

2017

STATE OF NEBRASKA

**STATUTES RELATING TO
BURIAL PRE-NEED SALE ACT**

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Department of Health and Human Services
Division of Public Health
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STATUTES PERTAINING TO BURIAL PRE-NEED SALE ACT

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.

Source: Laws 1986, LB 643, § 1.

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) 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) 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) 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) 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) Department shall mean the Department of Insurance;
- (7) Director shall mean the Director of Insurance;
- (8) 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;
- (9) Human remains shall mean the body of a deceased person;
- (10) 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) 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) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;
- (13) Marker, monument, or lettering shall mean an object or method used to memorialize, locate, and identify human remains;
- (14) 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) 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;
- (16) 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;
- (17) 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 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) 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) 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) 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) 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 pre-need sale be placed in trust by the pre-need seller;

(22) Trustee shall mean 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) Trust principal shall mean 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

(24) 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.

Source: Laws 1986, LB 643, § 2; Laws 1992, LB 757, § 13; Laws 1993, LB 121, § 126; Laws 1999, LB 107, § 1; Laws 2003, LB 131, § 19; Laws 2009, LB259, § 2.

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

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.

Source: Laws 1986, LB 643, § 3.

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 pre-need 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 pre-need 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 pre-need sale.

Source: Laws 1986, LB 643, § 4.

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 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;
- (3) 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) 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 year after the pre-need seller has received all proceeds to which the seller is entitled by reason of the pre-need sale.

Source: Laws 1986, LB 643, § 5.

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.

Source: Laws 1986, LB 643, § 6; Laws 1996, LB 1044, § 52; Laws 2006, LB 85, § 1.

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.

Source: Laws 1986, LB 643, § 7; Laws 1992, LB 757, § 14; Laws 1999, LB 107, § 2; Laws 2001, LB 56, § 35; Laws 2003, LB 130, § 112; Laws 2003, LB 131, § 20; Laws 2009, LB259, § 3.

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, 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;
- (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) 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) 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.

(4) 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)(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.

Source: Laws 1986, LB 643, § 8; Laws 1993, LB 121, § 127; Laws 1997, LB 752, § 71; Laws 2005, LB 119, § 1.

12-1109. Rules and regulations.

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

Source: Laws 1986, LB 643, § 9; Laws 2014, LB700, § 13.

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

Each pre-need seller shall file a report with the director on or before June 1 of each year in such form as the director may require. The report shall contain 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. 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 reports to the director. Each such report, when filed with the director, shall be accompanied by a fee of fifty dollars.

Source: Laws 1986, LB 643, § 10; Laws 2005, LB 119, § 2.

12-1111. Contracts; requirements; provisions.

(1) 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) 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.

Source: Laws 1986, LB 643, § 11.

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.

Source: Laws 1986, LB 643, § 12.

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

(1) After making the calculations required by section 12-1114, any amounts exceeding trust principal, except income earned in the current calendar year, may be distributed to the pre-need seller by the trustee at the pre-need seller's request.

(2) 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 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 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 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 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)(a) of this section, the trustee shall pay over to the pre-need seller the 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, 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 sale 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, at which time 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 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;

(e) 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) 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) In the administration of the individual trust accounts or the trust accounts held under a master trust agreement, the trustee shall be permitted to 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 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.

Source: Laws 1986, LB 643, § 13; Laws 2017, LB239, § 1.

Effective Date: August 24, 2017

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

(1) 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. Such amount is then considered to be trust principal and shall be retained before any income may be distributed as provided in subsection (1) of section 12-1113.

(2) If there is insufficient income in any given year to fully fund the amount required to be retained pursuant to subsection (1) of this section:

(a) As much of the required amount as possible shall be retained;

(b) The shortage shall be recouped from the income in subsequent years before such income may be distributed as provided in subsection (1) of section 12-1113; and

(c) The calculation required under subsection (1) of this section for subsequent years shall be computed as though the full amount required to be retained for each year had been retained.

(3) 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.

Source: Laws 1986, LB 643, § 14; Laws 2017, LB239, § 2.

Effective Date: August 24, 2017

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 pre-need 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 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) It shall be the responsibility of the licensed agent to notify the director of any change of the agent's address.

Source: Laws 1986, LB 643, § 15; Laws 2005, LB 119, § 3.

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 if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

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

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

(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.

Source: Laws 1986, LB 643, § 16; Laws 1987, LB 93, § 3; Laws 2005, LB 119, § 4; Laws 2009, LB192, § 1.

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.

Source: Laws 1986, LB 643, § 17.

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.

Source: Laws 1986, LB 643, § 18.

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.

Source: Laws 1986, LB 643, § 19.

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)(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.

Source: Laws 1986, LB 643, § 20.

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.

Source: Laws 1986, LB 643, § 21.