



COLORADO

**Department of
Regulatory Agencies**

Division of Insurance

Preneed Funeral Contract Seller Study Findings Report

September 1, 2017



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Marguerite Salazar
Commissioner of Insurance

September 1, 2017

Members of the House Committee on Business Affairs and Labor, and the Senate Committee on Business, Labor, and Technology
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the Committees:

Please find attached the Preneed Funeral Contract Seller Study Findings Report prepared in response to SB17-249, which directed the Division of Insurance (Division) to conduct a study on preneed funeral contract sellers as follows:

"...study whether all contract sellers in Colorado are in compliance with this Article 15 and, if applicable, determine strategies to gain compliance from contract sellers who are not currently in compliance."

The findings of that study are to be submitted the House Business Affairs and Labor Committee, and the Senate Business, Labor, and Technology Committee, no later than September 1, 2017.

Accordingly, the Division has completed its study on the compliance of preneed funeral contract sellers as directed, and is pleased to submit this written report on the findings of that study. This report discusses the strategies and collaborative suggestions reached through stakeholder involvement to strengthen compliance and support for preneed contract sellers, and create a fair and consistent marketplace with a focus on enhanced consumer protections.

Sincerely,

Marguerite Salazar
Commissioner of Insurance

I. INTRODUCTION

On June 1, 2017 the Governor signed into law Senate Bill 17-249, which included a revision to section 10-15-122, C.R.S, which states, "Study of contract sellers - report - repeal. (1) THE DIVISION SHALL STUDY WHETHER ALL CONTRACT SELLERS IN COLORADO ARE IN COMPLIANCE WITH THIS ARTICLE 15 AND, IF APPLICABLE, DETERMINE STRATEGIES TO GAIN COMPLIANCE FROM CONTRACT SELLERS WHO ARE NOT CURRENTLY IN COMPLIANCE. No LATER THAN SEPTEMBER 1, 2017, THE DIVISION SHALL REPORT THE FINDINGS OF THE STUDY TO THE HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE AND THE SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE, OR ANY SUCCESSOR COMMITTEES. (2) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2018."

The most recently published annual statistics report issued by the Division of Insurance ("Division") stated that there were \$360,900,000 in total preneed contract outstanding liabilities. There are currently 70 active preneed contract sellers regulated by the Division and 206 registered funeral homes regulated by the Division of Professions and Occupations.

To conduct this study, Division representatives participated in several stakeholder meetings in collaboration with the Colorado Funeral Directors Association ("CFDA") in Denver and across the State. Division staff also attended the CFDA annual convention in Denver on July 21 and July 22. In these meetings Division staff and stakeholders were able to discuss compliance issues and the enforcement provisions contained in Article 15 of Title 10 of the Colorado Revised Statutes ("Article 15"). These discussions resulted in collaborative suggestions to strengthen compliance and support for preneed contract sellers and to create a fair and consistent marketplace with a focus on enhanced consumer protections.

Through stakeholder meetings, reviews of statutes and Division processes surrounding compliance with Article 15, three predominant strategies are recommended for strengthening regulatory oversight and gaining compliance from preneed contract sellers. The three areas that were identified that could benefit from legislative changes are:

- Preneed Contract Seller Provider Licenses for Every Funeral Home;
- Agent Registration; and
- Preneed Consumer Relief Fund.

Specific statutory citations from applicable Colorado statutes can be found in the Appendix.

II. Current Colorado Laws

- A. Section 10-15-102(6), C.R.S., defines a contract seller as "a person who sells or offers to sell funeral goods, merchandise, or services through a preneed contract." This statute does not require that individuals who have direct consumer contact be licensed or pass background checks. Insurance-funded preneed contracts can only be sold by a licensed insurance producer, which requires individual licensing status. Section 10-15-102(12), C.R.S., defines person as "an individual, partnership, firm,

joint venture, corporation, company, association, joint stock association, or limited liability company." Preneed sellers are permitted to be entities with no clear requirement that the employees of the entity be licensed. There is no limit on the number of agents a funeral home could allow to sell preneed contracts on its behalf. Section 10-15-103(1)(b)(I), C.R.S., requires that each applicant submit a set of fingerprints to the Commissioner and Section 10-15-103(1)(b)(II), C.R.S., defines applicant as "an individual and, in the case of a corporation, each officer and director of the corporation." These background checks are of limited value if the people with direct consumer contact do not get screened.

- B. Section 10-15-114(1), C.R.S., allows the Commissioner of Insurance ("Commissioner") to impose administrative fines against contract sellers and to take action against preneed licensees. Specifically, it provides that the commissioner may impose disciplinary action on a contract seller when the contract seller has violated certain provisions in this statute. Presently, the Division only licenses entities, therefore, the owners and employees of the entity are not licensed and not directly subject to disciplinary actions. As a result, the actual alleged perpetrators are potentially not subject to the regulatory authority of the Division. Further, in the event the licensed entity is no longer in business, disciplinary actions become meaningless in most cases because there is no legal mechanism to seek recourse against the former owners. The current statute does not hold the contract seller responsible for the actions of a contract seller's agent, which neutralizes the enforcement capabilities of Article 15.
- C. Section 10-15-103(1)(a)(I) and (II), C.R.S., state that a preneed contract seller application must include either: "(I) A current balance sheet, income statement, and statement of cash flow to demonstrate that the business has a net worth of at least ten thousand dollars, signed by a certified public accountant ("CPA"), or, if prepared by the applicant or public accountant, accompanied by a current tax return; or (II) A surety bond of at least ten thousand dollars to honor preneed contract obligations." The balance sheet/surety bond requirement has proven to be inadequate. This requirement is too low to provide recovery by a harmed consumer in the event the contract seller is unable to perform its obligations to the preneed contract buyer. The Division has dealt with multiple cases where the amount of restitution ordered exceeds \$10,000. This scenario leaves contract buyers without feasible recourse, as they are often left in the position of trying to collect amounts that may ultimately prove uncollectable. There is the possibility of criminal charges and restitution, but this option may take a significant amount of time and effort and still does not guarantee payment.
- D. Section 10-15-107(1), C.R.S., requires that when a preneed contract seller enters into a contract where the consideration is cash, the contract seller "shall deposit not less than seventy-five percent of the total preneed contract price with a trustee. The contract seller shall deposit all funds in excess of twenty-five percent of the total preneed contract price with a trustee within forty-five days after receipt thereof." A potential shortfall exists at the time of performance between the contract price and

the amount required to be put into trust. Auditing to detect underfunded trusts becomes difficult in certain circumstances when preneed contracts are on an installment plan and the seller keeps the first 25%. Out of the total \$360,900,000 in total preneed contract outstanding liabilities, \$157,344,000 is allocated to trust funded contracts. Section 10-15-105(4)(j), C.R.S., allows for administrative and sales costs and permits the preneed contract seller to retain liquidated damages of no more than 15% of the total preneed contract price in cases of default or cancellation by the contract buyer. Section 10-15-105(4)(d), C.R.S., states that the contract buyer shall receive a 100% refund if the buyer cancels the preneed contract within seven days of signing the contract.

III. CURRENT PRENEED LICENSING STRUCTURE

There are currently four preneed contract seller licensing structures in Colorado:

1. Traditional funeral home;
2. Subsidiary of a life insurance company;
3. A conglomerate of funeral homes; and,
4. Preneed contract broker.

Pursuant to section 10-15-103(1)(a), C.R.S., only the "contract seller" listed on the preneed contract needs to be licensed or have a signed general provider agreement in place. Agents of licensees are allowed to sell by virtue of an entity license. Prior to 1992, Colorado law required both the preneed contract seller and the contract seller's agent be licensed by the Division. In order to obtain a license, agents were required to submit an affidavit from his or her employer attesting to good moral character, pass a written exam, and pay a twenty dollar application fee. (§ 10-15-112, C.R.S. (1991)) These requirements were legislatively changed in 1992.

The current preneed licensing structure allows entities that own, or contract with, multiple funeral homes to be licensed under one preneed contract seller license. An individual broker or insurance subsidiary can become licensed as a preneed contract seller and enter into general provider contracts with multiple funeral homes. With multiple funeral home entities selling preneed contracts under one preneed contract seller license, the Division is challenged to identify the specific entity and its authorized individuals that sell the contracts. This allows multiple distinct entities to hold a single license under an umbrella organization structure and does not assess fees on all preneed contract sellers as required in section 10-15-103(5)(b), C.R.S. By not imposing fees on each funeral home location, only a limited portion of the industry is shouldering the cost of regulatory supervision. The industry estimates that the number of funeral homes involved in selling preneed contracts is more than double the current number of preneed licenses. When so many funeral homes owned by a single entity are able to sell preneed contracts under a single preneed seller license, regulatory supervision is limited.

Section 10-15-102(12), C.R.S., defines “person” so broadly, that it allows for both individuals and business entities of various forms to be licensed under Article 15. Although many types of persons can be licensed under the broad definitions of “contract seller” and “person”, the people that are actually selling preneed contracts may not be known to the Division. The Division currently only requires that the entity that is a party to the contract be licensed as a preneed contract seller, rather than the entity and individuals working for the entity. A registration requirement for the persons actually selling preneed contracts through a licensed entity would permit more consumer protection and appropriate regulatory oversight.

Under the current construct, all individuals who handle fiduciary funds are not undergoing fingerprint and background checks and are not subject to regulatory oversight. The requirements of section 10-15-103(1)(b)(I), C.R.S., are only performed on “each officer and director” of the corporation. Entities that own multiple funeral homes, or persons that contract with multiple funeral homes under general provider agreements, as well as their employees that have actual consumer contact, are not subject to regulatory oversight. Funeral home employees and agents of a funeral home are not regulated by the Division.

Preneed contracts are not insurance. Section 10-15-103(2)(f), C.R.S., explicitly prohibits insurance companies from acting as preneed contract sellers. The Division has found that insurance companies are selling a preneed look-alike product or have established a subsidiary structure to circumvent this prohibition. As a result the intent of the legislature is not currently being met. This leads to confusion for consumers and frustration on the part of funeral home directors that are asked to fulfill “preneed look-alike” contract terms.

IV. STRATEGIES TO GAIN COMPLIANCE WITH ARTICLE 15

The Division would recommend significant amendments to Article 15 to gain necessary industry compliance.

A. Mandate all registered funeral homes also be licensed preneed contract sellers.

The majority of issues brought to the attention of the Division regarding preneed contract sellers are the result of unlicensed sellers and their representatives selling preneed contracts. In stakeholder meetings, Division staff was advised on several occasions by industry that all funeral homes are involved in some form of preneed sales. The preferred method to ensure compliance with Article 15 would be to require preneed contract seller licensing for all funeral homes registered with the Division of Professions and Occupations. Funeral homes under common ownership should be individually licensed by location in order to engage in a preneed contract sale. This change would impact 206 registered funeral homes, as there are currently only 70 active preneed contract seller licenses.

The definition of preneed contract seller needs to be strengthened to require the individual funeral homes at each location to have its own individual preneed contract seller’s license, regardless of their common ownership. The definition should also only allow a registered funeral home to become a licensed preneed contract seller; therefore, not allowing individual brokers, insurance company subsidiaries or large corporate owners of multiple funeral homes to act in the capacity of an umbrella licensee for their preneed contract sellers. This would

allow for more effective regulation and the fair and equitable assessment of licensing fees. By requiring every registered funeral home to be licensed as a preneed contract seller the Division would be able to collect licensing fees over a broader base of licensees.

All licensing requirements for the funeral industry were sunset in 1982. Colorado funeral homes, embalmers and funeral directors are now only required to register annually with the Division of Professions and Occupations, Office of Funeral Home and Crematory Registration. As part of their registration, funeral homes are required to appoint a designee per section 12-54-110(4), C.R.S., which provides that, "The designee shall require each person employed at the funeral establishment to demonstrate evidence of compliance with section 12-54-111*." The designee shall retain the records of such evidence so long as the person is employed at the funeral establishment."¹ The definition of designee should be expanded to include compliance with preneed contract seller requirements.

B. Registering of Preneed Contract Sellers and Agents

Through our study and the current interpretation of the statutes, it has become clear that the people that have direct contact with consumers are not regulated under Article 15. The people with direct contact with consumers handle a significant amount of fiduciary funds: \$360,900,000 in total preneed contract liabilities outstanding. If the definition of preneed contract seller is clarified to mean each funeral home location, the definition will also need to be revised to require the registration of the individuals under each location that sell preneed contracts. It is recommended that funeral homes be required to register all employees that sell preneed funeral contracts so that individual persons that handle fiduciary funds are identified. This structure would be the most effective and efficient way to ensure that the consumer protections found in Article 15 are applied to the individuals actually interacting with the public and have the potential for causing consumer harm. This type of structure is successfully applied in other states.

C. Establish Preneed Consumer Relief Fund

The Enforcement section of the Division has handled numerous investigation cases wherein approximately \$2.25 million of restitution was ordered. Although much of the funds were collected, it is only through arduous, lengthy and labor intensive efforts by Division staff. Industry representatives suggested that a Preneed Consumer Relief Fund be established to protect consumers from preneed contract sellers that go out of business or take money from consumers without trusting the funds. The feasibility of such a fund led to discussions regarding assessing fees on contracts, which would impact consumers directly.

The proposed solution for the funding involves addressing another issue of old contracts that preneed contract sellers have identified. Preneed sellers are responsible to maintain trust funds and annually report every contract sold until the contract has been satisfied. Colorado law does not have any provisions that govern in cases where a preneed contract is never fulfilled. If funeral homes/preneed contract sellers were allowed to turn over to the relief fund monies attributed to contracts wherein the contract holder has attained the age of 110,

¹ Section 12-54-111, C.R.S., puts forth the requirements for the use of the title for a mortuary science practitioner, a funeral director, and an embalmer

they would no longer have to be responsible for those funds. The age of 110 was suggested by stakeholders based upon their experience. Absent of knowing the age of the contract holder, it was suggested that contracts that are on the books for 50 years or longer be turned over to the fund. If a subsequent claim is made, the relief fund can be accessed to pay such claims. This funding mechanism would have the benefit of making funds available for consumers that have been defrauded by preneed contract sellers, which should ease the regulatory burden placed on funeral home directors.

The industry was very supportive of this concept because it provides guarantees for all preneed contracts that are sold and should have the ability to make consumers whole without the need for an additional assessment on consumers. If this model is put into use, Colorado would be unique as to the funding mechanism for this relief fund.

Eight states (Florida, Indiana, Kentucky, North Carolina, Oregon, Texas, Vermont, West Virginia) have created a consumer protection fund whereby preneed contract sellers are required to pay a nominal fee for each preneed contract sold in order to protect consumers should a preneed contract seller go out of business or is otherwise unable to perform on the contract or refund the monies paid. The potential drawback of creating the fund utilizing this funding method is that the cost of implementation would be passed on to the consumer.

V. CONCLUSION

While the preneed industry is regulated, current laws contain gaps that prevent effective regulation of the industry. The Division of Insurance currently does not have sufficient enforcement power or staff to determine whether all preneed contract sellers in Colorado are in compliance with Article 15. Fees collected from the industry over the last five years averaged approximately \$65,000 annually. The ambiguous licensing structure created within statute has diminished the enforcement power of the Division to protect consumers. The need for a single licensing structure cannot be overemphasized. Having multiple funeral homes under one license creates ambiguity and allows the regulatory system to continue to be ineffective. If every registered funeral home were mandated to be licensed as a preneed contract seller, the licensing structure would be clear. The Division would also see an increase in the total annual fees collected and potentially allow for the Division to create a full-time FTE position for the regulation of preneed contract sellers under Article 15.

Regulation of funeral homes should reside in one Division within DORA. Currently there are 206 funeral homes registered with the Division of Professions and Occupations. There are only 70 active preneed contract sellers licensed with the Division of Insurance to sell preneed contracts. These numbers need to match. The participants in our stakeholder meetings across the State all seemed to come to a consensus that every funeral home that operates in Colorado has at least an interest in selling preneed contracts, and most likely, each funeral home is actually selling preneed contracts even if they are not licensed to do so. In order for Article 15 to be effective in protecting consumers, all of the participants need to be identified and regulated under the law. Equally enforcing regulations on all the participants in this industry will allow for a level playing field for everyone involved.

The establishment of a relief fund for preneed consumers seems prudent. Such a fund would strengthen consumer protection and directly benefit consumers by protecting them from harmful acts. One way to effectuate this could be to establish a Foundation in conjunction with the Colorado Funeral Directors Association. Requirements for contributing and withdrawing from the fund would also need to be established in detail, likely via rulemaking.

The findings from this study support the previous recommendations regarding preneed contracts as suggested in the 2016 Sunset Review of the Division of Insurance. Division findings specifically support authorizing the Commissioner to conduct financial examinations of preneed sellers periodically, or as often as the Commissioner deems necessary, and requiring the Commissioner to conduct financial examinations of preneed sellers with Division staff. In the past, examinations had not been successful because of how they were conducted. Those examinations were lengthy, expensive, and disruptive to the business of the funeral homes being examined. The Division recognizes that financial examinations can be effectively conducted in a much more efficient manner. Discussions with Division staff and stakeholders outlined how financial examinations could be conducted in a manner that is not disruptive to business. Stakeholders were receptive to the financial examination concepts presented at our meetings.

The goal of changing the structure in which preneed contract sellers are licensed and regulated is to curtail unlicensed activity within the industry. Such potential legislative changes would be accompanied by strong outreach to the industry to educate funeral home directors and owners about the new laws, as well as consistent and aggressive implementation of licensing requirements.

APPENDIX - PRENEED LAWS

Section 10-15-102, C.R.S.

(1) "Broker" means any contract seller who must utilize the services of a general provider to fulfill the terms of a preneed contract.

. . . .

(6) "Contract seller" means a person who sells or offers to sell funeral goods, merchandise, or services through a preneed contract.

. . . .

(12) "Person" means an individual, partnership, firm, joint venture, corporation, company, association, joint stock association, or limited liability company.

. . . .

(13)(a) "Preneed contract" means any written contract, agreement, or mutual understanding, or any security or other instrument that is convertible into a contract, agreement, or mutual understanding, whereby, upon the death of the preneed contract beneficiary, a final resting place, merchandise, or services are provided or performed in connection with the final disposition of the beneficiary's body. Consideration for a preneed contract is funds, deposits, or the assignment of life insurance benefits.

Section 10-15-103, C.R.S.

(1)(a) A contract seller shall not enter into a preneed contract or accept any funds or other consideration without a license from the commissioner. To be valid, an application for an initial license must be in writing, signed by the applicant, and duly verified on forms furnished by the commissioner. Each application must be accompanied by payment of five hundred dollars and either:

(I) A current balance sheet, income statement, and statement of cash flow to demonstrate that the business has a net worth of at least ten thousand dollars, signed by a certified public accountant ("CPA"), or, if prepared by the applicant or public accountant, accompanied by a current tax return; or

(II) A surety bond of at least ten thousand dollars to honor preneed contract obligations.

1(b)(I) With the submission of the initial application described in paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the commissioner. The commissioner shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. (II) For purposes of this paragraph (b), "applicant" means an individual and, in the case of a corporation, each officer and director of the corporation.

. . . .

(2) Upon receipt of a complete application and license fee, the commissioner shall issue a license to the applicant unless the commissioner determines that:

(a) The applicant has made false statements or misrepresentations in such application; or

(b) The applicant does not meet the conditions of subsection (1) of this section; or

(c) The applicant is not duly authorized to transact business in the state of Colorado; or

(d) Any officer, director, or controlling shareholder of the applicant has been convicted of a crime involving fraud or misappropriation or misuse of funds; or

(e) The applicant has not filed a preneed contract, general provider contract, or trust agreement and assignment form, where applicable, which comply with the provisions of this article; or

(f) The applicant is an insurance company.

. . . .

(4)(a) The commissioner may investigate the books, records, and accounts of a contract seller to ensure that trust funds, preneed contracts, and preneed insurance policies comply with this article. The commissioner, or a qualified person designated by the commissioner, may examine the books, records, and accounts of the contract seller as often as necessary upon receiving a complaint or indication of noncompliance and may require the attendance of and examine under oath all persons whose testimony the commissioner needs for this purpose.

(b) The commissioner shall make every reasonable effort to utilize examiners employed by the division of insurance in preference to designating persons who are not employees of the division of insurance to perform examinations. If evidence of a violation of this article is known, the commissioner may designate a qualified person who is not an employee of the division of insurance to examine a contract seller, and the contract seller shall directly pay the reasonable expenses and charges of the examiner.

. . . .

(5)(a) Every license shall expire on June 30. Every license shall be renewed annually and automatically extended upon filing of a complete application on a form provided by the commissioner, demonstration of compliance with the conditions of subsection (2) of this section, payment of the fee prescribed in paragraph (b) of this subsection (5), and the filing of the annual report which shall be due by March 31 of each year. A filing made later than March 31 may be subject to a late fee of up to one hundred dollars per day for each day received after such date. If the contract seller is in compliance with this section, the contract seller shall be deemed licensed unless and until notified by the commissioner that the renewal does not comply with this section.

(b) The annual renewal fee shall be based upon the aggregate preneed contract price of all preneed contracts outstanding at the end of each calendar year. If the aggregate preneed contract price is:

(I) One hundred thousand dollars or less, the annual renewal fee shall be one hundred dollars;

(II) Greater than one hundred thousand dollars but not exceeding five hundred thousand dollars, the annual renewal fee shall be two hundred dollars;

(III) Greater than five hundred thousand dollars but not exceeding one million dollars, the annual renewal fee shall be five hundred dollars;

(IV) Greater than one million dollars but not exceeding five million dollars, the annual renewal fee shall be one thousand dollars;

(V) Greater than five million dollars but not exceeding ten million dollars, the annual renewal fee shall be one thousand five hundred dollars;

(VI) In excess of ten million dollars, the annual renewal fee shall be two thousand dollars.

Section 10-15-105, C.R.S.

. . . .

(4)(d) State the terms and conditions for cancellation by the contract buyer within the first seven days of the contract buyer's signature to the preneed contract during which period the contract buyer may provide the contract seller with written notice of cancellation. The contract seller shall forward a one hundred percent refund to the contract buyer within ten calendar days of receipt of the written cancellation.

. . . .

(4)(j) Contain a provision stating that the contract seller is responsible for furnishing the merchandise and services expressed in the preneed contract unless the contract buyer is in default, the contract is canceled, or the assignment funding the contract is void, canceled, or otherwise reduced in value by action of the contract buyer. The preneed contract shall provide that in the case of the death of the preneed contract beneficiary, the contract buyer or, if the contract buyer is deceased, such buyer's heirs, assigns, or duly authorized representatives are entitled to a full return of consideration instead of performance by the contract seller. It shall further provide whether or not a preneed contract, in case of default or cancellation, a preneed contract which has not been performed, or promissory note executed in connection therewith, may allow the contract seller to retain liquidated damages. In no event shall such liquidated damages exceed the lesser of the funds received or fifteen percent of the total preneed contract price. Such liquidated damages are deemed to be the reasonable value of administrative and sales costs incurred.

. . . .

(10)(a) The contract seller shall:

(I) Disclose the name and address of the trustee who holds the preneed contract funds; and

(II) Notify the buyer when the preneed contract funds are deposited into trust.

Section 10-15-107, C.R.S.

(1) If a contract seller enters into a preneed contract in which the consideration is funds, the contract seller shall deposit not less than seventy-five percent of the total preneed contract price with a trustee. The contract seller shall deposit all funds in excess of twenty-five percent of the total preneed contract price with a trustee within forty-five days after receipt thereof. All funds deposited with a trustee shall be deposited under the terms of a trust instrument, which shall not be inconsistent or in conflict with the provisions of this article, and shall be held in trust by the trustee pursuant to the provisions of this article. Copies of all trust instruments and amendments to such trust instruments shall be filed with the commissioner.

. . . .

Section 10-15-114, C.R.S.

(1) The commissioner may impose an administrative fine not to exceed one thousand dollars for each separate offense; may issue a letter of admonition; may place a contract seller on probation under the commissioner's close supervision on such terms and for such time as the commissioner deems appropriate; and may refuse to renew, may revoke, or may suspend the license of any contract seller if, after an investigation and after notice and a hearing pursuant to the provision of section 24-4-104, C.R.S., the commissioner determines that the contract seller has: (a) Failed to comply with or has violated any provision of this article or any regulation or order lawfully made pursuant to and within the authority of this article; or

(b) Used false or misleading advertising or made any false or misleading statement or concealment in the contract seller's application for licensure; or

(c) Employed any device, scheme, or artifice which results in defrauding a contract buyer; or

(d) Disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any contract buyer which are subject to regulation pursuant to this article; or

(e) Committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.; or

(f) Been convicted of, or any officer, director, or controlling shareholder has been convicted of, a crime involving fraud or misappropriation or misuse of funds; or

(g) Failed to provide appropriate records requested by the commissioner as part of an investigation of a complaint filed with the commissioner.

TITLE 12 Professions and Occupations, ARTICLE 54 Mortuaries

Section 12-54-110, C.R.S. Registration required.

(1) Unless practicing at a registered funeral establishment pursuant to this section, a person shall not practice as, or offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall the funeral establishment sell or offer to sell funeral goods and services to the public.

(2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include the following:

(I) The specific location of the funeral establishment;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the funeral establishment began doing business; and

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

(A) Refrigerating or holding human remains;

(B) Embalming human remains;

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

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

(E) Selling preneed contracts.

(b) Each funeral establishment registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the funeral establishment provides a service listed in subparagraph (IV) of paragraph (a) of this subsection (2) that was not included in the initial registration, the funeral establishment shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the funeral establishment appoints a new designee, the funeral establishment shall submit an amended registration within thirty days after appointing the designee.

(e) The director may establish registration fees, renewal fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a funeral establishment fails to renew

the registration in accordance with the schedule established by the director, the registration shall expire.

(3) Each funeral establishment shall appoint an individual as the designee of the funeral establishment. A designee shall:

- (a) Be at least eighteen years of age;
- (b) Have at least two years' experience working for a funeral establishment;
- (c) Be employed by the registered funeral establishment that the designee represents;
- (d) Have the authority within the funeral establishment's organization to require that personnel comply with this article; and
- (e) Not be designated for more than one funeral establishment unless the additional establishment is operated under common ownership and management and no funeral establishment is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the funeral establishment to demonstrate evidence of compliance with section 12-54-111. The designee shall retain the records of such evidence so long as the person is employed at the funeral establishment.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

12-54-111. Title protection.

(1) A person shall not advertise, represent, or hold oneself out as or use the title of a mortuary science practitioner unless the person:

(a) Has at least two thousand hours practicing or interning as a mortuary science practitioner, including, without limitation, experience in cremation and embalming;

(b) Has graduated with a certificate, diploma, or degree in mortuary science from:

(I) A program accredited by the American board of funeral service education or its successor, if the successor is approved by the director, and the program is part of a school of higher education; or

(II) A school of higher education accredited by the American board of funeral service education or its successor, if the successor is approved by the director; and

(c) Has taken the mortuary science test, known as the national board examination, administered by the international conference of funeral service examining boards or its successor, if the successor is approved by the director, and received a passing score.

(2) A person shall not advertise, represent, or hold oneself out as or use the title of a funeral director unless the applicant:

(a) Has at least two thousand hours practicing or interning as a funeral director; and

(b) Has directed at least fifty funerals or graveside services.

(3) A person shall not advertise, represent, or hold oneself out as or use the title of an embalmer unless the applicant:

(a) Has at least four thousand hours practicing or interning as an embalmer; and

(b) Has embalmed at least fifty human remains.

(4) For purposes of this section, intern or practice hours from Colorado or any other state shall meet the standards set by this section.