
SUBSTITUTE HOUSE BILL 2360

State of Washington 62nd Legislature 2012 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Stanford, Rivers, and Ryu)

READ FIRST TIME 01/25/12.

1 AN ACT Relating to deposit and investment provisions for the
2 prearrangement trust funds of cemetery authorities and funeral
3 establishments; and amending RCW 68.46.040 and 18.39.250.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 68.46.040 and 2005 c 365 s 128 are each amended to
6 read as follows:

7 (1) All prearrangement trust funds ((shall)) must be deposited in
8 a ((public depository as defined by RCW 39.58.010, in a state or
9 federally chartered credit union, or in instruments issued or insured
10 by any agency of the federal government)) commercial bank, trust
11 company, mutual savings bank, savings and loan association, or credit
12 union, whether state or federally chartered. Such accounts ((shall))
13 must be designated as the "prearrangement trust fund" by name and the
14 particular cemetery authority for the benefit of the beneficiaries
15 named in any prearrangement contract.

16 (2) All prearrangement trust funds must be invested in accordance
17 with the provisions of RCW 11.100.020 subject to the following
18 restrictions:

1 (a) No officer or director of the cemetery authority, trustee of
2 the prearrangement trust funds, or spouse, sibling, parent,
3 grandparent, or issue of such officer, director, or trustee, may borrow
4 any of such funds for himself or herself, directly or indirectly;

5 (b) No funds may be loaned to the cemetery authority, its agents,
6 or employees, or to any corporation, partnership, or other business
7 entity in which the cemetery authority has any ownership interest; and

8 (c) No funds may be invested with persons or business entities
9 operating in a business field directly related to cemeteries.

10 **Sec. 2.** RCW 18.39.250 and 2005 c 365 s 21 are each amended to read
11 as follows:

12 (1) Any funeral establishment selling funeral merchandise or
13 services by prearrangement funeral service contract and accepting
14 moneys therefore (~~(shall)~~) must establish and maintain one or more
15 prearrangement funeral service trusts under Washington state law with
16 two or more designated trustees, for the benefit of the beneficiary of
17 the prearrangement funeral service contract. Funeral establishments
18 may join with one or more other Washington state licensed funeral
19 establishments in a "master trust" provided that each member of the
20 "master trust" (~~(shall—comply)~~) complies individually with the
21 requirements of this chapter.

22 (2) Up to ten percent of the cash purchase price of each
23 prearrangement funeral service contract, excluding sales tax, may be
24 retained by the funeral establishment unless otherwise provided in this
25 chapter. If the prearrangement funeral service contract is canceled
26 within thirty calendar days of its signing, then the purchaser
27 (~~(shall)~~) must receive a full refund of all moneys paid under the
28 contract.

29 (3) At least ninety percent of the cash purchase price of each
30 prearrangement funeral service contract, paid in advance, excluding
31 sales tax, shall be placed in the trust established or utilized by the
32 funeral establishment. Deposits to the prearrangement funeral service
33 trust (~~(shall)~~) must be made not later than the twentieth day of the
34 month following receipt of each payment made on the last ninety percent
35 of each prearrangement funeral service contract, excluding sales tax.

36 (4) All prearrangement funeral service trust moneys (~~(shall)~~) must
37 be deposited in an insured account in a (~~(public depository or shall)~~)

1 commercial bank, trust company, mutual savings bank, savings and loan
2 association, or credit union, whether state or federally chartered ((be
3 invested in instruments issued or insured by any agency of the federal
4 government)). The account or investments shall be designated as the
5 prearrangement funeral service trust of the funeral establishment for
6 the benefit of the beneficiaries named in the prearrangement funeral
7 service contracts. The prearrangement funeral service trust shall not
8 be considered as, or used as, an asset of the funeral establishment.
9 All prearrangement funeral service trust moneys must be invested in
10 accordance with the provisions of RCW 11.100.020 subject to the
11 following restrictions:

12 (a) No officer or director of the funeral establishment, trustee of
13 the prearrangement trust funds, or spouse, sibling, parent,
14 grandparent, or issue of such officer, director, or trustee, may borrow
15 any of such funds for himself or herself, directly or indirectly;

16 (b) No funds may be loaned to the funeral establishment, its
17 agents, or employees, or to any corporation, partnership, or other
18 business entity in which the funeral establishment has any ownership
19 interest; and

20 (c) No funds may be invested with persons or business entities
21 operating in a business field directly related to funeral homes.

22 (5) After deduction of reasonable fees for the administration of
23 the trust, taxes paid or withheld, or other expenses of the trust, all
24 interest, dividends, or growth earned by a trust ((shall)) become a
25 part of the trust. Adequate records ((shall)) must be maintained to
26 allocate the share of principal and interest to each contract. Fees
27 deducted for the administration of the trust ((shall)) may not exceed
28 one percent per year of the amount in trust. In no instance ((shall))
29 may the administrative charges deducted from the prearrangement funeral
30 service trust reduce, diminish, or in any other way lessen the value of
31 the trust so that the services or merchandise provided for under the
32 contract are reduced, diminished, or in any other way lessened.

33 (6) Except as otherwise provided in this chapter, the trustees of
34 a prearrangement funeral service trust ((shall)) must permit withdrawal
35 of all funds deposited under a prearrangement funeral service contract,
36 plus accruals thereon, under the following circumstances and
37 conditions:

1 (a) If the funeral establishment files a verified statement with
2 the trustees that the prearrangement funeral merchandise and services
3 covered by the contract have been furnished and delivered in accordance
4 therewith; or

5 (b) If the funeral establishment files a verified statement with
6 the trustees that the prearrangement funeral merchandise and services
7 covered by the contract have been canceled in accordance with its
8 terms.

9 (7) Subsequent to the thirty calendar day cancellation period
10 provided for in this chapter, any purchaser or beneficiary who has a
11 revocable prearrangement funeral service contract has the right to
12 demand a refund of the amount in trust.

13 (8) Prearrangement funeral service contracts which have or should
14 have an account in a prearrangement funeral service trust may be
15 terminated by the board if the funeral establishment goes out of
16 business, becomes insolvent or bankrupt, makes an assignment for the
17 benefit of creditors, has its prearrangement funeral service
18 certificate of registration revoked, or for any other reason is unable
19 to fulfill the obligations under the contract. In such event, or upon
20 demand by the purchaser or beneficiary of the prearrangement funeral
21 service contract, the funeral establishment (~~shall~~) must refund to
22 the purchaser or beneficiary all moneys deposited in the trust and
23 allocated to the contract unless otherwise ordered by a court of
24 competent jurisdiction. The purchaser or beneficiary may, in lieu of
25 a refund, elect to transfer the prearrangement funeral service contract
26 and all amounts in trust to another funeral establishment licensed
27 under this chapter which will agree, by endorsement to the contract, to
28 be bound by the contract and to provide the funeral merchandise or
29 services. Election of this option (~~shall~~) does not relieve the
30 defaulting funeral establishment of its obligation to the purchaser or
31 beneficiary for any amounts required to be, but not placed, in trust.

32 (9) Prior to the sale or transfer of ownership or control of any
33 funeral establishment which has contracted for prearrangement funeral
34 service contracts, any person, corporation, or other legal entity
35 desiring to acquire such ownership or control (~~shall~~) must apply to
36 the director in accordance with RCW 18.39.145. Persons and business
37 entities selling or relinquishing, and persons and business entities
38 purchasing or acquiring ownership or control of such funeral

1 establishments (~~shall~~) must each verify and attest to a report
2 showing the status of the prearrangement funeral service trust or
3 trusts on the date of the sale. This report (~~shall~~) must be on a
4 form prescribed by the board and shall be considered part of the
5 application for a funeral establishment license. In the event of
6 failure to comply with this subsection, the funeral establishment
7 (~~shall be~~) is deemed to have gone out of business and the provisions
8 of subsection (8) of this section (~~shall~~) apply.

9 (10) Prearrangement funeral service trust moneys (~~shall~~) may not
10 be used, directly or indirectly, for the benefit of the funeral
11 establishment or any director, officer, agent, or employee of the
12 funeral establishment including, but not limited to, any encumbrance,
13 pledge, or other use of prearrangement funeral service trust moneys as
14 collateral or other security.

15 (11)(a) If, at the time of the signing of the prearrangement
16 funeral service contract, the beneficiary of the trust is a recipient
17 of public assistance as defined in RCW 74.04.005, or reasonably
18 anticipates being so defined, the contract may provide that the trust
19 will be irrevocable. If after the contract is entered into, the
20 beneficiary becomes eligible or seeks to become eligible for public
21 assistance under Title 74 RCW, the contract may provide for an election
22 by the beneficiary, or by the purchaser on behalf of the beneficiary,
23 to make the trust irrevocable thereafter in order to become or remain
24 eligible for such assistance.

25 (b) The department of social and health services (~~shall~~) must
26 notify the trustee of any prearrangement service trust that the
27 department has a claim on the estate of a beneficiary for long-term
28 care services. Such notice (~~shall~~) must be renewed at least every
29 three years. The trustees upon becoming aware of the death of a
30 beneficiary (~~shall~~) must give notice to the department of social and
31 health services, office of financial recovery, who shall file any claim
32 there may be within thirty days of the notice.

33 (12) Every prearrangement funeral service contract financed through
34 a prearrangement funeral service trust (~~shall~~) must contain language
35 which:

36 (a) Informs the purchaser of the prearrangement funeral service
37 trust and the amount to be deposited in the trust;

1 (b) Indicates if the contract is revocable or not in accordance
2 with subsection (11) of this section;
3 (c) Specifies that a full refund of all moneys paid on the contract
4 will be made if the contract is canceled within thirty calendar days of
5 its signing;
6 (d) Specifies that, in the case of cancellation by a purchaser or
7 beneficiary eligible to cancel under the contract or under this
8 chapter, up to ten percent of the contract amount may be retained by
9 the seller to cover the necessary expenses of selling and setting up
10 the contract;
11 (e) Identifies the trust to be used and contains information as to
12 how the trustees may be contacted.

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