

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

2

SENATE BILL 391*
Second Edition Engrossed 5/9/89

Short Title: Modify Funeral/Burial Trust Fund.

(Public)

Sponsors: Senator Staton.

Referred to: Judiciary II.

March 13, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE FUNERAL AND BURIAL TRUST FUNDS ACT.
3 The General Assembly of North Carolina enacts:

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

6 "ARTICLE 13B.
7 "FUNERAL AND BURIAL TRUST FUNDS.
8 "§ 90-210.30. Definitions.

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

- 10 (1) 'Commissioner' means the Commissioner of Banks of this State.
11 (2) 'Financial institution' means a bank, trust ~~company~~ company, credit
12 union, savings bank or savings and loan association authorized by law
13 to do business in this State;
14 (3) 'Preneed ~~burial~~ funeral contract' means ~~a~~ any contract, agreement, or
15 mutual understanding, or any series or combination of contracts,
16 agreements or mutual understandings, whether funded by trust deposits
17 or prearrangement insurance policies, or any combination thereof,
18 which has for a purpose the furnishing or performance of funeral
19 services, or the furnishing or delivery of personal property,
20 merchandise, or services of any nature in connection with the final
21 disposition of a dead human body, to be furnished or delivered at a
22 time determinable by the death of the person whose body is to be

1 disposed of, but does not mean the furnishing of a cemetery lot, crypt,
2 niche, mausoleum, grave marker or monument.

3 (4) 'Prearrangement insurance policy' means a life insurance policy,
4 annuity contract, or other insurance contract, or any series of contracts
5 or agreements in any form or manner, issued by an insurance company
6 authorized by law to do business in this State, which, whether by
7 assignment or otherwise, has for a purpose the funding of a preneed
8 funeral contract or an insurance-funded funeral or burial
9 prearrangement, the insured being the person for whose service the
10 funds were paid.

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

17 (6) 'Preneed licensee' means any person, partnership, association,
18 corporation or other entity who has applied for and been granted a
19 license to engage in the preneed funeral business under this Article.

20 (7) 'Practice of funeral service' means engaging in the care or disposition
21 of dead human bodies or in the practice of disinfecting and preparing
22 by embalming or otherwise dead human bodies for the funeral service,
23 transportation, burial or cremation, or in the practice of funeral
24 directing or embalming as presently known, whether under these titles
25 or designations or otherwise. It also means engaging in preneed
26 funeral planning, making arrangements for funeral service, selling
27 funeral supplies to the public or making financial arrangements for the
28 rendering of such services or the sale of such supplies, whether at time
29 of need or prior thereto.

30 (8) 'Preneed funeral planning' means selling preneed funeral contracts, as
31 defined in G.S. 90-210.30(3), or making other arrangements prior to
32 death for the providing of funeral service or merchandise.

33 **"§ 90-210.31. Deposit of ~~trust~~ preneed funeral funds.**

34 (a) Except as provided in this section, all payments of money made to any
35 person, partnership, ~~association or~~ association, corporation or other entity upon any
36 ~~agreement or contract,~~ agreement, contract or prearrangement insurance policy, or any
37 series or combination of ~~agreements or contracts,~~ agreements, contracts or
38 ~~prearrangement insurance policies~~ but ~~not including~~ excluding the furnishing of cemetery
39 lots, crypts, niches, mausoleums, grave markers or monuments, which ~~has~~ have for a
40 purpose or which by operation provide for the furnishing or performance of funeral or
41 burial services, or the furnishing or delivery of personal property, merchandise, or
42 services of any nature in connection with the final disposition of a dead human body, to
43 be furnished or delivered at a time determinable by the death of the person whose body
44 is to be disposed of, or the providing of the proceeds of an insurance policy for such

1 ~~use, are held to be trust funds.~~ preneed funeral funds, and their receipt, application or
2 disposition shall be subject to the provisions of this Article. Preneed funeral funds shall
3 be deposited or applied as follows:

4 (1) Any payment of money received by a preneed licensee from a preneed
5 funeral contract purchaser who chooses to have such funds placed in a
6 financial institution shall, within the required period of time, deposit
7 the same in a manner hereinafter provided within such financial
8 institution in the preneed licensee's name as trustee. ~~The person,~~
9 ~~partnership association or corporation receiving the payments is declared to~~
10 ~~be a trustee thereof, and shall deposit all payments in a financial institution.~~
11 ~~All~~ Thereafter, all of the interest, dividends, increases or accretions of
12 whatever nature earned by the funds deposited in a trust account ~~funds,~~
13 shall remain with the principal of such account and shall become a part
14 thereof, subject to all of the ~~regulations~~ requirements concerning the
15 principal of said fund herein hereinafter contained. ~~The~~ Consistent with
16 applicable tax laws, the trust fund itself shall be solely liable for all taxes
17 on said fund and its ~~may~~ be charged with any taxes on said fund by
18 reason of any interest, dividends, increases and ~~accretions.~~ or accretions
19 earned thereon, and for the reasonable charges paid by the trustee to
20 itself or others for the preparation of fiduciary tax returns reporting
21 such income. ~~The trustee~~ preneed licensee, as trustee, may establish an
22 individual trust fund for each ~~contract~~ contract, or a common trust fund
23 for all ~~contracts.~~ contracts or may establish an account with the trust
24 department of any financial institution for the deposit, custody or
25 investment management of all contracts. If the services of a trust
26 department are utilized by a preneed licensee for the custody and
27 investment management of preneed funeral trust funds, the reasonable
28 cost thereof may be charged to the trust fund. The trust accounts shall
29 be carried in the name of the ~~person, partnership, association or~~
30 ~~corporation to whom pre-need payments are made,~~ preneed licensee as
31 trustee but accounting records shall be maintained showing the
32 amounts deposited and invested, and interest, dividends, increases and
33 accretions earned thereon, with respect to each purchaser's contract.

34 (2) Any payment received from a purchaser of a preneed funeral contract
35 who chooses to purchase a prearrangement insurance policy shall,
36 within the required period of time, be applied to the purchase of such
37 policy.

38 (a1) A funeral establishment licensed by the Commissioner may enter into an
39 inflation proof pre-need burial contract that establishes a fixed price for services and
40 merchandise to be furnished at a future date regardless of changes in the cost of services
41 and merchandise to the licensed funeral establishment. A licensed funeral establishment
42 that enters into an inflation proof pre-need burial contract may retain ten percent (10%)
43 of all payments on the contract upon filing with the Commissioner a bond in the amount
44 retained. ~~The bond shall be in a form and with such surety or sureties as may be~~

1 required by the Commissioner, conditioned on compliance with G.S. 90-210.31(c1) and
2 G.S. 90-210.32(b). In the event of noncompliance with G.S. 90-210.31(c1) the
3 Commissioner shall disburse the proceeds of the bond in accordance with G.S. 90-
4 210.31(c1), and in the event of noncompliance with G.S. 90-210.32(b) the
5 Commissioner shall disburse the proceeds to the party who made the payments to the
6 licensed funeral establishment. That portion of all payments on the contract not retained
7 by the licensed funeral establishment shall be deposited in a trust fund as provided in
8 subsection (a) of this section.

9 (b) All payments made under the agreement, contract by the purchaser of a preneed
10 funeral contract, agreement, prearrangement insurance policy or plan are and shall
11 remain trust funds with the a financial institution or as paid insurance premiums with an
12 insurance company, as the case may be, until the death of the person for whose service
13 the funds were paid and until the delivery of all merchandise and full performance of all
14 services called for by the preneed funeral contract, agreement, contract prearrangement
15 insurance policy or plan, or except where payment is made pursuant to G.S. 90-
16 210.31A(c) or G.S. 90-210.32. The trust fund shall be established in an insured account in a
17 financial institution and may be transferred from one approved financial institution to another.

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

37 (c1) In the event that a person, partnership, association, or corporation other than
38 the contracting licensed funeral establishment to a pre-need burial contract provides the
39 services, merchandise or personal property described in the contract for the beneficiary
40 thereof, the funds deposited in a financial institution pursuant to G.S. 90-210.31(a)
41 together with all interest, dividends, increases or accretions earned on such fund and any
42 amount retained by the licensed funeral establishment pursuant to G.S. 90-210.31(a1)
43 shall be paid to the provider of such services, merchandise or personal property upon
44 submission to the financial institution and the licensed funeral establishment of a

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

10 (d) ~~Subsection (a) of this section does not apply to contracts for funeral service~~
11 ~~or merchandise sold as burial insurance policies which are regulated by Article 24A of~~
12 ~~Chapter 58 of the General Statutes. Except as otherwise provided, nothing in this Article~~
13 ~~shall be construed to permit funds deposited in a financial institution pursuant to the~~
14 ~~provisions of this Article to be withdrawn or used to purchase prearrangement~~
15 ~~insurance. Provided, however, funds deposited in trust under the terms of a revocable~~
16 ~~noninflation-proof preneed funeral contract entered into on or after July 1, 1989, may,~~
17 ~~upon the express permission of the contract purchaser, be withdrawn and used to~~
18 ~~purchase prearrangement insurance.~~

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

25 **"§ 90-210.31A. Inflation-proof contracts; revocability of contracts; disposition of**
26 **contract funds and substitution of licensees; approved contract forms;**
27 **accounting for preneed funds.**

28 (a) A preneed licensee may enter into an inflation-proof preneed funeral contract
29 that establishes a fixed price or fixed cost to the preneed funeral contract purchaser,
30 consisting of payments by the purchaser together with all interest, dividends, increases
31 and accretions earned thereon, for services and merchandise to be furnished at a future
32 date regardless of changes in the cost of services and merchandise to the preneed
33 licensee. A preneed licensee that enters into an inflation-proof preneed funeral contract
34 in which the funds are deposited in trust in a financial institution pursuant to G.S. 90-
35 210.31(a)(1) may retain up to ten percent (10%) of all payments on such contract upon
36 filing with the Commissioner a bond in the amount of the retainage. The bond shall be
37 in a form and with such surety or sureties, including a letter of credit issued by an
38 insured financial institution, as may be required by the Commissioner. The bond and
39 any approved surety thereon shall be conditioned on a preneed licensee's compliance
40 with G.S. 90-210.31A(c) and G.S. 90-210.32(b). In the event of noncompliance with
41 G.S. 90-210.31A(c) the Commissioner shall disburse the proceeds of the bond in
42 accordance with the provisions of that section and in the event of noncompliance with
43 G.S. 90-210.32(b) the Commissioner shall disburse the proceeds to the party who made
44 payments to the preneed licensee. That portion of all payments on an inflation-proof

1 preneed funeral contract not retained by the preneed licensee shall be deposited pursuant
2 to G.S.90-210.31(a)(1).

3 (b) Upon the death of the beneficiary of a preneed funeral contract, the financial
4 institution shall pay the funds it holds in trust under this Article, or the insurance
5 company shall pay the proceeds held under this Article, as the case may be, to the
6 preneed licensee which is the party to the preneed funeral contract, prearrangement
7 insurance policy or other funded funeral or burial prearrangement, when a certified
8 statement is furnished to the financial institution or insurance company that all terms
9 and conditions of the contract have been fully performed by the preneed licensee.
10 Unless otherwise specified in the preneed funeral contract, agreement, or plan, the
11 preneed licensee shall have no obligation to deliver any merchandise or perform any
12 services for which payment in full has not been deposited with a financial institution or
13 which shall not be provided by the proceeds of a prearrangement insurance policy, and
14 any such amounts received which do not constitute payment in full shall be refunded to
15 the estate of the deceased beneficiary of the preneed funeral contract or credited against
16 the cost of merchandise or services contracted for by the representatives of the
17 deceased; and any balance remaining in the fund or policy after payment for the
18 merchandise and services as set forth in the preneed funeral agreement, preneed funeral
19 contract or plan shall be paid to the estate of the beneficiary of the agreement, contract
20 or plan or to the insurance beneficiary named to receive any such balance.

21 (c) At the option of a preneed funeral contract purchaser, the contract may be
22 made revocable or irrevocable. If the preneed funeral contract is made irrevocable, the
23 purchaser, and after his death the beneficiary or such beneficiary's legal representative
24 may, upon written notice given to the financial institution or insurance company and the
25 preneed licensee which is a party to the contract, direct the substitution of a different
26 preneed licensee to furnish funeral services and merchandise. Such a substitution may
27 be made either before or after the death of the beneficiary of the preneed contract;
28 provided, however, on the death of a preneed funeral contract beneficiary, a funeral
29 establishment providing any funeral services or merchandise need not be a licensee
30 under this Article to receive payment for such service or merchandise. Upon receipt of
31 such notice, the financial institution shall immediately pay the funds held therein
32 pursuant to G.S. 90-210.31(a)(1), together with all accumulated interest, dividends,
33 increases and accretions thereon, to the preneed licensee which is a party to the preneed
34 funeral contract; provided, however, if the preneed funeral contract is funded by a
35 prearrangement insurance policy, the insurance company may not pay any of the funds
36 until the death of the beneficiary of the contract. The preneed licensee which is the
37 party to the preneed funeral contract shall immediately pay all such funds received,
38 together with any principal amount previously retained on an inflation-proof contract
39 pursuant to G.S. 90-210.31A(a), but not including any interest, dividends, increases or
40 accretions earned on such an amount, to the successor preneed licensee so designated;
41 provided, however, the preneed licensee which is a party to the contract may retain not
42 more than five percent (5%) of said funds received from the financial institution. Upon
43 making payments pursuant to this subsection, the financial institution and the preneed
44 licensee which is a party to the preneed funeral contract shall be relieved from all

1 further liability on the contract. The person giving notice of this substitution of preneed
2 licensee and the successor preneed licensee shall enter into a new preneed funeral
3 contract for the funds transferred, and this Article shall apply, including the duty of the
4 successor preneed licensee at the election of the preneed contract purchaser to deposit
5 the funds in a financial institution or purchase prearrangement insurance if the death of
6 the beneficiary of the contract has not occurred. Nothing in this subsection shall be
7 construed to permit an irrevocable preneed funeral contract to be made revocable or to
8 result in the payment of any of the transferred funds to the beneficiary of the preneed
9 funeral contract or his estate, except as provided by subsection (b) of this section.

10 (d) This Article does not apply to contracts for funeral services or merchandise
11 sold as burial insurance policies which are regulated by Part 13 of Article 10 of Chapter
12 143B of the North Carolina General Statutes.

13 (e) The Commissioner shall approve all forms for preneed funeral contracts. All
14 such contracts must be in writing and no form shall be used without prior approval of
15 the Commissioner. Any use or attempted use of an oral preneed funeral contract or any
16 written funeral contract in a form not approved by the Commissioner shall be deemed a
17 violation of this Article by the person selling the services or merchandise thereunder.

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

26 **"§ 90-210.32. Refund of deposit.**

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

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

38 (b) Within 30 days of receipt of a written demand for refund given to any
39 preneed licensee by any party who has ~~paid funds paid~~ under a revocable preneed burial
40 funeral contract, the ~~licensed funeral establishment that preneed licensee which~~
41 retained any portion of the payments pursuant to ~~G.S. 90-210.31(a)~~ G.S. 90-210.31A(a)
42 shall refund to ~~such party the preneed contract purchaser~~ the entire principal amount
43 retained by the ~~licensed funeral establishment licensee~~ without any interest, dividends,
44 increases or accretions earned on such fund.

1 (c) After making refund pursuant to this section and giving notice of the refund
2 to the ~~contracting licensed funeral establishment, preneed licensee,~~ the financial institution
3 or insurance company shall be relieved from all further liability. After making refund
4 pursuant to this section, the ~~licensed funeral establishment preneed licensee~~ shall be
5 relieved from all further liability.

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

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

13 **"§ 90-210.33. Deposit within 30-10 days of receipt. All**

14 (a) Except as provided in this Article, all trust funds mentioned in received by a
15 preneed licensee pursuant to the provisions of this Article shall shall, within 10 days of
16 the receipt thereof, be deposited by such licensee in a financial institution in the preneed
17 licensee's name name of the trustee, as trustee, trustee, within 30 days after receipt thereof,
18 with a financial institution and shall be held together with the interest, dividends, or accretions
19 thereon, in trust, subject to the provisions of this Article.

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

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

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

38 **"§ 90-210.34. Application for license.**

39 (a) No person, firm, partnership, ~~association~~ association, or corporation or other
40 entity may, may offer or sell preneed funeral contracts or offer to make or make any
41 funded funeral or burial prearrangements, whether funded by prearrangement insurance
42 policies, trust deposits or otherwise, without first securing a license from the
43 Commissioner-Commissioner. a license, accept and/or hold payments made on pre-need burial
44 contracts, except financial institutions as defined in G.S. 90-210.30(2) hereof. Only funeral

1 establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall
2 be eligible for license hereunder. Employees and agents of such entities licensed
3 hereunder, upon being authorized by satisfying the requirements of Chapter 90, Article
4 13A, for engaging in such sales, may sell preneed funeral contracts, prearrangement
5 insurance policies and make funded funeral or burial prearrangements only on behalf of
6 and to be performed by one employer or one principal; provided, however, that, in the
7 event such agents and employees engage in prearrangement insurance sales, these
8 agents shall meet the licensing requirements of the Commissioner of Insurance;
9 provided, further, such employees and agents may sell such preneed funeral contracts
10 and prearrangement insurance policies and make such prearrangements for any number
11 of funeral establishments licensed under this Article which are wholly-owned by or
12 affiliated, through common ownership or contract, with the same entity. Application for
13 a license shall be in writing, signed by the applicant and duly verified on forms
14 furnished by the Commissioner. Each application shall contain at least the following:
15 the full names and address (both residence and place of business) of the applicant, and
16 every member, officer and director thereof if the applicant is a firm, partnership,
17 association or ~~corporation~~ corporation and any other information as the Commissioner
18 shall deem necessary. Any license issued pursuant to the application shall be valid only
19 at the address stated in the application for the applicant or at a new address approved by
20 the Commissioner.

21 (b) Each application for a license shall be accompanied by a nonrefundable
22 investigation fee of ~~twenty-five dollars (\$25.00)~~ one hundred dollars (\$100.00). If the
23 license is granted, the investigation fee shall be applied to the annual license fee for the
24 first year or part thereof. Upon receipt of the application and payment of the
25 investigation fee, the Commissioner shall issue a renewable license unless ~~it~~ he
26 determines that the applicant has made false statements or representations in the
27 application, or is insolvent, or has conducted, or is about to conduct, his business in ~~a~~ an
28 illegal, unethical or fraudulent manner, or is not duly authorized to transact business in
29 this State. Each preneed licensee under this Article shall pay annually to the
30 Commissioner on or before June 30 of each year, a license fee of ~~twenty-five dollars~~
31 ~~(\$25.00)~~one hundred dollars (\$100.00).

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

39 **"§ 90-210.35. Licensee's books and records; notice of transfers, assignments and**
40 **terminations.**

41 (a) ~~The~~ A preneed licensee shall keep for examination by the Commissioner
42 accurate accounts, books, and records in this State of all preneed funeral contract and
43 prearrangement insurance policy transactions, copies of all agreements, insurance
44 policies, instruments of assignment, the dates and amounts of payments made and

1 accepted thereon, the names and addresses of the contracting parties, the persons for
2 whose benefit funds are accepted, and the names of the ~~depositories of the funds.~~ financial
3 institutions holding preneed funeral trust funds and insurance companies issuing
4 prearrangement insurance policies. ~~The licensee shall make all books and records pertaining~~
5 ~~to the trust funds available to the Commissioner for examination.~~ The Commissioner may at
6 any time investigate the books, records, and accounts of ~~the a~~ preneed licensee with
7 respect to its ~~trust funds~~ funds, contracts and prearrangement insurance policies and for
8 that purpose may require the attendance of and examine under oath all persons whose
9 testimony ~~it~~ he may require.

10 (b) ~~Before any trust funds may be transferred to a~~ A preneed licensee may transfer
11 preneed funds held by it as trustee from the financial institution that which is not a party
12 to a pre-need-preneed funeral burial contract the licensee shall notify the Commissioner of the
13 name and address of the intended transferee financial institution; and before contract to a
14 substitute financial institution which is not a party to the contract. Before the transfer
15 may be made, the transferee financial institution shall agree to make the disclosure
16 required under the ~~pre-need-preneed funeral~~ burial-funeral contract to the Commissioner or his
17 designated examiner. Within 10 days after the transfer, the licensee shall notify the
18 Commissioner in writing of the name and address of the transferee financial institution.
19 If the preneed funeral contract is revocable, the licensee shall notify the contracting
20 party 10 days in advance of the intended transfer.

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

26 (d) Financial institutions that accept preneed funeral trust funds pursuant to G.S.
27 90-210.31(a)(1) and insurance companies who issue prearrangement insurance policies
28 pursuant to G.S. 90-210.31(a)(2) shall upon request by the Commissioner or his
29 designated examiner, disclose any information regarding preneed funeral trust accounts
30 held or prearrangement insurance policies issued by it for a preneed licensee.

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

37 **"§ 90-210.36. Enforcement of Article. Article; notice of denial or revocation of**
38 **license; appeal.**

39 (a) The Commissioner shall enforce the provisions of this Article and has the
40 power to make investigations, subpoena witnesses, require audits and reports and
41 conduct hearings as to violations of any ~~provisions,~~ provisions of this Article. The
42 Commissioner has the authority to require such other reports and information and to
43 establish promulgate such rules and regulations as are necessary to carry out the
44 provisions of this Article.

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

6 (c) Notwithstanding any other provisions of law, any aggrieved party may,
7 within 30 days after final decision of the Commissioner and by written notice to the
8 Commissioner, appeal to the North Carolina Court of Appeals for a final determination
9 of any question of law which may be involved. The cause shall be entitled 'State of
10 North Carolina on Relation of the Commissioner of Banks against (here insert name of
11 appellant).' In the event of such an appeal, the Commissioner shall certify the record to
12 the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include
13 all memoranda, briefs and any other documents, data, information or evidence
14 submitted by any party to such proceeding except for material such as trade secrets
15 normally not available through commercial publication for which such party has made a
16 claim of confidentiality and requested exclusion from the record which the
17 Commissioner deems confidential. All factual information contained in any report of
18 examination or investigation submitted to or obtained by the Commissioner's staff shall
19 also be made a part of the record unless deemed confidential by the Commissioner.

20 **"§ 90-210.37. Penalties.—Conversion of funds as felony; violations misdemeanors;**
21 **penalties; and criminal liability of officers, directors, agents and**
22 **employees.**

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

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

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

44 **"§ 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, funded by insurance
3 or trust deposits."

4 Sec. 2. Amend G.S. 90-210.20 by adding the following new subsection to
5 said statute:

6 "(m) 'Solicitation' means initiating face-to-face or telephonic communication with
7 consumers with the intent of offering preneed funeral planning or of influencing their
8 selection of any funeral plan or funeral service provider."

9 Rewrite G.S. 90-210.25(e)(1)d to read as follows:

10 "d. Solicitation by the licensee, his agents, assistants or employees;
11 but advertisements shall be permitted;"

12 Sec. 3. (a) This act shall become effective July 1, 1989, and shall apply to
13 preneed funeral contracts and funded funeral prearrangements made and entered into on
14 or after the effective date.

15 (b) Any person licensed by the Commissioner under Article 13B of Chapter
16 90 of the General Statutes before the effective date shall be entitled to have his license
17 renewed notwithstanding that he is not a funeral establishment or a firm, partnership,
18 association or corporation offering or selling prearrangement insurance policies,
19 provided he otherwise has satisfied the requirements of that Article.