

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 239

Introduced by Baker, 30.

Read first time January 11, 2017

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Burial Pre-Need Sale Act; to amend
2 sections 12-1113 and 12-1114, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to trust funds; and to repeal the
4 original sections.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 12-1113, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 12-1113 (1) After making the calculations required by section
4 12-1114, any amounts exceeding trust principal, except income earned in
5 the current calendar year, may be distributed to the pre-need seller by
6 the trustee at the pre-need seller's request ~~Except as provided in~~
7 ~~subsection (3) of this section, at least annually the trustee shall~~
8 ~~distribute all of the income of any trust account to the pre-need seller~~
9 ~~after deducting the amount computed under section 12-1114.~~

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

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

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

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

29 (iii) Fifty percent of the funds remaining in trust shall be paid
30 over to the pre-need seller upon written notification from the pre-need
31 seller, verified in writing by the pre-need seller's contractor or person

1 in charge of construction, that seventy-five percent of the construction
2 of the mausoleum, columbarium, or lawn crypt has been substantially
3 completed; and

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

9 (b) When the funds are held in trust by reason of a pre-need sale
10 which is not included in subdivision (2)(a) of this section, the trustee
11 shall pay over to the pre-need seller the funds held in trust upon
12 receiving written notification from the pre-need seller that delivery of
13 the merchandise has been completed or services have been performed for
14 which the funds were placed in trust;

15 (c) Upon cancellation of a pre-need sale, unless the pre-need
16 purchaser has designated the trust as irrevocable pursuant to section
17 12-1106, the pre-need seller shall give written notification to the
18 trustee and the trustee shall, within ninety days, pay over to the pre-
19 need purchaser an amount equal to the amount required to be held in trust
20 by the pre-need seller for that pre-need purchaser after deducting any
21 reasonable charges made by the trustee caused by the cancellation and
22 then any balance remaining in the pre-need purchaser's trust account
23 shall immediately be paid over to the pre-need seller;

24 (d) Upon cancellation of a pre-need sale in which the funds were
25 designated by the pre-need purchaser as irrevocable pursuant to section
26 12-1106, the trustee shall immediately pay over to the pre-need seller
27 any amounts otherwise excludable from trust under section 12-1104 if such
28 amounts have not previously been retained by the pre-need seller.
29 Thereafter, the amount required to be held in trust shall be computed by
30 the trustee and the amount so computed shall be held by the trustee
31 separate from the trust in an individual account in the name of the pre-

1 need purchaser and such account shall:

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

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

15 The balance remaining in such pre-need purchaser's trust account
16 after transfer of the computed amount to the individual account shall be
17 paid over to the pre-need seller;

18 (e) Upon default, the pre-need seller shall be entitled to retain in
19 trust the funds held in trust attributable to the defaulted pre-need sale
20 until notice of cancellation by the pre-need purchaser is received by the
21 pre-need seller or until the death of the person for whom the pre-need
22 sale was entered into, whichever occurs first. In the event of default,
23 the death of the person for whom the pre-need sale was entered into,
24 absent prior notification of cancellation, shall be construed as a
25 cancellation of that pre-need sale;

26 (f) Receipt of the written notification by the trustee and
27 distribution of the funds after receipt of such written notification
28 shall relieve the trustee of any liability for failure to properly
29 administer the funds held in trust. Failure of the trustee to obtain such
30 written notification may subject the trustee to liability for actual
31 damages limited to the amount of the funds which the trustee erroneously

1 distributed; and

2 (g) In the administration of the individual trust accounts or the
3 trust accounts held under a master trust agreement, the trustee shall be
4 permitted to pay all of the reasonable costs incurred in the
5 administration of the trusts, including any state or federal income taxes
6 payable by the trusts. The payment of all costs and expenses, including
7 taxes, shall be paid from the trust income and shall be deducted prior to
8 the distribution of such income as provided in subsection (1) of this
9 section. In the event that the income is not sufficient to pay all of
10 such costs, expenses, and taxes, the pre-need seller shall be responsible
11 for such payment out of its own separate funds.

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

16 Sec. 2. Section 12-1114, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 12-1114 (1) To offset increases in the cost of living as the same
19 may affect the trust accounts, the pre-need seller shall compute each
20 year the total amount of the trust principal of each trust account
21 determined as of December 31 of the immediately preceding year, and then
22 multiply such amount by the percentage increase in the National Consumer
23 Price Index for such year. The amount so determined shall be the amount
24 of the current year's income that is required to be retained in trust by
25 the trustee. Such amount is then considered to be trust principal and
26 shall be retained before any income may be distributed as provided in
27 subsection (1) of section 12-1113 before the balance of the income for
28 the current year can be paid out to the pre-need seller as provided in
29 subsection (1) of section 12-1113.

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

1 section:

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

3 (b) The shortage shall be recouped from the income in subsequent

4 years before such income may be distributed as provided in subsection (1)

5 of section 12-1113; and

6 (c) The calculation required under subsection (1) of this section

7 for subsequent years shall be computed as though the full amount required

8 to be retained for each year had been retained.

9 (3) If publication of the National Consumer Price Index is
10 discontinued, the director shall select a comparable index for the
11 purposes of determining such percentage increase in the cost of living
12 and notify all licensed pre-need sellers of the index selected.

13 Sec. 3. Original sections 12-1113 and 12-1114, Reissue Revised
14 Statutes of Nebraska, are repealed.