

FOURTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

7 JUN 30 P 1:13

SENATE

RECEIVED BY: 

S. B. No. 64

Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

Introduction

The bill seeks to address the need for a statute to regulate the proliferating pre-need companies in the country.


Considering the importance of the preneed industry to the average Filipino and to the government, it should be given utmost attention. The industry should be saved from the danger of extinction brought about by problematic preneed companies.

Recent events have shown that some preneed companies, particularly educational plans, have encountered extreme problems that they cannot even meet current tuition fee payments. Some companies have trust funds lower than their actuarial reserve liability. And since ARL determines the firms compliance with their contracts, this even highlights the immediate need to protect the planholders while at the same time saving the firms, being equally vital in helping the government in giving hopes to families of lower income bracket who avail of these preneed services.

With the recent scenario, there is an urgent need to fully regulate so as to protect not only the industry but the planholders as well.

It is imperative that the state ensures that funds of these preneed companies meet the long-term promises of the contracts. The government has to make sure that preneed firms are able to maintain sufficient funds to cope and comply with their contracts.

With the aforementioned rationale, approval of this bill is earnestly sought.


EDGARDO J. ANGARA
Senator

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AN ACT
ESTABLISHING THE PRE-NEED CODE OF 2007

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

CHAPTER I

GENERAL PROVISIONS

1
2
3
4 SECTION 1. *Short Title.* - This Act shall be known as the "Pre-Need
5 Code of 2007."

6
7 SECTION 2. *Declaration of Policy.* - It is hereby declared the policy
8 of the State to regulate the establishment of pre-need companies and to place
9 their operation on sound efficient and stable basis to derive the optimum
10 advantages from them in the mobilization of savings and to prevent and
11 mitigate, as far as practicable, practices prejudicial to public interest and the
12 protection of planholders.

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

16
17 SECTION 3. *Construction.* - Any doubt in the interpretation and
18 implementation of any provision in this Code shall be interpreted in favor of
19 the rights and interests of the planholder.

1 **SECTION 4. Definition of Terms.** - Whenever used in this Code, the
2 following terms shall have the respective meanings hereafter set forth or
3 indicated, unless the context requires otherwise:

- 4 (a) **"Commission"** refers to the Insurance Commission.
- 5 (b) **"Pre-Need Plans"** are contracts, agreements, deeds or plans for
6 the benefit of the Planholders which provide for the performance
7 of future service/s, payment of monetary considerations or
8 delivery of other benefits at the time of actual need or agreed
9 maturity date, as specified therein, in exchange for cash or
10 installment amounts with or without interest or insurance
11 coverage and includes life, pension, education, interment, and
12 other plans, instruments, contracts or deeds as may in the
13 future be determined by the Commission.
- 14 (c) **"Pre-Need Company"** refers to any corporation registered with
15 the Commission and authorized/licensed to sell or offer to sell
16 Pre-Need Plans. Except as used in Sections 7, 8, 9, 44 and 45 of
17 this Code, the term "Pre-Need Company" shall also refer to
18 schools, memorial chapels, banks, non-bank financial
19 institutions and other entities that sell or offer to sell Pre- Need
20 Plans insofar as their Pre-Need activities or business are
21 concerned.
- 22 (d) **"Planholder"** refers to any person, natural or juridical, who
23 purchases a Pre- Need Plan from a Pre-Need Company for whom
24 or for whose beneficiaries Benefits are to be delivered as
25 stipulated and guaranteed by the Pre-Need Company. The term
26 includes the assignee, transferee, and any successor in interest
27 of such Planholder.
- 28 (e) **"Beneficiary"** refers to the person designated by the Planholder
29 as the recipient of the Benefits in the Pre-Need Plan.
- 30 (f) **"Contract Price"** refers to the stipulated price in the Pre-Need
31 Plan.
- 32 (g) **"Benefits"** refer to the payment of monetary considerations
33 and/or performance of future services which the Pre-Need
34 Company undertakes to deliver either to the Planholder or his
35 beneficiary at the time of actual need or agreed maturity date,
36 as specified in the Pre-Need Plan.

- 1 (h) **"Sales Counselor"** refers to a person engaged in the sale,
2 whether on commission or salary basis, of Pre-Need Plans upon
3 authority of a registered Pre-Need Company and registered by
4 the Commission to engage in the business of selling Pre-Need
5 Plans.
- 6 (i) **"Trust Fund"** refers to a fund set up from Planholders'
7 payments, separate and distinct from the paid-up capital of a
8 Pre-Need Company, established with a Trustee under a trust
9 agreement approved by the Commission, to guarantee the
10 delivery of Benefits.
- 11 (j) **"Liquidity Reserve"** refers to a portion of the Trust Fund set
12 aside by the Trustee to cover the Benefits due to Planholders for
13 the ensuing year.
- 14 (k) **"Actuarial Reserve Liability" (ARL)** is the measure of
15 liabilities of the Pre- Need Company for its Pre-Need Plans
16 outstanding as of valuation date.
- 17 (l) **"Fixed Value Plans"** are Pre-Need Plans whose Benefits and
18 costs are fixed and pre-determined at the inception or purchase
19 of the Plan.
- 20 (m) **"Actual Cost or Traditional Plans"** are Pre-Need Plans
21 wherein the Benefits or services at the time they are due are
22 guaranteed, regardless of any increase in cost from the
23 originally assumed values since the date of issue of the Pre-Need
24 Plan.

25 26 CHAPTER II

27 AUTHORITY OF THE COMMISSION

28 SECTION 5. *Supervision and Regulation.* - Pre-Need Companies
29 shall be under the supervision and regulation of the Commission. The
30 Commission is hereby authorized to provide for its reorganization, to
31 streamline its structure and operations, upgrade its human resource
32 component to enable it to effectively and efficiently perform its functions and
33 exercise its powers under this Code.

34 All positions of the Commission shall be governed by compensation and
35 position classification systems and qualification standards approved by the
36 Commission based on a comprehensive job analysis and audit of actual duties

1 and responsibilities. The compensation plan shall be comparable with the
2 prevailing compensation plan in the *Bangko Sentral ng Pilipinas* (BSP) and
3 other government financial institutions and shall be subject to periodic
4 review by the Commission no more than once every two (2) years without
5 prejudice to yearly merit reviews or increases based on productivity and
6 efficiency. The Commission shall, therefore, be exempt from laws, rules, and
7 regulations on compensation, position classification and qualification
8 standards. The Commission shall, however, endeavor to make its system
9 conform as closely as possible to the principles under the Compensation and
10 Position Classification Act of 1989.

11
12 **SECTION 6. Powers and Functions of the Commission.** - The
13 Commission shall, at all times, act with transparency and dispatch and shall
14 have, among others, the following powers and functions:

- 15 1. Have primary and exclusive jurisdiction and supervision over all
16 Pre-Need Companies.
- 17 2. Approve, amend, renew or deny any license, registration or
18 certificate issued under this Code.
- 19 3. Fix and assess fees and/or charges as it may find reasonable in
20 the exercise of regulation.
- 21 4. Regulate, supervise and monitor the operations and
22 management of Pre- Need Companies to ensure compliance with
23 the provisions of this Code, existing laws, rules and regulations,
24 including but not limited to:
 - 25 (a) Revoke or nullify investments made and/or entered into
26 by a Pre-need Company or a Trustee which are contrary
27 to existing laws and regulations;
 - 28 (b) Demand for the conversion of the investments made by
29 the Trustee to cash or other liquid assets to protect the
30 interest of the Planholders.
 - 31 (c) Regulate, investigate or supervise activities of Pre-Need
32 Companies, their officers, employees, Sales Counselors,
33 consultants or agents.
- 34 5. Issue cease and desist orders to prevent fraud and injury to the
35 investing public;

- 1 6. Issue subpoena *duces tecum* and *ad testificandum*, order the
2 examination, search and seizure of documents, papers, files, tax
3 returns, books of accounts and other records, in whatever form,
4 of any entity or person under investigation.
- 5 7. Punish for contempt of the Commission, both direct and indirect,
6 in accordance with the pertinent provisions of and penalties
7 prescribed by the Rules of Court.
- 8 8. Impose sanctions, institute cases and/or prosecute offenders for
9 violation of this Code, related laws, rules, regulations and orders
10 issued pursuant thereto.
- 11 9. Suspend or revoke licenses.
- 12 10. Enlist the aid and support of and/or deputize any and all
13 enforcement agencies of the Government in the implementation
14 of its powers and exercise of its functions under this Code;
- 15 11. Take over Pre-Need Companies which fail to comply with this
16 Code, related laws, rules, regulations and orders issued
17 pursuant thereto, either through the appointment of a
18 conservator, receiver or liquidator.
- 19 13. Prepare, approve, amend or repeal rules, regulations and orders,
20 and issue opinions and provide guidance on and supervise
21 compliance with such rules, regulations and orders.
- 22 14. Formulate policies and recommendations on issues concerning
23 the pre-need industry including proposed legislation.
- 24 15. Retain and utilize, in addition to its annual budget, an amount
25 up to one hundred million pesos (P 100,000,000.00) of the fees,
26 charges and other income derived from the regulation of Pre-
27 Need Companies.
- 28 16. Exercise such other powers as may be provided by law as well as
29 those which may be implied from, or which are necessary or
30 incidental to carry out of, the express powers granted the
31 Commission to achieve the objectives and purposes of the law.

32
33 **CHAPTER III**
34 **ORGANIZATION, LICENCING AND MANAGEMENT OF**
35 **PRE- NEED COMPANIES**

1 **SECTION 7. *Pre-requisites to Incorporation.*** - Except upon
2 favorable recommendation of the Commission, the Securities and Exchange
3 Commission shall not accept or approve the articles of incorporation and by-
4 laws of any Pre- Need Company.

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

8
9 **SECTION 8. *Amendment of the Articles of Incorporation and By-***
10 ***Laws.*** - Amendments to the articles of incorporation and by-laws of a Pre-
11 Need Company, including merger, consolidation and dissolution, shall not be
12 approved by the Securities and Exchange Commission without the favorable
13 recommendation from the Commission.

14
15 **SECTION 9. *Paid-up Capital.*** - A Pre-Need Company incorporated
16 after the effectivity of this Code shall have a minimum paid-up capital of One
17 Hundred Million Pesos (P100, 000,000.00). Existing Pre-Need Companies
18 shall comply with the following minimum unimpaired paid-up capital:

19 (a) With three-type plans 100,000,000

20 (b) With two-type plans 75,000,000

21 (c) With one-type plan 50,000,000;

22 *Provided*, that existing Pre-Need Companies with traditional education
23 plans shall have a minimum unimpaired paid-up capital of P100, 000,000.

24 *Provided, further*, that the Commission may adopt risk-based
25 principles on capital adequacy based on internationally accepted standards.
26 In the exercise of its authority under this paragraph, the Commission may
27 prescribe a higher minimum unimpaired paid-up capital for Pre-Need
28 Companies.

29
30 **SECTION 10. *Licensing of Pre-Need Companies.*** - No person shall
31 operate as a Pre-Need Company or engage in the business of a Pre-Need
32 Company unless licensed by the Commission in accordance with this Code.
33 Every license under this Section shall expire every thirtieth day of June, or
34 such date of every year as may be fixed by the Commission. The license may
35 be renewed upon compliance with the prescribed requirements.

1 **SECTION 11. *Fit and Proper Rule.*** - To maintain the quality of
2 management of Pre-Need Companies and afford better protection to
3 Planholders and beneficiaries, the Commission shall prescribe, pass upon and
4 review the qualifications and disqualifications of individuals elected or
5 appointed directors or officers of Pre-Need Companies, including its
6 actuaries, and disqualify those found unfit. The Commission may disqualify,
7 suspend or remove any director or officer who commits or omits an act which
8 renders him unfit for the position.

9 In determining whether an individual is fit and proper to hold the
10 position of a director or officer of a Pre-Need Company, regard shall be given
11 to his integrity, experience, education, training, and competence, Provided,
12 However that the following persons, and those determined by the
13 Commission to be unfit, shall in no case be allowed to serve or act in the
14 capacity of officer, employee, director, consultant, Sales Counselor of any Pre-
15 Need Company:

- 16 1. any person convicted of any crime involving any Pre-Need Plan,
17 security or financial product,
- 18 2. any person convicted of an offense involving moral turpitude or
19 involving fraud, or embezzlement, theft, *estafa* or other
20 fraudulent acts or transactions;
- 21 3. any person who, by reason of any misconduct, is enjoined by
22 order, judgment, or decree by any court, quasi-judicial body or
23 administrative agency of competent jurisdiction from acting as a
24 director, officer, employee, consultant, agent or occupying any
25 fiduciary position.
- 26 4. any person found by the Commission to have willfully violated,
27 or willfully aided, abetted, counseled, commanded, induced, or
28 procured the violation of this Code, Insurance Code, the
29 Securities Regulation Code, or any related laws and any rules or
30 orders thereunder;
- 31 5. any person judicially declared to be insolvent, or incapacitated
32 to contract;
- 33 6. any person found guilty by a foreign court, regulatory authority
34 or government agency of the acts or violations similar to any of
35 the acts or misconduct enumerated in the foregoing paragraphs.

- 1 (a) materially misrepresented statements in the application
- 2 requirements;
- 3 (b) obtained or attempted to obtain a license by fraud or
- 4 misrepresentation;
- 5 (c) materially misrepresented the terms and conditions of Pre-Need
- 6 Plan which he sold or offered to sell;
- 7 (d) terminated for cause from another Pre-Need Company; or
- 8 (e) similar grounds found in Section 11 of this Code
- 9 (f) analogous circumstances.

11 CHAPTER V

12 REGISTRATION OF PRE-NEED PLANS

13
14 **SECTION 15. *Registration of Pre-Need Plans*** - No Pre-Need
15 Company shall sell or offer to sell Pre-Need Plans unless such plans are
16 registered with the Commission. The Commission shall have the authority to
17 determine the number of Pre-Need Plans to be sold under each certificate of
18 registration.

19
20 **SECTION 16. *Registration Requirements*** - The Commission shall
21 set forth the requirements for registration of Pre-Need Plans and shall
22 require the following documents, among others:

- 23 (a) Duly accomplished Registration Statements;
- 24 (b) Board resolution authorizing the registration of applicant's Pre-
- 25 Need Plans;
- 26 (c) Opinion of independent counsel on the legality of the issue;
- 27 (d) Audited financial statements;
- 28 (e) Viability study with certification, under oath, of pre-need
- 29 actuary accredited by the Commission;
- 30 (f) Copy of the proposed Pre-Need Plan; and
- 31 (g) Sample of sales materials.

32
33 **SECTION 17. *Approval of Forms***. - All forms, including
34 amendments thereto, relating to the Pre-Need Plans shall be approved by the
35 Commission.

1 **SECTION 18. *Advertising of Pre-Need Plans.*** - All advertisements,
2 sales paraphernalia or information disseminated to the public involving Pre-
3 Need Plans and/or Pre-Need Companies shall be approved by the
4 Commission. The lapse of twenty (20) working days from submission or
5 request for approval without action from the Commission shall be deemed an
6 approval.

7

8

9 *Approved,*

1 frequency as to indicate a general business practice, shall constitute unfair
2 claim settlement practices;

3 (a) knowingly misrepresenting to claimants pertinent facts or plan
4 provisions relating to coverages at issue;

5 (b) failing to acknowledge communications with respect to claims
6 arising under its plan with reasonable promptness;

7 (c) failing to adopt and Implement reasonable standards for the
8 prompt investigation of claims arising under its plan;

9 (d) failing to effect prompt, fair and equitable settlement claims
10 submitted In which liability has become reasonably clear; or

11 (e) offering, without justifiable reason, amount and/or services not
12 in accordance with the Pre-Need Plans, thereby compelling
13 Planholders to resort to court action.

14 (2) If it is found that a Pre-Need Company has violated this section, each
15 instance of non-compliance with paragraph (1) may be treated as a separate
16 violation of this section and shall be considered sufficient cause for the
17 suspension or revocation of the Pre-Need Company's license to operate.

18
19 **SECTION 22. *Payment of Plan Proceeds.*** - The proceeds of the Pre-
20 Need Plan shall be paid immediately upon maturity of the contract, unless
21 such proceeds are made payable in installments or as an annuity, in which
22 case the installments or annuities shall be paid as they become due. Refusal
23 or failure to pay the claim within fifteen (15) days from maturity or due date
24 will entitle the beneficiary to collect Interest on the proceeds of the plan for
25 the duration of the delay at the rate twice the legal interest unless such
26 failure or refusal to pay is based on the ground that the claim is fraudulent.
27 Provided, that the planholder has duly complied with the documentary
28 requirements of the Pre-Need Company as approved by the Commission.

29
30 **Section 23. *Consequences of Delay or Default.*** - In case of any
31 litigation for the enforcement of any Pre-Need Plan, it shall be the duty of the
32 Commission to determine whether the payment of the claim of the
33 Planholder has been unreasonably denied or withheld. If found to have
34 unreasonably denied or withheld the claim, the Pre-Need Company shall be
35 liable to pay damages, consisting of actual damages, attorney's fees and legal
36 interest to be computed from the date the claim is made until it is fully

1 satisfied; Provided, That the failure to pay any such claim within the time
2 prescribed in the preceding section shall be considered prima facie evidence of
3 unreasonable delay in payment.

4
5 **CHAPTER VIII**
6 **TRUST FUND**
7

8 **SECTION 24. *Trust Fund.*** - To guarantee the delivery of property or
9 performance of services in the future, a portion of the installment payment
10 collected shall be deposited by the Pre-Need Company in the appropriate
11 Trust Fund, the amount of which will be determined by an actuary and shall
12 be sufficient to pay the benefits promised under the Pre-Need Plan. Should
13 the Commission, based on its experience in implementing the Trust Fund
14 framework, determine that the admitted asset framework will better protect
15 the interests of the Planholders, it may instead adopt such framework as
16 provided in the Insurance Code.

17 In such case that the Commission adopts the admitted asset
18 framework, it shall likewise have the authority to prescribe appropriate rules
19 for registration of Pre-Need Plans.
20

21 **SECTION 25. *Contributions to the Trust Fund.*** - The minimum
22 limits of the deposit contribution to the Trust Fund shall be forty eight
23 percent (48%) of the amount collected for life plans and fifty four percent
24 (54%) of the total amount collected for Pre-Need Plans other than life plans
25 unless a higher deposit contribution is determined by the actuary and duly
26 approved by the Commission.

27 In case of installment payments, the minimum limits, unless the
28 actuary and the Commission determine otherwise, of the deposit
29 contributions to the Trust Fund shall be in accordance with the following
30 schedule:

Payment Received	Life Plans	Other Plans
Collection of the 1 st 20% of Contract Price	10%	10%
Collection of the 2 nd 20% of Contract Price	20%	20%
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%

2 All Pre-Need Companies shall incorporate in the Pre-Need Plan the
3 schedule of the minimum Trust Fund contribution. Likewise, each Pre-Need
4 Company shall inform the Planholders of the annual actual contributions to
5 the Trust Fund.

6 Trust Fund Contributions shall not form part of the income or gross
7 receipts of the Pre-Need Company and therefore, not available for dividend
8 declaration or payment to creditors.

9 No withdrawal shall be made from the Trust Fund except for payment
10 of Benefits, cost of other services related to the delivery of Benefits and
11 investment expenses in the operation of the Trust Fund, including trust fees
12 and bank charges.

13

14 **SECTION 26. *Terms and Conditions of a Trust Fund.*** - A Trust
15 Fund must be established separately for each type of Pre-Need Plan with the
16 trust department of a trust company, bank or investment house doing
17 business in the Philippines; Provided, that no director and/or officer of the
18 Pre-Need Company shall at the same time serve as director and/or officer of
19 the affiliate or related trust entity; Provided further that no Trust Fund shall
20 be established by a Pre- Need Company with a subsidiary, affiliate or related
21 trust entity. However, such may be allowed provided the following conditions
22 are complied with:

- 23 (1) A written approval of the Commission has been previously
24 obtained; and
25 (2) Public disclosure of the affiliation with the trust entity be
26 included in all sales materials, in whatever form; and

1 The Trust Agreement shall be submitted to the Commission for
2 approval before execution and shall contain the following salient provisions,
3 among others:

- 4 (a) The manner in which the Trust Fund is to be operated;
- 5 (b) Investment powers of the trustee with respect to trust deposits,
6 including the character and kind of investment;
- 7 (c) Auditing and settlement of accounts of the trustee with respect
8 to the Trust Fund;
- 9 (d) Basis upon which the Trust Fund may be terminated;
- 10 (e) Provisions for withdrawal of the Trust Fund;
- 11 (f) That the trustee shall submit to the power of the Commission to
12 examine and verify the Trust Fund;
- 13 (g) An undertaking by the Trustee that it shall abide by the rules
14 and regulations of the Commission with respect to the Trust
15 Fund; and
- 16 (h) An undertaking by the Trustee that it shall submit such other
17 data or information as may be prescribed by the Commission.

18
19 **SECTION 27. *Responsibilities of the Trustee.*** -The trustee shall:

- 20 (a) Administer and manage the Trust Fund with utmost good faith,
21 care and prudence required by a fiduciary relationship.
- 22 (b) The Trustee shall have the exclusive management and control
23 over the funds and the right at any time to sell, convert, invest,
24 change, and transfer or otherwise change or dispose of the assets
25 comprising the funds.
- 26 (c) Not use the Trust Fund to invest in or extend any loan or credit
27 accommodation to the Pre-Need Company, its directors, officers,
28 stockholders, and related interests as well as to persons or
29 enterprises controlling, owned or controlled by, or under
30 common control with said company, its directors, officers,
31 stockholders and related interests.

32
33 **SECTION 28. *Investment of the Trust Fund.*** - All investments of
34 the Trust Fund/s of a Pre-Need Company shall be limited to the following and
35 subject to limitations to wit:

1 (1) Fixed Income Instruments. These may be classified into short
2 term and long term instruments. The instrument is short term if
3 the maturity period is three hundred sixty five (365) days or
4 less. This category includes:

5 (a) Government securities;

6 (b) Savings/time deposits with a commercial bank with
7 satisfactory examination rating as of the last examination
8 by the *Bangko Sentral ng Pilipinas*;

9 (c) Commercial papers duly registered with the Commission
10 with a credit rating of "1" for short term and "Aaa" for
11 long term based on the rating scale of an accredited
12 Philippine Rating Agency or its equivalent at the time of
13 investment.

14 (d) Direct loans to corporations which are financially stable,
15 profitable for the last three (3) years and have a good
16 track record of paying their previous loans from the Trust
17 Fund of Pre-Need Companies.

18 These loans shall be fully secured by a real estate mortgage up to the
19 extent of sixty per cent (60%) of the appraised value of the property at the
20 time the loan was granted.

21 The property shall be covered by a Transfer Certificate of Title
22 registered in the name of the mortgagor and free from liens and
23 encumbrances.

24 (2) Mutual Funds duly registered with the Securities and Exchange
25 Commission and/or Unit Investment Trust Fund (UITF) of any
26 trust entity, where such funds are invested only in fixed income
27 instruments and blue chip securities subject to the limitations
28 prescribed by law, rules and regulations.

29 (3) Investments in equities shall be limited to Stocks listed on the
30 Main board of a local Stock Exchange.

31 In determining these investments, compliance to certain standards
32 such as good track record, financial stability and history of dividend
33 declaration and payment over the past three years shall be considered.

34 (4) Real Estate. These shall include prime real estate properties
35 located in cities and first class municipalities free from liens and
36 encumbrances at the time of investment.

1 The Commission shall set the allowable level of investments in the
2 above-enumerated assets, Provided, that no investment in any single entity,
3 except for investment in government securities, shall exceed twenty five
4 percent (25%) of the total value of the *Trust Fund*.

5 The Commission may adopt the same investment guidelines as
6 provided in the Insurance Code, for Pre-Need Companies and its trust funds.

7
8 **SECTION 29. *Valuation of Actuarial Reserve Liabilities (ARL)* –**

9 To determine the sufficiency and adequacy of the Trust Fund to guarantee
10 the delivery of future Benefits stipulated in the Pre-Need Plan, an annual
11 valuation of Actuarial Reserve Liabilities as of valuation date shall be made
12 and submitted to the Commission within one hundred five (105) days from
13 the end of the calendar year. The actuarial valuation report containing the
14 actuarial assumption, methodology, and results should be certified by the
15 actuary accredited by the Commission In accordance with actuarially sound
16 and accepted principles and subject to the minimum standard of valuation
17 and guidelines set by the Commission. Upon approval by the Commission of
18 the actuarial computation, any deficiency in the Trust Fund shall be covered
19 by the Pre-Need Company through additional deposit within thirty (30) days
20 from submission of the actuarial valuation report or from notice of deficiency
21 whichever is earlier. Any excess of the Trust Fund shall be credited for future
22 deposit requirements.

23 **SECTION 30. *Liquidity Reserve.*** - The trustee shall at all times
24 maintain a Liquidity Reserve which shall be sufficient to cover at least fifteen
25 percent (15%) of the Trust Fund but shall in no case be less than the amount
26 of the Benefits payable for the succeeding year. For this purpose, the Pre-
27 Need Company shall timely submit to the Trustee a summary of Benefits
28 payable for the succeeding year.

29 The following shall qualify as investments for the Liquidity Reserve:

- 30 (a) Loans secured by a hold-out on assignment or pledge deposits
31 maintained either with the TRUSTEE or other banks, or of
32 deposit substitute of the TRUSTEE itself or mortgage and
33 chattel mortgage bonds issued by the TRUSTEE;
- 34 (b) Treasury notes or bills, other government securities or bonds,
35 and such other evidences or indebtedness or obligations the

1 servicing and repayment of which are fully guaranteed by the
2 Republic of the Philippines;

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

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

7
8 **SECTION 31. *Distribution of Profits.*** - A Pre-Need Company may
9 declare dividend provided that the following shall remain unimpaired, as
10 certified under oath by the President and the Treasurer:

11 (a) One hundred percent (100%) of the capital stock;

12 (b) An amount sufficient to pay all net losses reported, or in the
13 course of settlement, and all liabilities for expenses and taxes.

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

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CHAPTER IX

ACTUARIES FOR PRE-NEED COMPANIES

SECTION 32. *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 an actuary duly accredited with the Commission who shall, during his tenure of engagement, 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. Actuarial work shall at least include the following:

1. Determining the contract price for a pre-need plan that is submitted by the Pre-Need Company for registration or amendment, with the Commission;
2. Valuing liabilities of the Pre-Need Company referred to as Actuarial Reserve Liabilities in Pre-Need Plans that were issued by the Company, and other plans in which the Company continues to have obligations as of a valuation date;
3. Issuing a Statement of Actuarial Opinion on the appropriateness of the actuarial reserves, when compared with the assets of the trust fund that was set up to back the liabilities represented by such reserves. Opinion on the appropriateness of actuarial reserves as of a certain date shall be based on a comparison of the amount of assets in the trust fund with the amount of reserves, and the projection of the income and outgo of the trust fund of at least five (5) years, for the purpose of establishing the adequacy of the trust fund to pay for the contingent and maturing obligations of the Pre-Need Company to the plan holders.

The work of the actuary shall be performed under guidelines and standards that are internationally accepted and shall be subject to the applicable rules and regulations of the Commission

No accredited actuary shall serve more than one client or employer at the same time. However, one already in the employ, or is already engaged as a consultant, of a Pre-Need Company may be allowed by the Commission to

1 serve another Pre-Need Company, provided the following conditions are first
2 complied with:

- 3 1. that the request to engage his services by another company is in
4 writing;
- 5 2. that his present employer acquiesced to it in writing; and
- 6 3. that he furnishes the Commission with copies of said
7 agreements from the companies.

8
9 **SECTION 33. *Qualification of the Actuary.*** - A person shall be
10 officially accredited by the Commission to act as an Actuary in any Pre-Need
11 Company upon application therefore and the payment of the corresponding
12 fee hereinafter prescribed, provided that: (1) he is a Fellow in good standing
13 of the Actuarial Society of the Philippines as having met the continuing
14 education requirements of the Society at the time of his application for
15 accreditation with the Commission, and remains in such good standing
16 during the tenure of his engagement; or (2) in the case he is not a Fellow in
17 good standing of the Actuarial Society of the Philippines, he should meet all
18 the requirements for accreditation as a Fellow of the Society and has been
19 given permission by the pertinent government authorities in the Philippines
20 to render service in the Philippines, as determined by the Commission.

21 *Provided further,* that the accreditation of an actuary shall be subject
22 to the approval of the Commission under Section 11 of this Code

23
24 **SECTION 34. *Renewal of Certificate.*** - No certificate of
25 accreditation issued under this Chapter shall be valid after the thirty-first
26 day of December of the year following its issuance unless it has been renewed
27 by the Commission.

28
29 **SECTION 35. *Prohibited Positions.*** - No actuary engaged by a Pre-
30 need Company shall at the same time be a stockholder or serve as a Director
31 of the Board, Chief Executive Officer or Chief Financial Officer of the
32 Company or any such position that the Commission may determine to have
33 an inherent conflict of interest to the position of an actuary.

1 following reports in such form and with such details as may be prescribed by
2 the Commission:

- 3 (1) Annual Report which shall include among others the financial
4 statements and the management discussion and analysis of
5 results of operations and shall be certified under oath by the
6 Chairman, Chief Executive Officer, Chief Finance Officer and
7 the actuary;
- 8 (2) Actuarial Valuation Report which shall be prepared in
9 accordance with the minimum standards of valuation for pre-
10 need plans prepared by the Actuarial Society of the Philippines
11 and adopted by the Commission and certified under oath by the
12 actuary;
- 13 (3) Annual Audited Financial Statement which shall be certified
14 under oath to by the Chairman, Chief Executive Officer and
15 Chief Finance Officer of the Pre-Need Company and its external
16 auditor in accordance with a uniform accounting system that
17 may be prescribed by the Commission;
- 18 (4) Annual Statement of Trust Fund which shall include details
19 such as the income, disbursements, assets and liability items
20 and shall be certified under oath by the Chairman, Chief
21 Executive Officer and Chief Finance Officer of the Pre-Need
22 Company and at least two (2) of the highest-ranking officers of
23 the Trustee; and
- 24 (5) Any other report that may be required by the Commission.

25 **SECTION 39. *Publication of Reports.*** - Within thirty (30) days after
26 the receipt of the annual statements approved by the Commission, every Pre-
27 Need Company shall publish in two (2) newspapers of general circulation a
28 full synopsis of the annual statements.

29 The Commission may require the publication of other reports it may
30 deem necessary to apprise Planholders of the condition of the Pre-Need
31 Company.

32
33 **CHAPTER XI**

34 **EXAMINATION OF PRE-NEED COMPANIES**

1 (3) *Revocation of License.* The Commission may issue a revocation
2 order of the license of the Pre-Need Company under suspension
3 for a period of ninety (90) days.

4 Any administrative sanction shall not prejudice the filing of
5 appropriate criminal or civil actions.

6
7 **SECTION 43. *Criminal Penalties.*** The following acts are criminal in
8 nature:

9 (1) Selling or offering to sell a Pre-Need Plan by unregistered
10 persons shall be penalized by an imprisonment of one (1) year
11 and fine equivalent to triple the contract price of each of the Pre-
12 Need Plans sold;

13 (2) Selling or offering to sell an unregistered Pre-need Plan or any
14 product that has Pre-need Plan features shall be penalized by
15 imprisonment of one (1) year and a fine equivalent to triple the
16 contract price of each of the Pre-Need Plans sold;

17 (3) Any negligent act or omission that is prejudicial or injurious to
18 the Planholder shall be penalized by imprisonment of one (1)
19 year and one (1) day to six (6) years and a fine in the amount of
20 fifty thousand pesos (P50, 000.00) to five hundred thousand
21 pesos (P500, 000.00)

22 (4) Any fraudulent act or omission that is prejudicial or injurious to
23 the Planholder shall be penalized by imprisonment of six (6)
24 years and one (1) day to twelve (12) years and a fine in the
25 amount of one hundred thousand pesos (P100, 000.00) to one
26 million pesos (P1, 000, 000.00) and

27 (5) Willful violation of the provisions of the Code or orders of the
28 Commission provided that repeated violations shall constitute
29 *prima facie* evidence against the offender, shall be penalized by
30 imprisonment of six (6) years and one (1) day to twelve (12)
31 years and a fine in the amount of one hundred thousand pesos
32 (P100, 000.00) to one million pesos (P1, 000,000.00).

33
34 **CHAPTER XIII**

35 **APPOINTMENT OF CONSERVATOR**

1 *forthwith order the company to cease and desist from transacting business*
2 *and shall designate a receiver to immediately take charge of its Trust Fund,*
3 *assets and liabilities, as expeditiously as possible collect and gather all the*
4 *assets and administer the same for the Benefit of its Planholders and*
5 *creditors, and exercise all the powers necessary for these purposes including,*
6 *but not limited to, bringing suits and foreclosing mortgages in the name of*
7 *the Pre-Need Company.*

8 The Commission shall thereupon determine within thirty (30) days
9 whether the Pre-Need Company may be reorganized or otherwise placed in
10 such condition so that it may be permitted to resume business with safety to
11 *its Planholders and creditors and shall prescribe the conditions under which*
12 *such resumption of business shall take place as well as the time for*
13 *fulfillment of such conditions. In such case, the expenses and fees in the*
14 *collection and administration of the Pre-Need Company shall be determined*
15 *by the Commission and shall be paid out of the assets of such company. If the*
16 *Commission shall determine and confirm within the said period that the Pre-*
17 *Need Company IS insolvent, as defined hereunder, it shall, if the public*
18 *interest so requires, order its liquidation, indicate the manner of its*
19 *liquidation and approve a liquidation plan and implement it immediately.*
20 *The Commission shall designate a competent and qualified person as*
21 *liquidator who shall take over the functions of the receiver previously*
22 *designated and, with all convenient speed, distribute the Trust Fund*
23 *exclusively to the Planholders in proportion to termination values of their*
24 *respective Pre-Need Plans, convert the assets of the Pre-Need Company to*
25 *cash, or sell, assign or otherwise dispose of the same to the Planholders,*
26 *creditors and other parties for the purpose of settling the liabilities or paying*
27 *the debts of such company and he may, in the name of the company,*
28 *institute such actions as may be necessary In the appropriate Court to collect*
29 *and recover accounts and assets of the Pre-Need Company, and to do such*
30 *other acts as may be necessary to complete the liquidation as ordered by the*
31 *Commission.*

32 The provisions of any law to the contrary notwithstanding, the actions
33 of the Commission under this Section shall be final and executory, and can be
34 set aside by the Court upon petition by the company and only if there is
35 convincing proof that the action is plainly arbitrary and made in bad faith.
36 The Commission shall then file the corresponding answer reciting the

1 proceeding taken and praying for the assistance of the Court in the
2 liquidation of the company. No restraining order or injunction shall be issued
3 by the Court enjoining the Commission from implementing his actions under
4 this Section, unless there is convincing proof that the action of the
5 Commission is plainly arbitrary and made in bad faith and the petitioner
6 files a bond in favor of the Commission with the Court in an amount fixed by
7 it, The restraining order or injunction, shall be refused or, if granted, shall be
8 dissolved upon filing by the Commission, if he so desires, of a bond in an
9 amount twice the amount of the bond of the petitioner conditioned that it will
10 pay the damages which the petition may suffer by the refusal or the
11 dissolution of the injunction.

12 The Court shall give preference to ail proceedings under this Chapter.
13 The Commission shall not be required to pay any fee to any public officer for
14 filing, recording, or in any manner authenticating any paper or instrument
15 relating to the proceedings.

16 As used in this Title, the term "Insolvency" shall refer to the financial
17 condition of a Pre-Need Company that is generally unable to pay its liabilities
18 as they fall due in the ordinary course of business or that has liabilities that
19 are greater than its assets.

20 In case of liquidation of a Pre-Need Company, after payment of the *cost*
21 of the proceedings, including reasonable expenses and fees incurred in the
22 liquidation to be allowed by the Court, the Commission shall pay all allowed
23 claims against such company, under order of the Court, in accordance with
24 their legal priority.

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

31 CHAPTER XV

32 MISCELLANEOUS PROVISIONS

33
34 SECTION 46. *Adjudicatory power.* The Commission shall have the
35 power to adjudicate any and all claims involving Pre-need Plans. The decision

1 of the Commission shall be final and executory if the amount of Benefits does
2 not exceed One Hundred Thousand Pesos (P100, 000.00).

3 The authority to adjudicate granted to the Commission under this
4 section shall be concurrent with that of the civil courts, but the filing of a
5 complaint with the Commission shall preclude the civil courts from taking
6 cognizance of a suit involving the same subject matter.

7
8 **SECTION 47. *Duly of the Regulator*** - In view of the nature of the
9 pre-need industry as one impressed with public interest, the officers and
10 employees of the Commission are strictly enjoined to monitor, enforce and
11 ensure compliance with the provisions of this Code. Failure to do so shall be
12 dealt with under existing laws and regulations in the gravest degree.

13 **SECTION 48. *Transitory Provisions***. - Any Pre-Need Company who
14 at the time of the effectivity of this Code has been registered and licensed to
15 sell Pre-Need Plans and similar contracts, shall be considered registered and
16 licensed under the provision of this Code and Its implementing rules and
17 regulations and shall be subject to and governed by the provisions hereof;
18 provided, however, that compliance for all sections with the exception of
19 Section 13, may be deferred for such reasonable time as the commission may
20 determine but not to exceed one (1) year from approval of this code. With
21 respect to Chapter 5, compliance will cover all new plans sold one hundred
22 twenty (120) days after the
23 effectivity of this law.

24 The respective department of the Securities and Exchange Commission
25 handling all matters related to the pre-need industry prior to the effectivity
26 of this Act shall hereby secure and transfer all its files and records to the
27 Insurance Commission within sixty (60) days after the effectivity of this
28 Code.

29
30 **SECTION 49. *Implementing Rules and Regulations***. - The
31 Commission shall adopt such rules and regulations for the proper and
32 effective implementation of this Code within sixty (60) days, from approval
33 hereof. The Commission shall publish once a week for two (2) consecutive
34 weeks in two newspapers of general circulation the rules and regulations
35 promulgated pursuant to the preceding section.

1 **SECTION 50. *Effect on Existing Laws and Contracts.*** - The rights
2 and remedies provided by this Code shall be in addition to any and all other
3 rights and remedies that exist under existing laws. Nothing in this Act shall
4 impair the obligation of existing contracts nor affect or be construed to affect
5 existing criminal, civil or administrative cases.

6
7 **SECTION 51. *Separability Clause.*** - Any portion or provision of this
8 Act that may be declared *unconstitutional or invalid* shall not have the effect
9 of nullifying other portions or provisions hereof as long as such remaining
10 portion or provision can still subsist and be given effect in their entirety.

11
12 **SECTION 52. *Repealing Clause.*** - All acts, laws, executive orders
13 and/or rules and regulations or any part thereof which are Inconsistent with
14 the provisions of this Code are hereby repealed or modified accordingly.

15
16 **SECTION 53. *Effectivity Clause.*** - This Code shall take effect upon
17 its approval.

18
19
20 *Approved,*