

# West Virginia Department of Labor

1900 Washington Street, East, Charleston 25305 (304) 348-7890

ARCH A. MOORE, JR.  
Governor



JESS T. SHUMATE  
Commissioner

## NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

### PUBLIC HEARING

AGENCY: West Virginia Department of Labor

RULE TYPE: Legislative Rule

RULE TITLE: Preneed Burial Contract Law

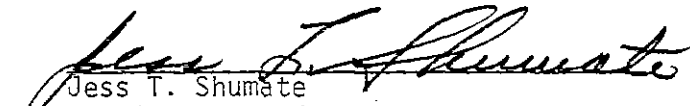
A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10:00 a.m.  
ON June 30, 1986 AT Conference Room A, The Conference Center, 1900  
Washington Street, East, Charleston, West Virginia.

COMMENTS ARE LIMITED TO: Written and Oral

COMMENTS MAY ALSO BE MAILED TO: West Virginia Department of Labor, Office  
of the Commissioner, 1800 Washington Street, East, Charleston, West Virginia  
25305.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE  
HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A  
REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
Jess T. Shumate  
Commissioner of Labor

OFFICE OF JESS T. SHUMATE  
SECRETARY OF STATE

1986 MAY 29 AM 10:24

FILED

# West Virginia Department of Labor

1900 Washington Street, East, Charleston 25305 (304) 348-7890

ARCH A. MOORE, JR.  
Governor



JESS T. SHUMATE  
Commissioner

May 28, 1986

FILED  
1986 MAY 28 PM 3:20  
OFFICE OF THE COMMISSIONER  
SECRETARIAT OF STATE

The Honorable Ken Hechler  
Secretary of State  
Building 1, Suite 157-K  
Capitol Complex  
Charleston, West Virginia 25305

Dear Mr. Hechler:

Chapter 47, Article 14, Section 5 - The Preneed Burial Contract Act requires the Commissioner of Labor to promulgate rules and regulations in order to implement the Code. It is therefore necessary to file these regulations in the State Register as soon as possible.

This law was passed by the 1983 Legislature, effective July 1, 1983. However, due to litigation in Federal Court the law could not be enforced until a restraining order was lifted April 1986.

Enclosed are three copies of the said rules and regulations and the Notice of Public Hearing. Please stamp and return one copy of each to our office, and file both documents in the State Register.

The final filing of the rules, of course, are pending the results of the upcoming public hearing.

Thank you for your cooperation in this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Jess T. Shumate".  
Jess T. Shumate  
Commissioner of Labor

JTS/AB/dp

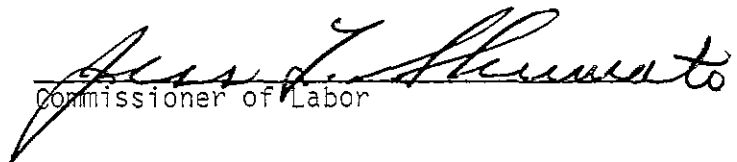
Enclosures

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

The West Virginia Department of Labor announces a public hearing on proposed Legislative Rules pertaining to the Preened Burial Contract Law, Chapter 47, Article 14 of the West Virginia Code. This hearing will be held on June 30, 1986 at 10:00 a.m. in the Conference Center, Conference Room A, Building 7, 1900 Washington Street, East, Charleston, West Virginia.

Both oral and written comments will be accepted at the hearing. Those unable to attend the hearing may submit written comments prior to the hearing by mailing to: West Virginia Department of Labor, Office of the Commissioner, 1800 Washington Street, East, Charleston, West Virginia 25305.

The issues to be heard at this hearing shall be limited to the proposed rules.

  
Commissioner of Labor

May 28, 1986  
Date

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1986 MAY 28 PM 3:20  
OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF LABOR  
CHAPTER 47-14  
SERIES XV

Title: Preneed Burial Contract Rule.

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WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF LABOR  
Chapter 47-14  
Series XV

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1986 MAY 28 PM 3:20  
OFFICE OF THE SECRETARY OF STATE

Title: The Preneed Burial Contract Rules.

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Section 1 - General

1.01. Scope - These regulations establish general recordkeeping and reporting requirements, limits on the amount of funds retained, fidelity bond requirements, and notification procedures for the enforcement of the Preneed Burial Contract Law, §47-14 of the State Code.

1.02. Authority - West Virginia Code, Chapter 47, Article 14, Section 9.

1.03. Filing Date -

1.04. Effective Date -

Section 2 - General Purpose and Definitions

2.01. General Purposes - The general purpose of these regulations is to establish a system of recordkeeping and reporting requirements to insure that the department may maintain supervision over transactions involving contracts and the funds collected, maintained, and expended, pursuant to a contract. The regulations establish limits on the amount of funds that may be retained by a seller from amounts collected and establish the minimum amounts for fidelity bonds.

2.02. Definitions

(a) Contract Amount - Means the price specified in a preneed burial contract for funeral or burial goods or services, but does not include incidental charges thereto.

(b) Funeral or Burial Goods - Means all merchandise supplied in regard to burial or entombment in a mausoleum, or interment in a columbarium, or merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative or final disposition of human remains, and includes, but is not limited to: caskets, chapel vaults, crypt-a-beds, rental caskets, cremation cases or containers, or any other receptacle in which human remains are placed for protection or practical utility, and any and all garments of clothing or merchandise with the express or implied use for the dressing or preparation of human remains, as specified in a preneed burial contract.

(c) Funeral Service - Means those services usually performed by a funeral service licensee, including, but not limited to: the transportation, care, preparation, or display of human remains, and coordinating of rites, ceremonies, interment and committal details, bookkeeping and legal matters in con-

nection with the disposition of human remains, as specified in a preneed burial contract.

(d) Costs of Goods or Services - Means the cost of the goods or services at the time of death of the contract beneficiary.

### Section 3 - Fidelity Bond Requirements

3.01. Fidelity Bond Required - Any person who applies for, receives or holds a Certificate of Authority to provide, sell or make available preneed burial contracts in the State of West Virginia shall file with, and make payable to the West Virginia Department of Labor, a bond with corporate surety conditioned upon the faithful observance of all the provisions of Chapter 47, Article 14 of the State Code, as amended, and the payments of any amounts owed to any contract buyer who cancels a contract, pursuant to the provisions of Chapter 47, Article 14 of the State Code, as amended.

The failure to file or maintain a bond of the required sum or the cancellation of such bond will effect the immediate revocation of, or denial or, a Certificate of Authority.

3.02. Fidelity Bond Amount - A fidelity bond amount shall be ten percent of the total dollar amount of the contract funds in trust, pursuant to the provisions of the law, or ten thousand dollars, whichever amount is greater.

A Certificate of Authority holder must renew the amount of the fidelity bond whenever the amount of the bond does not satisfy the requirements specified herein.

### Section 4 - Requirements for Sell of Preneed Burial Contracts

4.01. License Required - No contract seller or agent or employee of a Certificate of Authority holder may sell preneed burial contracts in the State of West Virginia unless they have registered with the West Virginia Department of Labor and have obtained a license to sell such contracts.

4.02. License Expiration Date - A license to sell preneed burial contracts shall expire one year following the date of issue by the Department of Labor.

#### 4.03. General Requirements

(a) Whenever a licensee is making any solicitation or sale of a preneed burial contract, the licensee shall have in his or her possession the license issued by the Department of Labor. Such license must be presented upon request to a representative of the West Virginia Department of Labor.

(b) The seller's license number must be provided on all preneed burial contracts sold by the licensee and on all written correspondence to the West Virginia Department of Labor.

(c) Any licensee who ceases to sell preneed burial contracts or ceases to represent a Certificate of Authority holder shall notify the Department of Labor in writing within ten days.

(d) Licenses to sell preneed burial contracts are not transferable.

(e) Fees collected for licenses to sell or for Certificates of Authority shall not be refunded if the license or certificate is cancelled, revoked or suspended.

#### Section 5 - Recordkeeping and Reporting Requirements

5.01. Correspondence - All correspondence relating to preneed burial contracts with the Department of Labor shall be in writing and include a reference to the Certificate of Authority holder's registration number.

5.02. Notice of Contract Sale and Contract Registration - When a preneed burial contract is sold, the Certificate of Authority holder shall, within ten days, file a copy of the contract with the Department of Labor so that the contract may be registered and the buyer notified of the registration.

The Certificate of Authority holder shall submit the five-dollar fee collected from the contract buyer to the Department of Labor in the form of a check or money order made payable to the West Virginia Department of Labor.

5.03. Notice of Contract Amendments or Cancellation - Whenever a preneed burial contract is cancelled or amended by the buyer, the Certificate of Authority holder shall notify the department within ten days of the action and provide a detailed explanation of the amendments to the contract, or if a contract is cancelled, a copy of the buyer's notice of cancellation and a statement by the certificate holder that the funds in trust have been refunded.

5.04. Notice of Contract Default by the Buyer - If a contract buyer is in default on payments or installments on any contract, the Certificate of Authority holder shall notify the contract buyer thirty days before the default deadline that the buyer has thirty days in which to pay the amount of monies in default. Such notice shall be in writing, and a copy filed within ten days of the notice date with the Department of Labor.

If the seller cancels a contract, the action must be reported to the Department within ten days of the cancellation. The report must include a copy of the cancellation notice to the buyer, and a statement from the seller indicating that the funds in trust have been refunded.

5.05. Termination of Contracts - Whenever a contract is terminated, the certificate holder shall provide a notarized statement to the trustee of the funds, that to the knowledge of the certificate holder, the goods or services described in the contract have been fully provided and performed, and include a certified photostatic copy of the death certificate of the contract beneficiary. No action may be taken by a trustee until the trustee has received satisfactory evidence that the contract has been fully performed.

The Certificate of Authority holder shall, within ten days of the termination of the contract, provide the following information to the Department of Labor so that a contract closing may be recorded.

(a) The contract number and beneficiary's name;

(b) A copy of the beneficiary's death certificate and a copy of the statement to the trustee, giving notice to the trustee that all of the goods or services described in the contract have been provided; and

(c) A statement that the funds were disbursed in accordance with the law, and specify if the principal and interest were used to defray additional costs of the goods or services above the contract amount, or if the remainder of the principal and interest were returned to the estate of the beneficiary or contract buyer.

5.06. Transfer of Contracts - A contract buyer may transfer a contract and the seller's obligations to a transferee by notifying the seller in writing and upon written acceptance by the transferee.

The Certificate of Authority holder shall notify the department, within ten days, of a transfer action and provide the following information:

(a) The contract number and beneficiary's name;

(b) A copy of the transfer request from the contract buyer;

(c) A copy of the acceptance of transfer from the transferee, including the name, address and Certificate of Authority number of the transferee;

(d) A statement by the certificate holder transferring the funds, which specifies the amount transferred and the name, address and location of the trustee that received the funds; and

(e) A written release from the contract buyer of the sellers and trustees liability under the contract upon transfer of the funds.

#### Section 6 - Funds

6.01. Amount of Funds Trused - The seller of a preneed burial contract may retain an amount not to exceed ten percent of the contract amount for business expenses. If less than the full contract amount is received from the buyer, an amount not greater than ten percent of the amount of any payment or installment may be retained by the seller until an amount not greater than ten percent of the contract amount is withheld.

The seller of a preneed burial contract shall fully explain to the buyer the provisions of a contract that involves deductions from installment payments, and provide the buyer with a written statement describing the amount of funds trused per installment and inform the buyer when the deductions will be complete and the total amount deducted.

6.02. Prior Approval of Funds Transferred - A Certificate of Authority holder or a trustee of funds collected pursuant to a preneed burial contract may not transfer funds from the institution where the funds are on deposit without the prior written approval of the Department of Labor.

6.03. Refunds on Terminated Contracts - Whenever the buyer of a contract or the estate of a contract beneficiary is due a refund of money from a Certificate of Authority holder, the full refund must be paid within ten days of the contract termination.

Section 7 - Information to Contract Buyers

7.01. Installment Contracts - Whenever a contract is sold on an installment payment basis, the seller shall comply with state and federal laws relating to consumer credit practices and procedures.

Section 8 - Severability

8.01. Severability - If any provision of these regulations or the application thereto to any employee, firm, Certificate of Authority holder or licensee is held invalid, the invalidity shall not affect other provisions or applications of these regulations, which can be given effect without the invalid provisions or application and, to this end, the provisions of the regulations are severable.