

AN ACT relating to the appropriate care and disposition of human remains.

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

➔Section 1. The citizens of the Commonwealth have a compelling interest and expectation that the remains of their loved ones will be treated with dignity and respect. The laws of the Commonwealth should provide adequate protection in upholding the sanctity of the handling and disposition of human remains and preserving the final resting place of any deceased person, without unduly restricting family, ethnic, cultural, or religious traditions. The purpose of this Act is to ensure that the deceased are accorded the dignity and respect appropriate to any individual without reference to ethnic origins, cultural backgrounds, or religious affiliation.

➔Section 2. KRS 213.076 is amended to read as follows:

- (1) (a) A certificate of death or a provisional certificate of death for each death which occurs in the Commonwealth shall be filed with the cabinet or as otherwise directed by the state registrar prior to final disposition, and it shall be registered if it has been completed and filed in accordance with this section. The funeral director, or person acting as such, who first takes custody of a dead body shall be responsible for filing the certificate of death. The funeral director, or person acting as such, shall obtain the required personal and statistical particulars from the person best qualified to supply them over the signature and address of the informant. Effective January 1, 2015, all certificates of death shall be filed with the cabinet using the Kentucky Electronic Death Registration System in a manner directed by the state registrar.
- (b) At the time of obtaining the required personal and statistical particulars from the informant referred to in paragraph (a) of this subsection, the funeral director, or person acting as such, shall ask the informant if the deceased ever served in the military. If the informant answers in the affirmative, then the

funeral director, or person acting as such, shall provide the informant with a fact sheet stating military burial rights supplied by the Kentucky Department of Veterans' Affairs.

- (c) The funeral director, or person acting as such, shall within five (5) days of the death, present the certificate to the attending physician, if any, or to the health officer or coroner as directed by the state registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record as required by this chapter.
- (d) It shall be unlawful for an institution to release a dead human body until the funeral director, or person acting as such, has completed and filed with the local registrar or person in charge of the institution, a provisional certificate of death. If death occurs outside an institution, the provisional certificate shall be filed with the local registrar by the funeral director, or person acting as such, prior to final disposition of the dead body. A copy of the provisional certificate of death signed by the person with whom it was filed, shall constitute authority for the possession, transportation, and, except for cremation, final disposition of the body.
- (e) All persons having in their possession a completed provisional certificate of death shall file the certificate at not more than weekly intervals with the local registrar.
- (f) If the place of death is unknown but the dead body is found in the Commonwealth, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation subject to amendment upon completion of any postmortem examination required to be performed.
- (g) If death occurs in a moving conveyance in the United States and the body is

first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, and the place where it is first removed shall be considered the place of death. If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space, and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in Kentucky, but the certificate shall show the actual place of death insofar as can be determined.

- (2) If any certificate of death is incomplete or unsatisfactory, the state registrar shall call attention to the defects in the certificate and require the person responsible for the entry to complete or correct. The state registrar may also require additional information about the circumstances and medical conditions surrounding a death in order to properly code and classify the underlying cause. A funeral director shall not be held responsible for the failure of a physician, dentist, chiropractor, or coroner to complete or correct the entry for which he or she is responsible.
- (3) The medical certification shall be completed, signed, and returned to the funeral director within five (5) working days after presentation to the physician, dentist, or chiropractor in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by KRS 72.400 to 72.475. In such cases, or if the cause of death is unknown or under investigation, the cause of death shall be shown as such on the certificate. A supplemental report providing the medical information omitted from the original certificate shall be filed by the certifier with the state registrar within five (5) days after receiving results of the inquiry as required by KRS 72.400 to 72.475. The supplemental report shall be made a part of the existing death certificate. This report shall be considered an amendment, and the death certificate shall be marked "Amended." In the absence of the physician, dentist, or chiropractor, or with such person's approval, the certificate may be completed and signed by his associate physician, dentist, or chiropractor, or the

chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, or a physician employed by the local health department, if the individual has access to the medical history of the case and death is due to natural causes.

- (4) If death occurs more than thirty-six (36) hours after the decedent was last treated or attended by a physician, dentist, or chiropractor, the case shall be referred to the coroner for investigation to determine and certify the cause of death. In the event that a coroner is not available to sign the certificate and there is no duly appointed deputy, the county judge/executive shall appoint a competent person to investigate the death and certify to its cause.
- (5)
 - (a) The physician, dentist, chiropractor, or coroner who certifies to the cause of death shall return the certificate to the funeral director, or person acting as such, who, in turn, shall file the certificate directly with the Vital Statistics Branch. Any certified copies of the record requested at the time of filing shall be issued in not more than two (2) working days.
 - (b) In the case of a death in which diabetes was known to be an underlying cause or contributing condition, diabetes shall be listed in the appropriate location on the death certificate by the physician, dentist, chiropractor, or coroner who certifies to the cause of death.
- (6) The Vital Statistics Branch shall provide self-addressed, color-coded envelopes for the funeral homes in the Commonwealth of Kentucky.
- (7) Three (3) free verification-of-death statements shall be provided to the funeral director by the Vital Statistics Branch for every death in the Commonwealth of Kentucky.
- (8) The body of any person whose death occurs in Kentucky shall not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, or removed from or into any registration district, until a provisional certificate of death has been filed

with the local registrar of the registration district in which the death occurs. If the death occurred from a disease declared by the Cabinet for Health and Family Services to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under conditions prescribed by the Cabinet for Health and Family Services and the local health department. The Cabinet for Health and Family Services shall identify by regulation those communicable diseases which require blood and body fluid precautions. If a person who has been diagnosed as being infected with a communicable disease for which blood and body fluid precautions are required, dies within a health facility as defined in KRS 216B.015, the facility shall notify any embalmer or funeral director to whom the body will be transported of the need for such precautions. The notice shall be provided by including the statement "Blood and Body Fluid Precautions" on the provisional report-of-death form as prescribed by the Cabinet for Health and Family Services. Lack of this notice shall not relieve any embalmer or funeral director from taking universal blood and body fluid precautions as are recommended by the United States Department of Health and Human Services, Centers for Disease Control for Morticians' Services. No embalmer or funeral director shall charge more for embalming the remains of a person with a communicable disease which requires blood and body fluid precautions than the price for embalming services listed on the price list funeral providers are required to maintain and provide to consumers pursuant to 16 C.F.R. Sec. 453.2 (1988).

- (9) A burial-transit permit for the final disposition issued under the law of another state which accompanies a dead body or fetus brought into the Commonwealth shall be the authority for final disposition of the body or fetus in the Commonwealth and may be accepted in lieu of a certificate of death. There shall be noted on the face of the record made for return to the local registrar that the body was shipped to

Kentucky for interment and the actual place of death.

- (10) Nothing in this section shall be construed to delay, beyond a reasonable time, the interment or other disposition of a body unless the services of the coroner or the health officer are required or the Department for Public Health deems it necessary for the protection of the public health. If compliance with this section would result in unreasonable delay in the disposition of the body the funeral director, or person acting as such, shall file with the local registrar or deputy registrar prior to interment a provisional certificate of death which shall contain the name, date, and place of death of the deceased, the name of the medical certifier, and an agreement to furnish within ten (10) days a complete and satisfactory certificate of death.
- (11) **(a)** No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by a copy of the provisional certificate of death.
- (b)** The sexton, or if there is no sexton, the funeral director, or person acting as such, shall enter on the provisional certificate over his signature, the date, place, and manner of final disposition and file the certificate within five (5) days with the local registrar. **If the place of interment is in a public cemetery, the place of final disposition shall include the following information:**
- 1. The name and geographic location of the cemetery; and**
 - 2. The specific plot within the cemetery in which the body was interred.**
- (12) Authorization for disinterment, transportation, and reinterment or other disposition shall be required prior to disinterment of any human remains. The authorization shall be issued by the state registrar upon proper application. The provisions of this subsection shall apply to all manners of disposition except cremation and without regard for the time and place of death. The provisions of KRS 381.765 shall not apply to remains removed for scientific study and the advancement of knowledge.

- (13) After a death certificate has been on file for five (5) years, it may not be changed in any manner except upon order of a court. Prior to that time, requests for corrections, amendments, or additions shall be accompanied by prima facie evidence which supports the requested change.

➔Section 3. 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) **The funds shall not be paid by the financial institution until the agent has proven that any grave space, underground crypt, or mausoleum crypt designated in the agreement, contract, or plan corresponds to the specific place of final disposition as required in Section 2(11)(b) of this Act.**
- (6)** 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 Department of Insurance of this state.
➔Section 4. KRS 367.946 is amended to read as follows:
 - (1) Every person engaged in the sale of any preneed cemetery merchandise contract and cemetery company, hereinafter referred to as registrants, shall register with the Attorney General at least thirty (30) days prior to commencing to do business. Such registration shall be on forms provided by the Attorney General and shall contain at

least the following information.

- (a) The name and location of the cemetery;
 - (b) The size and type;
 - (c) The names, addresses, and other relative information concerning the owners, officers, and directors;
 - (d) Identification, location, and total amounts deposited in the perpetual care and merchandise trust funds;
 - (e) Types of services and merchandise sold and whether at need or preneed.
- (2) Every registrant shall, within sixty (60) days of any material change of any item required to be reported hereunder, notify the department of such change.
- (3) Every registrant shall pay a filing fee of fifty dollars (\$50) with its application.
- (4) Every registrant shall file an annual report on a form provided by the Attorney General containing information as the Attorney General may reasonably require, but at least the following:
- (a) The total amount deposited in the perpetual care and maintenance trust fund, and a listing of:
 1. The total number of grave spaces, underground crypts, mausoleums, and niches sold within the last twelve (12) months; ~~and~~
 2. The gross selling price of each; and
 3. *The specific location of each grave space, underground crypt, mausoleum and niche sold within the last twelve (12) months including the unique identifier required under Section 5(1)(d) of this Act;*
 - (b) The total amount deposited in the cemetery merchandise trust fund account, and a listing of the total number of the different cemetery merchandise sold within the last twelve (12) months and the retail selling price of each; and
 - (c) The total amount deposited in the preconstruction trust fund accounts, and a

listing of the total number of mausoleum crypts, niches, and underground crypts sold within the last twelve (12) months and the retail selling price of each and current balance.

- (5) Every such report shall be verified by the registrant and shall be attested to by any other person preparing the same.
- (6) Such reports shall not be available to the general public and shall be used only for the lawful purpose of the Attorney General's office.
- (7) A ten dollar (\$10) fee shall be paid to the office of the Attorney General by each registrant filing an annual report.

(8) Every registrant shall submit a report listing the specific location of each grave space within the cemetery. The report shall be:

(a) Due within ninety (90) days after the effective date of this Act for existing cemeteries;

(b) Due at least thirty (30) days prior to commencing to do business for new cemeteries;

(c) Updated at least thirty (30) days prior to the expansion of any existing cemetery; and

(d) Accompanied by a fee of twenty-five dollars (\$25) paid to the Office of the Attorney General.

(9) (a) The Office of the Attorney General shall establish and maintain a database of the location of each grave space reported by registrants in compliance with subsection (8) of this section.

(b) The Office of the Attorney General shall compare the annual report required by subsection (4)(a) of this section with the inventory required by subsection (8) of this section to ensure that no grave space is sold more than once.

➔Section 5. KRS 367.948 is amended to read as follows:

(1) Every registrant shall keep and maintain adequate records, including, but not limited to, the following:

(a)~~(1)~~ A cash receipts journal, or its equivalent, listing moneys received in chronological order. The journal shall contain dates of all such moneys received, amounts received, and identification of the purchasers;

(b)~~(2)~~ A cash disbursement journal, or its equivalent, containing the same information as required by subsection (1) of this section 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)~~(3)~~ 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 during the period, 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; and

(d) *A unique identifier for each grave space, underground crypt, and mausoleum crypt within the cemetery and a cross-reference to any agreement, contract, or plan entered into by the registrant for that grave space, underground crypt, or mausoleum crypt.*

(2)~~(4)~~ All contracts, sales, trust fund, and accounting records of the registrant shall be readily available at the registrant's principal place of business in this state at reasonable times for examination by an authorized representative of the Attorney General's office;

- ~~(3)~~~~(5)~~ (a) The necessary expenses of any reasonable examination made pursuant to this section shall be paid by the registrant; but in no case shall the Attorney General or his 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 registrant's sales contract examined. In any event, the cost of such examination shall not exceed a total of one thousand two hundred fifty dollars (\$1,250) during any twelve (12) month period;
- (b) The registrant may pay for this expense using interest moneys which have accrued on the registrant's existing cemetery merchandise trust fund accounts or preconstruction trust fund account or perpetual care account. Any withdrawal of interest for this purpose shall be taken as a pro rata share of all of the trust fund accounts. The Attorney General shall be advised in writing by the registrant when interest moneys are the source of payment and shall receive written certification from the financial institution or registrant that the withdrawal was a pro rata share;
- ~~(4)~~~~(6)~~ This section shall apply to examinations of all registrant's contracts.

➔SECTION 6. A NEW SECTION OF KRS 367.934 TO 367.974 IS CREATED TO READ AS FOLLOWS:

- (1) In order to preserve the dignity of deceased persons and prevent accidental grave desecration, unsold grave spaces within a cemetery shall be separated by at least six (6) inches.**
- (2) This section shall not be interpreted in any way that would require a buried body to be disinterred or a grave site that has already been sold to be transferred.**