

1 AN ACT relating to preneed burial contracts.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 367.934 TO 367.974 IS CREATED  
4 TO READ AS FOLLOWS:

5 **(1) An agent that guarantees a price for all merchandise and full performance of all**  
6 **services to be provided pursuant to a preneed burial contract may collect an**  
7 **administrative fee not to exceed fifteen percent (15%) of the total amount of all**  
8 **payments to be paid under the contract.**

9 **(2) An administrative fee imposed under subsection (1) of this section shall not be**  
10 **collected:**

11 **(a) More than once for each executed preneed burial contract regardless of**  
12 **whether the contract is transferred to a successor entity; or**

13 **(b) If the amount to be paid by the purchaser will be paid in installments, until**  
14 **all installments have been paid.**

15 ➔Section 2. KRS 367.934 is amended to read as follows:

16 (1) **Except as provided in Section 1 of this Act:**

17 **(a) 1.** All payments of money made to any person, partnership, association, or  
18 corporation upon any agreement or contract, or any series or  
19 combination of agreements or contracts, but not including the furnishing  
20 of cemetery lots or mausoleums, which has for a purpose the furnishing  
21 or performance of funeral services, or the furnishing or delivery of  
22 personal property, merchandise, or services of any nature in connection  
23 with the final disposition of a dead human body, for future use at a time  
24 determinable by the death of the person whose body is to be disposed of,  
25 are held to be trust funds.

26 **2.** The person, partnership, association, or corporation receiving the  
27 payments:

- 1           a. Is declared to be the agent thereof;~~[-]~~ and
- 2           b. Shall deposit all payments in a trust account with a bank or trust
- 3                           company or invest the~~[said]~~ payments in a savings and loan
- 4                           association or federally chartered credit union.
- 5           3. The trustee shall be the financial institution holding the~~[said]~~ funds.
- 6           4. All of the interest, dividends, increases, or accretions of whatever nature
- 7                           earned by the funds deposited in a trust account shall remain with the
- 8                           principal of such account and become a part thereof, subject to all of the
- 9                           requirements~~[regulations]~~ concerning the principal of the account~~[said~~
- 10                           ~~fund]~~ herein contained.
- 11           5. a. The agent shall have the authority at any time to transfer or
- 12                           redesignate the trustee of the~~[said]~~ funds in his or her discretion
- 13                           upon notification to the Attorney General.
- 14                           b. In case of any transfer, the former trustee shall transfer funds
- 15                           directly to and payable to the newly designated trustee or its
- 16                           representative;~~[-]~~
- 17           ~~(b)(2)~~ All payments made to the agent under the agreement, contract, or plan
- 18                           are and shall remain trust funds with the financial institution until the death of
- 19                           the person for whose service the funds were paid and until the delivery of all
- 20                           merchandise and full performance of all services called for by the agreement,
- 21                           contract, or plan, except where payment is made pursuant to a request for
- 22                           refund; and~~[-]~~
- 23           (c) 1.~~(3)~~ The funds shall not be paid by the financial institution until:
- 24                           a. A certified statement is furnished to the financial institution by the
- 25                           agent setting forth that all of the terms and conditions of the
- 26                           agreement have been fully performed by the person, association,
- 27                           partnership, firm, or corporation; and

1                   **b.** *The agent has proven the death of the person for whose service*  
 2                   *the funds were paid by furnishing the financial institution with a*  
 3                   *verified or certified copy of a record verifying the death, issued*  
 4                   *by the state registrar of the Vital Statistics Branch or its*  
 5                   *successor agency as authorized by KRS Chapter 213, or a*  
 6                   *provisional certificate of death as described in KRS 213.076.*

7                   **2.** Any balance remaining in the fund after payment for the merchandise  
 8                   and services as set forth in the agreement, contract, or plan shall be paid  
 9                   to the estate of the beneficiary of the agreement, contract, or plan.

10 ~~(2)[(4)]~~ ~~[The funds shall not be paid by the financial institution until the agent has~~  
 11 ~~proven the death of the person for whose service the funds were paid by furnishing~~  
 12 ~~the financial institution with a verified or certified copy of a record verifying the~~  
 13 ~~death, issued by the state registrar of the Vital Statistics Branch or its successor~~  
 14 ~~agency as authorized by KRS Chapter 213, or a provisional certificate of death as~~  
 15 ~~described in KRS 213.076.~~

16 ~~(5)~~ ~~No provision of~~ KRS 367.932 to 367.974 shall ***not*** be construed to apply to  
 17 contracts for funeral service or merchandise sold as preneed and burial insurance  
 18 policies which are regulated by the Department of Insurance of this state.

19                   ➔Section 3. KRS 367.936 is amended to read as follows:

20 (1) **(a)** Upon the giving of fifteen (15) days' written notice, sent to the agent and the  
 21 trustee, any person, partnership, or corporation who has paid funds for a  
 22 preneed funeral service may demand a refund of the entire amount actually  
 23 paid, ***excluding an administrative fee imposed on a fully paid contract in***  
 24 ***accordance with Section 1 of this Act,*** together with all interest, dividends,  
 25 increases, or accretions, of any kind whatsoever, which have been earned on  
 26 such funds.

27 **(b) 1.** If the trustee is unknown, the written notice sent to the agent shall

1                   constitute compliance with this subsection~~[section]~~.

2                   2. Upon receipt of notice, the agent shall immediately forward notice to the  
3                   trustee.

4 (2) (a) The financial institutions shall be relieved from further liability, after making  
5                   payment to the person making payment of said funds, to the agent upon  
6                   receipt of the foregoing written notice.

7                   (b) Notice of payment of funds under this section shall be given by the financial  
8                   institution to the agent.

9 (3) The trustee may rely upon all certifications and affidavits made pursuant to or  
10                  required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not  
11                  be liable to any person for such reliance.

12                  ➔Section 4. This Act applies to contracts entered into on or after the effective  
13                  date of this Act.