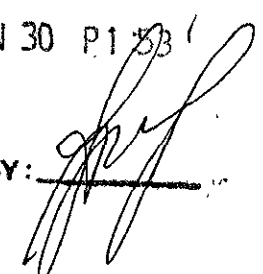


FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

7 JUN 30 P 1 53

RECEIVED BY: 

SENATE

S. No. 105

INTRODUCED BY THE HONORABLE MAR ROXAS

EXPLANATORY NOTE

This bill seeks to address the absence of a statute that regulates the pre-need industry by establishing the Pre-Need Industry Act of 2007 to govern the operations of firms which issue or sell pre-need plans or similar contracts and investments.

The present estimated value of the pre-need industry amounts to 50 billion pesos. It represents the investment of millions of Filipinos in their future financial security. This bill is even more timely due to the demise of educational pre-need companies, to the detriment of planholders and their children's future, who are still seeking justice until now.

While the Securities and Exchange Commission (SEC) may be capable of policing corporations in general, it is perceived to be lacking in capability to address the highly specialized needs and growing problems of the pre-need industry, thus, the need to transfer of the regulation of the industry to the Insurance Commission.

It is necessary that the responsible management of the trust fund beginning from its sale, collection of payments and investment must be ensured. Aggressive selling strategies of pre-need sales agents and the prevailing front-end loading investments contributions mix must be tempered for a more planholder-friendly business model. Additional disclosure requirements must also be imposed so that the pre-need companies adequately inform all prospective planholders.

It is likewise proposed in this bill that a Planholders Protection Fund be set up through the proportional and joint contributions of the all the duly registered pre-need companies for the purpose of providing a buffer fund out of which any failed or insolvent pre-need company may recompense to some extent the payments of its planholders.

Lastly, due to the lack of any strong remedial measures against any violations of the rules governing the pre-need industry particularly in the trust relationships relative to the management of the trust funds of pre-need companies, this bill will impose stronger penalties consisting of fine and/or imprisonment for specific offenses that cause harm to the interests of the planholder or the pre-need industry as a whole.

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


MAR ROXAS
Senator

FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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INTRODUCED BY THE HONORABLE MAR ROXAS

AN ACT
TO REGULATE THE PRE-NEED PLANS INDUSTRY OF THE PHILIPPINES

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

1 SECTION 1. *Title.* - This Act shall be known as the "Pre-Need Industry Act of 2005."

2 SEC. 2. *Declaration of Policy.* - It is hereby declared the policy of the state to regulate
3 the establishment of pre-need companies and to ensure that all transactions related thereto
4 are conducted in an efficient and responsible manner so that benefits appurtenant to each
5 plan and the industry are maximized for the benefit of the planholders and the pre-need
6 companies.

7 Any doubt in the interpretation of any provision in this Act shall be interpreted in
8 favor of the rights and interests of the planholder.

9 Section 3. *Definition of Terms.* - Whenever used in this Act, the following terms shall
10 have the respective meanings hereafter set forth, unless the context otherwise requires:

11 (a) "Commission" means the Insurance Commission.

12 (b) "Pre-Need Plans" are contracts which provide for the performance/delivery of
13 future services and/or payment of monetary consideration/benefits at the time of

1 actual need or maturity of the contract, payable either in cash or installment, with
2 or without insurance coverage, by planholders at prices stated in the contract,
3 such as life memorial plans, pensions plans, education plans, interment plans, and
4 similar contracts and investments.

5 (c) "Pre-Need Company" is any corporation registered with the Commission and
6 authorized/licensed to sell or offer for sale pre-need plans.

7 (d) "Issuer" means any corporation registered with the Commission and
8 authorized/licensed to sell or offer for sale pre-need plans and/or similar contracts
9 and investments.

10 (e) "Planholder" refers to any natural or juridical person who purchases pre-need
11 plans or similar contracts and investments for whom or for whose beneficiaries'
12 future services are to be rendered or payments/benefits delivered as guaranteed by
13 the issuer at the time of need or maturity of the contract.

14 (f) "Traditional or actual cost plans" refer to such plans whose corresponding
15 benefits/services are guaranteed, in spite of increase in costs of such
16 benefits/services at the time of availment on account of the contingencies of
17 inflation and interest yield rate fluctuations, among others.

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

20 *SEC. 4. Supervision and Regulation.* - Every pre-need company shall be subject to the
21 supervision and regulation of the Insurance Commission. The Commission shall create a new
22 department within its control, headed by a director to regulate and supervise the operation
23 and activities of pre-need plan companies in the country. For this purpose, an amount

1 equivalent to twenty percent (20%) of the fees, charges, and other income derived from the
2 pre-need industry shall be allocated and retained by the Commission.

3 The Commission shall have the authority to determine the number of pre-need
4 companies in order to prevent industry overcrowding and undue competition. The sales
5 agents of pre-need companies shall also be subject to the supervision and regulation of the
6 Commission.

7 The respective department of the Securities and Exchange Commission handling all
8 matters related to the pre-need industry prior to the effectivity of this Act shall hereby secure
9 and transfer all its files and records to the Insurance Commission within sixty (60) days after
10 the effectivity of this Act.

CHAPTER II. REGISTRATION

11 SEC. 5. *Registration.* - (a) Only corporations duly registered before the Securities and
12 Exchange Commission, after due endorsement of its compliance by the Insurance
13 Commission, shall be allowed to engage in the business of selling pre-need plans.

14 (b) No corporation shall issue or sell pre-need plans unless such have been registered
15 and licensed pursuant to the provisions of this Act and other laws as well as any rules which
16 the Commission may prescribe hereafter.

17 (c) All pre-need plans issued prior to this Act shall be governed by the same terms as
18 provided in its original agreements.

19 SEC. 6. *Registration Procedure.* - (a) All pre-need plans or similar contracts and
20 investments shall be registered and licensed through the filing by the issuer with the
21 Commission of a sworn registration statement containing the documents required by the

1 Commission and an actuarial viability of the plan duly certified by an accredited actuary. The
2 total declared value of the pre-need plans available for sale shall not be more than ten times
3 the minimum paid-up capital required by the Act.

4 (b) Upon filing of the registration statement, the registrant shall pay to the
5 Commission a minimum fee of one fifth (1/5) of one percent (1%) of the maximum aggregate
6 price at which such plans or contracts are proposed to be sold, but not less than One
7 Thousand Pesos (P1,000,000).

8 (c) The fact of such filing shall be immediately published by the Commission at the
9 expense of the registrant in two (2) newspapers of general circulation in the Philippines,
10 once a week for two (2) consecutive weeks, reciting that a registration statement for the sale
11 of such plans or contracts has been filed with it, and that the aforesaid registration statement,
12 as well as the papers attached thereto, are open for inspection during business hours by any
13 interested party.

14 (d) Any registered party may file a written opposition to the registration within ten
15 (10) days from the date of the last publication. The Commission shall schedule a hearing on
16 the written opposition after which it shall submit the matter for resolution before the
17 Commission. A resolution shall be issued within thirty (30) days from such submission.

18 *SEC. 7. Minimum Capital Requirements.* - (a) The issuer engaged in the issue and sale
19 of pre-need plans or similar contracts or investments shall have a minimum capital of at least
20 One Hundred Million Pesos (P100,000,000.00) plus Ten Million Pesos (P10,000,000.00) for
21 every additional pre-need product, which may be invested in cash or property. The
22 Commission may increase such minimum paid-up capital stock, under such terms and
23 conditions as it may impose, to an amount which, in its discretion, would reasonably assure
24 the safety of the interests of the planholders and the public.

1 (b) All existing pre-need companies shall comply with the minimum capital
2 requirements provided herein within a period of ninety (90) days from the effectivity of this
3 Act; provided, that a written request for a one-time extension of sixty (60) days may be
4 granted subject to the discretion of the Commission.

5 **SEC. 8. *Federation Membership.*** - All pre-need plan companies shall be registered
6 members of the Federation of Pre-Need Plan Companies, Inc. The Federation of Pre-Need
7 Plan Companies, Inc. shall be under the supervision of the Commission.

CHAPTER III. TRUST FUND

8 **SEC. 9. *Trust Fund.*** - To ensure the delivery of the guaranteed benefits and services
9 provided under a pre-need plan contract, a trust fund should be established independently
10 from the operations of the pre-need company.

11 No withdrawal shall be made from the trust fund except for paying the cost of (1)
12 services rendered or property delivered, (2) bank charges and investment expenses in the
13 operation of the trust fund, (3) expenses in the delivery of the benefits or services, (4) cash
14 surrender/termination values payable to the planholders, annuities, contributions to the fund
15 of cancelled plans, (5) taxes on trust funds, and (6) other costs necessary to insure the
16 delivery of benefits or services.

17 **SEC. 10. *Deposits in the Trust Fund.*** - (a) The issuer shall make periodic deposits in
18 the trust fund in an amount not less than sixty percent (60%) of the gross pre-need price of
19 the plan, if sold for cash, within sixty (60) days upon receipt of payment.

1 (b) For plans sold on installment basis, the following minimum percentages on
2 quarterly gross collections shall be deposited within sixty (60) days following the end of each
3 quarter of the fiscal year of the issuer, as follows:

(1) collections on the first 20% of plan value	-	70%
(2) collections on the second 20% of plan value	-	70%
(3) collections on the third 20% of plan value	-	60%
(4) collections on the fourth 20% of plan value	-	50%
(5) collections on the fifth 20% of plan value	-	50%

4 (c) If the abovestated minimum trust fund deposit requirements are not sufficient in
5 accordance with the actuarial viability study of the plan prepared by the Commission
6 accredited actuary, the approved trust fund deposit rates appearing in the approved actuarial
7 pricing by the Commission shall be the required basis for the periodic deposits to the trust
8 fund. Unless the Commission expressly declares otherwise, in no case shall the contributions
9 to the trust fund be less than fifty percent (50%) of the collections for the first and second
10 year of the plan.

11 (d) The proceeds of insurance coverage taken from an insurance company shall, in
12 appropriate cases, be considered as collections, but shall not be subject to commission and/or
13 other charges.

14 **SEC. 11. Actuarial Valuation of the Trust Fund.** - An actuarial valuation report of the
15 sufficiency of the trust fund to pay the contractual liabilities of the issuer under the plans
16 issued, duly certified by an accredited actuary, shall be submitted to the Commission within
17 one hundred twenty (120) days after the end of every fiscal year. The Commission shall refer
18 the report to its actuarial consultant, if there is one, or to an independent actuary for
19 verification and reexamination. The expenses incurred therefore shall be charged to the
20 issuer. Upon approval by the Commission of the actuarial computation, any deficiency in the
21 actuarially valued reserve liabilities shall be covered through additional deposits within

1 thirty (30) days, or such longer period as the Commission may allow, after receipt of notice
2 of deficiency from the Commission. Any excess in the trust fund over the actuarial reserve
3 liabilities can not be withdrawn from the trust fund.

4 **SEC. 12. *Trust Agreement.*** - The agreement creating the trust fund which shall be
5 submitted for approval of the Commission shall define the (a) manner in which the trust
6 fund is to be operated; (b) the investment powers of the trustee; (c) allocation and
7 apportionment of income, profits and losses; (d) terms and conditions governing the
8 admission and withdrawal of the investment; (e) audit and settlement of accounts of the
9 investee; (f) grounds upon which the fund may be terminated; (g) provisions for withdrawal
10 of the fund; and (h) such other matters as may be necessary or proper to define clearly the
11 rights of the issuer with regard to the trust fund.

12 **SEC. 13. *Limits on Trust Fund Investment.*** - (a) The trustee shall not use the trust fund
13 to extend any loan to or invest such in the pre-need company, its directors, officers,
14 stockholders and related interests nor to any other entity directly *or* indirectly controlled by
15 the above mentioned; Provided, however, that pre-need companies shall set aside ten
16 percent (10%) of the trust fund for lending to Countryside and Business Enterprises
17 established under R.A. No. 6810 and low cost housing programs of the government which
18 are guaranteed by the Home Mortgage and Guarantee Corporation.

19 (b) Any investment of the trust fund to any single and allowable security must not
20 exceed Twenty Five Percent (25%) of the total value of the trust fund.

21 (c) It shall be administered and managed by at least four (4) reputable banks and/or
22 financial institutions authorized to perform trust functions in the Philippines. Furthermore,

1 each investment of the trust fund in one qualified bank shall not exceed thirty percent (30%)
2 of the total trust fund contributions required by the Act.

3 **SEC. 14. *Liquidity Reserve Fund.*** - At least fifteen percent (15%) of the trust fund but
4 in no case less than Fifteen Million Pesos (P15,000,000.00) must be set aside and maintained
5 as a liquidity reserve fund which shall be invested only in the following transactions:

6 (a) Loans secured by a hold-out or assignment or pledge of deposits maintained either
7 with the trustee or other banks, or of deposit substitutes of the trustee itself or
8 mortgage and chattel mortgage bonds issued by the trustee;

9 (b) Short-term government securities or bonds, and such other evidences of
10 indebtedness or obligations, the servicing and repayment of which are fully
11 guaranteed by the Republic of the Philippines;

12 (c) Repurchase agreements with any of those mentioned in item (b) above, as
13 underlying instruments thereof;

14 (d) Savings or time deposits with government owned banks or commercial banks;
15 *Provided*, that in no case shall any such savings or time deposit account be
16 accepted or allowed under a "bearer", "numbered account" or other similar
17 arrangements; and

18 (e) Such investments as the Commission may allow.

CHAPTER IV. PLAN AGREEMENT, AMENDMENT AND PUBLICATIONS

19 **SEC. 15. *Compliance with the Contract.*** - Upon full payment of the contract price by
20 the plan holder, the issuer shall render to him or his assigns the services or give value thereof
21 or deliver the property as stipulated in the contract. Within thirty (30) days from the

1 completion of the payments, the pre-need company shall issue a written and express
2 undertaking addressed to the planholder stating that it is ready to honor all the provisions in
3 the pre-need plan.

4 **SEC. 16. *Amendments to the Plan, Agreements, Contracts or Other Documents***
5 *Pertinent to Registration.* - No plan agreement, trust agreement, contract, or other
6 documents of the plan or contracts shall be amended or modified without the prior and
7 written approval of the Commission and the planholders. Pre-need plans may be transferred
8 or assigned only once by the planholder and shall only require a written notice to the issuer
9 to be given to the pre-need company ten (10) days before the date of transfer.

10 **SEC. 17. *Default: Reinstatement Period.*** - (a) Every issuer must provide in all contracts
11 issued to planholders, a grace period of at least three (3) months within which planholders
12 may pay accrued installments without any charges. Non-payment beyond the grace period
13 shall render the plans without further force and effect.

14 (b) However, any payment by the planholder after the grace period but within a
15 period of two (2) years from the date when the earliest unpaid installment is due shall allow
16 the planholder to reinstate his plan. Except for interest charges, the issuer may impose no
17 other fees attributable to the delay. The issuer shall not cancel any plan during the two (2)
18 year period when reinstatement may be effected.

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

21 **SEC.18. *Termination Values.*** - Holders of surrendered and lapsed or cancelled policies
22 are entitled to such values in accordance with a schedule of minimum termination values

1 that the Commission may formulate to protect the equities of planholders. The termination
2 values shall in no case be less than fifty percent (50%) of the total payments made.

CHAPTER V. ACTUARIES

3 **SEC. 19. *Required Actuary.*** - No pre-need company shall be licensed to do business in
4 the Philippines nor shall any pre-need company doing business in the Philippines be allowed
5 to continue doing such business unless they engage the services of either a resident or
6 consulting actuary duly accredited with the Commission who shall, during his tenure of
7 office, be directly responsible for the direction and supervision of all actuarial work
8 connected with or that may be involved in the business of the pre-need company.

9 **SEC. 20. *Qualifications of the Actuary.*** -Any person who is a fellow of good standing
10 in the Actuarial Society of the Philippines may be officially accredited by the Commission to
11 act as an actuary in any pre-need company upon application therefore and the payment of
12 the prescribed fee.

CHAPTER VI. REPORTS

13 **SEC. 21. *Actuarial Valuation Report.*** - Every pre-need company shall annually make a
14 valuation of all pre-need its plans in order to determine its financial stability and solvency.
15 The valuation shall be made in accordance with the minimum standards of valuation for pre-
16 need plans prepared by the Actuarial Society of the Philippines and adopted by the
17 Commission. The results of such valuation shall be filed and reported to the Commission

1 accompanied by a sworn statement of opinion of the company's resident actuary or
2 consulting actuary within one hundred twenty (120) days after the end of each fiscal period.

3 **SEC. 22. *Audited Financial Statement.*** - Every pre-need company doing business in
4 the Philippines shall annually render to the Commission within one hundred twenty (120)
5 days after the end of each fiscal period a statement signed and sworn to by the president and
6 chief financial officer of such company showing the exact condition of its financial affairs in
7 accordance with a uniform accounting system that may be prescribed by the Commission.

8 Any entry in the statement that is found to be false shall constitute a misdemeanor
9 and the officer signing such statement shall be subject to the penalty provided for under
10 Section 32 (b) of this Act.

11 **SEC. 23. *Annual Statement of Trust Fund.*** - Every issuer shall file with the
12 Commission an annual statement of its operations with special focus on its trust fund within
13 one hundred twenty (120) days after the end of each fiscal period. Such statement shall be on
14 a form prescribed or approved by the Commission and shall include details as to all of the
15 income, disbursements, assets and liability items of and associated with the said trust fund
16 accounts. Said statement shall be signed under oath by the president and chief financial
17 officer of the pre-need company and shall be filed simultaneously with the annual statement
18 required in the preceding section.

19 The Commission shall have the power to require at any time the qualified banks
20 and/or financial institutions handling the trust funds of any pre-need company to issue a
21 certification detailing the status and composition of the trust fund of any pre-need company
22 in such form as it may warrant.

1 **SEC. 24. *Publication of the Annual Financial Statement.*** - Within thirty (30) days after
2 receipt of the annual statement approved by the Commission, every pre-need company doing
3 business in the Philippines shall publish once a week in two (2) newspapers of general
4 circulation within a period of two (2) consecutive weeks a full synopsis of its annual financial
5 statement showing fully the conditions of its business, and setting forth its resources and
6 liabilities.

CHAPTER VII. SUSPENSION/REVOCAION OF LICENSE OR PERMIT

7 **SEC. 25. *Suspension of License or Permit.*** - (a) If at any time the information
8 contained in the statement filed has been found to be misleading , incorrect, inadequate or
9 incomplete or the sale or offering for sale of the plans or contracts may work or tend to work
10 a fraud, the Commission may require from the person filing such statement further
11 information as may, in its judgment, be necessary to enable the Commission to ascertain
12 whether the registration of such security should be revoked on any ground specified in this
13 Act or any applicable law. The Commission may also suspend the right to sell such security
14 pending further investigation, by entering an order specifying the grounds for such action
15 and by notifying, expressly or by personal service, the person filing such statement and every
16 broker who shall have notified the Commission of an intention to sell such security. Refusal
17 to furnish the information required by the Commission within a reasonable time to be fixed
18 by the Commission, may be a proper ground for the entry of such order of suspension.

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

21 (c) Upon entry of such order of suspension, the Commission shall conduct a hearing
22 with proper notice to the parties to determine whether the sale of any such security should

1 be revoked on any ground under this Act or any law. It shall make the necessary findings
2 and enter a final order prohibiting the sale of such plans or contracts whenever proper. If,
3 however, the Commission finds that the sale of the plans or contracts is not fraudulent nor
4 will result in fraud, it shall forthwith enter an order revoking the suspension, and such plan
5 or contract shall be restored to its status as a security registered under this Act and applicable
6 law, as of the date of such order of revocation of suspension.

7 **SEC. 26. *Grounds for Revocation of Permit or License.*** - (a) The Commission may,
8 after due notice and hearing, revoke the registration of any pre-need plan and the permit to
9 sell such security by issuing an order to such effect, setting forth its findings in respect
10 thereto, if upon examination it shall appear that the issuer:

11 (1) is insolvent;

12 (2) has violated any of the provisions of this Act or any relevant law, or the rules
13 promulgated pursuant thereto, or any order of the Commission of which the
14 issuer had notice;

15 (3) has been or is engaged or is about to engage in fraudulent transactions;

16 (4) has made fraudulent representation in any prospectus, circular, literature,
17 brochure or other form of broadcast or media communication concerning its plans
18 or securities; or

19 (5) does not conduct its business in accordance with law.

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

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

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

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

9 **SEC. 27. *Withdrawal of Registration by the Issuer.*** - Upon petition made for its
10 withdrawal by the issuer, the Commission may revoke a registration statement. An
11 application for the withdrawal of a registration statement shall be accompanied by the
12 following:

13 (a) petition or application for withdrawal of the License/Permit to Sell Plans to the
14 public, stating the reasons therefore;

15 (b) proof of publication of Notice to Stockholders/Investors of said
16 revocation/withdrawal;

17 (c) Board resolution approving such application for withdrawal certified under oath
18 by the Corporate Secretary and attested to by the President;

19 (d) list of all stockholders/planholders/investors;

20 (e) for pre-need plan issuers, a certification under oath by the Treasurer attested to by
21 the President that all of the planholders' contribution were refunded and their
22 claims fully settled;

1 (f) a sworn statement of solidary assumption of liability executed by the President and
2 Treasurer of the issuer for settlement of all proven claims that may arise as a result
3 of said withdrawal; and

4 (g) a certification by the pre-need company stating the sufficiency of the trust fund to
5 cover payment of cash surrender/termination values.

6 Upon payment of a filing fee to be determined by the Commission which in no case
7 shall be lower than One Thousand Pesos (P1,000.00), the petition shall be published by the
8 Commission, at the expense of the issuer in two (2) newspapers of general circulation, once a
9 week for two (2) consecutive weeks, with notice to the general public, planholders,
10 stockholders or other persons affected by said withdrawal, who may file their claims with
11 the issuer and the Commission.

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

16 **SEC. 28. *Jurisdiction over Cases.*** - The Commission shall have jurisdiction to
17 adjudicate over all complaints filed by planholders against or by pre-need sales associates,
18 solicitors and/or issuers of pre-need companies against one another.

19 **SEC. 29. *Penalty for Issuance/Sale or Overpricing of Plans in Excess of Authorized***
20 ***Amount.*** - The issuance/sale of pre-need plans and similar contracts and investments in
21 excess of the amount authorized under a permit/license shall subject the issuer, to a fine, as
22 follows:

23 (a) first violation - 3/10 of 1% of the aggregate gross pre-need price of the plans sold.

1 (b) second violation - 1/2 of 1% of the aggregate gross pre-need price of the plans sold.

2 (c) third violation - suspension or revocation of license.

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

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

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

8 (a) first violation - 3/10 of 1% of the difference between the authorized plan value
9 and the value of the overpriced plan.

10 (b) second violation - 1/2 of 1% of the difference between the authorized plan value
11 and the value of the overpriced plan.

12 (c) third violation - suspension or revocation of license.

CHAPTER VIII. PLANHOLDERS' PROTECTION FUND

13 **Section 30. Planholders Protection Fund.** - (a) The Commission shall establish within
14 one year from effectivity of this Act a planholder's protection fund for the purpose of
15 compensating planholders for the extraordinary losses or damage they may suffer due to
16 business failure or insolvency of a pre-need company.

17 Any claim for non-payment from existing planholders shall be sufficient for the
18 Insurance Commission to investigate the financial status of the pre-need company.
19 Whenever a pre-need company shall have been suspended or closed on account of
20 insolvency by the Insurance Commission, payment of claims shall be made by the Fund as
21 soon as possible either (1) by cash or (2) check: *Provided, however,* That the Fund, in its
22 discretion may require proof of claims to be filed before paying the claims, and that in any

1 case where the Fund is not satisfied as to the viability of a claim, it may require the final
2 determination by the Insurance Commission: *Provided, further,* That failure to settle the
3 claim within six (6) months from the date of filing of the claim, upon conviction, subject the
4 directors, officers or employees of the Fund responsible for the delay, to imprisonment from
5 six (6) months to one (1) year: *Provided, however,* That the period shall not apply if the
6 validity of the claim requires the resolution of issues of facts and or law by another office,
7 body or agency.

8 Subject to such rules as the Commission may prescribe in the interest of the public,
9 any payment from the fund on any one claim based on a single pre-need plan shall be equal
10 to the total amount of actual payments made but shall not exceed One Hundred Thousand
11 Pesos (P100,000).

12 (b) For this purpose, each pre-need company shall initially be required to contribute
13 P1,000,000. A contribution of 95 of 1% of tdtal payments, actual or accrued, made on existing
14 plans shall be quarterly remitted to the Fund without need of demand. Any income of the
15 Protection Fund shall remain within the Fund.

16 (c) The fund shall be subrogated to the rights of the planholders who claimed from
17 the fund. The fund shall be considered as a preferred creditor in case of liquidation of the
18 assets of the pre-need company.

19 (d) After due hearing and based on public interest or the protection of planholders,
20 the Commission may regulate, supervise, examine, suspend or otherwise discontinue such
21 fund which may include taking custody and management of the fund itself as well as
22 investments in and disbursements from the fund under such forms and control and
23 supervision by the Commission.

CHAPTER IX. SANCTIONS

1 SEC. 31. *Administrative Sanctions.* - If, after proper notice and hearing, the
2 Commission finds that there is a violation of the provision of this Code, or that any registrant
3 has, in its registration statement and its supporting papers and other reports required to be
4 filed with the Commission, made any untrue statement of a material fact, or omitted to state
5 any material fact required to be stated therein or necessary to make the statements therein
6 not misleading, or refused to permit any lawful examination into its affairs, it shall, in its
7 discretion, impose any or all of the following sanctions:

- 8 (a) issue a cease and desist order;
- 9 (b) suspend or revoke the certificate of registration and/or permit to offer for sale pre-
10 need plans of the concerned pre-need company;
- 11 (c) a fine of not less than Five Hundred Pesos (P500.00) but not more than Fifty
12 Thousand Pesos (P50,000.00) for each day of continuing violation;
- 13 (d) disqualify any involved person from being an officer, member of the board of
14 directors or principal stockholder of an issuer whose pre-need plans are or are
15 about to be registered pursuant to this Act; and
- 16 (e) other penalties within the power of the Commission as may be provided by law.

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

20 SEC. 32. *Penal Sanctions.* - (a) Any trustee, together with any signatory officer of the
21 pre-need company, who uses the trust fund to extend any loan to or invest such in the pre-
22 need company, its directors, officers, stockholders and related interests nor to any other
23 entity directly or indirectly controlled by any of the above mentioned shall be punished with

1 imprisonment of at least six (6) years and one (1) day to not more than twelve (12) years
2 imprisonment and a fine of not more than One Million Pesos (P1,000,000.00) without
3 prejudice to any civil restitution of the amount of funds improperly invested.
4 Reimbursement of the amounts misappropriated does not absolve any of the accused of the
5 offense prescribed herein. Furthermore, any person found guilty by final judgment based on
6 this offense shall never be allowed to engage or hold any position in any other pre-need
7 company, bank or financial institution.

8 (b) Without prejudice to any other law which imposes a higher penalty, any other
9 violation of this Act shall be punishable with imprisonment of not more than six (6) months
10 and one (1) day to not more than six (6) years and/or a fine of not more than One Hundred
11 Thousand Pesos (P100,000.00).

CHAPTER X. MISCELLANEOUS PROVISIONS

12 **SEC. 33. *Implementing Rules and Regulations.*** - The Commission shall adopt such
13 rules and regulations for the proper and effective implementation of this Act within sixty
14 (60) days from approval hereof. The Commission shall publish once a week for two (2)
15 consecutive weeks in two newspapers of general circulation the rules and regulations
16 promulgated pursuant to his provision.

17 **SEC. 34. *Transitory Provisions.*** - Any issuer who at the time of the effectivity of this
18 Act has been registered and licensed to issue pre-need plans and similar contracts and
19 investments, shall be considered as registered and licensed under the provisions of this Act
20 and its implementing rules and regulations and shall be subject to and governed by the
21 provisions hereof.

1 SEC. 35. *Separability Clause.* - Any portion or provisions of this Act that may be
2 declared unconstitutional or invalid shall not have the effect of nullifying other portions and
3 provisions hereof as long as such remaining portion or provision can still subsist and be given
4 effect in their entirety.

5 SEC. 36. *Repealing Clause.* - Section 16 of the Securities Regulation Code is hereby
6 repealed. All other laws, decrees, executive orders, proclamations and administrative
7 regulations, or parts thereof inconsistent herewith are hereby repealed or modified
8 accordingly.

9 SEC. 37. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its
10 publication in at least two (2) national papers of general circulation.

Approved,