance / delivery of future services and / or payment of monetary consideration / benefits at the time of actual need or maturity of the contract, payable either in cash or installment, with or without insurance coverage, by planholders at prices stated in the contract, such as life memorial plans, pension plans, education plans, interment plans, and similar contracts and investments.
- (c) “Issuer” means any corporation registered with the Commission and authorized / licensed to sell or offer for sale pre-need plans and / or similar contracts and investments.
- (d) “Planholder” means any natural or juridical person who purchases pre-need plans or similar contracts and investments for whom or for whose beneficiaries future services are to be rendered or payments / benefits delivered as guaranteed by the issuer at the time of need or maturity of the contract.
- (e) “Traditional or actual cost plans” refer to such plans whose corresponding benefits / services are guaranteed in spite of increase in costs of such benefits / services at the time of avilment on account of the contingencies of inflation and interest yield rate fluctuations, among others.

- (f) "Fixed Value Plans" refer to plans whose benefits and costs of services are fixed at the time of purchase of the plan.

SECTION 3. *Supervision & Regulation.* – Every pre-need company shall be subject to the supervision and regulation of the Insurance Commission. The Commission shall create a new department within its control, headed by a director to regulate and supervise the operation and activities of pre-need plan companies in the country. For this purpose, an amount equivalent to twenty percent (20%) of the fees, charges, and other income derived from the pre-need industry shall be allocated and retained by the Commission.

The Commission shall have the authority to determine the number of pre-need companies in order to prevent industry overcrowding and undue competition.

CHAPTER II. REGISTRATION

SECTION 4. *Registration.* – No corporation shall issue or sell pre-need plans or similar contracts and investments unless such securities shall have been registered and licensed pursuant to the provisions of the Revised Securities Act.

SECTION 5. *Registration Procedure.* – All pre-need plans or similar contracts and investments shall be registered and licensed through the filing by the issuer with the Commission of a sworn registration statement containing the documents required by the Commission and an actuarial viability of the plan duly certified by an accredited actuary. Upon filing of the registration statement, the registrant shall pay to the Commission a minimum fee of one tenth of one percent of the maximum aggregate price at which such plans or contracts are proposed to be sold, but not less than One Thousand Pesos (P1,000.00), and the fact of such filing shall be immediately published by the Commission at the expense of registrant in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, reciting that a registration statement for the sale of such plans or contracts has been filed with it, and that the aforesaid registration statement, as well as the papers attached thereto, are open for inspection during business hours by interested parties.

Any interested party may file an opposition to the registration within ten (10) days from the date of the last publication.

SECTION 6. *Capital.* – The issuer engaged in the issue and sale of pre-need plans or similar contracts or investments shall have a minimum unimpaired capital of at least Ten Million Pesos (P10,000,000.00) plus Five Million Pesos (P5,000,000.00) for every additional pre-need product, in cash or property. The Commission may increase such minimum paid-up capital stock, under such terms and conditions as it may impose, to an amount which, in its discretion, would reasonably assure the safety of the interests of the planholders and the public.

SECTION 7. *Federation Membership.* – All pre-need plan companies shall be registered members of the federation of pre-need plan companies.

CHAPTER III. TRUST FUND

SECTION 8. *Trust Fund.* – To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund shall be established

independently with and shall be administered and managed by a reputable bank authorized to perform trust functions in the Philippines. No withdrawal shall be made from the trust fund except for paying the cost of service rendered or property delivered, bank charges and investment expenses in the operation of the trust fund, expenses in the delivery of the benefits or services, cash surrender/termination values payable to the planholders, annuities, contributions to the fund of cancelled plans, taxes on trust funds, and other costs necessary to insure the delivery of benefits or services.

SECTION 9. *Deposits in the Trust Fund.* – The issuer shall make periodic deposits in the trust fund in an amount not less than forty percent (40%) of the gross pre-need price of the plan, if sold for cash, within sixty (60) days upon receipt of payment. For plans sold on installment basis, the following minimum percentages on quarterly gross collections shall be deposited within sixty (60) days following the end of each quarter of the fiscal year of the issuer, as follows:

- (a) collections on the first 20% of plan value - 5%
- (b) collections on the second 20% of plan value - 5%
- (c) collections on the third 20% of plan value - 60%
- (d) collections on the fourth 20% of plan value - 65%
- (e) collections on the fifth 20% of plan value - 65%

If the above trust fund deposit rates are not sufficient in accordance with the actuarial viability study of the plan prepared by the Commission-accredited actuary, the approved trust fund deposit rates appearing in the approved actuarial pricing by the Commission shall be the required basis for the periodic deposits to the trust fund.

The proceeds of insurance coverage taken from an insurance company shall in appropriate cases be considered as collections, but shall not be subject to commission.

SECTION 10. *Actuarial Valuation of the Trust Fund.* – An actuarial valuation report of the sufficiency of the trust fund to pay the contractual liabilities of the issuer under the plans issued, duly certified by an accredited actuary, shall be submitted to the Commission within one hundred twenty (120) days after the end of every fiscal year. The Commission shall refer the report to its actuarial consultant, if there is one, or to an independent actuary for verification and re-examination. The expenses incurred therefore shall be charged to the issuer. Upon approval by the Commission of the actuarial computation, any deficiency in the actuarially valued reserve liabilities shall be covered through additional deposits within thirty (30) days, or such longer additional deposits within thirty (30) days, or such longer period as the Commission may allow, after receipt of notice of deficiency from the Commission. Any excess in the trust fund over the actuarial reserve liabilities may be applied to prospective required deposits to the trust fund.

SECTION 11. *Trust Agreement.* – The agreement creating the trust fund which shall be submitted for approval of the Commission shall define the investment policy and portfolio mix taking into consideration the factors of security of the principal growth, yield and liquidity in accordance with the prevailing economic conditions; manner in which the trust fund is to be operated; the investment powers of the trustee; allocation and apportionment of income, profits and losses; terms and conditions governing the admission and withdrawal of the fund; and such other matters as may be necessary or proper to define clearly the rights of the issuer with regard to the trust fund.

SECTION 12. *Limits on Trust Fund Investment.* – The trustee shall not use the trust fund to extend any loan to nor to invest in the pre-need company, its directors, officers, stockholders and related interests nor to any other entity directly or indirectly controlled by the above mentioned; Provided, however; That pre-need companies shall set aside ten percent (10%) of the trust fund for lending to Countryside and Business Enterprises established under R.A. No. 6810 and low-cost housing programs of the government.

SECTION 13. *Liquidity Reserve Fund.* – At least ten percent (10%) of the trust fund but in no case less than Five Hundred Thousand Pesos (P500,000.00) must be set aside and maintained as a liquidity reserve fund which shall be invested only in the following transactions:

- (a) Loans secured by a hold-out on, assignment or pledge of deposits maintained either with the trustee or other banks, or of deposit substitutes of the trustee itself or mortgage and chattel mortgage bonds issued by the trustee;
- (b) Short-term government securities or bonds, and such other evidences of 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;
- (d) Savings or time deposits with government-owned banks or commercial banks; Provided, That in no case shall any such savings or time deposit account be accepted or allowed under a "bearer", "numbered account" or other similar arrangements; and
- (e) Other investments as the Commission may allow.

CHAPTER IV. PLAN AGREEMENT, AMENDMENT AND PUBLICATIONS

SECTION 14. *Compliance with the Contract.* – Upon full payment of the contract price by the plan holder, the issuer shall render to him or his assigns the services or give value thereof or deliver the property as stipulated in the contract.

SECTION 15. *Amendments to the Plan Agreements, Contracts, or Other Documents Pertinent to Registration.* – No plan agreement, trust agreement, contract or other documents of the plan or contracts shall be amended or modified without prior approval of the Commission, and the planholders.

SECTION 16. *Default: Reinstatement Period.* – Every issuer must provide in all contracts issued to planholders, a grace period of at least three (3) months within which to pay accrued installments. Non-payment beyond the grace period shall render the plans without further force and effect. Any payment by the planholder after the grace period shall be reimbursed forthwith. The planholder shall be allowed a period of not less than two (2) years within which to reinstate his plan. No cancellation of plans shall be made by the issuer during such period when reinstatement may be effected.

The planholder of cancelled or lapsed plans shall be entitled to termination values as provided in the following section.

SECTION 17. *Termination Values.* – Holders of surrendered and lapsed or cancelled policies are entitled to such values in accordance with a schedule of minimum termination values that the Commission may formulate to protect the equities of planholders.

CHAPTER V. ACTUARIES

SECTION 18. *Required Actuary.* – No pre-need company shall be licensed to do business in the Philippines nor shall any pre-need company doing business in the Philippines be allowed to continue doing-such business unless they shall engage the services of either a resident or consulting actuary duly accredited with the Commission who shall, during his tenure of office, be directly responsible for the direction and supervision of all actuarial work connected with or that may be involved in the business of the pre-need company.

SECTION 19. *Qualifications of the Actuary.* – Any person who is a fellow of good standing in the Actuarial Society of the Philippines may be officially accredited by the Commission to act as an actuary in any pre-need company upon application therefore and the payment of the prescribed fee.

CHAPTER VI. REPORTS

SECTION 20. *Actuarial Valuation Report.* – Every pre-need company shall annually make a valuation of all pre-need plans in order to determine its financial stability and solvency. The valuation shall be made in accordance with the minimum standards of valuation for pre-need plans prepared by the Actuarial Society of the Philippines and adopted by the Commission. The results of such valuation shall be reported to the Commission accompanied by a sworn statement of opinion of the company's resident actuary or consulting actuary within one hundred twenty (120) days after the end of each fiscal period.

SECTION 21. *Audited Financial Statement.* – Every pre-need company doing business in the Philippines shall annually render to the Commission within one hundred twenty (120) days after the end of each fiscal period a statement signed and sworn to by the chief officer of such company showing the exact condition of its financial affairs in accordance with a uniform accounting system that may be prescribed by the Commission.

Any entry in the statement which is found to be false shall constitute a misdemeanor and the officer signing such statement shall be subject to the penalty provided for under this Act.

SECTION 22. *Annual Statement of Trust Fund.* – Every issuer shall file with the Commission an annual statement of its operations with special focus on its trust fund within one hundred twenty (120) days after the end of each fiscal period. Such statement shall be on a form prescribed or approved 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 under oath of two officers of the company and shall be filed simultaneously with the annual statement required in the preceding section.

SECTION 23. *Publication of the Annual Financial Statement.* – Within thirty (30) days after receipt of the annual statement approved by the Commission, every pre-need company doing business in the Philippines shall publish in two (2) newspapers of general circulation a full synopsis of its annual financial statement showing fully the conditions of its business, and setting forth its resources and liabilities.

CHAPTER VII. SUSPENSION/REVOCATION OF LICENSE OR PERMIT

SECTION 24. *Suspension of License or Permit.* – If at any time the information contained in the statement filed has been found to be misleading, incorrect, inadequate or incomplete or the sale or offering for sale of the plans or contracts may work or tend to work a fraud, the Commission may require from the person filing such statement further information as may, in its judgment, be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in the Revised Securities Act, and the Commission may also suspend the right to sell such security pending further investigation, by entering an order specifying the grounds for such action and by notifying, expressly or by personal service, the person filing such statement and every broker who shall have notified the Commission of an intention to sell such security. Refusal to furnish information required by the Commission within a reasonable time to be fixed by the Commission, may be a proper ground for the entry of such order of suspension.

Upon entry of such order of suspension, no further sales of such security shall be made until the Commission orders otherwise.

Upon entry of such order of suspension, the Commission shall conduct a hearing with proper notice to the parties to determine whether the sale of any such security should be revoked on any ground under the Revised Securities Act. It shall make the necessary findings and enter a final order prohibiting the sale of such plans or contracts whenever proper. If, however, the Commission finds that the sale of the plans or contracts is not fraudulent or will not result in fraud, it shall forthwith enter an order revoking the suspension, and such plan or contract shall be restored to its status as a security registered under the Revised Securities Act, as of the date of such order of revocation of suspension.

SECTION 25. *Grounds for Revocation of Permit or License.* – The Commission may, after due notice and hearing, revoke the registration of pre-need plan and the permit to sell such security by issuing an order to such effect, setting forth its findings in respect thereto, if upon examination it shall appear that the issuer:

- (a) is insolvent;
- (b) has violated any of the provisions of the Revised Securities Act, or the rules promulgated pursuant thereto, or any order of the Commission of which the issuer had notice;
- (c) has been or is engaged or is about to engage in fraudulent transactions;
- (d) has made fraudulent representation in any prospectus, circular, literature or other form of broadcast or media communication concerning its plans or securities; or
- (e) does not conduct its business in accordance with law.

The Commission may compel the production of all books and records of the issuer, and may administer oaths and examine the officers or employees of the issuer.

Failure by the issuer to submit the statements or books required or refusal to permit any examination thereof by the Commission shall be proper grounds for the revocation of the registration of and permit to sell its securities.

If the Commission deems it necessary, it may issue an order suspending the right to sell securities pending any investigation stating the grounds therefore. Upon the issuance thereof, no further sale of such security shall be made until the suspension order is lifted or set aside by the Commission. Any such sales in the interim shall be void.

Notice of such suspension order or lifting thereof shall be made expressly or by personal service upon the issuer and every dealer or broker or by personal service upon the issuer and every dealer or broker who shall have notified the Commission of his intention to sell such security.

SECTION 26. *Withdrawal of Registration by the Issuer.* – A registration statement may be revoked by the Commission upon petition made for its withdrawal by the issuer. An application for the withdrawal of a registration statement shall be accompanied by the following:

- (a) petition or application withdrawal of the License/Permit to Sell Securities to the public, stating the reasons therefore;
- (b) proof of publication of Notice to Stockholders/Investors of said revocation/withdrawal;
- (c) Board resolution approving such application for withdrawal, certified under oath by the Corporate Secretary and attested to by the President;
- (d) list of all stockholders/planholders/investors;
- (e) for pre-need plan issuers, a certification under oath by the Treasurer attested to by the President that the planholders' contributions were refunded and their claims fully settled;
- (f) a joint and several assumption of liability executed by the President and Treasurer of the issuer for settlement of all proved claims that may arise as a result of said withdrawal; and
- (g) sufficiency of trust fund to cover payment of cash surrender/termination values.

Upon payment of filing fee to be determined by the Commission but not lower than One Thousand Pesos (P1,000.00), the petition shall be published by the Commission, at the expense of the issuer in two (2) newspapers of general circulation, once a week for two (2) consecutive weeks, with notice to the general public, planholders, stockholders or other persons affected by said withdrawal, who may file their claims with the issuer and the Commission.

After publication and upon findings of the Commission that the petition with all papers and documents attached thereto is on its face complete and that no party stands to suffer damage thereby, it shall issue an order revoking said Registration/License or Permit to Sell Securities to the public.

SECTION 27. *Jurisdiction over Cases.* – The Commission shall have jurisdiction to adjudicate over all complaints filed by planholders against or by pre-need sales associates, solicitors and/or issuers of pre-need companies against one another.

SECTION 28. *Penalty for Issuance/Sale or Overpricing of Plans in Excess of Authorized Amount.* – The issuance/sale of pre-need plans and similar contracts and investments in excess of the amount authorized under a permit/license shall subject the issuer, to a fine, as follows:

- (a) first violation – 3/10 of 1% of the aggregate gross pre-need price of the plans sold.
- (b) second violation - 4/10 of 1% of the aggregate gross pre-need price of the plans sold.
- (c) third violation – suspension or revocation of license.

The recurrence of all violations shall be computed over a three year period.

The Commission shall act within a period of sixty (60) days from submission of completed applications, for price upgrading and/or downgrading of sales values of any plan.

Overpricing of plans above the amounts stated under said permit/license shall be penalized, by a fine based on the price difference realized from such sales, as follows:

- (a) first violation – 3/10 of 1% of the difference between the authorized plan value and the value of the overpriced plan.
- (b) second violation – 4/10 of 1% of the difference between the authorized plan value and the value of the overpriced plan.
- (c) third violation – suspension or revocation of license.

CHAPTER VIII. PLANHOLDERS' PROTECTION FUND

SECTION 29. The Commission may establish or facilitate the establishment of a planholders' protection fund for the purpose of compensating planholders for the extraordinary losses or damage they may suffer due to business failure or insolvency of a pre-need company, under such rules as the Commission may prescribe in the public interest. For this purpose, pre-need companies shall be required to contribute to the fund. The Commission may, having due regard to the public interest or the protection of planholders, regulate, supervise, examine, suspend, or otherwise discontinue such fund which may include taking custody and management of the fund itself as well as investments in and disbursements from the fund under such forms and control and supervision by the Commission.

CHAPTER IX. ADMINISTRATIVE SANCTIONS

SECTION 30. – *Administrative Sanctions.* – If, after proper notice and hearing, the Commission finds that there is a violation of the provision of this Code, or that any registrant has, in a registration statement and its supporting papers and other reports required to be filed with the Commission, made any untrue statement of a material fact,

or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or refused to permit any lawful examination into its affairs, it shall, in its discretion, impose any or all of the following sanctions:

- (a) suspension or revocation of its certificate of registration and permit to offer securities;
- (b) a fine of no less than Two Hundred Pesos (P200.00) nor more than Fifty Thousand Pesos (P50,000.00) for each day of continuing violation;
- (c) disqualification from being an officer, member of the board of directors or principal stockholder of an issuer whose securities are or are about to be registered pursuant to this Act; and
- (d) other penalties within the power of the Commission under existing laws.

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

CHAPTER X. MISCELLANEOUS PROVISIONS

SECTION 31. *Transitory Provisions.* – Any issuer who at the time of the effectivity of this Act has been registered and licensed to issue pre-need plans and similar contracts and investments, shall be considered as registered and licensed under the provisions of this Act and its implementing rules and regulations and shall be subject to and governed by the provisions hereof.

SECTION 32. *Implementing Rules and Regulations.* – The Commission shall adopt such rules and regulations for the proper and effective implementation of this Act within sixty (60) days from approval hereof. The Commission shall publish once a week for two (2) consecutive weeks in two newspapers of general circulation the rules and regulations promulgated pursuant to the preceding section.

SECTION 33. *Effect on Existing Law.* – The rights and remedies provided by this Act shall be in addition to any and all other rights and remedies that exist under the Revised Securities Act and other existing laws.

SECTION 34. *Repealing Clause.* – All acts, laws, executive orders or rules and regulations or any part thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 35. *Effectivity Clause.* – This Act shall take effect upon its approval.

Approved,