

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY WV Code 47-14-1; 46A-6-103; 46A-7-102(1)(e)

AMENDMENT TO AN EXISTING RULE: YES NO

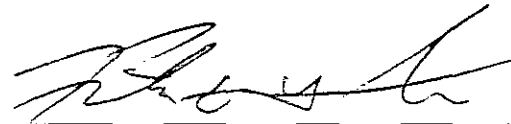
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 8

TITLE OF RULE BEING PROPOSED: Preneed Burial Contracts

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Rich O. Hartman for
Charlie Brown, Attorney General

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STATE REGISTER

DATE: September 23, 1987
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Office of the Attorney General

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

1. Authorizing statute(s) citation W. Va. Code §§ 47-14-1 et seq., Code § 46A-6-103 and Code § 46A-7-102(1) (e)
2. a. Date filed in State Register with Notice of Hearing: August 19, 1987
b. What other notice, including advertising, did you give of the hearing?
All potential sellers and providers of preneed funeral contracts and other interested persons were mailed copies of the proposed rule. Press releases were issued announcing the proposed rule and the public hearing and comment period.
c. Date of hearing(s): September 18, 1987
d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received
e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
September 23, 1987
f. Name and telephone number of agency person to contact for additional information:
Thomas L. Hindes, Director
Deputy Attorney General
Office of the Attorney General (348-8986)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

_____ not applicable _____

b. Date of hearing: _____ not applicable _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____ not applicable _____

d. Attach findings and determinations and reasons:

Attached _____ not applicable _____

AGENCY APPROVED PROPOSED
LEGISLATIVE RULE

September 23, 1987



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

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CONSUMER HOTLINE
(800) 368-8808

NOTICE OF AGENCY APPROVAL

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

The attached legislative rule constitutes the official rule approved by the Attorney General's office on the 23rd day of September, 1987, and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

Charles G Brown
ATTORNEY GENERAL

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

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

- Section 1. General Provisions
2. Definitions
3. Annual Report
4. Application for Certificate of Authority
or License; Contents or Application
5. Initial Examinations
6. Second or Subsequent Examinations
7. Trust Accounts
8. Provision of Goods and Services Under
Preneed Funeral Contract at Death
of Contract Beneficiary
9. Contents and Execution of Contracts
10. Default by the Contract Buyer
11. Sale or Transfer of Certificate of
Authority or License Prohibited
12. Multiple Price Lists Prohibited
13. Disciplinary Proceedings
14. Insolvency
15. Insurance or Annuity Funded Preneed
Funeral Contracts
16. Retention of Ten Percent from Preneed
Burial Contract Funds
17. Notice of Contract Irrevocability
18. Violation of Rule; Enforcement

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

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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. As used herein, "equipment" shall include only devices used to move, store or construct those other items specifically excluded from this definition. 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 a 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. As used herein, "equipment" shall include only devices used to move, store or construct those other items

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specifically excluded from this definition. 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.

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 filed at the time the application for renewal is filed.

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

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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;

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 which were not previously reported to the department pursuant to W. Va. Code Section 47-14-8(f) and Section 9.6 of this Rule; and

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.

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.

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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 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 on 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.

4.5 Application for the renewal of a certificate of authority or license shall be submitted by March 1 of each year. Applicants holding certificates of licenses from the preceding year who submit timely renewal applications may continue to do business under the previous certificate or license until the renewal is granted or refused by the Department.

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.

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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:

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

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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.

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 on a preneed funeral contract and not exempted by W. Va. Code Section 47-14-5(a)(1) or Section 16 of this Rule, 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 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.

7.3 All individual members of Boards of Trustees, as provided for in W. Va. Code Section 47-14-8(b) and Section 7.1(iii) of this Rule, shall obtain a fidelity bond as

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required by W. Va. Code Section 47-14-8(b) and shall file this bond with the department at the time of application for a certificate of authority. No other Trustee need obtain a fidelity bond.

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 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

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and services shall be returned to the contract buyer, his estate or designee. If the contract beneficiary was also the contract buyer, any such excess shall be paid to the contract beneficiary's estate or designee.

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;

9.1.2 Any statement required by the provisions of the Truth in Lending Act and Regulation Z (15 U.S.C. Sections 1601, et seq. and 12 C.F.R. Section 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. Section 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 C.F.R. Section 433.

9.1.5 Unless the contract is made irrevocable under the provisions of Section 17 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 monies paid 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.

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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;

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

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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.

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, 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.

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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.

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;

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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, are paid to a provider, contract seller or person who makes a preneed funeral contract available by or on behalf of a preneed funeral 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 beneficiary's life or annuity contract for such beneficiary, the contract providing for burial goods or funeral goods or

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services is a preneed funeral contract and the provisions of the Preneed Burial Act and this Rule are applicable to such contract and person, including the Five Dollar charge provided in W. Va. Code Section 47-14-8(f).

15.3 No provider, contract seller, person who makes a preneed funeral contract available, or any employee of such a person or firm may be named as the beneficiary of an insurance or annuity contract which provides funding for a preneed funeral contract.

15.4 All or part of the proceeds of a life insurance policy or annuity contract on preneed contract beneficiary may be paid to a person who is a provider of burial goods or funeral goods or services, pursuant to an assignment, if such person provides the insurer with a statement verifying that the goods and services provided for in the preneed funeral contract were delivered, justifying by reference to current price lists any increase over the original contract cost and explaining any substitution of goods or services. A copy of this statement shall be filed with the Department as provided in Section 8.2 of this rule.

15.5 The prospective purchaser of a life insurance policy or annuity, offered for sale by an insurance agent who is also a provider or seller of preneed funeral contracts and intended as a funding source for a preneed funeral contract also offered for sale by such person, shall be given a full and complete disclosure of the costs associated with the type of insurance or annuity being sold. All such 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.

15.6 No person who is a provider, contract seller or who makes a preneed funeral contract available shall refuse to enter a preneed funeral contract solely because a contract buyer chooses to procure adequate insurance or annuity funding from a source other than such person or any other specific source.

15.7 If a preneed funeral contract is made irrevocable by the buyer, any life insurance or annuity

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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 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. Assignments of benefits under life insurance or annuity contracts used to fund preneed funeral contracts shall be irrevocable if the preneed funeral contract is irrevocable and revocable if the preneed funeral contract is revocable.

15.8 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 owner of the insurance or annuity contract.

15.9 No preneed funeral contract may be funded by a life insurance or annuity contract unless the life insurance or annuity contract, by the time full payment is made therefore, provides an 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. If the insurance or annuity does not provide complete funding at the time of need because payments were not complete, the heirs or personal representative of the preneed funeral contract beneficiary may pay the balance remaining on the preneed funeral contract after application of the insurance or annuity payments and obtain performance as provided.

15.10 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.

15.11 No person who holds a certificate of authority or license to sell or provide preneed funeral contracts may sell or attempt to sell life insurance or

Attorney General
Legislative Rule, 47-14, 46A-6, & 46A-7
Series 8, Sec. 15

annuity contracts by making reference to the costs of burial goods or funeral goods and services unless the consumer is fully informed of the advantages of a preneed funeral contract and offered an opportunity to enter such a contract if the life insurance or annuity purchase is made.

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 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).

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:

Attorney General
Legislative Rule, 47-14, 46A-6, & 46A-7
Series 8, Sec. 17

"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 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, injunctive relief, restitution, and affirmative disclosure, advertising, or mailings.

SUMMARY OF PROPOSED
LEGISLATIVE RULE

September 23, 1987

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

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

SUMMARY OF PROPOSED LEGISLATIVE RULE

The Attorney General's office, through the Consumer Protection Division, is proposing the Rule in order to implement and interpret the Preneed Burial Act, W. Va. Code Sections 47-14-1 et seq. (hereinafter "the Act").

The Rule is divided into eighteen sections. The first of these addresses general provisions such as scope, authority, relevant dates, penalties, construction and severability of the Rule. Section Two contains relevant definitions.

The remaining sections interpret and further explain the multivaried requirements of the Act. Beginning with the component parts of an Annual Report in Section Three and the requirements of an Application for a Certificate of Authority or License in Section Four, the Rule clarifies and expands upon general provisions in the Act.

In Sections Five and Six the Rule specifies the terms under which on-site examinations of a certificate holder's records may be conducted and the expense items for which this Office may seek reimbursement in connection with such examinations. Section Seven summarizes the requirements with respect to trustees under the Act and clarifies the requirement of a fidelity bond.

Section Eight sets forth the performance requirements for a provider of funeral or burial goods and services after the contract beneficiary dies. Section Nine contains a summary of required contract terms and execution formalities. Section Ten clarifies the seller's options when the buyer defaults or otherwise fails to complete required payments.

Section Eleven prohibits certain transfers of certificates or licenses without approval, and Section Twelve prohibits multiple price lists. Section Thirteen sets forth the possible penalties in disciplinary proceedings, and Section Fourteen provides for action in the event a certificate holder becomes insolvent.

Section Fifteen is a substantial interpretive subset of the Rule. It specifies the requirements for preneed transactions in which insurance or annuity funding is intended to pay the contract price at the time of need. Since there is no trust established in these transactions, some portions of the Act and the Rule are inapplicable, but the Section is intended to create

protection for contract buyers and beneficiaries in such transactions which parallels that available when monies are held in trust. The Act was not written with these transactions in mind although they clearly constitute "preneed funeral contracts."

Section Sixteen establishes the ground rules for sellers who retain ten percent of the contract price as permitted by the Act, and Section Seventeen specifies the form for making a contract irrevocable. Finally, Section Eighteen summarizes the remedies available to the Attorney General's office if the Rule is violated.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301.

STATEMENT OF CIRCUMSTANCES
REQUIRING THE RULE

September 23, 1987



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE

This Rule is mandated by various specific requirements in the Preneed Burial Act, W. Va. Code Sections 47-14-1 et seq.

Numerous sections of the Act specifically require the Attorney General's Office to develop rules and regulations. For example, Section 47-14-6(f) mandates rules and regulations to implement the article, a requirement reiterated in Section 47-14-9.

Section 47-14-7(b)(2) also makes reference to such rules, as does Section 47-14-13.

The Act establishes a comprehensive regulatory scheme to govern the sale and eventual performance of preneed funeral contracts. The protective features of the Act serve two general goals. First, the Act guarantees that an agreement with respect to particular funeral or burial goods and services at a specific price will be enforceable at a future date if payment is made pursuant to the contract. The contract thus provides a guaranteed hedge against inflation of costs or diminution of promised services and goods. Secondly, the Act establishes comprehensive requirements to help guarantee that monies paid for a future funeral will remain available for that purpose.

REPORT OF PUBLIC HEARING
AND COMMENT PERIOD

September 23, 1987



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
1800: 368 8808

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 X

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



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368 8808

August 19, 1987

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

COMMENT PERIOD

AGENCY: Attorney General

RULE TYPE: Legislative Rule

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

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED AND
WILL END ON September 18, 1987, AT 5 p.m.. WRITTEN COMMENTS ARE
TO BE MAILED TO THE FOLLOWING ADDRESS: 812 Quarrier Street,
Sixth Floor, Charleston, West Virginia 25301

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

A handwritten signature in cursive script, appearing to read "T. L. Hindes".

THOMAS L. HINDES, Director

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

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

REPORT OF PUBLIC HEARING AND COMMENT PERIOD

The Public Comment Period with respect to the above-referenced Rule expired on September 18, 1987, and a Public Hearing on the proposed Rule was held on that date, all pursuant to notice filed in the Secretary of State's office for publication in the State Register on August 19, 1987. The Rule is intended to interpret and implement the requirements of the Preneed Burial Act, W. Va. Code Sections 47-14-1 et seq. (hereafter the Act).

The following individuals spoke at the Public Hearing conducted by Deputy Attorney General Thomas L. Hindes:

Roger Price
Executive Director
West Virginia Funeral
Directors Association

Jim Snyder, Esquire
Jackson, Kelly, Holt & O'Farrell
Representing Appalachian Life
Insurance Company

Charles E. Dodd, Director
Dodd & Reed Funeral Home

David G. Palmer, Esquire
Lantz, Palmer, Tebay & Reed
Representing Leavitt Funeral Home, Inc.

Karen M. Love, Esquire
Ice, Miller, Donadio & Ryan
Representing Laymen National
Life Insurance Company

Martha E. Junker, Esquire
Forethought Life Insurance

John Bonafair
Forethought Life Insurance

Vincent F. Mancinelli
Executive Secretary
West Virginia Board of Embalmers
and Funeral Directors

Numerous written comments were also received during the period. By and large these comments and the statements adduced at the public hearing were critical of various aspects of the proposed Rule and the Act itself. Commentators were either representatives of funeral homes affected by the Act and Rule or insurance companies hoping to sell life insurance as a funding vehicle for preneed funeral contracts.

In many cases, it was impossible to separate criticism of the Rule from underlying requirements of the Act. Complaints about the component parts of an Annual Report, for example, charging excessive duplication were in part directed toward specific reporting requirements in W. Va. Code Section 47-24-3. The Rule can clarify the lack of any need for duplicate reporting, however.

With respect to trust accounts, comments were received that urged broader trustee authority to purchase insurance and which complained of overly broad requirements to purchase trustee fidelity bonds. Complaints were also voiced on the time limits associated with reporting and renewal requirements for holders of certificates of authority.

Numerous commentators voiced a request that the office act to prepare model or form documents, although the Rule does specify in some detail the required elements of a contract under the Act. The requirement that records be kept in a fire resistant and secure location, found in Section 12.2, was labeled as "excessive."

Far and away the most unpopular section of the proposed Rule was Section 15, dealing with insurance or annuity funded contracts. Since this is a funding approach which was not considered by the Legislature in drafting the Act, some argued that this Office lacked authority to regulate in this area. Others questioned the prohibition in Section 15.3 on funeral sellers or providers being named as insurance beneficiaries or receiving payment under a policy assignment.

Other concerns about Section 15 concerned the comparison shopping protection in Section 15.5, the refund requirements in 15.8 and the reporting requirement in 15.10. Finally, the restrictions on the use of insurance policies which do not

provide immediate, unconditional death benefits, found in Section 15.9, were criticized.

The limitations on exempting ten percent of the contract price from trust requirements, as contained in Section 16 of the Rule, were viewed as inconsistent with the Act by some. Lastly some commentators argued that a linkage between the Rule and the Consumer Credit and Protection Act, see Sections 1.7 and 18.1, was unnecessary.

A transcript of the Public Hearing and copies of all written comments received are attached hereto.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301.

WATERS FUNERAL CHAPEL, INC.
SUMMERSVILLE, WEST VIRGINIA 26681



JACK WATERS
GREG WATERS
RAYMON VICKERS

LICENSED FUNERAL DIRECTORS

RECEIVED

SEP - 4 1987

ATTY GEN. OFFICE
C.P.D.

Mr. Thomas L. Hindes
Deputy Attorney General

September 3, 1987

Dear Mr. Hindes,
I am drafting this letter in support of our phone conversation on this date concerning the proposed rule governing pre need burial contracts. I would like to draw your attention to two areas of concern in which I have. I understand that the purpose of this rule is to insure protection of the public of West Virginia from unfair trade practices and to set rules governing Trust and Insurance based contracts so that both will best serve the public in accordance with the law. It is in total support of this objective that I voice my following opinion.

I first draw your attention to item 16.2 concerning Retention of Ten percent from pre need burial contract funds. I am in support of this statement and I feel that the majority of funeral directors do not however understand this rule. I have never retained any part of any pre need burial trust account because I did not feel I had provided the public with any service. However I have been informed that I have the right to keep 10% of the funds in the trust by other funeral directors which I feel are misinformed. Rule 16.2 allows me to keep only an actual itemized cost and expense which cannot exceed 10%, if I chose to do so. But in no event shall the 10% be automatically deducted from the account. I think most funeral directors assume that the 10% is a set percentage and do not provide an actual expense statement in which I am certainly in favor of, if proceeds are removed from the trust.

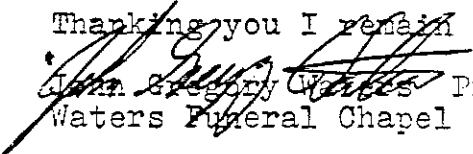
Secondly, I am concerned about item 15.3 concerning proceeds from an insurance policy contract not being payable to a funeral provider in any manner. I feel this should be acceptable by the means of a legal assignment which allows the provider to collect funds for the goods and services provided but maintains that any excess funds be paid to the policy beneficiary. I am in agreement that no provider or contract seller should be the policy beneficiary. I am also in support of the assigned policy proceeds being (1) accompanied by an at need statement of goods & services selected and signed by a family member, (2) in conformance to a current General Price List, which is required by the FTC to be provided the purchaser, (3) Excess funds returned to the policy beneficiary. This method would allow for protection of all parties involved in that: (1) The purchaser would always (except in case of irrevocable contracts) retain the right to change policy owner, beneficiary, assignee, funeral provider, surrender

the policy for cash value, or cancel the funeral contract and collect the policy proceeds by the beneficiary. (2) The provider would be assured that if the contract was fulfilled as agreed to that he would be paid for goods & services rendered and that excess funds would be paid directly to the beneficiary.

I think it is important to remember that the public interest is what has created the need. If I as a funeral professional am going to provide this service to satisfy the public it must be a program fair to both parties involved. I think the ideas I have set forth above represent both the public and myself. I am truly interested in these rules protecting the public from individuals who chose to conduct business with no conscience, however; I am also interested in being assured that if I enter a contract that I may not fulfill for twenty years that I do not have to depend on an individual who had no part in the original contract or may not have even been born yet to secure payment within the terms of the contract.

I suggest that the opinions are solely of my own and are presented only for your consideration. I am confident that you will approve a rule that is beneficial to both the public and the professional.

Thanking you I remain


John Gregory Waters Pres.
Waters Funeral Chapel

9/3 Greg Waters

Waters Funeral Home

called with Rule comments
as follows:

Questions

Sec 15.3 of rule
vis à vis the assignment
prohibition (Forethought
signee).

Problem is getting
paid after funeral is
provided (not revocation
by family ~~before~~ services
are rendered).

Properly regulated
assignment is parallel
to Trust.

Rule on

TO: Thomas L. Hinder, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: Price H. Calfee III
Calfee Funeral Service
Box 452
Pineville, WV 24874 (304) 732-6166

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.

DATE: September , 1987

The following are all of my comments with respect to the proposed rules. However, I want to bring to your attention that my most significant concerns are: First, with Rules 2.2 - 2.3; Second, the reporting in Section 3, Rules 8.2, 15.9, 16.1.3 and 16.2 in conjunction with 9.6.6; and Third, Section 15 Insurance or Annuity Funded PreNeed Funeral Contracts.

I wish to give an oral comment on September 18, 1987. Please provide me with notice of when I may address the group and for how long and an agenda for the hearing.

Section 1 General Provisions

Rule 1.5

Comment:

I believe the effective date of the Rules should not be until the official forms for preneed contracts per Rule 9.1 and all reporting forms per 47-14-9 have been promulgated, published

and furnished to the WV Funeral Directors Association and/or the WV Board of Embalmers and Funeral Directors.

Reasoning:

(1) The small businessman (funeral home) cannot afford to hire competent legal counsel to prepare a preneed burial contract for their use during the time frame between the effective date and when the forms later become available which contract would comply with Rule 9. (2) Without a standard form there will be as many different contracts as there are attorneys preparing them and so there will be no uniformity. (3) Without the uniformity of a standard form the department will not be able to efficiently review the contracts when copies are provided by the funeral homes to the department pursuant to the reporting requirements. (4) Due to the cost of procuring such a contract from an attorney many funeral homes will not offer preneed burial contracts until the forms are available thus reducing competition and reducing the public's ability to select different goods and services from different providers.

Section 2 - Definitions

Rules 2.2 and 2.3

First Comment: It appears all possible goods and services which can be provided to the public by a funeral home or a cemetery have been specifically mentioned except for "caskets". Caskets should be included as a "funeral good". If the department believes that because the statute is silent with

respect to "caskets" and so by stating that caskets are to be included as a funeral good would be to exceed the scope of the statute, then the same problem can be clarified by the rules providing that the nebulous and catch all term of cemetery "equipment" does not include (the sale of) "caskets".

Reasoning: (1) The issue of who should be selling caskets should be addressed because caskets are such a large dollar item in the goods purchased by consumers for funerals and burials. (2) Caskets have traditionally been sold by funeral directors. (3) Without clarification and as the Rules are presently proposed cemeteries can begin selling caskets door to door, being sold by persons much less qualified than licensed funeral directors, or persons under their direct supervision. Funeral Directors must have two years of college, one year apprenticeship, one year of mortuary science and pass a state examination. Therefore, if caskets are sold by cemeteries we have a significant loss of professionalism in service to the consuming public. (4) The respective roles that funeral homes and cemeteries play in serving the consumer needs to be preserved in order to preserve the quality provided by the funeral director's profession and not have an erosion of that by those who have chosen the occupation of selling cemetery lots, etc. generally in door to door setting. (5) There is a need to preserve the tradition and sanctity of the funeral.

Second Comment: The Rules do not address, I.E. define what is meant by "a cemetery when acting only as a cemetery" and how that phrase relates to "when any person, by the same contract,

sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

Section 3 - Annual ReportRule 3.1

Comment: Given that the reporting year ends on December 31 giving the funeral home only 30 days to prepare this annual report is an insufficient amount of time. A reasonable amount of time would be 60 to 90 days.

Reasoning: (1) The complexity of the annual report. (2) The volume which will be reported by a significant number of funeral homes. (3) The report is being compiled at the same time of year that the funeral home's clerks, record keepers, bookkeepers and accountants are trying to amass information for tax returns. (4) To prepare the Annual Report the funeral home must have a statement(s) from their Trustee, usually a bank's trust department, which statement(s) will probably not be available by January 30, let alone available so early in January that the funeral home can then prepare the balance of the required information.

Rules 3.2 - 3.3

Comment: After the word "or" in Rule 3.2.1, the last sentence of Rule 3.2.3, and all of Rules 3.2.5, 3.2.6 and 3.3 are reporting requirements which go beyond the scope of the statute in requiring certain information in an annual report. This reporting information needs to be eliminated. In lieu of eliminating this degree of reporting information in the annual report the department should eliminate from the proposed Rules

the initial report made within ten days of the contract being executed (Rule 15.9, 16.1.3 and 16.2 in connection with Rule 9.6.6) and the immediately after fulfillment report made within 30 days of the death of the contract beneficiary (Rule 8.2).

Reasoning: (1) These three reports when compared duplicate, or rather triplicate, one another. (2) The cost of such reporting is excessive especially to the small businessman. Indeed, only a dozen funeral homes in the state are capable of performing the proposed reporting. Small funeral homes would refrain from doing pre-need contracts and so competition would be lessened. (3) Receiving the volume of reports which the department would receive under the three reports required by the proposed rules would be more reports than the department could effectively review and/or audit especially in light of its other duties under the Act and its budgetary constraints. (4) The statute only requires an annual report and the additional information required in the annual report is more reasonable if required in the light of not having the other two reports. (5) The consumer who needs protection is protected by the annual report. (6) The certificate holder still must maintain records and the department still has the right to perform on site examinations per 47-14-3(i)(1) and (2).

Section 5 - Initial Examinations

Rule 5.3

Comments: I sincerely appreciate there being proposed in this rule the terms "...., if the examination is prompted by cause,..." nonetheless charging for the first examination is

contrary to the statute wherein 47-14-3(i)(3) states "The certificate holder shall pay for the cost of any examination which is not (underlining added) the first one in the calendar year,...."

Reasoning: (1) The purpose of rules is to by interpretation implement a statute, but not change it, and surely not be in contravention of it.

Section 7 - Trust Accounts

Rule 7.1

Comment: When this rule says "All funds...." it is confusing because really what is meant is a minimum of 90% of the funds because the funeral home can keep 10%.

Reasoning: (1) The statute and the rules provide for up to a 10% retention. (2) In comparison the statute is not confusing because it states "Unless otherwise specifically exempt under this article,....".

Rule 7.3

Comment: This rule should be entirely eliminated.

Reasoning: (1) Trustees are not required to make annual reports to the department.... certificate holders must. (2) The requirement of disclosing the fees charged by the Trustee is duplicative of the requirement in 3.2.3 that the annual report "include an accounting for each trust fund, describing all payments to and disbursements from the fund." Trustees' fees would be a disbursement from the fund.

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

Rule 8.2

Comment: This rule should be eliminated.

Reasoning: Please refer to the Comments and Reasoning to Rules 3.2-3.3.

Section 9 - Contents and Execution of Contracts

Rules 8.1 - 9.6.5

First Comment: We certificate holders do need guidance with the content of the contract and its execution.

Reasoning: The statute does not give sufficient guidance.

Second Comment: These rules outline an exceeding complex and very lengthy legal document which is of such complexity and length it is doubtful that the consuming public will in fact consume the contract i.e. read and understand it.

Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

SECTION 15 - INSURANCE OR ANNUITY FUNDED PRENEED FUNERAL CONTRACTS

Rules 15.1 - 15.2 and 15.4 - 15.9

Comments: These rules are good examples of appropriate interpretation for purposes of implementing the Act.

Reasoning: (1) These rules are consistent with the legislative intent expressed in 47-14-1 that prepaid funds will be available for the payment of funeral services so arranged when so needed and the funds not be dissipated. (2) The statute has

no prohibition against the use of insurance as a funding source and so the logical conclusion is that insurance is an appropriate funding source. (3) The WV Insurance Commissioner has already approved the use of some nationally known insurance programs such as Forethought and the National Selected Morticians (NSM) insurance program. (4) These rules provide the consumer appropriate protection and the necessary information for an informed choice. (5) These rules are in keeping with the legislative objective of fulfilling a public need, that is provide for preneed burial contracts and insurance is a convenient tool to the consumer and one with which many consumers are knowledgeable and feel confident in utilizing.

Rule 15.3

Comment: This rule eliminates the use of insurance as a funding source and the use of life insurance assignments as a funding source for preneed contracts! This rule most definitely should be eliminated!

Reasoning: (1) This rule is contrary to all the other provisions in the rules and the statute which provide for insurance as a funding source!! (2) This rule is contrary to the long standing practice of consumers using life insurance to fund preneed contracts. (5) Depending upon the consumer's age, life insurance can be a much less expensive means of funding a preneed contract. (6) Without insurance as a funding source a smaller percentage of the consuming public will be able to benefit from the use of preneed contracts. (7) To eliminate the

use of insurance by this proposed rule exceeds the scope of the statute.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over doing a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

Rule 16.1.2

Comment: This rule should be entirely eliminated.

Reasoning: (1) It allows the certificate holder to retain 10% of the "...payments made at the time the contract is entered" i.e. what is commonly referred to as the up front money. This is contrary to the statute! 47-14-5(a)(1) provides for the retention of 10% of "...the total amount agreed to be paid by the contract buyer....". (2) The funeral homes costs of doing business with respect to the pre-need funeral contract are ongoing such as the annual report and so the 10% should be from the entire contract not just the downpayment.

Rule 16.1.3 - 16.2

Comment: These two rules should be eliminated.

Reasoning: (1) These two rules read together amount to another report. Please refer to the Comments and Reasoning to Rules 3.2 - 3.3. (2) The consumer has already been informed of

the deduction by a clear and conspicuous disclosure which if the proposed 16.11 is not changed will be separately acknowledged by the buyer. (3) The statute has already stated in 47-14-5(a)(1) for what the money may be used by the funeral home and the three categories are so broad ("....selling expenses, servicing costs, and general overhead....") that accounting, reporting and itemization are exercises in over-regulation and futility. (4) Common sense tells us that one can buy a pre-need contract decades before it is used and in between those dates the funeral home is expending a significant amount of money in preparing annual reports, aside from other servicing costs, and so a fee not to exceed 10% is by no means excessive without resort to additional reporting.

Conclusion

I ask you to carefully review this entire written comment, but especially Rules 2.2 - 2.3; the reporting in Section 3, Rules 8.2, 16.1.3, 16.2 and 15.9 in conjunction with 9.6.6; and Section 15 Insurance or Annuity Funded Pre-Need Funeral Contracts.

Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,

Price H. Coe, III

TO: Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: SCHAEFFER FUNERAL HOME INC
Box 455 - N.Y. MARTIN ST.
PETERSBURG, W.VA. 26847
257-4040 - (304)

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.

DATE: September , 1987

The following are all of my comments with respect to
the proposed rules. However, I want to bring to your attention
that my most significant concerns are: First, with Rules 2.2 -
2.3; Second, the reporting in Section 3, Rules 8.2, 15.9, 16.1.3
and 16.2 in conjunction with 9.6.6; and Third, Section 15
Insurance or Annuity Funded PreNeed Funeral Contracts.

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I wish to give an oral comment on September 18, 1987.
Please provide me with notice of when I may address the group and
for how long and an agenda for the hearing.

Section 1 General Provisions

Rule 1.5

Comment:

I believe the effective date of the Rules should not be
until the official forms for preneed contracts per Rule 9.1 and
all reporting forms per 47-14-9 have been promulgated, published

and furnished to the WV Funeral Directors Association and/or the WV Board of Embalmers and Funeral Directors.

Reasoning:

(1) The small businessman (funeral home) cannot afford to hire competent legal counsel to prepare a preneed burial contract for their use during the time frame between the effective date and when the forms later become available which contract would comply with Rule 9. (2) Without a standard form there will be as many different contracts as there are attorneys preparing them and so there will be no uniformity. (3) Without the uniformity of a standard form the department will not be able to efficiently review the contracts when copies are provided by the funeral homes to the department pursuant to the reporting requirements. (4) Due to the cost of procuring such a contract from an attorney many funeral homes will not offer preneed burial contracts until the forms are available thus reducing competition and reducing the public's ability to select different goods and services from different providers.

Section 2 - Definitions

Rules 2.2 and 2.3

First Comment: It appears all possible goods and services which can be provided to the public by a funeral home or a cemetery have been specifically mentioned except for "caskets". Caskets should be included as a "funeral good". If the department believes that because the statute is silent with

respect to "caskets" and so by stating that caskets are to be included as a funeral good would be to exceed the scope of the statute, then the same problem can be clarified by the rules providing that the nebulous and catch all term of cemetery "equipment" does not include (the sale of) "caskets".

Reasoning: (1) The issue of who should be selling caskets should be addressed because caskets are such a large dollar item in the goods purchased by consumers for funerals and burials. (2) Caskets have traditionally been sold by funeral directors. (3) Without clarification and as the Rules are presently proposed cemeteries can begin selling caskets door to door, being sold by persons much less qualified than licensed funeral directors, or persons under their direct supervision. Funeral Directors must have two years of college, one year apprenticeship, one year of mortuary science and pass a state examination. Therefore, if caskets are sold by cemeteries we have a significant loss of professionalism in service to the consuming public. (4) The respective roles that funeral homes and cemeteries play in serving the consumer needs to be preserved in order to preserve the quality provided by the funeral director's profession and not have an erosion of that by those who have chosen the occupation of selling cemetery lots, etc. generally in door to door setting. (5) There is a need to preserve the tradition and sanctity of the funeral.

Second Comment: The Rules do not address, I.E. define what is meant by "a cemetery when acting only as a cemetery" and how that phrase relates to "when any person, by the same contract,

sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

Section 3 - Annual Report

Rule 3.1

Comment: Given that the reporting year ends on December 31 giving the funeral home only 30 days to prepare this annual report is an insufficient amount of time. A reasonable amount of time would be 60 to 90 days.

Reasoning: (1) The complexity of the annual report. (2) The volume which will be reported by a significant number of funeral homes. (3) The report is being compiled at the same time of year that the funeral home's clerks, record keepers, bookkeepers and accountants are trying to amass information for tax returns. (4) To prepare the Annual Report the funeral home must have a statement(s) from their Trustee, usually a bank's trust department, which statement(s) will probably not be available by January 30, let alone available so early in January that the funeral home can then prepare the balance of the required information.

Rules 3.2 - 3.3

Comment: After the word "or" in Rule 3.2.1, the last sentence of Rule 3.2.3, and all of Rules 3.2.5, 3.2.6 and 3.3 are reporting requirements which go beyond the scope of the statute in requiring certain information in an annual report. This reporting information needs to be eliminated. In lieu of eliminating this degree of reporting information in the annual report the department should eliminate from the proposed Rules

the initial report made within ten days of the contract being executed (Rule 15.9, 16.1.3 and 16.2 in connection with Rule 9.6.6) and the immediately after fulfillment report made within 30 days of the death of the contract beneficiary (Rule 8.2).

Reasoning: (1) These three reports when compared duplicate, or rather triplicate, one another. (2) The cost of such reporting is excessive especially to the small businessman. Indeed, only a dozen funeral homes in the state are capable of performing the proposed reporting. Small funeral homes would refrain from doing pre-need contracts and so competition would be lessened. (3) Receiving the volume of reports which the department would receive under the three reports required by the proposed rules would be more reports than the department could effectively review and/or audit especially in light of its other duties under the Act and its budgetary constraints. (4) The statute only requires an annual report and the additional information required in the annual report is more reasonable if required in the light of not having the other two reports. (5) The consumer who needs protection is protected by the annual report. (6) The certificate holder still must maintain records and the department still has the right to perform on site examinations per 47-14-3(i)(1) and (2).

Section 5 - Initial Examinations

Rule 5.3

Comments: I sincerely appreciate there being proposed in this rule the terms "...., if the examination is prompted by cause,..." nonetheless charging for the first examination is

contrary to the statute wherein 47-14-3(i)(3) states "The certificate holder shall pay for the cost of any examination which is not (underlining added) the first one in the calendar year,...."

Reasoning: (1) The purpose of rules is to by interpretation implement a statute, but not change it, and surely not be in contravention of it.

Section 7 - Trust Accounts

Rule 7.1

Comment: When this rule says "All funds...." it is confusing because really what is meant is a minimum of 90% of the funds because the funeral home can keep 10%.

Reasoning: (1) The statute and the rules provide for up to a 10% retention. (2) In comparison the statute is not confusing because it states "Unless otherwise specifically exempt under this article,....".

Rule 7.3

Comment: This rule should be entirely eliminated.

Reasoning: (1) Trustees are not required to make annual reports to the department.... certificate holders must. (2) The requirement of disclosing the fees charged by the Trustee is duplicative of the requirement in 3.2.3 that the annual report "include an accounting for each trust fund, describing all payments to and disbursements from the fund." Trustees' fees would be a disbursement from the fund.

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

Rule 8.2

Comment: This rule should be eliminated.

Reasoning: Please refer to the Comments and Reasoning to Rules 3.2-3.3.

Section 9 - Contents and Execution of Contracts

Rules 8.1 - 9.6.5

First Comment: We certificate holders do need guidance with the content of the contract and its execution.

Reasoning: The statute does not give sufficient guidance.

Second Comment: These rules outline an exceedingly complex and very lengthy legal document which is of such complexity and length it is doubtful that the consuming public will in fact consume the contract i.e. read and understand it.

Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

SECTION 15 - INSURANCE OR ANNUITY FUNDED PRENEED FUNERAL CONTRACTS

Rules 15.1 - 15.2 and 15.4 - 15.9

Comments: These rules are good examples of appropriate interpretation for purposes of implementing the Act.

Reasoning: (1) These rules are consistent with the legislative intent expressed in 47-14-1 that prepaid funds will be available for the payment of funeral services so arranged when so needed and the funds not be dissipated. (2) The statute has

no prohibition against the use of insurance as a funding source and so the logical conclusion is that insurance is an appropriate funding source. (3) The WV Insurance Commissioner has already approved the use of some nationally known insurance programs such as Forethought and the National Selected Morticians (NSM) insurance program. (4) These rules provide the consumer appropriate protection and the necessary information for an informed choice. (5) These rules are in keeping with the legislative objective of fulfilling a public need, that is provide for preneed burial contracts and insurance is a convenient tool to the consumer and one with which many consumers are knowledgeable and feel confident in utilizing.

Rule 15.3

Comment: This rule eliminates the use of insurance as a funding source and the use of life insurance assignments as a funding source for preneed contracts! This rule most definitely should be eliminated!

Reasoning: (1) This rule is contrary to all the other provisions in the rules and the statute which provide for insurance as a funding source!! (2) This rule is contrary to the long standing practice of consumers using life insurance to fund preneed contracts. (5) Depending upon the consumer's age, life insurance can be a much less expensive means of funding a preneed contract. (6) Without insurance as a funding source a smaller percentage of the consuming public will be able to benefit from the use of preneed contracts. (7) To eliminate the

use of insurance by this proposed rule exceeds the scope of the statute.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over doing a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

Rule 16.1.2

Comment: This rule should be entirely eliminated.

Reasoning: (1) It allows the certificate holder to retain 10% of the "...payments made at the time the contract is entered" i.e. what is commonly referred to as the up front money. This is contrary to the statute! 47-14-5(a)(1) provides for the retention of 10% of "...the total amount agreed to be paid by the contract buyer...". (2) The funeral homes costs of doing business with respect to the pre-need funeral contract are ongoing such as the annual report and so the 10% should be from the entire contract not just the downpayment.

Rule 16.1.3 - 16.2

Comment: These two rules should be eliminated.

Reasoning: (1) These two rules read together amount to another report. Please refer to the Comments and Reasoning to Rules 3.2 - 3.3. (2) The consumer has already been informed of

the deduction by a clear and conspicuous disclosure which if the proposed 16.11 is not changed will be separately acknowledged by the buyer. (3) The statute has already stated in 47-14-5(a)(1) for what the money may be used by the funeral home and the three categories are so broad ("....selling expenses, servicing costs, and general overhead....") that accounting, reporting and itemization are exercises in over-regulation and futility. (4) Common sense tells us that one can buy a pre-need contract decades before it is used and in between those dates the funeral home is expending a significant amount of money in preparing annual reports, aside from other servicing costs, and so a fee not to exceed 10% is by no means excessive without resort to additional reporting.

Conclusion

I ask you to carefully review this entire written comment, but especially Rules 2.2 - 2.3; the reporting in Section 3, Rules 8.2, 16.1.3, 16.2 and 15.9 in conjunction with 9.6.6; and Section 15 Insurance or Annuity Funded Pre-Need Funeral Contracts.

Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,

J. Blaine Schaeffer

Sarah S. Morgret
Director

Shaffer Funeral Home, Inc.

230 East Main Street
Romney, West Virginia 26757
Phone (304) 822-3511

Keith S. Shaffer
Director

September 13, 1987

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SEP 17 1987

ATTY GEN. OFFICE
187

To: Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

From: Sarah Shaffer Morgret, Director and Ila S. Shaffer, Owner
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(continued on page 2)

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Sarah Shaffer Wright, Director
Dea S. Shaffer, Owner

TO: Thomas L. Hinder, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

RECEIVED

SEP 17 1987

ATTY GEN. OFFICE
C.P.D.

FROM: Amos E. Quesenberry
Rose & Quesenberry Funeral Home
1901 South Kanawha Street
Beckley, West Virginia 25801 (304)253-4461

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
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Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

Section 3 - Annual Report

Rule 3.1

Comment: Given that the reporting year ends on December 31 giving the funeral home only 30 days to prepare this annual report is an insufficient amount of time. A reasonable amount of time would be 60 to 90 days.

Reasoning: (1) The complexity of the annual report. (2) The volume which will be reported by a significant number of funeral homes. (3) The report is being compiled at the same time of year that the funeral home's clerks, record keepers, bookkeepers and accountants are trying to amass information for tax returns. (4) To prepare the Annual Report the funeral home must have a statement(s) from their Trustee, usually a bank's trust department, which statement(s) will probably not be available by January 30, let alone available so early in January that the funeral home can then prepare the balance of the required information.

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Comment: After the word "or" in Rule 3.2.1, the last sentence of Rule 3.2.3, and all of Rules 3.2.5, 3.2.6 and 3.3 are reporting requirements which go beyond the scope of the statute in requiring certain information in an annual report. This reporting information needs to be eliminated. In lieu of eliminating this degree of reporting information in the annual report the department should eliminate from the proposed Rules

the initial report made within ten days of the contract being executed (Rule 15.9, 16.1.3 and 16.2 in connection with Rule 9.6.6) and the immediately after fulfillment report made within 30 days of the death of the contract beneficiary (Rule 8.2).

Reasoning: (1) These three reports when compared duplicate, or rather triplicate, one another. (2) The cost of such reporting is excessive especially to the small businessman. Indeed, only a dozen funeral homes in the state are capable of performing the proposed reporting. Small funeral homes would refrain from doing pre-need contracts and so competition would be lessened. (3) Receiving the volume of reports which the department would receive under the three reports required by the proposed rules would be more reports than the department could effectively review and/or audit especially in light of its other duties under the Act and its budgetary constraints. (4) The statute only requires an annual report and the additional information required in the annual report is more reasonable if required in the light of not having the other two reports. (5) The consumer who needs protection is protected by the annual report. (6) The certificate holder still must maintain records and the department still has the right to perform on site examinations per 47-14-3(1)(1) and (2).

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Comments: I sincerely appreciate there being proposed in this rule the terms "... , if the examination is prompted by cause, ..." nonetheless charging for the first examination is

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Section 7 - Trust Accounts

Rule 7.1

Comment: When this rule says "All funds...." it is confusing because really what is meant is a minimum of 90% of the funds because the funeral home can keep 10%.

Reasoning: (1) The statute and the rules provide for up to a 10% retention. (2) In comparison the statute is not confusing because it states "Unless otherwise specifically exempt under this article,....".

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

Rule 8.2

Comment: This rule should be eliminated.

Reasoning: Please refer to the Comments and Reasoning to Rules 3.2-3.3.

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First Comment: We certificate holders do need guidance with the content of the contract and its execution.

Reasoning: The statute does not give sufficient guidance.

Second Comment: These rules outline an exceeding complex and very lengthy legal document which is of such complexity and length it is doubtful that the consuming public will in fact consume the contract i.e. read and understand it.

Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

SECTION 15 - INSURANCE OR ANNUITY FUNDED PRENEED FUNERAL CONTRACTS

Rules 15.1 - 15.2 and 15.4 - 15.9

Comments: These rules are good examples of appropriate interpretation for purposes of implementing the Act.

Reasoning: (1) These rules are consistent with the legislative intent expressed in 47-14-1 that prepaid funds will be available for the payment of funeral services so arranged when so needed and the funds not be dissipated. (2) The statute has

no prohibition against the use of insurance as a funding source and so the logical conclusion is that insurance is an appropriate funding source. (3) The WV Insurance Commissioner has already approved the use of some nationally known insurance programs such as Forethought and the National Selected Morticians (NSM) insurance program. (4) These rules provide the consumer appropriate protection and the necessary information for an informed choice. (5) These rules are in keeping with the legislative objective of fulfilling a public need, that is provide for preneed burial contracts and insurance is a convenient tool to the consumer and one with which many consumers are knowledgeable and feel confident in utilizing.

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use of insurance by this proposed rule exceeds the scope of the statute.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over doing a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

Rule 16.1.2

Comment: This rule should be entirely eliminated.

Reasoning: (1) It allows the certificate holder to retain 10% of the "...payments made at the time the contract is entered" i.e. what is commonly referred to as the up front money. This is contrary to the statute! 47-14-5(a)(1) provides for the retention of 10% of "...the total amount agreed to be paid by the contract buyer...". (2) The funeral homes costs of doing business with respect to the pre-need funeral contract are ongoing such as the annual report and so the 10% should be from the entire contract not just the downpayment.

Rule 16.1.3 - 16.2

Comment: These two rules should be eliminated.

Reasoning: (1) These two rules read together amount to another report. Please refer to the Comments and Reasoning to Rules 3.2 - 3.3. (2) The consumer has already been informed of

the deduction by a clear and conspicuous disclosure which if the proposed 16.11 is not changed will be separately acknowledged by the buyer. (3) The statute has already stated in 47-14-5(a)(1) for what the money may be used by the funeral home and the three categories are so broad ("....selling expenses, servicing costs, and general overhead....") that accounting, reporting and itemization are exercises in over-regulation and futility. (4) Common sense tells us that one can buy a pre-need contract decades before it is used and in between those dates the funeral home is expending a significant amount of money in preparing annual reports, aside from other servicing costs, and so a fee not to exceed 10% is by no means excessive without resort to additional reporting.

Conclusion

I ask you to carefully review this entire written comment, but especially Rules 2.2 - 2.3; the reporting in Section 3, Rules 8.2, 16.1.3, 16.2 and 15.9 in conjunction with 9.6.6; and Section 15 Insurance or Annuity Funded Pre-Need Funeral Contracts.

Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,

Amos E. Duesenberg

Domico Funeral Home, Inc.

RECEIVED

SEP 18 1987

Telephone 363-2570
414 Gaston Avenue
Fairmont, West Virginia 26554

ATTY GEN S. J. ...

Sept. 15, 1987

Mr. Thomas L Hindes
Deputy Attorney General
Consumer Protection Division

Mr. Hindes:

Enclosed our my comments concerning legislative rule pretaining to the administration of Pre-need Burial Contracts.

In general, I think the proposed rule is only more interference of government into private business. As a conscientious, honest person and business man, I am personally upset and very disgusted with the interference of government into business. But, I'm not so naive as to think the entire proposed rule will be dropped so, I have chosen a few parts that concern me.

Annual report 3.1 and 4.1:

I'm not in favor of these rules because I don't fell I should be required to have a certificate to sell pre-need funerals. I an a certified and licensed funeral director and embalmer by the state of WV. Domico Funeral Home, Inc. is licensed to do business in WV as a funeral home. We are in the funeral service business and licensed to do so. Being forced to obtain a certificate for the selling of preneed funerals is unnecessary government interference into a business that I am already licensed in the state of WV to do, provide funeral service.

3.2 thru 3.26

Besides the added burden of extra paper work created by the government interference. I don't think the state has any right in obtaining information about outstanding pre-need contracts or any other information it requests in 3.2.1 thru 3.2.6. This should be between the provider and the purchaser. Why should the state have access to this information and I might add, anyone else who may see it. These are legal binding contracts done in good faith between the provider and the purchaser. In my opinion the state has no right to this information.

Section 5.1 thru 5.4

When I read this section I couldn't believe what I was reading. If I didn't know better, I would have thought that WV became a satellite of the Soviet Union. Especially 5.3 thru 5.3.4, this entire section should be taken out, it's so excessive, it's unbelievable.

Domico Funeral Home, Inc.

Telephone 363-2570
414 Gaston Avenue
Fairmont, West Virginia 26554

7.2 and 15.3

We at Domico Funeral Home, Inc. are now selling Forethought Life Insurance as our pre-need funeral contracts. And if the person or persons who proposed these rules would take the time to look at what Forethought has to offer, then they would understand why this is by far the best pre-plan funeral program available.

Though this plan we offer services and merchandise that the buyer chooses and we guarantee their merchandise and service. We fund the pre-need funeral with a life insurance policy, payable at need to the provider. We are guaranteeing that we will provide the merchandise and service requested so why shouldn't we receive the money when the merchandise and services are rendered. Rule 15.3 how I understand it, would effect the Forethought plan. In fact, it reads as if this rule was written intentionally to effect a plan such as Forethought.

Rule 9.6.6

Why does the state of WV need to know the private business of its citizens?

If by my comments you get the impression that I'm upset with government interference into business, you get the right impression.

It seems more and more the state and federal government are putting additional rules and regulation on us yearly.

My comments may not change any of these proposed rules, but I can't say I didn't take the opportunity to express them.

After all we still live in a democracy, don't we? But it seems to me that the government is becoming more a government for government, instead of a government for the people.

As always I will comply with any law that the state of WV enacts. I personally believe that our form of government is truly the best that is offered, but I feel that sometimes government tends to over govern and we must speak out and express our differences. It's not only our right, but our duty.

Thank You,

David M. Domico

David M. Domico
Domico Funeral Home, Inc.

Heck Funeral Home, Inc.

1007 SMITH STREET • TELEPHONE 304/743-4141
P. O. BOX 218

Milton, West Virginia 25541-0218

September 15, 1987

LICENSED DIRECTORS:

Thomas C. Sovine
Juanita K. Sovine
Merrill C. Lunsford

REC'D

SEP 16 1987

ATTY GEN OFFICE

Charles G. Brown, Attorney General
Office of the Attorney General
Charleston, West Virginia, 25305

Re: Implementation of the Preneed Burial Legislation (Article 14).

Dear Attorney General Brown,

I believe that your Consumer Protection office is creating a "monster" with their proposed legislative rules to implement Article 14. The paperwork for me will be crushing. The storage of that paperwork by you will be unbelievable. There has to be a more simple way to protect the consumer than what Mr. Hindes proposes.

You know as long as I have been on the licensing board there has been no preneed complaints against a funeral director. We have had several complaints against cemeteries that we have referred to your office.

I feel that this law has missed its target and a large segment of the industry still remains unregulated. And as the result of this the licensed funeral director is going to be the one to pay to police the preneed industry.

Specifically, I do not understand why consumer protection has come down so hard on funeral director sold life insurance to be used to fund preneed planned funeral contracts with the beneficiary being the funeral home.

I would appreciate it if there was something that you could do to take some of the load off the funeral director's back and out of your office.

Sincerely,



Thomas C. Sovine

RECEIVED
SEP 17 1987
ATTY GEN OFFICE
C.P.D.

Heck Funeral Home, Inc.

1007 SMITH STREET • TELEPHONE 304/743-4141

P. O. BOX 218

Milton, West Virginia 25541-0218

September 15, 1987

LICENSED DIRECTORS:

Thomas C. Sovine

Juanita K. Sovine

Merrill C. Lunsford

Office of the Attorney General
Consumer Protection Office
812 Quarrier St.
Chapelton, WV, 25301

Re: Comments on proposed Preneed Burial Contract Legislative rules.

3.2.1. thru 3.2.6 inclusive

I feel that this section is redundant in as much as one must file copies of the Preneed Contract at the time of sale, at fulfillment and anytime that an amendment is made to the contract.

4.4

I don't feel that it is fair for you to retain application money on a rejected application.

5.3.1 thru 5.3.4 inclusive

I feel that this should be a budgeted item and included as part of the "per contract" registration fee. Which means the \$5.00 per contract fee is not sufficient.

6.1

I feel that all legal actions should be initiated in the county in which the certificate of authority holder has his main office.

8.3

I think that the contract buyer should have the right to designate a beneficiary for any potential excess of monies.

15.3

I feel that "insurable interest" should be determined by the insurance companies and the insurance commissioner. I do not think that there is any more risk to the consumer using insurance to fund his preneed contract than there is funding it with cash. I feel that "15.3" is saying that the W.Va. insurance commissioner does not have the ability to determine whether an insurance contract is a good contract or not.

15.4

A comparison will be a neat trick since the average of a preneed funeral contract buyer is over 70 and most insurance companies will not write term life insurance on individuals over 60.

Respectfully Submitted,



Thomas C. Sovine

DONALD G. FORD FUNERAL HOME, INC.

213 Lincoln Street
Grafton, West Virginia 26354
Phone (304) 265-1570
Donald G. Ford, Owner and Director

RECEIVED

SEP 17 1987

ATTY GEN. OFFICE

September 16, 1987

Dear Mr. Hindes,

Below are my comments and suggested changes on particular items for the proposed legislature rule pertaining to the preneed burial contracts.

I Donald G. Ford of the Donald G. Ford Funeral Home, Inc. of Grafton, W.V. feel that several of these proposed rules severely limit my families' selection and constitutional rights as consumers. The unnecessary rules restricts me the funeral director, the expert in the community, on pre-planned funerals to offer my services to the families that wish to do so.

DONALD G. FORD FUNERAL HOME INC.

213 Lincoln Street
Grafton, West Virginia 26354
Phone (304) 265-1570
Donald G. Ford, Owner and Director

(2)

- 3.2) Families make arrangements and don't want the rest of their family members to know how much they paid for their funeral expenses. The confidentiality of their rights would be in serious violation. Taking away the ability of the consumer to choose which funeral home they desire to make the beneficiary to.
- 5.1) The examination of any procedure pertaining to a funeral home's records has to be within an advanced period of notice.
- 6.1) The charges made or investigation should be made in the county the funeral director lives in. They shouldn't have to go to Charleston, W.V. for this investigation.
- 7.2) It is the families' money, they have made me trustee of their money for the benefit of paying for their funeral. If I as the trustee feel that the funds can be better invested elsewhere and with the families' consent then the trustee should be allowed to apply those funds to the contract of insurance.
- 9.1.6I) If your going to describe the method of funding for a pre-need contract through an insurance contract, then you should have to disclose where the money is going to in a trust fund.
- 9.6.6) This rule violates the confidentiality of their pre-need contract. The family has a copy of the pre-need contract and I have a copy of the pre-need contract, and that's all that's necessary.
- 15.1) Under pre-need burial act 10% is allowable to be taken out on a trust contract.
- Under a contract of insurance where the total price of the funeral is paid as a premium and no money is taken out for commissions. In a contract of insurance where all premiums go towards the payment of the funeral at a future date. Then the pre-need burial act should not apply.

DONALD G. FORD FUNERAL HOME

213 Lincoln Street
Grafton, West Virginia 26354
Phone (304) 265-1570
Donald G. Ford, Owner and Director

(3)

- 15.3) Has proposed unnecessary restrictions and the right of the owner of a life insurance policy to choose who shall receive the benefits of the policy. This restriction doesn't protect the consumer, but is a violation of their constitutional rights as an American citizen. The purpose of the Forethought Life Assignment is to facilitate the consumers right to make a choice of the funeral provided.
- 15.4) It's impossible to compare term life insurance with a fixed death benefit to a whole-life policy which gives a benefit that increases with inflation for an indefinite period of time, up untill the beneficiaries death.
- 15.5) Replacing another policy or cash policy in and buy another policy. The families in my community rely on me to provide funeral services and expert advice.
- 17.2) This rule pertains to an irrevocable contract. It is an unnecessary duplication of paperwork as the contract of insurance now being used is already made irrevocable.

Thank You,
Donald G. Ford
Donald G. Ford
Owner and Director

RECEIVED

SEP 14 1987

ATTY GEN. OFFICE

CPD

TO: Thomas L. Hinder, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: Casdorph & Curry Funeral Home, Inc.
110 B St.
St. Albans, W.Va. 25177
(304) 727-4351

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.

DATE: September , 1987

The following are all of my comments with respect to the proposed rules. However, I want to bring to your attention that my most significant concerns are: First, with Rules 2.2 - 2.3; Second, the reporting in Section 3, Rules 8.2, 15.9, 16.1.3 and 16.2 in conjunction with 9.6.6; and Third, Section 15 Insurance or Annuity Funded PreNeed Funeral Contracts.

I wish to give an oral comment on September 18, 1987. Please provide me with notice of when I may address the group and for how long and an agenda for the hearing.

Section 1 General Provisions

Rule 1.5

Comment:

I believe the effective date of the Rules should not be until the official forms for preneed contracts per Rule 9.1 and all reporting forms per 47-14-9 have been promulgated, published

and furnished to the WV Funeral Directors Association and/or the WV Board of Embalmers and Funeral Directors.

Reasoning:

(1) The small businessman (funeral home) cannot afford to hire competent legal counsel to prepare a preneed burial contract for their use during the time frame between the effective date and when the forms later become available which contract would comply with Rule 9. (2) Without a standard form there will be as many different contracts as there are attorneys preparing them and so there will be no uniformity. (3) Without the uniformity of a standard form the department will not be able to efficiently review the contracts when copies are provided by the funeral homes to the department pursuant to the reporting requirements. (4) Due to the cost of procuring such a contract from an attorney many funeral homes will not offer preneed burial contracts until the forms are available thus reducing competition and reducing the public's ability to select different goods and services from different providers.

Section 2 - Definitions

Rules 2.2 and 2.3

First Comment: It appears all possible goods and services which can be provided to the public by a funeral home or a cemetery have been specifically mentioned except for "caskets". Caskets should be included as a "funeral good". If the department believes that because the statute is silent with

respect to "caskets" and so by stating that caskets are to be included as a funeral good would be to exceed the scope of the statute, then the same problem can be clarified by the rules providing that the nebulous and catch all term of cemetery "equipment" does not include (the sale of) "caskets".

Reasoning: (1) The issue of who should be selling caskets should be addressed because caskets are such a large dollar item in the goods purchased by consumers for funerals and burials. (2) Caskets have traditionally been sold by funeral directors. (3) Without clarification and as the Rules are presently proposed cemeteries can begin selling caskets door to door, being sold by persons much less qualified than licensed funeral directors, or persons under their direct supervision. Funeral Directors must have two years of college, one year apprenticeship, one year of mortuary science and pass a state examination. Therefore, if caskets are sold by cemeteries we have a significant loss of professionalism in service to the consuming public. (4) The respective roles that funeral homes and cemeteries play in serving the consumer needs to be preserved in order to preserve the quality provided by the funeral director's profession and not have an erosion of that by those who have chosen the occupation of selling cemetery lots, etc. generally in door to door setting. (5) There is a need to preserve the tradition and sanctity of the funeral.

Second Comment: The Rules do not address, I.E. define what is meant by "a cemetery when acting only as a cemetery" and how that phrase relates to "when any person, by the same contract,

sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

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Rule 5.3

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Reasoning: The statute does not give sufficient guidance.

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Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over doing a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

Rule 16.1.2

Comment: This rule should be entirely eliminated.

Reasoning: (1) It allows the certificate holder to retain 10% of the "...payments made at the time the contract is entered" i.e. what is commonly referred to as the up front money. This is contrary to the statute! 47-14-5(a)(1) provides for the retention of 10% of "...the total amount agreed to be paid by the contract buyer...". (2) The funeral homes costs of doing business with respect to the pre-need funeral contract are ongoing such as the annual report and so the 10% should be from the entire contract not just the downpayment.

Rule 16.1.3 - 16.2

Comment: These two rules should be eliminated.

Reasoning: (1) These two rules read together amount to another report. Please refer to the Comments and Reasoning to Rules 3.2 - 3.3. (2) The consumer has already been informed of

the deduction by a clear and conspicuous disclosure which if the proposed 16.11 is not changed will be separately acknowledged by the buyer. (3) The statute has already stated in 47-14-5(a)(1) for what the money may be used by the funeral home and the three categories are so broad ("....selling expenses, servicing costs, and general overhead....") that accounting, reporting and itemization are exercises in over-regulation and futility. (4) Common sense tells us that one can buy a pre-need contract decades before it is used and in between those dates the funeral home is expending a significant amount of money in preparing annual reports, aside from other servicing costs, and so a fee not to exceed 10% is by no means excessive without resort to additional reporting.

Conclusion

I ask you to carefully review this entire written comment, but especially Rules 2.2 - 2.3; the reporting in Section 3, Rules 8.2, 16.1.3, 16.2 and 15.9 in conjunction with 9.6.6; and Section 15 Insurance or Annuity Funded Pre-Need Funeral Contracts.

Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,

Ronald E. Landry - T.M.G.C.

Heck Funeral Home, Inc.

1007 SMITH STREET • TELEPHONE 304/743-4141
P. O. BOX 218

Milton, West Virginia 25541-0218
September 15, 1987

RECEIVED

SEP 16 1987

ATTY GEN. OFFICE
CDD

LICENSED DIRECTORS:

Thomas C. Sovine
Juanita K. Sovine
Merrill C. Lunsford

Office of the Attorney General
Consumer Protection Office
812 Quarrier St.
Charelston, WV, 25301

Re: Comments on proposed Preneed Burial Contract Legislative rules.

3.2.1. thru 3.2.6 inclusive

I feel that this section is redundant in as much as one must file copies of the Preneed Contract at the time of sale, at fulfillment and anytime that an amendment is made to the contract.

4.4

I don't feel that it is fair for you to retain application money on a rejected application.

5.3.1 thru 5.3.4 inclusive

I feel that this should be a budgeted item and included as part of the "per contract" registration fee. Which means the \$5.00 per contract fee is not sufficient.

6.1

I feel that all legal actions should be initiated in the county in which the certificate of authority holder has his main office.

8.3

I think that the contract buyer should have the right to designate a beneficiary for any potential excess of monies.

15.3

I feel that "insurable interest" should be determined by the insurance companies and the insurance commissioner. I do not think that there is any more risk to the consumer using insurance to fund his preneed contract than there is funding it with cash. I feel that "15.3" is saying that the W.Va. insurance commissioner does that have the ability to determine whether an insurance contract is a good contract or not.

15.4

A comparison will be a neat trick since the average of a preneed funeral contract buyer is over 70 and most insurance companies will not write term life insurance on individuals over 60.

Respectfully Submitted,



Thomas C. Sovine

TO: Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: Price H. Calfee, Jr.
Calfee Funeral Home, Inc.
800 S. Oakwood Ave.
Beckley, WV 25801 (304) 253-8381

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) ~~Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.~~

DATE: September 10, 1987

The following are all of my comments with respect to the proposed rules. However, I want to bring to your attention that my most significant concerns are: First, with Rules 2.2 - 2.3; Second, the reporting in Section 3, Rules 8.2, 15.9, 16.1.3 and 16.2 in conjunction with 9.6.6; and Third, Section 15 Insurance or Annuity Funded PreNeed Funeral Contracts.

~~I wish to give an oral comment on September 18, 1987. Please provide me with notice of when I may address the group and for how long and an agenda for the hearing.~~

Section 1 General Provisions

Rule 1.5

Comment:

I believe the effective date of the Rules should not be until the official forms for preneed contracts per Rule 9.1 and all reporting forms per 47-14-9 have been promulgated, published

and furnished to the WV Funeral Directors Association and/or the WV Board of Embalmers and Funeral Directors.

Reasoning:

(1) The small businessman (funeral home) cannot afford to hire competent legal counsel to prepare a preneed burial contract for their use during the time frame between the effective date and when the forms later become available which contract would comply with Rule 9. (2) Without a standard form there will be as many different contracts as there are attorneys preparing them and so there will be no uniformity. (3) Without the uniformity of a standard form the department will not be able to efficiently review the contracts when copies are provided by the funeral homes to the department pursuant to the reporting requirements. (4) Due to the cost of procuring such a contract from an attorney many funeral homes will not offer preneed burial contracts until the forms are available thus reducing competition and reducing the public's ability to select different goods and services from different providers.

Section 2 - Definitions

Rules 2.2 and 2.3

First Comment: It appears all possible goods and services which can be provided to the public by a funeral home or a cemetery have been specifically mentioned except for "caskets". Caskets should be included as a "funeral good". If the department believes that because the statute is silent with

respect to "caskets" and so by stating that caskets are to be included as a funeral good would be to exceed the scope of the statute, then the same problem can be clarified by the rules providing that the nebulous and catch all term of cemetery "equipment" does not include (the sale of) "caskets".

Reasoning: (1) The issue of who should be selling caskets should be addressed because caskets are such a large dollar item in the goods purchased by consumers for funerals and burials. (2) Caskets have traditionally been sold by funeral directors. (3) Without clarification and as the Rules are presently proposed cemeteries can begin selling caskets door to door, being sold by persons much less qualified than licensed funeral directors, or persons under their direct supervision. Funeral Directors must have two years of college, one year apprenticeship, one year of mortuary science and pass a state examination. Therefore, if caskets are sold by cemeteries we have a significant loss of professionalism in service to the consuming public. (4) The respective roles that funeral homes and cemeteries play in serving the consumer needs to be preserved in order to preserve the quality provided by the funeral director's profession and not have an erosion of that by those who have chosen the occupation of selling cemetery lots, etc. generally in door to door setting. (5) There is a need to preserve the tradition and sanctity of the funeral.

Second Comment: The Rules do not address, I.E. define what is meant by "a cemetery when acting only as a cemetery" and how that phrase relates to "when any person, by the same contract,

sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

Section 3 - Annual Report

Rule 3.1

Comment: Given that the reporting year ends on December 31 giving the funeral home only 30 days to prepare this annual report is an insufficient amount of time. A reasonable amount of time would be 60 to 90 days.

Reasoning: (1) The complexity of the annual report. (2) The volume which will be reported by a significant number of funeral homes. (3) The report is being compiled at the same time of year that the funeral home's clerks, record keepers, bookkeepers and accountants are trying to amass information for tax returns. (4) To prepare the Annual Report the funeral home must have a statement(s) from their Trustee, usually a bank's trust department, which statement(s) will probably not be available by January 30, let alone available so early in January that the funeral home can then prepare the balance of the required information.

Rules 3.2 - 3.3

Comment: After the word "or" in Rule 3.2.1, the last sentence of Rule 3.2.3, and all of Rules 3.2.5, 3.2.6 and 3.3 are reporting requirements which go beyond the scope of the statute in requiring certain information in an annual report. This reporting information needs to be eliminated. In lieu of eliminating this degree of reporting information in the annual report the department should eliminate from the proposed Rules

the initial report made within ten days of the contract being executed (Rule 15.9, 16.1.3 and 16.2 in connection with Rule 9.6.6) and the immediately after fulfillment report made within 30 days of the death of the contract beneficiary (Rule 8.2).

Reasoning: (1) These three reports when compared duplicate, or rather triplicate, one another. (2) The cost of such reporting is excessive especially to the small businessman. Indeed, only a dozen funeral homes in the state are capable of performing the proposed reporting. Small funeral homes would refrain from doing pre-need contracts and so competition would be lessened. (3) Receiving the volume of reports which the department would receive under the three reports required by the proposed rules would be more reports than the department could effectively review and/or audit especially in light of its other duties under the Act and its budgetary constraints. (4) The statute only requires an annual report and the additional information required in the annual report is more reasonable if required in the light of not having the other two reports. (5) The consumer who needs protection is protected by the annual report. (6) The certificate holder still must maintain records and the department still has the right to perform on site examinations per 47-14-3(i)(1) and (2).

Section 5 - Initial Examinations

Rule 5.3

Comments: I sincerely appreciate there being proposed in this rule the terms "...., if the examination is prompted by cause,..." nonetheless charging for the first examination is

contrary to the statute wherein 47-14-3(i)(3) states "The certificate holder shall pay for the cost of any examination which is not (underlining added) the first one in the calendar year,...."

Reasoning: (1) The purpose of rules is to by interpretation implement a statute, but not change it, and surely not be in contravention of it.

Section 7 - Trust Accounts

Rule 7.1

Comment: When this rule says "All funds...." it is confusing because really what is meant is a minimum of 90% of the funds because the funeral home can keep 10%.

Reasoning: (1) The statute and the rules provide for up to a 10% retention. (2) In comparison the statute is not confusing because it states "Unless otherwise specifically exempt under this article,....".

Rule 7.3

Comment: This rule should be entirely eliminated.

Reasoning: (1) Trustees are not required to make annual reports to the department.... certificate holders must. (2) The requirement of disclosing the fees charged by the Trustee is duplicative of the requirement in 3.2.3 that the annual report "include an accounting for each trust fund, describing all payments to and disbursements from the fund." Trustees' fees would be a disbursement from the fund.

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

Rule 8.2

Comment: This rule should be eliminated.

Reasoning: Please refer to the Comments and Reasoning to Rules 3.2-3.3.

Section 9 - Contents and Execution of Contracts

Rules 8.1 - 9.6.5

First Comment: We certificate holders do need guidance with the content of the contract and its execution.

Reasoning: The statute does not give sufficient guidance.

Second Comment: These rules outline an exceeding complex and very lengthy legal document which is of such complexity and length it is doubtful that the consuming public will in fact consume the contract i.e. read and understand it.

Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

SECTION 15 - INSURANCE OR ANNUITY FUNDED PRENEED FUNERAL CONTRACTS

Rules 15.1 - 15.2 and 15.4 - 15.9

Comments: These rules are good examples of appropriate interpretation for purposes of implementing the Act.

Reasoning: (1) These rules are consistent with the legislative intent expressed in 47-14-1 that prepaid funds will be available for the payment of funeral services so arranged when so needed and the funds not be dissipated. (2) The statute has

no prohibition against the use of insurance as a funding source and so the logical conclusion is that insurance is an appropriate funding source. (3) The WV Insurance Commissioner has already approved the use of some nationally known insurance programs such as Forethought and the National Selected Morticians (NSM) insurance program. (4) These rules provide the consumer appropriate protection and the necessary information for an informed choice. (5) These rules are in keeping with the legislative objective of fulfilling a public need, that is provide for preneed burial contracts and insurance is a convenient tool to the consumer and one with which many consumers are knowledgeable and feel confident in utilizing.

Rule 15.3

Comment: This rule eliminates the use of insurance as a funding source and the use of life insurance assignments as a funding source for preneed contracts! This rule most definitely should be eliminated!

Reasoning: (1) This rule is contrary to all the other provisions in the rules and the statute which provide for insurance as a funding source!! (2) This rule is contrary to the long standing practice of consumers using life insurance to fund preneed contracts. (5) Depending upon the consumer's age, life insurance can be a much less expensive means of funding a preneed contract. (6) Without insurance as a funding source a smaller percentage of the consuming public will be able to benefit from the use of preneed contracts. (7) To eliminate the

use of insurance by this proposed rule exceeds the scope of the statute.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over doing a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

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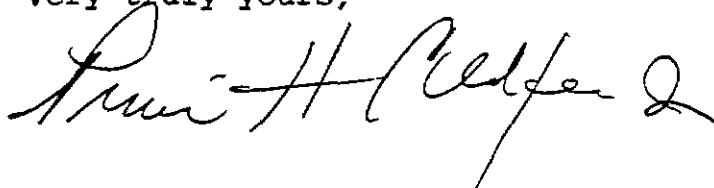
Conclusion

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Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

~~Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.~~

Very truly yours,



2

James W. Bower
Richard J. Pence
Steven G. Moore
A. Randy Amos
Robert P. Pence
Timothy R. Hooker
Timmy D. Holtz
Thomas W. Smell

Davis FUNERAL HOME

Clarksburg Chapel
443 West Pike Street
P.O. Box 2806
Clarksburg, WV 26302
304/624-6344

Bartlett Chapel
202 McGraw Ave.
Grafton, WV 26354
304/265-0489



RECEIVED

SEP 14 1987

AITY GEN. OFFICE
C.P.D

September 11, 1987

Mr. Thomas L. Hinds
Deputy Attorney General
812 Quarrier Street
Charleston, WV 25301

Re: Funeral Pre-Need Rule Interpretation

Dear Mr. Hinds:

In the brief time we have been aware of your interpretation of the funeral pre-need law, we believe the following areas need comment;

1. Interpretations are very ANTI-CONSUMER.
2. Not enough time to study interpretations before hearing.
3. Interpretations go beyond what the law was intended to cover.
4. Interpretations very self serving for a few funeral directors.
5. People making interpretations needed additional information.
6. Some areas of importance not covered, i.e. commingling of funds.
7. Some areas are unclear, i.e. will the Attorney Generals Office be providing a sample contract?

We would welcome the opportunity to discuss these and other areas in detail. But, we need additional time to digest these interpretations.

Sincerely,

Robert P. Pence

RPP/lr

The Melvin T. Strider Co., Inc.



H.M. Brown--Directors--J.P. Christian, Jr.

Colonial Funeral Home

P.O. BOX 388

CHARLES TOWN, WEST VIRGINIA 25414

RECEIVED

SEP 14 1987

ATTY GEN. OFFICE
C.P.D.

September 11th, 1987

Mr. Thomas L. Hinds, Esq.
Deputy Attorney General
Consumer Protection Division
Charleston, West Virginia 25305

Dear Mr. Hinds:

The proposed Legislative Rule pertaining to the administration of Preneed Burial Contracts.

I would like the following items to be deleted from this rule.
Items, #2, #3, and #15.

I feel, that, when a Preneed Contract is initially reported to your Agency, once is enough. STRIKE, 2 and 3. and 15.

Thank you.

Respectfully yours,
Joseph P. Christian, Jr.
Joseph P. Christian, Jr.

FORE THOUGHT.

September 9, 1987

RECEIVED

SEP 11 1987

Mr. Thomas L. Hinds
Director
Office of the Attorney General
State Capitol
Room 26E
Charleston, West Virginia 25305

ATTY GEN. OFFICE
C.P.D

Dear Mr. Hinds:

In response to the "Notice of Public Hearing or Comment Period on a Proposed Rule" dated August 19, 1987, (a copy is attached) the following person request time to make comments at the hearing on September 18, 1987:

John M. Bonafair

The above will also submit written comments concerning the proposed rule pertaining to the administration of Preneed Burial Contracts.

Respectfully yours,

Martha E. Junker

Martha E. Junker
Compliance Counsel

MEJ/cap

Attachment

FORETHOUGHT LIFE INSURANCE COMPANY
FORETHOUGHT CENTER
BATESVILLE, INDIANA 47006



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368 8808

August 19, 1987

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

COMMENT PERIOD

AGENCY: Attorney General

RULE TYPE: Legislative Rule

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

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED AND
WILL END ON September 18, 1987, AT 5 p.m.. WRITTEN COMMENTS ARE
TO BE MAILED TO THE FOLLOWING ADDRESS: 812 Quarrier Street,
Sixth Floor, Charleston, West Virginia 25301

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

A handwritten signature in cursive script, appearing to read "T. L. Hindes".

THOMAS L. HINDES, Director



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

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 X

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

TO: Thomas L. Hinder, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: N. Douglas Patterson, Jr.
751 3rd St.
New Martinsville, WV
26155 (304) 455-1800

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.

DATE: September 11, 1987

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sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

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Comments: I sincerely appreciate there being proposed in this rule the terms "....., if the examination is prompted by cause,..." nonetheless charging for the first examination is

contrary to the statute wherein 47-14-3(1)(3) states "The certificate holder shall pay for the cost of any examination which is not (underlining added) the first one in the calendar year,...."

Reasoning: (1) The purpose of rules is to by interpretation implement a statute, but not change it, and surely not be in contravention of it.

Section 7 - Trust Accounts

Rule 7.1

Comment: When this rule says "All funds...." it is confusing because really what is meant is a minimum of 90% of the funds because the funeral home can keep 10%.

Reasoning: (1) The statute and the rules provide for up to a 10% retention. (2) In comparison the statute is not confusing because it states "Unless otherwise specifically exempt under this article,....".

Rule 7.3

Comment: This rule should be entirely eliminated.

Reasoning: (1) Trustees are not required to make annual reports to the department.... certificate holders must. (2) The requirement of disclosing the fees charged by the Trustee is duplicative of the requirement in 3.2.3 that the annual report "include an accounting for each trust fund, describing all payments to and disbursements from the fund." Trustees' fees would be a disbursement from the fund.

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

Rule 8.2

Comment: This rule should be eliminated.

Reasoning: Please refer to the Comments and Reasoning to Rules 3.2-3.3.

Section 9 - Contents and Execution of Contracts

Rules 8.1 - 9.6.5

First Comment: We certificate holders do need guidance with the content of the contract and its execution.

Reasoning: The statute does not give sufficient guidance.

Second Comment: These rules outline an exceeding complex and very lengthy legal document which is of such complexity and length it is doubtful that the consuming public will in fact consume the contract i.e. read and understand it.

Reasoning: Nonetheless, please refer to the Comments and Reasoning to Rule 1.5.

SECTION 15 - INSURANCE OR ANNUITY FUNDED PRENEED FUNERAL CONTRACTS

Rules 15.1 - 15.2 and 15.4 - 15.9

Comments: These rules are good examples of appropriate interpretation for purposes of implementing the Act.

Reasoning: (1) These rules are consistent with the legislative intent expressed in 47-14-1 that prepaid funds will be available for the payment of funeral services so arranged when so needed and the funds not be dissipated. (2) The statute has

no prohibition against the use of insurance as a funding source and so the logical conclusion is that insurance is an appropriate funding source. (3) The WV Insurance Commissioner has already approved the use of some nationally known insurance programs such as Forethought and the National Selected Morticians (NSM) insurance program. (4) These rules provide the consumer appropriate protection and the necessary information for an informed choice. (5) These rules are in keeping with the legislative objective of fulfilling a public need, that is provide for preneed burial contracts and insurance is a convenient tool to the consumer and one with which many consumers are knowledgeable and feel confident in utilizing.

Rule 15.3

Comment: This rule eliminates the use of insurance as a funding source and the use of life insurance assignments as a funding source for preneed contracts! This rule most definitely should be eliminated!

Reasoning: (1) This rule is contrary to all the other provisions in the rules and the statute which provide for insurance as a funding source!! (2) This rule is contrary to the long standing practice of consumers using life insurance to fund preneed contracts. (5) Depending upon the consumer's age, life insurance can be a much less expensive means of funding a preneed contract. (6) Without insurance as a funding source a smaller percentage of the consuming public will be able to benefit from the use of preneed contracts. (7) To eliminate the

use of insurance by this proposed rule exceeds the scope of the statute.

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

Rule 16.1.1

Comments: A "Clear and conspicuous disclosure..." is well and good for the consumer, but a separate acknowledgement is over ~~doing~~ a good idea.

Reasoning: This proposed rule is adding further to an already complex and lengthy contract.

Rule 16.1.2

Comment: This rule should be entirely eliminated.

Reasoning: (1) It allows the certificate holder to retain 10% of the "...payments made at the time the contract is entered" i.e. what is commonly referred to as the up front money. This is contrary to the statute! 47-14-5(a)(1) provides for the retention of 10% of "...the total amount agreed to be paid by the contract buyer....". (2) The funeral homes costs of doing business with respect to the pre-need funeral contract are ongoing such as the annual report and so the 10% should be from the entire contract not just the downpayment.

Rule 16.1.3 - 16.2

Comment: These two rules should be eliminated.

Reasoning: (1) These two rules read together amount to another report. Please refer to the Comments and Reasoning to Rules 3.2 - 3.3. (2) The consumer has already been informed of

the deduction by a clear and conspicuous disclosure which if the proposed 16.11 is not changed will be separately acknowledged by the buyer. (3) The statute has already stated in 47-14-5(a)(1) for what the money may be used by the funeral home and the three categories are so broad ("....selling expenses, servicing costs, and general overhead....") that accounting, reporting and itemization are exercises in over-regulation and futility. (4) Common sense tells us that one can buy a pre-need contract decades before it is used and in between those dates the funeral home is expending a significant amount of money in preparing annual reports, aside from other servicing costs, and so a fee not to exceed 10% is by no means excessive without resort to additional reporting.

Conclusion

I ask you to carefully review this entire written comment, but especially Rules 2.2 - 2.3; the reporting in Section 3, Rules 8.2, 16.1.3, 16.2 and 15.9 in conjunction with 9.6.6; and Section 15 Insurance or Annuity Funded Pre-Need Funeral Contracts.

Further I ask that you revise the proposed rules after careful study of these written comments and with an understanding of the role of funeral directors in serving the consumer.

Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,



LANTZ, PALMER, TEBAY & REED

ATTORNEYS AT LAW
SUITE 753, PROFESSIONAL OFFICES
GRAND CENTRAL MALL
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GEORGE E. LANTZ
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RECEIVED
SEP 15 1987
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POST OFFICE BOX 251
PARKERSBURG, WV 26102
TELEPHONE 304-422-3110

September 15, 1987

Mr. Thomas L. Hindes
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, West Virginia 25301

Re: Written comments to proposed
legislative Rules implementing
the WV Preneed Burial Act

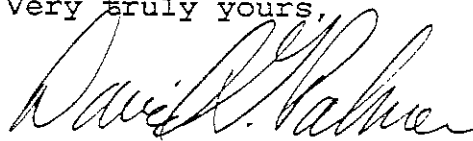
Dear Mr. Hindes:

Enclosed herewith please find written objections which I submit on behalf of my client, Carr K. Leavitt, with respect to the above-described matter.

These are the same written objections which we reviewed in our meeting on September 14, 1987 and which I ask that you review prior to drafting the final proposed Rules.

I sincerely appreciated your time and your cooperation on September 14, 1987.

Very truly yours,



David G. Palmer

DGP:jas

Enclosure - Written objections

TO: Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
L & S Building, 6th Floor
Charleston, WV 25301

FROM: Carr K. Leavitt
Leavitt Funeral Home, Inc.
403 Seventh Street
Parkersburg, WV 26102 (304) 422-6459

RE: (1) Written Comments to Proposed Legislative Rules
Implementing the WV Preneed Burial Act
(2) Scheduling of oral comments upon the proposed
Rules on September 18, 1987 beginning at 10:00
o'clock A.M.

DATE: September 15, 1987

The following are all of my comments with respect to the proposed rules. However, I want to bring to your attention that my most significant concerns are: First, with Rules 2.2 - 2.3; Second, the reporting in Section 3, Rules 8.2, 15.9, 16.1.3 and 16.2 in conjunction with 9.6.6; and Third, Section 15 Insurance or Annuity Funded PreNeed Funeral Contracts.

I wish to give an oral comment on September 18, 1987. Please provide me with notice of when I may address the group and for how long and an agenda for the hearing.

Section 1 General Provisions

Rule 1.5

Comment:

I believe the effective date of the Rules should not be until the official forms for preneed contracts per Rule 9.1 and all reporting forms per 47-14-9 have been promulgated, published

and furnished to the WV Funeral Directors Association and/or the WV Board of Embalmers and Funeral Directors.

Reasoning:

(1) The small businessman (funeral home) cannot afford to hire competent legal counsel to prepare a preneed burial contract for their use during the time frame between the effective date and when the forms later become available which contract would comply with Rule 9. (2) Without a standard form there will be as many different contracts as there are attorneys preparing them and so there will be no uniformity. (3) Without the uniformity of a standard form the department will not be able to efficiently review the contracts when copies are provided by the funeral homes to the department pursuant to the reporting requirements. (4) Due to the cost of procuring such a contract from an attorney many funeral homes will not offer preneed burial contracts until the forms are available thus reducing competition and reducing the public's ability to select different goods and services from different providers.

Section 2 - Definitions

Rules 2.2 and 2.3

First Comment: It appears all possible goods and services which can be provided to the public by a funeral home or a cemetery have been specifically mentioned except for "caskets". Caskets should be included as a "funeral good". If the department believes that because the statute is silent with

respect to "caskets" and so by stating that caskets are to be included as a funeral good would be to exceed the scope of the statute, then the same problem can be clarified by the rules providing that the nebulous and catch all term of cemetery "equipment" does not include (the sale of) "caskets".

Reasoning: (1) The issue of who should be selling caskets should be addressed because caskets are such a large dollar item in the goods purchased by consumers for funerals and burials. (2) Caskets have traditionally been sold by funeral directors. (3) Without clarification and as the Rules are presently proposed cemeteries can begin selling caskets door to door, being sold by persons much less qualified than licensed funeral directors, or persons under their direct supervision. Funeral Directors must have two years of college, one year apprenticeship, one year of mortuary science and pass a state examination. Therefore, if caskets are sold by cemeteries we have a significant loss of professionalism in service to the consuming public. (4) The respective roles that funeral homes and cemeteries play in serving the consumer needs to be preserved in order to preserve the quality provided by the funeral director's profession and not have an erosion of that by those who have chosen the occupation of selling cemetery lots, etc. generally in door to door setting. (5) There is a need to preserve the tradition and sanctity of the funeral.

Second Comment: The Rules do not address, I.E. define what is meant by "a cemetery when acting only as a cemetery" and how that phrase relates to "when any person, by the same contract,

sells....". The problem/situation which needs to be addressed is can a cemetery employee sell funeral goods and services or burial goods and services if he uses two different contracts or if he is an employee of both a cemetery and a funeral home or if he through his door to door marketing sells cemetery goods then brings up the subject of a preneed burial contract with the consumer and sends back his favorite funeral director the next evening or he himself then returns with his preneed contract sales kit the next evening?

Reasoning: (1) To not address this scenario will allow the practice to occur. (2) This scenario gives an unfair advantage in the marketplace to those entities which own both a funeral home(s) and a cemetery(ies) rather than just a funeral home of which there are a number of such entities in West Virginia and so you are not regulating a significant portion of the business being conducted. (3) This scenario can be a means of side stepping the prohibition against funeral directors soliciting which includes door to door sales, which sidestep will be utilized by those less scrupulous in the profession. (4) Many of the same arguments mentioned under the "First Comment" apply here too such as quality professional service to the public. (5) The legislative intent with this statute was to bring regulation about; to bring these types of acts, including this scenario, into the fold of the PreNeed Burial Act; and to be broad in its inclusions and narrow in its exclusions.

Section 3 - Annual Report

Rule 3.1

Comment: Given that the reporting year ends on December 31 giving the funeral home only 30 days to prepare this annual report is an insufficient amount of time. A reasonable amount of time would be 60 to 90 days.

Reasoning: (1) The complexity of the annual report. (2) The volume which will be reported by a significant number of funeral homes. (3) The report is being compiled at the same time of year that the funeral home's clerks, record keepers, bookkeepers and accountants are trying to amass information for tax returns. (4) To prepare the Annual Report the funeral home must have a statement(s) from their Trustee, usually a bank's trust department, which statement(s) will probably not be available by January 30, let alone available so early in January that the funeral home can then prepare the balance of the required information.

Rules 3.2 - 3.3

Comment: After the word "or" in Rule 3.2.1, the last sentence of Rule 3.2.3, and all of Rules 3.2.5, 3.2.6 and 3.3 are reporting requirements which go beyond the scope of the statute in requiring certain information in an annual report. This reporting information needs to be eliminated. In lieu of eliminating this degree of reporting information in the annual report the department should eliminate from the proposed Rules

the initial report made within ten days of the contract being executed (Rule 15.9, 16.1.3 and 16.2 in connection with Rule 9.6.6) and the immediately after fulfillment report made within 30 days of the death of the contract beneficiary (Rule 8.2).

Reasoning: (1) These three reports when compared duplicate, or rather triplicate, one another. (2) The cost of such reporting is excessive especially to the small businessman. Indeed, only a dozen funeral homes in the state are capable of performing the proposed reporting. Small funeral homes would refrain from doing pre-need contracts and so competition would be lessened. (3) Receiving the volume of reports which the department would receive under the three reports required by the proposed rules would be more reports than the department could effectively review and/or audit especially in light of its other duties under the Act and its budgetary constraints. (4) The statute only requires an annual report and the additional information required in the annual report is more reasonable if required in the light of not having the other two reports. (5) The consumer who needs protection is protected by the annual report. (6) The certificate holder still must maintain records and the department still has the right to perform on site examinations per 47-14-3(i)(1) and (2).

Section 5 - Initial Examinations

Rule 5.3

Comments: I sincerely appreciate there being proposed in this rule the terms "...., if the examination is prompted by cause,..." nonetheless charging for the first examination is

contrary to the statute wherein 47-14-3(1)(3) states "The certificate holder shall pay for the cost of any examination which is not (underlining added) the first one in the calendar year,...."

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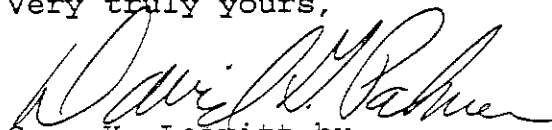
Conclusion

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Finally, I look forward to your contacting me regarding the September 18, 1987 oral comments.

Very truly yours,


Carr K. Leavitt by
David G. Palmer, Attorney

ICE MILLER DONADIO & RYAN

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September 17, 1987

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submitted
9/18 TLH

Mr. Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
Sixth Floor
Charleston, West Virginia 25301

RE: Comments on Proposed Legislative Rule Pertaining
to the Administration of Preneed Burial Contracts
on behalf of Laymen National Life Insurance Company

Dear Sir:

We are submitting to you on behalf of Laymen National Life Insurance Company whose home office is in Indianapolis, Indiana, these comments on the proposed rule. Laymen National is in the business of writing life insurance and annuity policies and is licensed in the State of West Virginia. It does write insurance that would cover Funeral goods and services. Its interest in these rules relates primarily to the writing of such policies in accordance with the law of West Virginia. Its primary interest is in having a workable system of handling such policies and allows it to write such policies in a manner which provides security to the consumer.

Laymen National proposes to have a bank or trust company be the beneficiary of any policy of insurance it issues. It would do so under a written trust agreement which would require that the funds be disbursed on behalf of the contract beneficiary and West Virginia Code Sections 47-14-1 et seq. In pursuit of this goal, Laymen National only has comments with respect to proposed rule 7.2. This rule prohibits a trustee from investing or applying trust funds for the purchase of a contract of insurance whether the trustee is a financial institution

Mr. Thomas L. Hindes, Director
September 16, 1987
Page Two

or not. We believe that it would be in the public interest to allow a bank or trust company to purchase policies of insurance under a trust agreement where a bank or trust company is to be the beneficiary of the policy under the written trust agreement. The initial reason for this would be to allow the bank or trust company to open an account for the contract beneficiary at the time a policy of insurance is purchased. Secondly, Laymen National believes that allowing banks and trust companies acting in such a capacity is in the consumer's interest. The bank or trust company provides a responsible person to receive the funds for the policy purchase and follow up to see that the policy is actually written. We believe that such a procedure will provide the best possible protection to the consumer because it places in the bank or trust company the responsibility of purchasing the policy of insurance and upon death seeing that the policy proceeds are used in accordance with the provisions of the law. In addition, we believe that the statute itself in no way implies that banks and trust companies as trustees cannot purchase such policies. In fact, Section 45-14-5(3)(ii) provides that the bank or trust company may proceed in accordance with the written trust agreement. Therefore, if the written trust agreement authorizes such trustee to purchase a policy of insurance, the statute seems to allow it to do so. Under these circumstances, there would appear to be a lack of authority for section 7.2 to apply to banks and trust companies when they are acting as trustees.

With all of this in mind, we would propose that Section 7.2 be revised to read:

"7.2 Other than as provided in this section, no trustee or board of trustees may invest or apply trust funds for the purchase of insurance on the contract beneficiary's life. In those cases where a trustee is a bank or trust company under a written trust agreement which provides that the trustee will hold the proceeds of any policy of insurance or other funds for the payment of funeral goods and services on behalf of the contract beneficiary in accordance with West Virginia Code Sections 47-14-1 et seq, such trustee may cause the policy of insurance to be written with funds provided to it by the contract seller or contract buyer beneficiary.

Karen M. Love of our office will be present at the hearing and will be delivering these written comments. She will be

Mr. Thomas L. Hindes, Director
September 16, 1987
Page Three

available to answer any questions you may have with respect
to these comments.

Very truly yours,

ICE MILLER DONADIO & RYAN


Alan H. Loble

AHL/clb

Submitted 9/18 TCH

GORMAN, SHEATSLEY & HUTCHISON, L. C.

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25802-2843

September 18, 1987

Mr. Thomas L. Hines, Director
Office of the Attorney General
State of West Virginia
State Capitol
Room 26-E
Charleston, West Virginia 25305

RE: Comments of Legacy One, Inc., a West Virginia Corporation, on the proposed legislative rule pertaining to the administration of preneed burial contract

Dear Mr. Hines:

The following written comments are presented to the Attorney General pursuant to a notice of public hearing or comment period on a proposed rule which is dated August 19, 1987 and issued by your office. Please accept the following comments and questions.

Section 47-14-1 et seq. of the West Virginia Code, as it regulates preneed funeral industry, is in itself one of the most onerous and overburdening regulatory schemes that exists in the United States. The regulation of the preneed burial industry as set forth in Section 47-14-1, et seq. of the West Virginia Code, effectively denies to both sellers and purchasers the economic benefits of prearrangement and prepurchase and the use of time tested and proven investment and marketing programs, both of which would benefit the economic growth of the industry and the consumers who participate in that growth.

With that in mind, a review of the proposed regulations as authorized by the statute, have gone even further and are successful in completely and totally denying access or marketability of any preneed funeral sales program. It is clear that nongovernmental persons and entities with personal bias and personal interest, including the West Virginia Funeral Directors' Association, have provided input and documentation upon which these rules and regulations were provided. The Attorney General, while fully aware of litigation on this very issue which is currently before the United States District Court for the Southern District of West Virginia in Charleston, did not seek to receive the views from the litigants themselves and the parties involved in that litigation so as to formulate protective yet reasonable rules and regulations for the administration of the preneed burial funds.

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1. What, if any, nongovernmental persons or entities provided input or documentation which was relied upon in the promulgation of these proposed legislative rules? If input or documentation was accepted from any individuals or entities, was it solicited or unsolicited; and did the Attorney General attempt to solicit alternative points of view?

2. What is the statutory authority upon which the Attorney General is relying with regard to the regulation of contracts which are funded by insurance programs. Section 17.2 and Section 15.1, et seq. of the regulations deal with the regulation of insurance funding programs, which said insurance funding programs have been previously approved by the Department of Insurance. West Virginia Code, Section 47-14-2 explicitly provides that insurance contracts are outside the scope of the West Virginia preneed legislation as contained in Section 47-14-1, et seq., and it is clear that regulation of insurance is beyond the scope of Chapter 46(a) of the Code. Expansion of the regulation of Section 15.1 of the proposed rules is clearly a regulation of the form, manner and possible uses of insurance contracts without any statutory authority whatsoever.

In addition, the Insurance Commissioner has already approved numerous marketing programs and insurance products in the State of West Virginia which have been used to fund preneed sales. Part of the regulatory scope of these approvals is the establishment of a default fund to insure that insurance funds are available if any company is unable to honor its insurance contracts. Annual and quarterly financial reporting is also required to assure the solvency of each company licensed to sell and underwrite insurance products in the State.

Any additional regulation is not only clearly outside the scope of Chapter 47-14 and also Chapter 46(a), but will impose dual regulatory systems on insurance contracts already existing in the State of West Virginia, potentially driving companies away from underwriting these types of policies in the State.

If additional regulation of insurance companies is to occur, it should not under the ambit of the Attorney General's Office, which obviously does not have the necessary expertise. The Insurance Commissioner should be given this responsibility. The Insurance Commissioner should be left to do his job and exercise his responsibilities in the regulation and approval of insurance products.

3. If an insurance company has already qualified a particular product as a single premium life insurance contract or some other form of insurance or annuity contract or death or burial insurance, will the regulations as promulgated impose additional regulations applying all the terms and conditions of 47-14-1, et seq. The rules and regulations would appear to impose the dual regulations but it is not clear.

4. How does the Attorney General reconcile Section 7.2 and Section 15.1 where it appears that Trust Funds may not be used to purchase contracts of insurance on the contract beneficiary's life, while at the same time under Section 15.1, et seq., providing a mechanism to do just that. Clearly a question that is outstanding is are payments made by purchasers for contracts of more than one payment to be considered funds subject to the trusting provisions of Section 47-14-1, et seq. of the West Virginia Code or are they exempt as being insurance premiums?

5. It is apparent that Section 9.1.6(i) and Section 7.2 are in conflict as they preclude all insurance funding which has been previously excluded under Section 47-14-2.

6. The ten (10) day filing requirement in Section 9.6.6 is totally unreasonable and does not give sufficient time for normal operating conditions which would require up to thirty (30) days, particularly if insurance contract funding is allowed and is used, which would require more than thirty (30) days to assimilate and deliver the documentation requested in addition to providing and processing an acceptance/rejection period. Even 47-14-1, et seq. does not contemplate that rapid of a filing schedule in light of its provisions which permit provisions which permit thirty (30) days before the necessity of depositing funds in Trust Accounts.

7. Section 10.1 which provides one hundred eighty (180) days default time plus an additional ten (10) days prior to the effectiveness of the default, is far in excess of any collection or default programs in any industry, much less the preneed funeral industry. The six (6) months of time subjects the contract provider or seller to significant exposure because of the ambiguities contained in those sections which discuss the obligations on death (See Section 10.1 and 8.1). A person could die within the one hundred eighty (180) day period. The contract seller would not have been able to cancel the contract for failure to pay and the contract seller or provider could be obligated to make and deliver the funeral when there are no funds available to pay for it and no potential person from whom to collect. While it is apparent that this is not the intent of the regulations, that untoward outcome is entirely possible.

8. Section 10.2 deals with additional funding. This section raises a very real question in that it permits the heirs or personal representatives of a contract beneficiary to pay the remaining balance on the contract beneficiary's death and to require the delivery of the services. Questions raised are to whom are the funds to be paid - the Trustee or the contract provider? Also what amount would they have to pay - the necessary amount to pay for the goods at the current retail price or the actual balance remaining on the contract? It is obvious that one or both parties could be seriously injured from a financial standpoint without

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a correlation between the Section 10.1, 8.1 and Section 10.2. The provisions of Section 10.2 may also contradict those sections which allow the provider to charge a price in excess of the contract price (See Section 8.1).

9. Paragraph 13.3 appears to raise a very significant question of constitutionality by the taking of property interest vested in a contract seller prior to any formal hearing by the Attorney General. This portion of the rule circumvents even the basic judicial prerequisites of protection of property rights and personal freedoms as set down in the West Virginia Code for any extra judicial or expedited and extraordinary relief. The fact that a person is entitled to an expedited hearing does not necessarily entitle that person to continue his work, does not grant him coverage or access to the Court system or a hearing procedure within a definite time frame so as to protect themselves.

10. Paragraph 14.2 under the regulations relates specifically to insolvency. In light of the fact that there are significant penalties to a provider or seller for the failure to perform certain requirements, the marked lack of specificity in the definitions contained in 14.2 and in other sections, is of great concern. There is no clear indication of what current trust obligations might be and total current assets might be.

The lack of specificity throughout this document is fearful and appalling. Definition of terms could be critical. What does one do when, pursuant to Section 8.1 and Section 10.1, the current obligation under a contract not subject to cancellation has not been fully paid yet the provider is required to perform. As you can see, ultimate dilemma exists.

11. Section 15.1 again raises serious problems. What if a buyer independently purchases an insurance contract as a private funding mechanism and does not assign it to the provider. Do the provisions of 47-14-1 et. seq. apply? As long as assignment is revocable, why even impose a prohibition on assignments? What consumer interest does it serve? This may again subject the seller to some sort of contractual obligation under 10.1, 8.1 and 14.2.

12. Paragraph 15.3 again is significantly indefinite. Under these provisions who are the proceeds of the insurance contract to be paid to - the Trustee or the provider? If the assignment is revocable and the contract is subject to cancellation by either party, what is the reason for this type of regulation? This section is further duplicative and probably illegal in light of Chapter 33 of the West Virginia Code.

13. Section 15.1, et seq. of the regulations are totally inappropriate in light of Chapter 33 of the West Virginia Code. There are numerous pitfalls and numerous questions left unanswered; for example, does this section apply only if monies are paid to parties other than premiums forwarded to the insurance company or are the premiums also considered Trust Fund monies?

Why include insurance contract funded arrangements in your regulations when the reserve requirements and procedural protections are already imposed by the insurance contract and by the terms of the insurance regulation and law. (See specifically Chapter 33 of the West Virginia Code). There is no need for Trusting or reporting because of the much more efficient alternative regulatory scheme already in place. These new regulations oft times appear to be at odds with the insurance regulations and thereby raise significant conflict of authority questions.

If in Section 15.3, the proceeds cannot be paid to a provider or assign, where will this money go upon the death of the purchaser? Will it be diverted to a twenty-four (24) hour Trust or to the Estate's Executor who can then use the money for other purposes other than a preneed funeral contract against the wishes of the deceased and perhaps, in addition, subject the money to a lengthy probate problem; and if all this does occur, will the provider be relieved of any contractual obligations if he is has not currently paid?

A separate problem exists in the Attorney General's desire to have a full informed consumer by requiring that the costs of term insurance is compared to the insurance contract offered. It is somewhat ludicrous to assume that any one would want to fund a death contract with term insurance because the real desire is to have the money available on the date of death to provide the funeral services. Obviously, single premium whole life insurance policies or short payment term whole life policies are the most reasonable alternative. Term insurance could expire before the time and need, thereby abrogating the whole prefunding intentions of the consumer and the consumer protection orientation of the statute.

If regulation prohibits beneficiary status and assignment to providers, then how can providers legally accept policies from other parties which are not related to the providers or seller? The Attorney General apparently again is aiming his regulation only at the funeral industry. He doesn't care what goes on outside it.

Paragraph 15.8 is totally incongruous with the theories and protections to be granted to underwriters of life insurance policies as the same relate to suicides and other items. All whole life policies have two-year contestability clauses specifically as they relate to suicides and other similar causes of death. This section would appear to revoke existing sections of the insurance law as established in Chapter 33 of the West Virginia Code and the regulations

Mr. Thomas L. Hines

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promulgated by the insurance commissioner. Attorney General appears to be imposing upon the insurance industry something that has never in the past been considered appropriate.

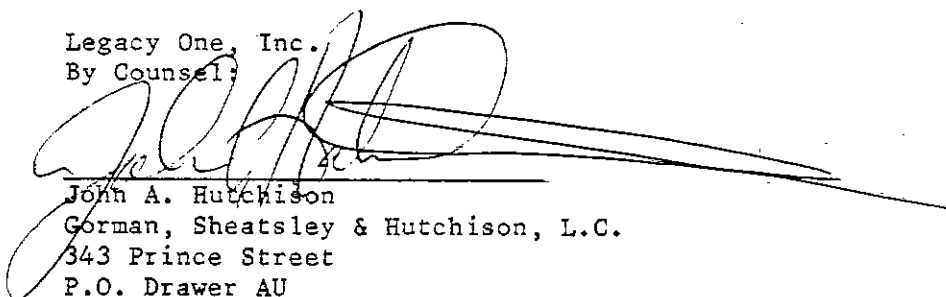
Given the explicit statutory intent to require the trusting of funds on preneed sales of goods and services in order to protect the consumers, what is the rationale for exempting services to be provided or offered by a cemetery or in the sale of cemetery lots, land, interests therein, services incidental thereto or the sale of markers, memorials, monuments, equipment, crypts, urns, burial vaults, or vaults to be constructed in mausoleums or columbariums when those funds may very well be exposed to the same dangers of being diverted or misappropriated before the time of providing the goods and services.

With these comments before the Commission, we sincerely would hope that the Attorney General's Office of the State of West Virginia rewrites and deletes many of the illegal and inappropriate sections set forth in these proposed regulations and further invites input in the preparation of those new regulations from a number of entities who have a broader and differing view from those who have obviously participated in the preparation of these regulations. The regulations as written are fraught with inconsistency, lack of specificity and punitive consequence and will, I am sure, generate a significant amount of litigation for purposes of definition and also to challenge obviously inappropriate portions thereof.

Very truly yours,

Legacy One, Inc.

By Counsel:



John A. Hutchison

Gorman, Sheatsley & Hutchison, L.C.

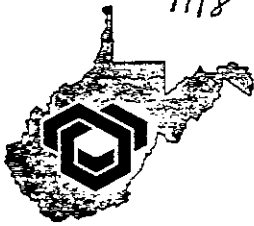
343 Prince Street

P.O. Drawer AU

Beckley, West Virginia 25802-2843

submitted at hearing
7/18 TLH

Mr. HINDES



West Virginia Funeral Directors Association

INCORPORATED

OFFICE OF THE PRESIDENT

September 17, 1987

Mr. Thomas L. Hindes, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
Charleston, West Virginia 25301

Dear Mr. Hindes:

Attached are the comments of the West Virginia Funeral Directors Association relative to Proposed Legislative Rules pertaining to the administration of preneed burial contracts.

We believe the proposed rules in many areas to be excessive and go beyond the statute as passed by the Legislature and in several cases to be in direct conflict with the statute.

This is evidenced by 1.7, 1.8, and 18.1 indicating that a violation of the Rule is a violation of Chapter 46A-6 and 46A-7 as well as Chapter 47-14.

We would point out also that 2.2, 2.3, and 2.4 (definitions) have been expanded beyond what is stated in the Law and 2.6 indicating that other terms used in the Rule shall be defined as those terms are defined in the Law giving the appearance that the Rule is being used to change what was intended by the Legislature.

There are also duplications of regulatory effort contained in the Rules i.e., 13.1.2 and 13.1.3 where it appears that the Rules go beyond 47-14 and duplicate the regulatory effort of the FTC and the State Board of Embalmers and Funeral Directors.

These Rules are complex and difficult to work with to the extent that many would not be inclined to do business under the Rules without advice of competent legal counsel, therefore, adding an additional financial burden.

This letter and the attachment constitute the comments of the West Virginia Funeral Directors Association relative to the proposed Rules.

Sincerely,

Joseph E. Nutter
President

JEN/scp
Enc.

COMMENTS
by
WEST VIRGINIA FUNERAL DIRECTORS ASSOCIATION, INC.

These comments are relative to Proposed Legislative Rules pertaining to the administration of preneed burial contracts:

Section 3 - Annual Report:

3.1 - The annual report should be due ninety (90) days after the expiration of the reporting year due to the complexity of the annual report and the fact that needed information from trustees will generally not be available by January 30. We would further request that the office of the Attorney General develop a uniform form for this report and make it available to Certificate of Authority holders as specified as the Department's responsibility in 47-14-9.

Also requested is a ruling as to whether or not the information requested from each Certificate holder is in the "public domain" once it is received by the office of the Attorney General.

3.2.5 - The request for current price lists of the Certificate holder is an excessive reporting requirement and should be eliminated.

Section 4 - Application for Certificate of Authority or License:
Contents of Application:

4.4 - The fees should be refunded upon rejection of any application.

Section 5 - Initial Examination:

5.1 - Advance notice should be given prior to the initial examination. In most cases advanced notice is given prior to audits and inspections, ie. IRS and State Tax Department.

5.3 - The charge for fees and expenses for the first examination is contrary to Statute (47-14-3, (i)3), thus, should be eliminated.

Section 7 - Trust Accounts:

7.1 The language "unless otherwise specifically exempt under this Article" should be added as per 47-14-5-(a)3. The Rule as written is not consistent with the Statute.

7.4 The bond required by 47-14-8 (b) applies to Board of Individual Trustees, and not the Trustees mentioned in 47-14-5 (a) 3. The bond previously required by Section 5 was repealed

by the passage of S.B. 548 during the 1987 Regular Legislative Session.

Section 8 - Provision of Goods and Services under Preneed Funeral Contract at Death of Contract Beneficiary:

8.2 - Duplication of type of information required in the annual report and should be eliminated.

Section 9 - Contents and Execution of Contracts:

Would request that the Office of the Attorney General develop a contract form to be furnished to Certificate holders as specified in 47-14-9.

Section 12 - Multiple Price Lists Prohibited:

12.2 - The requirement that record copies of price lists be retained in a "fire resistant" location is excessive and an undue burden upon the Certificate holder.

Section 13 - Disciplinary Proceedings:

13.1.4 - Should be clarified by inserting the words "by the department consistent with the requirements in 47-14" before the period.

✓Section 15 - Insurance or Annuity Funded Preneed Funeral Contracts:

15.3 - This Rule is excessive, prohibits the use of insurance as a funding source for preneed funerals, is contrary to 47-14, infringes on the Rules and Regulations of the office of the Insurance Commissioner, and should be eliminated.

Section 16 - Retention of Ten Percent from Preneed Burial Contract Funds:

This Rule is excessive, is an attempt to over regulate and is beyond the scope of the Statute. The Certificate holder must trust at least 90% of the total amount and the 10% that may be retained in no way reduces the amount of the contract.

The Rule should be eliminated.

Submitted 9/18 TLH

FORE THOUGHT.

Comment on Behalf of
Forethought Life Insurance Company
Regarding

West Virginia proposed legislative rule pertaining to the
administration of Preneed Burial Contracts.

Prepared By:

Martha E. Junker

FORETHOUGHT LIFE INSURANCE COMPANY
FORETHOUGHT CENTER
BATESVILLE, INDIANA 47006

Preface

The Forethought Group is a division of Hillenbrand Industries, a Fortune 500 Company, located in Batesville, Indiana. Hillenbrand Industries, through its major subsidiary, Batesville Casket Company, the largest manufacturer of burial caskets in the world, has enjoyed a history of more than 100 years in funeral service.

In response to demand from funeral directors and consumers, the Forethought Group began developing a prearranged funeral planning program. A number of alternative funding mechanisms were considered. After years of research and planning the Forethought Group determined that life insurance with an inflation adjusted death benefit was the best funding mechanism available. In this process the Forethought Group acquired an Insurance Company. Forethought Life Insurance Company makes its products available through licensed funeral firms and each funeral planning counselor is trained as a life insurance agent.

The Forethought Program as originally designed involves three basic steps:

- 1) the consumer plans the funeral by selecting funeral goods and services,
- 2) the consumer purchases a Forethought life insurance policy relative to the amount of the current funeral price,
- 3) the consumer contingently assigns the proceeds of the policy to the funeral firm in return for the funeral firm's promise to provide the funeral arranged at or below the guaranteed funeral price. The excess, if any, is payable to the beneficiary.

The death benefit of the policies purchased by the consumer is adjusted quarterly based on increases in an inflation index (Implicit Price Deflator of the the Gross National Product). The funeral firm guarantees in the Forethought Funeral Planning Agreement that the price that will be charged at the time that the funeral is performed will not be more than the original funeral price adjusted by the same inflation index. Thus, both the death benefit of the policy and the guaranteed funeral price grow at precisely the same rate. This method of funding protects both the funeral director and the consumer.

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Another important concern in developing the Forethought Program was to design a policy that could not be confused as burial insurance. Many states, including West Virginia, have statutes restricting and prohibiting the limitation of death benefits to only the delivery of goods and services. The Forethought Funeral Planning Program was developed taking these laws into account.

The Forethought Funeral Planning Program is distinguishable from such types of plans in that:

- 1) all benefits are paid in cash, not in goods and services, and,
- 2) any assignment of proceeds is contingent on the funeral director's delivery of services. If the assigned funeral home does not, for any reason, perform the services the proceeds of the policy are paid in cash to the beneficiary designated in the policy application.

Forethought Life Insurance Company is authorized to transact insurance in the State of West Virginia and currently has two policies approved by the Department of Insurance for sale to West Virginia consumers. The first, a single premium whole life insurance policy, provides full coverage from the date the policy is issued. The other, a limited pay policy, allows the consumer

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to make monthly premium payments over five or ten years. The limited pay policy provides full coverage by accidental death from the date of issue; death from natural causes is limited to a return of premium plus 10% annualized during the first two years and is fully covered after two years.

The Forethought life insurance policies are specifically designed to accomplish three goals:

- 1) fund a prearranged funeral plan,
- 2) to prevent the abuses that plagued early "burial insurance" programs, and
- 3) to protect the interests of the consumer and the funeral firm.

Comment: Forethought Life commends the West Virginia Office of Consumer Protection Division in its efforts to establish guidelines for preneed burial contracts. The following comments are offered based upon the experience gained through offering the Forethought Program and research conducted by the Forethought staff.

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The Forethought Group respectfully submits that insurance funded preneed arrangements were intentionally omitted by the legislature from the definition of a preneed contract under the Preneed Burial Contracts Act and thus are not subject to regulation by the Office of Consumer Protection.

The proposed rules purport in Scope (Section 1.2), Authority (Section 1.3), and Construction (Section 1.8), to be derived from the Provisions of the Preneed Burial Contracts Act. Since these rules are based on the Preneed Burial Contracts Act it is helpful to review the purpose of that statute:

"It is the legislative intent that the provisions of this Act shall be construed as a limitation on the manner in which a person is permitted to accept funds in prepayment of funeral services...so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged." West Virginia Code §47-25-1

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This legislative intent is reemphasized in the definition of a "Preneed funeral contract" as "any contract,...other than a contract of insurance, under which, for a specified consideration paid in advance of death in a lump sum or installments, a person promises to furnish or make available or provide funeral services...."

The legislative intent, as provided by the legislature, and the definition of a preneed burial contract in the Act identify two areas of concern:

- 1) prepayment of funeral services and goods to a funeral firm and,
- 2) allowing arrangement of funeral services in advance of need while providing safeguards against dissipation of prepaid funds.

These two areas of concern for the West Virginia lawmakers do not constitute a problem with insurance funded prearranged funeral plans.

The following comments relate to specific sections of the rules which address insurance issues. We comment on these sections to address the concerns of the Department and why we believe the structure of the Forethought product and systems eliminates the need for concern.

Section 15.3

This section prohibits the payment of insurance proceeds to a funeral provider or firm as beneficiary or under an assignment.

Comment: Forethought Life agrees with the prohibition of any device, such as a beneficiary designation, or an absolute assignment, which limits the insured's or his/her family's rights to select a funeral home or the goods and services to be delivered. However, use of an assignment which is contingent upon performance of services and is revocable or transferable at any time prior to delivery does not restrict the public's freedom to choose who should perform services or what goods and services will be delivered.

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The assignment form used most frequently by Forethought Life is revocable and may be revoked by the policyowner at any time prior to delivery of the goods and services. In any case, all of the assignments used by Forethought are contingent upon performance by the assignee/funeral firm. Failure on the part of the assignee to perform the actual funeral, for whatever reason, causes the death proceeds to be paid to the beneficiary as designated in the policy.

Section 15.3, as proposed unnecessarily and unreasonably restricts the right of a life insurance policyowner to choose who shall receive the benefits of the policy. Such a restriction does not protect the consumer; rather, it is an invalid restraint of the consumer's rights. The purpose of the Forethought Life assignment is to facilitate the consumer's right to make a choice of the funeral provider. Our research conclusively indicates that what the consumer wants is to plan a funeral and have it paid for. A contingent, revocable assignment allows that to happen.

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Forethought Life recommends that the proposed rule be changed by adding the words:

"...in such a way as to restrict the funeral planner's or survivor's right to free choice of funeral goods, services or provider."

Section 15.4

This section requires the purchaser of an insurance contract to fund preneed be given a cost comparison with term insurance on a separate sheet of paper.

Comment: The West Virginia Administrative Regulations Series XII concerning Disclosure, Solicitation and Sale of Life Insurance requires that each person who purchases a life insurance policy be provided a Buyer's Guide and a Policy Summary.

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The Buyer's Guide discusses the difference between term and whole life insurance and provides insightful comments on which type of insurance is most appropriate for a particular situation. The Policy Summary is a separate document which must include both a Life Insurance Surrender Cost Index and Life Insurance Net Payment Cost Index. These indexes are fully described in the Buyer's Guide and are designed to allow the consumer to compare the cost of the insurance being purchased to other life insurance products.

The Buyer's Guide as promulgated in the Administrative Regulations of West Virginia recognizes that these indexes should be "used only for comparing the relative costs of similar policies." This serves as recognition by the insurance department that to do otherwise is inappropriate and confusing. Thus, the requirements in §15.4 is superfluous as to comparable policies and illogical as to a comparison of whole life to term. Forethought Life delivers a Policy Summary and a Buyer's Guide with every policy issued. These two pieces of information serve the purpose of protecting the consumer's interest in a life insurance policy which funds a prearranged funeral plan. Forethought Life therefore recommends that section 15.4 be deleted from the proposed rules.

Section 15.5

This section prohibits a contract seller from refusing to enter into a preneed contract solely because the individual chooses to purchase insurance from a source other than the seller or a particular insurance company.

Comment: It is essential to recognize that all life insurance policies are not alike and vary greatly as to design. The Forethought policy is specifically designed to meet the obligations of both parties under the Forethought Funeral Planning Agreement. To insist that the funeral home accept a policy with features different than a Forethought policy may leave the consumer and the home open to risk. For example, many life insurance policies contain a fixed face amount, meaning the value of the policy never increases. It is relevant here to reference Section 8.1 of the proposed rules which requires the funeral director to guarantee the price of the funeral. Clearly, a funeral director ought to have a choice as the types of funding devices he is willing to accept in return for a guaranteed funeral. The proposed rules do not require the funeral director to accept any trust fund which exists in return for his guarantee

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of price. The fact is that most other insurance products being marketed for funeral funding have a high risk of a funding shortfall to the funeral director. Forethought encourages any effort to promote the general concept of making prearrangements but strongly objects to any regulatory attempt to require funeral directors to accept all funding devices in return for guaranteed funerals.

Forethought recommends that section 15.5 be changed by inserting the words:

"...of equal value," after the word funding and prior to the word from in that section.

Section 15.7

Section 15.7 requires that any refund of unearned premium, cash surrender value and accumulated interest and dividends be returned to the contract buyer or contract beneficiary as if these funds were trust funds.

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Comment: The Consumer Protection Division of the Attorney General's office must remember that an insurance policy purchased to fund a prearranged funeral plan is not a trust under the Preneed Burial Contracts Act. As an insurance policy, the contract is required to contain specified provisions under the Insurance Statutes. And the methods of distributing unearned premium and cash values are controlled by the Insurance Statutes. To require an insurance company to pay unearned premium, cash surrender values, and dividends in accordance with a statute from which such contracts are specifically exempted and in abrogation of the insurance companies duties under contract law is excessive. The insurance company has a duty under contract law to pay these values only under the authority of the owner of the policy. The policyowner may or may not be the person who prearranges the funeral and either may or may not be the insured. If the owner is not the preneed funeral contract buyer the insurance company would face the dilemma of breaching its contract with the owner of the policy or abiding by the proposed rule 15.7. No insurance company should be faced with such a choice. An insurance policy is a contract between the insurer and the policyowner. Only the policyowner may direct the distribution of cash values or policy proceeds or make

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assignments or beneficiary designations. To require otherwise is to change the basic contractual premise of an insurance policy. Therefore, Forethought strongly recommends that proposed rule Section 15.7 be deleted from the proposed rules.

Section 15.8

Section 15.8 requires that every life insurance or annuity contract used to fund a prearranged funeral provide an immediate and unconditional payment of death benefits in the amount of the funeral price at the time arranged.

Comment: This section would pose a restriction on insurance funded prearranged funeral plans that does not exist for trust arrangements. Section 47-14-8(1) of the Preneed Burial Contracts Act provides that a contract buyer may insist on the purchase of credit life insurance to cover the full cost of the funeral, however if the consumer does not choose to do so the funeral home would not be forced to provide the full services based on partial payment. Full and complete performance is required under the trust agreement only after the consumer has made full payment of the agreed upon price.

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Since a person making cash payments over time to a trust-funded plan is not entitled to the funeral until all required payments have been made, death before all payments have been made results in an obligation on the part of survivors to pay the difference. Therefore, a \$3,000 prearranged funeral upon which a consumer makes \$50 contributions each month will take 5 years to pay up. The funeral planner would not be entitled to a complete funeral until all installments had been paid.

Under the Forethought program the same consumer could likewise opt to pay for the insurance over time. The limited pay option provides full coverage from the effective date for death by accidental means. Natural death is fully covered after two years, even though the insurance premiums remain due for another 3 years. So, the insured has complete coverage and the funeral is fully funded at times when he has not made all the required payments.

We assert that the consumers' choice should not be limited, rather they should be expanded. We believe that consumers are able to make informed decisions and ought to have free choice of funding options for prearranged funeral plans.

The West Virginia Insurance Department has approved the Forethought limited payment policy. The proposed rules should not require more coverage from a policy than the insurance department especially when that same coverage is not required of trust arrangements. The Forethought approach to funeral planning system and products maintains and enhances the process of prearranging the funeral and providing funding in the future. It focuses attention on the consumers primary objective, Funeral Planning, and its appeal to consumer and funeral directors alike has been dramatically demonstrated in the few months we have offered it:

- o it is simple to understand
- o it provides inflation protection for
 - o consumer
 - o funeral director
- o it avoids rejection
- o it eliminates the need for embarrassing
 - o health questions
 - o medical exams
- o it is life insurance not a taxed deferred annuity

Guaranteed issue, deferred benefit life insurance is a legitimate alternative to underwriting, especially for older persons. It is not within the scope of the Department's authority to exclude the sale of this product as a funeral funding vehicle when it can otherwise be sold in West Virginia.

Sections 8.2, 9.6.6 and 15.9

These sections require that various documents related to each prearranged funeral be delivered to the Consumer Protection Division. Section 9.6.6 requires contract sellers to file with the division a copy of each signed preneed funeral contract. If the contract is funded by insurance, Section 15.9 requires the seller to file with the division a copy of the insurance policy. Section 8.2 requires the funeral director to file with the division an atneed statement of goods and services which justifies any changes from the preneed statement.

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Comment: We suggest that the above filing requirements are overly burdensome from the funeral director's perspective. Upon passage of duly promulgated rules and receipt of notice thereof, we believe that funeral directors as a group will comply with the rules. The proposed rules contain an audit function for the division and we believe that function is sufficient to facilitate enforcement of the rules.

Summary

The Forethought Group commends the Consumer Protection Division of the West Virginia Office of the Attorney General in its efforts to protect the interests of consumers. The Forethought Group shares in those interests and remains dedicated to providing quality funeral prearrangement services to consumers. To that end, we commit to assisting regulators in establishing fair and adequate rules to protect consumers' interests and request further opportunity to take part in that process.

The Forethought Life Insurance Company must assert that the Department lacks the authority to apply the proposed rules to life insurance funded funeral planning and to limit the types of life products, directly or indirectly, sold to that end.

DISCUSSION OF AMENDMENTS

September 23, 1987

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

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

DISCUSSION OF AMENDMENTS

Throughout the sections of the proposed rule, continuing review and editing have resulted in numerous wording changes. By and large these changes were accomplished in order to eliminate typographical errors and to improve style of expression. Since changes of this type do not affect the intended meaning of the sections involved, no attempt is made herein to note or describe such changes. Only substantial changes or changes directly affecting the legal effect of rule language will be discussed.

Sections 2 and 2.3 were amended to add a sentence, further defining the term "equipment" as used in the Preneed Burial Act and the Rule. The purpose of the amendment was to make it clear that "equipment" was a narrowly used term which would not include caskets or other such items commonly sold along with a funeral or burial.

Section 3.1 was amended to clarify the deadline for filing an annual report. This change should be read together with new Section 4.5 which extends the deadline for filing applications for the renewal of certificates of authority and licenses. Both submissions are now due by March 1 of each year.

Section 3.2.4 was amended to make clear the Rule's intention not to require duplicate filings of certain contract information. Section 3.2.6 was omitted because of perceived duplication.

Section 7, dealing with trust accounts, was amended in two significant ways: First, Section 7.2 was omitted. This section prohibited trustees from purchasing life insurance with trust assets. Trustees who are contract sellers or providers are already prohibited by the Act from making such investments, and the general law of trusts, together with Section 47-14-8(c) of the Act, seem adequate to control the investment options of other trustees in this regard. Former Section 7.4 (now 7.3) was amended to reflect an interpretation of Code Section 47-14-8(b) with respect to fidelity bonds. Since it appears that the Act intended that only trustee boards under that section should be bonded, the Rule was modified to reflect this interpretation.

The most extensive modifications were made in Section 15. The prohibition in Section 15.3 on the assignment of life insurance or annuity benefits to a funeral seller or provider

was eliminated. New Section 15.4 was added to guarantee that payment under such an assignment would be made only if the preneed contract is performed.

Section 15.5 (formerly 15.4) was amended to eliminate the reference to term life insurance, now merely requiring that a separate price disclosure of insurance costs be provided. Section 15.7 was amended to require that assignments be parallel with respect to revocability with the preneed contract.

Section 15.8 was amended to require refunds after cancellation be made to the "owner" of the insurance policy or annuity. Section 15.9 was amended to account for situations in which the preneed contract is not fully funded by insurance because all premiums have not been paid. An additional sentence was added to this subsection to make a clear parallel with Section 10.2, allowing payment of the contract balance after the beneficiary's death.

Finally, a new Section 15.11 was added to prohibit preneed contract sellers and providers from attempting to sell life insurance or annuities by reference to funeral costs without offering consumers the option to actually enter a preneed funeral contract. Throughout Section 15 wording and emphasis changes were made to underscore the office's intention to regulate the sale and content of preneed funeral contracts rather than the sale of insurance.

Section 16.1.2 was deleted since the initial payment under many preneed contracts would not be sufficient to cover the entire ten percent exempted from trust requirements.

For further information, please contact Thomas L. Hinds, Deputy Attorney General, Director of the Consumer Protection Division, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301.

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CONSUMER PROTECTION DIVISION

ATTY GEN. OFFICE
C.P.D.

WEST VIRGINIA OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

Pre-need Burial Act

Public hearing on proposed legislative
rules to implement the Pre-need Burial
Act, Chapter 47, Article 14 of the
West Virginia Code

Transcript of proceedings had and testimony
adduced at the public hearing held in the above-styled
matter before the West Virginia Office of the Attorney
General, Consumer Protection Division, on the 18th day of
September, 1987, commencing at 10:00 a.m., at the State
Capitol Complex, Room 418, Charleston, Kanawha County, West
Virginia, pursuant to notice.

BEFORE: TOM HINDES, Deputy Attorney General
Director of Consumer Protection Division

Action Court Reporting

N. Jean Payne

Post Office Box 4429

Charleston, West Virginia 25364

304/925-5588

(WHEREUPON, at 10:00 a.m. the meeting was called to order.)

MR. HINDES: This is a public hearing on proposed legislative rules to implement the requires of the Pre-need Burial Act, Chapter 47, Article 14, of the West Virginia Code.

My name is Tom Hindes. I am a Deputy Attorney General, Director of the Consumer Protection Division of the Attorney General's Office.

Pursuant to statutory amendments of the Pre-need Burial Act that were effective this year, the Attorney General's Office has been given enforcement rule-making oversight responsibility with respect to the Pre-need Burial Act. As part of that process, the legislation has mandated that we enact a rules package which would help implement the administration and enforcement of the Pre-need Burial Act.

The proposed rule that you have received copies of, I assume, is the first such rule that would implement that statutory charge. If anyone needs a copy of the rule, we have extra copies up here.

The purpose of this hearing is to summarize generally the nature of the process that we are

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involved in. The purpose of the hearing is the receipt of comments from interested parties with respect to the proposed rule.

The statutory process in West Virginia for enacting legislative rules by administrative agencies involves first an agency approved preparation of a rule draft. We are right now in the beginning stages of that process.

The rule that you are coming here to comment on is a proposed rule. It is not a final, agency-approved rule. There is nothing in this rule that could not be modified by our agency if we felt that circumstances merited such a modification. Certainly, that is why we are having this hearing in order to obtain comments from individuals who might assist us in that process.

Once the agency has approved its rule, that rule then gets submitted to the legislature, first to the legislative rule-making review committee, which also has an independent power to review, offer amendments, reject, whatever their preference is with respect to this rule.

Assuming they approve this rule, it then

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goes, along with rules from all other administrative agencies of State government, to the legislature for final enactment.

So what we're talking about here is a process that would eventually result, we would hope, in a rule some time at the beginning of next summer, by the time all of these particular stages are completed.

We have received a number of written comments, and I have received a number of telephone comments. I have met with a number of people who have asked to speak with me about the rule in the weeks, days since the rule was initially mailed out.

I can tell you that already as a result of this process there are a number of provisions in the proposed rule that we have effectively decided to modify, and I will list those for you at the end of my remarks here.

Let me begin by saying what this hearing is not about. A lot of the comments that we have received, well-intentioned comments, are comments which are critical of provisions in the Pre-need Burial Act, comments about the amounts of the fees, the requirements for renewals of certificates, licenses, the requirements

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for notifying individuals after a pre-need burial contract has been entered, requirements of an annual report, requirements with respect to inspection of records and so forth on at least an annual basis.

These are all requirements of the Act. These rules have no effect on those requirements. They may reiterate some of those requirements. They did not create those requirements. They could not be modified by this rule.

Essentially, we are working within the framework of the Pre-need Burial Act, which was a product of the West Virginia Legislature. The Attorney General's Office has no authority to change the provisions of the Act.

I realize there is apparently a lot of unhappiness with some aspects of the Act, and I guess that's the kind of thing that will have to be taken up with your Senator or your Delegates because there is really nothing that our office can do to affect that. We are essentially in the same position as you are, in that we are given this Act to administer and we essentially take it as it is given to us.

Another thing that this hearing is not

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intended to involve would be the questions that have arisen with respect to the \$5 per contract pre-need guarantee fund payments back to 1983.

We have received a number of comments on the propriety of going back to 1983 on collecting the \$5 payments. There are a number of other issues that relate to that, such things as the 10 percent withholding that was changed in 1983; such things as the changes in cancellation rights that took place in 1983; such things as the proper scope of the injunction that was in effect until April of 1986, how that affects all of these issues.

That is not a question that is dealt with in these rules. That is really a separate policy question. I am certainly willing to talk with anyone who would like to express their views on that issue that remains something that we are looking at in our office, but as far as the purpose of this hearing today, these rules have nothing to do with that particular issue.

Changes that we have already taken a look at and are essentially committed to making, I am not going to give you specific language, but just in general terms, I can give you an idea of the kind of things that we have already realized need to be modified in these rules.

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First of all, there have been a number of concerns expressed about the duplication of reports, duplication of material that would be submitted in the annual report, with material that would be submitted in connection with the sale of individual contracts during the year, information that would be submitted in connection with cancellation or the performance of the contract during the year.

It was never our intention to require a duplication of extensive paperwork reporting on these requirements. Some people have been concerned that that is what the rule would lead to.

I can tell you that that is not our intention. The annual report, of course, is a requirement that is specified in the Act itself. The annual report is required by the Act to be submitted at the time a renewal application is submitted, and the basic components of the annual report are also specified in the Act. We cannot affect that by these rules.

What we can do is to make it clear, however, that the information that is submitted when a contract is sold is not needlessly duplicated at the time the annual report is filed. So you don't have a complete

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other reporting requirement that is going to be burdensome in that connection.

Secondly, material that is submitted when a contract is performed or cancelled, it's not our intention to duplicate that. It looks like the simplest way to handle that would be to just delete Section 3.2.6 of that rule, and that is essentially what I have determined to recommend on that.

Concerns have been expressed about the turnaround time between the end of the reporting year and the requirement of filing an annual report and application for renewal. Essentially, that is a 30-day period in the rule.

What we would undertake to do would be to modify that and give a 60-day period instead of 30, so that those documents would be due the first of March instead of the first of February.

With respect to the treatment of pre-need funeral contracts that are intended to be covered by life insurance, certainly this is an area in which there is considerable interest and considerable uncertainty from the standpoint that the Act itself was written at a time when that was not contemplated as a means of funding a

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pre-need burial contract.

There is no real indication in the Act itself that the Legislature was actually thinking of life insurance policies as an alternative to a funded trust situation where the monies would be put in trust during a beneficiary's lifetime.

What we have attempted to do is to model a rule requirement with respect to life insurance that would as closely as possible parallel what is happening in a life insurance funded pre-need with what happens in a trust funded pre-need.

One basic problem that we have faced in that, there is a Code provision under the insurance law that puts rather severe restrictions on types of insurance policies called burial policies. It essentially prohibits those policies from being paid to funeral directors, essentially all of the people who are involved in these transactions.

There is some uncertainty about the interpretation of that particular statute. The way the rule, specifically Section 15.3, was written was to express the most conservative rule of that particular statutory requirement which, in effect, 15.3 would

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prohibit the funeral establishment from being named beneficiary or from being able to receive payments under an assignment of a life insurance policy.

Essentially, what we would contemplate modifying in that regard would be to modify this in order to permit the assignment of benefits under a life insurance policy in connection with pre-need contracts.

I'm sure many of you are prepared to comment on why we should permit assignments, but I think you can take it for granted that we are going to write this rule in such a way that it would make it possible for assignments to be entered which would serve as the vehicle for funding a pre-need contract.

What I would like to hear you address, if anyone is prepared to talk on that point, would be the mechanism that the rule should implement to, in a sense, create a reporting requirement to the insurer so that no payment is made until the services are actually rendered, and then payment is made based on the amount to be charged for those services under the requirements of the Pre-need Burial Act.

This is essentially the way a trustee should operate in any situation where a request for

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payment is made. So that is the way that we would anticipate modifying this insurance provision.

The beneficiary designations seem to me to remain something that violate public policy and the spirit of the Pre-need Burial Act and the insurance laws of West Virginia. So if you have a different opinion on that, I would welcome you to express that, but that essentially remains my objective at this time or our office's objective at this time.

All right, with that, I am going to open the meeting up to comment by interested people. I see that a few people signed up. I don't know whether people are interested in signing up.

The central format for this type of a public hearing, briefly, is we are here to receive your comments. The particular forum that we are involved in here is not a forum which involves debate or any type of vote being taken or anything of that nature. This is not comparable to a legislative hearing.

We are interested in receiving your comments. If anyone would like to discuss any aspect of your comments or any other things with respect to the Pre-need Burial Act, I would be available at any time to do

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that.

As far as the record that we are making at this particular hearing, however, that record would reflect merely any comments that we make. If you have questions or you would like to engage in some sort of discussion, perhaps we can attempt to do that at the time the record for this particular hearing is concluded.

All right, with that, I will turn it over to the first individual who has signed up and requested to speak, and that is Mr. Roger Price.

MR. PRICE: My name is Roger Price. I'm the Executive Director of the West Virginia Funeral Directors Association.

Mr. Chairman, at the conclusion of our remarks we will provide to you a copy of what those remarks are taken from.

If you will indulge me, we will go ahead for the record and cover those items that we have commented on that Mr. Hindes has indicated would be changed, eliminated or modified in the rules.

I believe the proposed rules in many cases would be excessive and go beyond the statute as passed by the Legislature and in several cases to be in direct

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conflict with the statute.

This is evidenced by Rule 1.7 and 1.8, 18.1, indicating that a violation of the rule is a violation also of Chapter 46-A(6) and 46-A(7), as well as 47-14.

We would point out also that 2.2, 2.3 and 2.4 in the area of definitions have been expanded beyond what is stated in the law, and 2.6, indicating that other terms used in the rules shall be defined as those terms are defined in the law. It certainly gives the appearance of the rules being used to change what was intended by the Legislature.

There are also duplications of other regulatory effort contained in the rule, such as 13.1.2, 13.1.3, where it appears that the rules go beyond 47-14 and duplicate regulatory effort of the Federal Trade Commission and duplicate regulatory effort of the State Board of Embalmers and Funeral Directors, rules which are complex and difficult with, to the extent that many would not be inclined to do business under these rules without advice of competent legal counsel, therefore, adding an additional financial burden.

I want to briefly go through some of the

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sections and, again, for the record, we will have these comments to be filed, I think, the appointment was by 5 p.m. today.

Section 3, regarding the annual report, 3.1, the annual report should be due 90 days after the expiration date for the year due to the complexity of the annual report and the fact that needed information from trustees will generally not be available by January 30.

We further request that the office of the Attorney General develop a uniform form for this report and make it available to certificate of authority holders as specified as the department's responsibility in 14-14-9.

We also request a ruling as to whether or not the information requested from each certificate holder is in the public domain once it is received by the office of the Attorney General.

Relative to section 3.2.5, the request for a current price list for certificate holders is an excessive reporting requirement and should be eliminated.

Relative to fees mentioned in 4.4, fees should be refunded to an applicant for a certificate of authority upon the rejection of any application.

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Currently the rule states that the fees shall not be refunded should that application be rejected.

Section 5, dealing with initial examination, advance notice should be given prior to initial examination. In most cases advance notice is given prior to audits, inspections, such as Internal Revenue, the Tax Department and other regulatory agencies.

Section 5.3, the charge for fees and expenses for the first examination is contrary to the statute, 47-14-3(i)(3), and thus should be eliminated.

With regard to trust accounts, 7.1, the language, unless otherwise specifically exempt under this article should be added as per 47-14-5(a)(3). The rule as written is not consistent with the statute.

7.4, the bond required by Chapter 47-14-8(b) applies to the Board of individual trustees and not the trustees mentioned in 47-14-5(a)(3), and that bond requirement previously required by Section 5 was repealed by the passage of Senate Bill 548 during the 1987 regular legislative session.

Section 8, duplication of the type of information required in the annual report, should be eliminated. That section deals with the provision of

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service, and the general contracts, I think that may be one of the sections that you mentioned that would be modified.

Relative to contents and execution of contracts, we would request to have the office of the Attorney General develop a contract form to be furnished to certificate holders, as specified in 47-14-9.

Section 12.2, the requirement that record copies or price lists be retained in a fire-resistant location is excessive, an undue burden upon the certificate holder, and should be eliminated.

13.1.4, which is the section on disciplinary proceedings, should be clarified by inserting the words "by the department," consistent with the requirements of 47-14.

Relative to Section 15, 15.3, on insurance, it appears that this rule is excessive, that it prohibits the use of insurance as a funding source for the pre-need funerals. It is contrary to 47-14 and it infringes on the rules and regulations of the office of the insurance commissioner and should be eliminated.

Section 16, retention of 10 percent of the pre-need burial contract funds, it appears that the rule.

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is excessive and is an attempt to deregulate and is simply beyond the scope of the statute. The certificate holder must trust at least 90 percent of the total amount. The 10 percent that may -- and the emphasis in that is on "may" -- that may be retained in no way reduces the amount of the total contract. The rule should be eliminated.

Thank you, Mr. Chairman.

MR. HINDES: Does anyone who signed up here have any objection if I take one gentleman out of order who has indicated he has another hearing? Do you object to that?

David Palmer.

MR. PALMER: Thank you, Mr. Chairman. I am supposed to be in Columbus around three o'clock, and prepared.

My name is David Palmer. I am an attorney practicing law in Parkersburg, West Virginia. I represent a funeral home. We have submitted written objections; nonetheless, we would like to make a brief oral statement.

I would urge all of the funeral directors in attendance or their attorneys or representatives who are in attendance to participate in all the phases of this process.

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After the Attorney General's office has finished with these rules they will be submitted to the appropriate committees for the Legislature and then go before the Legislature.

I think the funeral directors as a group and as a profession were caught napping in 1982 when the statute was being drafted. It was finished worked on and then was passed in '83. I think it's time you-all got together and did something to amend the statute.

Mr. Hinder aptly pointed out earlier that we are here today to discuss the rules that are implementing this statute, and I think a lot of your objections and a lot of my client's objections go to the statute isn't fair to live with and needs to be changed. So I am urging you all to start working along those lines.

One of the fears my client has, and I can see throughout this set of rules, is burdensome fees for some reporting, burdensome regulation and, to that degree, we should all be concerned about seeing as that it is the consumer that we are here to protect.

We should all be concerned about a lot of funeral directors' funeral homes not being able to compete in the marketplace. Therefore, a lot of them will go out

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of business.

There are only 268 in West Virginia, probably a couple dozen, at most, that are large funeral homes. I am afraid that a lot of the smaller funeral homes are going to be going out of business because they can't compete in the pre-need field.

I urge a lot of you, when I leave, to speak up for that interest. This is your chance. I hope you realize that.

Nonetheless, I would like to take a few moments and review some of my client's objections to the rules.

I would urge you to urge the Attorney General's Office to let these rules go through the appropriate process and not be enacted under an emergency provision, that they be altered and perhaps altered or modified, with your comments, by the Attorney General's Office, perhaps worked again on by the Legislative committee and then again on the floor of our Legislature, not enacted by an emergency procedure. That way you get the full benefit of an opportunity to work with the drafting of the rules.

My client has an objection that in Rule

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2.2 and 2.3 in defining everything that has been invented by man to take care of the body has been mentioned there except for caskets. It's kind of a large and important item.

I am urging the Attorney General's Office to define where it says what cemeteries can do, and they use the nebulous term "equipment," cemetery equipment that is being sold after they had listed everything else someplace else.

I am urging the Attorney General's Office to state in the rules that equipment, cemetery equipment does not include caskets, thereby keeping caskets in the realm of something sold by the funeral director at his place of business, not in a door-to-door situation by a cemetery lot salesman or sales person.

I think that whole realm of cemeteries backing only the cemeteries is something that you-all need to take up with the Legislature.

The annual report, I feel like Mr. Price, regarding the 90 day reporting time frame. My client, I know, we trust all funds through a trust department that prints out a computer sheet apparently at the end of January for the previous year, and I think we at that time

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of year also are working on tax returns and a few other bookkeeping items that are keeping your bookkeeper and accountant busy. I think 90 days would be a reasonable amount of time within in which to submit your annual report.

I believe that where the rules state for cause you are to pay for your first examination, that is not according to the statute. It says on the second year examination you may be charged for the cost of such examination. I am referring to Rule 5.3.

I believe there is simply a typographical error in Rule 7.1 where it talks about trusting of monies. It says all funds are to be entrusted when in reality in another portion of the statute talks about trusting a minimum of 90 percent.

I think we all need to urge the department because an annual report required by statute certain documents are required to be submitted within ten days. I think it is important that you-all urge the Attorney General's Office to hurry up and provide these standard contracts that are to be used, standard reporting forms, and that the annual reporting forms will be a recap or a simplistic type of document.

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The bulk of the report or the real meat of the report, I should think, would be taking place after that when you are fulfilling the requirements and they want to check on you to see that you fully have filled them in correctly, that your annual report would be rather brief.

So I urge you, I urge the Attorney General's Office to keep in mind that we are triplicating here with a ten day after the contract is consummated report, an annual report, and then a within 30 days after that report.

In talking with them earlier, I think they have the right attitude, by the way, gentlemen, ladies and gentlemen. Nonetheless, I think all of you who are going to be saddled with those many reports need standardized reports and certain reports to be simplistic.

I think it is much too much of a burden to expect all of you to come up with your own report forms and your own contracts. The contract requirements of this statute and these rules are extreme, to say the least.

The printers are going to have a field day with this. Some help from the association would be needed there, I should think. I think the costs in drawing up a

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contract by competent legal counsel would be devastating to some of the smaller funeral homes.

I would like to comment on 15.3, insurance. All of the other rules in Section 15 competently regulate insurance; 15.3 eliminates it, so why do we have the other rules? Totally inconsistent.

Accept that after having the statute -- as Mr. Hindes pointed out to me the other day, we do have a statute that is giving the Attorney General's Office a problem, where it prohibits a funeral directors being beneficiaries. I understand the Attorney General's Office has requested an opinion from the insurance commissioner.

I think you-all need to perhaps urge the insurance commissioner to hurry up and make the opinion and get it back to the Attorney General's Office. I believe that statute, and perhaps -- I don't have a copy of it with me -- perhaps before this hearing is over Mr. Hindes can give you that Code section or a site to it so your attorneys can give you some assistance.

Nonetheless, I think that statute was aimed at the coal mining burial fund, of which I have absolutely no knowledge or am even a party to. Some of you from the southern part of the state may perhaps

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understand the concept that that statute was getting at. I'm kind of -- gee, I don't know. I've had no experience with those.

I am urging you, especially those of you who practice your profession in the southern part of the state or in any of the coal areas to look at that statute because you are familiar with these coal mining burial insurance provisions and can adequately comment, urge the insurance commissioner to say that that statute was aimed at them and not aimed at what we are dealing with here today, that is the pre-need burial fund contract.

At a very minimum, I think, the assignment provisions of insurance is necessary to you-all making a living. People are most comfortable with insurance. It's something they have grown accustomed to, that they are knowledgeable about it.

We need that ability to take assignments, even though it gets a tad ridiculous. Should you sign up for or participate with NSM's program or any of the other nationally-known programs, you're going to be sitting there if they purchase a life insurance policy and make out Joe Blow as the beneficiary and two minutes later sit right down and sign it over to you.

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Nonetheless, that is a tad ridiculous but, nonetheless, you can live with that assignment. You can have that other document executed at that time. You need that provision if you're going to -- you need that ability to take an assignment if you're going to participate in NSM or any of the other programs that have already been approved by your insurance commissioner.

So I urge that 15.3 at least be altered to the point of allowing you-all to take assignments, at the bare minimum.

I was totally confused, moving onward to Rule 16.1.2, and I think the intent is correct or good intention by the Attorney General's Office, and the first time proved that we didn't say it the way we meant it.

It states in there that you are only allowed to take 10 percent of what appears to be the up front money on a contract. Many of the pre-need burial contracts are strong contracts.

I think the intent of the Attorney General's Office was to state you can take 10 percent of the whole of the contract, but you can take it out of the downpayment rather than taking out 10 percent of each installment down the line. I think that was their intent.

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At the present state I think that's going to be changed and I urge that that change be made.

Again, I urge all of you to take an opportunity this morning to speak, and I think Mr. Hindes for allowing me to speak out of turn, and thank you all for this opportunity.

MR. HINDES: The next speaker on our list is Jim Snyder.

MR. SNYDER: Thank you. My name is Jim Snyder. I am an attorney with the Charleston law firm of Jackson, Kelly, Holt and O'Farrell, and I have been asked to speak here on behalf of Appalachian Life Insurance Companies.

My comments will mainly be directed at Section 15, which deals with the funding of pre-need contracts through life insurance. Appalachian Life Insurance Companies strongly opposes Section 15 of the proposed legislative rules.

The purpose of Chapter 47, Article 14, is to insure that purchasers of pre-need burial contracts get what they paid for at death. The legislation sets up elaborate trusting provisions to make sure that the funds directed toward the purchase of a pre-need contract are there at death.

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Section 19 acts contrary to the purposes of the law in that it effectively eliminates life insurance as a means of funding pre-need contracts.

The law was clearly not intended to regulate insurance contracts used as a method for funding pre-need burials. This much is clear from the definition section of the Act, Section 2, subsection 12, which provides that a pre-need funeral contract means any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, other than a contract of insurance under which for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary.

So the law wasn't really intended to give regulatory power over insurance contracts. The only evidence of any intent by the legislation or the law on behalf of the insurance is contained in Section 9(i) of the statute, which relates only to credit life insurance and only requires that the seller of the pre-need contract disclose all costs of the credit life insurance and

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inquire of the buyer whether he understands the contract terms.

In addition, it seems to be a little bit of overkill for the Attorney General to take the regulation pre-need contracts and step over into the area of life insurance.

I think this is clearly inconsistent with the extensive regulatory powers invested in the West Virginia Insurance Commissioner under Chapter 33 of the Code. Chapter 33, Article 13, deals specifically with life insurance contracts and, as noted, Section 33-13-47 specifically deals with burial insurance.

Given the extensive regulation of insurance contracts in West Virginia, there is simply no need for additional regulation under the pre-need burial contract law.

I'd like to talk just briefly about a few of the specific provisions contained in Section 15. Section 15.2 appears to be a pre-need status to contracts which are not necessarily pre-need contracts under the statute, simply because life insurance is involved.

Section 15.3 has been pointed out as excluding sellers, providers or makers of the pre-need

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contracts from being beneficiaries or assignees of the benefits under a life insurance policy.

I am happy to see that the Attorney General is willing to amend the rules so that assignments may be taken. Again, it may be a little bit more paperwork, but it's better than nothing because I think the elimination of the ability for providers to take the insurance proceeds, which you know that they will get the insurance proceeds, would effectively eliminate insurance as a means of funding the contracts.

The way the provision is written now, it would call for very extensive testamentary documents to assure that the decedent's estate is bound to make payment under the pre-need contract once the benefits under the life insurance policy have been paid.

As to Section 15.4 regarding disclosure of information concerning insurance other than term insurance held as a source of payment for a pre-need funeral contract, there really isn't any statutory basis.

As I noted previously, Section 9(i) relates to disclosure which is required for credit life insurance, and that is certainly different from insurance which is used to fund a pre-need contract.

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I think in view of those disclosure provisions, it is clear that the Legislature didn't intend to impose disclosure provisions on other forms of insurance.

As to Section 15.7 relating to unearned premiums, cash surrender value, accumulated interest and dividends when there is a cancellation of a contract or policy, I would simply note that the general insurance law, as it is with a lot of provisions of Section 15, takes care of that.

There are provisions in Chapter 33 relating to the non-forfeiture of benefits, the disposition of cash surrender value and dividends upon cancellation or surrender of the policy.

As I said, I think that can be said for all of the provisions of Section 15. We have a very comprehensive regulation of life insurance in West Virginia. To the extent that the Attorney General's regulations parrot those regulations of the insurance commissioner, they are unnecessary. To the extent that they deviate from them, I think they should be stricken as being inconsistent.

One other provision of the regulations

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concerns Appalachian Life, and that is Section 7.2. Section 7.2 provides that 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.

I am really not sure exactly what that is aimed at. If it is aimed at tying the trustee's hands once the funds leave the trust, I think as to a trustee who is a provider, seller or pre-need contract maker, it is unnecessary because Section 5(a)(3) of the Act clearly requires that those funds be deposited in a federal or state chartered financial institution.

As for a trust which is administered by a bank or a trust company pursuant to a trust agreement under Section 5(a)(3)(2) of the statute, I don't think there is any reason to restrict the trustee's powers of investment.

An independent trustee under the law is a fiduciary and it is required to maximize the assets of the trust and at the same time exercise prudence in investment. If an independent trustee determines the best way to fund these contracts and maximize the assets of the trust is through the purchase of insurance, that is the determination that he is bound by and is making in the

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best interest of the trust and he should be permitted to make that decision.

Thank you very much for your time and attention.

MR. HINDES: The next speaker on our list is Charles E. Dodd.

MR. DODD: Good morning, ladies and gentlemen. I am Charles Dodd from Webster Springs, Dodd and Reed Funeral Home.

I thought that some funeral director should make some comments here this morning because we have heard from Mr. Price, the director of the state association, and two attorneys who are representing other entities, and I think that the funeral directors have a different view or a different plan than probably somebody else who is coming in to it and trying to define and identify just what we are facing in the way of rules and regulations.

Now I'm not going to go over everything that I had in mind because it's already been touched on by most of these other people, but I did want to mention some particular thing and I think some interpretation is necessary.

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I think there will be a lot of funeral directors in the state who have not read this law or have not even read the rules and regulations, and some of them maybe never will and they won't know what is going on.

I'm going to cover some things here that nobody has covered before as a matter of what I think is information that probably funeral directors should have.

Item number one is regarding definitions, Section 2.3, funeral merchandise. Now, as I interpret this, and I talked to some funeral directors and they didn't understand it, but I am assuming that any interpretations we are going to have or any opinions are going to be rendered by the Attorney General's Office.

If I interpret 2.3 as well as 2.2 that any person, whether or not he is a funeral director or whether in each of these sections it refers to cemeteries, that anybody could sell markers, memorials, monuments, urns, burial vaults as a separate sale without it being considered a pre-need sale. This is my interpretation. I assume that this is the same interpretation the Attorney General will put on it.

Section 4.2, no person other than a bank, trust company, savings and loan association, other

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financial institution as provided by West Virginia Code 47-14-3 may act as trustee with respect to funds paid -- or I suppose that word is supposed to be on -- it says or -- pre-need funeral contracts unless he has procured a certificate of authority.

I don't know whether other funeral directors have contracts of this type, but I know that we have them in existence and I am assuming that other funeral directors have them in existence, too, where you have made pre-need contracts and a particular person, a third party, is a trustee.

It's just an individual. It may be the person's attorney, it may be a relative or it may be just a friend because the person maybe doesn't have any relatives, and they are a trustee on an irrevocable contract for funeral service.

This thing says that they have to get a certificate of authority to be a trustee. Now, is that retroactive? Is that going to affect those people? Can they still serve as a trustee on that contract? We need to know that.

Another thing, this is Section 4.4 regarding the fee for certificate of authority, this has

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been mentioned before, but I think it would be a complete injustice for anybody to submit a hundred dollar fee to the Attorney General's Office for a certificate of authority and they would reject it and he doesn't give you hundred dollars back.

That would not be right in my opinion, and I am convinced that that should be completely reversed. If I send for a hundred dollar certificate and I don't get it, I think if I didn't get anything for my money, I think it ought to be sent back.

Another thing is in regard to the insurance, which the gentlemen before me have talked about. All of them have mentioned it. When you read in the law, the only place I can find in the law where it says anything at all about insurance is in the F and A. That's 47-14-2, subsection 12, which I think Mr. Snyder maybe read.

The only place that insurance is mentioned in here is in that subsection, and it doesn't refer to insurance anywhere at all. I know my interpretation, my best interpretation of this subsection would be that a contract of insurance under this definition is not a pre-need contract.

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That's the way I interpret it. I don't know how the rest of you do, but that's the way I feel about it. I don't think that insurance is a pre-need contract because there is no money to be trusted.

There were a few other little things. I think the other gentlemen have covered them almost completely, and I presume there are other people here who would like to talk.

So, with that, I thank you very much for the time and the opportunity to speak.

MR. HINDES: The next speaker on my list is Karen Love.

MS. LOVE: I am Karen Love. I am an attorney with the law firm of Ice, Miller, Donadio and Ryan in Indianapolis, Indiana, and I am here representing Layman National Life Insurance Company.

Layman National is in the business of writing insurance and doing policies and is licensed in the state of West Virginia and it does write insurance that would cover funeral goods and services. Its interest in these rules relates primarily to the writing of such policies in accordance with the laws of West Virginia.

Layman National proposes to have a bank or

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trust company be the beneficiary of any policy of insurance it issues. It would do so under a written trust agreement, which would require that the funds be dispersed on behalf of the contract beneficiary, in accordance with the West Virginia law.

In pursuit of this law I only have comments with respect to proposed rule 7.2. This rule prohibits a trustee from investing or applying trust funds for the purchase of a contract of insurance whether the trustee is a financial institution or not.

We believe that it would be in the public interest to allow a bank or trust company to purchase policies of insurance under a trust agreement where a bank or trust company is to be the beneficiary of the policy under a written trust agreement.

The bank or trust company would provide a responsible person to see that the policy is actually written and would provide the consumer with a procedure to provide the best possible protection because it places in the bank or trust company the responsibility of purchasing a policy of insurance and, upon death, seeing that the policy proceeds are used in accordance with the provisions of the law.

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We believe that the statute itself in no way implies that banks and trust companies, as trustees, cannot purchase such policies. Section 47-14-5(3)(2) provides that the bank or trust company may proceed in accordance with the written trust agreement.

With these comments of mine we propose that section 7.2 be revised to read: 7.2 Other than as provided in this section, no trustee or board of trustees may invest or apply trust funds for the purchase of insurance on a contract beneficiaries life.

In those cases where a trustee is a bank or trust company under a written trust agreement which provides that the trustee will hold the proceeds of any policy of insurance or other funds for the payment of funeral goods and services on behalf of the contract beneficiary.

In accordance with West Virginia Code Section 47-14-1 et. seq., such trustee may cause the policy of insurance to be written with funds provided to it by the contract seller or contract beneficiary.

If anyone has any questions regarding our comments, I will be available to answer any questions that any of you may have and certainly any questions that the

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Attorney General has.

Thank you.

MR. HINDES: Next, Martha E. Junker and John Bonfair, one or the other or both.

MS. JUNKER: My name is Martha E. Junker, and I am making comments on behalf of Forethought Life Insurance Company.

Forethought is a division of Hillenbrand Industries, a Fortune 500 company located in Batesville, Indiana. Hillenbrand Industries, through its major subsidiary, Batesville Casket Company, the largest manufacturer of burial caskets in the world, has enjoyed a history of more than 100 years in funeral service.

In response to the demand of funeral directors and consumers, the Forethought group began to develop a prearranged funeral planning program. They considered a number of alternatives for funding for this program and finally settled on an inflation-adjusted life insurance policy.

In the process they purchased an insurance company and Forethought Life Insurance Company makes products available through licensed funeral funds, and each funeral planning counsellor is trained as a life

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insurance agent.

The Forethought program as originally designed involves three basic steps. The consumer plans the funeral by selecting funeral goods and services. The consumer purchases the Forethought life insurance policy relative to the amount of the current funeral price. Then the consumer contingently assigns the proceeds of the policy to the funeral firm in return for the funeral firm's promise to provide the funeral arranged at or below the guaranteed funeral price.

The excess benefit that would be available at the time of death is paid to the beneficiary of the policy. The death benefit of the policy as purchased by the consumer are adjusted on a quarterly basis, based on an inflation index which is the implicit price declared or the gross national product.

The funeral firm guarantees in the Forethought funeral planning agreement that the price that will be charged at the time of the funeral is actually performed will not be more than the original funeral price adjusted by this same inflation index. That is both the death benefit and the policy, and the guaranteed benefit of the policy and the guaranteed funeral price go up

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precisely the same rate. This method, we feel, protects both the funeral director and the consumer.

Another important concern in developing the Forethought program was to design a policy that could not be confused as burial insurance. Many states, including West Virginia, have statutes usurping and prohibiting the limitation of death benefits to only the delivery of goods and services.

The Forethought funeral planning program was developed taking these laws into account. It is distinguishable from such types of plans in that all benefits are paid in cash, not in goods and services, and any assignment of proceeds is contingent on the funeral director's delivery of services.

If the assigned funeral home does not for any reason perform the services, the proceeds of the policy would be paid in cash to the beneficiary designated in the policy.

Forethought Life Insurance Company is authorized to transact insurance in the state of West Virginia and currently has two policies approved by the Department of Insurance. There is a stable premium whole life policy, which provides full coverage from the date the

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policy is issued, and a limited payment policy, which allowed the consumer to make monthly premium payments over five or ten years.

The limited pay policy provides full coverage by accidental death from date of issue and death from natural causes is limited to a return premium plus ten percent annualized during the first two years and is fully covered after the two-year period.

The Forethought life insurance policy is specifically designed to accomplish three goals, basically to fund prearranged funeral plans; secondly, to prevent the uses that plagued early burial insurance programs; and, third, to protect the interests of the consumer and the funeral parlor.

We commend the West Virginia Office of Consumer Protection for its efforts to establish guidelines for pre-need burial contracts, and our comments are based upon our experience that we have gained through offering a program and our research that we have conducted.

We respectfully submit, however, that insurance funded pre-need arrangements were intentionally omitted by the Legislature from the definition of a pre-

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need contract under the Burial Contracts Act and, thus, they are not subject to regulation by the Office of Consumer Protection.

The proposed rules purport in scope, authority and construction to be derived from the Pre-need Burial Contracts Act, and that has been stated several times this morning, that they are derived from that Act.

The intent of that Act is expressly stated in the legislation to be construed as a limitation on the manner in which a person is permitted to accept funds and prepayment of funeral services so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need, while at the same time providing all possible safeguards by which such prepaid funerals cannot be dissipated.

Basically, the legislative intent emphasizes two points. They identify two areas of concern. First, prepayment of funeral services and goods to a funeral parlor. Secondly, allowing arrangements to be made in advance while providing safeguards against dissipation of prepaid funds.

Neither of these concerns are a problem

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with an insurance funded prearranged program since the insurance agent who takes the money and takes his premium does not take it under the pre-need contract, so there is no prepayment of funeral services and goods. Secondly, there is no danger that the funds will be dissipated because those funds are protected by the insurance regulations.

We have some specific comments concerning the rules, specifically 15.3. It's the section that prohibits payment of insurance proceeds to a funeral provider as a beneficiary or on an assignment.

We are happy to hear that there will be some change to this provision. Forethought agrees with a prohibition of any type of a device such as a beneficiary designation or an absolute assignment which would limit the insured's or the family's right to their freedom of choice of the funeral provider and the services that will actually be provided.

However, we make use of an assignment which is contingent upon performance of services and is revocable or transferrable at any time prior to delivery. We feel that this process does not restrict the family's freedom of choice and allows assignment and allows the

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funeral home to receive the benefits of an insurance policy while protecting the individual's freedom of choice.

We feel that Section 15.3, as proposed, unnecessarily and unreasonably restricts the right of the life insurance policy owner to choose who should receive the benefits of the policy. Such restriction does not protect the consumer, rather it is invalid restraint on the consumer's rights.

We would recommend that the proposed rule be changed by adding words similar to, in such a way as to restrict the funeral planner's or survivor's right to freedom of choice in funeral goods or services or provider.

I might also mention the Attorney General has requested that instead of speaking directly to the validity of an assignment of a policy that would speak to the procedure under which this might be put into place. Again, I would emphasize that contingent assignment or something similar to that which protects the family's freedom of choice, we feel is a very effective way of protecting all interests concerned in this situation.

We have mentioned that in our claims

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procedure at Forethought Life Insurance Company we would require a statement of goods and services at the time of need, and we would pay only what services were actually performed by the funeral home. Any excess benefits would then go to the beneficiary of the policy.

Section 15.4 requires that the purchaser of an insurance contract fund for pre-need be given a cost comparison with term insurance on a separate sheet of paper. Forethought Life Insurance Company believes that this regulation is unnecessary, given the disclosure and solicitation regulations for insurance which require both buyer's guide and a policy summary would be given to purchasers of life insurance policies.

The buyer's guide discusses the difference between term and whole life insurance, and the policy summary contains surrender cost indexes and a net payment cost index which is designed purposely to provide the consumer a cost comparison statement with which they can compare similar types of policies.

The buyer's guide recognizes that these indexes should only be used for comparing relative costs of similar policies. It is very difficult to compare cost of a term life insurance policy with the cost of a whole

life insurance policy because they are just totally different types of policies.

Rather, we would recommend the use of the buyer's guide, coupled with the policy summary which discloses the differences between the policies, and then it provides a cost index from which they can compare the costs of the insurance which they would want to purchase.

15.5 prohibits a contract seller from refusing to enter into a pre-need contract solely because the individual chooses to purchase insurance from a source other than the seller or a particular insurance company.

Forethought Life Insurance Company feels it is essential to recognize that all life insurance policies are not alike and vary greatly as to design. Where the funeral home guarantees the price of the funeral, it should not be required to accept any funding mechanism because a lot insurance policies will have a level death benefit which does not increase with inflation in the manner that the Forethought policy does, and the funeral home would be open to greater risk and the family would be open to a greater risk and, therefore, would recommend that words such as "of equal value" be added to 15.5 prior to the word "from" in that section so that the

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consumer and the funeral home could be adequately protected.

Section 15.7 requires that any refund of unearned premiums have surrender value accumulated interest to be returned to the contract buyer or the contract beneficiary as if these funds were trust funds.

It is very important to recognize that an insurance policy is not a trust and that an insurer has obligations under the insurance contract to pay these values in a certain prescribed manner.

What this regulation could pose is a conflict for the insurer to comply with 15.7 or to comply with the insurance contract itself, which would require that these values be paid only as the owner would specify. The owner is not the contract buyer or the contract beneficiary. This would set up a dilemma which an insurance company should not have to be faced with.

I would now turn the program over to John Bonfair from Forethought to make some additions.

MR. BONFAIR: Thank you. My name is John Bonfair and I am the Vice President of Product and Business Development with Forethought Life Insurance Company.

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I have asked to break into our presentation to present the next comments because I am very concerned, especially with forcing the requirements on Forethought Life Insurance Company and its product design for what we feel are probably needless fears of the Consumer Protection Department.

Section 15.8 requires that every life insurance or annuity contract used to fund a prearranged funeral provide an immediate unconditional payment of death benefits in the amount of the funeral price at the time of arrangement.

Well, in the first case, an annuity which, for its consideration, is paid over time obviously is not going to be able to do that because it is by nature an annuity and not a death benefit. So immediately the words are wrong; the concept is wrong.

Then to require that of a life insurance policy and, as Marty discussed, our life insurance policy is designed to provide a guaranteed issue product which does not have any underwriting and, therefore, would accept all age risks up to age 90 on a limited pay that would be age 75. This section would pose a restriction on insurance funded prearranged funeral plans that does not

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exist for trust arrangements.

Section 47-14(a)(1) of the Pre-need Burial Contracts Act provides that a contract buyer may insist on the purchase of credit life insurance to cover the full cost of the funeral or, if the consumer does not wish to do so, the funeral home would not be forced to provide the full services based on partial payment.

In the instance of credit life insurance where credit life insurance can be obtained, and in many instances there are age restrictions on credit life insurance that would be less than the policy that we provide, some people would be unable to obtain the coverage even after any period of time, while credit life is generally immediately effective. Our policy has a waiting period of two years. On the other hand, after the two-year period, full and complete performance of the contracts can be obtained. As a consequence, the death benefit was paid.

Full and complete performance where there is no credit life insurance by the trust fund can only be obtained after the consumer has made full payment of the agreed-upon price. That, therefore, creates an additional constraint on an insurance fund, a fund like our own that

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does not exist with respect to the trust.

Mr. Hindes spoke to the parallel, to the attempt to create parallels between insurance funded funeral plans and trust funded funeral plans, and I would suggest that there immediately becomes a lack of parallel in this instance in that we are providing an opportunity through this product to provide insurance coverage on a deferred basis to the insurer, but insurance coverage nonetheless that would grow to the death benefit, would be sure that growth of the death benefit would cover the funeral after the first year and are, therefore, subjected to a greater restriction than the trust funds. The parallel immediately is avoided.

Since a person making cash payments over time to a trust funded plan until the required payments have been made, death before all payments have been made results in an obligation on the part of survivors to pay the difference.

Therefore, a \$3,000 prearranged funeral on which a consumer makes a \$50 contribution will take five years to pay up. The funeral planner will not be entitled to a complete funeral until all the installments have been paid.

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Under the Forethought program the same consumer would likewise opt to pay for the insurance over time. Limited payoff should provide full coverage for the effective date by accidental means, one additional benefit that comes out of our program.

Natural death is fully covered after two years, even though the insurance premiums remain due for another three years. So the insured has complete coverage and the funeral is fully funded at times when he would not have made all the required payments under a trust fund.

We assert that the consumer's choice should not be limited, rather they should be expanded. We believe that consumers are able to make informed decisions and ought to have free choice of funding options for prearranged funerals.

The West Virginia Insurance Department has approved the Forethought limited payment policy. The proposed rules should not require more coverage from a policy than the insurance department, especially when that same coverage is not required of trust arrangements.

The Forethought approach to funeral planning systems and products maintains and enhances the process of prearranging a funeral and providing funding in

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the future.

It focuses attention on the consumer's primary objective, that is, funeral planning, and its appeal to consumer and funeral director alike have been dramatically demonstrated in only the few months that Forethought has been in the marketplace offering these products.

It does so for several reasons. It is simple to understand, it provides inflation protection for the consumer and for the funeral director, it avoids rejection through underwriting and the risks of contestability of the policy after the policy has been issued during that contestability period.

It eliminates the need for embarrassing health questions and medical exams of older people for whom this is concern, and it is life insurance and not an annuity, which might be the opinion under an underwritten program in which the person does not qualify.

Guaranteed issue deferred benefit life insurance is a legitimate alternative to underwriting, especially for older persons. It is not within the scope of the department's authority to exclude the sale of this product as funeral funding, as a funeral funding vehicle

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when it can be otherwise sold in West Virginia.

Sections 8.2, 9.6.6 and 15.9 are comments on these. These sections require that various documents relating to each period and will be delivered to the Consumer Protection Division. 9.6.6 requires contract sellers to file with the Division a copy of each signed pre-need funeral contract.

If a contract is funded by insurance, Section 15.9 requires the seller to file with the Division a copy of the insurance policy. Section 8.2 requires the funeral director to file with the Division a statement of goods and services which justifies any change in the pre-need statement. We believe these rules are excessive and should be eliminated.

The Forethought group commends the Consumer Protection Division of the West Virginia Office of the Attorney General in its efforts to protect the interest of consumers. The Forethought group shares in those interests and remains dedicated to providing quality funeral prearrangement services to consumers.

To that end we commit to assisting regulators in establishing fair and adequate rules to protect consumers' interest and would request the

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opportunity to take a greater part in the process.

As a request in connection with that interest, we would ask that the record be kept open on this hearing for at least another two weeks after the close of this hearing so that we may contact those 73-some firms who have already signed up for our program in the state of West Virginia and who have obviously a considerable interest in making sure that the program can continue as it was originally presented to them on the insurance laws in the state of West Virginia and to be able to comment on the appropriateness of the rules with respect to their own operation.

One last statement, the Forethought Life Insurance Company must continue to assert the Department lacks the authority to apply the proposed rules to life insurance funded funeral planning and to limit the type of life products, directly or indirectly, sold to that end.

Thank you for the opportunity to speak before you.

MR. HINDES: Next on the list, Terry Ferrell. I think it says Terry Ferrell and Jack Barker.

That is the end of the sign-up sheet. If there is anyone else here who would like to address

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comments to the rules or our office for the purpose of this record, I would invite you to do that at this time.

Since nobody is jumping up, I will assume that no one else wants to make a statement.

Let me say that as far as the public notices, public comment period, as indicated in the notice, that does conclude today at the close of business at five o'clock. That was the deadline which we are required by statutory procedure for promulgating these rules to create a set time period.

As far as the mechanical process that we are now involved in, however, what we will have to do is to put in final form our agency approved rules. There are a number of other related documents that have to be prepared.

We have to write a commentary, for example, that explains every modification that is made to the original proposed rules, explain the reason for it. We have to prepare a document which essentially describes the input that we receive during this comment period. That is not something that is going to be accomplished by five o'clock today and, as a practical matter, we will be working on this through next week.

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So if there are other comments, other opportunities for input that any of you others would like to take advantage of, we are not going to refuse to listen to anyone just because five o'clock today came.

We would like to have as much input as we can get on these rules. We are new at this process. We don't have anyone in our office that has any independent expertise in your business. We are attempting to learn how that business operates, at least in terms of pre-need funeral contracts, so that we can develop sensible rules within the parameters already established by the Pre-need Burial Act. So I would invite comments and input.

As soon as we complete our process, which hopefully will be next week, we will again send to everyone on our mailing list a copy of the rule.

With that --

MR. MANCINELLI: Mr. Commissioner, it's not a comment. It more might be a question to you. We have some firms in the state that did not receive the notice of your public hearing. There were four firms that have contacted me and had not received this.

The other question that I have is that --

MR. HINDES: Will you identify yourself, sir, for

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the purpose of the Reporter sitting right beside you?

MR. MANCINELLI: Vince Mancinelli from Morgantown.

It is my understanding that the statute calls for a 30-day notice for a public hearing, and these people did not receive your notice from your office, and I realize that your letter was written on the 18th and was mailed out on August 31st, postmarked August 31st, to all the funeral establishments. That certainly doesn't warrant a 30-day notice which the statute calls for.

Most of the firms received them about two weeks ago, so I think that there should be more time or at least entertain the thought that these other people received the draft that you had sent to all but four -- there may be more, but there's four that I know of that did not receive them.

MR. HINDES: Thank you, Mr. Mancinelli.

At this point then, I will declare the record for this public hearing concluded, all comments having been received, and we can close the record on this hearing.

(WHEREUPON, at 11:20 a.m. the hearing was concluded.)

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REPORTER'S CERTIFICATE

I, N. Jean Payne, Certified Court Reporter, Staff Reporter for Action Court Reporting Service, Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of the proceedings had and testimony adduced at a hearing held in the above-styled matter at a hearing held on Friday, September 18, 1987.

N. Jean Payne

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