

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 51

Short Title: Funeral and Burial Trust Act.

(Public)

Sponsors: Senators Conder; and Carpenter.

Referred to: Human Resources.

February 11, 1991

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FUNERAL AND BURIAL TRUST FUND ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.30 reads as rewritten:

"§ 90-210.30. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) ~~'Commissioner' means the Commissioner of Banks of this State.~~ 'Board' means the North Carolina Board of Mortuary Science, as created pursuant to Article 13A of Chapter 90 of the General Statutes.
- (2) 'Financial institution' means a bank, trust company or savings and loan association authorized by law to do business in this State;
- (3) ~~'Preneed burial-funeral contract' means a-any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof,~~ which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.
- (4) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts

1 or agreements in any form or manner, issued by an insurance company
2 authorized by law to do business in this State, which, whether by
3 assignment or otherwise, has for a purpose the funding of a preneed
4 funeral contract or an insurance-funded funeral or burial
5 prearrangement, the insured being the person for whose service the
6 funds were paid.

7 (5) 'Insurance company' means any corporation, association,
8 partnership, society, order, individual or aggregation of individuals
9 engaging in or proposing or attempting to engage as principals in
10 any kind of insurance business, including the exchanging of
11 reciprocal or interinsurance contracts between individuals,
12 partnerships and corporations.

13 (6) 'Preneed licensee' means a funeral establishment which has
14 applied for and has been granted a license to sell preneed funeral
15 contracts under the Article. Such license is also referred to in this
16 Article as a 'preneed funeral establishment license.'

17 (7) 'Preneed funeral planning' means offering to sell or selling preneed
18 funeral contracts, as defined in G.S. 90-210.30(3), or making other
19 arrangements prior to death for the providing of funeral services or
20 merchandise."

21 Sec. 2. G.S. 90-210.31 reads as rewritten:

22 **"§ 90-210.31. Deposit of trust funds.**

23 (a) Except as provided in this section, all payments of money made to any
24 person, partnership, association ~~or~~, corporation, or other entity upon any preneed
25 funeral contract or any other agreement ~~or~~, contract, or prearrangement insurance
26 policy, or any series or combination of preneed funeral contracts or any other
27 agreements ~~or~~, contracts, or prearrangement insurance policies, but not including
28 excluding the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers ~~or~~
29 and monuments, which ~~has~~ have for a purpose or which by operation provide for the
30 furnishing or performance of funeral or burial services, or the furnishing or delivery of
31 personal property, merchandise, or services of any nature in connection with the final
32 disposition of a dead human body, to be furnished or delivered at a time determinable
33 by the death of the person whose body is to be disposed of, or the providing of the
34 proceeds of an insurance policy for such use are held to be ~~trust~~ preneed funeral funds,
35 and their receipt, application, and disposition shall be deposited or applied as follows:-
36 The person, partnership, association or corporation receiving the payments is declared to be a
37 trustee thereof, and shall deposit all payments in a financial institution. All of the interest,
38 dividends, increases or accretions of whatever nature earned by the funds deposited in a trust
39 account shall remain with the principal of such account and become a part thereof, subject to all
40 of the regulations concerning the principal of said fund herein contained. Consistent with
41 applicable tax laws, the trust fund may be charged with any taxes on said fund by reason of any
42 interest, dividends, increases or accretions earned thereon, and for the reasonable charges paid
43 by the trustee to itself or others for the preparation of fiduciary tax returns reporting such
44 income. The trustee may establish an individual trust for each contract or a common trust fund
45 for all contracts. The trust accounts shall be carried in the name of the person, partnership,

1 association or corporation to whom pre-need payments are made, but accounting records shall
2 be maintained showing the amounts deposited and invested, and interest, dividends, increases
3 and accretions earned thereon, with respect to each purchaser's contract.

4 (a1) A funeral establishment licensed by the Commissioner may enter into an
5 inflation proof pre-need burial contract that establishes a fixed price for services and
6 merchandise to be furnished at a future date regardless of changes in the cost of services
7 and merchandise to the licensed funeral establishment. A licensed funeral establishment
8 that enters into an inflation proof pre-need burial contract may retain ten percent (10%)
9 of all payments on the contract upon filing with the Commissioner a bond in the amount
10 retained. The bond shall be in a form and with such surety or sureties, including a letter
11 of credit issued by an insured financial institution, as may be required by the
12 Commissioner, conditioned on compliance with G.S. 90-210.31(e1) and G.S. 90-
13 210.32(b). In the event of noncompliance with G.S. 90-210.31(e1) the Commissioner
14 shall disburse the proceeds of the bond in accordance with G.S. 90-210.31(e1), and in
15 the event of noncompliance with G.S. 90-210.32(b) the Commissioner shall disburse the
16 proceeds to the party who made the payments to the licensed funeral establishment.
17 That portion of all payments on the contract not retained by the licensed funeral
18 establishment shall be deposited in a trust fund as provided in subsection (a) of this
19 section.

20 (b) All payments made under the agreement, contract or plan are and shall
21 remain trust funds with the financial institution until the death of the person for whose
22 service the funds were paid and until the delivery of all merchandise and full
23 performance of all services called for by the agreement, contract or plan, except where
24 payment is made pursuant to G.S. 90-210.32. The trust fund shall be established in an
25 insured account in a financial institution and may be transferred from one approved
26 financial institution to another.

27 (c) Upon the death of the beneficiary of a pre-need burial contract, the financial
28 institution shall not pay funds it holds in trust under this section to the licensed funeral
29 establishment until a certified statement is furnished to the financial institution that all
30 terms and conditions of the contract have been fully performed by the licensed funeral
31 establishment. Unless otherwise specified in the agreement, contract or plan, the said
32 person, partnership, association or corporation shall have no obligation to deliver any
33 merchandise or perform any services for which payment in full has not been deposited
34 in the financial institution, and any amounts deposited which do not constitute payment
35 in full shall be refunded to the estate of the deceased beneficiary of the plan or credited
36 against the cost of merchandise or services contracted for by representatives of the
37 deceased. Any balance remaining in the fund after payment for the merchandise and
38 services as set forth in the agreement, contract or plan shall be paid to the estate of the
39 beneficiary of the agreement, contract or plan.

40 (e1) In the event that a person, partnership, association, or corporation other than
41 the contracting licensed funeral establishment to a pre-need burial contract provides the
42 services, merchandise or personal property described in the contract for the beneficiary
43 thereof, the funds deposited in a financial institution pursuant to G.S. 90-210.31(a)
44 together with all interest, dividends, increases or accretions earned on such fund and any

1 amount retained by the licensed funeral establishment pursuant to G.S. 90-210.31(a1)
2 shall be paid to the provider of such services, merchandise or personal property upon
3 submission to the financial institution and the licensed funeral establishment of a
4 certified copy of the death certificate of the beneficiary and a certified copy of the
5 charges for the services, merchandise or personal property provided for the deceased.
6 Any balance remaining in the financial institution or retained by the licensed funeral
7 establishment after payment to the provider shall be paid to the estate of the beneficiary
8 of the contract. Upon making payment pursuant to this subsection and giving notice of
9 payment to the licensed funeral establishment, the financial institution shall be relieved
10 from all further liability. Upon making payment pursuant to this subsection, the licensed
11 funeral establishment shall be relieved from all further liability. This subsection shall
12 not apply if the pre-need contract provides that it is irrevocable.

13 (d) Subsection (a) of this section does not apply to contracts for funeral service or
14 merchandise sold as burial insurance policies which are regulated by Part 13 of Article
15 10 of Chapter 143B of the General Statutes.

16 (d1) This Article does not apply to pre-need burial contracts or prearrangements
17 for funeral services or merchandise funded, at the direction of the purchaser, with the
18 proceeds of any insurance policy regulated by Articles 1 through 64 of Chapter 58 of
19 the General Statutes.

20 (e) The Commissioner shall approve forms for pre-need burial contracts. All
21 such contracts must be in writing, and no contract form shall be used without prior
22 approval of the Commissioner. Any use or attempted use of an oral pre-need burial
23 contract or any written pre-need burial contract in a form not approved by the
24 Commissioner shall be deemed to be a violation of this Article by the person selling
25 services or merchandise thereunder.

26 (1) Any payment of money made by a preneed funeral contract purchaser
27 who chooses to have such funds placed in a financial institution shall,
28 within the required period of time, be deposited by the preneed
29 licensee in the manner hereinafter provided in a financial institution, in
30 trust, in the preneed licensee's name as trustee. Thereafter, all of the
31 interest, dividends, increases or accretions of whatever nature earned
32 by the funds shall remain with the principal and shall become a part
33 thereof, subject to all of the requirements concerning the principal
34 hereinafter contained. Consistent with applicable tax laws, the trust
35 fund may be charged with any taxes on said fund and its income, and
36 for the reasonable charges paid by the trustee to itself or others for the
37 preparation of fiduciary tax returns reporting such income. Penalties
38 charged by a financial institution for early withdrawal of a deposit
39 caused by a transfer pursuant to G.S. 90-210.35(b) shall be paid by the
40 preneed licensee. Penalties charged as a result of all other early
41 withdrawals as permitted by this Article shall be paid from the trust
42 fund, and the financial institution shall give the purchaser prompt
43 notice of all such penalties. The preneed licensee, as trustee, may
44 establish an individual trust for each preneed contract or a common

1 trust fund for all preneed funeral contracts. The trust accounts shall be
2 carried in the name of the preneed licensee as trustee, but accounting
3 records shall be maintained showing the amounts deposited and
4 invested, and interest, dividends, increases and accretions earned
5 thereon, with respect to each purchaser's contract.

6 (2) Notwithstanding any other provision of law, a preneed licensee who
7 enters into a preneed funeral contract with a purchaser who funds such
8 contract with a trust deposit pursuant to subsection (a)(1) hereof may
9 retain, free of the trust, up to ten percent (10%) of any payments made
10 on such contract, provided that:

11 a. The preneed licensee fully discloses in writing to the contract
12 purchaser in advance the percentage in intends to retain from
13 any payments made on the contract.

14 b. If the preneed licensee thereafter performs any services or
15 provides any goods or merchandise under such contract, the
16 preneed licensee shall give the purchaser credit for the amount
17 retained.

18 (3) Any payment received by a preneed licensee from a purchaser of a
19 preneed funeral contract who chooses to purchase a prearrangement
20 insurance policy, shall within the required period of time, be applied
21 by the preneed licensee to the purchase of such policy.

22 (b) Except as provided by subsection (a)(2) hereof or by G.S. 90-210.32, all
23 payments made by the purchaser of a preneed funeral contract or prearrangement
24 insurance policy are and shall remain trust funds within a financial institution or as paid
25 insurance premiums with an insurance company, as the case may be, until the death of
26 the person for whose service the funds were paid and until delivery of all merchandise
27 and full performance of all services called for by the preneed funeral contract or
28 prearrangement insurance policy.

29 (c) Each preneed licensee may establish and maintain with a financial institution
30 of its choice, a preneed funeral fund clearing account. Preneed funeral funds received
31 by a preneed licensee may be deposited and held in such an account until disbursed by
32 the preneed licensee to fund a preneed funeral contract pursuant to subsection (a)(1) or
33 (a)(3) hereof. Such account shall be maintained and used solely for the receipt and
34 disbursement of preneed funeral funds.

35 (d) Funds deposited in trust under a revocable standard preneed funeral contract
36 entered into on or after January 1, 1992, may, with the written permission of the
37 contract purchaser, be withdrawn and used to purchase prearrangement insurance
38 policies. Except as provided in this subsection, no funds deposited in trust in a financial
39 institution pursuant to this Article shall be withdrawn to purchase prearrangement
40 insurance policies."

41 Sec. 3. Chapter 90 is amended by adding a new section to Article 13B to
42 read:

43 "**§ 90-210.31A. Types of preneed contracts; revocability; disposition of funds;**
44 **substitution of licensees; forms.**"

1 (a) A preneed licensee may make preneed arrangements available through
2 standard and inflation-proof preneed funeral contracts. Standard preneed funeral
3 contracts apply all monies paid by or for the contract beneficiary, together with any
4 increases to the trust fund and all insurance proceeds, for the purchase of funeral
5 services and merchandise without a guarantee against price increases. Inflation-proof
6 contracts establish a fixed price for funeral services and merchandise without regard to
7 price increases. Upon written disclosure, inflation-proof contracts may permit the
8 preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and
9 all insurance proceeds, even those in excess of the retail cost of goods and services
10 provided, when the preneed licensee has fulfilled the contract obligation.

11 (b) At the option of the preneed funeral contract purchaser, such contracts may
12 be made revocable or irrevocable. If the contract is made irrevocable, the purchaser,
13 and after his death the beneficiary, or the beneficiary's legal representative, may, upon
14 written notice given to the financial institution or insurance company and the preneed
15 licensee which is a party to the contract, direct the substitution of a different preneed
16 licensee to furnish funeral services and merchandise. Such substitution may be made
17 either before or after the death of the beneficiary of the preneed funeral contract;
18 provided, however, if the substitution is made after the death of the preneed funeral
19 contract beneficiary, a funeral establishment providing any funeral services or
20 merchandise need not be a preneed licensee under this Article to receive payment for
21 such services or merchandise. Provided, further, if a substitution of trustee occurs after
22 the death of the contract beneficiary, the original contracting preneed licensee shall be
23 entitled to payment for any services or merchandise provided pursuant to G.S. 90-
24 210.32(d).

25 Upon receipt of such notice, the financial institution shall immediately pay the funds
26 held therein pursuant to G.S. 90-210.31(a)(1), together with all accumulated interest,
27 dividends, increases and accretions thereon, to the preneed licensee which is a party to
28 the preneed funeral contract. If the preneed funeral contract is funded by a
29 prearrangement insurance policy, the insurance company shall not pay any of the funds
30 until the death of the beneficiary of the contract. The preneed licensee which is party to
31 the preneed funeral contract shall immediately pay all such funds received to the
32 successor funeral establishment so designated; provided, however, the contracting
33 preneed licensee shall not be required to give credit for the amount retained pursuant to
34 G.S. 90-210.31(a)(2). Provided further, if the contracting preneed licensee did not
35 retain any portion of payments made to it as is permitted by G.S. 90-210.31(a)(2), then
36 such preneed licensee may retain up to ten percent (10%) of said funds received from
37 the financial institution.

38 Upon making payments pursuant to this subsection, the financial institution and the
39 preneed licensee which is a party to the preneed funeral contract shall be relieved from
40 all further contractual liability thereon.

41 The person giving notice of this substitution of preneed licensee and the successor
42 preneed licensee shall enter into a new preneed funeral contract for the funds
43 transferred, and this Article shall apply, including the duty of the successor preneed
44 licensee to deposit funds in a financial institution if the death of the beneficiary of the

1 preneed funeral contract has not occurred. Nothing in this subsection shall be construed
2 to permit an irrevocable preneed funeral contract to be made revocable or to result in the
3 payment of any of the transferred funds to the purchaser or to the beneficiary of the
4 preneed funeral contract or his estate, except as provided by subsection (c) hereof.

5 (c) When a preneed licensee has fulfilled its contractual obligation upon the
6 death of a preneed funeral contract beneficiary, the preneed licensee shall promptly
7 complete a certificate of performance and present the same to the financial institution
8 which holds funds in trust under G.S. 90-210.31(a)(1), or to the insurance company
9 which issued a preneed insurance policy pursuant to G.S. 90-210.31(a)(3). The
10 financial institution or insurance company on receipt of the certificate of performance
11 shall pay to the preneed licensee which is a party to the contract the trust funds or policy
12 proceeds.

13 Unless otherwise specified in the preneed funeral contract, the preneed licensee shall
14 have no obligation to deliver merchandise or perform any services for which payment in
15 full has not yet been deposited with a financial institution or which shall not be provided
16 by the proceeds of a prearrangement insurance policy, and any such amounts received
17 which do not constitute payment in full shall be refunded to the estate of the deceased
18 contract beneficiary or credited against the cost of merchandise or services contracted
19 for by a representative of the deceased; and any balance remaining in the fund or policy
20 after payment for the merchandise and services as set forth in the preneed funeral
21 contract or the insurance beneficiary named to receive any such balance. Provided,
22 however, unless the parties agree to the contrary, there shall be no refund to the estate of
23 a deceased beneficiary of an inflation-proof preneed funeral contract.

24 (d) In the event that any person, partnership or corporation, other than the
25 contracting preneed licensee, shall perform any funeral service or provide any
26 merchandise under a preneed funeral contract upon the death of the beneficiary thereof,
27 the trust funds held on deposit with a financial institution pursuant to G.S. 90-
28 210.31(a)(1), or preneed insurance proceeds held by an insurance company pursuant to
29 G.S. 90-210.31(a)(3), shall be paid by the contracting preneed licensee to such provider
30 upon submission to the contracting preneed licensee and the financial institution or
31 insurance company, as the case may be, of a certified copy of the contract beneficiary's
32 death certificate, a copy of the statement of charges for the services and merchandise
33 provided and a certificate of performance.

34 In the event that a credit for a retention is due a preneed funeral contract beneficiary
35 from a contracting preneed licensee which has retained any portion of preneed payments
36 made on such contract pursuant to G.S. 90-210.31(a)(2), and that credit is not given
37 upon the death of the contract beneficiary, G.S. 90-210.31B shall apply.

38 (e) This Article does not apply to contracts for funeral services or merchandise
39 sold as preneed burial insurance policies which are regulated by Part 13 of Article 10 of
40 Chapter 143B of the North Carolina General Statutes.

41 (f) The board shall approve all forms for preneed funeral contracts. All such
42 contracts must be in writing, and no form shall be used without prior approval of the
43 Board. Any use or attempted use of any oral preneed funeral contract or any written

1 contract in a form not approved by the Board shall be deemed a violation of this Article
2 by the person selling the services or merchandise thereunder.

3 (g) Whenever any balance of a preneed funeral fund shall be payable to the estate
4 of a deceased contract beneficiary and there has been no representative of the estate
5 appointed to whom payment may be made, the same may be paid into the office of the
6 clerk of superior court in the county wherein probate proceedings could be filed for the
7 deceased beneficiary."

8 Sec. 4. Chapter 90 is amended by adding a new section to Article 13B to
9 read:

10 **"§ 90-210.31B. Recovery fund.**

11 (a) There is established the Preneed Recovery Fund. The Fund shall be
12 administered by the Board under rules adopted by it. The purpose of the Fund is to
13 reimburse purchasers of preneed funeral contracts who have suffered financial loss as a
14 result of the malfeasance, misfeasance, default, failure or insolvency of any licensee
15 under this Article.

16 (b) From the fee of fifteen dollars (\$15.00) for each contract as required by G.S.
17 90-210.34(c) the Board will deposit two dollars (\$2.00) per contract into the Fund. The
18 Board may suspend the fee at any time and for any period for which the Board
19 determines that a sufficient amount is available to meet likely disbursements and that an
20 adequate reserve will remain after such disbursements.

21 (c) All sums received by the Board pursuant to this section shall be held in a
22 separate account known as the Preneed Recovery Fund. Deposits to and disbursements
23 from the Fund account shall be subject to the written direction of the Board under rules
24 established by it.

25 (d) The Board shall adopt rules governing management of the Fund account,
26 presentation and processing of applications for reimbursement, and subrogation or
27 assignment of the rights of any reimbursed applicant.

28 (e) The Board may use or otherwise expend monies in the Fund for the following
29 purposes:

30 (1) To make reimbursements on approved applications;

31 (2) To purchase insurance to cover such losses, in whole or in part,
32 deemed appropriate by the Board and not inconsistent with the
33 purposes of the Fund;

34 (3) To invest such portions of the Fund as are not currently needed to
35 reimburse losses and maintain adequate reserves, and as are permitted
36 to be made by fiduciaries under State law; and

37 (4) To pay the expenses of the Board to administer the Fund, including
38 employment of legal counsel to prosecute subrogation claims.

39 (f) Reimbursements from the Fund shall be made only to the extent to which
40 such losses are not bonded or otherwise covered, protected or reimbursed and only after
41 the applicant has complied with all applicable rules of the Board.

42 (g) The Board shall investigate all applications made and may reject or allow
43 such claims in whole or in part based on and to the extent that monies are available in
44 the Fund. The Board shall have complete discretion to determine the order and manner

1 of payment of approved applications. All such payments shall be a matter of privilege
2 and not of right, and no person shall have any right in the Fund as a third party
3 beneficiary or otherwise. No attorney shall be compensated by the Board for
4 prosecuting an application before it.

5 (h) In the event reimbursement is made to an applicant under this section, the
6 Board shall be subrogated in the reimbursed amount and may bring such action as
7 deemed advisable against any person or corporation, including the licensee. The Board
8 may enforce any claims it may have for restitution or otherwise and may employ and
9 compensate consultants, agents, legal counsel, accountants and other such persons as it
10 deems appropriate to carry out its authority under this section."

11 Sec. 5. G.S 90-210.32 reads as rewritten:

12 **"§ 90-210.32. Refund of deposit.**

13 (a) Within 30 days of receipt of a written demand for refund by any party who has
14 paid funds under a pre-need burial request from the purchaser of a revocable preneed
15 funeral contract who has contract funds deposited with a financial institution pursuant to
16 G.S. 90-210.31(a)(1), the financial institution with which such funds have been deposited
17 holding such funds in trust shall refund to such party the contract purchaser the entire
18 amount deposited with the financial institution together with all interest, dividends,
19 increases, or accretions earned on such fund.

20 (b) Within 30 days of receipt of a written demand for refund by any party who
21 has paid funds under a pre-need burial contract, the licensed funeral establishment that
22 has retained any portion of the payments pursuant to G.S. 90-210.31(a1) shall refund to
23 such party the entire principal amount retained by the licensed funeral establishment
24 without any interest, dividends, increases or accretions earned on such fund.

25 (b1) Within 30 days of receipt of a written notice of cancellation of any
26 prearrangement insurance policy purchased pursuant to G.S. 90-210.31(a)(3), the
27 issuing insurance company shall refund to the prearrangement insurance policy
28 purchaser any unearned premiums.

29 (c) After making refund pursuant to this section and giving notice of the refund
30 to the contracting licensed funeral establishment preneed licensee, the financial institution
31 shall be relieved from all further liability. After making refund pursuant to this section, the
32 licensed funeral establishment shall be relieved from all further liability.

33 (c1) Notwithstanding any other provision of this Article, if a preneed funeral
34 contract is revoked or transferred following the death of the beneficiary, the purchaser
35 may be charged according to the contracting preneed licensee's price lists for any
36 services performed or merchandise provided prior to revocation or transfer.

37 (d) This section shall not apply if the pre-need burial funeral contract provides
38 that it is irrevocable. Such contracts may not be revoked or any proceeds thereof
39 refunded except by order of a court of competent jurisdiction."

40 Sec. 6. G.S. 90-210.33 reads as rewritten:

41 **"§ 90-210.33. Deposit within 30 days of receipt.**

42 (a) All trust funds mentioned in this Article shall be deposited in the name of the trustee, as
43 trustee Except as provided in this Article, all preneed funeral funds received by a preneed
44 licensee pursuant to the provisions of G.S. 90-210.31(a)(1) shall, within 30-10 days after

1 receipt thereof, ~~be deposited by such licensee in with a financial institution and shall be~~
2 ~~held together with the interest, dividends, or accretions thereon~~, in trust, subject to the
3 ~~provisions of this Article. The trustee at the time of making deposit shall furnish to the financial~~
4 ~~institution the name of each payor, and the amount of payment on each account for which the~~
5 ~~deposit is being made in the preneed licensee's name as trustee.~~

6 (b) Premiums received by a preneed licensee in payment for prearrangement
7 insurance policies pursuant to the provisions of G.S. 90-210.31(a)(3) shall be applied to
8 the purchase of such policies within 10 days of receipt of the same.

9 (c) If a preneed funeral contract purchaser elects to fund such contract with a
10 trust deposit, the preneed licensee, at the time of making the deposit as trustee, shall
11 furnish to the financial institution the name of each payor and the amount of payment on
12 each for which the deposit is being made.

13 (d) If a preneed funeral contract purchaser elects to fund such contract with a
14 prearrangement insurance policy, the preneed licensee shall notify the insurance
15 company of the name of each payor and the amount of each payment when such policy
16 or policies have been purchased.

17 (e) Except as provided by G.S. 90-210.31(c), at no time before making a deposit
18 or purchasing a prearrangement insurance policy may a preneed licensee, or its agents
19 or employees, deposit in its or their own account or the account of any other person,
20 partnership, association, corporation, or entity any monies coming into its or their hands
21 for the purpose of purchasing services, merchandise, or prearrangement insurance under
22 the provisions of this Article."

23 Sec. 7. G.S. 90-210.34 reads as rewritten:

24 "**§ 90-210.34. Application for license.**

25 (a) ~~No person, firm, partnership, association or corporation may, without first~~
26 ~~securing from the Commissioner a license, accept and/or hold payments made on pre-~~
27 ~~need burial contracts, except financial institutions as defined in G.S. 90-210.30(2)~~
28 ~~hereof offer or sell preneed funeral contracts or offer to make or make any funded~~
29 ~~funeral prearrangements, whether funded by prearrangement insurance policies, trust~~
30 ~~deposits or otherwise, without first securing a license from the Board. There shall be~~
31 ~~two types of licenses: a preneed funeral establishment license and a preneed sales~~
32 ~~license. Only funeral establishments holding a valid establishment permit pursuant to~~
33 ~~G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license~~
34 ~~hereunder. Employees and agents of such entities, upon meeting the qualifications to~~
35 ~~engage in preneed funeral planning as established by the Board, shall be eligible for a~~
36 ~~preneed sales license. Such employees and agents may sell preneed funeral contracts,~~
37 ~~prearrangement insurance policies and make funded funeral prearrangements only on~~
38 ~~behalf of and to be performed by one employer or one principal; provided, however,~~
39 ~~such employees and agents may sell preneed funeral prearrangements for any number of~~
40 ~~funeral establishments licensed under this Article which are wholly-owned by or~~
41 ~~affiliated, through common ownership or contract, with the same entity; provided~~
42 ~~further, in the event such agents and employees engage in prearrangement insurance~~
43 ~~sales, these agents shall meet the licensing requirements of the Commissioner of~~
44 ~~Insurance. Every preneed funeral contract shall be signed by a person licensed as a~~

1 funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the
2 General Statutes.

3 Application for a license shall be in writing, signed by the applicant and duly verified
4 on forms furnished by the ~~Commissioner~~Board. Each application shall contain at least
5 the following: the full names and address (both residence and place of business) of the
6 applicant, and every ~~member~~,—officer and director thereof if the applicant is a firm,
7 partnership, association or corporation and any other information as the Board shall
8 deem necessary. ~~Any~~A preneed funeral establishment license issued pursuant to the
9 application shall be valid only at the address stated in the application for the applicant or
10 at a new address approved by the ~~Commissioner~~Board.

11 (b) ~~Each~~An application for a preneed funeral establishment license shall be
12 accompanied by a nonrefundable ~~investigation-application~~ fee of not more than twenty-
13 five dollars (\$25.00)two hundred fifty dollars (\$250.00) and an application for a preneed
14 sales license shall be accompanied by a nonrefundable application fee of not more than
15 one hundred dollars (\$100.00). If the license is granted, the ~~investigation-application~~ fee
16 shall be applied to the respective annual license fee for the first year or part thereof.
17 Upon receipt of the application and payment of the ~~investigation-application~~ fee, the
18 ~~Commissioner~~Board shall issue a renewable preneed funeral establishment license
19 unless it determines that the applicant has made false statements or representations in
20 the application, or is insolvent, or has conducted, or is about to conduct, his business in
21 a fraudulent manner, or is not duly authorized to transact business in this State. Upon
22 receipt of the application and payment of the application fee, the Board shall issue a
23 renewable preneed sales license provided the applicant has met the qualifications to
24 engage in preneed funeral planning as established by the Board pursuant to subsection
25 (a) hereof. Each licensee under this Article shall pay annually to the ~~Commissioner~~
26 Board on or before June 30 of each year, a license fee of ~~twenty-five dollars (\$25.00)~~not
27 more than two hundred fifty dollars (\$250.00) for a preneed funeral establishment
28 license and not more than one hundred dollars (\$100.00) for a preneed sales license.

29 (c) Any person selling a pre-need funeral ~~service~~contract, whether funded by a
30 trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10
31 days following the sale of such contract, a contract fee of fifteen dollars (\$15.00) for
32 each sale. Such fee shall not be remitted in cash. ~~shall collect from each purchaser a~~
33 service charge of ten dollars (\$10.00), and all of which fees so collected shall be remitted by
34 the person collecting same to the Commissioner at least once each month, and such funds shall
35 be used by the Commissioner in administering this Article.

36 (d) The fees collected under this Article, except for monies used pursuant to G.S.
37 90-210.31b., shall be used for the expenses of the Board in carrying out the provisions
38 of this Article. Any funds remaining with the Board after all expenses under this Article
39 for the current fiscal year have been fully provided for shall be paid over to the General
40 Fund of the State of North Carolina. Provided, however, the Board shall have the right
41 to maintain an amount, the cumulative total of which shall not exceed twenty percent
42 (20%) of gross receipts under this Article for the previous fiscal year of its operations,
43 as a maximum contingency or emergency fund."

44 Sec. 8. G.S 90-210.35 reads as rewritten:

1 **"§ 90-210.35. Licensee's books and records; notice of transfers, assignments and**
2 **terminations.**

3 (a) ~~The~~ Every preneed licensee shall keep for examination by the Board accurate
4 accounts, books, and records in this State of all preneed funeral contract and
5 prearrangement insurance policy transactions, copies of all agreements, insurance
6 policies, instruments of assignment, the dates and amounts of payments made and
7 accepted thereon, the names and addresses of the contracting parties, the persons for
8 whose benefit funds are accepted, and the names of the depositories of the financial
9 institutions holding preneed funeral trust funds and insurance companies issuing
10 prearrangement insurance policies. ~~The licensee shall make all books and records pertaining~~
11 ~~to the trust funds available to the Commissioner for examination. The Commissioner~~ The
12 Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the
13 Board may appoint to assist in the enforcement of this Article, may at any time
14 investigate the books, records, and accounts of ~~the any~~ licensee under this Article with
15 respect to ~~its~~ trust funds, preneed funeral contracts, and prearrangement insurance
16 policies, and for that purpose the Board may require the attendance of and examine
17 under oath all persons whose testimony it may require.

18 (b) ~~Before any trust funds may be transferred~~ A preneed licensee may transfer
19 preneed funds held by it as trustee from the financial institution which is a party to a
20 preneed funeral contract to a substitute financial institution that is not a party to a pre-
21 ~~need burial the contract.~~ Within 10 days after the transfer, the preneed licensee shall
22 notify the Commissioner ~~Board, in writing,~~ of the name and address of the intended
23 transferee financial institution; and before. Before the transfer may be made, the
24 transferee financial institution shall agree to make ~~the disclosure~~ disclosures required
25 under the pre-need ~~burial~~ funeral contract to the Commissioner ~~Board or his~~ its designated
26 ~~examiner~~ inspectors or examiners. If the contract is revocable, the licensee shall notify
27 the contracting party of the intended transfer.

28 (c) In the event that any preneed licensee should transfer or assign its assets or
29 stock to a successor funeral establishment or terminate its business as a funeral
30 establishment, the preneed licensee and assignee shall notify the ~~Commissioner~~ Board
31 within 15 days ~~after~~ prior to the effective date of said transfer, assignment or
32 terminations~~—~~: provided, however, the successor funeral establishment must be a
33 preneed licensee or shall be required to apply for and be granted such license by the
34 Board before accepting any preneed funeral contracts, whether funded by trust deposits
35 or preneed insurance policies. Provided further, a successor funeral establishment shall
36 be liable to the preneed funeral contract purchasers for the amount of contract payments
37 retained by the assigning or transferring funeral home pursuant to G.S. 90-210.31(a)(2).

38 (d) Financial institutions which accept preneed funeral trust funds pursuant to
39 G.S. 90-210.31(a)(1) and insurance companies which issue prearrangement insurance
40 policies pursuant to G.S. 90-210.31(a)(3), shall, upon request by the Board or its
41 inspectors or examiners, disclose any information regarding preneed funeral trust
42 accounts held or prearrangement insurance policies issued by it for a preneed licensee.

43 (e) In the event that any preneed licensee is unable or unwilling or is for any
44 reason relieved of its responsibility to perform as trustee or to perform any preneed

1 funeral contract, the Board, with the written consent of the purchaser, or after the
2 purchaser's death or incapacity, the beneficiary of the preneed funeral contract, may
3 order the contract to be assigned to a substitute preneed licensee provided that the
4 substitute licensee agrees to accept such assignment."

5 Sec. 9. G.S. 90-210.36 reads as rewritten:

6 **"§ 90-210.36. Enforcement of Article.**

7 (a) The ~~Commissioner~~ Board shall enforce the provisions of this Article and
8 has the power to make investigations, subpoena witnesses, require audits and reports
9 and ~~conduct~~ order hearings as to violations of any provisions, and to establish of this
10 Article. The Board shall have the authority to refuse to issue or to suspend or revoke a
11 preneed funeral establishment license and a preneed sales license when the applicant or
12 holder thereof has been convicted of a felony or any crime involving fraud or moral
13 turpitude, or when the applicant or holder thereof has violated any provision of this
14 Article or the rules adopted pursuant thereto. The Board shall have the authority to
15 require such reports and information and to adopt such rules and regulations as are
16 necessary to carry out the provisions of this Article."

17 Sec. 10. G.S. 90-210.37 reads as rewritten:

18 **"§ 90-210.37. Penalties.**

19 (a) Anyone who embezzles or who fraudulently, or knowingly and willfully
20 misapplies, or in any manner converts preneed funeral funds to his own use, or for the
21 use of any partnership, corporation, association, or entity for any purpose other than as
22 authorized by this Article; or anyone who takes, makes away with or secretes, with
23 intent to embezzle, or fraudulently, or knowingly and willfully misapply or in any
24 manner convert preneed funeral funds for his own use or the use of any corporation,
25 partnership, association, or entity for any purpose other than as authorized by this
26 Article shall be punished as a Class H felon. Each such embezzlement, conversion, or
27 misapplication shall constitute a separate offense and may be prosecuted individually.
28 Upon conviction, all licenses issued under this Article shall be revoked.

29 (b) Any person who willfully ~~violating~~ violates the provisions any other provision
30 of this Article shall be guilty of a misdemeanor and shall be fined not less than five
31 hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000), or shall be
32 imprisoned for not less than 10 days nor more than six months, or both. Each such
33 violation shall constitute a separate offense and may be prosecuted individually.

34 (c) If a corporation embezzles or fraudulently or knowingly and willfully
35 misapplies or converts preneed funeral funds as provided in subsection (a) hereof or
36 otherwise violates any provision of this Article, the officers, directors, agents, or
37 employees responsible for committing the offense shall be fined or imprisoned as herein
38 provided.

39 (d) The Board shall deliver to the Attorney General all evidence of violations
40 pursuant to this section, and the Attorney General may initiate criminal actions to be
41 prosecuted by the district attorneys as provided by law."

42 Sec. 11. Chapter 90 is amended by adding a new section to read:

43 **"§ 90-210.38. Nonregulation of insurance sales.**

1 The provisions of this Article do not regulate the issuance and sale of insurance
2 policies, but apply only to the underlying preneed funeral contracts, whether funded by
3 insurance or trust deposits."

4 Sec. 12. G.S. 90-210.18(b) reads as rewritten:

5 **"§ 90-210.18. Construction of Article; State Board; members; election;**
6 **qualifications; term; vacancies.**

7 (b) The North Carolina Board of Mortuary Science is created as a continuation of
8 the North Carolina Board of Embalmers and Funeral Directors. The Board is the agency
9 for regulation of the practice of funeral service in this State. The Board shall have ~~seven~~
10 nine members as follows:

11 (1) Four funeral service licensees or persons holding both funeral
12 director's license and an embalmer's license,

13 (2) Two persons holding a funeral director's license or a funeral service
14 license, and

15 (3) ~~One~~ Three public ~~member~~ members.

16 A member's term shall be three years and shall expire on December 31 or when his
17 successor has been duly elected or appointed. No member may serve more than two
18 complete consecutive terms.

19 The six seats on the Board for licensees shall be filled in an election in which every
20 person licensed to practice embalming, funeral directing, or funeral service in this State
21 may vote. No licensee may be nominated, elected, or serve unless he holds a North
22 Carolina license in the class designated for the seat and unless he is engaged in full-time
23 employment in this State in a practice authorized by his license. Any vacancy occurring
24 in an elective seat on the Board shall be filled for the unexpired term by majority vote of
25 the remaining Board members.

26 The public ~~member~~ members of the Board shall have full voting authority. ~~He~~ They
27 shall be appointed by the Governor and may neither be licensed under this Article nor
28 employed by a person who is. A vacancy occurring in ~~the a~~ public member's seat shall
29 be filled for the unexpired term by the Governor."

30 Sec. 13. G.S. 90-210.22 reads as rewritten:

31 **"§ 90-210.22. Required meetings of the Board.**

32 The Board shall hold at least two meetings in each year at which examinations shall
33 be given to qualified applicants for licenses. In addition, the Board may meet as often as
34 the proper and efficient discharge of its duties shall require. ~~Four~~ Five members shall
35 constitute a quorum."

36 Sec. 14. (a) This act becomes effective January 1, 1992, and shall apply to
37 preneed funeral contracts and funded funeral prearrangements made and entered into on
38 or after that date. G.S. 90-210.31b. shall apply to losses which arise after the effective
39 date of this act.

40 (b) Any entity licensed by the Commissioner of Banks under Article 13B of
41 Chapter 90 of the General Statutes before the effective date of this act shall be entitled
42 to have its license renewed notwithstanding that it is not a funeral establishment,
43 provided it otherwise satisfies the requirements of this Article.