



HOUSE OF REPRESENTATIVES

H. No. 6407

BY REPRESENTATIVES ANGARA, LOPEZ (J.), PRIETO-TEODORO, VILLAROSA,
ZIALCITA, CRUZ-GONZALES, CODILLA, GONZALES (N.) AND
DE GUZMAN, PER COMMITTEE REPORT NO. 2056

AN ACT ESTABLISHING THE PRE-NEED CODE OF THE PHILIPPINES

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

CHAPTER I

GENERAL PROVISIONS

1 SECTION 1. *Title.* – This Act shall be known as the “Pre-need Code of
2 the Philippines”.

3 SEC. 2. *Declaration of Policy.* – It is the policy of the State to
4 regulate the establishment of pre-need companies and to place their operation
5 on sound, efficient and stable basis to derive the optimum advantages from
6 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.

1 The State shall hereby regulate, through an empowered agency,
2 pre-need companies based on prudential principles to promote soundness,
3 stability and sustainable growth of the pre-need industry.

4 SEC. 3. *Construction.* – Any doubt in the interpretation and
5 implementation of any provision in this Code shall be interpreted in favor of
6 the rights and interests of the planholder:

7 SEC. 4. *Definition of Terms.* – Whenever used in this Code, the
8 following terms shall have their respective meanings:

9 (a) “Commission” refers to the Insurance Commission.

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

18 (c) “Pre-need company” refers to any corporation registered with the
19 Commission and authorized/licensed to sell or offer to sell pre-need plans. The
20 term “pre-need company” also refers to schools, memorial chapels, banks,
21 nonbank financial institutions and other entities which have also been
22 authorized/licensed to sell or offer to sell pre-need plans insofar as their
23 pre-need activities or business are concerned.

24 (d) “Planholder” refers to any natural or juridical person who purchases
25 pre-need plans from a pre-need company for whom or for whose beneficiaries’
26 benefits are to be delivered, as stipulated and guaranteed by the
27 pre-need company. The term includes the assignee, transferee and any
28 successor-in-interest of the planholder.

1 (e) "Beneficiary" refers to the person designated by the planholder as
2 the recipient of the benefits in the pre-need plan.

3 (f) "Contract price" refers to the stipulated price in the pre-need plan.

4 (g) "Benefits" refers to the payment of monetary considerations and/or
5 performance of future services which the pre-need company undertakes to
6 deliver either to the planholder or his beneficiary at the time of actual need or
7 agreed maturity date, as specified in the pre-need plan.

8 (h) "Sales counselors" refers to natural persons who are engaged in the
9 sale of, or offer to sell, or counsel of prospective planholders for the purpose of
10 selling, whether or not on commission basis, pre-need plans upon the authority
11 of the pre-need company.

12 (i) "General agents" refers to natural or juridical persons who are
13 engaged in the sale of, or offer to sell, or counsel of prospective planholders
14 for the purpose of selling, whether or not on commission basis, pre-need plans
15 upon the authority of the pre-need company and empowered by such company
16 to do such other acts and things for and on its behalf in the conduct of its
17 business, as specified in the general agency agreement executed by and
18 between them.

19 (j) "Affiliate of, or affiliated with, a specified person" refers to a
20 person that directly or indirectly, through one (1) or more intermediaries,
21 controls, or is controlled by, or is under common control with, the person
22 specified. Exercising control over a legal entity shall mean any one of the
23 following: (1) owning either solely or together with affiliated persons more
24 than twenty-five percent (25%) of the outstanding capital stock of a legal
25 entity; (2) being an officer, director or stockholder of at least ten percent (10%)
26 of the outstanding capital stock of a legal entity, or a relative by consanguinity
27 or affinity of such officer, director or stockholder within the fourth civil
28 degree; (3) being a person authorized by the legal entity to perform on its
29 behalf legal actions aimed at establishment, change or termination of legal

1 relations; or (4) being otherwise in possession, direct or indirect, of the power
2 to direct or cause the direction of the management and policies of a person,
3 whether through the ownership of voting securities, by contract or otherwise

4 (k) "Trust fund" refers to a fund set up from the planholders' payments
5 to pay for the cost of benefits and services, termination values payable to
6 planholders and other costs necessary to ensure the delivery of benefits or
7 services to planholders as provided for in the contracts.

8 (l) "Pre-need reserve liabilities" refers to the measure of the liabilities
9 of the pre-need company for its in-force plans or lapsed plans as of valuation
10 date.

11 (m) "Liquidity reserve" refers to a portion of the trust fund set aside by
12 the trustee to cover benefits due to planholders for the ensuing year.

13 (n) "Fixed value plans" refers to pre-need plans whose benefits and
14 costs are fixed and predetermined at the inception or purchase of the plan.

15 (o) "In-force plan" refers to a plan for which the pre-need company has
16 an outstanding obligation for the delivery of benefits or services or payment of
17 termination value.

18 (p) "Lapsed plan" refers to a plan that is delinquent in payment of
19 installments provided for in the contract, the delinquency of which extends
20 beyond the grace period provided for in the plan or contract.

21 (q) "Cancelled plan" refers to a plan that can no longer be reinstated
22 by reason of delinquency in the payment of installments for more than two (2)
23 years or a longer period as provided in the contract, counted from the expiry
24 of the grace period provided for in the plan or contract.

25 (r) "Scheduled benefit plans" refers to plans the date of availment of
26 the benefits of which is set at the inception or purchase of the plan.

1 (s) "Contingent benefit plans" refers to plans the timing of the
2 provision of the benefits of which is conditional on the occurrence of the
3 contingency.

4 (t) "Risk-based capital" refers to a method to measure the minimum
5 amount of capital that a pre-need company needs to support its overall business
6 operation. It is used to set capital requirements, considering the size and
7 degree of risk taken by the pre-need company.

8 The terms not otherwise defined under this Code shall be construed in
9 their usual and commonly understood trade, business, commercial or
10 investment meaning.

11 CHAPTER II

12 AUTHORITY OF THE COMMISSION

13 SEC. 5. *Supervision.* – All pre-need companies, as defined under this
14 Act, shall be under the primary and exclusive supervision and regulation of the
15 Insurance Commission.

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

19 (a) Approve, amend, renew or deny any license, registration or
20 certificate issued under this Code;

21 (b) Fix and assess fees and/or charges as it may find reasonable in the
22 exercise of regulation;

23 (c) Regulate, supervise and monitor the operations and management of
24 pre-need companies to ensure compliance with the provisions of this Code,
25 existing laws, rules and regulations including, but not limited to:

26 (1) Revoking or nullifying investments made and/or entered into by a
27 pre-need company or a trustee which are contrary to existing laws, rules and
28 regulations;

1 (2) Demanding for the conversion of the investments made by the
2 trustee to cash or other liquid assets to protect the interest of the planholders;
3 and

4 (3) Regulating, investigating or supervising activities of pre-need
5 companies, their officers, employees, sales counselors, consultants or agents;

6 (d) Issue cease and desist orders to prevent fraud and injury to the
7 investing public;

8 (e) Issue subpoena *duces tecum* and *ad testificandum*, order the
9 examination, search and seizure of documents, papers, files, tax returns, books
10 of accounts and other records, in whatever form, of any entity or person under
11 investigation;

12 (f) Punish for contempt of the Commission, both direct and indirect, in
13 accordance with the pertinent provisions of and penalties prescribed by the
14 Rules of Court;

15 (g) Impose sanctions, institute cases and/or prosecute offenders for
16 violation of this Code, related laws, rules, regulations and orders issued
17 pursuant thereto;

18 (h) Suspend or revoke licenses;

19 (i) Enlist the aid and support of and/or deputize any and all
20 enforcement agencies of the government in the implementation of its powers
21 and in the exercise of its functions under this Code;

22 (j) Take over pre-need companies which fail to comply with this Code,
23 related laws, rules, regulations and orders issued pursuant thereto, either
24 through the appointment of a conservator, receiver or liquidator;

25 (k) Prepare, approve, amend or repeal rules, regulations and orders,
26 and issue opinions and provide guidance on and supervise compliance with
27 such rules, regulations and orders;

28 (l) Formulate policies and recommendations on issues concerning the
29 pre-need industry, including proposed legislations;

1 (m) Retain and utilize, in addition to its annual budget, an amount up
2 to One hundred million pesos (P100,000,000 00) of the fees, charges and other
3 income derived from the regulation of the pre-need companies; and

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

8 CHAPTER III

9 ORGANIZATION, LICENSING AND MANAGEMENT OF PRE-NEED COMPANIES

10 SEC. 7. *Prerequisites to Incorporation.* – Except upon favorable
11 recommendation of the Commission, the Securities and Exchange Commission
12 (SEC) shall not accept or approve the articles of incorporation and bylaws of
13 any pre-need company.

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

17 SEC. 8. *Amendment of the Articles of Incorporation and Bylaws.* –
18 Amendments to the articles of incorporation and bylaws of a pre-need
19 company, including merger, consolidation and dissolution, shall not be
20 approved by the SEC without the favorable recommendation from the
21 Commission.

22 SEC. 9. *Paid-up Capital.* – A pre-need company incorporated after the
23 effectivity of this Code shall have a minimum paid-up capital of One hundred
24 million pesos (P100,000,000.00). Existing pre-need companies shall comply
25 with the following minimum unimpaired paid-up capital:

26 (a) One hundred million pesos (P100,000,000.00) for companies
27 selling at least three (3) types of plan;

28 (b) Seventy-five million pesos (P75,000,000.00) for companies selling
29 two (2) types of plan; and

1 (c) Fifty million pesos (P50,000,000.00) for companies selling a single
2 type of plan.

3 Existing pre-need companies with traditional education plans shall have
4 a minimum unimpaired paid-up capital of One hundred million pesos
5 (P100,000,000.00).

6 The Commission may adopt risk-based principles on capital adequacy
7 based on internationally accepted standards. In the exercise of its authority
8 under this paragraph, the Commission may prescribe a higher minimum
9 unimpaired paid-up capital for pre-need companies.

10 SEC. 10. *Licensing Requirements for Pre-need Companies* – Any
11 pre-need company organized or otherwise created under the laws of the
12 Philippines may apply for a license to do business as a pre-need company by
13 filing with the Commission an application for such license under oath in such
14 form and in accordance with such rules as the Commission may prescribe.
15 Such rules shall further provide for grounds upon which such an application
16 sought may be refused, revoked, suspended or renewed.

17 SEC. 11. *Qualification and Disqualification of Directors and Officers.*
18 – To maintain the quality of management of pre-need companies and afford
19 better protection to planholders and beneficiaries, the Commission shall
20 prescribe, pass upon and review the qualifications and disqualifications of
21 individuals elected or appointed directors or officers of pre-need companies,
22 including its actuaries, and disqualify those found unfit. The Commission may
23 disqualify, suspend or remove any director or officer who commits or omits an
24 act which renders him unfit for the position.

25 In determining whether an individual is fit and proper to hold the
26 position of a director or officer of a pre-need company, regard shall be given to
27 his integrity, experience, education, training and competence. The following
28 persons, and those determined by the Commission to be unfit, shall in no case

1 be allowed to serve or act in the capacity of an officer, employee, director,
2 consultant or sales counselor of any pre-need company:

3 (a) Any person convicted of any crime involving any pre-need plan,
4 security or financial product;

5 (b) Any person convicted of an offense involving moral turpitude or
6 involving fraud or embezzlement, theft, estafa or other fraudulent acts or
7 transactions;

8 (c) Any person who, by reason of any misconduct, is enjoined by order,
9 judgment or decree by any court, quasi-judicial body or administrative agency
10 of competent jurisdiction from acting as a director, officer, employee,
11 consultant, agent or occupying any fiduciary position;

12 (d) Any person found by the Commission to have willfully violated or
13 willfully aided, abetted, counseled, commanded, induced or procured the
14 violation of this Code, the Insurance Code, the Securities Regulation Code or
15 any related laws and any rules or orders thereunder;

16 (e) Any person judicially declared to be insolvent or incapacitated to
17 contract; and

18 (f) Any person found guilty by a foreign court, regulatory authority or
19 government agency of the acts or violations similar to any of the acts or
20 misconduct enumerated in the foregoing paragraphs: *Provided*, That conviction
21 in the first instance shall be considered as sufficient ground for
22 disqualification.

23 SEC. 12. *Independent Directors.* — Pre-need companies shall have at
24 least two (2) independent directors or twenty percent (20%) of the members of
25 the board, whichever is higher. For this purpose, an “independent director”
26 shall refer to a person other than an officer, employee or any person having a
27 fiduciary relation to the pre-need company, its parent or subsidiaries, or any

1 the remedies of pre-need companies in such instances.

2 SEC. 15. *Registration Requirements.* – The Commission shall set forth
3 the requirements for registration of pre-need plans and shall require the
4 following documents, among others:

5 (a) Duly accomplished registration statements;

6 (b) Board resolution authorizing the registration of applicant's
7 pre-need plans;

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

9 (d) Audited financial statements;

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

12 (f) Copy of the proposed pre-need plan; and

13 (g) Sample of sales materials.

14 SEC. 16. *Accreditation of Actuary.* – The Commission shall have the
15 power to set standards for the accreditation of actuaries directly responsible
16 for the preparation and certification of the viability study of the pre-need plan
17 submitted by the pre-need company for registration or amendment with the
18 Commission. It shall further have the power to define the obligations and
19 liabilities of actuaries accredited by it. No actuary engaged by a pre-need
20 company shall at the same time be a stockholder or serve as a director of the
21 board, chief executive officer or chief financial officer of the company or any
22 such position that the Commission may determine to have an inherent conflict
23 of interest to the position of an actuary.

24 SEC. 17. *Approval of Contract Forms.* – All forms, including
25 amendments thereto, relating to the pre-need plans shall be approved by the
26 Commission. No pre-need contracts or certificates shall be issued or delivered
27 within the Philippines unless in the form previously approved by the
28 Commission.

1 SEC. 18. *Pre-need Advertising Rules.* – Pre-need plans shall be
2 advertised and sold in an appropriate non-misleading manner in accordance
3 with the rules to be prescribed by the Commission.

4 It shall be unlawful for any pre-need company to advertise itself or its
5 pre-need plans unless the Commission has approved such advertising material.
6 The Commission shall have a period of ten (10) working days to approve or
7 deny the advertising material and failure to act within the said period shall
8 cause the advertising material to be approved. For purposes hereof, the
9 Commission shall have the power to define the scope of its advertising rules to
10 appropriately cover advertising or other communications to the public.

11 Any person who sells or offers to sell any pre-need plan or contract by
12 any means or instruments of communication in violation of this section shall be
13 liable to the person purchasing such pre-need contract who may sue to recover
14 the consideration paid for such pre-need contract with interest thereon. In
15 addition hereto, the Commission shall have the power to pursue the erring
16 pre-need company in an administrative or criminal proceeding.

17 SEC. 19. *Disclosures to Prospective Planholders.* – No registered
18 pre-need plans shall be sold to prospective planholders unless an information
19 brochure, which has been filed with the Commission, has been provided to the
20 purchaser. The information brochure shall contain an explanation of the
21 principal features of the pre-need plan, a statement that the planholder may
22 avail of a default or reinstatement period within which to reinstate his lapsed
23 plan, and the conditions of the same and the rates of return for scheduled
24 benefit plans and illustrative yields for contingent benefit plans, and such other
25 information that the Commission shall require by rule.

CHAPTER V

LICENSING OF SALES COUNSELORS AND GENERAL AGENTS

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3 SEC. 20. *Licensing of Sales Counselors.* – No sales counselor shall be
4 allowed to solicit, sell or offer to sell pre-need plans under this Code without
5 being licensed as such by the Commission. No license shall be issued unless
6 the following qualifications have been complied with:

7 (a) The applicant must be of good moral character and must not have
8 been convicted of any crime involving moral turpitude;

9 (b) The applicant has undergone a training program approved by the
10 Commission and such fact has been certified under oath by a duly authorized
11 representative of a pre-need company; and

12 (c) The applicant has passed a written examination administered by the
13 Commission: *Provided*, That the administration of the examination may be
14 delegated to an independent organization under the supervision of the
15 Commission.

16 Such license shall automatically expire every thirtieth (30th) day of June
17 or such date of every year as may be fixed by the Commission and may be
18 accordingly renewed.

19 SEC. 21. *Denial, Suspension and Revocation of License.* – An
20 application for the issuance or renewal of a license to act as sales counselor
21 may be denied, or such license, if already issued, shall be suspended or
22 revoked based on the following grounds:

23 (a) The applicant materially misrepresented statements in the
24 application requirements;

25 (b) The applicant obtained or attempted to obtain a license by fraud or
26 misrepresentation;

27 (c) The applicant materially misrepresented the terms and conditions of
28 a pre-need plan which he sold or offered to sell;

1 (d) The applicant was terminated for cause from another pre-need
2 company;

3 (e) Similar grounds found in Section 11 of this Code, or

4 (f) Analogous circumstances.

5 SEC. 22. *Licensing of General Agents.* - If the issuer should contract
6 the services of a general agent to undertake the sales of its plans, such general
7 agent shall be required to be licensed as such with the Commission, in
8 accordance with the requirements imposed by the Commission.

9 CHAPTER VI

10 DEFAULT AND TERMINATION BY PLANHOLDERS

11 SEC. 23. *Default; Reinstatement Period.* - The pre-need company
12 must provide in all contracts issued to planholders a grace period of at least
13 two (2) months within which to pay accrued installments, counted from the due
14 date of the first unpaid installment. Nonpayment of a plan within the grace
15 period shall render the plan a lapsed plan. Any payment by the planholder
16 after the grace period shall be reimbursed forthwith, unless the planholder duly
17 reinstates the plan. The planholder shall be allowed a period of not less than
18 two (2) years from the lapse of the grace period or a longer period as provided
19 in the contract within which to reinstate his plan. No cancellation of plans
20 shall be made by the issuer during such period when reinstatement may be
21 effected.

22 Within thirty (30) days from the expiration of the grace period and
23 within thirty (30) days from the expiration of the reinstatement period, which is
24 two (2) years from the lapse of the grace period, the pre-need company shall
25 give written notice to the planholder that his plan will be cancelled if not
26 reinstated within two (2) years. Failure to give either of the required notices
27 shall preclude the pre-need company from treating the plans as cancelled.

28 SEC. 24. *Termination of Pre-need Plans.* - A planholder may terminate
29 his pre-need plan at any time by giving written notice to the issuer.

1 admissible in an administrative or judicial proceeding brought under this
2 section.

3 (c) Any violation of this section shall be considered sufficient cause for
4 the suspension or revocation of the company's certificate of authority.

5 SEC. 26. *Payment of Plan Proceeds.* – In the case of scheduled
6 benefit plans, the proceeds of the plan shall be paid immediately upon maturity
7 of the contract, unless such proceeds are made payable in installments or as an
8 annuity, in which case the installments or annuities shall be paid as they
9 become due. Refusal or failure to pay the claim within fifteen (15) days from
10 maturity or due date will entitle the beneficiary to collect interest on the
11 proceeds of the plan for the duration of the delay at the rate twice the legal
12 interest unless such failure or refusal to pay is based on the ground that the
13 claim is fraudulent: *Provided*, That the planholder has duly complied with the
14 documentary requirements of the pre-need company.

15 In the case of contingent benefit plans, the benefits shall be paid by the
16 pre-need company thirty (30) days upon submission of all necessary
17 documents.

18 SEC. 27. *Recovery of Investment.* – The planholder may institute the
19 necessary legal action in court to recover his/her investment in the pre-need
20 company, in case of its insolvency or bankruptcy.

21 However, in case the insolvency or bankruptcy is a mere cover-up for
22 fraud or illegality, the planholder may institute the legal action directly against
23 the officers and/or controlling owners of the said pre-need company.

24 SEC. 28. *Consequences of Delay or Default.* – In case of any litigation
25 for the enforcement of any pre-need plan, it shall be the duty of the
26 Commission to determine whether the payment of the claim of the planholder
27 has been unreasonably denied or withheld. If found to have unreasonably
28 denied or withheld the claim, the pre-need company shall be liable to pay
29 damages, consisting of actual damages, attorney's fees and legal interest, to be

1 computed from the date the claim is made until it is fully satisfied: *Provided*,
2 That the failure to pay any such claim within the time prescribed in the
3 preceding section shall be considered *prima facie* evidence of unreasonable
4 delay in payment.

5 SEC. 29. *Distribution of Profits.* – No pre-need company shall declare
6 or distribute any dividend on its outstanding stocks nor buy back any of its
7 outstanding stocks except upon approval by the Commission, in accordance
8 with the conditions it may prescribe.

9 CHAPTER VIII

10 TRUST FUND

11 SEC. 30. *Trust Fund.* – To ensure the delivery of the guaranteed
12 benefits and services provided under a pre-need plan contract, a trust fund per
13 pre-need plan category shall be established. A portion of the installment
14 payment collected shall be deposited by the pre-need company in the trust
15 fund, the amount of which will be as determined by the actuary based on the
16 viability study of the pre-need plan approved by the Commission. Assets in
17 the trust fund shall at all times remain for the sole benefit of the planholders.
18 At no time shall any part of the trust fund be used for or diverted to any
19 purpose other than for the exclusive benefit of the planholders. In no case
20 shall the trust fund assets be used to satisfy claims of other creditors of the
21 pre-need company. The provision of any law to the contrary notwithstanding,
22 in case of insolvency of the pre-need company, the general creditors shall not
23 be entitled to the trust fund.

24 Except for the payment of the cost of benefits or services, the
25 termination values payable to the planholders, the insurance premium
26 payments for insurance-funded benefits of memorial life plans and other costs
27 necessary to ensure the delivery of benefits or services to planholders, no
28 withdrawal shall be made from the trust fund unless approved by the
29 Commission. The benefits received by the planholders shall be exempt from all

1 taxes and the trust fund shall not be held liable for attachment, garnishment,
 2 levy or seizure by or under any legal or equitable processes except to pay for
 3 the debt of the planholder to the benefit plan or that arising from criminal
 4 liability imposed in a criminal action.

5 The trust fund shall at all times be sufficient to cover the required
 6 pre-need reserve.

7 SEC. 31. *Deposits to the Trust Fund.* -- (a) The pre-need company
 8 shall make monthly deposits to the trust fund in an amount determined by the
 9 accredited actuary, sufficient to pay the benefits promised under the contract.
 10 For plans paid for in full, the pre-need company shall deposit into the trust
 11 fund at least forty-five percent (45%) for life plans and fifty-one percent (51%)
 12 for education and pension plans of said full payment or such higher amount as
 13 determined by the actuary.

14 In case of installment payments, the minimum limits of the deposit
 15 contributions to the trust fund, unless the viability study done by the actuary
 16 requires otherwise, shall be in accordance with the following schedule:

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

17 Contributions to the trust fund shall not form part of the income or gross
 18 receipts of the pre-need company and, therefore, shall not be available for
 19 dividend declaration or payment to creditors.

20 (b) The deposits to the trust fund shall be made within twenty (20) days
 21 from the end of each reference month for payments received from plans

1 whether paid for in full or in installments. Failure to make the trust fund
2 deposit shall subject the pre-need company to administrative liability as
3 provided for under this Code.

4 (c) Should the Commission discover a deficiency in the trust fund, it
5 shall give notice of the same to the pre-need company and require the said
6 company to make additional deposits. The pre-need company shall have thirty
7 (30) days from receipt of notice to make the said deposits and correct the
8 deficiency. Failure to pay the deficiency inspite of notice by the Commission
9 shall subject the pre-need company to the payment of a penalty, in addition to
10 other sanctions imposable under this Code.

11 (d) For plans sold prior to the effectivity of this law, the minimum
12 contributions to the trust fund shall be governed by rules and regulations in
13 force at the time of sale.

14 SEC. 32. *Investment of the Trust Fund.* – The pre-need company shall
15 manage the assets in the trust fund in accordance with investment guidelines
16 prescribed by the Commission. Such rules shall ensure that the pre-need
17 company is able to maximize the yield of the trust fund, consistent with the
18 requirements of safety and liquidity.

19 The pre-need company shall not use the trust fund to extend any loan to
20 or to invest in its directors, stockholders, officers or its affiliates.

21 SEC. 33. *Valuation of the Reserve Liabilities of the Pre-need*
22 *Company.* – To determine the sufficiency and adequacy of the trust fund, an
23 Annual Pre-need Reserve Valuation Report establishing the reserve
24 requirement and contractual liabilities of the pre-need company shall be made
25 and submitted to the Commission, in accordance with Section 26 of this Code.

1 SEC. 34. *Trust Fund Deficiencies.* – Upon approval by the Commission
2 of the pre-need reserve computation submitted in the preceding section, any
3 deficiency in the trust fund, when compared to the reserve liabilities as
4 reported in the pre-need reserve valuation report, shall be funded by the
5 pre-need company within thirty (30) days from such approval. Failure to cover
6 the deficiency in an appropriate manner within the time required shall subject
7 the pre-need company to the payment of a penalty, in addition to other
8 remedies exercisable by the Commission, as provided for in this Code. Any
9 excess of the trust fund over the actuarial reserve liabilities may be credited to
10 future deposit requirements.

11 SEC. 35. *Liquidity Reserve Pool.* – The pre-need company shall at all
12 times maintain a liquidity reserve pool of at least ten percent (10%) of the trust
13 fund but in no case less than one hundred twenty-five percent (125%) of the
14 amount of the availing plans for the succeeding year. The liquidity reserve
15 pool shall be invested in accordance with investment guidelines issued by the
16 Commission to ensure that pre-need companies are sufficiently liquid to meet
17 its obligations in the immediate future.

18 SEC. 36. *Trustees.* – Upon approval of the Commission or when the
19 Commission requires for the protection of planholders, the pre-need company
20 shall entrust the management and administration of the trust fund to any
21 reputable bank's trust department, trust company or any entity authorized to
22 perform trust functions in the Philippines: *Provided*, That no director and/or
23 officer of the pre-need company shall at the same time serve as director and/or
24 officer of the affiliate or related trust entity: *Provided, further*, That no trust
25 fund shall be established by a pre-need company with a subsidiary, affiliate or
26 related trust entity. However, such may be allowed, provided that the following
27 conditions are complied with:

28 (a) A written approval of the Commission has been previously
29 obtained; and

1 (b) Public disclosure of the affiliation with the trust entity be included
2 in all materials in whatever form.

3 The trust fund shall be managed in accordance with the trust agreement
4 approved by the Commission. The trust agreement shall contain, among others,
5 provisions on the manner in which the trust fund is to be operated;
6 responsibilities of the trustee; investment powers and limitations of the trustee
7 including the character and kind of investment; and the scope of participation
8 by the pre-need company in the management of the trust fund, as may be
9 allowed by the Commission.

10 The Commission shall have the authority to prescribe appropriate rules
11 that shall ensure that the yield of the trust fund is maximized, consistent with
12 the requirements of safety and liquidity.

13 CHAPTER IX

14 REPORTS AND EXAMINATION

15 SEC. 37. *Annual Pre-need Reserve Valuation Report.* – Every
16 pre-need company shall annually determine its reserve requirement and
17 contractual liabilities, and submit to the Commission an annual pre-need
18 reserve valuation report within one hundred twenty (120) days from the end of
19 the fiscal year of the pre-need company. The valuation report shall contain the
20 assumptions, methodology, formulas used, a summary of the pre-need plans
21 that were the subject of the valuation and the results of such valuation. The
22 report should be duly certified by an actuary accredited by the Commission in
23 the case of contingent plans such as memorial/life plans and by the pre-need
24 company's external auditors or by a qualified actuary in the case of scheduled-
25 benefit plans such as pre-need pension and education plans, the liabilities of
26 which are not actuarial in nature. The *reserving formula, bases and limits of the*
27 *assumptions to be used in the valuation of reserves shall be prescribed by the*
28 *Commission.*

1 The Commission may require any pre-need company to submit an
2 interim pre-need reserve valuation report if any of the following events
3 occurred:

4 (a) When there is sufficient evidence that a subsequent event or
5 transaction occurred after the end of the fiscal year and such event would
6 materially affect the computation of the pre-need reserve valuation report
7 submitted; and

8 (b) When the company ceased operation six (6) months after the end of
9 the fiscal year.

10 SEC. 38. *Annual Audited Financial Statements.* – Every pre-need
11 company shall terminate its fiscal period on the thirty-first (31st) day of
12 December every year. Within one hundred twenty (120) days after the
13 calendar or fiscal year, the pre-need company shall render to the Commission
14 annual financial statements signed and sworn to by its chief executive officer,
15 chief finance officer and external auditors in accordance with a uniform
16 accounting system that shall be prescribed by the Commission, showing in
17 such form and details the exact condition of its affairs.

18 The audited financial statements should be accompanied by the
19 Statement of Management's Responsibility signed under oath by the
20 company's chairman of the board, chief executive officer and chief financial
21 officer, containing the following declaration:

22 "The management of (name of the pre-need company) is responsible for
23 all information and representations contained in the financial statements for
24 the year(s) ended (date). The financial statements have been prepared in
25 conformity with rules and regulations of the Commission on accounting and
26 reflect amounts that are based on the best estimates and informed judgment of
27 management with an appropriate consideration to materiality."

28 "In this regard, management maintains a system of accounting and
29 reporting which provides for the necessary internal controls to ensure that

1 transactions are properly authorized and recorded, assets are safeguarded
2 against unauthorized use or disposition and liabilities are recognized. The
3 management likewise discloses to the company's audit committee and to its
4 external auditor: (i) all significant deficiencies in the design or operation of
5 internal controls that could adversely affect its ability to record, process, and
6 report financial data; (ii) material weaknesses in the internal controls; and (iii)
7 any fraud that involves management or other employees who exercise
8 significant roles in internal controls.”

9 “The board of directors reviews the financial statements before such
10 statements are approved and submitted to the stockholders of the company.”

11 “The (name of the auditing firm), the independent auditors appointed by
12 the stockholders, has examined the financial statements of the company in
13 accordance with generally accepted auditing standards in the Philippines and
14 has expressed its opinion on the fairness of the presentation upon completion
15 of such examination, in its report to the board of directors and stockholders.”

16 Any material omission of disclosures, misstatement or misleading
17 information found in the financial statements, whether interim or annual, shall
18 constitute a violation of this Code and the officer signing such statement shall
19 be subject to the penalty provided for under this Code and such other sanctions
20 as may be imposed by the Commission.

21 SEC. 39. *Annual Statement of Trust Fund.* – Every pre-need company
22 shall file with the Commission an annual statement of its trust fund for each
23 type of plan. Such statement shall be in a form prescribed by the Commission
24 and shall include details as to all of the income, disbursements, assets and
25 liability items of and associated with the said trust fund accounts. Said
26 statement shall be made under oath by two (2) officers of the company and
27 shall be filed simultaneously with the annual statement required by the
28 preceding section.

1 Where the trust fund is managed and administered by a trustee as
2 provided under Section 30 of this Code, an annual statement of trust fund for
3 each type of plan shall instead be filed with the Commission. It shall include
4 details such as the income, disbursements, assets and liability items, and shall
5 be certified under oath by at least two (2) of the highest ranking officers of the
6 trustee.

7 SEC. 40. *Publication of Annual Statement.* – Within thirty (30) days
8 after receipt of the annual statement approved by the Commission, every
9 pre-need company shall publish in two (2) newspapers of general circulation a
10 full synopsis of its annual financial statements, including the trust fund annual
11 statement showing fully the conditions of its business, and setting forth its
12 resources and liabilities in a standardized format to be designed by the
13 Commission.

14 The Commission may require pre-need companies to create and
15 maintain a website wherein its planholders may readily access updated
16 information pertaining to the status of financial condition and results of
17 information of the company. The sufficiency and truthfulness of the contents
18 of such website shall be the responsibility of the company.

19 SEC. 41. *Keeping of Records.* – The Commission shall require every
20 pre-need company to keep its books, records, accounts and vouchers in such
21 manner that the Commission's authorized representatives may readily verify
22 the company's annual statements and ascertain whether the company is solvent
23 and has complied with the provisions of this Code or the circulars, instructions,
24 rulings or decisions of the Commission.

25 SEC. 42. *Examination.* – The Commission shall, at least once a year
26 and whenever it considers that the public interest so demands, cause an
27 examination to be made into the affairs, financial condition and method of
28 business of every pre-need company, and of any other person, firm or

1 corporation managing the Fund or affairs and/or property of such pre-need
2 company. Such examination shall be carried in a manner prescribed by the
3 Commission by rule.

4 CHAPTER X

5 FINANCIAL ACCOUNTING STANDARDS

6 SEC. 43. *Accounting Rules and Regulations for Pre-need Plans.* –

7 The Commission shall have the authority to make, amend and rescind such
8 accounting rules and regulations applicable for pre-need companies. The
9 Commission may prescribe, among other things, the form or forms in which
10 required information shall be set forth, the items or details to be shown in the
11 components of the financial statements, and the recognition and measurement
12 basis to be adopted for each account, after considering the nature of the
13 operation of the pre-need industry. Pre-need companies shall strictly comply
14 with such accounting rules and regulations as prescribed by the Commission.

15 CHAPTER XI

16 ADJUDICATORY POWER

17 SEC. 44. *Jurisdiction.* – The Commission shall have jurisdiction to hear
18 and decide cases involving claims arising from any loss, damage or liability for
19 which a pre-need company may be answerable under the pre-need contract.

20 CHAPTER XII

21 SUSPENSION OR REVOCATION OF AUTHORITY

22 SEC. 45. *Suspension; Grounds.* – If the Commission is of the opinion,
23 upon examination or other evidence that any pre-need company is in an
24 unsound condition, or that it has failed to comply with the provisions of law or
25 regulations, or that its condition or method of business is such as to render its
26 proceedings hazardous to the public or to its planholders, or that its paid-up
27 capital stock is impaired or deficient, the Commission is authorized to suspend
28 or revoke all certificates of authority granted to such pre-need company, its
29 officers and agents, after due notice or hearing. No new business shall

1 thereafter be done by such company or for such company by its agent in the
2 Philippines.

3 The Commission may not lift the order of suspension or revocation of
4 the said authority until the concerned pre-need company shall have submitted a
5 viable business plan showing the company's estimated receipts and
6 disbursements, as well as the basis therefor for the next succeeding three (3)
7 years.

8 CHAPTER XIII

9 CONSERVATORSHIP AND PROCEEDINGS UPON INSOLVENCY

10 SEC. 46. *Conservator.* – (a) If the Commission finds that a pre-need
11 company is in a state of continuing inability or unwillingness to maintain a
12 condition of solvency or liquidity deemed adequate to protect the interest of
13 planholders and creditors, the Commission may appoint a conservator to take
14 charge of the assets, liabilities and the management of such company; collect
15 all moneys and debts due the said company; and exercise all powers necessary
16 to preserve the assets of said company, reorganize the management thereof and
17 restore its viability. The said conservator shall have the power to overrule or
18 revoke the actions of the previous management and the board of directors of
19 the said company, and such other powers as the Commission shall deem
20 necessary.

21 (b) The conservator appointed shall report and be responsible to the
22 Commission until such time as the Commission is satisfied that the pre-need
23 company can continue to operate on its own. The conservator shall recommend
24 an appropriate trust entity to manage and administer the trust fund, and the
25 pre-need company may resume operations upon conditions imposed by the
26 Commission, among them, the appointment of the trustee chosen by the
27 conservator. Such trustee may only be discharged upon showing of due cause
28 by the pre-need company. The conservatorship shall be terminated should the
29 Commission, on the basis of the report of the conservator or of his own

1 findings, determine that continuance in business of the pre-need company
2 would be hazardous to planholders and creditors. In such case, it shall order
3 the liquidation of the pre-need company and proceed in accordance with this
4 Code.

5 (c) The conservator shall not be subject to any action, claim or demand
6 by, or liability to any person in respect of anything done in good faith in the
7 exercise of the powers of conservatorship.

8 SEC. 47. *Proceedings in Receivership.* -- (a) Whenever upon
9 examination or other evidence, it shall be disclosed that the condition of any
10 pre-need company doing business in the Philippines is insolvent, or that its
11 continuance in business would be hazardous to its planholders and creditors,
12 the Commission shall forthwith order the company to cease and desist from
13 transacting business in the Philippines. The Commission shall designate a
14 receiver to immediately take charge of all its assets and liabilities, and to
15 administer the same for the benefit of its planholders and creditors, and
16 exercise all the powers necessary for these purposes including, but not limited
17 to, bringing suits and foreclosing mortgages in the name of the pre-need
18 company. The powers of the receiver shall be limited to the management of
19 the pre-need company. Trustees of pre-need companies under receivership
20 may continue to exercise all powers over the trust fund under their control.

21 (b) The Commission shall thereupon determine within thirty (30) days
22 whether the pre-need company may be reorganized or otherwise placed in such
23 condition so that it may be permitted to resume business with safety and
24 security to its planholders and creditors, and shall prescribe the conditions
25 under which such resumption of business shall take place as well as the time
26 for fulfillment of such conditions. In such case, the expenses and fees in the
27 collection and administration of the pre-need company shall be determined by
28 the Commission and shall be paid out of the assets of such company.

29 (c) The receiver or the liquidator, as the case may be, designated under

1 the provisions of this chapter, shall not be subject to any action or claim or
2 demand by, or liability to, any person in respect of anything done or omitted to
3 be done in good faith in the exercise, or in connection with the exercise, of the
4 powers conferred on such receiver or liquidator.

5 (d) If the Commission shall determine and confirm within the said
6 period that the pre-need company is insolvent, as defined hereunder, or cannot
7 resume business with safety to its planholders and creditors, it shall, if the
8 public interest requires, order its liquidation, in accordance with the provisions
9 of this Code.

10 (e) The provisions of any law to the contrary notwithstanding, the
11 actions of the Commission under this section shall be final and executory and
12 can be set aside by the Court of Appeals upon petition by the company and
13 only if there is convincing proof that the action is plainly arbitrary and made in
14 bad faith.

15 As used in this chapter, the term "insolvency" shall mean the inability of
16 the pre-need company to pay its lawful obligations as they fall due in the usual
17 and ordinary course of business, as may be shown by its failure to maintain the
18 margin of solvency required in this Code.

19 SEC. 48. *Commission's Power to Assume Trustee Functions.* – In
20 cases where the Commission has ordered the liquidation of the pre-need
21 company, the Commission may immediately take custody of the trust fund
22 established by the pre-need company, and the pre-need company shall
23 forthwith deliver custody and an accounting of the same. Henceforth, the
24 Commission shall have the full power and control over the Fund to satisfy the
25 pre-need company's obligations to planholders.

26 SEC. 49. *Liquidation.* – (a) In cases where the Commission determines
27 that the pre-need company shall be liquidated, it shall have the power to
28 commence insolvency proceedings in the appropriate court which shall have
29 jurisdiction over the assets of the pre-need company, excluding trust fund

1 assets that have been established exclusively for the benefit of planholders.

2 (b) Proceedings in court shall proceed independently of proceedings in
3 the Commission for the liquidation of claims, and creditors of the pre-need
4 company shall have no personality whatsoever in the Commission proceedings
5 to litigate their claims against the trust funds.

6 (c) In liquidating claims of planholders, the Commission shall ensure
7 that all planholders receive an equitable distribution of their claims,
8 considering the amounts each has paid into their plans, the termination values
9 due each planholder, the present value of their claims and other equitable
10 considerations. The only other claims which may be satisfied by the
11 Commission out of the trust funds are the claims for trustees' fees which are
12 reasonable and can be shown to have been incurred in the administration of the
13 trust fund, and taxes incurred under trust.

14 CHAPTER XIV

15 ADMINISTRATIVE SANCTIONS AND CRIMINAL PENALTIES

16 SEC. 50. *Administrative Sanctions.* – (a) The Commission, after proper
17 notice and hearing, may impose any or all of the sanctions provided in
18 subparagraph (b) of this section for the following offenses: (1) the making of
19 any untrue statement of a material fact in a registration statement, information
20 brochure and its supporting papers and other reports required to be filed with
21 the Commission; (2) the failure to disclose any material fact required to be
22 stated therein; (3) the refusal to permit any lawful examination into its affairs;
23 and (4) any violation of this Code or its implementing rules and regulations.

24 (b) The imposition of the foregoing administrative sanctions shall be
25 without prejudice to the filing of criminal charges against the individual
26 responsible for the violation:

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

10 (2) Suspension of License. – The Commission shall issue a suspension
11 order against the pre-need company if it fails to comply with the CDO within
12 thirty (30) days from issuance thereof;

13 (3) Revocation of License. – The Commission may issue a revocation
14 order of the license of the pre-need company under suspension for a period of
15 ninety (90) days;

16 (4) A fine of not less than Ten thousand pesos (P10,000.00) nor more
17 than One million pesos (P1,000,000.00) plus not more than Two thousand
18 pesos (P2,000.00) for each day of continuing violation;

19 (5) Disqualification from being an officer, a member of the board of
20 directors or principal stockholders of a pre-need company; or

21 (6) Other penalties within the power of the Commission under existing
22 laws.

23 (c) The unauthorized sale of pre-need plans shall subject the issuer to a
24 fine as follows:

25 (1) First violation – thirty percent (30%) of the aggregate gross
26 pre-need price of the plans sold;

27 (2) Second violation – forty percent (40%) of the aggregate gross
28 pre-need price of the plans sold; and

29 (3) Third violation – suspension or revocation of license.

1 Failure to pay fines within three (3) months from receipt of notice to pay
2 will cause the Commission to issue a suspension order.

3 SEC. 51. *Criminal Penalties.* – The following acts are criminal in
4 nature:

5 (a) Selling or offering to sell a pre-need plan by unregistered persons
6 shall be penalized by imprisonment of one (1) year and a fine equivalent to
7 triple the contract price;

8 (b) Selling or offering to sell an unregistered pre-need plan or any
9 product that has pre-need plan features shall be penalized by imprisonment of
10 one (1) year and a fine equivalent to triple the indicated price;

11 (c) Soliciting, selling or offering to sell a pre-need plan by means of
12 false or misleading representation and other fraudulent means shall be
13 penalized by imprisonment of six (6) years and one (1) day to twelve (12)
14 years and a fine in the amount of Fifty thousand pesos (P50,000.00) to Five
15 hundred thousand pesos (P500,000.00);

16 (d) Any negligent act or omission that is prejudicial or injurious to the
17 planholder shall be penalized by imprisonment of one (1) year and one (1) day
18 to six (6) years and a fine in the amount of Fifty thousand pesos (P50,000.00)
19 to Five hundred thousand pesos (P500,000.00);

20 (e) Any fraudulent act or omission that is prejudicial or injurious to the
21 planholder shall be penalized by imprisonment of six (6) years and one (1) day
22 to twelve (12) years and a fine in the amount of One hundred thousand pesos
23 (P100,000.00) to One million pesos (P1,000,000.00); and

24 (6) Willful violation of the provisions of the Code or orders of the
25 Commission: *Provided*, That repeated violations shall constitute *prima facie*
26 evidence against the offender and shall be penalized by imprisonment of six (6)
27 years and one (1) day to twelve (12) years and a fine in the amount of One
28 hundred thousand pesos (P100,000.00) to One million pesos (P1,000,000.00).

1 Any person who violates any other provisions of this Code or rules and
2 regulations promulgated by the Commission under authority thereof shall, upon
3 conviction, be punished by a fine of not less than Fifty thousand pesos
4 (P50,000.00) nor more than Five million pesos (P5,000,000.00) or
5 imprisonment of not less than one (1) year nor more than fourteen (14) years,
6 or both, at the discretion of the court. Should the offense be committed by a
7 juridical person, the penalty may, in the discretion of the court, be imposed on
8 such juridical entity and upon the officer or officers of the juridical entity
9 responsible for the violation. If such officer is an alien, he shall, in addition to
10 the penalties prescribed, be deported without further proceedings after service
11 of sentence.

12 CHAPTER XV

13 MISCELLANEOUS PROVISIONS

14 SEC. 52. *Review of Commission Orders or Decisions.* – Any person
15 aggrieved by an order or decision of the Commission, whether in relation to its
16 settlement of a claim of a planholder or in the exercise of its regulatory
17 authority, may appeal the order or decision to the Court of Appeals by petition
18 for review in accordance with the pertinent provisions of the Rules of Court.

19 SEC. 53. *Transitory Provisions.* – All requirements of this Code shall
20 be complied with upon approval of this Code: *Provided, however,* That
21 compliance may be deferred for such reasonable time as the Commission may
22 determine but not to exceed one (1) year from the approval of this Code.
23 Violations committed prior to the effectivity of this Code shall be punished in
24 accordance with the provisions of the laws then in force.

25 SEC. 54. *Prescription of Actions.* – All criminal actions in violation of
26 any of the provisions of this Code shall prescribe after three (3) years from the
27 discovery of such violation: *Provided,* That such actions shall in any event
28 prescribe after ten (10) years from the commission of such violation.

1 SEC. 55. *Effect on Existing Law.* – Any person, natural or juridical, or
2 pre-need plan, authorized, licensed or registered by the SEC under the
3 Securities Regulation Code shall be deemed to have been licensed or registered
4 under the provisions of this Code. Such person or plan shall, unless otherwise
5 herein provided, be given a period of one (1) year from the effectivity of this
6 Code within which to comply with the same. The rights and remedies provided
7 by this Code shall be in addition to any and all other rights and remedies that
8 exist under existing laws.

9 SEC. 56. *Congressional Oversight Committee.* – There is hereby
10 created a Congressional Oversight Committee composed of seven (7) members
11 from the Senate and seven (7) members from the House of Representatives.
12 The members from the Senate shall be appointed by the Senate President based
13 on the proportional representation of the parties or coalitions therein with at
14 least two (2) Senators representing the Minority. The members from the
15 House of Representatives shall be appointed by the Speaker based on the
16 proportional representation of the parties or coalitions therein with at least two
17 (2) members representing the Minority. The Congressional Oversight
18 Committee shall have the power to review or revise the implementing rules and
19 regulations promulgated by the Commission within sixty (60) days.

20 SEC. 57. *Implementing Rules and Regulations.* – The Commission
21 shall adopt such rules and regulations for the proper and effective
22 implementation of this Code within three (3) months from approval hereof.
23 The Commission shall publish the rules and regulations once a week for two
24 (2) consecutive weeks in two (2) newspapers of general circulation.

25 Until such time as the Commission is ready to implement the rules and
26 regulations under this Code, it shall immediately adopt the existing rules and
27 regulations governing the pre-need industry as passed by the SEC.

1 SEC. 58. *Separability Clause.* – Should any provision of this Act or
2 the application thereof to any person or circumstance be held invalid, the other
3 provisions or sections of this Act shall not be affected thereby.

4 SEC. 59. *Repealing Clause.* – All acts, laws, executive orders and/or
5 rules and regulations or any part thereof that are inconsistent with the
6 provisions of this Code are hereby repealed or modified accordingly.

7 SEC. 60. *Effectivity.* – This Act shall take effect upon its approval.

Approved,

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