

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 71

Introduced by Pahls, 31.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Burial Pre-Need Sale Act; to amend section
2 12-1102, Revised Statutes Cumulative Supplement, 2010; to
3 broaden the definition of trustee; and to repeal the
4 original section.

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

1 Section 1. Section 12-1102, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 12-1102 For purposes of the Burial Pre-Need Sale Act,
4 unless the context otherwise requires:

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

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

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

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

23 (5) Delivery ~~shall mean~~ means the act of performing the
24 service required by or the act of placing the item purchased in the
25 physical possession of the pre-need purchaser, including, but not

1 limited to, the installing or depositing of the item sold on or in
2 real property owned by or designated by the person entitled to
3 receive such item, except that (a) the pre-need burial of a vault
4 shall constitute delivery only if the burial is with the consent of
5 the pre-need purchaser and the pre-need seller has made other pre-
6 need vault burials prior to January 1, 1986, and (b) delivery of a
7 crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker
8 or monument may be accomplished by delivery of a document of title;

9 (6) Department ~~shall mean~~ means the Department of
10 Insurance;

11 (7) Director ~~shall mean~~ means the Director of Insurance;

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

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

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

18 and

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

22 (9) Human remains ~~shall mean~~ means the body of a deceased
23 person;

24 (10) Lawn crypt ~~shall mean~~ means an inground burial
25 receptacle of single or multiple depth, installed in multiples of ten

1 or more in a large mass excavation, usually constructed of concrete
2 and installed on gravel or other drainage underlayment and which acts
3 as an outer container for the interment of human remains;

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

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

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

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

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

24 (16) Pre-need purchaser ~~shall mean~~ means a member of the
25 general public purchasing burial or funeral merchandise or services

1 or a marker, monument, or lettering from a pre-need seller for
2 personal use;

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

5 (a) Any items of burial or funeral merchandise or
6 services which are not purchased for the immediate use in a funeral
7 or burial of human remains;

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

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

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

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

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

25 (21) Trust account ~~shall mean~~ means either a separate

1 trust account established pursuant to the Burial Pre-Need Sale Act
2 for a specific pre-need purchaser by a pre-need seller or multiple
3 accounts held under a master trust agreement when it is required by
4 the act that all or some portion of the proceeds of such pre-need
5 sale be placed in trust by the pre-need seller;

6 (22) Trustee ~~shall mean~~ means a bank, trust company,
7 building and loan association, or credit union ~~within the state~~ whose
8 deposits or accounts are insured or guaranteed by the Federal Deposit
9 Insurance Corporation or the National Credit Union Share Insurance
10 Fund;

11 (23) Trust principal ~~shall mean~~ means all deposits,
12 including amounts retained as required by section 12-1114, made to a
13 trust account by a pre-need seller less all withdrawals occasioned by
14 delivery or cancellation; and

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

20 Sec. 2. Original section 12-1102, Revised Statutes
21 Cumulative Supplement, 2010, is repealed.