

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142
RULE TYPE: Legislative; CITE AUTHORITY WV Code 47-14;46A-6 & 7
AMENDMENT TO AN EXISTING RULE: YES___ NO XX
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____
TITLE OF RULE BEING AMENDED: _____
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 8
TITLE OF RULE BEING PROPOSED: Administration of Preneed
Burial Contracts

DATE OF PUBLIC HEARING: September 18, 1987 TIME: 10:00am
LOCATION OF PUBLIC HEARING: House of Delegates Judiciary Committee Room
3rd Floor, Main Unit, Room 418
State Capitol
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH XXX

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Attorney General
Consumer Protection
812 Quarrier St
6 th Floor
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

J. R. I. I.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Proposed legislative rule pertaining to the administration of Preneed Burial Contracts.

Type of Rule: Legislative Interpretive Procedural

Agency Attorney General Address 812 Quarrier St., 6th Floor
Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$22,750	\$ -0-	\$22,750	\$45,500	45,500
Personal Services	18,000		18,000	36,000	36,000
Current Expense	2,250		2,250	4,500	4,500
Repairs and Alterations					
Equipment	2,500		2,500	5,000	5,000
Other					

2. Explanation of above estimates. Administration under this Rule and the related Preneed Burial Act, W. Va. Code §§ 47-14-1 et seq. will require part of an attorney's time, a full-time auditor and a part-time secretary. In 1987-88 there will not be full implementation until the year is one-half over.

3. Objectives of these rules: Implement the Preneed Burial Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.


Persons involved in the sale or provision of preneed funeral contracts will fund these activities through payment of fees and expenses

C. Economic Impact on Citizens/Public at Large.

None

Date August 19, 1987

Signature of Agency Head or Authorized Representative



Deputy Attorney General
Director, Consumer Protection Division



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8888

August 19, 1987

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: Attorney General

RULE TYPE: Legislative Rule

RULE TITLE: Proposed legislative rule pertaining to the
administration of Preneed Burial Contracts.

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10
a.m. ON September 18, 1987, AT House of Delegates Judiciary
Committee Room, 3rd Floor, Main Unit, Room 418, State Capitol,
Charleston, West Virginia 25305

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH

COMMENTS MAY ALSO BE MAILED TO: 812 Quarrier Street, Sixth
Floor, Charleston, West Virginia 25301

THE DEPARTMENT REQUEST 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.


THOMAS L. HINDES, Director

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 47-14, 46A-6, AND 46A-7
SERIES 8

1987 AUG 19 3 4 44
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Title: Proposed legislative rule pertaining to the administration of Preneed Burial Contracts.

Section 1. General Provisions.

1.1 Rule Designation - This rule is legislative.

1.2 Scope - This rule sets forth certain requirements for sellers of preneed burial contracts, the contract contents, and other matters pursuant to the Preneed Burial Contracts Act, W. Va. Code Sections 47-14-1 et seq.

1.3 Authority - The authority for this regulation is W. Va. Code Sections 47-14-9; 46A-6-103; and 46A-7-102(1)(e).

1.4 Filing Date -

1.5 Effective Date -

1.6 Repeal of Former Rule - Not Applicable.

1.7 Penalties - Except as indicated, a violation of the provisions of this rule shall constitute a violation of the provisions of the Preneed Burial Contracts Act, W. Va. Code Sections 47-14-1 et seq., and shall constitute an "unfair or deceptive act" as prohibited by W. Va. Code Section 46A-6-104, thereby triggering appropriate remedies provided for violations of that section.

1.8 Construction - These rules are to be liberally construed to effectuate the provisions of the Preneed Burial Contract Act, W. Va. Code Sections 47-14-1 et seq., and the Consumer Credit and Protection Act, W. Va. Code Sections 46A-1-101 et seq.

1.9 Severability - If, for any reason, any section, subsection, phrase, clause, or provision of this rule or the application thereof is held unconstitutional or invalid, such unconstitutionality or invalidity shall not

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affect other sections, subsections, phrases, clauses, or provisions or its application to any other person or circumstance, and, to this end, each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Section 2. Definitions.

2.1 "Annual report" means the report required to be filed with the department under the provisions of W. Va. Code 47-14-3.

2.2 "Burial goods" means all goods supplied in regard to burial, entombment in a mausoleum, or internment in a columbarium, but does not include those services performed by a cemetery when acting only as a cemetery, or the sale by any person of cemetery lots, land, or interests therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults, or vaults constructed or to be constructed in a mausoleum or columbarium. However, when any person, by the same contract, sells burial goods and other items or services excluded from this definition, such a contract shall be considered a "preneed funeral contract" within the meaning of this Rule and Chapter 47, Article 14 of the Code.

2.3 "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by an person which will be used in connection with a funeral or alternative for disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or in the sale by the cemetery of cemetery lots, land, or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium. However, when any person, by the same contract, sells funeral goods and other items or services excluded from this definition, such a contract shall be considered a "preneed funeral contract" within the meaning of this Rule and Chapter 47, Article 14 of the Code.

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2.4 "Funeral services" means those services usually performed by a funeral service licensee, including, but not limited to, care and preparation of human remains and coordinating rites, ceremonies, and processions in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements. However, when any person, by the same contract, sells funeral services and other items or services excluded from this definition, such a contract shall be considered a "preneed funeral contract" within the meaning of this Rule and Chapter 47, Article 14 of the Code.

2.5 "Reporting year" means the twelve month period commencing on January 1 of any year and ending at midnight of December 31 of the same year.

2.6 All other terms used in this Rule shall be defined as those terms are defined in W. Va. Code Section 47-14-2.

Section 3. Annual Report.

3.1 Each and every person who applies for renewal of a certificate of authority pursuant to the provisions of W. Va. Code Section 47-14-3 shall be required to make an annual report for each reporting year or portion thereof. Such report shall be due within thirty days after the expiration of any reporting year.

3.2 Each annual report shall contain the following information:

3.2.1 An identification of all outstanding preneed funeral contracts, the dates upon which such contracts were entered, the names of all parties involved in such contracts or having any right under such contracts, the amount paid on such contracts, and the amounts owing on any contracts upon which payments are incomplete, or, with respect to contracts which will be funded by the proceeds of a life insurance or annuity contract for the contract beneficiary, the amount of such insurance or annuity, the insurance agent and insurer, the current beneficiary and the method of payment for such insurance or annuity contract;

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3.2.2 The name of the seller and the name of the provider of services and goods and a statement that the provider has the capacity to perform all of its obligations under its contracts;

3.2.3 A statement that the seller and the person receiving funds paid thereunder have complied with applicable trust requirements of the Preneed Burial Act and this Rule, identifying the present depository or holder of all trust funds with amounts thereof itemized as to each contract. This statement shall also include an accounting for each trust fund, describing all payments to and disbursements from the fund.

3.2.4 Any changes or amendments in any contracts or obligations of the contract seller or provider that have occurred during the reporting year;

3.2.5 The current price list of the provider for funeral goods and services and any other price list employed since the previous annual report; and

3.2.6 A statement respecting all contracts and trust funds which were terminated by performance or cancellation during the reporting year, setting forth the dates of performance or cancellation, the amounts of principle and interest in the trust at such time, all expenditures made from the trust fund and to whom, and the funeral goods, burial goods or funeral services delivered and the price charged.

3.3 No extensions shall be granted for any reporting year unless the holder of a certificate of authority is unable to gather the requisite information to complete the annual report and establishes such inability to the satisfaction of the department. Any such extension shall be for a period and upon such terms as the department, in its discretion, deems appropriate.

Section 4. Application for Certificate of Authority or License; Contents of Application

4.1 No person shall sell, offer for sale, make available or be a provider of a preneed funeral contract

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until such time as he has received a certificate of authority from the department. Employees or agents of persons holding a certificate of authority and who are involved in actually selling preneed funeral contracts must have a license issued by the department. No person shall be eligible to obtain a license to sell preneed funeral contracts unless he or she also holds a certificate of authority or is employed by the holder of a certificate of authority.

4.2 No person, other than a bank, trust company, savings and loan association or other financial institution as provided in W. Va. Code Section 47-14-3(a), may act as a trustee with respect to funds paid or preneed funeral contracts unless he has procured a certificate of authority.

4.3 The department shall prescribe the necessary forms for applying for a certificate of authority or license. These forms shall be used by all applicants.

4.4 Application fees for any certificate of authority or license shall not be refunded upon rejection of any application.

Section 5. Initial Examinations.

5.1 Examination of the records of a holder of a certificate of authority by the department, or at its direction, may occur with or without advance notice of such examination.

5.2 Holders of certificates of authority shall make all books, records, and other information relating to preneed funeral contracts available during regular business hours.

5.3 The department shall be entitled to charge fees and expenses to a holder of a certificate of authority for any examination within a calendar year, including the first such examination, if the examination is prompted by cause, whether or not a court order is obtained. In addition to an hourly fee for the examiner's time in conducting the examination, expenses and other related items, up to a maximum of \$500, shall include:

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5.3.1 Travel expenses assessed at the mileage permitted by the state in using personal automobiles for travel on state business or the expenses incurred by the department in securing a vehicle from the Department of Finance and Administration Motor Pool, or other actual expenses incurred in such travel for securing transportation;

5.3.2 Hotel or lodging expenses as necessary for any examination;

5.3.3 Meals and other services as permitted by travel regulations of the department or the state;

5.3.4 Any other reasonable and necessary expenses incurred as a result of the examination, including, but not limited to: printing, photocopying, long distance telephone tolls, access fees, equipment rental expenses or fees of a court reporter or stenographer for transcribing or reproducing statements or testimony.

5.4 Failure to provide necessary records or submit to any examination or pay the expenses assessed therefore shall result in suspension or revocation of the certificate of authority.

Section 6. Second or Subsequent Examinations.

6.1 When the department has reason to believe that a holder of a certificate of authority or a licensee employed a certificate holder is violating the provisions of the Preneed Burial Act or this Rule, the department may petition the Circuit Court of Kanawha County or the Circuit Court of the county wherein such a holder of a certificate of authority does business for permission to conduct a second or subsequent examination. Such court, if it concludes that the department's determination is not clearly erroneous, shall order an examination of the records or compel the examination of any interested person under oath. The proceedings on such a petition shall be adversary, with notice to all interested parties.

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6.2 The provisions of this Rule are in addition to the investigative powers of the department as provided in W. Va. Code Section 46A-7-111 and are not intended to diminish or qualify such powers.

Section 7. Trust Accounts.

7.1 All funds paid to or collected by any person from a preneed funeral contract shall be deposited in a trust account within thirty days of receipt. The trust account shall be administered: (i) by the provider, contract seller, or person making the preneed funeral contract available, acting as trustee; (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers and located in this state; or (iii) under the terms of a trust instrument entered into with a board of at least three individual trustees as provided in W. Va. Code Section 47-14-8(b).

7.2 No trustee or board of trustees may invest or apply trust funds for the purchase of a contract of insurance on the contract beneficiary's life.

7.3 All trustees shall include in their annual report a statement accounting for fees charged against the trust, which fees shall be subject to review by the department in order to determine whether they are reasonable in amount. Any fees found to be excessive shall be repaid to the trust.

7.4 All trustees, other than national or state banks having trust powers or trust companies, shall obtain a fidelity bond as provided in W. Va. Code Section 47-14-8(b) and file this bond with the department at the time of application for a certificate of authority.

Section 8. Provision of Goods and Services Under
Preneed Funeral Contract at Death of
Contract Beneficiary.

8.1 To the extent that a provider, based on price lists in effect at the contract beneficiary's death, would charge more than the contract price for the goods and

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services provided, the provider may have and use so much of the principal and interest of any trust fund as may be necessary to defray the cost over the contract price. In no event, however, unless the contract has been cancelled as provided in Section 10 of this Rule, shall the provider fail or refuse to make available goods and services of the type for which the contract provides even though the costs exceed the value of the trust fund or other proceeds available for such purpose. The goods and services shall be provided for the amount available in the trust or other proceeds in such a situation. Substitution of goods of equivalent quality and value may be made only after notice to the contract buyer or the next of kin of the beneficiary and only when the provider can demonstrate that the goods described in the contract are unavailable.

8.2 Within thirty days after the death of a contract beneficiary, the trustee, and the provider, contract seller or person who made the a preneed contract available shall file a report with the department, describing the goods and services provided, accounting for all expenditures and disbursements from the trust or other proceeds, justifying by reference to current price lists any increase over the original contract cost and explaining any substitution of goods or services.

8.3 In the event that the contract buyer was not the contract beneficiary, all trust monies or other proceeds not properly applied toward the costs of providing the goods and services shall be returned to the contract buyer or his estate. If the contract beneficiary was also the contract buyer, any such excess shall be paid to the contract beneficiary's estate.

Section 9. Contents and Execution of Contracts.

9.1 All preneed funeral contracts which do not follow such official forms as may be promulgated by the department, shall be in writing and contain the following:

9.1.1 The name and address of the contract buyer and the contract beneficiary, if a different person;

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9.1.2 Any statement required by the provisions of the Truth in Lending Act and Regulation Z (15 U.S.C. 1601, et seq. and 12 C.F.R. 226);

9.1.3 Any Notice of Cancellation required by the provisions of the Cooling Off Period For Door-to-Door Sales Rule (16 C.F.R. 429) or the home solicitation sales provisions of W. Va. Code Sections 46A-2-132 to 135;

9.1.4 Any statement required by the provisions of the Federal Trade Commission Preservation of Consumers' Claims and Defenses rule, 16 CFR 433.

9.1.5 Unless the contract is made irrevocable under the provisions of Section 18 of this Rule, a statement that the person shall have the right to cancel the preneed funeral services contract at any time and receive a refund of all monies paid and the return of any documents or instruments of obligation in the seller's possession; provided that, if any goods or services are being sold under the contract which are not "burial goods," "funeral goods" or "funeral services" as defined in W. Va. Code Section 47-14-2 and the contract seller wishes to retain costs therefore or the ten percent exclusion permitted by W. Va. Code Section 47-14-5, such right of retention and exclusion shall be clearly and conspicuously set forth on the face of the contract in a clause which must be separately acknowledged by the contract buyer.

9.1.6 Statements particularly describing all limitations, terms, and conditions of the contract and all rights and duties of the parties under the contract, including, but not limited to,

9.1.6a The total cost of such contract;

9.1.6b The amount of each periodic payment;

9.1.6c The timing of each periodic payment;

9.1.6d The amount of any finance charge assessed and the rate of assessment of finance charges;

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9.1.6e The total of all payments under the contract including the downpayment;

9.1.6f Whether the seller is taking a security interest in any property in which the contract buyer has any interest;

9.1.6g The name and address of the contract seller and a contract number commencing with the digits of the year such contract was sold and a readily identifiable chronological numbering method;

9.1.6h The existence of and method of calculation of any late charges or deferral charges;

9.1.6i A statement describing the method of funding of the preneed funeral contract if other than through the establishment of a trust fund;

9.1.6j A specific description of the funeral or burial goods and funeral services to be provided, the cost of the goods and services in conformity with the provisions of the Federal Trade Commission's Funeral Practices Rule as in existence on the effective date of this Rule, and the name(s) of all provider(s) for the preneed funeral contract.

9.2 Each and every preneed funeral contract shall be signed by the seller or a representative of the seller and the buyer. Such contract shall be dated as of the time of signing and shall contain all representations made during the sales presentation.

9.3 Each and every preneed funeral contract shall be presented to the buyer prior to execution. The contract buyer shall be entitled to review it prior to execution and to remove such contract from the seller's premises to conduct a review. To that end, any offer contained within a preneed funeral contract shall be valid for five business days from the date of presentation of the offer.

9.4 No preneed funeral contract shall be presented to any buyer unless all spaces have either been filled in or marked through.

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9.5 Upon execution of a preneed funeral contract, the buyer shall immediately be given a copy of the contract.

9.6 After execution, copies of the preneed funeral contract shall be distributed as follows:

9.6.1 One copy to the buyer;

9.6.2 One copy to be retained by the seller;

9.6.3 One copy for the provider;

9.6.4 One copy for the contract beneficiary if other than the buyer and such distribution is desired by the buyer;

9.6.5 One copy for the trustee, if a separate party; and

9.6.6 One copy to be provided to the department within ten days of execution.

Section 10. Default by the Contract Buyer.

10.1 A preneed funeral contract and any trust associated therewith may be terminated by the contract seller only upon default by the buyer. If a contract buyer is in default for more than one hundred and eighty days with respect to any payment or installment due on or pursuant to the contract, the seller may, on ten days prior written notice, cancel the contract. After cancellation, the seller must refund all funds in the trust fund, including monies paid for items which are excluded from the definitions of burial goods, funeral goods and services and which are not subject to the buyer's right of cancellation under W. Va. Code Section 47-14-6; provided that the seller may retain up to ten percent of the monies paid as liquidated damages if such a deduction was not made at the time the contract was entered.

10.2 If payment for a preneed funeral contract is not complete at the time of the contract beneficiary's death and the seller has not cancelled the contract as aforesaid,

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or if a life insurance or annuity contract intended to fund the preneed funeral contract has lapsed, the heirs or personal representative of the beneficiary may pay the balance remaining on the preneed funeral contract and obtain performance as provided.

Section 11. Sale or Transfer of Certificate of Authority or License Prohibited.

11.1 No holder of a certificate of authority or license to sell preneed funeral contracts may sell or transfer such certificate of authority or license to any other person.

11.2 No holder of a certificate of authority or license to sell preneed funeral contracts shall transfer such certificate of authority or license to another business location without first notifying the department.

11.3 In the event that the holder of a certificate of authority is other than a natural person, the department shall be notified of any sale or transfer of the stock or assets of such an entity. Any substantial change in corporate ownership shall, in the department's discretion, necessitate application for a new certificate of authority.

Section 12. Multiple Price Lists Prohibited.

12.1 No seller, provider, or other person who makes preneed funeral contracts available to the public shall maintain multiple price lists for the provision of the same goods and services.

12.2 Each seller, provider, or other person who makes preneed funeral contracts available to the public shall maintain a record copy of each price list for goods and services offered under any preneed funeral contract and set forth on such price list the duration or time period to which each list is applicable. Such record copy shall be retained in a fire resistant and secure location.

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Section 13. Disciplinary Proceedings.

13.1 In addition to the provisions of W. Va. Code Section 47-14-11, a holder of a certificate of authority or licensee may face disciplinary action for:

13.1.1 Violating the provisions of this Rule;

13.1.2 Violating the provisions of the Federal Trade Commission's Funeral Industry Practices Rule, 16 C.F.R. Part 453, or the provisions of the Federal Trade Commission Cooling-Off Period For Door-To-Door Sales Rule, 16 C.F.R. Part 429;

13.1.3 Violating the provisions of any consumer protection or disclosure statute or regulation or violating any statute or regulation concerning funeral industry practices; or

13.1.4 Failure to submit to any examination.

13.2 The penalties which may be imposed administratively by the department for violating the provisions of this Rule shall include one or more of the following:

13.2.1 Denial of any application for a certificate of authority or license;

13.2.2 Revocation or suspension of a certificate of authority or license;

13.2.3 Imposition of a fine in the amount not to exceed one thousand dollars for each county in which a violation occurred;

13.2.4 Issuance of a reprimand; or

13.2.5 Imposition of a period of probation upon the holder of a certificate of authority or license under such terms and conditions as may be deemed appropriate by the department.

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13.3 In the event that the department has reason to believe that the holder of a certificate of authority or license has committed willful or widespread violations of this Rule or the Preneed Burial Act, is or may be insolvent or otherwise poses a threat to the security of trust assets, the department shall immediately suspend the certificate of authority or license upon notice to the holder and prior to any hearing; provided that the holder in such circumstances shall be entitled to an expedited hearing.

Section 14. Insolvency.

14.1 If an audit reveals that a trust account or trustee appears to be insolvent, the department shall have the authority, in the reasonable exercise of discretion, to find a substitute trustee to undertake the management of the trust funds.

14.2 For the purposes of this Section, "insolvency" means the occasion or occurrence of any event or series of events whereby the current trust obligations exceed the total current assets of the trust.

Section 15 Insurance or Annuity Funded Preneed Funeral Contracts.

15.1 A contract of insurance on the preneed funeral contract beneficiary's life or an annuity contract for such beneficiary may be purchased by a preneed funeral contract buyer as a means of funding a preneed funeral contract. To the extent that monies, other than insurance premiums forwarded to an insurance company, are paid to a provider, contract seller or a person who makes a preneed funeral contract available by or on behalf of a contract beneficiary, the trust provisions of the Preneed Burial Act and this Rule are fully applicable thereto.

15.2 If a contract for the provision of burial goods or funeral goods or services is made by a person who also sells or receives any benefit, directly or indirectly, from a contract of insurance on the preneed funeral contract

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beneficiary's life or annuity contract for such beneficiary, the contract providing for burial goods or funeral goods or services is a preneed funeral contract and the provisions of the Preneed Burial Act and this Rule are fully applicable to such contract and person, including the Five Dollar charge provided in W. Va. Code Section 47-14-8(f).

15.3 No contract of insurance on the preneed funeral contract beneficiary's life or annuity contract for such beneficiary may be made payable to a provider, contract seller, person who makes a preneed funeral contract available, insurance agent or any employee of such a person or firm as beneficiary, nor may any proceeds under the insurance or annuity contract be directly paid to such a person or firm under an assignment or otherwise.

15.4 To the extent that a contract of insurance, sold as a funding source for a preneed funeral contract, is other than term insurance on the preneed funeral contract beneficiary's life, the purchaser of the policy shall be given a full and complete disclosure of the costs associated with the type of insurance being sold by comparison to term life insurance. All statements as to insurance costs or other disclosures shall be on a separate printed sheet which can be used for comparison with the costs of insurance available from other insurers or through other insurance agents.

15.5 No provider, contract seller or person who makes a preneed funeral contract available shall refuse to enter a preneed funeral contract solely because the contract buyer has chosen to procure insurance or annuity funding from a source other than themselves or any other particular person or firm, acting as an insurance agent or insurer.

15.6 If a preneed funeral contract is made irrevocable by the buyer, then any life insurance or annuity contract entered in connection therewith which provides cash surrender or loan benefits during the preneed funeral contract beneficiary's lifetime shall also be made irrevocable and unavailable to the preneed funeral contract

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beneficiary for such a loan or cash surrender. If the preneed funeral contract is revocable, the life insurance or annuity contract shall likewise be revocable.

15.7. If a preneed funeral contract and a life insurance or annuity contract associated therewith are cancelled all unearned premiums, cash surrender values and accumulated interest and dividends shall be returned to the contract buyer, contract beneficiary or estate as provided if the funds were trust funds in Section 8.3 of this Rule.

15.8 No preneed funeral contract may be funded by a life insurance or annuity contract unless that life insurance or annuity contract, upon acceptance and payment threfore, provides an immediate and unconditional payment of death benefits at least equal in amount to the price agreed upon for burial goods or funeral goods or services in the preneed funeral contract.

15.9 At the time a preneed funeral contract funded by a life insurance or annuity contract is submitted to the department as provided in W. Va. Code Section 47-14-8(f), a copy of such insurance or annuity contract shall also be submitted.

Section 16. Retention of Ten Percent from Preneed Burial Contract Funds.

16.1 No seller or person collecting funds for a preneed funeral contract may retain the ten percent of collected funds permitted by W. Va. Code Section 47-14-5(1) unless:

16.1.1 Clear and conspicuous disclosure of such intention is communicated to the contract buyer on the face of the preneed funeral contract in a clause which is separately acknowledged by the buyer;

16.1.2 This deduction is taken entirely from payments made at the time the contract is entered; and

16.1.3 A full and complete accounting for all monies deducted is furnished to the contract buyer and to the department at the time the contract is submitted pursuant to W. Va. Code Section 47-14-8(f).

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16.2 Any deduction made from a contract payment under this Rule shall be based on actual costs and expenses, reasonably allocated to such contract and itemized in the required accounting. In no event shall the ten percent be automatically deducted on account of any contract without reference to actual costs and expenses.

Section 17. Notice of Contract Irrevocability.

17.1 No preneed funeral contract shall be made irrevocable without the express, written, informed consent of the contract buyer. Absent such consent, the preneed funeral contract shall be revocable.

17.2 Each preneed funeral contract which is irrevocable shall contain the following notice in bold face on the front of the contract:

"NOTICE OF IRREVOCABILITY

THIS PRENEED FUNERAL CONTRACT SHALL BE IRREVOCABLE DURING THE LIFETIME OF THE CONTRACT BENEFICIARY. NEITHER THE BUYER NOR ANY OTHER PERSON AS BENEFICIARY WILL BE ENTITLED TO CANCEL THIS CONTRACT OR RECEIVE A REFUND OF PAYMENTS MADE UNDER THIS CONTRACT.

_____ (Buyer's Signature) _____ (Date) _____"

17.3 Any buyer who has purchased a preneed funeral contract may elect after consummation to amend the contract to make it irrevocable by notifying the contract seller and trustee and by placing his signature on the original copy of the contract and giving the true date of the signature.

Section 18. Violation of Rule; Enforcement.

18.1 Violation of any term or provision of this Rule shall be an unfair and deceptive act or practice in

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violation of W. Va. Code Section 46A-6-104 and a violation of the provisions of W. Va. Code Sections 47-14-11(a)(1) and 13.

18.2 The department may request, and the courts or administrative tribunals shall be empowered to order, any writs, orders, or other relief which may be necessary for the enforcement of the provisions of the Code and this Rule, including, but not limited to, ex parte injunctive relief, injunctive relief, restitution, and affirmative disclosure, advertising, or mailings.