

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

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BY: 

SENATE

COMMITTEE REPORT NO. 40

Submitted jointly by the Committees on Banks, Financial Institutions and Currencies; and Trade and Commerce on 22 NOV 2005

RE : Senate Bill No. 2169, prepared by the Committees on Banks, Financial Institutions and Currencies; and Trade and Commerce

Recommending its approval in substitution of Senate Bill Nos. 328, 1114, 1582 and 1896.

Sponsors : Senators Angara

MR. PRESIDENT:

The Committees on Banks, Financial Institutions and Currencies and Trade and Commerce to which were referred Senate Bill No. 328, introduced by Sen. Sergio Osmeña III, entitled:

"AN ACT ESTABLISHING THE PRE-NEED PLAN CODE OF THE PHILIPPINES"

Senate Bill No. 1114, introduced by Sen. Franklin M. Drilon, entitled:

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

Senate Bill No. 1582, introduced Sen. Ramon Magsaysay Jr, entitled:

"AN ACT ESTABLISHING THE PRE-NEED PLAN CODE OF THE PHILIPPINES"

Senate Bill No. 1896, introduced Sen. MAR Roxas, entitled:

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

have considered the same and has the honor to report them back to the Senate with the recommendation that the attached SB No. 2169, prepared by the Committees, entitled

"AN ACT ESTABLISHING THE PRE-NEED CODE OF 2005"

be approved in substitution of Senate Bill Nos. 328, 1114, 1582 and 1896 with Senators Sergio Osmeña III, Franklin M. Drilon, Ramon Magsaysay Jr., MAR Roxas and the members of the Committees on Banks, Financial Institution and Currencies and; Trade and Commerce as authors thereof.

Respectfully submitted:

Edg J. Angara
EDGARDO J. ANGARA

Chairman

Committee on Banks, Financial
Institutions and Currencies

*w/ reservations
amendments*

MAR ROXAS

Chairman

Committee on Trade and Commerce

Juan Ponce Enrile
JUAN PONCE ENRILE

Vice Chairman

Members:

Ramon Magsaysay Jr w/ amendments
RAMON B. MAGSAYSAY, JR

Rodolfo G. Biazon
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*Manny Villar w/ amendments
w/ reservation and budget*
MANNY VILLAR

Sergio R. Osmena III
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Richard "Dick" Gordon w/ amendments
RICHARD "DICK" GORDON

Ramon "Bong" Revilla Jr.
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COMPAÑERA PIA S. CAYETANO

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HON. FRANKLIN M. DRILON

Senate President
Pasay City

**COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES
JOINT WITH
COMMITTEE ON TRADE AND COMMERCE**

SUMMARY OF PROCEEDINGS

I. BACKGROUND

A. Nature

The pre-need plan is a financial service that gained popularity in the country because it suited the needs of the Filipinos. It is actually a savings mechanism which was designed to realize every Filipino's basic needs—education for their children, pension upon their retirement and memorial service upon their demise.

B. History¹

Pacific Memorial Plan, Inc. (now Pacific Plans, Inc.) established the country's first pre-need company in 1966. It offered desired memorial service for planholders regardless of actual cost.

Later, College Assurance Plan Philippines, (CAP) Inc. introduced the traditional education plan in 1980. The original concept was for the pre-need company to cover the actual cost of tuition and other standard school fees at the time the student/beneficiary enters the school which the planholders have chosen beforehand upon the purchase of the plan.

A total of 92 pre-need companies have been registered over the last twenty-five years. In 2005, however, the number of pre-need companies licensed to operate is down to 32.

Throughout the years, the industry grew into a multi-billion industry. In, 2004, the pre-need industry posted P157 billion in total assets, P65.6 billion or 41.78% of which pertain to the total Trust Fund maintained with the banking sector. About 66% of the Trust Fund was invested in government securities. The number of issued and outstanding pre-need plans as of February 2005 reached 3,740,872.

C. Existing Regulatory Framework: SEC regulation

Although the first pre-need company opened in 1966, the supervision of the SEC started only in 1978 when it issued its first "Rules on Registration and Sale of Pre-Need Plans, Pension Plans, Life Plans and Similar Contracts and Investments."

With the approval of the Revised Securities Act in 1982, pre-need plans were included under the definition of securities which formally placed its regulation under the jurisdiction of SEC, being the regulator of securities.

¹ Source: Situational Report on the Pre-Need Industry, www.sec.gov.ph.

In 1995, the shift in regulatory philosophy from merit system to full disclosure was applied to the pre-need industry. The concept requires companies to reveal all material information that will or might affect and influence investors in their investment decisions. The system transfers to the investor the responsibility of doing his own evaluation and judgment based on the fully disclosed documents and lets him assume the risks inherent in any investment decision.

In 2000, the SEC adopted prudential measures in coming up with guidelines on where the trust fund should be invested. It also required an increase in the minimum paid-up capital of pre-need companies for which the latter were given time to comply with. The passage of the Securities Regulation Code (SRC) in July 19, 2000 separated pre-need plans from the general category of securities and treated it as a class of its own. This justified the application of prudential regulation on the treatment of trust funds and their investments.

In 2001, the SEC commenced the implementation of the New Pre-Need Rules on Registration and Sale of Pre-Need Plans under Section 16 of the SRC.

II. Industry Problems

In recent years, the country saw the downfall of several pre-need companies, including major industry players and pioneers.

The major factor that caused the failure of some companies is the issuance of traditional educational plans which consist of 21% of the total number of plans sold as of 2003. Under a traditional educational plan, the issuing pre-need company guarantees the payment of the actual cost of benefits or services promised regardless of the increase from the originally assumed values. The deregulation of tuition fees in 1992 resulted in the unforeseen tremendous increase in the obligations of Pre-Need Companies.

Another factor that contributed to the problem is bad management and investment decisions made by Pre-Need Companies. These actions have not been properly regulated by the SEC for a long time in view of the lack of funding and regulatory framework for the industry.

The industry problems were highlighted when the SEC implemented prudential rules for the industry, particularly the inclusion of the actuarial reserve liability in the financial statements of the company. Such inclusion of the ARL showed that some companies do not have enough assets to pay off their future obligations to the planholders.

The liquidity problems and trust fund deficiencies encountered by a number of pre-need companies as well as the filing of Petitions for Rehabilitations are the most glaring manifestations of the growing problems of the industry.

Considering the importance of the pre-need 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 pre-need companies. Such importance of the industry was

emphasized by no less than the President of the Republic when she included in her 2005 State of the Nation Address her desire to speed up the passage of the Pre-Need Code. Thus, this proposed remedial legislation aimed at regulating the future operations of pre-need companies.

III. Committee Actions

- A. During the Thirteenth Congress, the Committee on Banks, Financial Institutions and Currencies jointly with the Committee on Trade and Commerce (the "Committees") conducted public hearings on the proposed bills on February 4, 2005 and May 31, 2005. At the latter date, the Pre-Need Code Technical Working Group (TWG) was formed, with Commissioner Joselia Poblador as the appointed Presiding Officer.
- B. The TWG was composed of the Senators' representatives and the following resource persons:
 1. Commissioner Joselia Poblador – Securities and Exchange Commission (SEC)
 2. Commissioner Benjamin Santos – Insurance Commission (IC)
 3. Mr. Robert Manabat - General Accountant and OIC for Non-Traditional Securities and Instruments Department, SEC
 4. Asst. Director Nonilonia Ambat - Non-Traditional Securities and Instruments Department, SEC
 5. Asst. Dir. Merle Joy Pascual - Non-Traditional Securities and Instruments Department, SEC
 6. Mr. Reynaldo Vergara – Chief Insurance Specialist, Insurance Commission (IC)
 7. Ms. Marivic Peralta - Supervising Insurance Specialist, IC
 8. Ms. Maricel Basallote - Supervising Insurance Specialist, IC
 9. Mr. Gerald Calderon - Bureau of Trade Regulations and Consumer Protection, Department of Trade and Industry
 10. Atty. Miguel Vazquez - President, Federation of Pre-need Plan Companies
 11. Ms. Virginia Ong - Federation of Pre-need Plan Companies
 12. Mr. Rey Gatcheco - Federation of Pre-need Plan Companies
 13. Mr. Mabini Juan – Chairman and CEO, Actuarial Advisers Inc.
 14. Atty. Geronimo Sy – Department of Justice
 15. Atty. Maricel Pascual Lopez – Legal Counsel for CAP Plan holders

16. Mr. Vic Ortuoste - Parents Enabling Parents (PEP) Coalition

17. Mr. Philip Piccio – Parents Enabling Parents (PEP) Coalition

TWG meetings were held on the following dates:

- June 15, 2005
- June 22, 2005
- June 29, 2005
- July 6, 2005
- July 13, 2005
- July 20, 2005
- July 27, 2005
- August 5, 2005
- August 12, 2005
- August 19, 2005
- August 26, 2005

- C. On September 1 and 6, 2005, the TWG presented its proposed substitute bill to the Committees.
- D. The establishment of the Pre-need Code was likewise discussed extensively during the Twelfth Congress.
- E. The discussions in the hearings and TWG meetings, as well as the comments and suggestions in the position papers submitted to the Committee, were taken into consideration in the drafting of the Substitute Bill.

IV. Summary of the Bill

A. Declared Policy

The proposed Pre-Need Code ("Bill") seeks to establish a regulatory framework for the Pre-Need Companies to protect the planholders and to promote a healthy industry.

B. Regulatory Body

With the enactment of the Securities Regulations Code in 2000, Pre-Need Plans were removed from the definition of securities. However, the SEC continued to regulate the industry in the absence of a clear regulatory framework.

Considering, however, that pre-need plans are similar to insurance products, the appropriate regulator would be the Insurance Commission (IC), and not the SEC.

The IC's powers and responsibilities will be enhanced to effectively regulate the industry. Moreover, the Commission's funding and personnel will be correspondingly beefed up for it to cope with the added authority.

C. Coverage

In order to provide a level playing field in the industry, the Pre-Need Code will also cover other corporations selling pre-need plans such as schools, banks, quasi-banks and other institutions. This is in anticipation of the fact that pre-need products, like all other products in the financial market will go through further hybridization.

The authority of the IC on these entities, however, will be limited only to activities related to the pre-need business.

D. Incorporation and Licensing

The pre-need business may be pursued only under a corporate framework. However, before a pre-need company could be registered by the SEC, there should be a proper recommendation from the IC.

Annual license to operate will likewise have to be obtained from the IC in order for a Pre-Need Company to continue its operations.

These requirements are added protections against frauds and scams.

E. Capitalization

The Bill retains the capitalization requirement in the SEC Rules. However, the IC will have to adopt the risk based principles for determining adequacy of capital in appreciation of the fact that different companies take on different levels of risk. Higher capital will be required for pre-need companies which took on higher risk levels.

F. Fit and Proper Rule and independent directors

To maintain the quality of management of pre-need companies, the qualifications of directors, officers and actuaries will be reviewed by the IC. Stringent qualifications and disqualifications were included in the bill.

Moreover, presence of independent directors in the Board will be required.

G. Actuaries

Acknowledging the importance of the role of the actuaries in the industry, they will be subject to accreditation by the IC.

H. Sales Counselors

To enhance professionalism, any individual involved in the selling of pre-need plans is required to be licensed by the Commission. A sales counselor shall undergo a qualifying examination and shall be subject to other stringent qualifications. Moreover, licenses will be periodically reviewed.

I. Trust Fund

The bill adopts the Trust Fund Model currently being employed by the SEC. Under this model, the control of the fund is shifted from the Pre-Need Company (the trustor) to the trust entity (trustee).

Ideally, a trust fund should be established with a non-related trust entity. However, this would be difficult considering the present situation where most of the pre-need companies have affiliate banks. Thus, the bill allows the establishment of trust fund with related entities provided certain conditions are met to protect the trust fund and the planholders.

Concerns were raised on the minimal level of contributions to the trust fund particularly in the first two years of the pre-need plans. To address these concerns, an industry study has been conducted on the possible effects of an increase in the minimum contributions to the viability of the industry. Such study led to increases in the proposed minimum trust fund contributions. Moreover, the rates of the minimum contributions for the first two years of the plan were doubled.

Year		Life Plans		Pension and Educational Plans	
		From	To	From	To
1	1 st 20% of the contract	5%	10%	5%	10%
2	2 nd 20% of the contract	10%	20%	10%	20%
3	3 rd 20% of the contract	70%	70%	80%	80%
4	4 th 20% of the contract	70%	70%	80%	80%
5	5 th 20% of the contract	70%	70%	80%	80%
TOTAL		45%	48%	51%	54%

For transparency, the bill requires that the minimum contributions to the trust fund, as well as the actual contributions thereon, be properly disclosed to the planholders.

Adequacy of the contributions to the Trust Fund will be periodically assessed in comparison with the actuarial reserve liability (ARL) to be determined by actuaries. ARL, which is basically the present value of the future obligations to planholders, will be the ultimate measure of the level of the contributions to the Trust Fund.

Withdrawals from the Trust Fund will be limited to payment of benefits, cost of other services related to the delivery of benefits and investment expenses in the operation of the Trust Fund, including trust fees and bank charges.

The effectivity of the trust fund model in protecting the interests of the planholders will be reviewed by the regulator. If the model is found to be ineffective, the regulator will have the authority to move towards the admitted assets framework, as followed by the insurance companies. Under the admitted asset framework, the control of the fund is shifted to the pre-need companies, subject to the stringent supervision by the regulator. Under this method, the assets of the company will be sorted in

relation to their exposure to risk. Investments found to have high risk will be excluded from the admitted assets.

J. Termination Value

The Bill provides that termination values will be required for all outstanding (in-force and lapsed) pre-need plans. However, the study made by the pre-need actuaries maintains that an increase in the termination values for in-force plans and the grant thereof to lapsed and cancelled plans would only lead to an increase in prices and might affect the viability of the industry. In view of the result of the study, the minimum termination values will not be set forth in the Code. Such determination will be left to the regulator, who will be in the position to monitor the industry closely.

K. Required Certified Reports

The Code clearly specifies what reports are required and who should certify the same under oath. Coordination between top executives (Chairman, Chief Executive Officer and Chief Financial Officer) and the pre-need actuaries will be required as they will be personally accountable to the reports signed by them.

L. Sanctions and Penalties.

The Code provides for a range of administrative and criminal sanctions which is severe enough to discourage abuses and malpractices.

M. Insolvency Proceedings.

Insolvency proceedings of pre-need companies shall be lodged with the Commission. No pre-need company shall be allowed to file directly to courts for rehabilitation or liquidation.

N. Transitory Provisions

The bill, once passed, will not affect the rights and obligations under existing contracts.

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

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S E N A T E

S. No. 2169

(In substitution of Senate Bill Nos. 328, 1114, 1582 and 1896)

Prepared by the Committee on Banks, Financial Institutions and Currencies,
and the Committee on Trade and Commerce with Senators Sergio Osmeña III,
Franklin M. Drilon, Ramon Magsaysay, Jr. and MAR Roxas, as authors.

**AN ACT
ESTABLISHING THE PRE-NEED CODE OF 2005**

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

CHAPTER 1 – GENERAL PROVISIONS

1 Section 1. **Short Title.** - This Act shall be known as the "Pre-Need
2 Code of 2005."

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

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

12 Section 3. **Construction** - Any doubt in the interpretation and
13 Implementation of any provision in this Code shall be interpreted in favor of the

1 rights and interests of the Planholder.

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

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

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

14 (c) "Pre-Need Company" refers to any corporation registered with the
15 Commission and authorized/licensed to sell or offer to sell Pre-Need Plans.

16 Except as used in Sections 7, 8, 9, 44 and 45 of this Code, the term
17 "Pre-Need Company" shall also refer to schools, memorial chapels, banks,
18 non-bank financial institutions and other entities that sell or offer to sell Pre-
19 Need Plans insofar as their Pre-Need activities or business are concerned.

20 (d) "Planholder" refers to any person, natural or juridical, who purchases a Pre-
21 Need Plan from a Pre-Need Company for whom or for whose beneficiaries
22 Benefits are to be delivered as stipulated and guaranteed by the Pre-Need
23 Company. The term includes the assignee, transferee, and any successor in
24 interest of such Planholder.

25 (e) "Beneficiary" refers to the person designated by the Planholder as the
26 recipient of the Benefits in the Pre-Need Plan.

27 (f) "Contract Price" refers to the stipulated price in the Pre-Need Plan.

28 (g) "Benefits" refer to the payment of monetary considerations and/or

1 performance of future services which the Pre-Need Company undertakes to
2 deliver either to the Planholder or his beneficiary at the time of actual need or
3 agreed maturity date, as specified in the Pre-Need Plan .

4 (h) "Sales Counselor" refers to a person engaged in the sale, whether on
5 commission or salary basis, of Pre-Need Plans upon authority of a registered
6 Pre-Need Company and registered by the Commission to engage in the
7 business of selling Pre-Need Plans.

8 (i) "Trust Fund" refers to a fund set up from Planholders' payments, separate
9 and distinct from the paid-up capital of a Pre-Need Company, established
10 with a Trustee under a trust agreement approved by the Commission, to
11 guarantee the delivery of Benefits.

12 (j) "Liquidity Reserve" refers to a portion of the Trust Fund set aside by the
13 Trustee to cover the Benefits due to Planholders for the ensuing year.

14 (k) "Actuarial Reserve Liability" (ARL) is the measure of liabilities of the Pre-
15 Need Company for its Pre-Need Plans outstanding as of valuation date.

16 (l) "Fixed Value Plans" are Pre-Need Plans whose Benefits and costs are fixed
17 and pre-determined at the inception or purchase of the Plan.

18 (m) "Actual Cost or Traditional Plans" are Pre-Need Plans wherein the Benefits
19 or services at the time they are due are guaranteed, regardless of any
20 increase in cost from the originally assumed values since the date of issue of
21 the Pre-Need Plan.

22

23 **CHAPTER 2 – AUTHORITY OF THE COMMISSION**

24 Section 5. ***Supervision and Regulation.*** - Pre-Need Companies shall
25 be under the supervision and regulation of the Commission. The Commission is
26 hereby authorized to provide for its reorganization, to streamline its structure
27 and operations, upgrade its human resource component to enable it to
28 effectively and efficiently perform its functions and exercise its powers under this

1 Code.

2

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

15 Section 6. ***Powers and Functions of the Commission*** - The
16 Commission shall, at all times, act with transparency and dispatch and shall
17 have, among others, the following powers and functions:

- 18 1. Have primary and exclusive jurisdiction and supervision over all Pre-Need
19 Companies.
- 20 2. Approve, amend, renew or deny any license, registration or certificate
21 issued under this Code.
- 22 3. Fix and assess fees and/or charges as It may find reasonable in the
23 exercise of regulation.
- 24 4. Regulate, supervise and monitor the operations and management of Pre
25 Need Companies to ensure compliance with the provisions of this Code,
26 existing laws, rules and regulations, including but not limited to:
 - 27 a. Revoke or nullify investments made and/or entered into by a Pre-need
28 Company or a Trustee which are contrary to existing laws and

- 1 regulations.;
- 2 b. Demand for the conversion of the investments made by the Trustee to
3 cash or other liquid assets to protect the interest of the Planholders.
- 4 c. Regulate, investigate or supervise activities of Pre-Need Companies, their
5 officers, employees, Sales Counselors, consultants or agents.
- 6 5. Issue cease and desist orders to prevent fraud and injury to the investing public;
- 7 6. Issue subpoena duces tecum and ad testificandum, , order the examination,
8 search and seizure of documents, papers, files, tax returns, books of accounts
9 and other records, in whatever form, of any entity or person under
10 investigation..
- 11 7. Punish for contempt of the Commission, both direct and indirect, in accordance
12 with the pertinent provisions of and penalties prescribed by the Rules of Court.
- 13 8. Impose sanctions, institute cases and/or prosecute offenders for violation of this
14 Code, related laws, rules, regulations and orders issued pursuant thereto.
- 15 9. Suspend or revoke licenses.
- 16 10. Enlist the aid and support of and/or deputize any and all enforcement
17 agencies of the Government in the implementation of its powers and
18 exercise of its functions under this Code;
- 19 11. Take over Pre-Need Companies which fail to comply with this Code,
20 related laws, rules, regulations and orders issued pursuant thereto, either
21 through the appointment of a conservator, rece
22 iver or liquidator.
- 23 13. Prepare, approve, amend or repeal rules, regulations and orders, and
24 issue opinions and provide guidance on and supervise compliance with
25 such rules, regulations and orders.
- 26 14. Formulate policies and recommendations on issues concerning the pre-
27 need industry including proposed legislation.
- 28 15. Retain and utilize, in addition to its annual budget, an amount up to one
29 hundred million pesos (P 100,000,000.00) of the fees, charges and other

1 income derived from the regulation of Pre-Need Companies. ,

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

6
7 **CHAPTER 3 – ORGANIZATION, LICENSING AND MANAGEMENT OF PRE-
8 NEED COMPANIES**

9 Section 7. ***Pre-requisites to incorporation.*** - Except upon favorable
10 recommendation of the Commission, the Securities and Exchange Commission
11 shall not accept or approve the articles of incorporation and by-laws of any Pre-
12 Need Company.

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

16 Section 8. ***Amendment of the Articles of Incorporation and By-
17 Laws*** - Amendments to the articles of incorporation and by-laws of a Pre-Need
18 Company, including merger, consolidation and dissolution, shall not be
19 approved by the Securities and Exchange Commission without the favorable
20 recommendation from the Commission.

21 Section 9. ***Paid-Up Capital.*** -A Pre-Need Company incorporated
22 after the effectivity of this Code shall have a minimum paid-up capital of One
23 Hundred Million Pesos (P100,000,000.00). Existing Pre-Need Companies shall
24 comply with the following minimum unimpaired paid-up capital:

- | | |
|------------------------------|-------------|
| 25 (a) With three-type plans | 100,000,000 |
| 26 (b) With two-type plans | 75,000,000 |
| 27 (c) With one-type plan | 50,000,000; |

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

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

7 Section 10. ***Licensing of Pre-Need Companies.*** – No person shall
8 operate as a Pre-Need Company or engage in the business of a Pre-Need
9 Company unless licensed by the Commission in accordance with this Code.

10 Every license under this Section shall expire every thirtieth day of June, or
11 such date of every year as may be fixed by the Commission. The license may be
12 renewed upon compliance with the prescribed requirements.

13 Section 11. ***Fit and Proper Rule.*** To maintain the quality of
14 management of Pre-Need Companies and afford better protection to Planholders
15 and beneficiaries, the Commission shall prescribe, pass upon and review the
16 qualifications and disqualifications of individuals elected or appointed directors or
17 officers of Pre-Need Companies, including its actuaries, and disqualify those
18 found unfit. The Commission may disqualify, suspend or remove any director or
19 officer who commits or omits an act which renders him unfit for the position.

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

- 26 1. any person convicted of any crime involving any Pre-Need Plan, security
27 or financial product,
- 28 2. any person convicted of an offense involving moral turpitude or

- 1 involving fraud, or embezzlement, theft, estafa or other fraudulent acts
2 or transactions;
- 3 3. any person who, by reason of any misconduct, is enjoined by order,
4 judgment, or decree by any court, quasi-judicial body or administrative
5 agency of competent jurisdiction from acting as a director, officer,
6 employee, consultant, agent or occupying any fiduciary position.
- 7 4. any person found by the Commission to have wilfully violated, or
8 wilfully aided, abetted, counselled, commanded, induced, or procured
9 the violation of this Code, Insurance Code, the Securities Regulation
10 Code, or any related laws and any rules or orders thereunder;
- 11 5. any person judicially declared to be insolvent, or incapacitated to
12 contract;
- 13 6. any person found guilty by a foreign court, regulatory authority or
14 government agency of the acts or violations similar to any of the acts or
15 misconduct enumerated in the foregoing paragraphs.

16 Provided, that, conviction in the first instance shall be considered as
17 sufficient ground for disqualification.

18 Section 12. ***Independent Directors – The independent directors***
19 **of a** Pre- need Company shall be at least two (2) or twenty percent (20%) of
20 the members of the board, whichever is higher. For this purpose, an
21 "Independent director" shall refer to a person other than an officer, employee or
22 any person having a fiduciary relation to the Pre-Need Company, its parent or
23 subsidiaries, or any other individual having a relationship therewith, which may
24 interfere with the exercise of independent judgment in carrying out the
25 responsibilities of a director.

26 **CHAPTER 4 – LICENSING OF SALES COUNSELORS**

27 Section 13. ***Licensing of Sales Counselors*** - No Sales Counselor shall

1 be allowed to solicit, sell or offer to sell Pre-Need Plans under this Code, without
2 being licensed as such by the Commission.

3 No license shall be issued unless the following qualifications have been
4 complied with:

- 5 1. The applicant must be of good moral character and must not have
6 been convicted of any crime involving moral turpitude.
- 7 2. The applicant has undergone a training program approved by the
8 Commission and such fact has been certified under oath by a duly
9 authorized representative of a Pre-Need Company;
- 10 3. The applicant has passed a written examination administered by
11 the Commission. Provided, that the administration of the
12 examination may be delegated to an independent organization
13 under the supervision of the Commission.

14 Such license shall automatically expire every thirtieth day of June, or such
15 date of every year as may be fixed by the Commission and may be accordingly
16 renewed.

17 Section 14. ***Denial, Suspension, Revocation of License.*** An
18 application for the issuance or renewal of a license to act as Sales Counselor may
19 be denied, or such license, if already issued, shall be suspended or revoked
20 based on the following grounds :

- 21 (a) materially misrepresented statements in the application
22 requirements;
- 23 (b) obtained or attempted to obtain a license by fraud or
24 misrepresentation;
- 25 (c) materially misrepresented the terms and conditions of Pre-Need
26 Plan which he sold or offered to sell;
- 27 (d) terminated for cause from another Pre-Need Company; or

1 (e) Similar grounds found in Section 11 of this Code

2 (f) Analogous circumstances.

3 **CHAPTER 5— REGISTRATION OF PRE-NEED PLANS**

4 Section 15. **Registration of Pre-Need Plans** – No Pre-Need Company
5 shall sell or offer to sell Pre-Need Plans unless such plans are registered with the
6 Commission. The Commission shall have the authority to determine the number
7 of Pre-Need Plans to be sold under each certificate of registration.

8 Section 16. **Registration Requirements** – The Commission shall set
9 forth the requirements for registration of Pre-Need Plans and shall require the
10 following documents, among others:

11 (a) Duly accomplished Registration Statements;

12 (b) Board resolution authorizing the registration of applicant's Pre-
13 Need Plans;

14 (c) Opinion of independent counsel on the legality of the issue;

15 (d) Audited financial statements;

16 (e) Viability study with certification, under oath, of pre-need actuary
17 accredited by the Commission;

18 (f) Copy of the proposed Pre-Need Plan; and

19 (g) Sample of sales materials.

20 Section 17. **Approval of Forms.** – All forms, including amendments
21 thereto, relating to the Pre-Need Plans shall be approved by the Commission.

22 Section 18. **Advertising of Pre-Need Plans** – All advertisements,
23 sales paraphernalia or information disseminated to the public involving Pre-Need
24 Plans and/or Pre-Need Companies shall be approved by the Commission. The
25 lapse of twenty (20) working days from submission or request for approval
26 without action from the Commission shall be deemed an approval.

27 **CHAPTER 6 - DEFAULT AND TERMINATION BY PLANHOLDERS**

28

1 practices:

- 2 (a) knowingly misrepresenting to claimants pertinent facts or plan
3 provisions relating to coverages at issue;
- 4 (b) failing to acknowledge communications with respect to claims
5 arising under its plan with reasonable promptness;
- 6 (c) failing to adopt and implement reasonable standards for the
7 prompt investigation of claims arising under its plan;
- 8 (d) failing to effect prompt, fair and equitable settlement of claims
9 submitted in which liability has become reasonably clear; or
- 10 (e) offering, without justifiable reason, amount and/or services not in
11 accordance with the Pre-Need Plans, thereby compelling
12 Planholders to resort to court action..

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

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

27 Section 23. *Consequences of delay or default* - In case of any litigation
28 for the enforcement of any Pre-Need Plan, it shall be the duty of the Commission

1 to determine whether the payment of the claim of the Planholder has been
2 unreasonably denied or withheld. If found to have unreasonably denied or
3 withheld the claim, the Pre-Need Company shall be liable to pay damages,
4 consisting of actual damages, attorney's fees and legal interest to be computed
5 from the date the claim is made until it is fully satisfied; Provided, That the
6 failure to pay any such claim within the time prescribed in the preceding section
7 shall be considered prima facie evidence of unreasonable delay in payment.

8 **CHAPTER 8 - TRUST FUND**

9 Section 24. **Trust Fund.** - To guarantee the delivery of property or
10 performance of services in the future, a portion of the installment payment
11 collected shall be deposited by the Pre-Need Company in the appropriate Trust
12 Fund, the amount of which will be determined by an actuary and shall be
13 sufficient to pay the Benefits promised under the Pre-Need Plan.

14 Should the Commission, based on its experience in implementing the
15 Trust Fund framework, determine that the admitted asset framework will better
16 protect the interests of the Planholders, it may instead adopt such framework as
17 provided in the Insurance Code.

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

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

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

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

1
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 the
5 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 of
10 Benefits, cost of other services related to the delivery of Benefits and investment
11 expenses in the operation of the Trust Fund, including trust fees and bank
12 charges,

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

21 (1) A written approval of the Commission has been previously obtained;

22 and

23 (2) Public disclosure of the affiliation with the trust entity be included in

1 all sales materials, in whatever form; and

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

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

19 Section 27. ***Responsibilities of the Trustee*** – The trustee shall:

- 20 (a) Administer and manage the Trust Fund with utmost good faith, care
21 and prudence required by a fiduciary relationship.
- 22 (b) The Trustee shall have the exclusive management and control over the
23 funds and the right at any time to sell, convert, invest, change,
24 transfer or otherwise change or dispose of the assets comprising the
25 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,

1 stockholders, and related interests as well as to persons or enterprises
2 controlling, owned or controlled by, or under common control with said
3 company, its directors, officers, stockholders and related interests.

4 Section 28. ***Investment of the Trust Fund*** – All investments of the
5 Trust Fund/s of a Pre-Need Company shall be limited to the following and subject
6 to limitations to wit:

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

- 11 a. Government securities;
- 12 b. Savings/time deposits with a commercial bank with satisfactory
13 examination rating as of the last examination by the Bangko Sentral
14 ng Pilipinas;
- 15 c. Commercial papers duly registered with the Commission with a
16 credit rating of "1" for short term and "Aaa" for long term based on
17 the rating scale of an accredited Philippine Rating Agency or its
18 equivalent at the time of investment.
- 19 d. Direct loans to corporations which are financially stable, profitable
20 for the last three (3) years and have a good track record of paying
21 their previous loans from the Trust Fund of Pre-Need Companies.

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

25 The property shall be covered by a Transfer Certificate of Title
26 registered in the name of the mortgagor and free from liens and
27 encumbrances.

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

6 (3) Investments in equities shall be limited to stocks listed on the Main
7 board of a local Stock Exchange.

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

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

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

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

20 Section 29. ***Valuation of Actuarial Reserve Liabilities (ARL)*** – To
21 determine the sufficiency and adequacy of the Trust Fund to guarantee the
22 delivery of future Benefits stipulated in the Pre-Need Plan, an annual valuation of
23 Actuarial Reserve Liabilities as of valuation date shall be made and submitted to
24 the Commission within one hundred five (105) days from the end of the calendar
25 year. The actuarial valuation report containing the actuarial assumption,
26 methodology, and results should be certified by the actuary accredited by the
27 Commission in accordance with actuarially sound and accepted principles and

1 subject to the minimum standard of valuation and guidelines set by the
2 Commission. Upon approval by the Commission of the actuarial computation, any
3 deficiency in the Trust Fund shall be covered by the Pre-Need Company through
4 additional deposit within thirty (30) days from submission of the actuarial
5 valuation report or from notice of deficiency whichever is earlier. Any excess of
6 the Trust Fund shall be credited for future deposit requirements.

7 Section 30. **Liquidity Reserve.** – The trustee shall at all times maintain
8 a Liquidity Reserve which shall be sufficient to cover at least fifteen percent
9 (15%) of the Trust Fund but shall in no case be less than the amount of the
10 Benefits payable for the succeeding year. For this purpose, the Pre-Need
11 Company shall timely submit to the Trustee a summary of Benefits payable for
12 the succeeding year.

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

- 14 (a) Loans secured by a hold-out on assignment or pledge deposits
15 maintained either with the TRUSTEE or other banks, or of deposit
16 substitute of the TRUSTEE itself or mortgage and chattel mortgage
17 bonds issued by the TRUSTEE;
- 18 (b) Treasury notes or bills, other government securities or bonds, and
19 such other evidences or indebtedness or obligations the servicing
20 and repayment of which are fully guaranteed by the Republic of the
21 Philippines;
- 22 (c) Repurchase agreements with any of those mentioned in Item "b"
23 above, as underlying instruments thereof; and
- 24 (d) Savings or time deposits with government-owned banks or
25 commercial banks

26 Section 31. **Distribution of Profits.** - A Pre-Need Company may declare
27 dividend provided that the following shall remain unimpaird, as certified under oath by
28 the President and the Treasurer:

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

4 Any dividend declared under the preceding paragraph shall be reported to the

5 Commission within thirty (30) days after such declaration.

6

7 **CHAPTER 9 - ACTUARIES FOR PRE-NEED COMPANIES**

8 Section 32. ***Required Actuary.*** - No Pre-Need Company shall be

9 licensed to do business in the Philippines nor shall any Pre-Need Company doing

10 business in the Philippines be allowed to continue doing such business unless

11 they shall engage the services of an actuary duly accredited with the Commission

12 who shall, during his tenure of engagement, be directly responsible for the

13 direction and supervision of all actuarial work connected with or that may be

14 involved in the business of the Pre-Need Company.

15 Actuarial work shall at least include the following:

- 16 1. Determining the contract price for a pre-need plan that is
- 17 submitted by the Pre-Need Company for registration or
- 18 amendment, with the Commission;
- 19 2. Valuing liabilities of the Pre-Need Company referred to as Actuarial
- 20 Reserve Liabilities in Pre-Need Plans that were issued by the
- 21 Company, and other plans in which the Company continues to have
- 22 obligations as of a valuation date;
- 23 3. Issuing a Statement of Actuarial Opinion on the appropriateness of
- 24 the actuarial reserves, when compared with the assets of the trust
- 25 fund that was set up to back the liabilities represented by such
- 26 reserves. Opinion on the appropriateness of actuarial reserves as of
- 27 a certain date shall be based on a comparison of the amount of
- 28 assets in the trust fund with the amount of reserves, and the
- 29 projection of the income and outgo of the trust fund of at least five

1 (5) years, for the purpose of establishing the adequacy of the trust
2 fund to pay for the contingent and maturing obligations of the Pre-
3 Need Company to the plan holders.

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

7 No accredited actuary shall serve more than one client or employer at the
8 same time. However, one already in the employ, or is already engaged as a
9 consultant, of a Pre-Need Company may be allowed by the Commission to serve
10 another Pre-Need Company, provided the following conditions are first complied
11 with:

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

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

28 *Provided, further,* that the accreditation of an actuary shall be subject to

1 the approval of the Commission under Section 11 of this Code.

2 Section 34. **Renewal of Certificates.** - No certificate of accreditation
3 issued under this Chapter shall be valid after the thirty-first day of December of
4 the year following its issuance unless it has been renewed by the Commission.

5 Section 35. **Prohibited Positions** – No actuary engaged by a Pre-need
6 Company shall at the same time be a stockholder or serve as a Director of the
7 Board, Chief Executive Officer or Chief Financial Officer of the Company or any
8 such position that the Commission may determine to have an inherent conflict of
9 interest to the position of an actuary.

10 Section 36. **Required Certified Reports.** - The following documents,
11 which are from time to time submitted to the Commission by a Pre-Need
12 Company shall be duly certified by an actuary:

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

23 It shall be the duty of an actuary to immediately report to the Commission
24 any matter contained in, arising out of, or in relation to the above reports
25 requiring intervention of the Commission to protect the interests of Planholders.

26 *Provided, that,* the actuary shall not be liable to the Pre-Need Company for any
27 acts done under this paragraph, unless there is a clear showing of bad faith,
28 malice or gross negligence.

1 Section 37. **Disaccreditation of an Actuary** – An actuary shall be
2 disaccredited by the Commission on the following grounds:

- 3 a) Failure to adequately perform his required functions and duties
4 under this Code;
- 5 b) Failure to meet the requirements of Section 11 of this Code;
- 6 c) Failure to disclose conflict of interest;
- 7 d) Failure to comply with the Code of Conduct of the Actuarial Society
8 of the Philippines; or,
- 9 e) Such other grounds that may be determined by the Commission.
- 10

11 **CHAPTER 10 – MINIMUM REPORTORIAL REQUIREMENTS**

12 Section 38. **Required Certified Reports** - All Pre-Need Companies are
13 required to submit to the Commission within one hundred twenty (120) days
14 after each calendar year, which shall be the fiscal year, the following reports in
15 such form and with such details as may be prescribed by the Commission:

- 16 1.) Annual Report which shall include among others the financial
17 statements and the management discussion and analysis of results
18 of operations and shall be certified under oath by the Chairman,
19 Chief Executive Officer, Chief Finance Officer and the actuary;
- 20 2.) Actuarial Valuation Report which shall be prepared in accordance
21 with the minimum standards of valuation for pre-need plans
22 prepared by the Actuarial Society of the Philippines and adopted by
23 the Commission and certified under oath by the actuary;
- 24 3.) Annual Audited Financial Statement which shall be certified under
25 oath to by the Chairman, Chief Executive Officer and Chief Finance
26 Officer of the Pre-Need Company and its external auditor in
27 accordance with a uniform accounting system that may be
28 prescribed by the Commission;

1 4.) Annual Statement of Trust Fund which shall include details such as
2 the income, disbursements, assets and liability items and shall be
3 certified under oath by the Chairman, Chief Executive Officer and
4 Chief Finance Officer of the Pre-Need Company and at least two (2)
5 of the highest-ranking officers of the Trustee; and

6 5.) Any other report that may be required by the Commission.

7 Section 39. **Publication of Reports.** - Within thirty (30) days after the
8 receipt of the annual statements approved by the Commission, every Pre-Need
9 Company shall publish in two (2) newspapers of general circulation a full
10 synopsis of the annual statements.

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

14 **CHAPTER 11 - EXAMINATION OF PRE-NEED COMPANIES**

15 Section 40. **Keeping of Records.** - The Commission shall require every
16 Pre-Need Company to keep its books, records, accounts and vouchers in such
17 manner and for such period that he or his authorized representatives may readily
18 verify its annual statements and ascertain whether the company is solvent and
19 has complied with the provisions of this Code or the circulars, instructions,
20 rulings or decisions of the Commission.

21 Section 41. **Examination.** - The Commission shall at least once a year
22 and as often as necessary cause an examination to be made into the affairs,
23 financial condition and method of business of every Pre-Need Company and of
24 any other person or entity managing the affairs and/or property of such Pre-
25 Need Company. Provided, that, for such purpose, the managing person or entity
26 shall be deemed to be a Pre-Need Company and subject to the authority of the
27 Commission.

28 **CHAPTER 12 - SANCTIONS AND PENALTIES**

1 Section 42. **Administrative sanctions.** Any violation of this Code shall
2 be proceeded against in the following manner:

3 1. *Cease and Desist Order.* The Commission may, *motu proprio* or upon
4 verified complaint by any party, issue a cease and desist order (CDO)
5 against any Pre-Need Company upon proof, after due notice and hearing,
6 of violation of any provision of this Code, provided, that such cease and
7 desist (CDO) may be issued ex parte if the violation is clearly apparent,
8 injurious to a number of Planholders and requires immediate intervention
9 by the Commission. The cease and desist order (CDO) shall specifically
10 enjoin the Pre-need Company from performing certain activities and shall
11 impose fines and state the required remedial actions. All proceedings
12 before the issuance of the cease and desist order (CDO) shall be
13 confidential.

14 2. *Suspension of License.* The Commission shall issue a suspension order
15 against the Pre-need Company if it fails to comply with the cease and
16 desist order within thirty (30) days from issuance thereof.

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

20 Any administrative sanction shall not prejudice the filing of appropriate
21 criminal or civil actions.

22 Section 43. **Criminal penalties.** The following acts are criminal in
23 nature:

24 1. *Selling or offering to sell a Pre-Need Plan by unregistered persons shall*
25 *be penalized by an imprisonment of one (1) year and fine equivalent to*
26 *triple the contract price of each of the Pre-Need Plans sold;*

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

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

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

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

19
20 **CHAPTER 13 - APPOINTMENT OF CONSERVATOR**

21 Section 44. ***Appointment of Conservator.*** If at any time before, or
22 after, the suspension or revocation of the license of a Pre-Need Company as
23 provided in Section 42 hereof, the Commission finds that such company is in a
24 state of continuing inability or unwillingness to comply with the requirements of
25 the Code and/or orders of the Commission, a conservator may be appointed to
26 take charge the assets, liabilities, and the management of such company, collect
27 all moneys and debts due the company and exercise all powers necessary to

1 preserve the assets of the company, reorganize its management, and restore its
2 viability. The conservator shall have the power to overrule or revoke the actions
3 of the previous management and board of directors of the said company, any
4 provision of law, or of the articles of incorporation or by-laws of the company, to
5 the contrary notwithstanding, and such other powers as the Commission shall
6 deem necessary.

7 The conservator may be another Pre-Need Company, by officer or officers
8 of such company, or any other competent and qualified person, firm or
9 corporation. The remuneration of the conservator and other expenses attendant
10 to the conservation shall be borne by the Pre-Need Company.

11 The conservator shall not be subject to any action, claim or demand by, or
12 liability to, any person in respect of anything done or omitted to be done in good
13 faith in the exercise, or in connection with the exercise, of the powers conferred
14 on the conservator.

15 The conservator appointed shall report and be responsible to the
16 Commission until such time as the Commission is satisfied that the Pre-Need
17 Company can continue to operate on its own and the conservatorship shall
18 likewise be terminated should the Commission, on the basis of the report of the
19 conservator or of his own findings, determine that the continuance in business of
20 the Pre-Need Company would be hazardous to Planholders and creditors, in
21 which case the provisions of Chapter 14 shall apply.

22 **CHAPTER 14 – INSOLVENCY PROCEEDINGS**

23 Section 45. ***Proceedings upon Insolvency.*** Whenever, upon
24 examination or other evidence, it shall be discovered that the condition of any
25 Pre-Need Company is one of insolvency, or that its continuance in business
26 would be hazardous to its Planholders and creditors, the Commission shall
27 forthwith order the company to cease and desist from transacting business and
28 shall designate a receiver to immediately take charge of its Trust Fund, assets

1 and liabilities, as expeditiously as possible collect and gather all the assets and
2 administer the same for the Benefit of its Planholders and creditors, and exercise
3 all the powers necessary for these purposes including, but not limited to,
4 bringing suits and foreclosing mortgages in the name of the Pre-Need Company.

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

27 The provisions of any law to the contrary notwithstanding, the actions of
28 the Commission under this Section shall be final and executory, and can be set

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

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

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

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

27 The receiver or the liquidator, as the case may be, designated under the
28 provisions of this title shall not be subject to any action, claim or demand by, or

1 liability to, any person in respect of anything done or omitted to be done in good
2 faith in the exercise, or in connection with the exercise, of the powers conferred
3 on such receiver or liquidator.

4 **CHAPTER 15 – MISCELLANEOUS PROVISIONS**

5 Section 46. **Adjudicatory power.** The Commission shall have the
6 power to adjudicate any and all claims involving Pre-need Plans. The decision of
7 the Commission shall be final and executory if the amount of Benefits does not
8 exceed One Hundred Thousand Pesos (P100,000.00).

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

13 Section 47. **Duty of the Regulator.** – In view of the nature of the pre-
14 need industry as one impressed with public interest, the officers and employees
15 of the Commission are strictly enjoined to monitor, enforce and ensure
16 compliance with the provisions of this Code. Failure to do so shall be dealt with
17 under existing laws and regulations in the gravest degree.

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

28 The respective department of the Securities and Exchange Commission

1 handling all matters related to the pre-need industry prior to the effectivity of
2 this Act shall hereby secure and transfer all its files and records to the Insurance
3 Commission within sixty (60) days after the effectivity of this Code.

4 Section 49. **Implementing Rules and Regulations.** - The
5 Commission shall adopt such rules and regulations for the proper and effective
6 implementation of this Code within sixty (60) days from approval hereof. The
7 Commission shall publish once a week for two (2) consecutive weeks in two
8 newspapers of general circulation the rules and regulations promulgated
9 pursuant to the preceding section.

10 Section 50. **Effect on Existing Laws and Contracts.** - The rights
11 and remedies provided by this Code shall be in addition to any and all other
12 rights and remedies that exist under existing laws.

13 Nothing in this Act shall impair the obligation of existing contracts nor
14 affect or be construed to affect existing criminal, civil or administrative cases.

15 Section 51. **Separability clause.** - Any portion or provision of this Act
16 that may be declared unconstitutional or invalid shall not have the effect of
17 nullifying other portions or provisions hereof as long as such remaining portion or
18 provision can still subsist and be given effect in their entirety.

19 Section 52. **Repealing Clause.** - All acts, laws, executive orders and/or
20 rules and regulations or any part thereof which are inconsistent with the
21 provisions of this Code are hereby repealed or modified accordingly.

22 Section 53. **Effectivity Clause.** - This Code shall take effect upon its
23 approval.

24 Approved,