

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 199



INTRODUCED BY REPRESENTATIVE ARTHUR C. YAP

EXPLANATORY NOTE

Under the recently enacted Republic Act No. 9829, otherwise known as the Pre-Need Code of the Philippines, *“Pre-need plans” are contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments, contracts or deeds as may in the future be determined by the Commission.*

For the ordinary consumers, pre-need plans refer mostly to the educational plans which they obtain for their children. The most notorious of these plans were the *“anti-inflation”* plans, which allow planholders to pay at present day cost, the usually expensive private college education, but for utilization only when their children go to college, at a much later time.

This *“anti-inflation”* plans were later on deemed to be not feasible. The simplest explanation was that there was something inherently wrong with the actuarial assumptions and computations on such type of pre-need plans.

But this after it victimized, thousands, if not hundreds of thousands, of planholders.

It was perceived to be the culprit behind the fall of giant pre-need companies, who were no longer able to sustain the payment of their beneficiaries. However, it was soon found out the unsound business practices or even malpractices of the pre-need companies were equally to blame.

After several pre-need companies caused the suffering of countless numbers of families, stifled their dreams, and downright murdered the inherent right of their children to a better education and future, **not a single pre-need company, owner, executive, officer, or responsible person, has been punished.**

Very recently, in September 2009, Congress enacted R. A. 9829 or the Pre-Need Code. The passage of this law was deemed as the solution to all of the ills and catastrophes brought about by this problematic industry.

Then the tragedy of Prudentiallife recently surfaced.

Prudentiallife Plans, Inc., or PPI, failed to keep itself afloat after losing its license and permit to sell new plans in 2009. It is now short of at least P10 billion in funds to cover obligations to some 300,000 clients. It was placed under conservatorship, under the authority of the Insurance Commission (IC) since September 2010. This was a year after the Securities and Exchange Commission (SEC) stripped it of its license and disallowed the sale of new plans.

PPI, asked to be allowed to undergo rehabilitation instead of liquidation. It blames the deterioration of its finances to *“an old basket of plans that guaranteed high benefits”* but which were based on *“assumptions that were proven then, but were not sustained due to subsequent events beyond the company’s control”*.

The end result would be the same. Planholders would not be paid, or at least would not receive the benefits as stated under their original plan. Again, the planholders are at the very losing end.

Worse, the planholders would not be able to have recourse under the new Pre Need Code. This is because any offense, which may have been committed against them, were done prior to the enactment of the said new law.

Nevertheless, assuming that the planholders would have recourse under this new law, the Pre-Need Code would not give them the justice that they needed. A mere perusal of its enumerated criminal offenses would reveal that it provides very light penalties for very grave offenses. The only offenses punishable under Section 54 of the said Code are: a) selling or offering to sell, a pre-need plan by unregistered persons; b) an unregistered pre-need plan; c), a pre-need plan by means of false or misleading representation and other fraudulent means; d) committing any negligent act or omission prejudicial or injurious to the planholder; e) any other fraudulent act or omission. These are offenses penalized by imprisonment ranging from only one (1) year to a maximum of six (6) years only.

Moreover, the law places to the discretion of the court, the imposition of the penalty against the officer or officers if a “juridical entity” is responsible for the violation. This is even if an offense under the Code would surely be done by a juridical entity because only corporations are allowed to operate as a pre-need company.

Most important, the law does not also provide for the appropriate grave penalty if it the offense is committed again on massive scale.

What if another College Assurance Plan, Pacific Education Plan, Legacy or Prudentiallife pre-need disaster occurs?

Surely, even under the Pre-Need Code, no person shall be aptly penalized for such a dreadful offense.

Under this proposed measure, the Pre-Need Code would be amended to include the offense of economic sabotage by selling pre need plans by means of false or misleading representation and other fraudulent means, when it is committed by a syndicate or in large scale.

It shall be deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is committed in large scale if committed against five (5) or more persons individually or as a group.

It will be considered as a non-bailable capital offense. Thus not only would the offender be meted by life imprisonment if found guilty, a mere finding of prima facie evidence during preliminary investigation would already land the offender in jail.

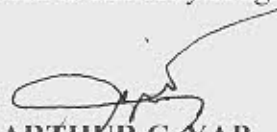
And, selling a fraudulent pre-need plan would be very easy to prove. Under this measure, the failure of a pre-need company to pay for the benefits under the pre-need plan after its maturity, for any reason whatsoever, whether or not under a plan that is approved by the IC, **shall constitute prima facie evidence of false, misleading representation or fraud.**

The owners, executives and officers of the large corporate pre-need companies can no longer be reckless because they would also be held criminally liable. This is as long as they are officers having control, management or direction of the pre-need company.

Finally, the IC, cannot also collude with the pre-need companies to approve pre-need plans that are inherently defective. This is because if the beneficiaries cannot be paid are under a pre-need plan of a company that is approved by the Commission, and such complainants number more than thirty percent (30%) of all the beneficiaries or maturing planholders of the pre-need company, the officers of the Commission responsible for the approval of the said pre-need plan, shall be held liable for negligence or omission under Paragraph d) of Section 54.

These pre-need companies have long run amok and committed not just grave crimes against their thousands of planholders, but economic sabotage against the State. It is high time to write *finis* to this.

It is in this view that the immediate passage of the bill is earnestly sought.


ARTHUR C. YAP
Representative

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 199

INTRODUCED BY REPRESENTATIVE ARTHUR C. YAP

AN ACT
DEFINING THE OFFENSE OF ECONOMIC SABOTAGE
THROUGH THE SOLICITING, SELLING OR OFFERING TO
SELL A PRE-NEED PLAN BY MEANS OF FALSE OR
MISLEADING REPRESENTATION AND OTHER FRAUDULENT
MEANS, AMENDING FOR THE PURPOSE SECTION 54 OF
REPUBLIC ACT NO. 9829, OTHERWISE KNOWN AS THE PRE-
NEED CODE OF THE PHILIPPINES, AND FOR OTHER
PURPOSES

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

1 **SECTION 1. *Short Title.*** – This Act shall be known as the “Pre-Need Economic
2 Sabotage Act of 2013”.

3 **SECTION 2. *Declaration of Policy.*** – It is hereby declared the policy of the State
4 to regulate the establishment of pre-need companies and to prevent practices prejudicial
5 to public interest and provide for the utmost protection of planholders.

6 **SECTION 3. *Amendment of Section 54 of Republic Act No. 9829, Otherwise***
7 ***Known as the Pre-Need Code of the Philippines.*** – Section 54 of Republic Act No.
8 9829, otherwise known as the Pre-Need Code of the Philippines, is hereby amended, to
9 read as follows:

10 "SEC. 54. Criminal Penalties. – The following acts are criminal in
11 nature:

12 Xxx

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

6 **THE FAILURE OF A PRE-NEED COMPANY TO PAY FOR**
7 **THE BENEFITS UNDER THE PRE-NEED PLAN AFTER ITS**
8 **MATURITY, FOR ANY REASON WHATSOEVER, WHETHER**
9 **OR NOT UNDER A PLAN THAT IS APPROVED BY THE**
10 **COMMISSION UNDER THIS ACT, SHALL CONSTITUTE PRIMA**
11 **FACIE EVIDENCE OF FALSE, MISLEADING**
12 **REPRESENTATION OR FRAUD.**

13 **THE OFFENSE UNDER THIS PARAGRAPH, WHEN**
14 **COMMITTED BY A SYNDICATE OR IN LARGE SCALE, SHALL**
15 **BE CONSIDERED AN OFFENSE INVOLVING ECONOMIC**
16 **SABOTAGE, AND SHALL BE CONSIDERED AS A CAPITAL**
17 **OFFENSE. IT SHALL BE DEEMED COMMITTED BY A**
18 **SYNDICATE IF CARRIED OUT BY A GROUP OF THREE (3) OR**
19 **MORE PERSONS CONSPIRING OR CONFEDERATING WITH**
20 **ONE ANOTHER. IT IS DEEMED COMMITTED IN LARGE**
21 **SCALE IF COMMITTED AGAINST FIVE (5) OR MORE**
22 **PERSONS INDIVIDUALLY OR AS A GROUP.**

23 **THE PERSONS CRIMINALLY LIABLE FOR THIS**
24 **OFFENSE ARE THE OFFICERS HAVING CONTROL,**
25 **MANAGEMENT OR DIRECTION OF THE PRE-NEED**
26 **COMPANY, EVEN IF SUCH BE A JURIDICAL ENTITY.**

27 (d) Any negligent act or omission that is prejudicial or injurious to
28 the planholder shall be penalized by imprisonment of one (1) year and one

1 (1) day to six (6) years and a fine in the amount of Fifty thousand pesos
2 (P50,000.00) to Five hundred thousand pesos (P500,000.00).

3 IF THE BENEFICIARIES OR MATURING
4 PLANHOLDERS UNDER THE SECOND PARAGRAPH OF THE
5 PRECEDING PARAGRAPH (c) CANNOT BE PAID UNDER A
6 PRE-NEED PLAN OF A COMPANY THAT IS APPROVED OR
7 REGISTERED BY THE COMMISSION, AND SUCH
8 COMPLAINANTS NUMBER MORE THAN THIRTY PERCENT
9 (30%) OF ALL THE BENEFICIARIES OR MATURING
10 PLANHOLDERS OF THE PRE-NEED COMPANY, THE
11 OFFICERS OF THE COMMISSION RESPONSIBLE FOR THE
12 APPROVAL OR REGISTRATION OF THE SAID PRE-NEED
13 PLAN UNDER THIS ACT, SHALL BE CONSIDERED TO BE
14 GUILTY OF NEGLIGENCE OR OMMISSION UNDER THIS
15 PARAGRAPH AND SHALL ALSO BE HELD LIABLE FOR THIS
16 OFFENSE.

17 xxx.”

18 **SECTION 4. *Separability Clause.*** - If any provision of this Act, or any parts
19 thereof, is declared unconstitutional, the same shall not affect the validity and effectivity
20 of the other portions.

21 **SECTION 5. *Repealing Clause.*** - All laws, executive orders, presidential
22 decrees, proclamations, rules, regulations, issuances and enactments of parts thereof
23 inconsistent with this Act are hereby repealed or modified accordingly.

24 **SECTION 6. *Effectivity.*** - This Act shall take effect fifteen (15) days from its
25 complete publication in the Official Gazette of in a newspaper of general circulation in
26 the Philippines, whichever comes earlier.

APPROVED.