

CHAPTER 215

INSURANCE

SENATE BILL 95-038

BY SENATORS Tebedo, Dennis, and Feeley;
also REPRESENTATIVE Moellenberg.

AN ACT

CONCERNING THE REGULATION OF SELLERS OF PRENEED FUNERAL CONTRACTS, AND, IN CONNECTION THEREWITH, SETTING FORTH REQUIREMENTS FOR PRENEED FUNERAL CONTRACTS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 15 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**ARTICLE 15
Preneed Funeral Contracts**

10-15-101. Legislative declaration. THE GENERAL ASSEMBLY DECLARES THAT THE BUSINESS OF SELLING PRENEED CONTRACTS WHEREBY THE SELLER AGREES TO PROVIDE FUNERAL, INTERMENT, ENTOMBMENT, OR CREMATION MERCHANDISE OR SERVICES IN THE FUTURE OR FOR FUTURE USE IS AFFECTED WITH A PUBLIC INTEREST, AND THE PRESERVATION OF THE SAFETY AND WELFARE OF THE PUBLIC FROM UNCONSCIONABLE DEALING REQUIRES REGULATION OF THE SALE OF SUCH CONTRACTS AND OF THE DISPOSITION OF FUNDS OBTAINED AS A RESULT OF SUCH SALES.

10-15-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BROKER" MEANS ANY CONTRACT SELLER WHO MUST UTILIZE THE SERVICES OF A GENERAL PROVIDER TO FULFILL THE TERMS OF A PRENEED CONTRACT.

(1.5) "CASH ADVANCES" MEANS CONSIDERATION WHICH CAN BE USED AT THE TIME

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OF NEED AT THE DISCRETION OF THE CONTRACT BUYER OR HIS OR HER HEIRS, ASSIGNS, OR AUTHORIZED REPRESENTATIVES FOR MERCHANDISE OR SERVICES THE PRICES OF WHICH ARE NOT GUARANTEED IN A PRENEED CONTRACT AND WHICH MERCHANDISE OR SERVICES ARE ANCILLARY AND IN ADDITION TO MERCHANDISE AND SERVICES THE PRICES OF WHICH ARE GUARANTEED IN A PRENEED CONTRACT.

(2) "CEMETERY" MEANS ANY PLACE, INCLUDING A MAUSOLEUM, NICHE, OR CRYPT, IN WHICH THERE IS PROVIDED SPACE EITHER BELOW OR ABOVE THE SURFACE OF THE GROUND FOR THE INTERMENT OF THE REMAINS OF HUMAN BODIES.

(3) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.

(4) "COMMON TRUST FUNDS" MEANS A COMMON TRUST AS DEFINED BY THE PROVISIONS OF ARTICLE 24 OF TITLE 11, C.R.S. THIS ARTICLE DOES NOT PRECLUDE THE USE OF A COMMON TRUST TO THE EXTENT THAT THE INDIVIDUAL CONTRACT SELLER COMPLIES WITH THE PROVISIONS OF THIS ARTICLE.

(5) "CONTRACT BUYER" MEANS A PERSON WHO PURCHASES MERCHANDISE AND SERVICES THROUGH A PRENEED CONTRACT.

(6) "CONTRACT SELLER" MEANS A PERSON WHO SELLS MERCHANDISE AND SERVICES THROUGH A PRENEED CONTRACT.

(7) "FINAL RESTING PLACE" MEANS A SPACE, EITHER BELOW OR ABOVE THE SURFACE OF THE GROUND, FOR THE INTERMENT OF THE REMAINS OF HUMAN BODIES.

(8) "FUNDS" MEANS MONEY PAID BY A CONTRACT BUYER, EXCLUDING INTEREST, FINANCE CHARGES, AND LATE FEES PAID, FOR THE PURCHASE OF A PRENEED CONTRACT.

(9) "GENERAL PROVIDER" MEANS A PERSON WHO ENGAGES, ON A CONTRACT BASIS, IN THE USUAL BUSINESS OF PROVIDING THE MERCHANDISE AND PERFORMING THE SERVICES, AT TIME OF NEED, FOR THE FINAL DISPOSITION OF A DECEASED HUMAN BODY, AND DOES NOT INCLUDE SUBCONTRACTORS OF A GENERAL PROVIDER.

(10) "MERCHANDISE" MEANS GOODS WHICH ARE NORMALLY SOLD OR OFFERED FOR SALE DIRECTLY TO THE PUBLIC FOR USE IN CONNECTION WITH FUNERAL SERVICES AND DOES NOT INCLUDE OVERHEAD ITEMS.

(11) "OVERHEAD ITEMS" MEANS ITEMS SUCH AS EMBALMING FLUID, SANITARY SUPPLIES, AND OTHER ITEMS USED IN THE PERFORMANCE OF FUNERAL SERVICES.

(12) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, FIRM, JOINT VENTURE, CORPORATION, COMPANY, ASSOCIATION, JOINT STOCK ASSOCIATION, OR LIMITED LIABILITY COMPANY.

(13) (a) "PRENEED CONTRACT" MEANS ANY WRITTEN CONTRACT, AGREEMENT, OR MUTUAL UNDERSTANDING, ANY SERIES OR COMBINATION OF CONTRACTS, AGREEMENTS, OR MUTUAL UNDERSTANDINGS, OR ANY SECURITY OR OTHER INSTRUMENT WHICH IS CONVERTIBLE INTO A CONTRACT, AGREEMENT, OR MUTUAL UNDERSTANDING WHEREBY IT IS AGREED THAT, UPON THE DEATH OF THE PRENEED

CONTRACT BENEFICIARY, A FINAL RESTING PLACE, MERCHANDISE, OR SERVICES SHALL BE PROVIDED OR PERFORMED IN CONNECTION WITH THE FINAL DISPOSITION OF THE PRENEED CONTRACT BENEFICIARY'S BODY. CONSIDERATION FOR A PRENEED CONTRACT IS FUNDS OR THE ASSIGNMENT OF LIFE INSURANCE BENEFITS.

(b) A CONTRACT FOR MERCHANDISE WHEREBY THE BUYER TAKES PHYSICAL POSSESSION OF THE MERCHANDISE AT THE TIME OF ENTERING INTO THE CONTRACT SHALL NOT BE INCLUDED IN THE DEFINITION OF A PRENEED CONTRACT.

(c) PROVIDING A DEVELOPED FINAL RESTING PLACE WITHIN A DESIGNATED CEMETERY APPROVED FOR THE INTERMENT, ENTOMBMENT, OR INURNMENT OF HUMAN REMAINS IS NOT SUBJECT TO THE PROVISIONS OF THIS ARTICLE. PROVIDING AN UNDEVELOPED FINAL RESTING PLACE SHALL BE EXEMPT FROM THE PROVISIONS OF THIS ARTICLE ONLY IF THE CEMETERY CONTAINS UNSOLD DEVELOPED FINAL RESTING PLACES REPRESENTING AT LEAST TWENTY-FIVE PERCENT OF THE OUTSTANDING PAID-IN-FULL CONTRACTS FOR UNDEVELOPED FINAL RESTING PLACES. IN THE EVENT SUCH SPECIFIC AND IDENTIFIABLE FINAL RESTING PLACE IS NOT DEVELOPED FOR USE AT THE TIME OF NEED AND FULL PAYMENT HAS BEEN MADE, THEN THE CONTRACT MUST PROVIDE THE PURCHASER WITH AN IMMEDIATE ALTERNATE AND COMPARABLE FINAL RESTING PLACE AT THE SAME CEMETERY OR A FULL REFUND OF MONEYS PAID.

(14) "PRENEED CONTRACT BENEFICIARY" MEANS, FOR ANY PRENEED CONTRACT ENTERED INTO ON OR AFTER JULY 1, 1967, ANY PERSON SPECIFIED IN THE PRENEED CONTRACT, UPON WHOSE DEATH A FINAL RESTING PLACE, MERCHANDISE, OR SERVICES OF ANY NATURE SHALL BE PROVIDED, DELIVERED, OR PERFORMED.

(15) "PRENEED CONTRACT PRICE" MEANS THE TOTAL PRICE LISTED ON A PRENEED CONTRACT FOR ALL ITEMS LISTED, AND INCLUDES CASH ADVANCES.

(16) "SERVICES" MEANS ANY SERVICES WHICH MAY BE USED TO CARE FOR AND PREPARE DECEASED HUMAN BODIES FOR BURIAL, CREMATION, OR OTHER FINAL DISPOSITION.

(17) "TRUSTEE" MEANS A CHARTERED STATE BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR TRUST COMPANY THAT IS AUTHORIZED TO ACT AS FIDUCIARY AND THAT IS SUBJECT TO SUPERVISION BY THE STATE BANK OR FINANCIAL SERVICES COMMISSIONER OR A NATIONAL BANKING ASSOCIATION, FEDERAL CREDIT UNION, OR FEDERAL SAVINGS AND LOAN ASSOCIATION AUTHORIZED TO ACT AS FIDUCIARY IN COLORADO.

(18) "TRUST FUNDS" MEANS FUNDS DEPOSITED BY A CONTRACT SELLER WITH A TRUSTEE.

(19) "TRUST INSTRUMENT" MEANS THE DOCUMENTS PURSUANT TO WHICH A TRUSTEE RECEIVES, HOLDS, INVESTS, AND DISBURSES TRUST FUNDS.

10-15-103. License procedure - records - examination of records. (1) NO CONTRACT SELLER SHALL ENTER INTO A PRENEED CONTRACT OR ACCEPT ANY FUNDS OR OTHER CONSIDERATION WITHOUT FIRST SECURING A LICENSE FROM THE COMMISSIONER. APPLICATION FOR AN INITIAL LICENSE SHALL BE IN WRITING, SIGNED BY THE APPLICANT, AND DULY VERIFIED ON FORMS FURNISHED BY THE

COMMISSIONER. EACH APPLICATION SHALL BE ACCOMPANIED BY PAYMENT OF FIVE HUNDRED DOLLARS AND A CURRENT BALANCE SHEET, INCOME STATEMENT, AND STATEMENT OF CASH FLOW TO DEMONSTRATE A NET WORTH OF AT LEAST TEN THOUSAND DOLLARS, AS EVIDENCED BY THE SIGNATURE OF A CERTIFIED PUBLIC ACCOUNTANT ("CPA") OR PUBLIC ACCOUNTANT ("PA"), OR, IF PREPARED BY THE APPLICANT, ACCOMPANIED BY A CURRENT TAX RETURN; OR, IN THE ALTERNATIVE, THE APPLICANT SHALL FURNISH THE COMMISSIONER A SURETY BOND IN THE AMOUNT OF TEN THOUSAND DOLLARS TO HONOR PRENEED CONTRACT OBLIGATIONS.

(2) UPON RECEIPT OF A COMPLETE INITIAL APPLICATION AND LICENSE FEE, THE COMMISSIONER SHALL ISSUE A LICENSE TO THE APPLICANT UNLESS THE COMMISSIONER DETERMINES THAT:

(a) THE APPLICANT HAS MADE FALSE STATEMENTS OR MISREPRESENTATIONS IN SUCH APPLICATION; OR

(b) THE APPLICANT DOES NOT MEET THE CONDITIONS OF SUBSECTION (1) OF THIS SECTION; OR

(c) THE APPLICANT IS NOT DULY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF COLORADO; OR

(d) ANY OFFICER, DIRECTOR, OR CONTROLLING SHAREHOLDER OF THE APPLICANT HAS BEEN CONVICTED OF A CRIME INVOLVING FRAUD OR MISAPPROPRIATION OR MISUSE OF FUNDS; OR

(e) THE APPLICANT HAS NOT FILED A PRENEED CONTRACT, GENERAL PROVIDER CONTRACT, TRUST AGREEMENT AND ASSIGNMENT FORM, WHERE APPLICABLE, WHICH COMPLY WITH THE PROVISIONS OF THIS ARTICLE; OR

(f) THE APPLICANT IS AN INSURANCE COMPANY.

(3) (a) THE CONTRACT SELLER SHALL KEEP ACCURATE ACCOUNTS, BOOKS, AND RECORDS OF ALL TRANSACTIONS, COPIES OF ALL PRENEED CONTRACTS, DATES AND AMOUNTS OF PAYMENTS MADE AND ACCEPTED THEREON, THE NAME AND ADDRESS OF EACH CONTRACT BUYER, COPIES OF ALL ANNUAL REPORTS, THE NAME OF THE PRENEED CONTRACT BENEFICIARY AS TO EACH PRENEED CONTRACT, THE NAME OF THE TRUSTEE HOLDING TRUSTED FUNDS RECEIVED UNDER EACH PRENEED CONTRACT, COPIES OF STATUTORY REPORTS MADE TO THE TRUSTEE AND STATUTORY REPORTS PROVIDED BY THE TRUSTEE, AND ANY OTHER INFORMATION NECESSARY TO VERIFY COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

(b) SUCH RECORDS AS STATED IN PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL BE KEPT BY THE CONTRACT SELLER FOR AT LEAST FIVE YEARS FOLLOWING THE EARLIEST OF THE FOLLOWING:

(I) THE DEATH OF THE PRENEED CONTRACT BENEFICIARY; OR

(II) THE REMOVAL OF FUNDS FROM TRUST; OR

(III) THE TERMINATION OF THE ASSIGNMENT OF LIFE INSURANCE BENEFITS.

(4) (a) THE CONTRACT SELLER SHALL MAKE ALL BOOKS AND RECORDS AVAILABLE TO THE COMMISSIONER FOR EXAMINATION. THE COMMISSIONER, OR A QUALIFIED PERSON DESIGNATED BY THE COMMISSIONER, MAY, NOT MORE FREQUENTLY THAN ONCE IN ANY CALENDAR YEAR UNLESS PURSUANT TO ORDER OF COURT FOR GOOD CAUSE SHOWN, DURING ORDINARY BUSINESS HOURS, EXAMINE THE BOOKS, RECORDS, AND ACCOUNTS OF THE CONTRACT SELLER, AND FOR THAT PURPOSE MAY REQUIRE THE ATTENDANCE OF AND EXAMINE UNDER OATH ALL PERSONS WHOSE TESTIMONY THE COMMISSIONER MAY REQUIRE.

(b) THE COMMISSIONER SHALL MAKE EVERY REASONABLE EFFORT TO UTILIZE EXAMINERS EMPLOYED BY THE DIVISION OF INSURANCE IN PREFERENCE TO DESIGNATING PERSONS TO PERFORM EXAMINATIONS WHO ARE NOT EMPLOYEES OF THE DIVISION OF INSURANCE. HOWEVER, IN THE EVENT OF EVIDENCE OF A VIOLATION OF THIS ARTICLE, THE COMMISSIONER MAY DESIGNATE A QUALIFIED PERSON WHO IS NOT AN EMPLOYEE OF THE DIVISION OF INSURANCE TO EXAMINE ANY CONTRACT SELLER, AND THE REASONABLE EXPENSES AND CHARGES OF SUCH EXAMINER SHALL BE PAID DIRECTLY BY THE CONTRACT SELLER TO ANY SUCH AUTHORIZED EXAMINER. THE EXAMINEE MAY CONTEST THE AMOUNT OF FEES, COSTS, AND EXPENSES CHARGED TO IT BY SUCH PERSON BY FILING AN OBJECTION WITH THE COMMISSIONER WHICH SETS FORTH THE CHARGES WHICH THE EXAMINEE CONSIDERS TO BE UNREASONABLE, TOGETHER WITH THE BASIS FOR SUCH CLAIM OF UNREASONABLE CHARGES. NO AMOUNTS WHICH ARE SO DISPUTED WILL BE DUE TO THE EXAMINER UNLESS AND UNTIL THE COMMISSIONER HAS REVIEWED THE OBJECTION AND MADE A WRITTEN FINDING THAT THE DISPUTED CHARGES WERE REASONABLE IN RELATION TO THE EXAMINATION PERFORMED.

(5) (a) EVERY LICENSE SHALL EXPIRE ON JUNE 30. EVERY LICENSE SHALL BE RENEWED ANNUALLY AND AUTOMATICALLY EXTENDED UPON FILING OF A COMPLETE APPLICATION ON A FORM PROVIDED BY THE COMMISSIONER, DEMONSTRATION OF COMPLIANCE WITH THE CONDITIONS OF SUBSECTION (2) OF THIS SECTION, PAYMENT OF THE FEE PRESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (5), AND THE FILING OF THE ANNUAL REPORT WHICH SHALL BE DUE BY MARCH 31 OF EACH YEAR. A FILING MADE LATER THAN MARCH 31 MAY BE SUBJECT TO A LATE FEE OF UP TO ONE HUNDRED DOLLARS PER DAY FOR EACH DAY RECEIVED AFTER SUCH DATE. IF THE CONTRACT SELLER IS IN COMPLIANCE WITH THIS SECTION, THE CONTRACT SELLER SHALL BE DEEMED LICENSED UNLESS AND UNTIL NOTIFIED BY THE COMMISSIONER THAT THE RENEWAL DOES NOT COMPLY WITH THIS SECTION.

(b) THE ANNUAL RENEWAL FEE SHALL BE BASED UPON THE AGGREGATE PRENEED CONTRACT PRICE OF ALL PRENEED CONTRACTS OUTSTANDING AT THE END OF EACH CALENDAR YEAR. IF THE AGGREGATE PRENEED CONTRACT PRICE IS:

(I) ONE HUNDRED THOUSAND DOLLARS OR LESS, THE ANNUAL RENEWAL FEE SHALL BE ONE HUNDRED DOLLARS;

(II) GREATER THAN ONE HUNDRED THOUSAND DOLLARS BUT NOT EXCEEDING FIVE HUNDRED THOUSAND DOLLARS, THE ANNUAL RENEWAL FEE SHALL BE TWO HUNDRED DOLLARS;

(III) GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT NOT EXCEEDING ONE MILLION DOLLARS, THE ANNUAL RENEWAL FEE SHALL BE FIVE HUNDRED DOLLARS;

(IV) GREATER THAN ONE MILLION DOLLARS BUT NOT EXCEEDING FIVE MILLION DOLLARS, THE ANNUAL RENEWAL FEE SHALL BE ONE THOUSAND DOLLARS;

(V) GREATER THAN FIVE MILLION DOLLARS BUT NOT EXCEEDING TEN MILLION DOLLARS, THE ANNUAL RENEWAL FEE SHALL BE ONE THOUSAND FIVE HUNDRED DOLLARS;

(VI) IN EXCESS OF TEN MILLION DOLLARS, THE ANNUAL RENEWAL FEE SHALL BE TWO THOUSAND DOLLARS.

10-15-104. Annual report. EACH CONTRACT SELLER SHALL FILE AN ANNUAL REPORT ON A CALENDAR YEAR BASIS WITH THE COMMISSIONER ON A FORM AS PROVIDED BY THE COMMISSIONER. IN THE ANNUAL REPORT, EACH CONTRACT SELLER WHO IS REQUIRED TO DEPOSIT FUNDS WITH A TRUSTEE SHALL STATE THE NAME OF EACH TRUSTEE WITH WHICH IT HAS TRUST FUNDS ON DEPOSIT AND THE AMOUNT REMAINING ON DEPOSIT IN THE TRUST FUND ON DECEMBER 31. EACH CONTRACT SELLER SHALL REPORT ANNUALLY THE AMOUNT OF ALL ANNUAL PRENEED AGGREGATE MERCHANDISE SALES AND THE DISPOSITION OF SUCH MERCHANDISE. ANY CONTRACT SELLER WHICH HAS VOLUNTARILY OR INVOLUNTARILY DISCONTINUED THE SALE OF PRENEED CONTRACTS SHALL NOT BE REQUIRED TO OBTAIN A RENEWAL OF ITS LICENSE, BUT IT SHALL CONTINUE TO MAKE ANNUAL REPORTS TO THE COMMISSIONER UNTIL ALL SUCH CONTRACTS HAVE BEEN FULLY PERFORMED BY IT AND SHALL PAY FIFTY PERCENT OF THE FEE STRUCTURE PRESCRIBED BY SECTION 10-15-103 (5) (b).

10-15-105. Contract requirements - refund - full performance. (1) (a) THE PRENEED CONTRACT SHALL BIND THE CONTRACT SELLER, OR THE HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES OF THE CONTRACT SELLER, TO PROVIDE THE SERVICES OR MERCHANDISE CONTAINED IN THE PRENEED CONTRACT.

(b) (I) THE CONTRACT SELLER SHALL FILE WITH THE COMMISSIONER A COPY OF EACH FORM OF PRENEED CONTRACT OFFERED OR SOLD BY SUCH CONTRACT SELLER UNLESS THE CONTRACT SELLER NOTIFIES THE COMMISSIONER THAT IT WILL USE PREAUTHORIZED FORMS MADE AVAILABLE BY THE COMMISSIONER. FOR PRENEED CONTRACTS WHICH ARE FUNDED BY THE ASSIGNMENT OF LIFE INSURANCE BENEFITS, THE ASSIGNMENT SHALL BE DEEMED TO BE PART OF THE PRENEED CONTRACT, AND THE CONTRACT SELLER SHALL FILE WITH THE COMMISSIONER A COPY OF EACH FORM OF ASSIGNMENT. IF THE COMMISSIONER HAS NOT APPROVED OR DISAPPROVED ANY FILED PRENEED CONTRACT WITHIN THIRTY DAYS AFTER THE DATE OF FILING, THE CONTRACT SELLER MAY CONSIDER THE CONTRACT APPROVED.

(II) IF A PREVIOUSLY APPROVED PRENEED CONTRACT IS DETERMINED TO BE IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE WHERE THERE HAS BEEN NO CHANGE IN THE PRENEED LAWS OR REGULATIONS UNDER WHICH THE PRENEED CONTRACT FORM HAD BEEN PREVIOUSLY APPROVED, THE COMMISSIONER SHALL GIVE THE CONTRACT SELLER AT LEAST FIVE BUSINESS DAYS' NOTICE OF THE SPECIFIC ALLEGED DEFICIENCIES. FOLLOWING REVIEW OF THE CONTRACT SELLER'S RESPONSE, AND, IF APPROPRIATE, DISCUSSION WITH THE CONTRACT SELLER, IF THE COMMISSIONER DETERMINES THAT THE DEFICIENCIES HAVE NOT BEEN CORRECTED, THE COMMISSIONER MAY PURSUE ADMINISTRATIVE ACTION PURSUANT TO SECTIONS 10-15-114 AND 10-15-115.

(III) PRINTED CONTRACT FORMS THAT WERE APPROVED FOR USE PURSUANT TO THIS ARTICLE AS IT WAS IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE, SHALL REMAIN APPROVED FOR USE UP TO NINETY DAYS AFTER SUCH DATE. WHEN SUCH NINETY-DAY PERIOD EXPIRES, ONLY THOSE FORMS MAY BE USED THAT ARE APPROVED FOR USE PURSUANT TO THIS ARTICLE AS IT IS IN EFFECT AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

(c) AT THE TIME THE PRENEED CONTRACT IS ENTERED INTO, THE CONTRACT SELLER SHALL FURNISH THE CONTRACT BUYER WITH AN ACCURATE COPY OF THE PRENEED CONTRACT.

(d) IF THE CONTRACT SELLER IS A BROKER, OR IF THE PRENEED CONTRACT REQUIRES ANY SERVICES TO BE PERFORMED OR MERCHANDISE TO BE PROVIDED BY A GENERAL PROVIDER OTHER THAN THE CONTRACT SELLER, THE CONTRACT SELLER SHALL FURNISH THE CONTRACT BUYER WITH A COPY OF THE AGREEMENT OR A CERTIFICATE EVIDENCING AN AGREEMENT BETWEEN THE CONTRACT SELLER AND SUCH GENERAL PROVIDER WHEREBY THE GENERAL PROVIDER OR THE HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES OF SUCH GENERAL PROVIDER ARE OBLIGATED TO PERFORM THE SERVICES OR PROVIDE THE MERCHANDISE AS STATED IN THE PRENEED CONTRACT. SUCH AGREEMENT OR CERTIFICATE SHALL STATE THAT THE GENERAL PROVIDER SHALL PERFORM THE CONTRACT SERVICES AND PROVIDE THE MERCHANDISE SPECIFIED IN THE AGREEMENT BETWEEN THE CONTRACT SELLER AND THE GENERAL PROVIDER, UNDER ANY FULLY PAID PRENEED CONTRACT, WITHOUT RECOURSE AGAINST THE CONTRACT BUYER OR HIS OR HER HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES FOR ANY FUNDS DUE FROM THE CONTRACT SELLER. EACH SUCH AGREEMENT OR CERTIFICATE EVIDENCING EACH AGREEMENT SHALL BE FILED WITH THE COMMISSIONER. AS AN ALTERNATIVE TO HAVING A SEPARATE AGREEMENT WITH A GENERAL PROVIDER, THE PRENEED CONTRACT SHALL CONTAIN A SIGNATURE AND STATEMENT OF GUARANTEE BY THE GENERAL PROVIDER OR AN AUTHORIZED AGENT OF SAID GENERAL PROVIDER TO PROVIDE THE MERCHANDISE AND SERVICES AS AGREED IN THE PRENEED CONTRACT.

(2) A PRENEED CONTRACT SHALL BE WRITTEN IN CLEAR, UNDERSTANDABLE LANGUAGE AND SHALL BE PRINTED OR TYPED IN AT LEAST EIGHT-POINT TYPE.

(3) A PRENEED CONTRACT SHALL CONFORM TO ALL OTHER APPLICABLE STATE AND FEDERAL STATUTES AND REGULATIONS.

(4) EACH PRENEED CONTRACT SHALL:

(a) STATE ON ITS FACE THAT "THIS PRENEED CONTRACT IS NOT INSURANCE; HOWEVER, PRENEED CONTRACTS AND CONTRACT SELLERS ARE SUBJECT TO REGULATION BY THE COLORADO DIVISION OF INSURANCE.";

(b) STATE THE NAME AND ADDRESS OF THE PRINCIPAL OFFICE OF THE PRENEED CONTRACT SELLER AND, IF NOT THE SAME, THE NAME AND ADDRESS OF THE PRINCIPAL OFFICE OF THE GENERAL PROVIDER;

(c) IDENTIFY THE CONTRACT BUYER AND THE PRENEED CONTRACT BENEFICIARY;

(d) STATE THE TERMS AND CONDITIONS FOR CANCELLATION BY THE CONTRACT

BUYER WITHIN THE FIRST SEVEN DAYS OF THE CONTRACT BUYER'S SIGNATURE TO THE PRENEED CONTRACT DURING WHICH PERIOD THE CONTRACT BUYER MAY PROVIDE THE CONTRACT SELLER WITH WRITTEN NOTICE OF CANCELLATION. THE CONTRACT SELLER SHALL FORWARD A ONE HUNDRED PERCENT REFUND TO THE CONTRACT BUYER WITHIN TEN CALENDAR DAYS OF RECEIPT OF THE WRITTEN CANCELLATION.

(e) PROVIDE THAT THE CONTRACT BUYER MAY CANCEL THE PRENEED CONTRACT AT ANY TIME AFTER THE SEVEN-DAY PERIOD PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (4) AND THAT ANY RETURN OF CONSIDERATION BE MADE TO THE CONTRACT BUYER, HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES IN A TIMELY MANNER, NOT TO EXCEED THIRTY DAYS AFTER THE DATE OF THE REQUEST FOR RETURN OF CONSIDERATION IN LIEU OF PERFORMANCE, AND NOT TO EXCEED FORTY-FIVE DAYS AFTER THE DATE OF REQUEST FOR RETURN OF CONSIDERATION IN CASE OF DEFAULT OR CANCELLATION;

(f) CONTAIN A PROVISION EXPRESSING THE RIGHT OF THE CONTRACT SELLER TO PERFORM UNDER THE PRENEED CONTRACT IF THE HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES OF THE PRENEED CONTRACT BENEFICIARY HAVE NOT CANCELED THE PRENEED CONTRACT WITHIN ONE HUNDRED SIXTY-EIGHT HOURS AFTER THE DEATH OF THE PRENEED CONTRACT BENEFICIARY, OR IF PREVIOUSLY AUTHORIZED TO PERFORM PRIOR TO SUCH ONE HUNDRED SIXTY-EIGHT HOURS;

(g) SPECIFY THE SERVICES OR MERCHANDISE, OR BOTH, TO BE PROVIDED, AND CLEARLY INDICATE THAT THE PRENEED CONTRACT SELLER GUARANTEES AND FULLY PAYS FOR EACH SUCH SERVICE OR MERCHANDISE, OR BOTH, WHEN IT IS PROVIDED, EXCEPT FOR CASH ADVANCES;

(h) CONTAIN A PROVISION PROVIDING THAT THE PRENEED CONTRACT SELLER SHALL PROVIDE MERCHANDISE AS DESCRIBED IN THE PRENEED CONTRACT OR OF EQUIVALENT QUALITY;

(i) (I) STATE ON ITS FACE THE MANNER IN WHICH IT IS FUNDED. EACH PRENEED CONTRACT SHALL CLEARLY STATE THE TERMS OF THE CONSIDERATION BETWEEN THE CONTRACT SELLER AND THE CONTRACT BUYER.

(II) SUCH TERMS SHALL REQUIRE THAT THE CONTRACT BUYER BE RESPONSIBLE FOR PAYING ANY UNPAID BALANCE OF THE PRENEED CONTRACT PRICE.

(III) WHERE THE CONSIDERATION IS AN ASSIGNMENT OF LIFE INSURANCE BENEFITS, EXCLUDING ANNUITIES, ANY UNPAID BALANCE SHALL NOT EXCEED THE PRICE OF THE SERVICES OR MERCHANDISE PROVIDED AT THE TIME OF DEATH OF THE PRENEED CONTRACT BENEFICIARY, BASED ON THE GENERAL PROVIDER'S GENERAL PRICE LIST THEN IN FORCE, IN EXCESS OF THE VALUE OF THE ASSIGNMENT. SUCH ASSIGNMENT SHALL NOT REQUIRE THE PAYMENT OF ANY UNPAID BALANCE AFTER THE THIRD ANNIVERSARY OF THE ISSUE DATE OF THE PRENEED CONTRACT. THE CONTRACT SELLER MAY REQUIRE ANY ASSIGNMENT WHICH HAS BEEN REDUCED IN VALUE BY ACTION OF THE POLICY OWNER TO BE RETURNED TO FULL VALUE.

(j) CONTAIN A PROVISION STATING THAT THE CONTRACT SELLER IS RESPONSIBLE FOR FURNISHING THE MERCHANDISE AND SERVICES EXPRESSED IN THE PRENEED CONTRACT UNLESS THE CONTRACT BUYER IS IN DEFAULT, THE CONTRACT IS

CANCELED, OR THE ASSIGNMENT FUNDING THE CONTRACT IS VOID, CANCELED, OR OTHERWISE REDUCED IN VALUE BY ACTION OF THE CONTRACT BUYER. THE PRENEED CONTRACT SHALL PROVIDE THAT IN THE CASE OF THE DEATH OF THE PRENEED CONTRACT BENEFICIARY, THE CONTRACT BUYER OR, IF THE CONTRACT BUYER IS DECEASED, SUCH BUYER'S HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES ARE ENTITLED TO A FULL RETURN OF CONSIDERATION INSTEAD OF PERFORMANCE BY THE CONTRACT SELLER. IT SHALL FURTHER PROVIDE WHETHER OR NOT A PRENEED CONTRACT, IN CASE OF DEFAULT OR CANCELLATION, A PRENEED CONTRACT WHICH HAS NOT BEEN PERFORMED, OR PROMISSORY NOTE EXECUTED IN CONNECTION THEREWITH, MAY ALLOW THE CONTRACT SELLER TO RETAIN LIQUIDATED DAMAGES. IN NO EVENT SHALL SUCH LIQUIDATED DAMAGES EXCEED THE LESSER OF THE FUNDS RECEIVED OR FIFTEEN PERCENT OF THE TOTAL PRENEED CONTRACT PRICE. SUCH LIQUIDATED DAMAGES ARE DEEMED TO BE THE REASONABLE VALUE OF ADMINISTRATIVE AND SALES COSTS INCURRED.

(5) ANY PRENEED CONTRACT FOR WHICH MERCHANDISE HAS BEEN CONTRACTED, MANUFACTURED, AND PLACED IN STORAGE SHALL GUARANTEE THAT THE MERCHANDISE, WHEN DELIVERED, SHALL BE MERCHANTABLE AND FIT FOR ITS INTENDED PURPOSE.

(6) NO CONTRACT SELLER SHALL CONDITION A PRENEED CONTRACT UPON THE PURCHASE OF ANY OTHER ITEM OR CONTRACT UNLESS SUCH PRENEED CONTRACTS, OTHER CONTRACTS, AND ANY OTHER ITEM CAN BE INDEPENDENTLY PURCHASED AT THE SAME STATED PRICE. NOTHING IN THIS SECTION SHALL PROHIBIT THE SALE, PURCHASE, OR ASSIGNMENT OF LIFE INSURANCE BENEFITS TO BE IDENTIFIED IN THE PRENEED CONTRACT AND BE USED AS FULL OR PARTIAL CONSIDERATION TO FUND A PRENEED CONTRACT.

(7) THE CONTRACT SELLER SHALL BE DEEMED TO HAVE FULLY PERFORMED UNDER THE PRENEED CONTRACT WHEN:

(a) THE SERVICES OR MERCHANDISE, OR BOTH, CONTRACTED FOR HAVE ACTUALLY BEEN USED IN CONJUNCTION WITH THE DEATH OF THE PRENEED CONTRACT BENEFICIARY; OR

(b) THE SERVICES CONTRACTED FOR HAVE ACTUALLY BEEN FURNISHED; OR

(c) THE CONTRACT BUYER HAS TAKEN PHYSICAL POSSESSION OF THE MERCHANDISE; OR

(d) THE MERCHANDISE CONTRACTED FOR, WHICH THE CONTRACT BUYER HAS AGREED TO PURCHASE PRIOR TO NEED, HAS BEEN MANUFACTURED AND PLACED IN STORAGE AND A CERTIFICATE OF TITLE OR WAREHOUSE RECEIPT HAS BEEN ISSUED IN THE CONTRACT BUYER'S NAME, ANY SUCH CERTIFICATE OF TITLE OR WAREHOUSE RECEIPT HAVING EFFECTIVELY AND UNALTERABLY TRANSFERRED OWNERSHIP OF THE MERCHANDISE TO THE CONTRACT BUYER AND ALL SUCH MERCHANDISE HAVING BEEN FULLY PROTECTED BY CASUALTY INSURANCE AGAINST ALL HAZARDS; OR

(e) FULL PAYMENT TO THE MANUFACTURER HAS BEEN MADE BY THE CONTRACT SELLER WITHIN FORTY-FIVE DAYS AFTER THE SALE OF THE MERCHANDISE CONTRACTED FOR, WHICH THE CONTRACT BUYER HAS AGREED TO PURCHASE PRIOR TO

NEED, BY THE CONTRACT BUYER, THE MERCHANDISE HAS BEEN MANUFACTURED NOT LATER THAN SIX MONTHS THEREAFTER AND PLACED IN STORAGE, AND A CERTIFICATE OF TITLE OR WAREHOUSE RECEIPT HAS BEEN ISSUED IN THE CONTRACT BUYER'S NAME, ANY SUCH CERTIFICATE OF TITLE OR WAREHOUSE RECEIPT HAVING EFFECTIVELY AND UNALTERABLY TRANSFERRED OWNERSHIP OF THE MERCHANDISE TO THE CONTRACT BUYER AND ALL SUCH MERCHANDISE HAVING BEEN FULLY PROTECTED BY CASUALTY INSURANCE AGAINST ALL HAZARDS, AS STATED IN PARAGRAPH (d) OF THIS SUBSECTION (7); OR

(f) THE MERCHANDISE CONTRACTED FOR, WHICH THE CONTRACT BUYER HAS AGREED TO PURCHASE PRIOR TO NEED, HAS BEEN INSTALLED UPON OR PLACED WITHIN THE INTERMENT SITE OF THE CONTRACT BUYER, INCLUDING THE PLACE OF INTERMENT, ENTOMBMENT, OR GROUND BURIAL.

(8) IN ANY PRENEED CONTRACT THAT INCLUDES MERCHANDISE CONTRACTED FOR PURSUANT TO PARAGRAPHS (d) AND (e) OF SUBSECTION (7) OF THIS SECTION, UPON FULL PAYMENT FOR THE MERCHANDISE BY THE CONTRACT BUYER, THE TITLE SHALL BE DEEMED TRANSFERRED TO THE CONTRACT BUYER.

(9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, UPON THE REQUEST AND CONSENT OF THE CONTRACT BUYER, A PRENEED CONTRACT, RELATED TRUST, OR ASSIGNMENT OF THE OWNERSHIP OR THE BENEFITS OF A LIFE INSURANCE POLICY MAY BE MADE IRREVOCABLE. HOWEVER, THE CONTRACT BUYER, OR HIS OR HER HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES MAY, AT ANY TIME BEFORE PERFORMANCE, TRANSFER THE FUNDS OR THE ASSIGNMENT TO ANY OTHER CONTRACT SELLER OR GENERAL PROVIDER AS REQUIRED BY APPLICABLE LAWS.

10-15-106. Preexisting contracts. THIS ARTICLE SHALL NOT BE CONSTRUED SO AS TO IMPAIR OR AFFECT THE OBLIGATION OF ANY PREEXISTING LAWFUL CONTRACT.

10-15-107. Deposit of funds with trustee. (1) IF A CONTRACT SELLER ENTERS INTO A PRENEED CONTRACT IN WHICH THE CONSIDERATION IS FUNDS, THE CONTRACT SELLER SHALL DEPOSIT NOT LESS THAN SEVENTY-FIVE PERCENT OF THE TOTAL PRENEED CONTRACT PRICE WITH A TRUSTEE. THE CONTRACT SELLER SHALL DEPOSIT ALL FUNDS IN EXCESS OF TWENTY-FIVE PERCENT OF THE TOTAL PRENEED CONTRACT PRICE WITH A TRUSTEE WITHIN FORTY-FIVE DAYS AFTER RECEIPT THEREOF. ALL FUNDS DEPOSITED WITH A TRUSTEE SHALL BE DEPOSITED UNDER THE TERMS OF A TRUST INSTRUMENT, WHICH SHALL NOT BE INCONSISTENT OR IN CONFLICT WITH THE PROVISIONS OF THIS ARTICLE, AND SHALL BE HELD IN TRUST BY THE TRUSTEE PURSUANT TO THE PROVISIONS OF THIS ARTICLE. COPIES OF ALL TRUST INSTRUMENTS AND AMENDMENTS TO SUCH TRUST INSTRUMENTS SHALL BE FILED WITH THE COMMISSIONER.

(2) FOR EACH DEPOSIT WITH A TRUSTEE, THE CONTRACT SELLER SHALL MAKE A RECORD OF, AND PROVIDE THE TRUSTEE WITH, THE NAME AND ADDRESS OF THE CONTRACT BUYER, THE TOTAL PRENEED CONTRACT PRICE, AND THE AMOUNT OF TRUSTABLE FUNDS. THE CONTRACT SELLER SHALL KEEP SUCH RECORD, AS TO EACH CONTRACT BUYER, UNTIL FIVE YEARS FOLLOWING THE EARLIER OF:

(a) THE DEATH OF THE PRENEED CONTRACT BENEFICIARY; OR

(b) THE REMOVAL OF FUNDS FROM TRUST.

(3) WITHIN THIRTY DAYS FOLLOWING THE LAST DAY OF THE CALENDAR QUARTER, THE CONTRACT SELLER SHALL PROVIDE TO THE TRUSTEE A DETAILED LISTING OF ALL PRENEED CONTRACTS OUTSTANDING, THE NAME AND ADDRESS OF EACH CONTRACT BUYER, THE TOTAL PRENEED CONTRACT PRICE, ACCUMULATED RECEIPTS, AND THE TOTAL AMOUNT OF FUNDS TRUSTED FOR EACH PRENEED CONTRACT. IF THE TRUSTEE FINDS A SIGNIFICANT DISCREPANCY BETWEEN SUCH CUMULATIVE LISTING AND THE AGGREGATE DEPOSITS IN TRUST, THE TRUSTEE SHALL CONTACT THE CONTRACT SELLER IN ORDER TO RECONCILE THE DISCREPANCY. IF THE TRUSTEE IS UNABLE TO RESOLVE SUCH DISCREPANCY TO THE TRUSTEE'S SATISFACTION, THE TRUSTEE SHALL PROMPTLY NOTIFY THE COMMISSIONER IN WRITING OF SUCH DISCREPANCY.

10-15-108. Standard for investments by trustees. (1) SAVINGS AND LOAN ASSOCIATIONS ACTING AS TRUSTEES UNDER THE TERMS OF THIS ARTICLE SHALL INVEST TRUST FUNDS AS OTHERWISE AUTHORIZED UNDER THE LAWS OF THIS STATE RELATING TO THE INVESTMENT OF FUNDS BY SAVINGS AND LOAN ASSOCIATIONS AND THE FEDERAL LAW GOVERNING SUCH INVESTMENTS, BUT SAVINGS AND LOAN ASSOCIATIONS SHALL ACCEPT TRUST FUNDS ONLY TO THE EXTENT THAT THE FULL AMOUNT THEREOF IS INSURED BY THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.

(2) BANKS AND TRUST COMPANIES ACTING AS TRUSTEES UNDER THE TERMS OF THIS ARTICLE SHALL BE SUBJECT TO THE FOLLOWING INVESTMENT STANDARDS: IN ACQUIRING, INVESTING, REINVESTING, EXCHANGING, RETAINING, SELLING, AND MANAGING PROPERTY FOR THE BENEFIT OF OTHERS, TRUSTEES SHALL BE REQUIRED TO HAVE IN MIND THE RESPONSIBILITIES WHICH ARE ATTACHED TO SUCH OFFICES AND THE SIZE, NATURE, AND NEEDS OF THE ESTATES ENTRUSTED TO THEIR CARE AND SHALL EXERCISE THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING WHICH MEN OF PRUDENCE, DISCRETION, AND INTELLIGENCE EXERCISE IN THE MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL. WITHIN THE LIMITATIONS OF THE STANDARDS SET FORTH IN THIS SUBSECTION (2), TRUSTEES ARE AUTHORIZED TO ACQUIRE AND RETAIN EVERY KIND OF PROPERTY, REAL, PERSONAL, AND MIXED, AND EVERY KIND OF INVESTMENT, SPECIFICALLY INCLUDING, BUT NOT BY WAY OF LIMITATION, BONDS, DEBENTURES, AND OTHER CORPORATE OBLIGATIONS, SAVINGS ACCOUNTS IN INSURED SAVINGS AND LOAN ASSOCIATIONS, STOCKS, PREFERRED OR COMMON, SECURITIES OF ANY OPEN-END OR CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST, AND PARTICIPATIONS IN COMMON TRUST FUNDS, WHICH MEN OF PRUDENCE, DISCRETION, AND INTELLIGENCE WOULD ACQUIRE OR RETAIN FOR THEIR OWN ACCOUNT.

(3) CREDIT UNIONS ACTING AS TRUSTEES UNDER THE TERMS OF THIS ARTICLE SHALL INVEST FUNDS RECEIVED UNDER AN ACCOUNT AGREEMENT AS AUTHORIZED UNDER THE LAWS OF THIS STATE OR THE UNITED STATES RELATING TO THE INVESTMENT OF FUNDS BY CREDIT UNIONS, BUT A CREDIT UNION SHALL ACCEPT TRUST FUNDS ONLY TO THE EXTENT THAT THE FULL AMOUNT THEREOF IS INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND OR OTHER INSURER APPROVED BY THE COMMISSIONER OF FINANCIAL SERVICES.

10-15-109. Disbursements - excess trust assets. AT REASONABLE TIMES, AND UNLESS THE TRUSTEE IS NOTIFIED BY THE COMMISSIONER THAT THE PRENEED SELLER IS IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE OR BY THE CONTRACT SELLER NOT TO DISBURSE TRUST ASSETS, THE TRUSTEE SHALL DISBURSE EXCESS TRUST ASSETS TO THE CONTRACT SELLER IN ACCORDANCE WITH THE TERMS OF THE PRENEED CONTRACT BETWEEN THE CONTRACT BUYER AND THE CONTRACT SELLER. THE TRUSTEE SHALL NOT DISBURSE ANY EXCESS TRUST ASSETS UNTIL SUCH TIME AS THE VALUE OF SUCH TRUST ASSETS EXCEEDS THE TOTAL OF ALL FUNDS PAID BY THE CONTRACT BUYERS UNDER THE PRENEED CONTRACTS. IF MORE THAN ONE TRUST ACCOUNT IS USED BY THE CONTRACT SELLER, THE AGGREGATE OF ALL TRUST ACCOUNTS MUST EXCEED THE TOTAL OF ALL FUNDS PAID BY ALL CONTRACT BUYERS BEFORE ANY DISBURSEMENT BY THE TRUSTEE. IT IS THE OBLIGATION AND RESPONSIBILITY OF THE TRUSTEE TO CONDUCT AT LEAST ANNUAL VALUATIONS OF THE MARKET VALUE OF THE ASSETS HELD IN TRUST, WHICH MAY INCLUDE ACCRUED INTEREST.

10-15-110. Discharge of preneed contract - disbursements by trustees.

(1) BEFORE DISBURSING ANY TRUST ASSETS TO DISCHARGE A PRENEED CONTRACT, THE TRUSTEE SHALL DETERMINE THAT THE AMOUNT OF ASSETS TO BE RELEASED DOES NOT EXCEED THE FUNDS TRUSTED.

(2) IF A PRENEED CONTRACT IS CANCELLED BY THE CONTRACT BUYER OR THE CONTRACT BUYER'S HEIRS, ASSIGNS, OR DULY AUTHORIZED REPRESENTATIVES, THE TRUSTEE SHALL REQUIRE A COPY OF THE SIGNED CANCELLATION REQUEST BEFORE RELEASING TRUST ASSETS.

(3) IF A PRENEED CONTRACT IS CANCELLED BY THE CONTRACT SELLER DUE TO A DEFAULT BY THE CONTRACT BUYER, THE TRUSTEE SHALL REQUIRE AN AFFIDAVIT FROM AN OFFICER OR OWNER OF THE CONTRACT SELLER SETTING FORTH SUCH DEFAULT BEFORE RELEASING FUNDS.

(4) IF A PRENEED CONTRACT IS PERFORMED BY THE CONTRACT SELLER, THE TRUSTEE SHALL REQUIRE AN AFFIDAVIT FROM AN OFFICER OR OWNER OF THE CONTRACT SELLER SETTING FORTH SUCH PERFORMANCE BEFORE RELEASING FUNDS.

10-15-111. Insurance-funded preneed contracts. (1) IF A CONTRACT SELLER ENTERS INTO A PRENEED CONTRACT IN WHICH THE CONSIDERATION IS THE ASSIGNMENT OF LIFE INSURANCE BENEFITS, SUCH PRENEED CONTRACT SHALL STATE THAT ALL OR PART OF SUCH ASSIGNED FUNDS SHALL BE PAID TO THE CONTRACT SELLER TO PAY FOR THE SERVICES OR MERCHANDISE, OR BOTH, INCLUDED IN THE PRENEED CONTRACT. THE PRENEED CONTRACT AND THE ASSIGNMENT SHALL IDENTIFY THE POLICY BEING ASSIGNED INCLUDING THE NAME OF THE ISSUING COMPANY. THE INITIAL BENEFIT ASSIGNED SHALL NOT EXCEED THE PRENEED CONTRACT PRICE WHEN THE ASSIGNMENT IS EXECUTED. THE PURCHASER OF ANY INSURANCE POLICY TO BE ASSIGNED UNDER A PRENEED CONTRACT MUST HAVE AN INSURABLE INTEREST IN THE LIFE OF THE PRENEED CONTRACT BENEFICIARY.

(2) IF THE VALUE OF THE ASSIGNMENT EXCEEDS THE PRICE OF THE PRENEED CONTRACT SERVICES OR MERCHANDISE, OR BOTH, AT THE TIME OF THE DEATH OF THE PRENEED CONTRACT BENEFICIARY, BASED ON THE GENERAL PROVIDER'S GENERAL PRICE LIST IN FORCE IN ACCORDANCE WITH THE REGULATIONS OF THE FEDERAL TRADE

COMMISSION, THE EXCESS AMOUNTS SHALL BE PAID TO THE BENEFICIARY UNDER THE POLICY OR, IF NONE, TO THE ESTATE OF THE PRENEED CONTRACT BENEFICIARY.

10-15-112. Rules. THE COMMISSIONER MAY, AFTER NOTICE AND HEARING AS PROVIDED IN ARTICLE 4 OF TITLE 24, C.R.S., PROMULGATE SUCH RULES AS MAY BE REASONABLY NECESSARY FOR THE EFFECTIVE ADMINISTRATION OF AND NOT INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

10-15-113. Applicability of administrative procedure act. ALL PROCEDURES FOR THE ISSUANCE, SUSPENSION, OR REVOCATION OF LICENSES SHALL BE PURSUANT TO SECTIONS 24-4-104 TO 24-4-107, C.R.S., EXCEPT WHERE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. ANY FINAL ACTION WITH RESPECT TO THE ISSUANCE, SUSPENSION, OR REVOCATION OF LICENSES SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S.

10-15-114. Investigations - actions against licensees. (1) THE COMMISSIONER MAY IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH SEPARATE OFFENSE; MAY ISSUE A LETTER OF ADMONITION; MAY PLACE A CONTRACT SELLER ON PROBATION UNDER THE COMMISSIONER'S CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME AS THE COMMISSIONER DEEMS APPROPRIATE; AND MAY REFUSE TO RENEW, MAY REVOKE, OR MAY SUSPEND THE LICENSE OF ANY CONTRACT SELLER IF, AFTER AN INVESTIGATION AND AFTER NOTICE AND A HEARING PURSUANT TO THE PROVISION OF SECTION 24-4-104, C.R.S., THE COMMISSIONER DETERMINES THAT THE CONTRACT SELLER HAS:

(a) FAILED TO COMPLY WITH OR HAS VIOLATED ANY PROVISION OF THIS ARTICLE OR ANY REGULATION OR ORDER LAWFULLY MADE PURSUANT TO AND WITHIN THE AUTHORITY OF THIS ARTICLE; OR

(b) USED FALSE OR MISLEADING ADVERTISING OR MADE ANY FALSE OR MISLEADING STATEMENT OR CONCEALMENT IN THE CONTRACT SELLER'S APPLICATION FOR LICENSURE; OR

(c) EMPLOYED ANY DEVICE, SCHEME, OR ARTIFICE WHICH RESULTS IN DEFRAUDING A CONTRACT BUYER; OR

(d) DISPOSED OF, CONCEALED, DIVERTED, CONVERTED, OR OTHERWISE FAILED TO ACCOUNT FOR ANY FUNDS OR ASSETS OF ANY CONTRACT BUYER WHICH ARE SUBJECT TO REGULATION PURSUANT TO THIS ARTICLE; OR

(e) COMMITTED ANY ACT THAT CONSTITUTES A VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.; OR

(f) BEEN CONVICTED OF, OR ANY OFFICER, DIRECTOR, OR CONTROLLING SHAREHOLDER HAS BEEN CONVICTED OF, A CRIME INVOLVING FRAUD OR MISAPPROPRIATION OR MISUSE OF FUNDS; OR

(g) FAILED TO PROVIDE APPROPRIATE RECORDS REQUESTED BY THE COMMISSIONER AS PART OF AN INVESTIGATION OF A COMPLAINT FILED WITH THE COMMISSIONER.

10-15-115. Injunctions - cease and desist orders. (1) WHENEVER THE

COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT ANY PERSON IS VIOLATING ANY PROVISION OF THIS ARTICLE OR ANY RULE OR ORDER PROMULGATED PURSUANT TO THIS ARTICLE, THE COMMISSIONER MAY:

(a) IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, APPLY FOR AN INJUNCTION IN ANY COURT OF COMPETENT JURISDICTION TO PERPETUALLY ENJOIN SUCH PERSON FROM COMMITTING ANY ACT PROHIBITED BY THIS ARTICLE; OR

(b) AFTER NOTICE AND HEARING PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S., ISSUE AN ORDER TO CEASE AND DESIST THE ACT OR ACTS VIOLATING ANY PROVISION OF THIS ARTICLE. A COPY OF THE CEASE AND DESIST ORDER SHALL BE FURNISHED TO EACH PARTY.

10-15-116. Surrender of license. ANY CONTRACT SELLER MAY SURRENDER SUCH CONTRACT SELLER'S LICENSE BY DELIVERING IT TO THE COMMISSIONER WITH WRITTEN NOTICE OF ITS SURRENDER, BUT SUCH SURRENDER SHALL NOT AFFECT THE CONTRACT SELLER'S CIVIL OR CRIMINAL LIABILITY FOR ACTS COMMITTED PRIOR THERETO.

10-15-117. Reinstatement of license. THE COMMISSIONER MAY REINSTATE A SUSPENDED LICENSE OR ISSUE A NEW LICENSE TO A PERSON WHOSE LICENSE HAS BEEN REVOKED, IF NO FACT OR CONDITION THEN EXISTS WHICH CLEARLY WOULD HAVE JUSTIFIED THE COMMISSIONER IN REFUSING ORIGINALLY TO ISSUE SUCH LICENSE AND THE VIOLATIONS OF THIS ARTICLE WHICH PRECEDED THE SUSPENSION OR REVOCATION OF THE LICENSE HAVE BEEN CORRECTED.

10-15-118. Violation. (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE COMMITS A CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S. ANY PERSON WHO VIOLATES THE TRUST FUND PROVISIONS OF THIS ARTICLE OR ANY OTHER MISAPPROPRIATION OF FUNDS COMMITS THEFT PURSUANT TO SECTION 18-4-401, C.R.S.

(2) THE COMMISSIONER MAY APPLY TO A COURT OF COMPETENT JURISDICTION FOR THE APPOINTMENT OF A RECEIVER IF THE COMMISSIONER DETERMINES THAT SUCH APPOINTMENT IS NECESSARY TO PROTECT THE INTERESTS OF THE CONTRACT BUYERS.

10-15-119. Immunity from prosecution. (1) IF ANY PERSON ASKS TO BE EXCUSED FROM ATTENDING AND TESTIFYING OR FROM PRODUCING ANY BOOKS, PAPERS, RECORDS, CORRESPONDENCE, OR OTHER DOCUMENTS AT ANY HEARING ON THE GROUND THAT THE TESTIMONY OR EVIDENCE REQUIRED OF THE PERSON MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A PENALTY OR FORFEITURE, AND, NOTWITHSTANDING SUCH REQUEST, THE COMMISSIONER DIRECTS SUCH PERSON TO GIVE SUCH TESTIMONY OR PRODUCE SUCH EVIDENCE, SUCH PERSON SHALL NONETHELESS COMPLY WITH SUCH DIRECTION BUT THE PERSON SHALL NOT THEREAFTER BE PROSECUTED OR SUBJECTED TO ANY PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF ANY TRANSACTION, MATTER, OR THING CONCERNING WHICH THE PERSON TESTIFIES OR PRODUCES EVIDENCE PURSUANT THERETO; AND NO TESTIMONY SO GIVEN OR EVIDENCE SO PRODUCED SHALL BE RECEIVED AGAINST SUCH PERSON UPON ANY CRIMINAL ACTION, INVESTIGATION, OR PROCEEDING. HOWEVER, NO PERSON WHO HAS FILED A WAIVER PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE IMMUNE FROM PROSECUTION ON ACCOUNT OF TESTIMONY GIVEN OR

EVIDENCE PRODUCED.

(2) NO PERSON SO TESTIFYING SHALL BE EXEMPT FROM PROSECUTION OR PUNISHMENT FOR ANY PERJURY IN THE FIRST DEGREE COMMITTED BY THE PERSON WHILE SO TESTIFYING, AND THE TESTIMONY OR EVIDENCE SO GIVEN OR PRODUCED SHALL BE ADMISSIBLE AGAINST THE PERSON UPON ANY CRIMINAL ACTION, INVESTIGATION, OR PROCEEDING CONCERNING SUCH PERJURY; NOR SHALL THE PERSON BE EXEMPT FROM THE REFUSAL, REVOCATION, OR SUSPENSION OF ANY LICENSE, PERMISSION, OR AUTHORITY CONFERRED, OR TO BE CONFERRED, PURSUANT TO THE LAWS OF THIS STATE.

(3) ANY PERSON MAY EXECUTE, ACKNOWLEDGE, AND FILE IN THE OFFICE OF THE COMMISSIONER A STATEMENT EXPRESSLY WAIVING HIS OR HER IMMUNITY OR PRIVILEGE WITH RESPECT TO ANY TRANSACTION, MATTER, OR THING SPECIFIED IN SUCH STATEMENT, AND THEREUPON THE TESTIMONY OF SUCH PERSON OR SUCH EVIDENCE IN RELATION TO SUCH TRANSACTION, MATTER, OR THING MAY BE RECEIVED OR PRODUCED BEFORE ANY JUDGE OR JUSTICE, COURT, TRIBUNAL, GRAND JURY, OR OTHER AUTHORITY, AND IF IT IS SO RECEIVED OR PRODUCED, SUCH INDIVIDUAL SHALL NOT BE ENTITLED TO ANY IMMUNITY OR PRIVILEGE ON ACCOUNT OF SUCH TESTIMONY SO GIVEN OR EVIDENCE SO PRODUCED. A WAIVER EXECUTED PURSUANT TO THIS SUBSECTION (3) SHALL BE VALID ONLY IF IT IS:

(a) ENTERED INTO VOLUNTARILY;

(b) EXECUTED BY A PERSON WITH THE INTELLECTUAL CAPACITY TO UNDERSTAND THE CONSEQUENCES OF EXECUTING SUCH A WAIVER;

(c) NOT EXECUTED UNDER THREAT, COERCION, OR DURESS; AND

(d) (I) ENTERED INTO KNOWINGLY.

(II) FOR PURPOSES OF THIS PARAGRAPH (d), A WAIVER IS ENTERED INTO KNOWINGLY WHEN THE PERSON EXECUTING SUCH WAIVER HAS BEEN INFORMED OF HIS OR HER RIGHT TO CONFER WITH INDEPENDENT LEGAL COUNSEL.

10-15-120. Rule against perpetuities inapplicable. NO TRUST CREATED PURSUANT TO THE PROVISIONS OF THIS ARTICLE, NOR ANY INTEREST THEREIN, SHALL BE DEEMED TO BE INVALID BY ANY EXISTING LAW OR RULE AGAINST PERPETUITIES OR ACCUMULATIONS OR SUSPENSION OF THE POWER OF ALIENATION, AND SUCH TRUST AND ANY INTEREST THEREIN MAY CONTINUE FOR SUCH TIME AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES FOR WHICH IT MAY BE CREATED.

10-15-121. Other insurance laws applicable. IN ADDITION TO THE PROVISIONS OF THIS ARTICLE, THE PROVISIONS OF ARTICLE 1 OF THIS TITLE AND PARTS 9 AND 11 OF ARTICLE 3 OF THIS TITLE, EXCEPT AS THEY ARE INCONSISTENT WITH THE PROVISIONS OR PURPOSES OF THIS ARTICLE, SHALL APPLY TO ANY PERSON REGULATED PURSUANT TO THIS ARTICLE.

SECTION 2. 10-7-102 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-7-102. Life insurance policies - requirements. (1) It is unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy unless the same contains the following provisions:

(j) IF A POLICY IS ADVERTISED OR MARKETED AS A MEANS OF PAYMENT OF FINAL EXPENSES FOR FUNERAL, INTERMENT, ENTOMBMENT, OR CREMATION MERCHANDISE OR SERVICES OTHER THAN ACCORDING TO THE PROVISIONS OF ARTICLE 15 OF THIS TITLE, THE POLICY SHALL STATE IN PREDOMINATE TYPE:

"THIS POLICY DOES NOT GUARANTEE THAT ITS PROCEEDS WILL BE SUFFICIENT TO PAY FOR ANY PARTICULAR SERVICES OR MERCHANDISE AT TIME OF NEED OR THAT SERVICES OR MERCHANDISE SHALL BE PROVIDED BY ANY PARTICULAR PROVIDER."

SECTION 3. Repeal of rules. To further the general assembly's intent to rescind or delete rules unnecessary for the administrative functions of an agency, as expressed in section 24-34-914, Colorado Revised Statutes, and to require the commissioner of insurance to repromulgate necessary rules, all rules of the commissioner of insurance concerning the administration of article 15 of title 10, Colorado Revised Statutes, found in section 5 of 3 CCR 702-2, are hereby expressly repealed, effective on the date of enactment of this act.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of insurance, for the fiscal year beginning July 1, 1995, the sum of six thousand two hundred fifty-six dollars (\$6,256), or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1995