

THIRTEENTH CONGRESS OF THE REPUBLIC  
OF THE PHILIPPINES

First Regular Session

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SENATE  
S.B. No. 1582

RECEIVED BY: \_\_\_\_\_

*Introduced by Senator Magsaysay, Jr.*

**EXPLANATORY NOTE**

At present, there are over fifty (50) corporations engaged in the sale of pre-need plans. Their assets total a combined almost one hundred billion pesos with three and a half million plans sold since pre-need plans have been transacted.

The proliferation of pre-need corporations has raised questions on the industry's financial capabilities specially on its ability to provide security to its investors and planholders. There have been problems reported involving and questioning the stability of some players in the pre-need market. There is a need to regulate the industry to protect its investors and planholders from fraud. There is likewise a need to regulate the industry to protect it from unscrupulous pre-need corporations who may take advantage of the good name of the honest members of the industry. There is need to provide regulatory standards within the industry to ensure a level playing field to enable potential purchaser true freedom of choice. Finally, there is a need to strengthen government's regulatory capabilities to insure that the industry serves its purpose does not become a forum abuse.

This legislation have the following objectives and policy aims:

1. To provide the necessary legal framework that will govern the pre-need industry, define their responsibilities and functions and extent of services they can offer to future plan holders.
2. To provide a regulatory standard for the industry.
3. To strengthen the government's regulatory capabilities.
4. To provide effective protection for plan holders.

To ensure the achievement of the above-mentioned objectives and policy aims, the bill is highlighted by the following provisions:

1. The Insurance Commission shall be the regulatory agency for the pre-need industry.
2. A minimum paid-up capital of one hundred million pesos (P100,000,000.00) and margin of solvency of at least P10 million is required.
3. Safeguards for the investments of the trust fund have been provided.
4. To ensure effective protection for Planholders, a Liquidity Reserve Fund and a Planholders Protection Fund shall be established.
5. Pre-need companies are required to publish their annual statement and trust fund annual statement.
6. To effectively regulate the pre-need companies, financial accounting standards have been provided.

The immediate approval of this legislative is imperative and highly significant.

  
RAMON B. MAGSAYSAY, JR.

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**S E N A T E**  
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**AN ACT ESTABLISHING THE PRE-NEED PLAN CODE OF THE  
PHILIPPINES**

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

**SECTION 1. Title** - This Act shall be known as the Pre-Need Plan Code of the Philippines of 2004.

**SEC. 2. Declaration of Policy.** - It is hereby declared 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 advantages 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.

**SEC. 3. 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 which provide for the performance of future service/services or payment of monetary consideration at the time of actual need, payable either in cash or installment by planholders at prices stated in the contract, such as life/memorial plans, pension plans, education plans, cremation plans, internment plans and similar contracts and investments.
- (c) "Pre-need company" is any corporation registered with the Commission and authorized/ licensed to sell or offer for sale pre-need plans.
- (d) "Planholder" is any natural or juridical person who purchases pre-need plans for whom or for whose beneficiaries' future services/payments are to be rendered or made at the time of need or payment/benefits to be delivered as stipulated and guaranteed by the pre-need company at the time of need or maturity of the contract.

- (e) "Traditional or actual cost plans" are plans wherein the benefits or services at the time they are guaranteed, regardless of any increase in cost from the originally assumed values since the date of issue of the pre-need plan, on account of inflation, interest yield rate fluctuation, or other similar causes.
- (f) "Fixed value plans" are plans whose benefits and costs are fixed and pre-determined at the inception or purchase of the plan.
- (g) "Sales agents/representatives" are natural persons who are engaged in the sale, or offers to sell, or counsels prospective planholders for the purpose of selling, whether or not on commission basis, of pre-need plans upon authority of the pre-need company, and registered and licensed by the Commission to engage in the business of selling said pre-need plans and contracts.
- (h) "In force plan" is a plan for which the pre-need company has an outstanding obligation, either for (1) the delivery of benefits or services, or (2) the payment of termination value, such as plan which is up-to-date in the payment of installments; a fully delivered; or a lapsed or cancelled plan, the termination value of which has not yet been paid.
- (i) "Lapsed plan" is a plan that is delinquent in payment of installments provided for the contract, the delinquency of which extends beyond the grace period provided for in plan or contract and for which the planholder has been duly notified.
- (j) "Cancelled plan" is a lapsed plan can no longer be reinstated by reason of delinquency in the payment of installments for (2) years or more, counted, from the expiry of the grace period provided for in the plan or contract, and for which the planholder has been duly notified.
- (k) "Trust fund" is a fund set up from the plant holder's payments, separate and distinct form the paid-up capital of the pre-need company, property as provided for in the contracts.
- (l) "Actuarial reserve liabilities" refer to the measure of the liabilities, of the pre-need company for its in-force plans as of valuation date.

The terms not otherwise defined under this Code shall be constructed of the pre-need company for its-in-forced plans as of valuation date.

**SEC. 4. Supervision** - All pre-need companies shall be under the supervision and regulation of the Insurance Commission. The Commission shall create a new department within its control to regulate and supervise the operations and activities of pre-need plan companies in the country.

**SEC. 5. Paid-Up Capital** - A pre-need company shall have a paid-up capital of at the least One hundred million pesos (P100,000,000.00) in cash or property: *Provided*, That the Commission may increase such minimum paid-up capital stock under such terms and conditions it may impose, to an amount which in its opinion, would reasonably assure the safety of the interest of the planholders and the public. Pre-need companies which are currently licensed as such with paid-up capital of less than One hundred million pesos (P 100,000,000.00) may be allowed to continue to operate as such but shall be required to build-up capital within a period of two(2) years from the enactment of this Code. If, after the build-up period, a pre-need company

## CHAPTER II REGISTRATION REQUIREMENTS

**SEC 6. Registration Requirements for Pre-Need Companies.** (a) Any company organized or otherwise created under the laws of the Philippines may register for purposes of this Code by filing with the Commission an application to do business as a pre-need company under oath in such form as the commission may prescribe which shall include, but not limited to the following:

1. The names, addresses and business experience for the last five (5) years of the directors and offices of the pre-need company;
2. A statement whether any of the persons referred to in paragraph (1) is subject to any ineligibility enumerated in Section 8 of this Code;
3. The articles of incorporation and by laws of the pre-need company;
4. A statement of the capitalization of the pre-need company including the authorized and subscribed capital stock and the amount paid thereon; the number and classes of shares, the description of the respective right, voting powers, preferences and restriction of the class, and
5. Any other information which the Commission may deem necessary to be disclosed.

(b) Within sixty (60) days after filing the application, the Commission shall grant the license, or institute proclamation to determine whether to deny the application. The order of the Commission granting the license shall become effective after completion of the publication thereof at the expense of the applicant, once a week for two (2) consecutive weeks in two (2) newspapers of general circulation in the Philippines.

(c) The Commission may, after due notice and hearing, deny an application for registration as pre-need company as it finds that:

1. The pre-need company made or caused to be made a materially false or misleading statement in its application to do business as pre-need company, or omitted to state to state in such application a material fact which was required to be stated therein;
2. The pre-need company or any affiliated person thereof not comply with the provision of the Code or the rules of the Commission thereunder, or in the case of an affiliated person would be subject to an ineligibility enumerated in Section 8 of this Code if such company was registered pre-need company; or
3. The pre-need company has not paid the registration fee prescribed by the Commission
  - (d) Whenever the Commission on its own motion or upon application, finds that a license pre-need company has ceased to operate as a pre-need company, it shall so declare. Upon the effectivity of such order, the license of such company shall cease to be in effect.
  - (e) Every license under this Section shall expire every thirty-first (31<sup>st</sup>) day of December, but may be renewed upon application under oath, payment of the fee and the submission of the required documents. Application for renewals must be made not less than thirty (30) days before the day of the ensuring year otherwise, they shall be treated as original applications.

**SEC. 7. Registration of Pre-Need Contracts/Plans** – (a) Within a period of forty-five (45) days after the grant of license to do business as a pre-need company, the company shall file with the Commission a registration statement pursuant to this Code. The Commission may promulgate rules governing the content of the registration statement, including any prospectus made a part thereof or annexed thereto, or may require additional information of documents including written statement from an expert, depending on the necessity thereof for the protection of planholders and the general public.

(b) It appears to the Commission that a pre-need company has failed to file the registration statement required by this Section or licensed a report required pursuant to Chapter VIII or has filed such registration statement or report but omitted therefrom materials facts required to be stated herein or necessary to make such statements not misleading, the Commission, after due notice and hearing upon such conditions and with such exemptions as it deems appropriate for the protection of planholders, may by order, suspend the registration of such company until such statement or report is filed or corrected, or may, by order, revoke such registration if the evidence finds that such revocation is in the public interest.

(c) The Commission may, by order, after notice and hearing, suspend, revoke or cancel the registration of a pre-need contract if it finds that the pre-need company was not so licensed or its application to do business as a pre-need company would be subject to denial under Section 6.

**SEC. 8 Ineligibility of Certain Persons.** It shall be unlawful for any of the following persons to serve or act in the capacity of officer, employee, director, sales counselors or solicitor for any pre-need company:

1. Any person who has been convicted of any felony or misdemeanor involving the purchase or sale of any pre-need plan, security or proprietary or nonproprietary membership certificate, commodity future contract, pension plan, life plan;
2. Any person who, by reason of any misconduct is permanently or temporarily enjoined by order, judgment or decree of any court or quasi-judicial body of competent jurisdiction from acting as an underwriter, broker, dealer, investment company manager, investment adviser, futures commission merchant, commodity trading advisor, floor broker, or as an affiliated person, salesman or employee of any of the foregoing from engaging in or continuing any conduct or practice in connection with any such activity or continuing any conduct or practice in connection with any such activity or in connection with the purchase or any plan or security;
3. Any person found guilty of an offense involving moral turpitude or involving fraud, or embezzlement, theft, estafa or other fraudulent acts or transactions;
4. Any person found to have willfully violated or willfully aided, abetted, counseled, commanded, induced, or procured the violation of this code or any existing laws and any Commission rules or orders thereunder, or who has filed a materially false or misleading application, report or registration statement with the Commission required to be filed under this Code, the Securities Regulation Code, or other laws;
5. Any person judicially declared to be insolvent or incapacitated to contract; or
6. Any person found guilty by a foreign court or equivalent financial regulatory authority of the acts or violations similar to any of the acts or misconduct enumerated in paragraphs (1) to (5) above.

**SEC. 9. Licensing of Sales Agents / Representatives** – (a) No person shall engage in the business of selling or offering to sell, pre-need contracts or plans, or act as a sales agent, sales representative, sales counselor of any pre-need company, unless licensed by the Commission. License shall be issued upon passing of licensing examination to be designed and administered by the Commission. Administration of the examination may be delegated to an independent organization under the supervision

of the Commission. Training for such examination may be undertaken by the association of pre-need companies.

(b) No registered or licensed pre-need company shall employ sales agents, sales representative or sales counselors unless licensed as such by the Commission.

(c) Registration of a sales agent/representative of a licensed pre-need company may be made upon written application in such form and containing such information and documents concerning such sales agent/representative as the Commission shall prescribe. The application shall be signed and certified by the pre-need company to which such sales agent/representative is to become affiliated. Applications filed under this subsection shall be accompanied by a registration fee in such reasonable amount as the commission by rule shall prescribe.

(d) The names and addresses of all sales agents/representatives and all orders of the Commission with respect thereto shall be recorded in a register of pre-need industry professionals kept in the office of the Commission which shall be open to public inspection.

(e) Such registration shall automatically cease upon termination of the agency contract of such sales agent/representative by the pre-need company: Provided, That it may be renewed for the ensuing year upon payment of an annual fee at such time and in such reasonable amount as the commission may prescribe.

**Sec. 10. Refusal, Suspension, Revocation of a License of a Sales Agent/Representative** - An application for the issuance or renewal of a license to act as sales/representative may be refused, or such license, if already issued or renewed, shall be suspended or revoked if the Commission finds that the applicant for, or holder of, such license:

1. Has willfully violated any provision of this Code;
2. Has intentionally made a material misstatement in the application to qualify for such license;
3. Has obtained or attempted to obtain a license by fraud or misinterpretation;
4. Has been guilty of fraudulent or dishonest practices;
5. Has misappropriation or converted to his own use or illegally moneys required to be held in fiduciary capacity;
6. Has not demonstrated trustworthiness and competence to transact business as a plan adviser in such manner as to safeguard the public;
7. Has materially misrepresented the terms and conditions of a pre-need plan which he seeks to sell or has sold;
8. Has been found to be ineligible under any of the provisions of Section 8; or
9. Has been terminated as a sales agnet/representative by the pre-need company with whom he or she has an agency contract.

**CHAPTER IV**  
**SUSPENSION/REVOCAION OF LICENSE**

**SEC. 11. Suspension of License or Permit** – if at any time the information contained in the plan agreement or prospectus 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 pre-need company additional information necessary to enable the Commission to ascertain whether the registration of such of pre-need contract/plan should be revoked on any ground specified in Section 12 of this code. The Commission may also suspend the right to sell such plan pending further investigation by entering an order specifying the grounds for such action with due notice by mail or by personal service, on pre-need company. Refusal to furnish information required by the commission within thirty(30) days may be proper ground for the entry of such order of suspension. Upon entry of such order of suspension, no further sales of such plan 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 such plan should be revoked on any ground under Section 12 of this Code. It shall make the necessary findings and enter the final order prohibiting the sale of such plans or contract whenever proper. If, however, the Commission finds that the sale of the plans or contracts is not fraudulent nor will result in fraud, it shall forthwith enter an order revoking the suspension.

**SEC. 12. Ground for Revocation of Permit or License of a Pre-Need Company.** The Commission may order, after due notice and hearing, revoke the license of a pre-need company, if upon examination it shall appear that the pre-need company.

1. Is insolvent;
2. Has violated any of the provision of this code, or the rules promulgated pursuant thereto, or any order of the Commission of which the pre-need company had notice;
3. Has been or is engaged or is about to engage in fraudulent transaction;
4. He has made fraudulent representation in any prospectus, circular, literature or other form of broadcast or media communication concerning its plans; or
5. Does not conduct its business in accordance with law;

The Commission may compel the production of all books and records of the pre-need company and may administer oaths and examine the officers or employees of the pre-need company.



Failure by the pre-need company 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 pre-need plans.

If the Commission deems it necessary, it may issue an order suspending the right to sell plans pending any investigation stating the grounds therefore. Upon the issuance thereof, no further sale of such pre-need plan 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 or lifting therefore shall be made expressly or by personal service upon the pre-need company who have notified the Commission of his intention to sell such pre-need plan.

**SEC. 13. Withdrawal of Registration.** A registration statement may be revoked by the Commission upon petition made for its withdrawal by the pre-need company as herein provided. An application for the withdrawal of a registration statement should be accompanied by the following:

1. Petition or application for withdrawal of the license/permit to sell plans to the public, stating the reasons therefore;
2. Proof of publication of notice to planholders of said revocation/withdrawal
3. Board resolution approving such application for withdrawal certified under oath by the corporate secretary and attested to by the president;
4. List of all planholders, with their corresponding complete addresses and telephone numbers;
5. A certification under oath by the treasurer attested to by the president that the planholders contributions were refunded and their claims fully settled;
6. A joint and several assumption of liability executed by the president and treasurer of the pre-need company for settlement of all claims that may arise as a result of said withdrawal; and
7. Proof of sufficiency of trust fund to cover the pre-need company's actuarial reserve liabilities, plus interest at legal rate.

Upon payment of a filing fee of One thousand pesos (P 1,000.00), 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 pre-need company 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 to sell plans to the public.

**CHAPTER V**  
**PLANHOLDER'S PROTECTION**

**SEC. 14. Approval of Contract Forms.** No pre-need contracts or certificates shall be issued or delivered within the Philippines unless in the form previously approved by the Commission and no application form shall be use with, and no rider, clause, warranty or endorsement shall be attached to, print to, stamped upon such contract or certificate unless the form of such application, rider cause, warranty or endorsement has been approved by the Commission.

**SEC 15. Pre-Need Advertising Code** – Pre-Need plans shall be advertised and sold in an appropriate non-misleading manner in accordance with a uniform Pre-Need Advertising Code to be designed by the Commission.

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.

**SEC. 16. Default. Reinstatement Period.** The pre-need company must provide in all contracts issued to planholders, a grace period of at least two (2) months within which to pay accrued installments. Non-payment of a plan within the grace period shall render the plan a lapsed plan, as defined under section 3, paragraph (i) of this code. Any payment by the planholder after the grace period for the purpose of liquidating the accrued installments on the plan, shall be reimbursed forthwith unless the planholder expresses his desire that such payments be treated as initial payment for the reinstatement of his plan. 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 issuer during such period when reinstatement may be effected.

**SEC. 17. Termination Values.** A plan holder may terminate his in-force plan, including a lapsed or cancelled plan, at any time by giving written notice to the issuer and said planholder shall be entitled to termination values which should not be less than the following:

<b>PAYMENT RECEIVED</b>	<b>MINIMUM TERMINATION VALUES</b>
Less than 20% of gross pre-need price	- 30% of total payments
20% or over but not exceeding 40% of gross pre-need price	- 40% of total payments
Over 40%but not exceeding 60% of gross pre-need price	- 50% of total payments
Over 60% but not exceeding 80% of gross pre-need price	- 60% of total payments

Over 80% but not less than 100%

of gross pre-need price

-65% of total payments

For a fully-paid plan, the minimum termination value shall be the actuarial reserve liability on such plan at the date of termination, less a surrender charge of ten percent (10%) of such liability.

**SEC 18. Amendments to the Plan, Contract or Other Documents** – No plan agreement, contract or other documents pertinent to the plan shall be amended or modified without the prior approval of the Commission, and such amendment or modification shall neither affect adversely, the planholders thereof nor impair any term or condition in the plan or other related documents.

## **CHAPTER VI**

### **TRUST FUND**

**SEC 19. Trust Fund** – To ensure the delivery of the guarantee benefits and services provided under a pre-need plan contract a trust fund per pre-need plan category shall be established independently with and shall be managed and administered either by a reputable bank, trust company or any entity authorized to perform trust functions in the Philippines. The trust fund per-pre-need category shall at all times be sufficient to cover the actuarial reserve liabilities corresponding to the in-force plans under the said category. No withdrawal shall be made from the trust fund except for payment of the cost of benefits or services, cash surrender/termination values payable to the planholders, the cost of service rendered for the management of the fund, taxes on trust funds, and other cost necessary to ensure the delivery of benefits or services.

**SEC 20. Deposits in the Trust Fund** – The pre-need company shall make monthly deposits in the trust fund an amount determined by a Commission accredited actuary sufficient to pay the benefits promised under the contract, but in no case shall the amount of trust fund deposits be less than sixty-five percent (65%) of the gross pre-need price of the plan. For plans full paid in cash, the amount of the trust fund deposits shall be made of the gross pre-need price of the plan. For plans full paid in cash, the amount of the trust fund deposits shall be made within sixty (60) days from receipt of payment. For plans sold on installment basis, the trust fund deposit shall be made within sixty (60) days following the end of each quarter of the fiscal year of the pre-need company.

**SEC 21. Investment of the Trust Fund** – Investment out of the trust fund shall be limited to the following:

1. Bonds or other evidences or indebtedness of the government of the Philippines or its subdivisions authorized by law to issue bonds: Provided, That said investments shall not less than ten percent (10%) of the trust fund;

2. Savings/time deposits and common trust fund with commercial bank with satisfactory examination rating as of the last examination by the Bangko Sentral ng Pilipinas
3. Commercial papers duly registered with the Securities and Exchange Commission (SEC) with a credit rating of "1" for short term and "Aaa" for long term based on the rating scale of Philippine Rating Corporation or its equivalent if rated by other local credit rating agency at the time of investment. Provided, That the maximum exposure to long term commercial papers shall not exceed fifteen percent (15%) of the total trust fund and the exposure to each commercial paper issuer shall no exceed ten percent (10%) of the allocated amount;
4. Direct loans, with a maximum tem of two (2) years, to corporations which are financially stable, have recorded profits for the last three(3) years and have not defaulted in the payment of interest on any three (3) including the last two (2) of the five (5) fiscal years next preceding the date of loan: Provided, That the loans shall be fully secured by a real estate mortgage up to the extent of sixty percent (60%) of the appraised value of the property shall be covered by a Transfer Certificate of Title registered in the name of the mortgagor, free form liens and encumbrances, and: Provided, finally, That the maximum amount to be allocated for direct loans shall not exceed five percent(5%) of the total trust fund and the amount to be granted to each corporate borrower shall not exceed ten percent (10%) of the amount allocated;
5. Mutual funds duly registered with the SEC and where funds are invested only in fixed income instruments and blue chips subject to the limitations prescribed by law;
6. Common stocks of any listed corporation created under the laws, of the Philippines which shall have recorded profits for at least three (3) years next preceding the purchase of such stock and regular dividends on the stocks shall have been paid for three (3) years out of the last five (5), including the last two (2) next preceding the purchase of such stocks: provided, further, That the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount and: Provided, finally, That the stocks invested in is not in exceeds of twenty percent (20%) of the common stocks of the issuing entity;
7. Real estate properties located in strategic areas of cities and first class municipalities, excluding those used by the company to conduct its business: Provided, That the Transfer Certificate of Title (TCT) is registered 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: Provided, further, that the real estate shall be appraised every five (5) years by a licensed real estate appraiser, accredited by the industry association, the value of which shall be recorded in the books as prescribed by the Commission: Provided, finally, That the total recorded value of the real estate investment shall not exceed twenty-five (25%) of the total trust fund equity of the pre-need company; and

8. Such other investments as may be allowed by the Commission.

**SEC. 22. Actuarial Valuation of the Reserve Liabilities of the Pre-Need Company.** An actual valuation to determine all contractual liabilities of the pre-need company shall be made and submitted to the Commission within one hundred five (105) days from the end of the first cal year of the pre-need company. The actuarial valuation report shall contain the actuarial assumption, methodology, formulas used; a summary of the pre-need plans that were subject of the actuarial valuation; and the results of such valuation. The report should be duly certified by an actuary accredited by the Commission. The bases and limits of the assumptions to be used in the valuation of reserves shall be prescribed by the Commission. Any deficiency in the trust fund, when compare to the actuarial reserve liabilities as reported in the actuarial valuation report, shall be funded by the pre-need company within one hundred fifty (150) days after the end of the fiscal year, including interest based on the highest rate assumed in the actuarial valuation of the particular plan, computed from the effective date of valuation to the date of deposit. Any excess of the trust fund over the actuarial reserve liabilities shall be credited to future deposit in requirements.

**SEC. 23. Trust Agreements – (a)** The agreement creating the trust fund shall be submitted to approval of the Commission and shall contain, among others, the following provisions:

1. Manner in which the trust fund is to be operated;
2. Investment powers of the trustee with respect to the trust deposits, including the character and kind of investment;
3. Allocation, appointment, distribution dates of income, profits and losses;
4. Terms and conditions governing the admission and withdrawal of investment or participation in the fund;
5. Auditing and settlement of accounts of the trustee with respect to the fund;
6. Basis upon which the fund may be terminated;
7. Provisions for withdrawal of the fund; and

8. Such other matters as may be necessary to define clearly the rights if the issuer with regard to the trust fund.

(b) No trust agreement shall be amended, modified or terminated without the prior approval of the Commission, and such amendment, modification or termination shall neither affect adversely the plan holder nor impair any term or condition of the trust agreement.

(c) Trustee's fees and any other charges shall be based on income generated by the same trustees as approved by the Commission: Provided, That total fees and charges shall in no case exceed ten percent (10%) of income generated.

**SEC. 24. Liquidity Reserve Fund** – The trustee shall at all times maintain a liquidity reserve fund sufficient to cover at least ten percent (10%) of the trust fund but no case less than the amount of the availing plans for succeeding year. The reserve fund shall be invested only in the following transactions:

1. Loans secured by a hold-out on assignment or pledge 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;
2. 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;
3. Repurchase agreements with any of those mentioned in item "2" above, as underlying instruments thereof;
4. Savings or time deposits with agreement-owned banks or commercial banks: Provided, that in no case shall such savings or time deposit account be accepted or allowed under a "Bearer", "Numbered Account" or other similar arrangements; and
5. Other investments as the Commission may allow.

**SEC 25. Limitation of Trust Fund Investment** – The trustee shall not use the fund to invest in or extend any loan or credit accommodation to the pre-need company, its directors, stockholders and related interest as well as enterprises owned or controlled by said company, its directors, officers and stockholders.

## **CHAPTER VII**

### **ACTUARIES FOR PRE-NEED COMPANIES**

**SEC. 26 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 it 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.

**SEC. 27. Qualification of the actuary** – A person shall be officially accredited by the Commission to act as an actuary in any pre-need company upon application therefore and the payment of the corresponding fee: Provided, That: (1) he is a fellow of good standing of the Actuarial Society of the Philippines at the time of his appointment and remains in such good standing during the tenure of his engagement; or (2) in the case of one who is not a fellow of the Actuarial Society of the Philippines, he should meet all the requirements of the said for accreditation as a fellow of the Society.

**SEC. 28. Renewal of Certificates** – No certificate of registration issued this Chapter shall be valid after the thirty first (31<sup>st</sup>) day of December of the year following its issuance unless it has been renewed by the Commission.

**SEC. 29. Certification of Required Reports** – The actuary shall certify to the correctness of the following documents, are submitted to the Commission by a pre-need company:

1. Report on the actuarial valuation of all liabilities pertaining to pre-need issued;
2. Annual financial statement of the pre-need company pertaining to valuation of liabilities and other reserve items;
3. Statement on the sufficiency and accuracy of the asset share studies used in the pricing of the pre-need product. These are necessary for approval of a new product, for repricing of an existing product, or an enhancement of an existing product; and
4. Report on the sufficiency of trust funds vis-à-vis the computed actuarial reserve liabilities of the pre-need company.

**SEC. 30. Exception** – Any pre-need company may employ any person who is not officially under either of the qualifications for any kind of actuarial work: Provided, That he shall not, any time, have the authority to certify to the correctness of the foregoing documents.

## **CHAPTER VIII**

### **REPORTS**

**SEC. 31. 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. All such valuation shall be made by an accredited actuary in accordance with actuarially sound and accepted principles and subject to the minimum

standard of valuation and guidelines set 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 five (105) days after the end of each fiscal period.

**SEC. 32. Annual Statement.** Every pre-need company shall terminate its fiscal period on the thirty-first (31<sup>st</sup>) day of December every year on its chosen fiscal years. Within one hundred five (105) days after the calender of fiscal year, the pre-need company shall render to ht Commission an audited statement signed and sworn to by the chief officer and accredited actuary of such company in accordance with a uniform accounting system that may be prescribed by the Commission, showing in such form and details, the exact condition of its affairs.

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 Code.

**SEC 33. Annual Statement of Trust Fund** – Every pre-need company shall file with the Commission an annual statement of its trust for each type of plan. Such statement shall be in a form prescribed or approved by the Commission and shall include details as to all of the income, disbursement, assets and liability items of and associated with the said trust fund accounts. Said statement shall be under oath of two (2) officers of the company and shall be filed simultaneously with the annual statement required by the preceding Section.

**SEC. 34. 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 statement, including the trust fund annual statement showing fully the condition of its business, and setting forth its resources and liabilities in a standardized format to be designed by the Commission.

## CHAPTER IX

### FINANCIAL ACCOUNTING STANDARDS

**SEC. 35. Admitted Assets** – In any determination of the financial condition of any pre-need company, there shall be allowed and admitted as assets only such assets owned by the pre-need company concerned and which consist of:

1. Cash in the possession of the pre-need company or in transit under its control, and the true and duly verified balance of any deposit of such company in a financially sound commercial bank or trust company;



2. Investments in securities, including money market instruments, and in real property acquired or held in accordance with and subject to the applicable provisions of this Code and the income realized and unrealized therefrom or accrued thereon;
3. Loans granted by the pre-need company concerned to the extent of the portion thereof adequately secured by non-speculative assets with readily realizable values in accordance with the subject to the limitations imposed by applicable provisions of this Code;
4. Loans and other assets and liens on pre-need contracts or certificates of a pre-need company, in an amount not exceeding trust fund reserves and other plan liabilities carried on each individual pre-need contract or certificate;
5. Deposits or amounts recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the Commission to be available for the repayment of losses and claims and values to be determined by him;
6. Electronic data processing machines, as may be authorized by the Commission to be acquired by the pre-need company concerned, the acquisition cost of which to be amortized in equal annual amounts within period of five (5) years from the date of acquisition thereof; and
7. Other assets, not inconsistent with the provisions of paragraph (1) to (6) hereof, which are deemed by the Commission to be readily realizable and available for the payment of losses and claims at values to be determined by the Commission.

**SEC. 36. Non-Admitted Assets** – (a) The following assets shall not be allowed as admitted assets of a pre-need company in any determination of its financial condition:

1. Goodwill, trade names and other like intangible assets;
2. Prepaid expenses and commissions;
3. Advances to officers which are not adequately secured and which are not previously authorized by the Commission, as well as advances to employees, agents and other persons on mere personal security;
4. Shares of stock of such pre-need company, owned by it, or any equity therein as well as loans secured thereby, or any proportionate interest in such shares of stock through the ownership by such pre-need company of an interest in another corporation or business unit;
5. Furniture, furnishings, fixtures, safes, equipment, library, stationary, literature and supplies;

6. Items of bank credits representing checks, drafts or notes returned unpaid after the date of statement; and
  7. The amount if any, by which the aggregate value of investments as carried in the ledger assets of such pre-need company exceed the aggregate value thereof as determined in accordance with the provisions of this Code or the rules of commission.
- (b) All non-admitted assets and all other assets doubtful value or character included as ledger on non-ledger assets in any statement submitted by a pre-need company to the Commission shall also be reported, to the extent of the value disallowed as deductions from the gross assets of such pre-need company, except where the Commission permits a reserved to be carried among the liabilities of such pre-need company in lieu of any such deduction.

## CHAPTER X MARGING OF SOLVENCY

**SEC 37. Margin of Solvency** – A pre-need company shall at all times maintain a margin of solvency equivalent to the excess of the value of its admitted assets of its paid up capital, over the amount of its liabilities: Provided, that such margin shall in no event less than ten million pesos (P 10,000,000.00) or ten percent (10%) of its paid-up capital whichever is higher, and Provided, further, That the term “paid-up capital” shall not include contributed surplus and capital in excess of par value. Whenever the aforementioned margin shall be found to be less than herein required to be maintained, the Commission shall forthwith direct the company to make good any such deficiency by increasing its outstanding capital cash to be contributed by all stockholders of record in proportion to their respective interest, and paid to the treasurer of the company, within thirty (30) days from receipt of the notice from the Commission: Provided, That the company, in the interim, shall not be permitted to take any new risk of any kind of character such as further selling of pre-need plans or contracts unless and until it make good any such deficiency.

**SEC 38. Distribution of Profits** – No pre-need company shall declare or distribute any dividend on its outstanding stocks except upon approval by the Commission and from profits attested in a sworn statement to the Commission by the President or treasurer of the pre-need company to be remaining on hand retaining unimpaired the following:

1. Ten percent (10%) of the capital stock;
2. The margin of solvency required by Section 38; and

3. A sum sufficient to pay all net losses reported, or in the course of settlement and all liabilities for expenses and taxes.

Any dividend declared or distributed shall be reported to the Commission within thirty (30) days after such declaration or distribution.

If the Commission finds that any such pre-need company has declared or distributed dividend in violation of this section, he may order such company to cease and desist from doing business until the amount of such dividend or the portion thereof in excess of the amount allowed under this Section has been restored to said company.

## CHAPTER IX CLAIMS SETTLEMENT

**SEC.39 Unfair Claims Settlement Practices** – (a) No pre-need company shall refused, without just cause, to pay settle claims arising under coverages provided by it 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 claim settlement practices:

1. Knowingly misrepresentation to claimants pertinent facts or plain 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. Not attempting in good faith to effectuate 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 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) It is found, after notice and an opportunity to be heard, that a pre-need company has violated this Section, each instance of noncompliance with paragraph (1) may be treated as a separate violation of this Section and shall be considered sufficient cause for the suspension or revocation of the company's license and operation.

**SEC. 40. Payment of Plan Proceeds** – The proceeds of the plan shall be immediately upon maturing of the policy, 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 beneficiary to collect interest on the proceeds of the plan for the duration of the delay of the rate twice the legal interest, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

**SEC. 41. Jurisdiction** – The Commission, through its newly created department shall have jurisdiction to hear and decide cases involving claims arising from any loss damage or liability for which a pre-need company may be answerable under the pre-need contract. In case of any litigation for the enforcement of any pre-need contract, it shall be duty of the Commission to make a finding as to whether the payment of the claim of the plan holder has been unreasonably denied or withheld. In the affirmative case, the pre-need company shall be adjudge to pay damages which shall consist of attorney's fees and other expenses incurred by the planholder or his beneficiary by reason of such unreasonable denial or withholding of payment plus interest of the amount of the claim due the planholder or his beneficiary from the date the plan I filed until the claim is fully satisfied: Provided, That the failure to pay any such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment and subject to administrative sanctions in Section 51.

## CHAPTER XII

### EXAMINATION OF PRE-NEED COMPANIES

**SEC. 42 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 representative may readily verify the company's annual statements and ascertain whether the company is solvent and has complied with the provision of this code or the circular, instructions, rulings or decisions of the Commission.

**SEC. 43. 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 trust fund or affairs and/or property of such pre-need company. Such company, as well as its managing person, firm or corporation shall submit all such books, papers and securities as the Commission may require. The Commission shall also have the power to examine the officers of such company under oath, not matters relating to the business and the company's financial condition. The authority to transact business in the Philippines of any such company shall be suspended by the Commission if such examination is refused and such company shall not thereafter be allowed to transact further business in the Philippines until it has fully complied with the provisions of this Section.

**CHAPTER XIII**  
**PLANHOLDERS' PROTECTION FUND**

**SEC. 44. Establishment of Planholders' Protection Fund** – There is hereby created a planholders' Protection Fund hereinafter referred to as Protection Fund, which shall be sued for the payment of claims against a pre-need company remaining unpaid by reason of insolvency of such company. No payment on any one claim shall exceed Fifty thousand pesos (P 50,000.00). The Protection Fund shall consist of all payments made thereto pre-need companies. The Protection Fund shall be held and administered by the Commission in accordance with the provision of this Chapter.

**SEC. 45. Contributions; Disbursements** – (a) All pre-need companies shall contribute and aggregate amount of Twenty-five million pesos (P 25,000,000.00) to the Protection Fund. The contributions of the pre-need companies shall be at least five hundred thousand pesos (500,000.00) in accordance with the schedule and amount of contribution as may be determined by the Commission.

(b) The Protection Fund consisting of all the payments made thereto by the pre-need companies shall remain as assets in their books and any disbursements therefrom shall be deducted proportionately from the contributions of each company. Any earnings of the Protection Fund shall be turned over to the contributing companies in proportion to their contributions.

(c) In case of any disbursement from the Fund as provided in the preceding paragraph, the pre-need companies shall contribute equally to replenish the amount disbursed.

**SEC. 46. Custodian of the Planholder's Protection Fund** – The treasurer of the Philippines shall be the custodian of the Fund; and all disbursement shall be made by the Treasurer of the Philippines upon vouchers signed by the commissioner or his deputy, as hereinafter provided. The moneys of said Fund may be invested by the commissioner only in bonds or other evidences of debt of the Government of the Philippines or its politics subdivisions or instrumentalities. The commissioner may sell any of the securities in which Fund is invested, if advisable, for its proper administration or in the best interest of such Fund.

**SEC. 47. Administration Expense** – The expense of administering the Protection Fund shall be paid out of such fund. The commissioner shall serve as administrator of the Fund without additional compensation; however, expenses incurred in the performance of his duties in connection with said fund may be allowed and paid from the Fund. The compensations of those persons employed by the commissioner shall include in his annual report to the Secretary of Finance a statement of he expenses of administration of the Fund for the preceding year.

**SEC. 48. Role of the Commissioner** – The Commissioner may adopt, amend and enforce all reasonable rules and regulations necessary for the proper administration of the Fund. In the event any pre-need company shall fail to make any payment required under this Chapter, or that any payment is incorrect, he shall have full authority to examine all books and records of the pre-need company for the purpose of ascertaining the facts that shall determine the correct amount to be paid and may proceed in any court of competent jurisdiction to recover for the benefit of the Fund any sum shown to be due upon such examination and determination. Any pre-need company which fails to make any payment to the Fund when due, shall thereby forfeit to aid fund a penalty of five percent (5%) of the amount determined to be due as provided by this chapter, plus one percent (1%), after the expiration of the first month of such delay. The commissioner, if satisfied that the delay was excusable, may remit any part of such penalty to the Fund. The commissioner, in his discretion, may suspend or revoke the certificate of authority to do business in the Philippines of any pre-need company which shall fail to comply with this Chapter or to pay any penalty imposed in accordance herewith.

#### **CHAPTER XIV PROCEEDINGS IN RECEIVERSHIP**

**SEC. 49. Proceedings Receivership** - (a) Whenever, upon examination or other evidence, it shall be disclosed that the condition of any pre-need company doing business in the Philippines is insolvent 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 in the Philippines. The Commission shall designate a receiver to immediately take charge of all assets and liabilities, administer the same for the benefit of its planholders and creditors, and exercise all powers necessary for these purposes including, but not limited to bringing suits and foreclosing mortgages in the name of the pre-need company.

(b) The Commission shall thereupon determine within thirty (30) days whether the pre-need company may be recognized or otherwise placed in such condition so that it may be permitted to resume business with security 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.

(c) The receiver designated under the provisions of this Chapter 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.

## CHAPTER XV ADMINISTRATIVE SANCTIONS

**SEC. 50. Administrative Sanctions** – (a) If, after proper notice and hearing, the Commission finds that there is a violation of any of the provisions of this Code, or that any pre-need company 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:

1. Cease and desist order;
2. Suspension or revocation of its license and registration to sell pre-need plans/contacts;
3. A fine of not less than five thousand pesos (P 5,000.00) plus an additional five hundred pesos (P 500.00) but not more than two thousand pesos (P 2,000.00) for each day of continuing violation, with a maximum penalty of not more than five million pesos (P 5,000,000.00) and/or imprisonment of six (6) years to twelve (12) years;
4. Disqualification from being an officer, member of the board of directors or principal stockholder of a pre-need company; or
5. 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.

(b) The sale of pre-need plan not authorized under a permit/license or overpricing thereof shall subject the issuer to fine as follows:

1. First Violation – 30% of the aggregate gross pre-need price of the plans sold;
2. Second Violation – 40% of the aggregate gross pre-need 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.

**CHAPTER XVI**  
**TRANSITORY PROVISIONS**

**SEC 51. Implementing Rules and Regulations** – The Commission shall adopt such rules and regulations for the proper and effective implementation of this Code within three (3) months from approval hereof. The Commission shall publish the rules and regulations once a week for two (2) consecutive weeks in two (2) newspapers of general circulation.

**SEC 52. Effect on Existing Law** – 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 53. Repealing Clause.** All acts, laws, executive orders and/or rules and regulations or any part thereof which are inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

**SEC.54 Effectivity Clause** – This Code shall take effect upon its approval.

Approved,