

**First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0524.01 Jery Payne x2157

**SENATE BILL 13-125**

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**SENATE SPONSORSHIP**

**Todd,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Business, Labor, & Technology  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING PRENEED FUNERAL CONTRACTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill amends the statutes regulating preneed funeral contracts. Currently, preneed contract sellers are licensed by the commissioner of insurance. An audit of a seller is no longer required every 5 years. The commissioner may designate a qualified person, preferably a division employee, to conduct the audit. The current fee structure for licensing a seller is replaced with authority to set the fee to cover the cost of regulation.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

Currently, selling unsold lots in an undeveloped cemetery is exempt from regulation. For the exemption to apply, the bill requires the sales contract to provide for a comparable resting place or a full refund if the original becomes unavailable.

Notwithstanding a contract, the preneed buyer or the person directing final disposition is authorized to transfer the contract to another provider, but the original provider may retain up to 25% of the original preneed contract price.

The bill requires the person holding a trust fund or providing insurance for a preneed contract to notify the buyer when the funds are deposited or when they are applied towards the purchase of an insurance policy. The contract seller or insurance producer must advise the buyer that this notice is required by law.

If a preneed contract does not guarantee the prices charged, it must be clearly identified as a "nonguaranteed contract".

A preneed contract business cannot be sold without the commissioner's approval. Procedures are set for approval of the sale. If the commissioner determines that the finances of the buyer will support performing the contracts, then the sale is approved. The new owner is required to send a notice to the preneed contract buyer of the sale. When a contract seller surrenders a license, the commissioner must approve the financial ability of the contract seller to perform the contracts. The commissioner retains jurisdiction over the contracts of an inactive contract seller until all contracts are fulfilled. In an emergency, the commissioner may administer the preneed contracts and accounts if a seller goes out of business due to financial insolvency, criminal activity, or a license suspension.

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

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

4 **10-15-102. Definitions.** As used in this article, unless the context  
5 otherwise requires:

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

9 (8.5) "FUNERAL GOODS" HAS THE SAME MEANING AS IN SECTION  
10 12-54-102, C.R.S.

1           (13) (a) "Preneed contract" means any written contract,  
2 agreement, or mutual understanding, ~~any series or combination of~~  
3 ~~contracts, agreements, or mutual understandings,~~ or any security or other  
4 instrument ~~which~~ THAT is convertible into a contract,     agreement, or  
5 mutual understanding whereby, ~~it is agreed that,~~ upon the death of the  
6 preneed contract beneficiary, a final resting place, merchandise, or  
7 services ~~shall be~~ ARE provided or performed in connection with the final  
8 disposition of the ~~preneed contract~~ beneficiary's body. Consideration for  
9 a preneed contract is funds, DEPOSITS, or the assignment of life insurance  
10 benefits.

11           (b) "PRENEED CONTRACT" DOES NOT INCLUDE a contract for  
12 merchandise whereby the buyer takes physical possession of the  
13 merchandise at the time of entering into the contract. ~~shall not be included~~  
14 ~~in the definition of a preneed contract.~~

15           (c) ~~Providing a developed final resting place within a designated~~  
16 ~~cemetery approved for the interment, entombment, or inurnment of~~  
17 ~~human remains is not subject to the provisions of this article. Providing~~  
18 ~~an undeveloped final resting place shall be exempt from the provisions of~~  
19 ~~this article only if the cemetery contains unsold developed final resting~~  
20 ~~places representing at least twenty-five percent of the outstanding~~  
21 ~~paid-in-full contracts for undeveloped final resting places. In the event~~  
22 ~~such specific and identifiable final resting place is not developed for use~~  
23 ~~at the time of need and full payment has been made, then the contract~~  
24 ~~must provide the purchaser with an immediate alternate and comparable~~  
25 ~~final resting place at the same cemetery or a full refund of moneys paid.~~

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

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

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

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

18           (4) (a) ~~The contract seller shall make all books and records~~  
19 ~~available to the commissioner for examination. The commissioner, or a~~  
20 ~~qualified person designated by the commissioner, during ordinary~~  
21 ~~business hours, shall examine the books, records, and accounts of the~~  
22 ~~contract seller at least once every five years, and more often as necessary~~  
23 ~~to ensure compliance with this article, and for that purpose may require~~  
24 ~~the attendance of and examine under oath all persons whose testimony the~~  
25 ~~commissioner may require.~~ THE COMMISSIONER MAY INVESTIGATE THE  
26 BOOKS, RECORDS, AND ACCOUNTS OF A CONTRACT SELLER TO ENSURE  
27 THAT TRUST FUNDS, PRENEED CONTRACTS, AND PRENEED INSURANCE

1 POLICIES COMPLY WITH THIS ARTICLE. THE COMMISSIONER, OR A  
2 QUALIFIED PERSON DESIGNATED BY THE COMMISSIONER, MAY EXAMINE  
3 THE BOOKS, RECORDS, AND ACCOUNTS OF THE CONTRACT SELLER AS  
4 OFTEN AS NECESSARY UPON RECEIVING A COMPLAINT OR INDICATION OF  
5 NONCOMPLIANCE AND MAY REQUIRE THE ATTENDANCE OF AND EXAMINE  
6 UNDER OATH ALL PERSONS WHOSE TESTIMONY THE COMMISSIONER NEEDS  
7 FOR THIS PURPOSE.

8 (b) THE COMMISSIONER SHALL MAKE EVERY REASONABLE EFFORT  
9 TO UTILIZE EXAMINERS EMPLOYED BY THE DIVISION OF INSURANCE IN  
10 PREFERENCE TO DESIGNATING PERSONS WHO ARE NOT EMPLOYEES OF THE  
11 DIVISION OF INSURANCE TO PERFORM EXAMINATIONS. IF EVIDENCE OF A  
12 VIOLATION OF THIS ARTICLE IS KNOWN, the commissioner may designate  
13 a qualified person who is not an employee of the division of insurance to  
14 examine ~~any~~ A contract seller, and the CONTRACT SELLER SHALL DIRECTLY  
15 PAY THE reasonable expenses and charges of ~~such~~ THE examiner. ~~shall be~~  
16 ~~paid directly by the contract seller to any such authorized examiner.~~ The  
17 examinee may contest the amount of fees, costs, and expenses charged ~~to~~  
18 ~~it by such person~~ THE EXAMINER by filing an objection with the  
19 commissioner that sets forth the charges the examinee considers to be  
20 unreasonable, together with the basis for ~~such claim of unreasonable~~  
21 ~~DISPUTING THE charges.~~ ~~No~~ Amounts that are ~~so~~ disputed ~~will be~~ ARE NOT  
22 due to the examiner ~~unless and~~ until the commissioner has reviewed the  
23 objection and made a written finding that the disputed charges were  
24 reasonable ~~in relation to~~ FOR the examination performed.

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

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

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

11           (b) IF THE SPECIFIC AND IDENTIFIABLE FINAL RESTING PLACE IS NOT  
12 DEVELOPED FOR USE AT THE TIME OF NEED AND FULL PAYMENT HAS BEEN  
13 MADE, THEN THE CONTRACT MUST PROVIDE THE PURCHASER WITH AN  
14 IMMEDIATE ALTERNATE AND COMPARABLE FINAL RESTING PLACE AT THE  
15 SAME CEMETERY OR WITH A FULL REFUND OF MONEYS PAID TO QUALIFY  
16 FOR THE EXEMPTION UNDER THIS SUBSECTION (2).

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

19           **10-15-104. Annual report.** Each contract seller shall file ~~an~~  
20 ~~annual~~ WITH THE COMMISSIONER A report, on a calendar year basis, ~~with~~  
21 ~~the commissioner~~ on a form as provided by the commissioner. In the  
22 ~~annual~~ report, each contract seller ~~who~~ THAT is required to deposit funds  
23 with a trustee shall state the name of each trustee ~~with which it has~~  
24 WHERE trust funds ARE on deposit and the amount remaining on deposit  
25 in the trust fund on December 31. ~~Each contract seller shall report~~  
26 ~~annually the amount of all annual preneed aggregate merchandise sales~~  
27 ~~and the disposition of such merchandise.~~ Any contract seller ~~which~~ THAT

1 has voluntarily or involuntarily discontinued the sale of preneed contracts  
2 ~~shall not be required to~~ NEED NOT obtain a renewal of its license but it  
3 shall continue to make annual reports to the commissioner until all ~~such~~  
4 THE contracts have been fully performed. ~~by it and shall pay fifty percent~~  
5 ~~of the fee structure prescribed by section 10-15-103 (5) (b).~~

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

8 **10-15-105. Contract requirements - refund - full performance.**  
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10 (9) (a) Notwithstanding any other provision of this section to the  
11 contrary, upon the request and consent of the contract buyer, a preneed  
12 contract, related trust, or assignment of the ownership or the benefits of  
13 a life insurance policy may be made irrevocable. However, the contract  
14 buyer, or ~~his or her heirs, assigns, or duly authorized representatives~~ THE  
15 PERSON WITH THE RIGHT OF FINAL DISPOSITION may, at any time before  
16 performance, transfer the funds or the assignment to ~~any other~~ ANOTHER  
17 contract seller or general provider as required by applicable laws.

18 (b) THE CONTRACT BUYER OR, IF THE CONTRACT BUYER HAS DIED,  
19 THE PERSON AUTHORIZED TO DIRECT THE DISPOSITION OF THE DECEASED  
20 CONTRACT BUYER, MAY TRANSFER THE TRUST FUNDS TO ANOTHER  
21 FUNERAL PROVIDER. THE ORIGINAL PRENEED SELLER MAY RETAIN UP TO  
22 FIFTEEN PERCENT OF THE ORIGINAL PRENEED CONTRACT PURCHASE PRICE.

23 (10) (a) THE CONTRACT SELLER SHALL:

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

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

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

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

7           **10-15-111.5. Change of ownership - rules.** (1) (a) A SALE OF AN  
8 EXISTING PRENEED CONTRACT THAT CHANGES WHO PROVIDES FUNERAL  
9 GOODS AND SERVICES IS VOID UNLESS APPROVED BY THE COMMISSIONER  
10 UNDER THIS SECTION. TO TRANSFER OWNERSHIP, THE CONTRACT SELLER  
11 MUST REPORT A PENDING SALE OF THE PRENEED CONTRACT TO THE  
12 COMMISSIONER IN WRITING AT LEAST FOURTEEN DAYS BEFORE THE SALE  
13 CLOSING. THE NOTICE MUST INCLUDE:

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

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

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

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

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

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

25           (VII) AN ACCOUNTING OF THE TRUST FUND AND ALL TRANSFERRED  
26 AND OUTSTANDING PRENEED CONTRACTS, INCLUDING THE NUMBER OF  
27 PENDING CONTRACTS, THE FULL CONTRACT VALUE, THE CURRENT VALUE

1 FOR EACH CONTRACT, A RECORD OF ALL DISBURSEMENTS FROM PRENEED  
2 TRUST ACCOUNTS WITHIN THE LAST TWENTY-FOUR MONTHS, AND THE  
3 INFORMATION REQUIRED IN THE ANNUAL REPORT;

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

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

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

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

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

18 (a) THE ACCOUNTING IS COMPLETE, ACCURATE, AND SHOWS THE  
19 TRUST FUND IS WHOLE AND INTACT;

20 (b) ALL REQUIRED INFORMATION AND DOCUMENTS ARE FILED WITH  
21 THE COMMISSIONER; AND

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

26 (3) (a) THE CONTRACT SELLER, OR PERSON WITH AN INTEREST IN  
27 THE CONTRACT, REMAINS LIABLE FOR ALL FUNDS AND TRANSACTIONS

1 UNTIL THE EFFECTIVE DATE OF THE TRANSFER.

2 (b) ANY DISCREPANCIES, MALFEASANCE, OR FRAUD PRIOR TO THE  
3 SALE OF THE PRENEED CONTRACT IS THE RESPONSIBILITY OF THE SELLER,  
4 FOR WHICH THE SELLER IS LIABLE.

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

10 =====

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

13 **10-15-116. Surrender of license.** (1) ~~Any contract seller may~~  
14 ~~surrender such contract seller's license by delivering it to the~~  
15 ~~commissioner with written notice of its surrender, but such surrender~~  
16 ~~shall not affect the contract seller's civil or criminal liability for acts~~  
17 ~~committed prior thereto.~~ A CONTRACT SELLER MAY SURRENDER A LICENSE  
18 BY:

19 (a) FILING WRITTEN NOTICE WITH THE COMMISSIONER;

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

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

27 (d) SUBMITTING THE CURRENT CERTIFICATE OF AUTHORITY.

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

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

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

11 (5) THE COMMISSIONER HAS JURISDICTION OVER THE INACTIVE  
12 CONTRACT SELLER AND TO REQUIRE THE REPORTS REQUIRED BY SECTION  
13 10-15-104 AND INSPECT THE RECORDS REQUIRED BY THIS ARTICLE SO  
14 LONG AS THERE ARE FUNDS IN TRUST OR PRENEED CONTRACTS THAT ARE  
15 NOT FULFILLED. WHEN THE FUNDS IN TRUST ARE EXHAUSTED OR EACH  
16 PRENEED CONTRACT IS FULFILLED, THE COMMISSIONER SHALL FINALLY  
17 CANCEL THE LICENSE OF THE CONTRACT SELLER.

18 (6) UPON A FINDING THAT AN EMERGENCY EXISTS THAT WILL  
19 HARM CONSUMERS, THE COMMISSIONER MAY BY ORDER ADMINISTER  
20 PRENEED CONTRACTS AND ACCOUNTS IF THE BUSINESS OF THE CONTRACT  
21 SELLER CLOSES DUE TO FINANCIAL INSOLVENCY, CRIMINAL ACTIVITY, OR  
22 LICENSE SUSPENSION.

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

26 **12-54-110. Registration required. (2) (a) Each funeral**  
27 **establishment shall register with the director using forms as determined**

1 by the director. The registration shall include ~~without limitation~~, the  
2 following:

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

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

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

8 (E) SELLING PRENEED CONTRACTS.

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

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

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

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

18 (D) Cremating human remains; AND

19 (E) SELLING PRENEED CONTRACTS.

20 **SECTION 10.** **Act subject to petition - effective date -**  
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
22 the expiration of the ninety-day period after final adjournment of the  
23 general assembly (August 7, 2013, if adjournment sine die is on May 8,  
24 2013); except that, if a referendum petition is filed pursuant to section 1  
25 (3) of article V of the state constitution against this act or an item, section,  
26 or part of this act within the period, then the act, item, section, or part will  
27 not take effect unless approved by the people at the general election to be

1 held in November 2014 and, in such case, will take effect on the date of  
2 the official declaration of the vote thereon by the governor.

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