

CHAPTER 287

INSURANCE

SENATE BILL 13-125

BY SENATOR(S) Todd, Jahn;
also REPRESENTATIVE(S) DelGrosso, Young.

AN ACT

CONCERNING PRENEED FUNERAL CONTRACTS, AND, IN CONNECTION THEREWITH, REDUCING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 10-15-102, **amend** (6) and (13); and **add** (8.5) as follows:

10-15-102. Definitions. As used in this article, unless the context otherwise requires:

(6) "Contract seller" means a person who sells OR OFFERS TO SELL FUNERAL GOODS, merchandise, ~~and~~ OR services through a preneed contract.

(8.5) "FUNERAL GOODS" HAS THE SAME MEANING AS IN SECTION 12-54-102, C.R.S.

(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~~ THAT 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~~ ARE provided or performed in connection with the final disposition of the ~~preneed contract~~ beneficiary's body. Consideration for a preneed contract is funds, DEPOSITS, or the assignment of life insurance benefits.

(b) "PRENEED CONTRACT" DOES NOT INCLUDE 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~~

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

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.~~

SECTION 2. In Colorado Revised Statutes, 10-15-103, **amend** (1) (a) and (4) as follows:

10-15-103. License procedure - records - examination of records. (1) (a) ~~No~~ A contract seller shall NOT enter into a preneed contract or accept any funds or other consideration without ~~first securing~~ a license from the commissioner. ~~TO BE VALID, AN~~ application for an initial license shall MUST be in writing, signed by the applicant, and duly verified on forms furnished by the commissioner. Each application shall MUST be accompanied by payment of five hundred dollars and EITHER:

(I) A current balance sheet, income statement, and statement of cash flow to demonstrate THAT THE BUSINESS HAS A net worth of at least ten thousand dollars, ~~as evidenced by the signature of~~ SIGNED BY a certified public accountant ("CPA"), ~~or public accountant ("PA")~~; or, if prepared by the applicant OR PUBLIC ACCOUNTANT, accompanied by a current tax return; or

(II) ~~in the alternative, the applicant shall furnish the commissioner~~ A surety bond in the amount of AT LEAST ten thousand dollars to honor preneed contract obligations.

(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, during ordinary business hours, shall examine the books, records, and accounts of the contract seller at least once every five years, and more often as necessary to ensure compliance with this article, and for that purpose may require the attendance of and examine under oath all persons whose testimony the commissioner may require.~~ THE COMMISSIONER MAY INVESTIGATE THE BOOKS, RECORDS, AND ACCOUNTS OF A CONTRACT SELLER TO ENSURE THAT TRUST FUNDS, PRENEED CONTRACTS, AND PRENEED INSURANCE POLICIES COMPLY WITH THIS ARTICLE. THE COMMISSIONER, OR A QUALIFIED PERSON DESIGNATED BY THE COMMISSIONER, MAY EXAMINE THE BOOKS, RECORDS, AND ACCOUNTS OF THE CONTRACT SELLER AS OFTEN AS NECESSARY UPON RECEIVING A COMPLAINT OR INDICATION OF NONCOMPLIANCE AND MAY REQUIRE THE ATTENDANCE OF AND EXAMINE UNDER OATH ALL PERSONS WHOSE TESTIMONY THE COMMISSIONER NEEDS FOR THIS PURPOSE.

(b) THE COMMISSIONER SHALL MAKE EVERY REASONABLE EFFORT TO UTILIZE

EXAMINERS EMPLOYED BY THE DIVISION OF INSURANCE IN PREFERENCE TO DESIGNATING PERSONS WHO ARE NOT EMPLOYEES OF THE DIVISION OF INSURANCE TO PERFORM EXAMINATIONS. IF EVIDENCE OF A VIOLATION OF THIS ARTICLE IS KNOWN, the commissioner may designate a qualified person who is not an employee of the division of insurance to examine ~~any~~ a contract seller, and the CONTRACT SELLER SHALL DIRECTLY PAY THE reasonable expenses and charges of ~~such~~ the 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~~ THE EXAMINER by filing an objection with the commissioner that sets forth the charges the examinee considers to be unreasonable, together with the basis for ~~such claim of unreasonable~~ DISPUTING THE charges. ~~No~~ Amounts that are ~~so~~ disputed ~~will be~~ ARE NOT 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~~ FOR the examination performed.

SECTION 3. In Colorado Revised Statutes, **add** 10-15-103.5 as follows:

10-15-103.5. Scope of article - exemptions. (1) THIS ARTICLE DOES NOT APPLY TO A PERSON PROVIDING A DEVELOPED FINAL RESTING PLACE WITHIN A DESIGNATED CEMETERY APPROVED FOR THE INTERMENT, ENTOMBMENT, OR INURNMENT OF HUMAN REMAINS.

(2) (a) A PERSON PROVIDING AN UNDEVELOPED FINAL RESTING PLACE IS EXEMPT FROM THIS ARTICLE IF THE CEMETERY WHERE THE UNDEVELOPED FINAL RESTING PLACE IS LOCATED CONTAINS UNSOLD DEVELOPED FINAL RESTING PLACES REPRESENTING AT LEAST TWENTY-FIVE PERCENT OF THE OUTSTANDING PAID-IN-FULL CONTRACTS FOR UNDEVELOPED FINAL RESTING PLACES.

(b) IF THE 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 WITH A FULL REFUND OF MONEYS PAID TO QUALIFY FOR THE EXEMPTION UNDER THIS SUBSECTION (2).

SECTION 4. In Colorado Revised Statutes, **amend** 10-15-104 as follows:

10-15-104. Annual report. Each contract seller shall file ~~an annual~~ WITH THE COMMISSIONER A 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~~ THAT is required to deposit funds with a trustee shall state the name of each trustee ~~with which it has~~ WHERE trust funds ARE 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~~ THAT has voluntarily or involuntarily discontinued the sale of preneed contracts ~~shall not be required to~~ NEED NOT obtain a renewal of its license but it shall continue to make annual reports to the commissioner until all ~~such~~ THE contracts have been fully performed. ~~by it and shall pay fifty percent of the fee structure prescribed by section 10-15-103 (5)~~ (b):

SECTION 5. In Colorado Revised Statutes, 10-15-105, **amend** (9); and **add** (10) as follows:

10-15-105. Contract requirements - refund - full performance. (9) (a) 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~~ THE PERSON WITH THE RIGHT OF FINAL DISPOSITION may, at any time before performance, transfer the funds or the assignment to ~~any other~~ ANOTHER contract seller or general provider as required by applicable laws.

(b) THE CONTRACT BUYER OR, IF THE CONTRACT BUYER HAS DIED, THE PERSON AUTHORIZED TO DIRECT THE DISPOSITION OF THE DECEASED CONTRACT BUYER, MAY SELECT ANOTHER FUNERAL PROVIDER TO PROVIDE THE PREARRANGED FUNERAL MERCHANDISE AND SERVICES. IF ANOTHER PROVIDER IS SELECTED, THE ORIGINAL PRENEED SELLER MAY RETAIN UP TO FIFTEEN PERCENT OF THE ORIGINAL PRENEED CONTRACT PURCHASE PRICE.

(10) (a) THE CONTRACT SELLER SHALL:

(I) DISCLOSE THE NAME AND ADDRESS OF THE TRUSTEE WHO HOLDS THE PRENEED CONTRACT FUNDS; AND

(II) NOTIFY THE BUYER WHEN THE PRENEED CONTRACT FUNDS ARE DEPOSITED INTO TRUST.

(b) TO COMPLY WITH THIS SUBSECTION (10), THE DISCLOSURE MUST ADVISE THE CONSUMER TO CONTACT THE COMMISSIONER IF CONFIRMATION IS NOT RECEIVED BY A SPECIFIED TIME.

SECTION 6. In Colorado Revised Statutes, **add** 10-15-111.5 as follows:

10-15-111.5. Change of ownership - rules. (1) (a) A SALE OF AN EXISTING PRENEED CONTRACT THAT CHANGES WHO PROVIDES FUNERAL GOODS AND SERVICES IS VOID UNLESS APPROVED BY THE COMMISSIONER UNDER THIS SECTION. TO TRANSFER OWNERSHIP, THE CONTRACT SELLER MUST REPORT A PENDING SALE OF THE PRENEED CONTRACT TO THE COMMISSIONER IN WRITING AT LEAST FOURTEEN DAYS BEFORE THE SALE CLOSING. THE NOTICE MUST INCLUDE:

(I) THE NAME AND ADDRESS OF THE CONTRACT SELLER;

(II) THE NAME AND ADDRESS OF THE ORGANIZATION PROPOSING TO ACQUIRE OWNERSHIP OF THE PRENEED CONTRACT, REFERRED TO IN THIS SECTION AS THE "TRANSFeree";

(III) THE NAME AND ADDRESS OF THE OWNERS, OPERATORS, CORPORATE OFFICERS, PARTNERS, OR MEMBERS OF THE TRANSFeree;

(IV) THE NAME AND ADDRESS OF THE FINANCIAL INSTITUTION WHERE PRENEED FUNDS ARE HELD;

(V) THE NAME UNDER WHICH PRENEED FUNDS ARE HELD;

(VI) A DESCRIPTION OF EACH PRENEED CONTRACT, ARRANGEMENT, OR AGREEMENT INCLUDED IN THE SALE;

(VII) AN ACCOUNTING OF THE TRUST FUND AND ALL TRANSFERRED AND OUTSTANDING PRENEED CONTRACTS, INCLUDING THE NUMBER OF PENDING CONTRACTS, THE FULL CONTRACT VALUE, THE CURRENT VALUE FOR EACH CONTRACT, A RECORD OF ALL DISBURSEMENTS FROM PRENEED TRUST ACCOUNTS WITHIN THE LAST TWENTY-FOUR MONTHS, AND THE INFORMATION REQUIRED IN THE ANNUAL REPORT;

(VIII) ANY DOCUMENTS OR AMENDMENTS THERETO CONCERNING THE TRUST OR INSURANCE FUNDS, OR ANY OTHER PREPLANNING OR PREFUNDING AGREEMENTS;

(IX) A COPY OF THE NOTICE PROPOSED TO BE SENT TO THE CONTRACT BUYERS AFTER THE TRANSFER; AND

(X) ANY OTHER INFORMATION THAT IS REASONABLY REQUIRED BY THE COMMISSIONER BY RULE.

(b) THE COMMISSIONER MAY, BY RULE OR ORDER, WAIVE OR REDUCE ANY OR ALL OF THE REQUIREMENTS IN SUBPARAGRAPHS (I) TO (X) OF PARAGRAPH (a) OF THIS SUBSECTION (1) AS UNNECESSARY OR INAPPROPRIATE IN THE PUBLIC INTEREST OR FOR THE PROTECTION OF THE CONTRACT BUYERS.

(2) (a) THE COMMISSIONER SHALL APPROVE THE CONTRACT SELLER'S APPLICATION FOR CHANGE OF OWNERSHIP BY WRITTEN AUTHORIZATION IF:

(I) THE ACCOUNTING IS COMPLETE, ACCURATE, AND SHOWS THE TRUST FUND IS WHOLE AND INTACT;

(II) ALL REQUIRED INFORMATION AND DOCUMENTS ARE FILED WITH THE COMMISSIONER; AND

(III) THE TRANSFEREE HOLDS A VALID CONTRACT SELLER'S LICENSE, OR IS QUALIFIED UNDER SECTION 10-15-103 FOR A CONTRACT SELLER'S LICENSE, AND IS ABLE TO PERFORM ALL TRANSFERRED PRENEED CONTRACTS IN ACCORDANCE WITH THIS ARTICLE.

(b) THE COMMISSIONER SHALL APPROVE OR DISAPPROVE OF THE SALE OF AN EXISTING PRENEED CONTRACT IN WRITING WITHIN SIXTY DAYS AFTER RECEIVING THE REPORT REQUIRED BY PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION. IF THE COMMISSIONER FAILS TO DISAPPROVE OF THE SALE IN WRITING WITHIN SIXTY DAYS, THE SALE IS DEEMED APPROVED.

(3) (a) THE CONTRACT SELLER, OR PERSON WITH AN INTEREST IN THE CONTRACT, REMAINS LIABLE FOR ALL FUNDS AND TRANSACTIONS UNTIL THE EFFECTIVE DATE OF THE TRANSFER.

(b) ANY DISCREPANCIES, MALFEASANCE, OR FRAUD PRIOR TO THE SALE OF THE

PRENEED CONTRACT IS THE RESPONSIBILITY OF THE SELLER, FOR WHICH THE SELLER IS LIABLE.

(4) WITHIN THIRTY DAYS AFTER APPROVAL BY THE COMMISSIONER, THE TRANSFEREE OF A PRENEED CONTRACT SHALL SEND A NOTICE TO THE LAST-KNOWN ADDRESS OF EACH CONTRACT BUYER INFORMING THE BUYER OF THE CHANGE IN OWNERSHIP AND THE ASSUMPTION OF THE OBLIGATION TO PERFORM THE PRENEED CONTRACT.

SECTION 7. In Colorado Revised Statutes, **amend** 10-15-116 as follows:

10-15-116. Surrender of license. (1) ~~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.~~ A CONTRACT SELLER MAY SURRENDER A LICENSE BY:

(a) FILING WRITTEN NOTICE WITH THE COMMISSIONER;

(b) SUBMITTING A LIST OF ALL OUTSTANDING PRENEED CONTRACTS, INCLUDING THE NAME OF THE CONTRACT BUYER, THE METHOD OF FUNDING FOR THE PRENEED CONTRACT, THE PRENEED CONTRACT PRICE, THE AMOUNT OF FUNDS RECEIVED, AND THE AMOUNT OF FUNDS HELD IN TRUST;

(c) PAYING ALL OUTSTANDING FINES AND INVOICES DUE TO THE STATE OF COLORADO; AND

(d) SUBMITTING THE CURRENT CERTIFICATE OF AUTHORITY.

(2) UPON RECEIPT OF THE NOTICE, THE COMMISSIONER SHALL REVIEW THE PRENEED CONTRACT SELLER'S TRUST FUNDS AND EVIDENCE OF ALL OUTSTANDING PRENEED CONTRACTS.

(3) UPON DETERMINING THAT THE AVAILABLE ASSETS ARE SUFFICIENT TO MEET ANY REMAINING PRENEED CONTRACT LIABILITIES, THE COMMISSIONER SHALL DEACTIVATE THE LICENSE.

(4) THE CONTRACT SELLER SHALL CONTINUE TO KEEP THE TRUST FUND INTACT AND IN TRUST AFTER THE LICENSE IS INACTIVE, AND THE TRUSTEE SHALL DISBURSE THE FUNDS IN TRUST IN ACCORDANCE WITH PRENEED CONTRACTS UNTIL THE FUNDS ARE EXHAUSTED.

(5) THE COMMISSIONER HAS JURISDICTION OVER THE INACTIVE CONTRACT SELLER AND TO REQUIRE THE REPORTS REQUIRED BY SECTION 10-15-104 AND INSPECT THE RECORDS REQUIRED BY THIS ARTICLE SO LONG AS THERE ARE FUNDS IN TRUST OR PRENEED CONTRACTS THAT ARE NOT FULFILLED. WHEN THE FUNDS IN TRUST ARE EXHAUSTED OR EACH PRENEED CONTRACT IS FULFILLED, THE COMMISSIONER SHALL FINALLY CANCEL THE LICENSE OF THE CONTRACT SELLER.

(6) UPON A FINDING THAT AN EMERGENCY EXISTS THAT WILL HARM CONSUMERS, THE COMMISSIONER MAY BY ORDER ADMINISTER PRENEED CONTRACTS AND

ACCOUNTS IF THE BUSINESS OF THE CONTRACT SELLER CLOSES DUE TO FINANCIAL INSOLVENCY, CRIMINAL ACTIVITY, OR LICENSE SUSPENSION.

SECTION 8. In Colorado Revised Statutes, 12-54-110, **amend** (2) (a) introductory portion, (2) (a) (IV) (C), and (2) (a) (IV) (D); and **add** (2) (a) (IV) (E) as follows:

12-54-110. Registration required. (2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include ~~without limitation~~, the following:

(IV) A list of each of the following services provided at each funeral establishment location:

(C) Transporting human remains to or from the funeral establishment or the place of final disposition; ~~and~~

(D) Providing funeral goods or services to the public; AND

(E) SELLING PRENEED CONTRACTS.

SECTION 9. In Colorado Revised Statutes, 12-54-303, **amend** (2) (a) introductory portion, (2) (a) (IV) (C), and (2) (a) (IV) (D); and **add** (2) (a) (IV) (E) as follows:

12-54-303. Registration required. (2) (a) Each crematory shall register with the director using forms as determined by the director. The registration shall include ~~without limitation~~, the following:

(IV) A list of each of the following services provided at each crematory location:

(C) Providing funeral goods or services to the public; ~~and~~

(D) Cremating human remains; AND

(E) SELLING PRENEED CONTRACTS.

SECTION 10. Appropriation - adjustments to 2013 long bill. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of regulatory agencies for the fiscal year beginning July 1, 2013, are adjusted as follows:

(a) The cash funds appropriation from the division of insurance cash fund created in section 10-1-103 (3), Colorado Revised Statutes, for the division of insurance for personal services, is decreased by \$2,400.

SECTION 11. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act

or an item, section, or part of this act within the period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to preneed contracts created on or after the applicable effective date of this act.

Approved: May 24, 2013