

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 119



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

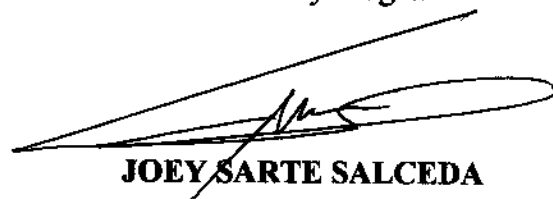
There are over 56 companies engaged in the sale of pre-need plans with a total assets of PHP 97.7 billion. Over 3.5 million plans have been sold as of last year. A total of PHP 40 billion have been paid for such plans and industry had contracted to pay PHP 124 billion more. However, concerns have been expressed about the proliferation of pre-need companies selling or offering various pension plans and the immensity of the amount of plans contracted in as much as a number of these companies have folded up.

Questions have been raised about the industry's financial status and the protection it affords to investors and pre-need planholders. Thus, there is a need to introduce reforms to strengthen the regulatory framework of the industry to afford better protection to its investors.

The policy objectives of this bill include the legislative framework that will govern the pre-need industry. It also sets the industry's regulatory standards with the Securities and Exchange Commission as its regulatory agency. Salient features of this measure include the stipulation of a minimum paid-up capital of PHP 50 Million and a margin of solvency of at least PHP 10 Million in incorporating a pre-need firm. More importantly, safeguards are in placed such as the creation of a Liquidity Reserve Fund to protect planholders.

Under this bill, pre-need companies are required to publish their annual statement and trust fund annual statement. Moreover, to effectively regulate pre-need companies, financial accounting standards have been provided to enable a system of uniformity.

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



JOEY SARTE SALCEDA

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

House Bill No. 119

Introduced by **Representative JOEY SARTE SALCEDA**

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

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

CHAPTER 1
GENERAL PROVISIONS

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

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to regulate the establishment of pre-need companies and to place their operation on a sound, efficient and stable basis to derive the optimum advantages from them in the mobilization of savings, to ensure that trust funds are maintained at adequate levels for the delivery of benefits guaranteed to planholders, and to prevent practices prejudicial to public interest and the protection of planholders.

SEC. 3. Definition of Terms. – Whenever used in this Code, the following terms shall have their respective meanings:

(a) "Actuarial reserve liabilities" refer to the measure of the liabilities of the pre-need company for its in-force plans as of valuation date.

(b) "Affiliate of" or "affiliated with," a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Exercising control over a legal entity shall mean any one of the following: (i) owning either solely or together with affiliated persons more than twenty-five percent (25%) of the outstanding

capital stock of a legal entity; (ii) being an officer, director or stockholder of at least ten percent (10%) of the outstanding capital stock of a legal entity, or a relative by consanguinity or affinity of such officer, director or stockholder within the fourth (4th) civil degree; (iii) being a person authorized by the legal entity to perform on its behalf legal actions aimed at establishment, change or termination of legal relations; or (iv) being otherwise in possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Cancelled plan" is a lapsed plan which can no longer be reinstated by reason of delinquency in the payment of installments for two (2) years or more, counted from the expiry of the grace period provided for in the plan or contract, and for which the planholder has been duly notified.

(d) "Commission" refers to the Insurance Commission.

(e) "Fixed value plans" are plans whose benefits and costs are fixed and pre-determined at the inception or purchase of the plan.

(f) "In-force plan" is a plan for which the pre-need company has an outstanding obligation either for (1) the delivery of benefits or services, or (2) the payment of termination value, such as a plan which is up-to-date in the payment of installments; a fully-paid plan wherein the benefits or services are not yet due or have not yet been fully delivered; or a lapsed or cancelled plan, the termination value of which has not yet been paid.

(g) "Lapsed plan" is a plan that is delinquent in payment of installments provided for in the contract, the delinquency of which extends beyond the grace period provided for in the plan or contract and for which the planholder has been duly notified.

(h) "Planholder" is any natural or juridical person who purchases pre-need plans for whom or for whose beneficiaries' future services/payments are to be rendered or made at the time of need or payments/benefits to be delivered as stipulated and guaranteed by the pre-need company at the time of need or maturity of the contract.

(i) "Pre-need company" is any corporation registered with the Commission and authorized/licensed to sell or offer for sale pre-need plans.

(j) "Pre-need plans" are contracts which provide for the performance of future service/services or payment of monetary consideration at the time of actual need, payable either in cash or installment by planholders at prices stated in the contract, such as life/memorial plans, pension plans, education plans, cremation plans, interment plans and similar contracts and investments.

(k) "Salespersons" are natural persons who are engaged in the sale of, or offer to sell, or counsel prospective planholders for the purpose of selling, whether or not on commission basis, pre-need plans upon authority of the pre-need company.

(l) "Traditional or actual cost plans" are plans wherein the benefits or services at the time they are due are guaranteed, regardless of any increase in cost from the originally assumed values since the date of issue of the pre-need plan, on account of inflation, interest yield rate fluctuation, or other similar causes.

(m) "Trust fund" is a fund set up from the planholders' payments, separate and distinct from the paid-up capital of the pre-need company, deposited with a trustee under a trust agreement approved by the Commission, to pay for annuities, services or property as provided for in the contracts.

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

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

SEC. 5. *Paid-up Capital.* – All pre-need companies shall have a paid-up capital of at least One hundred million pesos (P100,000,000.00) in cash or property. The Commission may increase such minimum paid-up capital stock under such terms and conditions it may impose, to an amount which in its opinion, would reasonably assure the safety of the interest of the planholders and the public.

CHAPTER II

REGISTRATION AND LICENSING REQUIREMENTS

SEC. 6. *Licensing Requirements for Pre-Need Companies.* – Any pre-need company organized or otherwise created under the laws of the Philippines may apply for a license to do business as a pre-need company by filing with the Commission an application for such license under oath in such form as the Commission may prescribe, following such procedures as the Commission shall set forth by rules. Such rules shall further provide for grounds upon which such registration sought may be refused, revoked, suspended, or renewed. The Commission shall have the power to impose eligibility requirements for directors, officers, management, controlling shareholders and related interests of the foregoing, to ensure that pre-need companies observe good corporate governance principles, in accordance with international best practices. Pursuant thereto, the Commission shall likewise have the

power to prescribe the number of independent directors required to sit in a pre-need company's board of directors.

SEC. 7. *Registration of Pre-Need Contracts/Plans.* – Within a period of forty-five (45) days after the grant of a license to do business as a pre-need company, and for every pre-need plan which the pre-need company intends to offer for sale to the public, the pre-need company shall file with the Commission a registration statement for the sale of pre-need plans pursuant to this Code. The Commission shall promulgate rules governing the content of the registration statement, including any information brochure made a part thereof or annexed thereto or may require additional information or documents including written statement from an expert, depending on the necessity thereof for the protection of planholders and the general public. Said rules shall further set forth the conditions under which such registration may be denied, revoked, suspended, or withdrawn, and the remedies of pre-need companies in such instances.

SEC. 8. *Licensing of Salespersons.* – No person shall engage in the business of selling, or offering to sell, pre-need contracts or plans, or act as a salesperson as defined in this Code unless licensed by the Commission, after passing an examination designed and administered by the Commission or its designee, in accordance with requirements imposed by the Commission.

SEC. 9. *Licensing of Issuer as Dealer.* – Any issuer of pre-need plans may undertake the sale of its own plans: *Provided*, That it shall be required to be registered as a dealer in accordance with rules set forth by the Commission.

SEC. 10. *Licensing of General Agents.* – If the issuer should contract the services of a general agent to undertake the sales of its plans, such general agent shall be required to be registered as such with the Commission, in accordance with requirements imposed by the Commission.

SEC. 11. *Licensing of Licensed Principals.* – Every pre-need company registered as a dealer of its plans, and every general agent shall engage a licensed principal, who shall be registered as such with the Commission, in accordance with requirements imposed by the Commission. The licensed principal shall oversee compliance in all aspects of the selling activities of the entity with which he is engaged. Refusal, suspension or revocation of the licensed principal's license shall be in accordance with grounds and procedures set forth by the Commission.

CHAPTER III

PLANHOLDERS' PROTECTION

SEC. 12. *Approval of Contract Forms.* – No pre-need contracts or certificates shall be issued or delivered within the Philippines unless in the form previously approved by the Commission.

SEC. 13. *Pre-Need Advertising Rules.* – Pre-need plans shall be advertised and sold in an appropriate non-misleading manner in accordance with Pre-Need Advertising Rules to be designed by the Commission.

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

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

SEC. 14. *Disclosures to Prospective Planholders.* – No registered pre-need plans shall be sold to prospective planholders unless an Information Brochure, which has been filed with the Registration Statement in the form and containing the information prescribed by the Commission has been provided to the purchaser. The Information Brochure shall contain a statement that the planholder may avail of a default or reinstatement period, within which to reinstate his lapsed plan, and the conditions of the same and the rates of return for scheduled benefit plans and illustrative yields for contingent benefit plans, and such other information that the Commission shall require by rule. Such rules shall likewise set forth the form in which required information must be presented, the use of such Information Brochure, and other matters material and relevant to ensure that such disclosures are relevant and educational to prospective planholders.

SEC. 15. *Default; Reinstatement Period.* – The pre-need company must provide in all contracts issued to planholders, a grace period of at least two (2) months within which to pay accrued installments, counted from the due date of the first unpaid installment. Non-payment of a plan beyond the grace period shall render the plans without further force and effect. Any payment by the planholder

after the grace period shall be reimbursed forthwith. The planholder shall be allowed a period of not less than two (2) years within which to reinstate his plan. No cancellation of plans shall be made by the issuer during such period when reinstatement may be effected.

The pre-need company shall give written notice to the planholder that his plan will lapse if no payment is received within the grace period or that his plan will be cancelled if not reinstated within the reinstatement period. Such notice shall be given prior to the expiration of the grace period or the reinstatement period, as the case may be. Failure to give the required notice shall preclude the pre-need company from treating the plans as lapsed or cancelled, as the case may be.

In addition to other remedies provided in the contract, a planholder who reinstates his lapsed plan may elect to amortize his total outstanding balance over the remaining time of original pay-in period plus one additional year, subject to an increase in the total amount of payments, in accordance with a schedule to be promulgated by the Commission, and such fact shall be clearly stated in the notice informing the planholder of his right to reinstate his plan. The planholder may avail of this option only once with respect to a particular plan.

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

SEC. 16. *Termination Values.* – A planholder may terminate his in force plan including a lapsed or cancelled plan at any time by giving written notice to the issuer and said planholder shall be entitled to the termination values which shall not be less than the actuarial reserve liability on such plan at the date of termination less a surrender charge which shall not exceed ten percent (10%) of such liability.

CHAPTER IV

TRUST FUND

SEC. 17. *Trust Fund.* – To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established independently with and shall be managed and administered either by a reputable bank, trust company, or any entity authorized to perform trust functions in the Philippines. The trust fund per pre-need category shall at all times be sufficient to cover the actuarial reserve liabilities corresponding to the in force plans under the said category. No withdrawal shall be made from the trust fund except for the payment of the cost of benefits or services, cash surrender/termination values payable to the planholders, the cost of services rendered for the management of the fund, taxes on trust funds and other costs necessary to ensure the delivery of benefits or services.

SEC. 18. *Affiliated Trustees.* – It shall be unlawful for any pre-need company to engage a trustee to manage trust funds established for the benefit of planholders where the trustee and the pre-need company are affiliated, as defined in this Code.

SEC. 19. *Deposits to the Trust Fund.* – (a) The pre-need company shall make monthly deposits to the trust fund in an amount determined by a Commission accredited actuary sufficient to pay the benefits promised under the contract. For plans paid for in full, the pre-need company shall deposit at least sixty-five percent (65%) of said full payment into the trust fund within the time required in this section. For plans paid in installments, the pre-need company shall deposit at least the prescribed minimum percentages set forth below, unless the actuary determines a higher percentage for a pre-need plan whose registration has been duly approved by the Commission.

Payments Received	Deposit to the Trust Fund
Collection on the 1 st 20% of Contract price	---- 25% of amount collected
Remainder of collections of Contract price	---- 75% of amount collected

(b) The trust fund deposits shall be deposited within twenty (20) days from the end of each reference month for payments received from plans whether paid for in full or in installments. Failure to make the trust fund deposit shall subject the pre-need company to administrative liability as provided for under this Code.

(c) Should the Commission discover a deficiency in the trust fund, it shall give notice of the same to the pre-need company, and require said company to make additional deposits to the Trust Fund. The pre-need company shall have thirty (30) days from receipt of notice to make the said deposits and correct the deficiency. Failure to pay the deficiency in spite of notice by the Commission shall subject the pre-need company to payment of a penalty, in addition to other remedies exercisable by the Commission, provided for in this Code.

SEC. 20. *Investment of the Trust Fund.* – The trustee shall have the exclusive management and control over the trust funds in its care, and the right at any time, to sell, convert, invest, change, transfer or otherwise dispose of the assets composing the trust fund. Pursuant thereto, the trustee shall manage the assets in the trust fund in accordance with investment guidelines prescribed by the Commission, setting forth the investments that the trustee will be allowed, and the limits of such investments. Such rules shall ensure that the trustee is enabled to maximize the yields of the trust fund, and, at the same time, the trustee is given sufficient flexibility to manage his investment activities in accordance with the economic climate.

It shall be unlawful for the pre-need company, its affiliates, or any officer, director, or stockholder of at least ten percent (10%) of its outstanding capital stock, or their relatives by consanguinity or affinity up to the fourth civil degree, to influence or direct the trustee in any manner, in its investment of the trust fund. However, the pre-need company may communicate with the trustee to set investment policies and guidelines, so long as the same are in accordance with the provisions of this Code, and rules and regulations issued by the Commission in the implementation hereof.

SEC. 21. *Actuarial Valuation of the Reserve Liabilities of the Pre-Need Company.* – An actuarial valuation to determine all contractual liabilities of the pre-need company shall be made and submitted to the Commission, in accordance with Section 28 of this Code, within one hundred five (105) days from the end of the fiscal year of the pre-need company. The actuarial valuation report shall contain the actuarial assumptions, methodology, formulas used, a summary of the pre-need plans that were subject of the actuarial valuation, and the results of such valuation. The report should be duly certified by an actuary accredited by the Commission. The bases and limits of the assumptions to be used in the valuation of reserves shall be prescribed by the Commission.

SEC. 22. *Trust Fund Deficiencies.* – Upon approval by the Commission of the actuarial computation submitted in the preceding section, any deficiency in the trust fund, when compared to the actuarial reserve liabilities as reported in the actuarial valuation report, shall be funded by the pre-need company within thirty (30) days from such approval. Failure to cover the deficiency in an appropriate manner, within the time required shall subject the pre-need company to the payment of a penalty, in addition to other remedies exercisable by the Commission, provided for in this Code.

Any excess of the trust fund over the actuarial reserve liabilities shall be credited to future deposit requirements.

SEC. 23. *Trust Agreement.* – The agreement creating the trust fund shall be submitted for approval of the Commission and shall contain such provisions as the Commission shall prescribe.

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

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

SEC. 24. *Trust Assets.* – Assets in trust funds established for the benefit of planholders shall at all times remain for the sole benefit of planholders. In no case shall these be used to satisfy claims of

creditors, other than the trustee's fees pertinent to the particular trust fund it manages, and taxes incurred by the said trust fund. No other creditor shall have access to the trust assets for the payment of debts incurred by the pre-need company.

SEC. 25. *Liquidity Reserve Fund.* – The trustee shall at all times maintain a liquidity reserve fund of at least ten percent (10%) of the trust fund but in no case less than the amount of the availing plans for the succeeding year. The reserve fund shall be invested in accordance with investment guidelines issued by the Commission to ensure that pre-need companies are sufficiently liquid to meet its obligations in the immediate future.

SEC. 26. *Limitation of Trust Fund Investment.* – The trustee shall not use the fund to extend any loan to or to invest in the pre-need company, its subsidiaries or affiliates, its directors, officers and stockholders owning ten percent (10%) of the outstanding shares, relatives of said directors, officers and stockholders, whether by consanguinity or affinity, up to the fourth civil degree.

CHAPTER V

ACTUARIES FOR PRE-NEED COMPANIES

SEC. 27. *Required Actuary.* – No pre-need company shall be licensed to do business in the Philippines nor shall any pre-need company doing business in the Philippines be allowed to continue doing such business unless it shall engage the services of either a resident or consulting actuary duly accredited with the Commission who shall, during his tenure of office, be directly responsible for the direction and supervision of all actuarial work connected with or that may be involved in the business of the pre-need company. The Commission shall have the power to set standards for accreditation of actuaries, and provide for the manner in which such accreditation is renewed. It shall further have the power to define the obligations and liabilities of actuaries accredited by it.

CHAPTER VI

REPORTS

SEC. 28. *Actuarial Valuation Report.* – Every pre-need company shall annually make a valuation of all pre-need plans in order to determine its financial stability and solvency, containing such matters enumerated in Section 21 hereof. All such valuation shall be made by an accredited actuary in accordance with actuarially sound and accepted principles and subject to the minimum standard of valuation and guidelines set by the Commission. The results of such valuation shall be reported to the

Commission accompanied by a sworn statement of opinion of the company's resident actuary or consulting actuary within one hundred five (105) days after the end of each fiscal period.

SEC. 29. *Annual Statement.* – Every pre-need company shall terminate its fiscal period on the thirty-first (31st) day of December every year, or its chosen fiscal year. Within one hundred five (105) days after the calendar or fiscal year, the pre-need company shall render to the Commission an audited statement signed and sworn to by the chief officer and accredited actuary of such company in accordance with a uniform accounting system that shall be prescribed by the Commission showing in such form and details, the exact condition of its affairs.

Any material entry in the statement which is found to be false shall constitute a violation of this Code and the officer signing such statement shall be subject to the penalty provided for under this Code.

SEC. 30. *Annual Statement of the Trust Fund.* – Every pre-need company shall file with the Commission an annual statement of its trust fund for each type of plan. Such statement shall be in a form prescribed or approved by the Commission and shall include details as to all of the income, disbursements, assets and liability items of and associated with the said trust fund accounts. Said statement shall be made under oath of two (2) officers of the company and shall be filed simultaneously with the annual statement required by the preceding Section.

SEC. 31. *Publication of Annual Statement.* – Within thirty (30) days after receipt of the annual statement approved by the Commission, every pre-need company shall publish in two (2) newspapers of general circulation a full synopsis of its annual financial statement, including the trust fund annual statement showing fully the conditions of its business, and setting forth its resources and liabilities in a standardized format to be designed by the Commission.

CHAPTER VII

FINANCIAL ACCOUNTING STANDARDS

SEC. 32. *Uniform Chart of Accounts.* – Pre-need plans shall maintain an accounting system in accordance with a Uniform Chart of Accounts to be prescribed by the Commission.

SEC. 33. *Margin of Solvency.* – A pre-need company doing business in the Philippines shall at all times maintain a margin of solvency, which shall be the difference between the company's "conforming assets" and "aggregate indebtedness" divided by its "aggregate indebtedness", of at least ten percent (10%). For purposes of this section, the term "conforming assets" shall include the pre-need company's trust fund, cash and cash equivalents, marketable securities, real property, other assets that

are permissible as investments in the trust fund. "Conforming assets" shall exclude installment contract receivables, deferred commissions, pre-operating expenses, prepaid expenses, deferred charges, and other intangible assets. The Commission may assign a value to certain asset classes, such that they are weighted differently for purposes of the calculation required by this Section, and may amend by rule the list of "conforming assets." The term "aggregate indebtedness" shall include the pre-need company's actuarial reserve liabilities, benefits payable, accounts payable, accrued expenses, taxes payable, loans payable, and notes payable. "Aggregate indebtedness" shall exclude estimated benefit provision in installment contract receivables (ICRs), unrealized gross income in ICRs and loans and advances from affiliated persons.

SEC. 34. *Distribution of Profits.* – No pre-need company shall declare or distribute any dividend on its outstanding stocks nor buy back any of its outstanding stocks except upon approval by the Commission, in accordance with conditions it may prescribe.

CHAPTER VIII CLAIMS SETTLEMENT

SEC. 35. *Unfair Claims Settlement Practices.* – (a) No pre-need company shall refuse, without just cause, to pay or settle claims arising under coverages provided by its plans, nor shall any such company engage in unfair claim settlement practices. Any of the following acts by a pre-need company, if committed without just cause, shall constitute unfair claims settlement practices:

- (1) Knowingly misrepresenting to claimants pertinent facts or plan provisions relating to coverages at issue;
- (2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its plan;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its plan;
- (4) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear; or
- (5) Compelling planholders to institute suits or recover amounts due under its plan by offering without justifiable reason substantially less than the amounts ultimately recovered in suits brought by them.

(b) Evidence as to the number and types of valid and justifiable complaints to the Commission against a pre-need company shall be deemed admissible in an administrative or judicial proceeding brought under this Section.

(c) If it is found after notice and an opportunity to be heard, that a pre-need company has violated this Section, each instance of noncompliance with paragraph (1) may be treated as a separate violation of this Section and shall be considered sufficient cause for the suspension or revocation of the company's license and operation.

SEC. 36. *Payment of Plan Proceeds.* – The proceeds of the plan shall be paid immediately upon maturity of the policy, unless such proceeds are made payable in installments or as an annuity, in which case the installments or annuities shall be paid as they become due. Refusal or failure to pay the claim within fifteen (15) days from maturity or due date will entitle the beneficiary to collect interest on the proceeds of the plan for the duration of the delay at the rate twice the legal interest unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

SEC. 37. *Jurisdiction.* – The Commission, shall have jurisdiction to hear and decide cases involving claims arising from any loss, damage or liability for which a pre-need company may be answerable under the pre-need contract. In case of any litigation for the enforcement of any pre-need contract, it shall be the duty of the Commission to make a finding as to whether the payment of the claim of the planholder has been unreasonably denied or withheld. In the affirmative case, the pre-need company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the planholder or his beneficiary by reason of such unreasonable denial or withholding of payment plus interest on the amount of the claim due the planholder or his beneficiary, from the date the plan is filed until the claim is fully satisfied: *Provided*, That the failure to pay any such claim within the time prescribed in said sections shall be considered *prima facie* evidence of unreasonable delay in payment and subject to administrative sanctions provided in this Code. Proceedings for the adjudication of claims shall proceed in accordance with the provisions of Section 416 of the Insurance Code, insofar as the same is applicable under the circumstances.

CHAPTER IX

EXAMINATION OF PRE-NEED COMPANIES

SEC. 38. *Keeping of Records.* – The Commission shall require every pre-need company to keep its books, records, accounts and vouchers in such manner that the Commission's authorized representatives may readily verify the company's annual statements and ascertain whether the company

is solvent and has complied with the provisions of this Code or the circulars, instructions, rulings or decisions of the Commission.

SEC. 39. *Examination.* – The Commission shall at least once a year and whenever it considers that the public interest so demands, cause an examination to be made into the affairs, financial condition and method of business of every pre-need company, and of any other person, firm or corporation managing the trust fund or affairs and/or property of such pre-need company. Such examination shall be carried in a manner prescribed by the Commission by rule.

CHAPTER X

PLANHOLDERS' PROTECTION FUND

SEC. 40. *Establishment of Planholders' Protection Fund.* – There is hereby created a Planholders' Protection Fund (Protection Fund), which shall be used for the payment of claims against a pre-need company remaining unpaid by reason of insolvency of such company. The Protection Fund shall consist of all payments made thereto by pre-need companies. The Protection Fund shall be held and administered by the Commission in accordance with rules adopted by it.

SEC. 41. *Custodian of the Planholders' Protection Fund.* – The Treasurer of the Philippines shall be the custodian of the Fund, and all disbursements shall be made by the Treasurer of the Philippines upon vouchers signed by the commissioner or his deputy, as hereinafter provided. Sixty percent (60%) of the moneys of said Fund may be invested by the commissioner only in bonds or other evidences of debt of the Government of the Philippines or its political subdivisions or instrumentalities. The commissioner may sell any of the securities in which the Fund is invested, if advisable, for its proper administration or in the best interest of such Fund.

SEC. 42. *Administration Expenses.* – The expense of administering the Protection Fund shall be paid out of such fund. The commissioner shall serve as administrator of the Fund without additional compensation. Expenses incurred in the performance of his duties in connection with said fund may be allowed and paid from the Fund. The compensation of those persons employed by the commissioner shall be deemed an administration expense payable from the Fund. The commissioner shall include in his annual report to the Secretary of Finance a statement of the expenses of administration of the Fund for the preceding year.

SEC. 43. *Role of the Commissioner.* – The commissioner may adopt, amend and enforce all reasonable rules and regulations necessary for the proper administration of the Fund. In the event any pre-need company shall fail to make any payment required under this Chapter, or that any payment is

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

CHAPTER XI

SUSPENSION OR REVOCATION OF AUTHORITY

SEC. 44. *Suspension; Grounds.* – If the Commission is of the opinion upon examination or other evidence that any pre-need company is in an unsound condition, or that it has failed to comply with the provisions of law or regulations obligatory upon it, or that its condition or method of business is such as to render its proceedings hazardous to the public or to its planholders, or that its paid-up capital stock is impaired or deficient, or that the margin of solvency required of such company is deficient, the Commission is authorized to suspend or revoke all certificates of authority granted to such pre-need company, its officers and agents, and no new business shall thereafter be done by such company or for such company by its agent in the Philippines, while such suspension, revocation or disability continues or until its authority to do business is restored by the Commission. Such suspension or revocation of license shall be done by the Commission after due hearing called for the purpose. Before restoring such authority, the Commission shall require the company concerned to submit to him a business plan showing the company's estimated receipts and disbursements, as well as the basis therefor, for the next succeeding three (3) years.

CHAPTER XII

APPOINTMENT OF CONSERVATOR

SEC. 45. *Conservator.* – (a) If at any time before or after, the suspension or revocation of the license of the pre-need company and/or the registration of pre-need plans as provided in the preceding chapter, the Commission finds that such company is in a state of continuing inability or unwillingness to

maintain a condition of solvency or liquidity deemed adequate to protect the interest of planholders and creditors, the Commission may appoint a conservator to take charge of the assets, liabilities, and the management of such company, collect all moneys and debts due said company and exercise all powers necessary to preserve the assets of said company, reorganize the management thereof, and restore its viability. The said conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the said company, and such other powers as the Commission shall deem necessary.

(b) The conservator appointed shall report and be responsible to the Commission until such time as the Commission is satisfied that the pre-need company can continue to operate on its own. The conservator shall recommend an appropriate trust entity to continue the trustee functions, and the pre-need company may resume operations upon conditions imposed by the Commission, among them, the appointment of the trustee chosen by the conservator. Such trustee may only be discharged upon showing of due cause by the pre-need company. The conservatorship shall be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that continuance in business of the pre-need company would be hazardous to planholders and creditors. In such case, it shall order the liquidation of the pre-need company and proceed in accordance with this Code.

(c) The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done in good faith in the exercise or in connection with the exercise, of the powers conferred on the conservator.

CHAPTER XIII

PROCEEDINGS UPON INSOLVENCY

SEC. 46. *Proceedings in Receivership.* – (a) Whenever upon examination or other evidence, it shall be disclosed that the condition of any pre-need company doing business in the Philippines is insolvent, or that its continuance in business would be hazardous to its planholders and creditors, the Commission shall forthwith order the company to cease and desist from transacting business in the Philippines. The Commission shall designate a receiver to immediately take charge of all its assets and liabilities, and to administer the same for the benefit of its planholders and creditors, and exercise all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the pre-need company. The powers of the receiver shall be limited to the

management of the pre-need company. Trustees of pre-need companies under receivership may continue to exercise all powers over the trust funds under their control.

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

(c) The receiver or the liquidator, as the case may be, designated under the provisions of this Chapter, shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on such receiver or liquidator.

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

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

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

SEC. 47. *Commission Power to Assume Trustee Functions.* – In cases where the Commission has ordered the liquidation of the pre-need company, the Commission may immediately take custody of the trust funds established by the pre-need company, and the trustee shall forthwith deliver custody and an accounting of the same. Henceforth, the Commission shall have full power and control over the trust fund, to satisfy the pre-need company's obligations to planholders.

SEC. 48. *Liquidation.* – (a) In cases where the Commission determines that the pre-need company shall be liquidated, it shall have the power to commence insolvency proceedings in the appropriate

court which shall have jurisdiction over the assets of the pre-need company, excluding trust fund assets that have been established for the benefit of planholders.

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

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

(d) Should the planholders be unable to fully recover their claims from the available assets of the trust funds in the hands of the Commission, they shall be entitled to make appropriate recovery from the Planholders' Protection Fund, and the Commission shall determine in every case, the amount to which each planholder shall be entitled from the Planholders' Protection Fund, given the above-enumerated considerations.

(e) After appropriate recovery from the Planholders' Protection Fund, should there remain any deficiency in payments to planholders, the same may be litigated in the court hearing the insolvency case. Planholders in this case shall be considered general unsecured creditors.

CHAPTER XIV

ADMINISTRATIVE SANCTIONS

SEC. 49. *Administrative Sanctions.* – (a) If, after proper notice and hearing, the Commission finds that there is a violation of any of the provisions of this Code or rules issued for the implementation hereof, or that any pre-need company has, in a registration statement, information brochure and its supporting papers and other reports required to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or refused to permit any lawful examination into its affairs, it shall, in its discretion, impose any or all of the following sanctions:

- (1) Cease and desist order;
- (2) Suspension or revocation of its license and registration to sell pre-need plans/contracts;

(3) A fine of not less than Five thousand pesos (P5,000.00) plus an additional Five hundred pesos (P500.00) but not more than Two thousand pesos (P2,000.00) for each day of continuing violation, with a maximum penalty of not more than Five million pesos (P5,000,000.00);

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

(5) Other penalties within the power of the Commission under existing laws: *Provided, however,* That no person, other than the pre-need company, shall be liable as provided therein who shall prove that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not

believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

In determining what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

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

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

First violation – Thirty percent (30%) of the aggregate gross pre-need price of the plans sold;

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

Third violation – Suspension or revocation of license.

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

CHAPTER XV

MISCELLANEOUS PROVISIONS

SEC. 50. Review of Commission Orders or Decisions. – Any person aggrieved by an order or decision of the Commission, whether in relation to its settlement of a claim of a planholder, or in the exercise of its regulatory authority, may appeal the order or decision to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

SEC. 51. *Transitory Provisions.* – All requirements of this Code shall be complied with upon approval of this Code: *Provided, however,* That compliance may be deferred for such reasonable time as the Commission may determine but not to exceed one (1) year from the approval of this Code. Violations committed prior to the effectivity of this Code shall be punished in accordance with the provisions of the laws then in force.

SEC. 52. *Prescription of Actions.* – All criminal actions in violation of any of the provisions of this Code shall prescribe after three (3) years from the discovery of such violation: *Provided,* That such actions shall in any event prescribe after ten (10) years from the commission of such violation.

SEC. 53. *Penalties.* – Any person, natural or juridical, subject to the supervision and control of the Commission by virtue of this Code, who violates any provision of this Code or rules issued for the implementation hereof, for which no penalty is provided, shall be deemed guilty of a penal offense, and upon conviction, shall be punished by a fine not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both, in the discretion of the court. Should the offense be committed by a juridical person, the penalty may in the discretion of the court, be imposed on such juridical entity and upon the officer or officers of the juridical entity responsible for the violation. If such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

SEC. 54. *Effect on Existing Law.* – Any person, natural or juridical, or pre-need plan, authorized, licensed or registered by the Securities and Exchange Commission under the Securities Regulation Code, shall be deemed to have been licensed or registered under the provisions of this Code and shall be governed by the provisions hereof: *Provided, however,* That where any such natural or juridical person is affected by the new requirements of this Code, such person or plan shall, unless otherwise herein provided, be given a period of one (1) year from the effectivity of this Code within which to comply with the same. The rights and remedies provided by this Code shall be in addition to any and all other rights and remedies that exist under existing laws.

SEC. 55. *Implementing Rules and Regulations.* – The Commission shall adopt such rules and regulations for the proper and effective implementation of this Code within three (3) months from approval hereof. The Commission shall publish the rules and regulations once a week for two (2) consecutive weeks in two (2) newspapers of general circulation.

SEC. 56. *Repealing Clause.* – All acts, laws, executive orders and/or rules and regulations, or any part thereof which are inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SEC. 57. *Effectivity Clause.* – This Code shall take effect upon its approval.

Approved,