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SENATE BILL 6000

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Harper, King, and Shin

Read first time 01/09/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to deposit and investment provisions for the  
2 prearrangement trust funds of cemetery authorities; and amending RCW  
3 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 national or  
9 state-chartered financial institution authorized to do business in the  
10 state, or in a state or federally chartered credit union((, or in  
11 instruments issued or insured by any agency of the federal  
12 government)). Such accounts ((shall)) must be designated as the  
13 "prearrangement trust fund" by name and the particular cemetery  
14 authority for the benefit of the beneficiaries named in any  
15 prearrangement contract.

16 (2) All prearranged cemetery merchandise or service trust moneys  
17 must be invested in accordance with the provisions of RCW 11.100.020  
18 subject to the following 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;

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

10       (d) Notwithstanding any other provisions contained in this section,  
11 funds may be invested in any commercial bank, mutual savings bank, or  
12 savings and loan association duly chartered and operating under the  
13 laws of the United States or statutes of the state of Washington.

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

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

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

33       (3) At least ninety percent of the cash purchase price of each  
34 prearrangement funeral service contract, paid in advance, excluding  
35 sales tax, shall be placed in the trust established or utilized by the  
36 funeral establishment. Deposits to the prearrangement funeral service

1 trust (~~shall~~) must be made not later than the twentieth day of the  
2 month following receipt of each payment made on the last ninety percent  
3 of each prearrangement funeral service contract, excluding sales tax.

4 (4) All prearrangement funeral service trust moneys (~~shall~~) must  
5 be deposited in an insured account in a public depository or shall be  
6 invested in (~~instruments issued or insured by any agency of the~~  
7 ~~federal government. The account or investments shall be designated as~~  
8 ~~the prearrangement funeral service trust of the funeral establishment~~  
9 ~~for the benefit of the beneficiaries named in the prearrangement~~  
10 ~~funeral service contracts. The prearrangement funeral service trust~~  
11 ~~shall not be considered as, or used as, an asset of the funeral~~  
12 ~~establishment~~) accordance with the provisions of RCW 11.100.020  
13 subject to the following restrictions:

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

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

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

23 (d) Notwithstanding any other provisions contained in this section,  
24 funds may be invested in any commercial bank, mutual savings bank, or  
25 savings and loan association duly chartered and operating under the  
26 laws of the United States or statutes of the state of Washington.

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

1 (6) Except as otherwise provided in this chapter, the trustees of  
2 a prearrangement funeral service trust (~~shall~~) must permit withdrawal  
3 of all funds deposited under a prearrangement funeral service contract,  
4 plus accruals thereon, under the following circumstances and  
5 conditions:

6 (a) If the funeral establishment files a verified statement with  
7 the trustees that the prearrangement funeral merchandise and services  
8 covered by the contract have been furnished and delivered in accordance  
9 therewith; or

10 (b) If the funeral establishment files a verified statement with  
11 the trustees that the prearrangement funeral merchandise and services  
12 covered by the contract have been canceled in accordance with its  
13 terms.

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

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

37 (9) Prior to the sale or transfer of ownership or control of any  
38 funeral establishment which has contracted for prearrangement funeral

1 service contracts, any person, corporation, or other legal entity  
2 desiring to acquire such ownership or control (~~shall~~) must apply to  
3 the director in accordance with RCW 18.39.145. Persons and business  
4 entities selling or relinquishing, and persons and business entities  
5 purchasing or acquiring ownership or control of such funeral  
6 establishments (~~shall~~) must each verify and attest to a report  
7 showing the status of the prearrangement funeral service trust or  
8 trusts on the date of the sale. This report (~~shall~~) must be on a  
9 form prescribed by the board and shall be considered part of the  
10 application for a funeral establishment license. In the event of  
11 failure to comply with this subsection, the funeral establishment  
12 (~~shall be~~) is deemed to have gone out of business and the provisions  
13 of subsection (8) of this section (~~shall~~) apply.

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

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

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

1           (12) Every prearrangement funeral service contract financed through  
2 a prearrangement funeral service trust (~~shall~~) must contain language  
3 which:

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

6           (b) Indicates if the contract is revocable or not in accordance  
7 with subsection (11) of this section;

8           (c) Specifies that a full refund of all moneys paid on the contract  
9 will be made if the contract is canceled within thirty calendar days of  
10 its signing;

11           (d) Specifies that, in the case of cancellation by a purchaser or  
12 beneficiary eligible to cancel under the contract or under this  
13 chapter, up to ten percent of the contract amount may be retained by  
14 the seller to cover the necessary expenses of selling and setting up  
15 the contract;

16           (e) Identifies the trust to be used and contains information as to  
17 how the trustees may be contacted.

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