

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 51
Human Resources Committee Substitute Adopted 4/22/91
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Short Title: Funeral and Burial Trust Act.

(Public)

Sponsors:

Referred to:

February 11, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE FUNERAL AND BURIAL TRUST FUND ACT.
3 The General Assembly of North Carolina enacts:
4 Section 1. Article 13B of Chapter 90 of the General Statutes is repealed.
5 Sec. 2. Chapter 90 of the General Statutes is amended by adding the
6 following new Article to read:

7 **"ARTICLE 13D.**

8 **"FUNERAL AND BURIAL TRUST FUNDS.**

9 **"§ 90-210.60. Definitions.**

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

- 11 (1) 'Board' means the North Carolina Board of Mortuary Science as
12 created pursuant to Article 13A of Chapter 90 of the General Statutes;
- 13 (2) 'Financial institution' means a bank, trust company, savings bank, or
14 savings and loan association authorized by law to do business in this
15 State;
- 16 (3) 'Insurance company' means any corporation, association, partnership,
17 society, order, individual or aggregation of individuals engaging in or
18 proposing or attempting to engage as principals in any kind of
19 insurance business, including the exchanging of reciprocal or
20 interinsurance contracts between individuals, partnerships, and
21 corporations.

- 1 (4) 'Prearrangement insurance policy' means a life insurance policy,
2 annuity contract, or other insurance contract, or any series of contracts
3 or agreements in any form or manner, issued by an insurance company
4 authorized by law to do business in this State, which, whether by
5 assignment or otherwise, has for a purpose the funding of a preneed
6 funeral contract or an insurance-funded funeral or burial
7 prearrangement, the insured or annuitant being the person for whose
8 service the funds were paid;
- 9 (5) 'Preneed funeral contract' means any contract, agreement, or mutual
10 understanding, or any series or combination of contracts, agreements,
11 or mutual understandings, whether funded by trust deposits or
12 prearrangement insurance policies, or any combination thereof, which
13 has for a purpose the furnishing or performance of funeral services, or
14 the furnishing or delivery of personal property, merchandise, or
15 services of any nature in connection with the final disposition of a
16 dead human body, to be furnished or delivered at a time determinable
17 by the death of the person whose body is to be disposed of, but does
18 not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;
- 19 (6) 'Preneed funeral contract beneficiary' means the person upon whose
20 death the preneed funeral contract will be performed; this person may
21 also be the purchaser of the preneed funeral contract;
- 22 (7) 'Preneed funeral funds' means all payments of money made to any
23 person, partnership, association, corporation, or other entity upon any
24 preneed funeral contract or any other agreement, contract, or
25 prearrangement insurance policy, or any series or combination of
26 preneed funeral contracts or any other agreements, contracts, or
27 prearrangement insurance policies, but excluding the furnishing of
28 cemetery lots, crypts, niches, and mausoleums, which have for a
29 purpose or which by operation provide for the furnishing or
30 performance of funeral or burial services, or the furnishing or delivery
31 of personal property, merchandise, or services of any nature in
32 connection with the final disposition of a dead human body, to be
33 furnished or delivered at a time determinable by the death of the
34 person whose body is to be disposed of, or the providing of the
35 proceeds of any insurance policy for such use;
- 36 (8) 'Preneed funeral planning' means offering to sell or selling preneed
37 funeral contracts, or making other arrangements prior to death for the
38 providing of funeral services or merchandise;
- 39 (9) 'Preneed licensee' means a funeral establishment which has applied for
40 and has been granted a license to sell preneed funeral contracts under
41 the Article. Such license is also referred to in this Article as a 'preneed
42 funeral establishment license.'

43 **"§ 90-210.61. Deposit or application of preneed funeral funds.**

1 (a) Preneed funeral funds are subject to the provisions of this Article and shall be
2 deposited or applied as follows:

3 (1) If the preneed funeral contract purchaser chooses to fund the preneed
4 funeral contract by a trust deposit or deposits, the preneed licensee
5 shall deposit all funds in an insured account in a financial institution,
6 in trust, in the preneed licensee's name as trustee within five business
7 days. The preneed licensee, at the time of making the deposit as
8 trustee, shall furnish to the financial institution the name of each
9 preneed funeral contract purchaser and the amount of payment on each
10 for which the deposit is being made. The preneed licensee may
11 establish an individual trust fund for each preneed funeral contract or a
12 common trust fund for all preneed funeral contracts. The trust
13 accounts shall be carried in the name of the preneed licensee as trustee,
14 but accounting records shall be maintained for each individual preneed
15 funeral contract purchaser showing the amounts deposited and
16 invested, and interest, dividends, increases, and accretions earned.
17 Except as provided in this Article, all interest, dividends, increases, or
18 accretions earned by the funds shall remain with the principal. The
19 trust fund may be charged with applicable taxes and for reasonable
20 charges paid by the trustee to itself or others for the preparation of
21 fiduciary tax returns. Penalties charged by a financial institution for
22 early withdrawals caused by a transfer pursuant to G.S. 90-210.63
23 shall be paid by the preneed licensee. Penalties charged as a result of
24 other early withdrawals as permitted by this Article shall be paid from
25 the trust fund, and the financial institution shall give the preneed
26 funeral contract purchaser prompt notice of these penalties.

27 (2) Notwithstanding any other provision of law, if a preneed funeral
28 contract is funded by a trust deposit or trust deposits, a preneed
29 licensee may retain, free of the trust, up to ten percent (10%) of any
30 payments made on a preneed funeral contract, provided that the
31 preneed licensee fully discloses in writing in advance to the preneed
32 funeral contract purchaser the percentage of the payments to be
33 retained. If there is no substitution pursuant to G.S. 90-210.63(a), the
34 preneed licensee shall give credit for the amount retained upon the
35 death of the preneed funeral contract beneficiary and performance of
36 the preneed funeral contract.

37 (3) If the preneed funeral contract purchaser chooses to fund the contract
38 by a prearrangement insurance policy, the preneed licensee shall apply
39 all funds received for this purpose to the purchase of the
40 prearrangement insurance policy within five business days. The
41 preneed licensee shall notify the insurance company of the name of
42 each preneed funeral contract purchaser and the amount of each
43 payment when the prearrangement insurance policy or policies are
44 purchased.

1 (b) Except as provided by this Article or by the preneed funeral contract, all
2 payments made by the purchaser of a preneed funeral contract or prearrangement
3 insurance policy shall remain trust funds within a financial institution or as paid
4 insurance premiums with an insurance company, as the case may be, until the death of
5 the preneed funeral contract beneficiary and until full performance of the preneed
6 funeral contract.

7 (c) Each preneed licensee may establish and maintain with a financial institution
8 of its choice, a preneed funeral fund clearing account. Preneed funeral funds received
9 by a preneed licensee may be deposited and held in such an account until disbursed by
10 the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1)
11 or (a)(3) of this section. This account shall be used solely for the receipt and
12 disbursement of preneed funeral funds.

13 (d) Funds deposited in trust under a revocable standard preneed funeral contract
14 may, with the written permission of the preneed funeral contract purchaser, be
15 withdrawn by the trustee and used to purchase a prearrangement insurance policy.
16 Except as provided in this subsection, no funds deposited in trust in a financial
17 institution pursuant to this Article shall be withdrawn by the trustee to purchase a
18 prearrangement insurance policy.

19 (e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit
20 or purchasing a prearrangement insurance policy may a preneed licensee, or its agents
21 or employees, deposit in its own account or the account of any other person any monies
22 coming into its hands for the purpose of purchasing services, merchandise, or
23 prearrangement insurance policies under the provisions of this Article.

24 **"§ 90-210.62. Types of preneed funeral contracts; forms.**

25 (a) A preneed licensee may offer standard preneed funeral contracts and
26 inflation-proof preneed funeral contracts. A standard preneed funeral contract applies
27 the trust funds or insurance proceeds to the purchase price of funeral services and
28 merchandise at the time of death of the contract beneficiary without a guarantee against
29 price increases. An inflation-proof contract establishes a fixed price for funeral services
30 and merchandise without regard to price increases. Upon written disclosure to the
31 purchaser of a preneed funeral contract, inflation-proof contracts may permit the
32 preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and
33 all insurance proceeds, even those in excess of the retail cost of goods and services
34 provided, when the preneed licensee has fully performed the preneed funeral contract.
35 Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed
36 funeral contract purchaser.

37 (b) The Board shall approve all forms for preneed funeral contracts. All
38 contracts must be in writing, and no form shall be used without prior approval of the
39 Board. Any use or attempted use of any oral preneed funeral contract or any written
40 contract in a form not approved by the Board shall be deemed a violation of this Article.

41 **"§ 90-210.63. Substitution of licensee.**

42 (a) If the preneed funeral contract is irrevocable, the preneed funeral contract
43 purchaser, or after his death the preneed funeral contract beneficiary or his legal
44 representative, upon written notice to the financial institution or insurance company and

1 the preneed licensee who is a party to the preneed funeral contract, may direct the
2 substitution of a different funeral establishment to furnish funeral services and
3 merchandise.

4 (1) If the substitution is made after the death of the preneed funeral
5 contract beneficiary, a funeral establishment providing any funeral
6 services or merchandise need not be a preneed licensee under this
7 Article to receive payment for such services or merchandise. The
8 original contracting preneed licensee shall be entitled to payment for
9 any services or merchandise provided pursuant to G.S. 90-210.65(d).

10 (2) If the substitution is made before the death of the preneed funeral
11 contract beneficiary, the substitution must be to a preneed licensee. If
12 the preneed funeral contract is funded by a trust deposit or deposits,
13 the financial institution shall immediately pay the funds held to the
14 original contracting preneed licensee. The original contracting
15 preneed licensee shall immediately pay all such funds received to the
16 successor funeral establishment so designated; provided, however, the
17 original contracting preneed licensee shall not be required to give
18 credit for the amount retained pursuant to G.S. 90-210.61(a)(2).
19 Provided further, if the original contracting preneed licensee did not
20 retain any portion of payments made to it as is permitted by G.S. 90-
21 210.61(a)(2) then such preneed licensee may retain up to ten percent
22 (10%) of said funds received from the financial institution. Upon
23 making payments pursuant to this subsection, the financial institution
24 and the original contracting preneed licensee shall be relieved from all
25 further contractual liability thereon.

26 (3) If the preneed funeral contract is funded by a prearrangement
27 insurance policy, the insurance company shall not pay any of the funds
28 until the death of the preneed funeral contract beneficiary, and the
29 insurance company shall pay the funds in accordance with the terms of
30 the policy.

31 (b) The person giving notice of the substitution of a preneed licensee and the
32 successor preneed licensee shall enter into a new preneed funeral contract for the funds
33 transferred, and this Article shall apply, including the duty of the successor preneed
34 licensee to deposit all of the funds in a financial institution if the death of the preneed
35 funeral contract beneficiary has not occurred. Nothing in this subsection shall be
36 construed to permit the use of the transferred funds to purchase a prearrangement
37 insurance policy, nor to permit an irrevocable preneed funeral contract to be made
38 revocable or to result in the payment of any of the transferred funds to the preneed
39 funeral contract purchaser or to the preneed funeral contract beneficiary or his estate,
40 except as provided by G.S. 90-210.64(b).

41 **"§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

42 (a) After the death of a preneed funeral contract beneficiary and full performance
43 of the preneed funeral contract by the preneed licensee, the preneed licensee shall
44 promptly complete a certificate of performance or similar claim form and present it to

1 the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the
2 insurance company that issued a preneed insurance policy pursuant to G.S. 90-
3 210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the
4 financial institution shall pay the trust funds to the contracting preneed licensee and the
5 insurance company shall pay the insurance proceeds according to the terms of the
6 policy.

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

20 (c) In the event that any person other than the contracting preneed licensee
21 performs any funeral service or provides any merchandise as a result of the death of the
22 preneed funeral contract beneficiary, the financial institution shall pay the trust funds to
23 the contracting preneed licensee and the insurance company shall pay the insurance
24 proceeds according to the terms of the policy. The preneed licensee shall, subject to the
25 provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other
26 provider.

27 (d) When the balance of a preneed funeral fund is payable to the estate of a
28 deceased preneed funeral contract beneficiary and there has been no representative of
29 the estate appointed, the balance due may be paid into the office of the clerk of superior
30 court in the county where probate proceedings could be filed for the deceased preneed
31 funeral contract beneficiary.

32 **"§ 90-210.65. Refund of preneed funeral funds.**

33 (a) Within 30 days of receipt of a written request from the purchaser of a
34 revocable preneed funeral contract who has trust funds deposited with a financial
35 institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the
36 preneed funeral contract purchaser the entire amount held by the financial institution.

37 (b) Within 30 days of receipt of a written notice of cancellation of any
38 prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the
39 issuing insurance company shall pay such amounts to such person or persons as is
40 provided under the terms of the prearrangement insurance policy.

41 (c) After making refund pursuant to this section and giving notice of the refund
42 to the preneed licensee, the financial institution or insurance company shall be relieved
43 from all further liability.

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

6 (e) This section shall not apply to irrevocable preneed funeral contracts.
7 Irrevocable preneed funeral contracts may not be revoked nor any proceeds refunded
8 except by order of a court of competent jurisdiction.

9 **"§ 90-210.66. Recovery fund.**

10 (a) There is established the Preneed Recovery Fund. The Fund shall be
11 administered by the Board. The purpose of the Fund is to reimburse purchasers of
12 preneed funeral contracts who have suffered financial loss as a result of the
13 malfeasance, misfeasance, default, failure or insolvency of any licensee under this
14 Article, and includes refunds due a preneed funeral contract beneficiary from a preneed
15 licensee who has retained any portion of the preneed funeral contract payments pursuant
16 to G.S. 90-210.61(a)(2).

17 (b) From the fee of fifteen dollars (\$15.00) for each preneed funeral contract as
18 required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the
19 Fund. The Board may suspend the deposits into the Fund at any time and for any period
20 for which the Board determines that a sufficient amount is available to meet likely
21 disbursements and to maintain an adequate reserve.

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

25 (d) The Board shall adopt rules governing management of the Fund, the
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 expend monies in the Fund for the following purposes:

29 (1) To make reimbursements on approved applications;

30 (2) To purchase insurance to cover losses as deemed appropriate by the
31 Board and not inconsistent with the purposes of the Fund;

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

35 (4) To pay the expenses of the Board for administering the Fund,
36 including employment of legal counsel to prosecute subrogation
37 claims.

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

41 (g) The Board shall investigate all applications made and may reject or allow
42 such claims in whole or in part to the extent that monies are available in the Fund. The
43 Board shall have complete discretion to determine the order and manner of payment of
44 approved applications. All payments shall be a matter of privilege and not of right, and

1 no person shall have any right in the Fund as a third-party beneficiary or otherwise. No
2 attorney may be compensated by the Board for prosecuting an application for
3 reimbursement.

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

10 (i) The Fund shall apply to losses arising after the effective date of this act,
11 regardless of the date of the underlying preneed funeral contract.

12 **"§ 90-210.67. Application for license.**

13 (a) No person may offer or sell preneed funeral contracts or offer to make or
14 make any funded funeral prearrangements without first securing a license from the
15 Board. There shall be two types of licenses: a preneed funeral establishment license
16 and a preneed sales license. Only funeral establishments holding a valid establishment
17 permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral
18 establishment license. Employees and agents of such entities, upon meeting the
19 qualifications to engage in preneed funeral planning as established by the Board, shall
20 be eligible for a preneed sales license. The Board shall establish the preneed funeral
21 planning activities that are permitted under a preneed sales license. The Board shall
22 adopt rules establishing such qualifications and activities no later than 12 months
23 following the ratification of this act. Preneed sales licensees may sell preneed funeral
24 contracts, prearrangement insurance policies, and make funded funeral prearrangements
25 only on behalf of one preneed funeral establishment licensee; provided, however, they
26 may sell preneed funeral contracts, prearrangement insurance policies, and make funeral
27 prearrangements for any number of licensed preneed funeral establishments that are
28 wholly owned by or affiliated with, through common ownership or contract, the same
29 entity; provided further, in the event they engage in selling prearrangement insurance
30 policies, they shall meet the licensing requirements of the Commissioner of Insurance.
31 Every preneed funeral contract shall be signed by a person licensed as a funeral director
32 or funeral service licensee pursuant to Article 13A of Chapter 90 of the General
33 Statutes.

34 Application for a license shall be in writing, signed by the applicant and duly
35 verified on forms furnished by the Board. Each application shall contain at least the
36 following: the full names and addresses (both residence and place of business) of the
37 applicant, and every officer and director thereof if the applicant is a partnership,
38 association, or corporation and any other information as the Board shall deem
39 necessary. A preneed funeral establishment license shall be valid only at the address
40 stated in the application or at a new address approved by the Board.

41 (b) An application for a preneed funeral establishment license shall be
42 accompanied by a nonrefundable application fee of not more than one hundred fifty
43 dollars (\$150.00). The Board shall set the amounts of the application fees and renewal
44 fees by rule, but the fees shall not exceed one hundred fifty dollars (\$150.00). If the

1 license is granted, the application fee shall be applied to the annual license fee for the
2 first year or part thereof. Upon receipt of the application and payment of the application
3 fee, the Board shall issue a renewable preneed funeral establishment license unless it
4 determines that the applicant has violated any provision of G.S. 90-210.69(c) or has
5 made false statements or representations in the application, or is insolvent, or has
6 conducted or is about to conduct, its business in a fraudulent manner, or is not duly
7 authorized to transact business in this State. Each preneed funeral establishment
8 licensee shall pay annually to the Board on or before June 30 of each year a license
9 renewal fee of not more than one hundred fifty dollars (\$150.00).

10 (c) An application for a preneed sales license shall be accompanied by a
11 nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall
12 set the amounts of the application fees and renewal fees by rule, but the fees shall not
13 exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be
14 applied to the annual license fee for the first year or part thereof. Upon receipt of the
15 application and payment of the application fee, the Board shall issue a renewable
16 preneed sales license provided the applicant has met the qualifications to engage in
17 preneed funeral planning as established by the Board unless it determines that the
18 applicant has violated any provision of G.S. 90-210.69(c). Each preneed sales licensee
19 shall pay annually to the Board on or before June 30 of each year, a license renewal fee
20 of not more than fifty dollars (\$50.00).

21 (d) Any person selling a preneed funeral contract, whether funded by a trust
22 deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of
23 the sale, a fee of fifteen dollars (\$15.00) for each sale. The fee shall not be remitted in
24 cash.

25 (e) The fees collected under this Article, except for monies used pursuant to G.S.
26 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of
27 this Article. Any funds collected under this Article and remaining with the Board after
28 all expenses under this Article for the current fiscal year have been fully provided for
29 shall be paid over to the General Fund of the State of North Carolina. Provided,
30 however, the Board shall have the right to maintain an amount, the cumulative total of
31 which shall not exceed twenty percent (20%) of gross receipts under this Article for the
32 previous fiscal year of its operations, as a maximum contingency or emergency fund.

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

37 **"§ 90-210.68. Licensee's books and records; notice of transfers, assignments and**
38 **terminations.**

39 (a) Every preneed licensee shall keep for examination by the Board accurate
40 accounts, books, and records in this State of all preneed funeral contract and
41 prearrangement insurance policy transactions, copies of all agreements, insurance
42 policies, instruments of assignment, the dates and amounts of payments made and
43 accepted thereon, the names and addresses of the contracting parties, the persons for
44 whose benefit funds are accepted, and the names of the financial institutions holding

1 preneed funeral trust funds and insurance companies issuing prearrangement insurance
2 policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its
3 examiners, which the Board may appoint to assist in the enforcement of this Article,
4 may at any time investigate the books, records, and accounts of any licensee under this
5 Article with respect to trust funds, preneed funeral contracts, and prearrangement
6 insurance policies. The Board may require the attendance of and examine under oath all
7 persons whose testimony it may require. Every preneed licensee shall submit a written
8 report to the Board, at least annually, in a manner and with such content as established
9 by the Board, of its preneed funeral contract sales and performance of such contracts.
10 The Board may also require other reports.

11 (b) A preneed licensee may transfer preneed funds held by it as trustee from the
12 financial institution which is a party to a preneed funeral contract to a substitute
13 financial institution that is not a party to the contract. Within 10 days after the transfer,
14 the preneed licensee shall notify the Board, in writing, of the name and address of the
15 transferee financial institution. Before the transfer may be made, the transferee
16 financial institution shall agree to make disclosures required under the preneed funeral
17 contract to the Board or its inspectors or examiners. If the contract is revocable, the
18 licensee shall notify the contracting party of the intended transfer.

19 (c) If any preneed licensee transfers or assigns its assets or stock to a successor
20 funeral establishment or terminates its business as a funeral establishment, the preneed
21 licensee and assignee shall notify the Board at least 15 days prior to the effective date of
22 the transfer, assignment or termination: provided, however, the successor funeral
23 establishment must be a preneed licensee or shall be required to apply for and be
24 granted such license by the Board before accepting any preneed funeral contracts,
25 whether funded by trust deposits or preneed insurance policies. Provided further, a
26 successor funeral establishment shall be liable to the preneed funeral contract
27 purchasers for the amount of contract payments retained by the assigning or transferring
28 funeral home pursuant to G.S. 90-210.61(a)(2).

29 (d) Financial institutions that accept preneed funeral trust funds and insurance
30 companies that issue prearrangement insurance policies shall, upon request by the Board
31 or its inspectors or examiners, disclose any information regarding preneed funeral trust
32 accounts held or prearrangement insurance policies issued by it for a preneed licensee.

33 (e) In the event that any preneed licensee is unable or unwilling or is for any
34 reason relieved of its responsibility to perform as trustee or to perform any preneed
35 funeral contract, the Board, with the written consent of the purchaser of the preneed
36 funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract
37 beneficiary may order the contract to be assigned to a substitute preneed licensee
38 provided that the substitute licensee agrees to accept such assignment.

39 **"§ 90-210.69. Rulemaking; enforcement of Article; judicial review.**

40 (a) The Board is authorized to adopt rules for the carrying out and enforcement
41 of the provisions of this Article. The Board may perform such other acts and exercise
42 such other powers and duties as are authorized by this Article and by Article 13A of this
43 Chapter to carry out its powers and duties.

1 **(b)** The Board may administer oaths and issue subpoenas requiring the
2 attendance of persons and the production of papers and records in any investigation
3 conducted by it. Members of the Board's staff or the sheriff or other appropriate official
4 of any county of this State shall serve all notices, subpoenas and other papers given to
5 them by the Board for service in the same manner as process issued by any court of
6 record. Any person who does not obey a subpoena issued by the Board shall be guilty
7 of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the
8 discretion of the court.

9 **(c)** If the Board finds that a licensee, an applicant for a license or an applicant for
10 license renewal is guilty of one or more of the following, the Board may refuse to issue
11 or renew a license or may suspend or revoke a license or place the holder thereof on
12 probation upon conditions set by the Board, with revocation upon failure to comply with
13 the conditions:

- 14 **(1)** Offering to engage or engaging in activities for which a license is
15 required under this Article but without having obtained such a license;
- 16 **(2)** Aiding or abetting an unlicensed person, firm, partnership, association,
17 corporation or other entity to offer to engage or engage in such
18 activities;
- 19 **(3)** A crime involving fraud or moral turpitude by conviction thereof;
- 20 **(4)** Fraud or misrepresentation in obtaining or receiving a license or in
21 preneed funeral planning;
- 22 **(5)** False or misleading advertising; or
- 23 **(6)** Violating or cooperating with others to violate any provision of this
24 Article or the rules adopted pursuant thereto.

25 **(d)** Any proceedings pertaining to or actions against a funeral establishment
26 under this Article may be in addition to any proceedings or actions permitted by G.S.
27 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for
28 funeral directing or funeral service may be in addition to any proceedings or actions
29 permitted by G.S. 90-210.25 (e)(1) and (2).

30 **(e)** All hearings under this Article shall be conducted pursuant to G.S. 150B-
31 40(e). Judicial review shall be pursuant to Article 4 of Chapter 150B of the General
32 Statutes.

33 **"§ 90-210.70. Penalties.**

34 **(a)** Anyone who embezzles or who fraudulently, or knowingly and willfully
35 misapplies, or in any manner converts preneed funeral funds to his own use, or for the
36 use of any partnership, corporation, association, or entity for any purpose other than as
37 authorized by this Article; or anyone who takes, makes away with or secretes, with
38 intent to embezzle or fraudulently or knowingly and willfully misapply or in any
39 manner convert preneed funeral funds for his own use or the use of any other person for
40 any purpose other than as authorized by this Article shall be punished as a Class H
41 felon. Each such embezzlement, conversion, or misapplication shall constitute a
42 separate offense and may be prosecuted individually. Upon conviction, all licenses
43 issued under this Article shall be revoked.

1 (b) Any person who willfully violates any other provision of this Article shall be
2 guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500.00),
3 or shall be imprisoned for not less than 30 days nor more than two years, or both. Each
4 such violation shall constitute a separate offense and may be prosecuted individually.

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

10 (d) The Board shall have the power to investigate violations of this section and
11 shall deliver all evidence of violations to the district attorney in the county where the
12 offense occurred.

13 **"§ 90-210.71. Nonregulation of insurance sales.**

14 The provisions of this Article do not regulate the issuance and sale of insurance
15 policies, but apply only to the underlying preneed funeral contracts.

16 **"§ 90-210.72. Nonapplication to certain funeral contracts.**

17 This Article does not apply to contracts for funeral services or merchandise sold as
18 preneed burial insurance policies pursuant to Part 13 of Article 10 of Chapter 143B of
19 the North Carolina General Statutes or to replacements or conversions of such policies
20 pursuant to G.S. 143B-472.28."

21 Sec. 3. G.S. 90-210.18(b) reads as rewritten:

22 **"§ 90-210.18. Construction of Article; State Board; members; election;
23 qualifications; term; vacancies.**

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

- 28 (1) Four funeral service licensees or persons holding both funeral
29 director's license and an embalmer's license,
- 30 (2) Two persons holding a funeral director's license or a funeral service
31 license, and
- 32 (3) ~~One~~ Three public ~~member~~ members.

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

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

43 The public ~~member~~ members of the Board shall have full voting authority. ~~He~~ They
44 shall be appointed by the Governor and may neither be licensed under this Article nor

1 employed by a person who is. A vacancy occurring in ~~the~~a public member's seat shall
2 be filled for the unexpired term by the Governor."

3 Sec. 4. G.S. 90-210.22 reads as rewritten:

4 **"§ 90-210.22. Required meetings of the Board.**

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

9 Sec. 5. (a) As of the effective date of this act, there shall be no requirement
10 for the filing, maintenance or renewal of any bond as was required by G.S. 90-
11 210.31(al) as such section existed prior to being repealed by this act.

12 (b) As of the effective date of this act, the Commissioner of Banks shall
13 deliver to the North Carolina Board of Mortuary Science all of his records pertaining to
14 the regulation of preneed funeral funds.

15 Sec. 6. This act becomes effective July 1, 1992.