

**CHAPTER 102****(HB 142)**

AN ACT relating to preneed funeral service or burial contracts.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 367.934 is amended to read as follows:

- (1) All payments of money made to any person, partnership, association, or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots or mausoleums, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association, or corporation receiving the payments is declared to be the agent thereof, and shall deposit all payments in a trust account with a bank or trust company or invest said payments in a savings and loan association or federally chartered credit union. The trustee shall be the financial institution holding said funds. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. The agent shall have the authority at any time to transfer or redesignate the trustee of said funds in his *or her* discretion upon notification to the Attorney General. In case of any transfer, the former trustee shall transfer funds directly to and payable to the newly-designated trustee or its representative.
- (2) All payments made to the agent under the agreement, contract, or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract, or plan, except where payment is made pursuant to a request for refund.
- (3) The funds shall not be paid by the financial institution until a certified statement is furnished to the financial institution by the agent setting forth that all of the terms and conditions of the agreement have been fully performed by the person, association, partnership, firm, or corporation. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract, or plan shall be paid to the estate of the beneficiary of the agreement, contract, or plan.
- (4) ***The funds shall not be paid by the financial institution until the agent has proven the death of the person for whose service the funds were paid by furnishing the financial institution with a verified or certified copy of a record verifying the death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213 or a provisional certificate of death as described in KRS 213.076.***
- (5) No provision of KRS 367.932 to 367.974 shall be construed to apply to contracts for funeral service or merchandise sold as preneed and burial insurance policies which are regulated by the Office of Insurance of this state.

Section 2. KRS 367.942 is amended to read as follows:

- (1) Every licensee shall keep and maintain adequate records including but not limited to the following:
  - (a) A cash receipts journal, listing moneys received in chronological order, dates, and amounts received, and identification of the payor or purchaser;
  - (b) A cash disbursement journal, containing the same information for moneys disbursed. If a separate bank account is kept exclusively for any such funds, the checkbook could be used as a cash disbursement journal;
  - (c) A "reconciliation," done at least once every twelve (12) months. The reconciliation shall indicate the beginning balance in the trust account, payments received during the period, interest earned during the period, disbursements on either cancellation or the death of the beneficiary, and the ending balance for the period. The ending balance for each period is determined as follows:

Beginning Balance

+ Payments received

+ Interest  
 - Disbursements  
 Ending Balance

- (d) Documentation files, supporting the reconciliation and containing the preneed burial contract. Each file, consisting of a separate file for each contract, should include the name and address of the purchaser, the beneficiary, and the financial institution in which the trust funds were deposited. Passbooks, certificates, and other evidence of the account with the financial institution should be kept with the individual files, depending on the safety and security of the files.
- (e) ***A certified copy of a verification of death issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076 upon the death of each person for whose service funds were paid to the licensee by the trustee under a preneed burial contract.***
- (2) All sales, trust fund, and accounting records of the agent licensee shall be readily available at the agent's principal place of business in this state at reasonable times for examination by an authorized representative of the Attorney General's office.
- (3) The necessary expenses of any examination made pursuant to this section shall be paid by the licensee, but in no case shall the Attorney General or his *or her* authorized representatives be paid more than the actual expenses of such examination not to exceed the lesser of the following amounts: one hundred dollars (\$100) per day for each auditor or five dollars (\$5) for each agent's sales contract examined. The agent may pay for this expense using interest moneys which have accrued on the agent's existing preneed funeral trust fund accounts. Any withdrawal of interest for this purpose shall be taken as a pro rata share of all of the agent's existing preneed funeral trust fund accounts. The Attorney General shall be advised in writing by the agent when interest moneys is the source of payment and shall receive written certification from the financial institution or agent that the withdrawal was a pro rata share.
- (4) This section shall apply to examinations of all preneed funeral contracts whether entered into prior to or after July 13, 1984.

Section 3. KRS 304.12-240 is amended to read as follows:

- (1) As used in this section, ***unless the context requires otherwise:***
- (a) "Preneed funeral contract or prearrangement" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services; ***and***
- (b) "***Agent***" has the meaning provided in KRS 367.932.
- (2) The executive director shall adopt regulations requiring life insurers to provide disclosure to consumers when life insurance or annuities are used to fund preneed funeral contracts or prearrangements.
- (3) ***Life insurance and annuity benefits used to fund preneed funeral contracts or prearrangements shall not be paid by a life insurer until the agent has proven the death of the person for whose service the premiums were paid by furnishing the life insurer with a verified or certified copy of a record verifying the death issued by the state registrar of the Vital Statistics Branch of its successor agency as authorized by KRS Chapter 213 or a provisional certificate of death as described in KRS 213.076.***

**Approved March 30, 2006**