**ARTICLE 11**

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**BURIAL PRE-NEED SALES**

Section

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(Note – Several new sections will have to be added here)

**12-1101 Act, how cited.**

Sections 12-1101 to 12-1121 shall be known and may be cited as the Burial Pre-Need Sale Act.

**12-1102 Terms, defined.**

For purposes of the Burial Pre-Need Sale Act, unless the context otherwise requires:

(1) Agent shall mean any person who acts for or on behalf of a pre-need seller in making pre-need sales;

(2) Beneficiary shall mean the individual who is to be the subject of the disposition who will receive burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller as set forth in a pre-need contract;

(~~2~~3) Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner in connection with a funeral or the interment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(~~3~~4) Columbarium shall mean an aboveground structure or building which is used or intended to be used for the inurnment of human remains in a niche. A columbarium may be combined with a mausoleum;

(~~4~~5) Crypt or niche shall mean a chamber in a lawn crypt, columbarium, or mausoleum of sufficient size to inter or entomb cremated or noncremated human remains;

(~~5~~6) Delivery shall mean the act of performing the service required by or the act of placing the item purchased in the physical possession of the pre-need purchaser, including, but not limited to, the installing or depositing of the item sold on or in real property owned by or designated by the person entitled to receive such item, except that (a) the pre-need burial of a vault shall constitute delivery only if the burial is with the consent of the pre-need purchaser and the pre-need seller has made other pre-need vault burials prior to January 1, 1986, and (b) delivery of a crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker or monument may be accomplished by delivery of a document of title;

(~~6~~7) Department shall mean the Department of Insurance;

(~~7~~8) Director shall mean the Director of Insurance;

(~~8~~9) Document of title shall mean a deed, bill of sale, warehouse receipt, or any other document which meets the following requirements:

(a) The effect of the document is to immediately vest the ownership of the item described in the person purchasing the item;

(b) The document states the exact location of such item; and

(c) The document gives assurances that the item described exists in substantially completed form and is subject to delivery upon request;

(10) Guaranteed contract shall mean a pre-need contract in which the seller agrees that all or any portion of the costs for the disposition, services, facilities or merchandise identified in a pre-need contract will be no greater than the amount designated in the contract upon the death of the pre-need beneficiary or that such costs will be otherwise limited or restricted;

(~~9~~11) Human remains shall mean the body of a deceased person;

(~~10~~12) Lawn crypt shall mean an inground burial receptacle of single or multiple depth, installed in multiples of ten or more in a large mass excavation, usually constructed of concrete and installed on gravel or other drainage underlayment and which acts as an outer container for the interment of human remains;

(~~11~~13) Letter of credit shall mean an irrevocable undertaking issued by any financial institution which qualifies as a trustee under the Burial Pre-Need Sale Act, given to a pre-need seller and naming the director as the beneficiary, in which the issuer agrees to honor drafts or other demands for payment by the beneficiary up to a specified amount;

(~~12~~14) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;

(~~13~~15) Marker, monument, or lettering shall mean an object or method used to memorialize, locate, and identify human remains;

(16) Market value shall mean a fair market value:

(a) As to cash, the amount of the cash;

(b) As to a security as of any date, the price for the security as of the end of the day that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell the security in an orderly transaction between unrelated market participants as the measurement date; and

(c) As to any other asset, the price to sell the asset in an orderly transaction between unrelated market participants at the measurement date consistent with statements of financial accounting standards;

(~~14~~17) Master trust agreement shall mean an agreement between a pre-need seller and a trustee, a copy of which has been filed with the department, under which proceeds from pre-need sales may be deposited by the pre-need seller;

(~~15~~18) Mausoleum shall mean an aboveground structure or building which is used or intended to be used for the entombment of human remains in a crypt. A mausoleum may be combined with a columbarium;

(19) Nonguaranteed contract shall mean a pre-need contract in which the pre-need seller does not agree that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a pre-need contract will be limited to the amount designated in the contract upon the beneficiary’s death or that such costs will otherwise be limited or restricted;

(~~16~~20) Pre-need purchaser shall mean a member of the general public purchasing burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller for personal use of the pre-need purchaser or for use by an individual other than the pre-need purchaser;

(~~17~~21) Pre-need sale shall mean any sale by any pre-need seller to a pre-need purchaser of:

(a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral, ~~or~~ burial or other disposition of human remains;

(b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or

(c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale;

(~~18~~22) Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public;

(~~19~~23) Substantially completed shall mean that time when the mausoleum, columbarium, or lawn crypt being constructed is then ready for the interment, entombment, or inurnment of human remains;

(~~20~~24) Surety bond shall mean an undertaking given by an incorporated surety company naming the director as the beneficiary and conditioned upon the faithful performance of a contract for the construction of a mausoleum, columbarium, or lawn crypt by a pre-need seller;

(~~21~~25) Trust account shall mean either a separate trust account established pursuant to the Burial Pre-Need Sale Act for a specific pre-need purchaser by a pre-need seller or multiple accounts held under a master trust agreement when it is required by the act that all or some portion of the proceeds of such preneed sale be placed in trust by the pre-need seller;

(~~22~~26) Trustee shall mean a state or federally chartered financial institution, including a bank, trust company, building and loan association, or credit union ~~within the state~~ whose deposits or accounts are insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(~~23~~27) Trust principal shall mean:

(a) ~~a~~All deposits~~, including amounts retained as required by section 12-1114,~~ made to a trust account by a pre-need seller less all withdrawals occasioned by delivery or cancellation; and

(b) Income generated from all deposits made to a trust account by a pre-need seller, including interest, dividends, capital gains, and losses generated by the investment of pre-need trust property which accumulates during the existence of the trust account, net the payment of all reasonable costs incurred in the administration of trusts including any state or federal income taxes payable by the trusts; and

(~~24~~28) Vault shall mean an item of burial or funeral merchandise or services which is an inground burial receptacle installed individually, as opposed to lawn crypts, which is constructed of concrete, steel, or any other material, and which acts as an outer container for the interment of human remains.

**12-1103 Pre-need sale; proceeds; trust requirements.**

(1) Except as otherwise provided in the Burial Pre-Need Sale Act, proceeds received by any pre-need seller as partial or complete payment on a pre-need sale shall be deposited with a trustee within sixty days after receipt. The proceeds of the pre-need sale required to be deposited with a trustee shall be deposited either with a trustee under the terms of a master trust agreement or with a trustee in a separate trust account in the name of the pre-need purchaser. In either event, the money so deposited shall be held in trust by the trustee pursuant to the terms of the Burial Pre-Need Sale Act.

(2) The pre-need seller shall file with the Department a copy of the master trust agreement for each trustee with whom the pre-need seller has such an agreement. In the event a master trust agreement is amended, including a change of trustee, the pre-need seller shall file with the Department a copy of the amended master trust agreement thirty days before the effective date of the amendment.

**12-1104 Proceeds of sale; trust requirements; exclusions.**

There shall be excluded from the trust requirements of section 12-1103 and the pre-need seller shall be entitled to retain free of trust the following:

(1) All proceeds from the sale of a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(2) All interest that may be charged by the pre-need seller directly to the preneed purchaser for extending to the pre-need purchaser the right to make payments on an installment basis on a pre-need sale;

(3) Proceeds from the sale of a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has not been substantially completed as follows: (a) All proceeds, if the pre-need seller has submitted to and received the written approval of the director of a letter of credit or surety bond securing the substantial completion of the mausoleum, columbarium, or lawn crypt; or (b) the first thirty-five percent of the retail sales price of such sale. In either event, the pre-need seller shall agree, in writing, as a part of the pre-need sale that in the event of the death of the person for whose benefit the pre-need sale of a crypt or niche is made prior to the completion of construction of the mausoleum, columbarium, or lawn crypt, that:

(i) Alternate burial will be provided until the completion of the construction; and

(ii) Within a reasonable time after the completion of construction, the body of the decedent will be moved in a dignified manner from the alternate burial place to the crypt or niche so purchased at the sole expense of the pre-need seller;

(4) The first fifteen percent of the retail sales price of all other pre-need sales, including the pre-need sale of markers, monuments, or lettering and the preneed sale of burial or funeral merchandise or services; and

(5) All amounts required for perpetual care, endowed care, or continual care or the like of the item so purchased if such funds or earnings from the funds will be used for the care and maintenance of the item or items sold in the preneed sale.

**12-1105 Pre-need seller; records required.**

Upon the making of a pre-need sale by a pre-need seller when some or all of the proceeds from that sale are required to be placed in trust or a letter of credit or surety bond has been approved in lieu thereof, the pre-need seller in addition to retaining a copy of any written agreement entered into shall prepare and maintain a separate record of each such pre-need sale and the record shall contain the following information:

(1) The name and address of the pre-need purchaser;

(2) The name and address of the beneficiary, if different than that of the pre-need purchaser;

(~~2~~3) The retail sales price of each item purchased in such pre-need sale, exclusive of any interest that may be charged the pre-need purchaser by the pre-need seller or a written statement by the pre-need purchaser of the pre-need purchaser’s intent to defer the selection of burial or funeral merchandise or services until the time of need;

(~~3~~4) The date and amount of each payment made by the pre-need purchaser to the pre-need seller, designating such payment as principal or interest and the disposition made by the pre-need seller of each such payment as to whether it was retained in whole or in part by the pre-need seller or deposited in trust and, if deposited in trust, the date of such deposit and the name of the trustee with whom the deposit was made; and

(~~4~~5) The date of withdrawal and all amounts withdrawn by the pre-need seller pursuant to subsection (2) of section 12-1113 and a designation of the event which permitted such withdrawal.

The record shall be maintained for inspection purposes by the director for at least ~~one~~five years after the pre-need seller has received all proceeds to which the seller is entitled by reason of the pre-need sale.

**12-1106 Pre-need purchaser; designate irrevocable funds.**

At the written request of the pre-need purchaser, the first four thousand dollars, increased annually as provided in this section, paid by the pre-need purchaser which is placed in trust by the pre-need seller may be designated as irrevocable in accordance with the rules and regulations of the Department of Health and Human Services. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. Upon default or cancellation any trust funds designated as irrevocable shall be governed by section 12-1113.

**12-1107 Trustees; acceptance of funds; conditions; powers.**

(1) Banks which do not have a separate trust department and building and loan associations and credit unions acting as trustees under the Burial Pre- Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the Nebraska Uniform Trust Code, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

**12-1108 Pre-need seller; license required; application; requirements; fee;**

**renewal; records.**

(1) No pre-need seller shall make or offer to make a pre-need sale without first obtaining a license from the director. An application for such a license or a renewal of an existing license shall be made in writing, signed by the proposed pre-need seller, duly verified on forms prepared and furnished by the director, and accompanied by an application fee of one hundred dollars. Each application shall contain the following information:

(a) The applicant’s full name and his, her, or its home and business address, telephone numbers, and if the applicant is a partnership, limited liability company, corporation, or association, the application shall list the names and addresses of all of the officers, directors, members, or trustees thereof;

(b) The names and addresses of all agents, including employees and independent contractors, authorized to make pre-need sales in the name of the applicant;

(c) If the applicant is an individual, the applicant’s social security number. If the applicant is a business entity, the applicant’s federal tax identification number;

(d) Whether such agents are presently licensed as agents pursuant to section 12-1115 and if not the date upon which application will be made;

(e) Whether the pre-need seller’s license has previously been suspended, revoked, or voluntarily surrendered and the reason therefor; and

(f) Whether the applicant or any officers, directors, members, or association trustees have been convicted of fraud or a crime involving misappropriation or misuse of funds within the past ten years.

(2) The director may require the applicant provide additional documentation reasonably necessary to verify the accuracy of the information contained in an application.

(~~2~~3) Upon receipt of the application, the director shall issue a license to the pre-need seller unless the director determines that the applicant (a) is unable to demonstrate its financial ability to meet the requirements of the Burial Pre- Need Sale Act, (b) has made false statements or misrepresentations in the application, (c) is not duly authorized to transact business in the state, (d) has been convicted of fraud or a crime involving misappropriation or misuse of funds within the last ten years, or (e) has failed to comply with any of the terms or conditions of the Burial Pre-Need Sale Act and such is deemed by the director to substantially impede the applicant’s ability to abide by such act. If the director determines that an unrestricted license will not be issued or that no license will be issued on the basis of the application, the director may:

(i) Request additional information from the applicant;

(ii) Issue a temporary license with restrictions and reporting requirements as the director deems necessary so as to monitor the actions of the applicant for a period not to exceed six months; or

(iii) Refuse to issue the license.

The director shall notify the applicant of the action taken, and the notification and any protest shall be made in the same manner as provided in subsection (2) of section 12-1116.

(~~3~~4) A license shall expire five years from the date of the issuance and may be renewed for additional five-year periods upon filing with the director a new application for such license.

(5) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. Any pre-need seller failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the pre-need seller’s license until the change of address is reported to the director, or both.

(~~4~~6) The licensee shall maintain accurate accounts, books, and records of all transactions required including copies of all contracts involving pre-need sales and shall make a report as prescribed in section 12-1110.

(~~5~~7)(a) The licensee shall make all books and records pertaining to trust funds available to the director for examination. The director, or a qualified person designated by the director, may during ordinary business hours examine the books, records, and accounts of the licensee with respect to the funds received by such licensee and may require the attendance at an examination under oath of all persons whose testimony he or she may deem necessary.

(b) The reasonable expenses for the examination of the books, records, and accounts of the licensee shall be fixed and determined by the director. The licensee shall be responsible for the payment of the determined expenses to the director within a reasonable time after the receipt of a statement for such expenses. The expenses shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses.

**12-1109 Director; adopt rules and regulations.**

The director ~~shall~~ may adopt and promulgate rules and regulations necessary to carry out and enforce the Burial Pre-Need Sale Act.

**12-1110 Pre-need seller; report; requirements; fee.**

(1) Each pre-need seller shall file an annual report with the director for the preceding calendar year on or before ~~June~~ April 1 of each year. The annual report shall be in ~~such~~ a form ~~as~~ provided by the director ~~may require. The report~~  and shall contain such information as the director deems necessary for the purpose of ascertaining whether the pre-need seller can continue to meet its contractual obligations to pre-need purchasers and beneficiaries. The report shall include the name and address of each trustee with which the pre-need seller has trust funds on deposit and the amount on deposit with each such trustee as of December 31 of that year or such other reporting period as the director may establish. ~~The report shall include a list of all amounts retained as required by section 12-1114.~~

(2) Any pre-need seller who has discontinued making pre-need sales but who continues to have trust funds on deposit with a trustee or trustees shall not be required to obtain a renewal of his, her, or its license but shall continue as long as trust funds are being held to make annual reports to the director.

(3) Any pre-need seller who has no pre-need funds in trust but who continues to maintain a pre-need seller’s license shall file an annual report with the director. ~~Each such~~

(4) All annual reports, when filed with the director, shall be accompanied by a fee of fifty dollars.

(5) Within seven business days after the failure of pre-need seller to comply with the requirements of this section, the director shall notify the pre-need seller of such failure.

(6) Subject to this section, if a pre-need seller fails to comply with the requirements of this section and any rules and regulations adopted and promulgated under this section and any orders issued under this section:

(a) The pre-need seller shall forfeit twenty-five dollars for each day thereafter such failure continues; and

(b) In addition to the forfeiture required under this section, the director may suspend the license of a pre-need seller until the pre-need seller has complied with the requirements of this section, and any orders issued under this section. All such forfeitures collected by the director shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(7) For good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty days within which the annual report may be filed as required under this section without the forfeiture required under this section and without any suspension authorized under this section.

**12-1111 Contracts; requirements; provisions.**

(1) No pre-need seller shall enter into a pre-need sale unless the pre-need contract meets the requirements of this section. At the time that a pre-need sale is entered into, the pre-need seller shall furnish each pre-need purchaser with a duplicate original of any written contract which the pre-need purchaser is required to sign.

(2) The pre-need seller shall file with the director a copy of each form of contract that is utilized by the pre-need seller in making pre-need sales.

(3) No pre-need contract shall be utilized in this state unless:

(a) The contract is printed in not less than ten-point type;

(b) The style arrangement and overall appearance of the contract gives no undue prominence to any portion of the text of the contract; and

(c) The pre-need contract clearly and conspicuously:

(i) Includes the name, address and telephone number of the pre-need purchaser, beneficiary and pre-need seller;

(ii) Identifies the name, address and telephone and license number of the pre-need seller;

(iii) Sets out in detail any specified items of burial or funeral merchandise or services, marker, monument, or lettering requested by the pre-need purchaser;

(iv) Identifies the pre-need trust account into which pre-need contract payments shall be deposited, including the name and address of the trustee;

(v) Identifies whether funds paid by the pre-need purchaser which are placed in trust by the pre-need seller are designated as irrevocable within the meaning of section 12-1106;

(vi) Includes the name and signature of the pre-need purchaser, the pre-need agent responsible for the sale of the pre-need contract, and the authorized representative of the pre-need seller;

(vii) Identifies whether the pre-need contract is a guaranteed or nonguaranteed contract;

(viii) Includes the cancellation of contract provisions set forth in section 12-1113;

(ix) Includes a disclosure on all installment payment pre-need contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the pre-need purchaser for the burial or funeral services in such an event;

(x) Includes a disclosure that in the administration of individual trust accounts held under a master trust agreement, the trustee may pay all of the reasonable costs incurred in the administration of the trusts, including any state or federal income taxes payable by the trusts in accordance with section 12-1113(1)(i);

(xi) Includes a disclosure that the pre-need purchaser or beneficiary may contact the Nebraska Department of Insurance to address any concerns with the pre-need contract and provide the pre-need purchaser or beneficiary with the Department’s address and phone number; and

(xii) Provides for the designation of a successor trustee or the manner in which a successor trustee can be determined.

(~~3~~4) Except in the case of a default or cancellation by the pre-need purchaser, a contract shall contain no provisions limiting the liability of the pre-need seller to less than furnishing the merchandise or services expressed in the contract, except that the contract may provide that a like or better quality item of merchandise shall be substituted for the original in the event merchandise itemized is no longer available and through reasonable efforts cannot be obtained. In the case of default or cancellation of a pre-need sale, a contract shall contain no provisions allowing the pre-need seller to retain, as liquidated damages or otherwise, any amounts not permitted by section 12-1113. Any contractual provisions to the contrary shall be of no force or effect.

**12-1112 Act; when applicable.**

The terms and conditions of the Burial Pre-Need Sale Act shall govern only those pre-need sales made and contracts entered into by any pre-need seller or his, her, or its agents after January 1, 1987. The Burial Pre-Need Sale Act shall not be construed so as to impair or affect the obligation of any lawful contract in existence on or prior to January 1, 1987.

**12-1113 Trust funds; distributions; conditions; accumulation.**

~~(1) Except as provided in subsection (3) of this section, at least annually the trustee shall distribute all of the income of any trust account to the pre-need seller after deducting the amount computed under section 12-1114.~~

(~~2~~1) All ~~remaining~~ funds held in trust~~, including cost-of-living amounts retained as required by section 12-1114,~~ shall be governed by the following:

(a) When the funds held in trust are for the purchase of a crypt or niche in a mausoleum, columbarium, or lawn crypt which is to be constructed or is being constructed, the trustee shall distribute the funds held in trust for such purpose to the pre-need seller as follows:

(i) Twenty-five percent of the funds held in trust shall be paid over to the preneed seller upon written notification from the pre-need seller, verified in writing by the pre-need seller’s contractor or person in charge of the construction, that twenty-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(ii) Thirty-three and one-third percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller’s contractor or person in charge of construction, that fifty percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(iii) Fifty percent of the funds remaining in trust shall be paid over to the preneed seller upon written notification from the pre-need seller, verified in writing by the pre-need seller’s contractor or person in charge of construction, that seventy-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed; and

(iv) All funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller’s contractor or person in charge of construction, that the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(b) When the funds are held in trust by reason of a pre-need sale which is not included in subdivision (~~2~~1)(a) of this section, the trustee shall immediately pay over to the pre-need seller, less any amounts withheld subject to subsection (i) of this section, the market value of funds held in trust upon receiving written notification from the pre-need seller that delivery of the merchandise has been completed or services have been performed for which the funds were placed in trust;

(c) Upon cancellation of a pre-need ~~sale~~contract by the pre-need purchaser, unless the pre-need purchaser has designated the trust as irrevocable pursuant to section 12-1106, the pre-need seller shall give written notification to the trustee and the trustee shall, within ninety days, pay over to the pre-need purchaser an amount equal to the amount required to be held in trust by the pre-need seller for that pre-need purchaser after deducting any reasonable charges made by the trustee caused by the cancellation and then any balance remaining in the pre-need purchaser’s trust account shall immediately be paid over to the pre-need seller;

(d) Upon cancellation of a pre-need contract by the pre-need seller, unless the pre-need purchaser has designated the trust as irrevocable pursuant to section 12-1106, the pre-need seller shall give written notification to the trustee and the trustee shall, within ninety days, pay over to the pre-need purchaser one hundred percent of the market value of funds held in trust after deducting any reasonable charges made by the trustee caused by the cancellation. The pre-need seller shall pay over to the pre-need purchaser any amounts previously excluded from trust under section 12-1104.

(~~d~~e) Upon cancellation of a pre-need ~~sale~~ contract by the pre-need purchaser, in which the funds were designated by the pre-need purchaser as irrevocable pursuant to section 12-1106, the trustee shall immediately pay over to the pre-need seller any amounts otherwise excludable from trust under section 12-1104 if such amounts have not previously been retained by the pre-need seller. Thereafter, the amount required to be held in trust shall be computed by the trustee and the amount so computed shall be held by the trustee separate from the trust in an individual account in the name of the pre-need purchaser and such account shall:

(i) Be held until the death of the ~~person for whom the pre-need sale was entered into~~beneficiary, at which time the market value of all funds in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, shall, within ninety days, be paid to the pre-need purchaser or his or her estate; or

(ii) Be held until the trustee receives written notification from the pre-need purchaser to transfer the market value of all of the funds held in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, to another irrevocable trust established by another licensed pre-need seller as a result of a pre-need sale made by the second pre-need seller to the canceling pre-need purchaser. Such transfer shall take place within ninety days after such written notification is received by the original pre-need seller. The balance remaining in such pre-need purchaser’s trust account after transfer of the computed amount to the individual account shall be paid over to the pre-need seller;

(f) Upon cancellation of a pre-need contract by the pre-need seller, in which the funds were designated by the pre-need purchaser as irrevocable pursuant to section 12-1106, the pre-need seller shall immediately pay over to the trustee any amounts previously excluded from the trust under section 12-1104. The trustee shall place one hundred percent of the market value of funds held in trust, including any amounts remitted by the pre-need seller pursuant to this section, in an individual account in the name of the pre-need purchaser and such account shall:

(i) Be held until the death of the beneficiary, at which time the market value of all funds held in trust, less any reasonable charges made by the trustee which were caused by such cancellation, shall, within ninety days, be paid to the pre-need purchaser or his or her estate; or

(ii) Be held until the trustee receives written notification from the pre-need purchaser to transfer the market value of all of the funds held in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, to another irrevocable trust established by another licensed pre-need seller as a result of a pre-need sale made by the second pre-need seller to the canceling pre-need purchaser. Such transfer shall take place within ninety days after such written notification is received by the original pre-need seller.

(~~e~~g) If a pre-need purchaser is in default of any installment payments for over sixty days, a pre-need seller may cancel the pre-need contract. Prior to cancelling the pre-need contract, the pre-need seller shall notify the pre-need purchaser in writing that the pre-need contract shall be cancelled if payment is not received within sixty days of the postmarked date of notice. The notice shall include the amounts of payments due, the date the payment is due, and the proposed date of cancellation. If the pre-need purchaser fails to remit the payments due within sixty days of the postmarked date of notice, then the pre-need seller, at its option, may either cancel the contract or may continue the contract as a non-guaranteed contract where the purchaser will receive full credit for all payments the purchaser has made into the trust towards the cost of the beneficiary’s burial or funeral merchandise or services. If the pre-need seller defaults on the pre-need contract or fails to provide burial or funeral merchandise or services for any reason, the pre-need contract shall be treated as being cancelled by the pre-need seller. If the pre-need purchaser remits the payments due within sixty days of the postmarked date of notice, then the pre-need seller shall not cancel the pre-need contract and shall be required to provide a new notice of default and cancellation if the pre-need purchaser defaults on future installment payments.~~Upon default, the pre-need seller shall be entitled to retain in trust the funds held in trust attributable to the defaulted pre-need sale until notice of cancellation by the pre-need purchaser is received by the pre-need seller or until the death of the person for whom the pre-need sale was entered into, whichever occurs first. In the event of default, the death of the person for whom the pre-need sale was entered into, absent prior notification of cancellation, shall be construed as a cancellation of that pre-need sale~~;

(~~f~~h) Receipt of the written notification by the trustee and distribution of the funds after receipt of such written notification shall relieve the trustee of any liability for failure to properly administer the funds held in trust. Failure of the trustee to obtain such written notification may subject the trustee to liability for actual damages limited to the amount of the funds which the trustee erroneously distributed; and

(~~g~~i) In the administration of the individual trust accounts or the trust accounts held under a master trust agreement, the trustee ~~shall be permitted to~~ may pay all of the reasonable costs incurred in the administration of the trusts, including any state or federal income taxes payable by the trusts. The payment of all costs and expenses, including taxes, shall be paid from the ~~trust~~ income generated from all deposits made to the trust account by a pre-need seller but shall not include deposits made to a trust account by the pre-need seller~~and shall be deducted prior to the distribution of such income as provided in subsection (1) of this section~~. In the event that the income is not sufficient to pay all of such costs, expenses, and taxes, the pre-need seller shall be responsible for such payment out of its own separate funds.

~~(3) A pre-need seller may elect to allow the income from the funds held in any trust account to accumulate, in which event the accumulation of income shall be deemed to be in lieu of the cost-of-living amount retained as required by section 12-1114.~~

**~~12-1114 Pre-need seller; trust funds; retain cost-of-living amount.~~**

~~To offset increases in the cost of living as the same may affect the trust accounts, the pre-need seller shall compute each year the total amount of the trust principal of each trust account determined as of December 31 of the immediately preceding year, and then multiply such amount by the percentage increase in the National Consumer Price Index for such year. The amount so determined shall be the amount of the current year’s income that is required to be retained in trust by the trustee before the balance of the income for the current year can be paid out to the pre-need seller as provided in subsection (1) of section 12-1113. If publication of the National Consumer Price Index is discontinued, the director shall select a comparable index for the purposes of determining such percentage increase in the cost of living and notify all licensed pre-need sellers of the index selected.~~

**12-1115 Pre-need sales agent; license required; fee; failure to surrender**

**license; penalty.**

(1) No agent shall make any pre-need sales on behalf of a pre-need seller in this state without first obtaining a license from the director. The director shall not issue such a license without requiring the proposed agent to fill out an application form stating his or her name, address, and telephone number and the pre-need seller for whom he or she will be making pre-need sales. The preneed seller for whom the agent will be making pre-need sales shall also sign the agent’s application and agree to be responsible for supervising the agent in conjunction with any pre-need sales. The fee for an agent’s license shall be twenty dollars which shall accompany the application.

(2) The agent’s license, when issued, shall allow the agent to make pre-need sales only for the pre-need seller whose name appears on the license. If the agency relationship between the pre-need seller and the agent terminates for any reason, the pre-need seller shall immediately notify the department of such termination. Once such notification has been received, the acts of the agent shall no longer be imputed to the pre-need seller and the agent’s license shall be considered as void. The agent, upon written request by the department, shall surrender to the department the license within a period of ~~ten~~ thirty days after the receipt of such written notice. Failure on the part of the agent to surrender the license after written notification shall be a Class IV misdemeanor.

(3) If the pre-need seller’s license is revoked or becomes inactive for any reason, the agent’s license shall also become inactive as of the same date. If the pre-need seller subsequently renews its license, the agent must obtain a new license from the director before making any pre-need sales on behalf of a pre-need seller.

(~~3~~4) It shall be the responsibility of the licensed agent to notify the director of any change of the agent’s legal name or address within thirty days of change.

**12-1116 Licenses; disciplinary actions; grounds; notice; administrative fine.**

(1) The director may deny, revoke, or suspend any license of any pre-need seller or agent or may levy an administrative fine in accordance with subsection (3) of this section, or any combination of actions, for any one of more of the following causes ~~if the director finds that~~:

(a) ~~The licensee has failed~~Failing to pay the license fee prescribed in section 12-1108 and 12-1115~~for such license~~;

(b) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(~~b~~c) ~~The licensee, either knowingly or without the exercise of due care to prevent the same, has violated~~Violating any of the provisions of the Burial Pre-Need Sale Act or any rule, ~~or~~ regulation, or order of the director, or disobeying a subpoena of the director ~~adopted and promulgated by the director pursuant to such act~~;

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing business;

~~(c) An act or condition exists which, if it had existed at the time of the original application of such licensee, would have resulted in the director refusing to issue such license; or~~

(~~d~~e) Failing~~The licensee~~, upon receipt of a written inquiry from the department, ~~has failed~~ to respond to such inquiry or ~~has failed~~failing to request an additional reasonable amount of time to respond to such inquiry within fifteen business days after such receipt~~.~~;

(f) Having been convicted of a felony or a Class I, II, or III misdemeanor;

(g) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and

(h) Cancelling a pre-need contract except as provided for in section 12-1113(1)(g).

(2) Written notification shall be provided to the licensee upon the director’s making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license; or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, the Administrative Procedure Act shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee’s license, and the licensee shall surrender the license to the director.

(3) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the Burial Pre-Need Sale Act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to the Burial Pre-Need Sale Act.

(4) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Burial Pre-Need Sales Act against any person who is under investigation for or charged with a violation of the act even if the individual or entity’s pre-need seller or agent license has been surrendered or has lapsed by operation of law. No disciplinary proceeding shall be instituted against any licensed person after the expiration of three years from the termination of such license.

**12-1117 Licenses; surrender; effect; reinstatement.**

(1) Any licensee may surrender any license issued by the director by delivering the license to the director with written notice of its surrender. Surrender shall not change the licensee’s civil or criminal liability for acts committed prior or subsequent to the surrender of such license. Voluntary surrender shall not constitute an admission against interest or an admission of liability nor shall the same be used in any evidentiary proceeding as such an admission.

(2) The director may reinstate a license or issue a new license to a person whose license has expired, has been revoked, or was voluntarily surrendered if no fact or condition exists which would cause a revocation or would have caused the director to originally refuse to issue such license.

**12-1118 Violations; penalty.**

Any person who violates any provision of the Burial Pre-Need Sale Act or who makes a report required under such act which is false or fraudulent shall be guilty of a Class II misdemeanor and his or her license shall be revoked.

**12-1119 Violations; action to enjoin.**

Whenever the director has reasonable cause to believe that any person, whether licensed or not, is violating any provision of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated pursuant to such act, he or she may, in addition to all other actions allowed, bring an action in the district court of Lancaster County to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance of such violation. In any such action, the district court may enter any order, judgment, or decree concerning temporary or permanent relief as it deems proper based upon the facts and circumstances presented to it by the director.

**12-1120 Pre-need seller; failure to perform obligations; director; powers.**

The director may collect the proceeds of any letter of credit, surety bond, or trust funds held pursuant to subdivision (~~2~~1)(a) of section 12-1113 upon the failure of the pre-need seller to perform the obligations secured thereby. Thereafter, in the director’s discretion, he or she may use such proceeds to secure completion of the mausoleum, columbarium, or lawn crypt or take any actions necessary to reimburse all pre-need purchasers of a crypt or niche therein to the extent of money paid or consideration given by the pre-need purchasers.

**12-1121 Trust; validity.**

No trust created or any interest in such trust shall be invalidated by any existing law or rule against perpetuities, accumulations, or suspension of the power of alienation, and such trust and any interest may continue for such time as may be necessary to accomplish the purposes for which it was created.

**Transfer of Trust Funds to Insurance.**

(1) To facilitate the transfer of funds held in a pre-need trust to an insurance policy, the pre-need purchaser shall apply for the insurance policy or otherwise provide his or her written consent to the transaction prior to submission of an insurance application and prior to the distribution of funds from the trust account.

(2) When obtaining written consent from a pre-need purchaser to transfer funds held in trust to fund an insurance policy, the pre-need purchaser shall be provided a written disclosure, which includes:

(a) A statement indicating the transfer of funds held in trust to an insurance policy will not occur without the express written consent of the pre-need purchaser;

(b) A statement indicating the pre-need purchaser has the right to refuse the transfer of funds held in trust to an insurance policy;

(c) The cost of such a transfer including all charges, fees, commissions and expenses related to the transfer of trust funds to an insurance policy;

(d) The name and contact information including mailing address and telephone number of the individual or entities responsible for paying the costs of the transfer; and

(e) A statement specifying the cost of the insurance policy premium.

(3) The transfer shall comply with all applicable laws and regulations of Chapter 44 of the Nebraska Revised Statutes, including but not limited to laws relating to licensing, commissions, fees, and consent.

(4) If the pre-need seller has retained or otherwise obtained or collected the first fifteen percent of the retail sales price of the pre-need sales as allowed under subsection 4 of section 12-1104, no other fees or commissions may be paid to the pre-need seller.

(5) Funds transferred from an individual trust account to an insurance policy which have been designated as irrevocable pursuant to section 12-1108 shall not be released to the pre-need purchaser or beneficiary. The trustee shall pay over to the insurer the market value of funds held in trust only after receiving (a) notice of the proposed transfer by the pre-need seller and (b) the written consent of the pre-need purchaser authorizing the transfer of funds held in trust to an insurance policy.

**Transfer of Trust Funds; Notification.**

(1) No pre-need seller may transfer the proceeds of a preneed sale held in trust to a new trust account unless the pre-need seller provides a written notice of disclosure of the proposed transfer to the pre-need purchaser disclosing the financial implications of such a transfer and the pre-need seller obtains a written statement of acceptance of the transfer from the pre-need purchaser.

(2) Every pre-need purchaser shall have the right to reject the transfer of his or her pre-need trust account. Pre-need purchasers electing to reject the transfer of funds held in trust to a new trust account shall provide written notice to the pre-need seller that such transfer or change of trustee is rejected.

(3) No fewer than ninety days after the mailing of the initial notice of disclosure, the pre-need seller shall send to the pre-need purchaser a second written notice of the proposed transfer of funds held in trust if positive acceptance or rejection of such transfer of funds held in trust has not been received. If the pre-need purchaser does not reject the transfer of funds held in trust during the thirty day period immediately following the date on which the pre-need seller mails the second and final notice of transfer, the pre-need purchaser's acceptance will be deemed to have occurred and the transfer of funds held in trust will be effected.

(4) Any notice of disclosure required to be issued by a pre-need seller pursuant to this section shall first be filed with and approved by the director prior to being distributed to the pre-need purchaser.

**Change of Trustee; Notification.**

(1) No pre-need seller may change trustees unless the pre-need seller provides a written notice of disclosure to the pre-need purchaser of the change of trustee. The written notice of disclosure shall include the name and physical address of the new trustee and shall be provided to the pre-need purchaser no fewer than thirty days prior to the effective date of the change of trustee.

(2) Any notice of disclosure required to be issued by a pre-need seller pursuant to this section shall first be filed with and approved by the director prior to the being distributed to the pre-need purchaser.

**Pre-need seller; listing of accounts; requirements.**

(1) Each pre-need seller shall file a list with the director of all pre-need contracts retained by the pre-need seller in accordance with section 12-1105. The list of pre-need contracts shall be in a form prescribed by the director and shall contain such information as the director deems necessary including:

(a) For individual trust accounts:

(i) Name of the pre-need purchaser;

(ii) The name and address of the beneficiary, if different than that of the pre-need purchaser;

(iii) Trust account number;

(iv) Date of the pre-need contract;

(v) Total cost of the pre-need contract;

(vi) Identify of all pre-need contracts being funded by installment payments;

(vii) Final monetary balance for pre-need contracts performed or cancelled during the year;

(viii) Identify new, performed and cancelled pre-need contracts;

(ix) Trust account balance as of December 31; and

(x) The date and amount of each payment made by the pre-need purchaser to the pre-need seller, designating such payment as principal or interest and the disposition made by the pre-need seller of each such payment as to whether it was retained in whole or in part by the pre-need seller or deposited in trust and, if deposited in trust, the date of such deposit and the name of the trustee with whom the deposit was made.

(b) For master trust accounts:

(i) Pre-need contract identification number;

(ii) Name of the pre-need contract purchaser;

(iii) Date of the pre-need contract;

(iv) Total pre-need contract cost;

(v) Trust account balance(s) as of December 31 of the year, at market value;

(vi) Preceding year’s income distributed during the year of reporting;

(v) Net principal added to trust during the year;

(vi) Identify contracts being funded by installment payments;

(vii) Agreements performed during the year;

(viii) Cancellations during the year;

(ix) Construction distributions during the year;

(x) Trust income net of losses, realized and unrealized, during the year;

(xi) Trustee fees/expenses, including taxes, during the year;

(xii) Trust account balance as of December 31 of the year, at market value;

(xiii) Trust principal balance as of December 31 of the year.

(3) Any recorded information, workpapers, documents, copies of workpapers, and documents produced by, obtained by, or disclosed to the director or any other person pursuant to this section shall be given confidential treatment, shall not be subject to subpoena and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such recorded information, workpapers, documents, and copies may be made provided to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the workpapers, recorded information, documents, and copies.

**Sale of Pre-Need Contract; Requirements. *(****Note - Should we mirror portions of the Assumption Reinsurance Act, i.e. require notification to and approval from the pre-need purchaser before the contract is transferred or purchased by another pre-need seller?****)***

(1) The director shall be notified in advance of any sale, surrender or transfer of a pre-need contract between a pre-need seller and another individual, entity or pre-need seller. The sale, surrender or transfer of pre-need contracts may not be accomplished or be effective without the prior approval of the director. The sale, surrender or transfer of pre-need contracts must comply with the Burial Pre-Need Sale Act and any regulations promulgated by the director.

(2) Before the director may approve the sale or transfer of a pre-need contract, the pre-need seller shall provide to the director such information as the director deems necessary for the purpose of ascertaining whether the sale, surrender or transfer of a pre-need contract by the pre-need seller is in the best interest of the pre-need purchaser.

(3) Any individual, entity or pre-need seller that purchases, claims, or receives by other means a pre-need contract shall:

(a) Provide to the director a copy of the purchase agreement and any other relevant documentation pertaining to the purchase, claim or receipt of a pre-need contract;

(b) Maintain such information as set forth in section 12-1105;

(c) File an annual report with the director as provided in section 12-1108; and

(d) Comply with the Burial Pre-Need Sale Act.

(4) Upon the approval of the director of a sale or transfer of a pre-need contract there shall be a novation of the pre-need contract with the result that the transferring pre-need seller shall thereby be relieved of all obligations to provide burial or funeral merchandise or services specified in the pre-need contract and the assuming individual or entity shall become directly and solely liable to the pre-need purchaser and beneficiary for those obligations specified in the pre-need contract.

**Trust accounts; purpose**

No trust account established pursuant to the Burial Pre-Need Sale Act shall be used for a purpose other than the maintenance and investment of funds deposited in trust pursuant to section 12-1103.