

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 543*

Short Title: Modify Funeral/Burial Trust Fund.

(Public)

Sponsors: Representatives Duncan, Wicker, Brubaker, Hege, Rhodes, and Esposito.

Referred to: Commerce.

March 13, 1989

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. Article 13B of Chapter 90 of the General Statutes reads as rewritten:

"ARTICLE 13B.

"FUNERAL AND BURIAL TRUST FUNDS.

"§ 90-210.30. Definitions.

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

- (1) 'Commissioner' means the Commissioner of Banks of this State.
- (2) 'Financial institution' means a bank, trust ~~company~~ company, credit union, savings bank 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.

- 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 being the person for whose service the
8 funds were paid.
- 9 (5) 'Insurance company' means any corporation, association, partnership,
10 society, order, individual or aggregation of individuals engaging in or
11 proposing or attempting to engage as principals in any kind of
12 insurance business, including the exchanging of reciprocal or
13 interinsurance contracts between individuals, partnerships and
14 corporations.
- 15 (6) 'Preneed licensee' means any person, partnership, association,
16 corporation or other entity who has applied for and been granted a
17 license to engage in the preneed funeral business under this Article.

18 **"§ 90-210.31. Deposit of ~~trust~~ preneed funeral funds.**

19 (a) Except as provided in this section, all payments of money made to any
20 person, partnership, ~~association or~~ association, corporation or other entity upon any
21 agreement or contract, agreement, contract or prearrangement insurance policy, or any
22 series or combination of agreements or contracts, ~~agreements, contracts or~~
23 prearrangement insurance policies but ~~not including~~ excluding the furnishing of cemetery
24 lots, crypts, niches, mausoleums, grave markers or monuments, which ~~has~~ have for a
25 purpose or which by operation provide for the furnishing or performance of funeral or
26 burial services, or the furnishing or delivery of personal property, merchandise, or
27 services of any nature in connection with the final disposition of a dead human body, to
28 be furnished or delivered at a time determinable by the death of the person whose body
29 is to be disposed of, or the providing of the proceeds of an insurance policy for such
30 use, are held to be ~~trust funds.~~ preneed funeral funds, and their receipt, application or
31 disposition shall be subject to the provisions of this Article. Preneed funeral funds shall
32 be deposited or applied as follows:

- 33 (1) Any payment of money received by a preneed licensee from a preneed
34 funeral contract purchaser who chooses to have such funds placed in a
35 financial institution shall, within the required period of time, deposit
36 the same in a manner hereinafter provided within such financial
37 institution in the preneed licensee's name as trustee. ~~The person,~~
38 partnership ~~association or corporation~~ receiving the payments is declared to
39 be a trustee thereof, and shall deposit all payments in a financial institution.
40 ~~All~~ Thereafter, all of the interest, dividends, increases or accretions of
41 whatever nature earned by the ~~funds deposited in a trust account~~ funds,
42 shall remain with the principal of ~~such account~~ and shall become a part
43 thereof, subject to all of the ~~regulations~~ requirements concerning the
44 principal of said fund ~~herein~~ hereinafter contained. ~~The~~ Consistent with

1 applicable tax laws, the trust fund itself shall be solely liable for all taxes
2 on said fund and its may be charged with any taxes on said fund by
3 reason of any interest, dividends, increases and accretions. or accretions
4 earned thereon, and for the reasonable charges paid by the trustee to
5 itself or others for the preparation of fiduciary tax returns reporting
6 such income. The trustee-preneed licensee, as trustee, may establish an
7 individual trust fund for each contract-contract, or a common trust fund
8 for all contracts-contracts or may establish an account with the trust
9 department of any financial institution for the deposit, custody or
10 investment management of all contracts. If the services of a trust
11 department are utilized by a preneed licensee for the custody and
12 investment management of preneed funeral trust funds, the reasonable
13 cost thereof may be charged to the trust fund. The trust accounts shall
14 be carried in the name of the person, partnership, association or
15 corporation to whom pre-need payments are made, preneed licensee as
16 trustee but accounting records shall be maintained showing the
17 amounts deposited and invested, and interest, dividends, increases and
18 accretions earned thereon, with respect to each purchaser's contract.

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

23 (a1) A funeral establishment licensed by the Commissioner may enter into an
24 inflation proof pre-need burial contract that establishes a fixed price for services and
25 merchandise to be furnished at a future date regardless of changes in the cost of services
26 and merchandise to the licensed funeral establishment. A licensed funeral establishment
27 that enters into an inflation proof pre-need burial contract may retain ten percent (10%)
28 of all payments on the contract upon filing with the Commissioner a bond in the amount
29 retained. The bond shall be in a form and with such surety or sureties as may be
30 required by the Commissioner, conditioned on compliance with G.S. 90-210.31(c1) and
31 G.S. 90-210.32(b). In the event of noncompliance with G.S. 90-210.31(c1) the
32 Commissioner shall disburse the proceeds of the bond in accordance with G.S. 90-
33 210.31(c1), and in the event of noncompliance with G.S. 90-210.32(b) the
34 Commissioner shall disburse the proceeds to the party who made the payments to the
35 licensed funeral establishment. That portion of all payments on the contract not retained
36 by the licensed funeral establishment shall be deposited in a trust fund as provided in
37 subsection (a) of this section.

38 (b) All payments made under the agreement, contract by the purchaser of a preneed
39 funeral contract, agreement, prearrangement insurance policy or plan are and shall
40 remain trust funds with the a financial institution or as paid insurance premiums with an
41 insurance company, as the case may be, until the death of the person for whose service
42 the funds were paid and until the delivery of all merchandise and full performance of all
43 services called for by the preneed funeral contract, agreement, contract-prearrangement
44 insurance policy or plan, or except where payment is made pursuant to G.S. 90-

1 210.31A(c) or G.S. 90-210.32. The trust fund shall be established in an insured account in a
2 financial institution and may be transferred from one approved financial institution to another.

3 ~~(c) Upon the death of the beneficiary of a pre-need burial contract, the financial~~
4 ~~institution shall not pay funds it holds in trust under this section to the licensed funeral~~
5 ~~establishment until a certified statement is furnished to the financial institution that all~~
6 ~~terms and conditions of the contract have been fully performed by the licensed funeral~~
7 ~~establishment. Unless otherwise specified in the agreement, contract or plan, the said~~
8 ~~person, partnership, association or corporation shall have no obligation to deliver any~~
9 ~~merchandise or perform any services for which payment in full has not been deposited~~
10 ~~in the financial institution, and any amounts deposited which do not constitute payment~~
11 ~~in full shall be refunded to the estate of the deceased beneficiary of the plan or credited~~
12 ~~against the cost of merchandise or services contracted for by representatives of the~~
13 ~~deceased. Any balance remaining in the fund after payment for the merchandise and~~
14 ~~services as set forth in the agreement, contract or plan shall be paid to the estate of the~~
15 ~~beneficiary of the agreement, contract or plan. Each preneed licensee may establish and~~
16 maintain with a financial institution of its choice, a preneed funeral fund clearing
17 account. Preneed funeral funds received by a preneed licensee may be deposited and
18 held in such account until disbursed by the preneed licensee to fund a preneed funeral
19 contract pursuant to subdivision (a)(1) or (a)(2) of this section. Such account shall be
20 maintained solely for the receipt and disbursement of preneed funeral funds and no
21 other purpose.

22 ~~(c1) In the event that a person, partnership, association, or corporation other than~~
23 ~~the contracting licensed funeral establishment to a pre-need burial contract provides the~~
24 ~~services, merchandise or personal property described in the contract for the beneficiary~~
25 ~~thereof, the funds deposited in a financial institution pursuant to G.S. 90-210.31(a)~~
26 ~~together with all interest, dividends, increases or accretions earned on such fund and any~~
27 ~~amount retained by the licensed funeral establishment pursuant to G.S. 90-210.31(a1)~~
28 ~~shall be paid to the provider of such services, merchandise or personal property upon~~
29 ~~submission to the financial institution and the licensed funeral establishment of a~~
30 ~~certified copy of the death certificate of the beneficiary and a certified copy of the~~
31 ~~charges for the services, merchandise or personal property provided for the deceased.~~
32 ~~Any balance remaining in the financial institution or retained by the licensed funeral~~
33 ~~establishment after payment to the provider shall be paid to the estate of the beneficiary~~
34 ~~of the contract. Upon making payment pursuant to this subsection and giving notice of~~
35 ~~payment to the licensed funeral establishment, the financial institution shall be relieved~~
36 ~~from all further liability. Upon making payment pursuant to this subsection, the licensed~~
37 ~~funeral establishment shall be relieved from all further liability. This subsection shall~~
38 ~~not apply if the pre-need contract provides that it is irrevocable.~~

39 ~~(d) Subsection (a) of this section does not apply to contracts for funeral service~~
40 ~~or merchandise sold as burial insurance policies which are regulated by Article 24A of~~
41 ~~Chapter 58 of the General Statutes. Except as otherwise provided, nothing in this Article~~
42 shall be construed to permit funds deposited in a financial institution pursuant to the
43 provisions of this Article to be withdrawn or used to purchase prearrangement
44 insurance. Provided, however, funds deposited in trust under the terms of a revocable

1 noninflation-proof preneed funeral contract entered into on or after July 1, 1989, may,
2 upon the express permission of the contract purchaser, be withdrawn and used to
3 purchase prearrangement insurance.

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

10 **"§ 90-210.31A. Inflation-proof contracts; revocability of contracts; disposition of**
11 **contract funds and substitution of licensees; approved contract forms;**
12 **accounting for preneed funds.**

13 (a) A preneed licensee may enter into an inflation-proof preneed funeral contract
14 that establishes a fixed price or fixed cost to the preneed funeral contract purchaser,
15 consisting of payments by the purchaser together with all interest, dividends, increases
16 and accretions earned thereon, for services and merchandise to be furnished at a future
17 date regardless of changes in the cost of services and merchandise to the preneed
18 licensee. A preneed licensee that enters into an inflation-proof preneed funeral contract
19 in which the funds are deposited in trust in a financial institution pursuant to G.S. 90-
20 210.31(a)(1) may retain up to ten percent (10%) of all payments on such contract upon
21 filing with the Commissioner a bond in the amount of the retainage. The bond shall be
22 in a form and with such surety or sureties, including a letter of credit issued by an
23 insured financial institution, as may be required by the Commissioner. The bond and
24 any approved surety thereon shall be conditioned on a preneed licensee's compliance
25 with G.S. 90-210.31A(c) and G.S. 90-210.32(b). In the event of noncompliance with
26 G.S. 90-210.31A(c) the Commissioner shall disburse the proceeds of the bond in
27 accordance with the provisions of that section and in the event of noncompliance with
28 G.S. 90-210.32(b) the Commissioner shall disburse the proceeds to the party who made
29 payments to the preneed licensee. That portion of all payments on an inflation-proof
30 preneed funeral contract not retained by the preneed licensee shall be deposited pursuant
31 to G.S.90-210.31(a)(1).

32 (b) Upon the death of the beneficiary of a preneed funeral contract, the financial
33 institution shall pay the funds it holds in trust under this Article, or the insurance
34 company shall pay the proceeds held under this Article, as the case may be, to the
35 preneed licensee which is the party to the preneed funeral contract, prearrangement
36 insurance policy or other funded funeral or burial prearrangement, when a certified
37 statement is furnished to the financial institution or insurance company that all terms
38 and conditions of the contract have been fully performed by the preneed licensee.
39 Unless otherwise specified in the preneed funeral contract, agreement, or plan, the
40 preneed licensee shall have no obligation to deliver any merchandise or perform any
41 services for which payment in full has not been deposited with a financial institution or
42 which shall not be provided by the proceeds of a prearrangement insurance policy, and
43 any such amounts received which do not constitute payment in full shall be refunded to
44 the estate of the deceased beneficiary of the preneed funeral contract or credited against

1 the cost of merchandise or services contracted for by the representatives of the
2 deceased; and any balance remaining in the fund or policy after payment for the
3 merchandise and services as set forth in the preneed funeral agreement, preneed funeral
4 contract or plan shall be paid to the estate of the beneficiary of the agreement, contract
5 or plan.

6 (c) At the option of a preneed funeral contract purchaser, the contract may be
7 made revocable or irrevocable. If the preneed funeral contract is made irrevocable, the
8 purchaser, and after his death the beneficiary or such beneficiary's legal representative
9 may, upon written notice given to the financial institution or insurance company and the
10 preneed licensee which is a party to the contract, direct the substitution of a different
11 preneed licensee to furnish funeral services and merchandise. Such a substitution may
12 be made either before or after the death of the beneficiary of the preneed contract;
13 provided, however, on the death of a preneed funeral contract beneficiary, a funeral
14 establishment providing any funeral services or merchandise need not be a licensee
15 under this Article to receive payment for such service or merchandise. Upon receipt of
16 such notice, the financial institution shall immediately pay the funds held therein
17 pursuant to G.S. 90-210.31(a)(1), together with all accumulated interest, dividends,
18 increases and accretions thereon, to the preneed licensee which is a party to the preneed
19 funeral contract; provided, however, if the preneed funeral contract is funded by a
20 prearrangement insurance policy, the insurance company may not pay any of the funds
21 until the death of the beneficiary of the contract. The preneed licensee which is the
22 party to the preneed funeral contract shall immediately pay all such funds received,
23 together with any principal amount previously retained on an inflation-proof contract
24 pursuant to G.S. 90-210.31A(a), but not including any interest, dividends, increases or
25 accretions earned on such an amount, to the successor preneed licensee so designated;
26 provided, however, the preneed licensee which is a party to the contract may retain not
27 more than five percent (5%) of said funds received from the financial institution. Upon
28 making payments pursuant to this subsection, the financial institution and the preneed
29 licensee which is a party to the preneed funeral contract shall be relieved from all
30 further liability on the contract. The person giving notice of this substitution of preneed
31 licensee and the successor preneed licensee shall enter into a new preneed funeral
32 contract for the funds transferred, and this Article shall apply, including the duty of the
33 successor preneed licensee at the election of the preneed contract purchaser to deposit
34 the funds in a financial institution or purchase prearrangement insurance if the death of
35 the beneficiary of the contract has not occurred. Nothing in this subsection shall be
36 construed to permit an irrevocable preneed funeral contract to be made revocable or to
37 result in the payment of any of the transferred funds to the beneficiary of the preneed
38 funeral contract or his estate, except as provided by subsection (b) of this section.

39 (d) This Article does not apply to contracts for funeral services or merchandise
40 sold as burial insurance policies which are regulated by Part 13 of Article 10 of Chapter
41 143B of the North Carolina General Statutes.

42 (e) The Commissioner shall approve all forms for preneed funeral contracts. All
43 such contracts must be in writing and no form shall be used without prior approval of
44 the Commissioner. Any use or attempted use of an oral preneed funeral contract or any

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

3 (f) Within 10 days of being relieved of its obligation to perform under a preneed
4 funeral contract by reason of substitution, or having its obligation to perform
5 extinguished by termination of the preneed funeral contract, or within 30 days of
6 providing any funeral or burial services, or the furnishing or delivery of personal
7 property, merchandise or services of any nature to any beneficiary under the terms of a
8 preneed funeral contract established pursuant to the terms of this Article, the preneed
9 licensee shall prepare in a manner and on a form acceptable to the Commissioner a final
10 accounting of all receipts and disbursements.

11 **"§ 90-210.32. Refund of deposit.**

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

19 (a1) Within 30 days of receipt of a written notice of cancellation of any
20 prearrangement insurance policy purchased pursuant to G.S. 90-210.31(a)(2) the issuing
21 insurance company shall refund to the prearrangement policy purchaser any unearned
22 premiums.

23 (b) Within 30 days of receipt of a written demand for refund given to any
24 preneed licensee by any party who has paid funds paid under a revocable preneed burial
25 funeral contract, the licensed funeral establishment that preneed licensee which has
26 retained any portion of the payments pursuant to G.S. 90-210.31(a1)-G.S. 90-210.31A(a)
27 shall refund to such party the preneed contract purchaser the entire principal amount
28 retained by the licensed funeral establishment- licensee without any interest, dividends,
29 increases or accretions earned on such fund.

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

35 (c1) Notwithstanding subsections (a) and (b) of this section, funds paid under a
36 revocable preneed funeral contract shall not be refundable after the preneed licensee has
37 furnished any services or merchandise under such contract following the death of the
38 preneed funeral contract beneficiary.

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

42 **"§ 90-210.33. Deposit within 30-10 days of receipt. All**

43 (a) Except as provided in this Article, all trust-funds mentioned in-received by a
44 preneed licensee pursuant to the provisions of this Article shall-shall, within 10 days of

1 the receipt thereof, be deposited by such licensee in a financial institution in the preneed
2 licensee's name ~~name of the trustee, as trustee, trustee,~~ within 30 days after receipt thereof,
3 with a financial institution and shall be held together with the interest, dividends, or accretions
4 thereon, in trust, subject to the provisions of this Article.

5 (b) Premiums received in payment for prearrangement insurance policies shall be
6 applied to the purchase of such policy within 10 days of receipt; provided, however, a
7 preneed licensee, or its agents or employees, shall have a period of 45 days from the
8 receipt of any prearrangement insurance premiums to complete any contracts,
9 instruments of assignment or other documents necessary to finalize an insurance funded
10 funeral prearrangement.

11 (c) ~~The trustee~~ The preneed licensee at the time of making deposit ~~as trustee~~ shall
12 furnish to the financial institution the name of each payor, and the amount of payment
13 on each account for which the deposit is being made.

14 (d) If a preneed licensee, or a preneed funeral contract purchaser, purchases a
15 prearrangement insurance policy, such licensee shall notify the insurance company of
16 the name of each payor and the amount of each payment when such policy or policies
17 have been purchased. Except as provided by G.S. 90-210.31(c), at no time before
18 making a deposit or purchasing a prearrangement insurance policy may a preneed
19 licensee, or its agents or employees, deposit in his or its own account or the account of
20 any other person, partnership, association, corporation or entity any monies coming into
21 its or their hands for the purpose of purchasing services, merchandise or prearrangement
22 insurance policies under the provisions of this Article.

23 **"§ 90-210.34. Application for license.**

24 (a) No person, firm, partnership, ~~association~~ association, or corporation or other
25 entity ~~may,~~ may offer or sell preneed funeral contracts or offer to make or make any
26 funded funeral or burial prearrangements, whether funded by prearrangement insurance
27 policies, trust deposits or otherwise, without first securing a license from the
28 Commissioner ~~Commissioner,~~ a license, accept and/or hold payments made on pre-need burial
29 contracts, ~~except financial institutions as defined in G.S. 90-210.30(2) hereof.~~ Only funeral
30 establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall
31 be eligible for license hereunder. Employees and agents of such entities licensed
32 hereunder, may sell preneed funeral contracts, prearrangement insurance policies and
33 make funded funeral or burial prearrangements only on behalf of and to be performed
34 by one employer or one principal; provided, however, that, in the event such agents and
35 employees engage in prearrangement insurance sales, these agents shall meet the
36 licensing requirements of the Commissioner of Insurance; provided, further, such
37 employees and agents may sell such preneed funeral contracts and prearrangement
38 insurance policies and make such prearrangements for any number of funeral
39 establishments licensed under this Article which are wholly-owned by or affiliated,
40 through common ownership or contract, with the same entity. Application for a license
41 shall be in writing, signed by the applicant and duly verified on forms furnished by the
42 Commissioner. Each application shall contain at least the following: the full names and
43 address (both residence and place of business) of the applicant, and every member,
44 officer and director thereof if the applicant is a firm, partnership, association or

1 ~~corporation.~~ corporation and any other information as the Commissioner shall deem
2 necessary. Any license issued pursuant to the application shall be valid only at the
3 address stated in the application for the applicant or at a new address approved by the
4 Commissioner.

5 (b) Each application for a license shall be accompanied by a nonrefundable
6 investigation fee of ~~twenty five dollars (\$25.00).~~ one hundred dollars (\$100.00). If the
7 license is granted, the investigation fee shall be applied to the annual license fee for the
8 first year or part thereof. Upon receipt of the application and payment of the
9 investigation fee, the Commissioner shall issue a renewable license unless ~~it~~ he
10 determines that the applicant has made false statements or representations in the
11 application, or is insolvent, or has conducted, or is about to conduct, his business in ~~a~~ an
12 illegal, unethical or fraudulent manner, or is not duly authorized to transact business in
13 this State. Each preneed licensee under this Article shall pay annually to the
14 Commissioner on or before June 30 of each year, a license fee of ~~twenty five dollars~~
15 (\$25.00)one hundred dollars (\$100.00).

16 (c) Any ~~person~~ licensee selling a ~~preneed funeral service contract~~ funeral contract,
17 whether funded by a trust deposit or a prearrangement insurance policy, shall ~~collect~~
18 from each purchaser remit to the Commissioner of Banks, within 10 days following the
19 sale of the contract, a service charge of ten dollars (\$10.00), and all of which fees so
20 collected shall be remitted by the person collecting same to the Commissioner at least once
21 each month, and such funds shall (\$10.00) for each sale to be used by the Commissioner in
22 administering this Article. Such service charges may not be remitted in cash.

23 **"§ 90-210.35. Licensee's books and records; notice of transfers, assignments and**
24 **terminations.**

25 (a) ~~The~~ A preneed licensee shall keep for examination by the Commissioner
26 accurate accounts, books, and records in this State of all preneed funeral contract and
27 prearrangement insurance policy transactions, copies of all agreements, insurance
28 policies, instruments of assignment, the dates and amounts of payments made and
29 accepted thereon, the names and addresses of the contracting parties, the persons for
30 whose benefit funds are accepted, and the names of the depositories of the funds. ~~financial~~
31 institutions holding preneed funeral trust funds and insurance companies issuing
32 prearrangement insurance policies. The licensee shall make all books and records pertaining
33 to the trust funds available to the Commissioner for examination. ~~The Commissioner may at~~
34 any time investigate the books, records, and accounts of the ~~a~~ preneed licensee with
35 respect to its trust ~~funds~~ funds, contracts and prearrangement insurance policies and for
36 that purpose may require the attendance of and examine under oath all persons whose
37 testimony ~~it~~ he may require.

38 (b) ~~Before any trust funds may be transferred to a~~ A preneed licensee may transfer
39 preneed funds held by it as trustee from the financial institution that which is not a party
40 to a pre-need preneed funeral burial contract the licensee shall notify the Commissioner of the
41 name and address of the intended transferee financial institution; and before contract to a
42 substitute financial institution which is not a party to the contract. Before the transfer
43 may be made, the transferee financial institution shall agree to make the disclosure
44 required under the pre-need preneed burial funeral contract to the Commissioner or his

1 designated examiner. Within 10 days after the transfer, the licensee shall notify the
2 Commissioner in writing of the name and address of the transferee financial institution.
3 If the preneed funeral contract is revocable, the licensee shall notify the contracting
4 party 10 days in advance of the intended transfer.

5 (c) In the event that any preneed licensee should transfer or assign transfers or
6 assigns its assets or stock to a successor funeral establishment or terminates its business
7 as a funeral establishment, the licensee and assignee shall notify the Commissioner
8 within not less than 15 days after prior to the effective date of said transfer, assignment
9 or termination.

10 (d) Financial institutions that accept preneed funeral trust funds pursuant to G.S.
11 90-210.31(a)(1) and insurance companies who issue prearrangement insurance policies
12 pursuant to G.S. 90-210.31(a)(2) shall upon request by the Commissioner or his
13 designated examiner, disclose any information regarding preneed funeral trust accounts
14 held or prearrangement insurance policies issued by it for a preneed licensee.

15 (e) In the event that any preneed licensee is unable or unwilling or is for any
16 reason relieved of its responsibility to perform as trustee or to perform any preneed
17 funeral contract, the Commissioner, with the written consent of the purchaser, or, after
18 the purchaser's death or incapacity, the beneficiary of the preneed funeral contract, may
19 order the contract to be assigned to a substitute preneed licensee provided that the
20 substitute licensee agrees to accept such assignment.

21 **"§ 90-210.36. Enforcement of Article. Article; notice of denial or revocation of**
22 **license; appeal.**

23 (a) The Commissioner shall enforce the provisions of this Article and has the
24 power to make investigations, subpoena witnesses, require audits and reports and
25 conduct hearings as to violations of any provisions, provisions of this Article. The
26 Commissioner has the authority to require such other reports and information and to
27 establish promulgate such rules and regulations as are necessary to carry out the
28 provisions of this Article.

29 (b) No license shall be denied or revoked except on 10 days notice to the
30 applicant or licensee. Upon receipt of such notice the applicant or licensee may, within
31 five days of such receipt, make written demand for a hearing. The hearing before the
32 Commissioner shall be an informal hearing and shall be held with reasonable
33 promptness.

34 (c) Notwithstanding any other provisions of law, any aggrieved party may,
35 within 30 days after final decision of the Commissioner and by written notice to the
36 Commissioner, appeal to the North Carolina Court of Appeals for a final determination
37 of any question of law which may be involved. The cause shall be entitled 'State of
38 North Carolina on Relation of the Commissioner of Banks against (here insert name of
39 appellant).' In the event of such an appeal, the Commissioner shall certify the record to
40 the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include
41 all memoranda, briefs and any other documents, data, information or evidence
42 submitted by any party to such proceeding except for material such as trade secrets
43 normally not available through commercial publication for which such party has made a
44 claim of confidentiality and requested exclusion from the record which the

1 Commissioner deems confidential. All factual information contained in any report of
2 examination or investigation submitted to or obtained by the Commissioner's staff shall
3 also be made a part of the record unless deemed confidential by the Commissioner.

4 **"§ 90-210.37. Penalties. ~~Conversion of funds as felony; violations misdemeanors;~~**
5 **penalties; and criminal liability of officers, directors, agents and**
6 **employees.**

7 (a) Anyone who embezzles or fraudulently or knowingly and willfully
8 misapplies, or in any manner converts preneed funeral funds to his own use, or for the
9 use of any partnership, corporation, association or entity for any purpose other than as
10 authorized by this Article; or anyone who takes, makes away with or secretes, with
11 intent to embezzle or fraudulently or knowingly and willfully misapply or in any
12 manner convert preneed funeral funds for his own use or the use of any corporation,
13 partnership, association or entity for any purpose other than as authorized by this Article
14 shall be punished as a Class H felon. Each such embezzlement, conversion, or
15 misapplication shall constitute a separate offense and the same may be prosecuted
16 individually.

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

23 (c) If a corporation embezzles, or fraudulently or knowingly and willfully
24 misapplies or converts preneed funeral funds as defined in subsection (a) hereof or
25 otherwise violates any provisions of this Article, the officers, directors, agents and/or
26 employees responsible for committing the offense shall be fined or imprisoned as herein
27 provided."

28 Sec. 2. (a) This act shall become effective July 1, 1989, and shall apply to
29 preneed funeral contracts and funded funeral prearrangements made and entered into on
30 or after the effective date.

31 (b) Any person licensed by the Commissioner under Article 13B of Chapter
32 90 of the General Statutes before the effective date shall be entitled to have his license
33 renewed notwithstanding that he is not a funeral establishment or a firm, partnership,
34 association or corporation offering or selling prearrangement insurance policies,
35 provided he otherwise has satisfied the requirements of that Article.