

CHAPTER 168**(HB 369)**

AN ACT relating to perpetual care and maintenance.

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

➔Section 1. KRS 367.952 is amended to read as follows:

- (1) Every seller of the items described in subsection (2)(a) of this section shall first provide for the future care and maintenance of such items, and to accomplish this purpose shall cause to be established in a financial institution authorized by law to administer trust funds, or in any other financially sound entity with the prior written approval of the Attorney General, an irrevocable trust fund to be known as a perpetual care and maintenance fund. The income of such funds shall be used solely for the general care, maintenance, and embellishment of the cemetery, except as otherwise provided herein.
- (2) (a) Every seller of the items described in this paragraph shall place the following amounts into the perpetual care and maintenance fund of the cemetery in which the item is located within thirty (30) days after each calendar quarter of operations for each payment of each sale which occurs or contract of sale entered into after July 13, 1984:
 1. Twenty percent (20%) of the gross selling price of each grave space, with a minimum of twenty dollars (\$20) per grave space;
 2. Underground crypt, five percent (5%) of the gross selling price with a minimum of twenty-five dollars (\$25) per crypt;
 3. Mausoleum crypt, five percent (5%) of the gross selling price with a minimum of fifty dollars (\$50) per mausoleum crypt; and
 4. Columbarium niche, ten percent (10%) of the gross selling price with a minimum of fifteen dollars (\$15) per niche.
- (b) For the purposes of this section, "gross selling price" shall not include interest, carrying charges or finance charges.
- (c) Every cemetery company hereinafter established shall create and maintain a perpetual care and maintenance fund, depositing therein an initial deposit as listed below, and shall submit proof thereof to the Attorney General prior to the offering for sale of any burial rights. Any payment required under subparagraph (a) of this subsection shall be credited against the initial deposit until the required sum has been reached:
 1. In counties of fewer than 50,000 persons, \$20,000;
 2. In counties of 50,000 to 99,999 persons, \$30,000;
 3. In counties of 100,000 or more persons, \$50,000.
- (3) In the event that a purchaser is in default of a contract purchasing any of the ~~above~~ items ***described in subsection (2)(a) of this section***, the financial institution shall release to the depositor the funds, plus interest, deposited on behalf of the defaulted contract upon receiving from the depositor a sworn affidavit stating that the purchaser is in default of the contract, the date of the default, an explanation of the default and that the depositor mailed a copy of the affidavit to the purchaser's last known address at least thirty (30) days prior to said request for release.
- (4) ***This section does not apply to any cemetery that is owned and operated by a local government. For the purposes of this section, "local government" means: cities, counties, urban-county governments, charter county governments, consolidated local governments, and unified local governments.***
- (5) ***Any local government that has established a trust fund pursuant to subsection (1) of this section may petition the Circuit Court pursuant to KRS 386.675 and 386.680 for termination of the trust and distribution of the funds to the local government for use solely for the general care, maintenance, and embellishment of the cemetery.***

- (6) *Any funds distributed to the local government pursuant to subsection (5) of this section shall be held separately from funds subject to the local government's general power of appropriation.*

Signed by Governor April 24, 2008.