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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2347 Session of  
1993

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INTRODUCED BY BUXTON, DeWEESE, EVANS, COY, CESSAR, LaGROTTA,  
LEDERER, MAYERNIK, TRELLO, LAUGHLIN, COLAFELLA, COWELL,  
GORDNER, MIHALICH, STABACK, BEBKO-JONES, SCRIMENTI,  
MICHLOVIC, RIEGER, OLASZ, CORRIGAN, CALTAGIRONE, JADLOWIEC,  
BARLEY, HUTCHINSON, NAILOR, TOMLINSON, CLYMER, DeLUCA, FARGO,  
CORNELL, TANGRETTI, GRUITZA AND PERZEL, DECEMBER 7, 1993

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, DECEMBER 7, 1993

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AN ACT

1 Providing for the regulation of preneed funeral and burial  
2 contracts; providing for powers and duties of the Office of  
3 Attorney General, Bureau of Consumer Protection; creating  
4 funds; imposing penalties; and making repeals.

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14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Short title.

17 This act shall be known and may be cited as the Preneed  
18 Funeral and Burial Contract Regulation Act.

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall  
21 have the meanings given to them in this section unless the  
22 context clearly indicates otherwise:

23 "Bureau of Consumer Protection." The Bureau of Consumer  
24 Protection in the Office of Attorney General.

25 "Buyer." A person who enters into a preneed contract with a  
26 preneed provider. The term includes, where the buyer is  
27 different from the contract beneficiary and where the buyer  
28 predeceases him or her, the contract beneficiary or contract  
29 beneficiary's estate.

30 "Contract beneficiary." The person, who may be the buyer or

1 another person, whose funeral or burial is the subject of the  
2 preneed contract.

3 "POD account." A separate account in a financial institution  
4 also referred to as a burial reserve account for the deposit of  
5 all funds paid by buyer and created by and using both the  
6 buyer's and preneed provider's names and which is payable to the  
7 preneed provider only upon the death of the buyer.

8 "Preneed contract." An agreement for the provision of  
9 preneed goods, preneed services or both preneed goods and  
10 preneed services.

11 "Preneed goods and services." Goods or services typically  
12 sold or provided in connection with the final disposition of  
13 human remains, purchased in advance of need and not provided or  
14 delivered contemporaneously to a purchaser or bonded facility  
15 with execution of the contract. The term includes, but is not  
16 limited to, caskets or other primary containers, cremation or  
17 transportation containers, outer burial containers, vaults,  
18 grave liners, grave markers, funeral clothing or accessories,  
19 monuments, cremation urns, embalming, cremation, funeral  
20 directing or cemetery services and similar funeral or burial  
21 items.

22 "Preneed insurance policy." Any form of insurance or  
23 annuity, which is sold or utilized for the purpose of providing  
24 funding for a preneed contract, regardless of how named.

25 "Preneed provider." A funeral director licensed by the  
26 Commonwealth or a cemetery company registered by the  
27 Commonwealth and registered under section 4 to sell preneed  
28 contracts.

29 Section 3. Construction and application.

30 (a) Uniform Commercial Code.--The provisions of 13 Pa.C.S.

1 Div. 2 (relating to sales) shall apply to the interpretation and  
2 enforcement of preneed contracts.

3 (b) Fiduciary relationship.--A fiduciary relationship shall  
4 exist between a preneed provider and a buyer.

5 Section 4. Registration.

6 (a) Registration requirement.--A preneed provider shall not  
7 promote, sell or enter into a preneed contract without first  
8 obtaining a preneed registration from the Bureau of Consumer  
9 Protection. The registration must be renewed on an annual basis.

10 (b) Application.--A preneed provider seeking to obtain  
11 preneed registration shall submit a registration fee of \$150 and  
12 an application on a form prescribed by the Bureau of Consumer  
13 Protection which contains the following:

14 (1) The types of preneed contracts to be written.

15 (2) The types of goods and services to be sold.

16 (3) The name, address and telephone number of the place  
17 of business of the preneed provider.

18 (4) The name, address, telephone number and Social  
19 Security number of each owner, officer or other official of  
20 the preneed provider or, if the preneed provider is a  
21 corporation, of the chief executive officer and all members  
22 of the board of directors.

23 (5) Any information deemed necessary by the Bureau of  
24 Consumer Protection to show evidence of good moral character,  
25 a reputation for fair dealing in business matters and the  
26 absence of a criminal record. The Bureau of Consumer  
27 Protection shall also have the right to require the applicant  
28 to submit a financial statement prepared by an accountant to  
29 establish financial stability.

30 (c) Individual registration.--A person shall not sell or

1 promote any preneed contract without first obtaining a preneed  
2 individual registration from the Bureau of Consumer Protection.  
3 The registration must be renewed on an annual basis. In addition  
4 to the registration required under this act, all cemetery  
5 salespersons must be licensed by the State Real Estate  
6 Commission and only funeral directors licensed by the State  
7 Board of Funeral Directors shall be authorized to sell preneed  
8 funeral service.

9 (d) Individual application.--A person seeking to obtain a  
10 preneed individual registration must be at least 21 years of age  
11 or older and must submit a registration fee of \$50 and an  
12 application on a form prescribed by the Bureau of Consumer  
13 Protection which includes the following:

14 (1) The name, address, telephone number and Social  
15 Security number of the person.

16 (2) The name, business address and telephone number of  
17 the preneed provider for whom the person is authorized to  
18 sell preneed contracts and of all other preneed providers who  
19 will be providing goods and services under the contracts.

20 (3) Any information deemed necessary by the Bureau of  
21 Consumer Protection to show evidence of good moral character,  
22 a reputation for fair dealing in business matters and the  
23 absence of a criminal record.

24 (4) A photograph of the person taken within the last six  
25 months.

26 (e) Restrictions on individual registrants.--A person  
27 registered under this act must be an employee or agent of a  
28 preneed provider which holds a valid preneed provider  
29 registration and which can deliver the goods and services sold.  
30 The preneed provider shall be liable for the acts of its

1 employees and agents, independent or otherwise, performed in the  
2 course of obtaining or attempting to obtain a preneed contract.

3 (f) Display of registration.--Upon issuance, the preneed  
4 registration shall be posted conspicuously in the preneed  
5 provider's place of business.

6 (g) Outside solicitation.--A person registered under this  
7 act who engages in solicitation outside of the preneed  
8 provider's principal place of business shall present a copy of  
9 his registration and written authorization from the preneed  
10 provider upon entry onto the premises where the prospective  
11 buyer is being solicited.

12 (h) Notice of changes.--A preneed provider or person  
13 registered under this act must notify the Bureau of Consumer  
14 Protection within 30 days of any change of any information  
15 required by the Bureau of Consumer Protection for preneed  
16 registration.

17 (i) Fees.--A preneed provider or a person applying for  
18 preneed registration shall pay the Bureau of Consumer Protection  
19 an annual fee as set forth in section 4(b) and (d),  
20 respectively. The Bureau of Consumer Protection shall deposit  
21 all fees into the Preneed Funeral and Burial Contract Regulation  
22 Fund established under section 18.

23 (j) Denial and revocation of registration.--

24 (1) The Bureau of Consumer Protection shall not grant a  
25 preneed registration and may revoke any previously granted  
26 preneed registration if the Bureau of Consumer Protection  
27 finds that:

28 (i) the applicant or registrant is insolvent;

29 (ii) the applicant or registrant cannot provide the  
30 goods or services described in its application; or

1 (iii) the applicant or registrant has engaged in a  
2 deceptive act or practice or has deliberately  
3 misrepresented or omitted a material fact relative to the  
4 sale of preneed contracts.

5 (2) The Bureau of Consumer Protection may exercise its  
6 discretion in determining whether to grant a registration if  
7 the provider:

8 (i) has failed to comply with any requirements of  
9 this act or any regulations promulgated under this act;  
10 or

11 (ii) has been convicted of any crime involving  
12 dishonesty or false statement.

13 Section 5. Discrimination prohibited.

14 Preneed providers shall not discriminate against buyers on  
15 the basis of race, color, religion, national origin, marital  
16 status or sex.

17 Section 6. Marketing and solicitation.

18 (a) Solicitation of patients.--An agent or employee of a  
19 preneed provider shall not visit or call upon a patient in a  
20 hospital, convalescent or nursing home, rest home, charitable  
21 home for the aged, infirmary, intermediate care facility for  
22 persons with mental disabilities or other health care facility  
23 for the purpose of soliciting or inducing the patient to enter  
24 into any preneed contract, establish a preneed trust or purchase  
25 a preneed insurance policy, unless:

26 (1) the agent or employee has received a request from  
27 the patient or legal representative to do so prior to the  
28 date of the visit;

29 (2) the agent or employee displays the registration  
30 required by this act; and

1           (3) the agent or employee explains at the beginning of  
2 the visit that the purpose of the visit is to persuade the  
3 patient to enter into a preneed contract or preneed insurance  
4 policy.

5       (b) Solicitation in the home.--An agent or employee of a  
6 preneed provider shall not visit or call upon any person in the  
7 person's home for the purpose of soliciting or inducing the  
8 person to enter into any preneed contract, establish a preneed  
9 trust or purchase a preneed insurance policy, unless:

10           (1) the agent or employee has received a request from  
11 the person or the person's legal representative to do so  
12 prior to the date of the visit;

13           (2) the agent or employee displays the registration  
14 required by this act; and

15           (3) the agent or employee explains at the beginning of  
16 the visit that the purpose of the visit is to persuade the  
17 person to enter into a preneed contract or preneed insurance  
18 policy.

19       (c) Telephone solicitation.--Telephone solicitation of  
20 preneed contracts and preneed insurance policies is permitted if  
21 all of the following conditions are met:

22           (1) The person calling clearly identifies himself and  
23 the product at the beginning of the communication.

24           (2) The person calling informs the prospective buyer at  
25 the beginning of the communication that the purpose of the  
26 call is to solicit the prospective buyer to enter into a  
27 preneed contract or insurance policy.

28           (3) The communication is terminated immediately upon any  
29 request to do so from the prospective buyer.

30       (d) Disclosure of information.--Upon beginning discussion of



1 any preneed contract, the preneed provider or its agent or  
2 employee must give the prospective buyer all information  
3 required by section 7. All prices on the lists must be the same  
4 as those for at-need funeral or burial goods and services at the  
5 preneed provider's establishment.

6 (e) Deceptive practices prohibited.--A preneed provider and  
7 its agents and employees shall not use any means, including  
8 advertisements, which are unfair, false, deceptive, misleading,  
9 coercive, intimidating or threatening.

10 (f) Interference with existing contract prohibited.--A  
11 preneed provider and its agents and employees shall not  
12 knowingly induce or attempt to induce any person to cancel or  
13 revoke any preexisting preneed contract, preneed trust or  
14 preneed insurance policy.

15 (g) Advertisements.--All advertisements of any kind of  
16 preneed contracts, preneed trusts or preneed insurance policies  
17 shall disclose the following information:

18 (1) The type of product which is to be used to fund the  
19 preneed contract.

20 (2) The nature of the relationship between the agent who  
21 solicits the purchase, the preneed provider, the buyer and  
22 the institution which will receive or hold any funds paid in  
23 connection with the purchase of the preneed contract.

24 Section 7. General contract requirements.

25 (a) Signing of contract.--Every preneed contract must be  
26 signed by a registered preneed provider.

27 (b) Waiver of required provisions void.--No provisions of  
28 any contract required by this act may be waived. Any attempted  
29 waiver is void.

30 (c) Required disclosures.--All preneed providers, even if

1 not required to do so by 16 CFR Part 453 (relating to funeral  
2 industry practices), must provide every prospective buyer of a  
3 preneed contract with all disclosures described in or required  
4 by the provisions of 16 CFR Part 453. For items covered by this  
5 act which are not covered by the provisions of 16 CFR Part 453,  
6 all preneed providers shall provide disclosures similar to those  
7 required by 16 CFR Part 453.

8 (d) Investment information.--With nonguaranteed plans, all  
9 preneed providers must disclose at the point of sale the  
10 following:

11 (1) where trust funds are invested and the current rate  
12 of return; or

13 (2) the names of the insurance company writing a life  
14 insurance policy to fund the preneed contract, the current  
15 rate of return and, with multiple payment plans, the fact  
16 that a comparison of premiums and benefits will be provided  
17 (Financial Review of this Policy) when the policy is mailed  
18 to the consumer.

19 Section 8. Specific contract requirements and disclosures.

20 (a) Plain language.--The provisions of the act of June 23,  
21 1993 (P.L.128, No.29), known as the Plain Language Consumer  
22 Contract Act, shall apply to preneed contracts.

23 (b) Identification of parties.--Each contract shall identify  
24 the preneed provider, the preneed provider's address, the  
25 telephone number, the registration number and the individual  
26 registration number of the salesperson and shall identify the  
27 buyer and the contract beneficiary, if other than the buyer, and  
28 set forth their addresses.

29 (c) Identification of services.--Each contract shall specify  
30 and itemize the services or goods, or both, to be provided and

1 contain a statement of the law regarding substitution in  
2 accordance with section 17. Goods shall be described in detail.  
3 The contract shall contain specifications of materials and  
4 construction and a description and the cost of each item as  
5 shown on the preneed provider's current price sheet. The price  
6 of all goods and services shall be itemized.

7 (d) Purchase price.--Each contract shall set forth the total  
8 purchase price and the terms under which it is to be paid,  
9 including any credit terms, if applicable.

10 (e) Method of funding.--

11 (1) Each contract shall state clearly whether it is  
12 funded or unfunded and, if it is funded, whether it is funded  
13 by a preneed trust fund or by a preneed insurance policy.

14 (2) The contract shall also state whether it is a  
15 guaranteed price contract in whole or in part or a  
16 nonguaranteed price contract.

17 (f) Guaranteed price contracts.--Each guaranteed price  
18 contract shall contain the following statement in 12-point bold  
19 type:

20 This contract in whole or in part guarantees the buyer  
21 the specific goods and services contracted for. No  
22 additional charges shall be required for the items  
23 specified in the contract.

24 (g) Nonguaranteed price contracts.--Each nonguaranteed price  
25 contract shall contain the following statement in 12-point bold  
26 type:

27 This contract does not guarantee the buyer any specific  
28 goods or services. Any funds paid under this contract may  
29 be only a deposit to be applied toward the final costs of  
30 the goods or services contracted for. Additional charges

1           may be required.

2       (h) Contract funded by preneed trust.--Each contract funded  
3 by a preneed trust shall contain the following:

4           (1) The name and address of the trustee.

5           (2) The amount of money to be placed in trust.

6           (3) The percentage and total amount paid on the preneed  
7 contract that the preneed provider will retain and not  
8 deposit into the preneed trust.

9           (4) An explanation of the disposition of the interest,  
10 including a statement of the fees, expenses and taxes which  
11 may be deducted from the interest under section 12.

12          (5) A statement of the buyer's responsibility for taxes  
13 owed on the interest.

14       (i) Contract funded by preneed insurance policy.--Each  
15 contract funded by a preneed insurance policy shall contain the  
16 following:

17           (1) The name of the company writing the insurance  
18 policy.

19           (2) Other disclosures required by section 13.

20       (j) Disclosure statement.--Each contract shall be  
21 accompanied by a disclosure statement containing the following:

22           (1) The name and address of the Bureau of Consumer  
23 Protection and the procedure for submitting complaints to the  
24 Bureau of Consumer Protection.

25           (2) A statement notifying the buyer of the \$5 Preneed  
26 Funeral and Burial Contract Guarantee Fund fee.

27           (3) The following statement of the buyer's cancellation  
28 rights under section 9(a) in 12-point bold type:

29           You have the right to cancel this contract at any time  
30 during the first 30 days. If you do so, you must receive

1 back 100% of the money you have paid. If this contract is  
2 funded by a preneed insurance policy, you may have longer  
3 than 30 days to cancel and receive a full refund. Consult  
4 your insurance policy and attachments for information  
5 regarding your time to cancel.

6 (4) The following statement of the buyer's cancellation  
7 rights under section 9(b) in 12-point bold type:

8 You have the right to cancel this contract at any time  
9 after the first 30 days. If you cancel a contract funded  
10 by a preneed trust, you will receive a refund of all the  
11 money placed in trust, plus any interest earned. Only  
12 reasonable administrative fees and any taxes you may have  
13 authorized to be paid from the interest may be deducted  
14 from this amount, as specified by law. If you cancel  
15 after 30 days, you will not receive a refund of the  
16 \$.....(.....%) that, by the terms of this  
17 agreement, is not placed in trust. If you cancel a  
18 contract funded by a preneed insurance policy after the  
19 time for a full refund, you may not want to cancel the  
20 insurance policy itself and you may want to change the  
21 beneficiary or assignee on the policy. Consult your  
22 contract and accompanying documents for information  
23 regarding the impact of cancellation of the contract and  
24 other changes.

25 (5) The following statement of the buyer's rights  
26 relating to funding methods in 12-point bold type:

27 You have a right to fund this contract by any method that  
28 you choose. You may choose to fund this contract through  
29 your own investment, through a preneed trust account or  
30 through a life insurance policy or annuity, including any

1 preneed insurance policy that may be offered by the  
2 preneed provider. Sale of this contract cannot be  
3 conditioned on purchase of any insurance policy or  
4 annuity.

5 (6) A statement explaining the buyer's rights regarding  
6 changes in or relating to the funding method.

7 (k) Effect of insolvency of preneed provider.--Each contract  
8 shall contain the following provision:

9 If the preneed provider is the subject of a bankruptcy or  
10 other insolvency proceedings, the preneed provider will  
11 be in default on this contract, and the full amount paid  
12 by the buyer under the contract, together with any  
13 interest or other earnings, less any reasonable  
14 administrative expenses or taxes already paid, will  
15 become immediately due and owing, without notice from the  
16 buyer.

17 (l) Preapproval of contract.--The preneed provider shall  
18 submit the form of the proposed contract to the Bureau of  
19 Consumer Protection prior to its use. Any contract which has not  
20 been approved by the Bureau of Consumer Protection is void.

21 Section 9. Cancellation.

22 (a) Cancellation within 30 days.--Any buyer may cancel a  
23 preneed contract within 30 days after all parties have signed  
24 the contract and shall receive 100% of all payments made under  
25 the contract. In the case of a preneed contract funded by a  
26 preneed insurance policy, the cancellation period under this  
27 subsection will continue until the latest of 30 days after  
28 delivery of the preneed insurance policy or expiration of the  
29 period for free cancellation of the policy under the terms of  
30 the policy or applicable law. No fee, surcharge, penalty or

1 liquidated damages may be imposed upon the right to cancel.

2 (b) Cancellation after 30 days.--Any buyer may cancel the  
3 contract at any time after the initial 30-day period and before  
4 performance by the preneed provider on the contract subject to  
5 the following conditions:

6 (1) In the case of a preneed contract funded by a  
7 preneed trust:

8 (i) where no irrevocable arrangement has been made,  
9 the buyer shall receive 100% of all moneys placed in  
10 trust under the contract and all accrued interest less  
11 reasonable trustee fees, administrative expenses and  
12 taxes; or

13 (ii) where an irrevocable arrangement has been made,  
14 the buyer shall have the right to change the beneficiary  
15 of the preneed trust to a substitute preneed provider.

16 (2) In the case of a preneed contract funded by a  
17 preneed insurance policy:

18 (i) where no irrevocable arrangement has been made,  
19 the buyer shall have the right to change beneficiaries of  
20 the policy or to cancel the policy and obtain the cash  
21 surrender value; or

22 (ii) where an irrevocable arrangement has been made,  
23 the buyer shall have the right to change the beneficiary  
24 of the policy to a substitute preneed provider.

25 (c) Return of amount owed buyer.--If the buyer cancels a  
26 preneed contract, the preneed provider shall return any amount  
27 owed to the buyer within 30 days of receiving notice of the  
28 cancellation.

29 (d) Notice of option to change beneficiary or assignee of  
30 policy.--If a buyer of a preneed contract funded by a preneed

1 insurance policy cancels the contract after the 30-day  
2 cancellation period, the insurance policy is not thereby  
3 canceled. The buyer shall be notified of the buyer's option to  
4 change the beneficiary or assignee of the policy by a notice  
5 sent to the buyer by the preneed provider within 30 days of  
6 receiving notice of the cancellation.

7 (e) Substitution of preneed provider.--If the contract  
8 beneficiary of a preneed contract moves or dies out of the  
9 service area of the preneed provider, the buyer or the contract  
10 beneficiary's estate may cancel the contract or substitute  
11 another who agrees to perform at any time before original  
12 preneed provider performance on the contract. If the contract is  
13 canceled after the 30-day cancellation period for this reason,  
14 in addition to the rights set out in subsection (b), the preneed  
15 provider shall return to the canceling party any amounts  
16 retained by the preneed provider under section 12. If another  
17 preneed provider agrees to perform, the original preneed  
18 provider shall transfer any amounts retained under section 12 to  
19 the substitute preneed provider.

20 Section 10. Credit life insurance.

21 (a) Option to purchase.--When the preneed contract is to be  
22 paid in installments, the preneed provider may make arrangements  
23 to offer the buyer the option to acquire and maintain credit  
24 life insurance on the life of the buyer. The insurance shall  
25 provide for the payment of death benefits to the preneed  
26 provider in an amount equal to the total of all contract  
27 payments unpaid as of the date of the buyer's death and shall be  
28 used solely to make those unpaid payments.

29 (b) Disclosure of costs.--All costs of the insurance shall  
30 be disclosed in clear language, and inquiry shall be made of the



1 buyer whether he or she understands the terms of the insurance  
2 contract and is aware of the total cost of the insurance.

3 (c) Required purchase prohibited.--Under no circumstances  
4 may the preneed provider require the buyer to purchase credit  
5 life insurance.

6 (d) Compliance with other laws.--Sale of a policy of credit  
7 life insurance shall in all other respects be in compliance with  
8 the act of September 2, 1961 (P.L.1232, No.540), known as the  
9 Model Act for the Regulation of Credit Life Insurance and Credit  
10 Accident and Health Insurance, and other applicable laws.

11 Section 11. Funding methods for preneed contracts.

12 (a) Option to fund.--The buyer must be given the option of  
13 funding the preneed contract with a trust and may choose not to  
14 fund the preneed contract. The preneed provider need not make  
15 arrangements to offer a preneed insurance policy as a funding  
16 option. A person may not change the method of funding the  
17 preneed contract without the buyer's written consent given after  
18 receipt of disclosures regarding the proposed new method of  
19 funding similar to those required by sections 8, 12 and 13.

20 (b) Trust account.--Within five business days of receipt,  
21 100% of the amount received in payment of a preneed contract,  
22 unless already used to purchase a preneed insurance policy,  
23 shall be deposited into a preneed trust account in a federally  
24 insured financial institution. The trust funds may be held in a  
25 separate account or a common fund. If held in a common fund,  
26 individual records shall be kept. The funds may not be used for  
27 any purpose except as authorized by this act and may not be  
28 deposited in any account other than the trust account.

29 (c) Purchase of a preneed insurance policy.--A preneed  
30 insurance policy may be purchased using the amounts received in

1 payment of the preneed contract at any time within the 30-day  
2 cancellation period. The buyer of the preneed contract funded by  
3 a preneed insurance policy purchased before expiration of the  
4 30-day cancellation period shall have 30 days from the time of  
5 payment of the premium for the insurance or annuity contract to  
6 cancel it without any penalty and shall be entitled to a full  
7 refund. The preneed provider shall provide the buyer with  
8 written notice of the extension of time to cancel  
9 contemporaneously with delivery of the policy. The notice shall  
10 be attached to the policy.

11 (d) Applicability.--This act shall not apply to the funding  
12 of a prearranged funeral or burial by the establishment of a POD  
13 account in a financial institution.

14 Section 12. Preneed trusts.

15 (a) Transfer of funds from trust account.--Funds received in  
16 payment of a preneed contract where the buyer has selected a  
17 trust as set forth in section 11(b) as the manner of funding the  
18 preneed contract shall be accounted for as follows:

19 (1) Five dollars shall be paid by the preneed provider  
20 on a monthly basis to the Preneed Funeral and Burial Contract  
21 Guarantee Fund established under section 19.

22 (2) A minimum of 90% of the amount received in payment  
23 of a guaranteed price preneed contract shall remain in the  
24 trust fund in a federally insured financial institution. The  
25 preneed provider may receive up to 10% of the amount paid on  
26 the preneed contract but must disclose to the buyer the  
27 percentage and amount to be received.

28 (3) One hundred percent of the amount received in  
29 payment of a nonguaranteed price preneed contract shall be  
30 deposited into a trust fund in a federally insured financial

1 institution.

2 (b) Separate or common trust fund.--The trust funds may be  
3 held in a separate account or in a common trust fund. If held in  
4 a common fund, individual records shall be kept.

5 (c) Selection of trustee.--The trustee of the fund may be  
6 anyone authorized under law to perform the functions of a  
7 trustee. Under no circumstances, however, may the preneed  
8 provider or any of its employees, agents or affiliates serve as  
9 the trustee. The contract beneficiary shall be the beneficiary  
10 of the trust.

11 (d) Fiduciary duties.--The trustee is subject to the  
12 fiduciary duties imposed by law.

13 (e) Form of trust account.--The preneed trust account may  
14 take the form of:

15 (1) a federally insured bank account within this  
16 Commonwealth; or

17 (2) any other form of investment within this  
18 Commonwealth which may lawfully be established or maintained  
19 by the trust department of the financial institution in which  
20 the preneed trust account is established.

21 (f) Conflict of interest.--The federally insured financial  
22 institution in which trust funds are held shall not be owned by  
23 a preneed provider having in excess of 10% of the outstanding  
24 stock or under the control of the preneed provider and shall not  
25 use any funds required to be held in trust to purchase an  
26 increase in any contract or agreement to which the preneed  
27 provider is a party, or otherwise to invest, directly or  
28 indirectly, in the preneed provider's business operation.

29 (g) Records.--The trustee shall maintain within this  
30 Commonwealth in the location specified in the preneed provider's

1 annual report to the Bureau of Consumer Protection a separate,  
2 written record for each preneed trust containing the following  
3 information:

4 (1) The name, address and telephone number of the  
5 preneed contract buyer.

6 (2) The name, address, telephone number, date of birth  
7 and Social Security number of the named trust beneficiary.

8 (3) The date on which the preneed trust was originally  
9 established and the amount of money originally deposited.

10 (4) The balance in the trust account, on a monthly  
11 basis.

12 (5) A description of the form and manner in which the  
13 trust funds are invested.

14 (6) A copy of the individual trust agreement or, in the  
15 case of a common or commingled trust account, a copy of the  
16 master trust agreement for the common account.

17 (7) Written documentation sufficient to demonstrate  
18 compliance with the requirements of sections 11 and 14 with  
19 respect to all changes in the terms or provisions of the  
20 trust.

21 (h) Common or commingled trust account.--In the case of any  
22 common or commingled preneed trust account, a separate written  
23 record which complies with the requirements of subsection (g)  
24 shall be maintained for each separate trust beneficiary.

25 (i) Notice of change of trustee.--The trustee and the  
26 preneed provider must notify the buyer, beneficiary and the  
27 Bureau of Consumer Protection if there is a change of trustee.

28 (j) Annual report by trustee.--The trustee shall provide the  
29 Bureau of Consumer Protection with an annual report of all funds  
30 deposited, interest earned, fees paid, withdrawals made and

1 disbursements after performance of contract obligations during  
2 the previous year. A copy of the Internal Revenue Service Form  
3 1099 shall be furnished to the preneed contract buyers annually.

4 (k) Trust income.--The income from the trust on all preneed  
5 contracts shall remain with the principal, but may be used to  
6 pay taxes, reasonable trustee fees and administrative expenses  
7 incurred in the administration of the trust. The Bureau of  
8 Consumer Protection shall, by rule, establish standards for the  
9 amount of fees and expenses which may be deducted from the  
10 income.

11 (l) Disbursement of trust funds.--No disbursement shall be  
12 made to a preneed provider unless the preneed provider has first  
13 certified to the trustee, on a form to be prescribed by the  
14 Bureau of Consumer Protection, that all obligations have been  
15 performed and all goods and services required by the preneed  
16 contract have been delivered. The certification shall contain an  
17 itemization of the goods and services that it has provided. The  
18 amount of the disbursement to a preneed provider shall be as  
19 follows:

20 (1) On a guaranteed price contract, the actual price of  
21 the items in the preneed contract, as reflected on the  
22 preneed provider's current price list.

23 (2) On a nonguaranteed price contract, the actual price  
24 of the items in the preneed contract, as reflected on the  
25 preneed provider's current price list.

26 (m) Remaining amount.--At the time of disbursement, any  
27 amount remaining after disbursement and the payment of trustee  
28 fees, administrative expenses and taxes shall be returned to the  
29 estate of the buyer.

30 (n) Periodic audits.--The Bureau of Consumer Protection

1 shall order periodic audits of the trust funds with such audits  
2 occurring at least once every three years. The cost of the  
3 audits shall be borne by the preneed provider.

4 Section 13. Preneed insurance policies.

5 (a) Transfer of funds.--Funds received in payment of a  
6 preneed contract where the buyer has selected a preneed  
7 insurance policy as the manner of funding the preneed contract  
8 shall be distributed as follows:

9 (1) Five dollars to the Preneed Funeral and Burial  
10 Contract Guarantee Fund established under section 19.

11 (2) The remaining amount shall be used to purchase the  
12 preneed insurance policy.

13 (b) Requiring insurance prohibited.--A preneed provider  
14 shall not require a buyer to purchase any insurance policy as a  
15 condition of entering into any preneed funeral contract.

16 (c) Sale of insurance.--A person who sells or offers to sell  
17 a preneed insurance policy as a manner to fund a preneed  
18 contract must be licensed by the Insurance Department to sell  
19 insurance in this Commonwealth.

20 (d) Rating of insurance company.--The preneed provider must  
21 disclose to the buyer the ratings of the insurance company from  
22 which the preneed insurance policy is to be purchased and  
23 furnish the buyer with a meaningful key to interpret the ratings  
24 before the preneed contract is signed.

25 (e) Required disclosures.--If a preneed insurance policy is  
26 used to fund a preneed contract, before the contract is signed,  
27 the following must be disclosed:

28 (1) The fact that a preneed insurance policy is being  
29 used to fund payment of the total purchase price of the  
30 preneed contract.

1           (2) The nature of the relationship among the individuals  
2 selling the preneed contract, the preneed provider, the  
3 insurer and any other person.

4           (3) The relationship of the preneed insurance policy to  
5 the funding of the preneed contract and the nature and  
6 existence of any guarantees relating to the preneed contract.

7           (4) The impact on the preneed contract, including any  
8 penalties, restrictions, entitlements or obligations,  
9 resulting from:

10           (i) any changes in the policy, including, but not  
11 limited to, changes in the assignment, beneficiary  
12 designation or use of the proceeds;

13           (ii) the policyholder's failure to make premium  
14 payments;

15           (iii) cancellation or surrender of the preneed  
16 policy by the policyholder;

17           (iv) any difference at the time of delivery between  
18 the proceeds of the policy and the amount actually needed  
19 to fund the preneed contract;

20           (v) the death of the contract beneficiary in a  
21 location not within the preneed provider's service area,  
22 which area shall be determined by the buyer; and

23           (vi) the inability of the preneed provider to  
24 perform on the preneed contract.

25           (5) The impact on the insurance policy of the buyer's  
26 cancellation of the preneed contract, the cash surrender  
27 value of the policy at yearly intervals and the option of the  
28 buyer to change the beneficiary of the policy if the preneed  
29 contract is canceled.

30           (f) Financial information.--If a preneed insurance policy

1 limits death benefits during a period following the inception  
2 date of the policy or where the accumulated premiums exceed the  
3 death benefit at any point during the first ten years, then a  
4 form entitled "Financial Review of this Policy" or a form  
5 containing substantially similar information and approved by the  
6 Insurance Commissioner shall be completed by the insurer and  
7 delivered simultaneously with the policy. In such a case, the  
8 cancellation period shall be extended by 10 days.

9 (g) Required notice.--Prior to taking an application for a  
10 policy which is subject to the disclosure requirements of  
11 subsection (h), the insurer must provide the applicant with a  
12 conspicuous notice in the following form or in a form containing  
13 substantially similar information approved by the Insurance  
14 Commissioner.

15 NOTICE TO APPLICANTS

16 With your policy, you will receive a form entitled  
17 "Financial Review of this Policy," showing premiums and  
18 benefits for a ten-year period. You should review the  
19 form along with your policy and decide whether the policy  
20 is suitable for you. If you are not entirely satisfied,  
21 please review the cancellation provision on the form for  
22 directions on obtaining a full refund of any premiums  
23 paid.

24 (h) Payment to preneed provider.--Payment of the proceeds of  
25 a preneed insurance policy shall not be made to a preneed  
26 provider unless the preneed provider has first certified to the  
27 insurance company, on a form to be prescribed by the Bureau of  
28 Consumer Protection, that all obligations have been performed  
29 and that all goods and services required by the preneed contract  
30 have been delivered. The certification shall contain an



1 itemization of the goods and services that the preneed provider  
2 has supplied.

3 (i) Remaining proceeds.--At the time of payment of the  
4 proceeds of the policy, any proceeds remaining after payment to  
5 the preneed provider for performance of the contract shall be  
6 returned to the estate of the buyer.

7 (j) Application of act to insurance and annuities.--The  
8 requirements of this act relating to preneed insurance policies  
9 shall apply to any and all forms of insurance or annuities which  
10 are sold or utilized for the purpose of providing funding for a  
11 preneed burial contract, regardless of how named.

12 (k) Construction of act.--This act shall not be construed as  
13 regulating the business of insurance.

14 Section 14. Performance and substitution of preneed provider.

15 (a) Full and partial performance.--A preneed provider is  
16 only entitled to payment of funds from the preneed trust or  
17 preneed insurance policy if the contract has been fully  
18 performed. If the preneed provider who is a party to the preneed  
19 contract has delivered or performed only a portion of the goods  
20 and services under the contract, the funds shall be allocated as  
21 provided in subsection (d).

22 (b) Inability to fully perform.--If the preneed provider is  
23 unable to fully perform the contract, the buyer may:

24 (1) cancel the contract under section 9; or

25 (2) either the preneed provider or the buyer may  
26 substitute a different preneed provider for all or part of  
27 the contract, if both the buyer and the substitute preneed  
28 provider agree.

29 (c) Complete inability to perform.--If the preneed provider  
30 is completely unable to perform the contract, the preneed

1 provider shall return any amount the preneed provider has kept  
2 from the amounts paid under the contract to:

3 (1) the substitute preneed provider, if one is agreed  
4 upon; or

5 (2) the buyer, if the buyer chooses to cancel the  
6 contract.

7 (d) Allocation of contract price.--If the original preneed  
8 provider is able to perform only part of the contract and the  
9 buyer and a substitute preneed provider agree to the substitute  
10 preneed provider's performance of the remainder of the contract,  
11 the preneed provider named in the contract and the substitute  
12 preneed provider shall each be entitled to a total compensation  
13 in an amount that is proportional to the contract price of the  
14 goods and services that were provided by each. The amount that  
15 the original preneed provider shall receive from the funds of  
16 the preneed trust or the preneed insurance policy shall be  
17 reduced by the amount that it received from the contract  
18 payments prior to the placement of any sums in trust or purchase  
19 of the preneed insurance policy.

20 Section 15. Change in preneed provider's status.

21 (a) Notice prior to cessation of business.--A preneed  
22 provider must notify the buyer of a preneed contract, the  
23 trustee of a preneed trust and the Bureau of Consumer Protection  
24 of a proposed cessation of business by the preneed provider at  
25 least 30 days prior to the effective date of cessation of  
26 business. Notice must be in writing by certified mail, return  
27 receipt requested.

28 (b) Notice of transfer of ownership.--A preneed provider  
29 must notify the buyer of a preneed contract, the trustee of a  
30 preneed trust and the Bureau of Consumer Protection of any

1 transfer of ownership or sale or assignment of any assets or  
2 stock within ten days after the transfer, sale or assignment.  
3 Notice must be in writing by certified mail, return receipt  
4 requested.

5 (c) Cancellation by buyer.--If the preneed provider ceases  
6 business or transfers ownership and if the buyer chooses to  
7 cancel within 30 days of receipt of notice of the action, the  
8 buyer shall be entitled to a return of any amounts retained by  
9 the preneed provider from the payments on the preneed contract,  
10 in addition to the amounts the buyer would be entitled to under  
11 section 9.

12 (d) Notice of bankruptcy proceeding.--If the preneed  
13 provider makes an assignment for the benefit of creditors or  
14 enters into any other debt reorganization plan or is the subject  
15 of any bankruptcy or receivership proceeding, the preneed  
16 provider shall notify the buyer, the trustee of a preneed trust  
17 and the Bureau of Consumer Protection of the action and shall  
18 send the buyer an explanation of how the buyer's rights and  
19 obligations under the preneed contract will be affected. Notice  
20 must be in writing by certified mail, return receipt requested.

21 (e) Assignment of contract.--If the preneed provider is for  
22 any reason unable, unwilling or is relieved of its  
23 responsibility to perform on the preneed contract, the Bureau of  
24 Consumer Protection, with the buyer's permission, may order that  
25 the contract be assigned to a substitute preneed provider.

26 (f) Qualifications of substitute preneed provider.--A  
27 substitute preneed provider must be licensed by the Commonwealth  
28 and registered as a preneed provider. A substitute preneed  
29 provider must agree to accept assignment of the preneed  
30 contract.

1 Section 16. Substitution of trustee and trusts.

2 The trustee of any preneed trust may transfer the funds held  
3 in trust to another trust or a new trustee may be substituted,  
4 only upon written notice sent certified mail, return receipt  
5 requested to the buyer, the Bureau of Consumer Protection and  
6 the preneed provider. Notice shall be sent ten days prior to the  
7 transfer or substitution.

8 Section 17. Substitution of goods and services.

9 (a) Unavailability of goods and services specified in  
10 contract.--If the particular goods and services specified in the  
11 contract are unavailable at the time of delivery, the preneed  
12 provider shall furnish without additional charge goods and  
13 services similar in style and at least equal in quality of  
14 material and workmanship.

15 (b) Evaluation of substitute goods and services.--The  
16 evaluation of style and quality shall be based on objective  
17 criteria set forth in the contract, as required by section 8.

18 (c) Selection of substitute goods and services.--The person  
19 or persons making arrangements for the funeral of the deceased  
20 contract beneficiary shall choose the goods and services to be  
21 substituted, and this choice must be reasonably based on the  
22 standards in subsections (a) and (b). In such case, the person  
23 making the funeral arrangements shall be given all the  
24 disclosures required by section 7(c).

25 Section 18. Preneed Funeral and Burial Contract Regulation  
26 Fund.

27 There shall be established within the State Treasury a  
28 separate restricted account to be known as the Preneed Funeral  
29 and Burial Contract Regulation Fund into which moneys collected  
30 under sections 4(i) and 22(a) shall be deposited for use by the

1 Bureau of Consumer Protection in administering and enforcing  
2 this act.

3 Section 19. Preneed Funeral and Burial Contract Guarantee Fund.

4 (a) Establishment.--There is hereby established within the  
5 State Treasury a separate interest-bearing, nonlapsing,  
6 restricted account known as the Preneed Funeral and Burial  
7 Contract Guarantee Fund into which moneys collected under  
8 subsection (b) shall be deposited.

9 (b) Deposit of fees.--Each preneed provider shall pay a fee  
10 of \$5 out of the funds received for each preneed contract and  
11 shall forward the fee to the Bureau of Consumer Protection no  
12 later than the last business day of each month. The contract  
13 shall be recorded by the Bureau of Consumer Protection. Within  
14 ten days after receiving the fee, the Bureau of Consumer  
15 Protection shall notify the contract buyer by mail of the  
16 recording. The fees shall be placed by the Bureau of Consumer  
17 Protection in the Preneed Funeral and Burial Contract Guarantee  
18 Fund, which shall be under the control of the Bureau of Consumer  
19 Protection, and the income on the fees shall accrue to the fund.  
20 Moneys in the Preneed Funeral and Burial Contract Guarantee Fund  
21 may be expended to purchase insurance to cover losses guaranteed  
22 by the Preneed Funeral and Burial Contract Guarantee Fund.

23 (c) Submission of claim.--In the event the buyer of any  
24 preneed funeral contract is unable to receive the benefits of  
25 the buyer's contract or to receive the funds due by reason of  
26 cancellation of the contract, the buyer may submit a claim to  
27 the Bureau of Consumer Protection on a form supplied by the  
28 Bureau of Consumer Protection. Upon a finding by the Bureau of  
29 Consumer Protection that the benefits or return of money paid to  
30 the preneed provider is not available to the buyer, the Bureau

1 of Consumer Protection will cause payment to be made to the  
2 buyer from the Preneed Funeral and Burial Contract Guarantee  
3 Fund. In all such cases the Bureau of Consumer Protection shall  
4 be subrogated to the buyer's claims against the preneed provider  
5 for any amounts paid from the Preneed Funeral and Burial  
6 Contract Guarantee Fund.

7 (d) Payment of award by court.--If the preneed provider's  
8 liability for default is subsequently proven, any award made by  
9 a court of law up to the amount paid to the buyer shall be made  
10 payable to the Preneed Funeral and Burial Contract Guarantee  
11 Fund.

## 12 Section 20. Regulations.

13 The Bureau of Consumer Protection may adopt, after public  
14 hearing, such rules and regulations as may be necessary for the  
15 enforcement and administration of this act.

## 16 Section 21. Preneed Funeral and Burial Contract Advisory Board.

17 (a) Establishment.--There is hereby created a Preneed  
18 Funeral and Burial Contract Advisory Board to advise the Bureau  
19 of Consumer Protection regarding the promulgation of regulations  
20 for the administration and enforcement of this act and on all  
21 matters relating to preneed burial contracts.

22 (b) Composition.--The board shall be comprised of the  
23 following:

24 (1) Two members representing funeral directors.

25 (2) Two members representing cemetery companies.

26 (3) Two members representing senior citizens.

27 (4) One member representing a consumer interest  
28 organization.

29 (c) Appointment of members.--The Director of the Bureau of  
30 Consumer Protection or a designee shall chair the advisory board

1 and shall appoint the members.

2 (d) Term of members.--All members shall be appointed for a  
3 period of two years, except that one-half of the initial members  
4 shall serve for three years.

5 (e) Meetings.--The board shall meet at times fixed by the  
6 Director of the Bureau of Consumer Protection, but not less than  
7 once per year.

8 (f) Annual report.--The board shall prepare an annual report  
9 of its activities and shall submit the report to the Consumer  
10 Protection and Professional Licensure Committee of the Senate  
11 and the Consumer Affairs Committee of the House of  
12 Representatives.

13 Section 22. Violations and enforcement.

14 (a) Penalty.--It is a violation of this act for a person to  
15 engage in the sale of preneed contracts without complying with  
16 the requirements of this act. Violation of this act by a preneed  
17 provider is grounds for disciplinary action by its licensing  
18 authority. Any person or any preneed provider who violates this  
19 act shall pay a civil penalty of not less than \$1,000 nor more  
20 than \$5,000 for each violation.

21 (b) Unfair trade practice.--A violation of this act  
22 constitutes a violation of the act of December 17, 1968  
23 (P.L.1224, No.387), known as the Unfair Trade Practices and  
24 Consumer Protection Law.

25 (c) Private right of action.--A buyer shall have a private  
26 right of action against any person who violates this act. In  
27 addition to an action for violation of this act, if any preneed  
28 provider fails to perform on a preneed contract, the buyer shall  
29 also have a cause of action for breach of contract and damages  
30 under 13 Pa.C.S. Div. 2 (relating to sales), including

1 incidental and consequential damages. Any buyer who prevails in  
2 an action brought for a violation of this act shall be awarded  
3 reasonable attorney fees and costs of the action. In an action  
4 for violation of any provision of this act, the buyer has a  
5 right to inspect and copy any documents relative to the action  
6 in the possession of the Bureau of Consumer Protection or any  
7 other agency involved in the investigation or enforcement of  
8 this act.

9 (d) Investigation and enforcement.--The Bureau of Consumer  
10 Protection has the primary responsibility and power to  
11 investigate and enforce the provisions of this act. In so doing,  
12 the Bureau of Consumer Protection shall coordinate and work with  
13 any other agency that has jurisdiction over any matter relating  
14 to this act.

15 (e) Employment of counsel and staff.--The Bureau of Consumer  
16 Protection shall, using the fees collected under section 4(i)  
17 and the penalties collected under subsection (a), employ  
18 qualified legal counsel and other staff to monitor, investigate,  
19 audit and otherwise be responsible for the enforcement of this  
20 act.

21 (f) Referral for criminal prosecution.--If the Bureau of  
22 Consumer Protection believes that grounds exist for the criminal  
23 prosecution of persons subject to this act, the Bureau of  
24 Consumer Protection shall forward to the Attorney General all  
25 evidence and other information for prosecution of the case. If  
26 the Bureau of Consumer Protection believes that any person or  
27 preneed provider has violated any other statute or regulation,  
28 the Bureau of Consumer Protection shall forward to the  
29 appropriate agency all evidence and other information relating  
30 to the alleged violation.



1 (g) Powers of the Bureau of Consumer Protection.--The Bureau  
2 of Consumer Protection shall have all powers necessary for the  
3 administration and enforcement of this act, including, but not  
4 limited to, the power to:

5 (1) investigate and require production of documents  
6 relating to any preneed contract, preneed funds or preneed  
7 insurance policy;

8 (2) hold hearings and require the appearance of any  
9 person;

10 (3) issue cease and desist orders;

11 (4) issue restitution orders;

12 (5) apply to the court for a receivership;

13 (6) apply to the court for injunctions and temporary  
14 restraining orders; and

15 (7) suspend or revoke certification.

16 (h) Records and audit.--Every preneed provider shall keep  
17 its accounts and records according to generally recognized  
18 accounting methods.

19 (i) Annual report.--Every preneed provider shall file with  
20 the Bureau of Consumer Protection an annual report on a form  
21 prescribed by the Bureau of Consumer Protection, containing the  
22 following information:

23 (1) All information required in the application for  
24 registration to sell preneed contracts.

25 (2) The total amount of all funds deposited in preneed  
26 trusts or used to pay for preneed insurance policies for that  
27 year, on an annual and quarterly basis.

28 (3) The total amount of all funds outstanding in preneed  
29 trusts or in preneed insurance contracts, on an annual and  
30 quarterly basis.

1           (4) The total number and amount of preneed contracts  
2 sold, on an annual and quarterly basis.

3           (5) The total number and amount of preneed contracts  
4 outstanding, on an annual and quarterly basis.

5           (6) The total amount of money received that year, on an  
6 annual and quarterly basis, from the sale of preneed  
7 contracts sold in the past year and sold in previous years.

8           (7) The total amount of money received that year, on an  
9 annual and quarterly basis, from the interest or other  
10 earnings, commissions or other fees from preneed contracts  
11 sold in the past year and sold in previous years.

12           (8) The names and addresses of the buyer and contract  
13 beneficiary, if different from the buyer, of each contract  
14 sold within the last year and the amount of each.

15           (9) The funding methods used for the preneed contracts  
16 sold in the last year by the preneed provider and the  
17 percentage of contracts, by both amount and number, funded by  
18 each method.

19           (10) The number and amount of any withdrawals from, or  
20 any changes of status of, any preneed trust account.

21           (11) The names and addresses of each financial  
22 institution, investment company, insurance company or other  
23 party involved in the funding of preneed contracts by the  
24 preneed provider.

25           (12) The location of the preneed provider's  
26 establishment and any trustee's accounts and other records.

27           (j) Individual records.--Every preneed provider shall keep  
28 individual records for each preneed contract sold. These records  
29 shall contain the following information:

30           (1) The name and address of each buyer.

1           (2) The name, address, telephone number and Social  
2 Security number of each contract beneficiary.

3           (3) The date and total amount of each contract.

4           (4) If the contract is funded by a preneed trust:

5               (i) the date the trust was originally established;

6               (ii) the amount originally deposited;

7               (iii) the balance in the trust account, on a monthly  
8 basis;

9               (iv) a description of the form and manner in which  
10 the funds are invested;

11              (v) a copy of the trust agreement or master trust  
12 agreement if accounts are commingled; and

13              (vi) the name and address of the trustee and the  
14 financial institution establishing the trust.

15           (5) If the contract is funded by a preneed insurance  
16 policy:

17               (i) the date the policy was purchased;

18               (ii) the amount paid for the policy; and

19               (iii) the name and address of the insurance company.

20           (6) Written documentation to demonstrate compliance with  
21 the requirements for any changes in the terms or provisions  
22 of any trust or in the method of funding the contract.

23           (k) Location of records.--All records kept by a preneed  
24 provider, trustee or insurance company relating to any preneed  
25 contract shall be kept within this Commonwealth.

26 Section 23. Repeals.

27           (a) Absolute.--The following acts and parts of acts are  
28 repealed:

29           Section 13(c) of the act of January 14, 1952 (1951 P.L.1898,  
30 No.522), known as the Funeral Director Law.

1 Act of August 14, 1963 (P.L.1059, No.459), entitled "An act  
2 prohibiting future need sales of cemetery merchandise and  
3 services, funeral merchandise and services, except under certain  
4 conditions; requiring the establishment of and deposit into a  
5 merchandise trust fund of certain amount of the proceeds of any  
6 such sale; providing for the administration of such trust funds  
7 and the payment of money therefrom; conferring powers and  
8 imposing duties on orphans' courts, and prescribing penalties."

9 (b) General.--All other acts and parts of acts are repealed  
10 insofar as they are inconsistent with this act.

11 Section 24. Effective date.

12 This act shall take effect in 60 days.