

manner as the owners of real estate who participate in the projects, if the water district has specified the conditions of its participation in a resolution.

NEW SECTION. Sec. 16. (1) Sections 4 through 8 of this act shall constitute a new chapter in Title 56 RCW.

(2) Sections 11 through 15 of this act shall constitute a new chapter in Title 57 RCW.

Passed the Senate April 18, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 390

[Substitute Senate Bill No. 5850]

FUNERAL HOMES—PREARRANGEMENT FUNERAL SERVICE CONTRACTS

AN ACT Relating to funeral establishments; amending RCW 18.39.010, 18.39.240, 18.39.250, 18.39.260, 18.39.280, 18.39.300, 18.39.320, 18.39.330, 18.39.350, and 18.39.360; adding new sections to chapter 18.39 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 108, Laws of 1937 as last amended by section 1, chapter 66, Laws of 1982 and RCW 18.39.010 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Funeral director" means a person engaged in the profession or business of conducting funerals and supervising or directing the burial and disposal of dead human bodies.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting, preserving or preparing for disposal or transportation of dead human bodies.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, conducted at a specific street address or location, and devoted to the care and preparation for burial or disposal of dead human bodies and includes all areas of such business premises and all tools, instruments, and supplies used in preparation and embalming of dead human bodies for burial or disposal.

(5) "Director" means the director of licensing.

(6) "Board" means the state board of funeral directors and embalmers created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract (~~(; other than a contract entered into by an insurance company,)~~) under which, for a specified consideration (~~((paid in advance in a lump sum or by installments)),~~) a funeral establishment promises, upon the death of (~~((a beneficiary))~~) the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Qualified public depository" means a depository defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, or a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funeral service contract funds are deposited by any funeral establishment.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female.

Sec. 2. Section 2, chapter 66, Laws of 1982 and RCW 18.39.240 are each amended to read as follows:

Only a funeral establishment licensed pursuant to this chapter may enter into prearrangement funeral service contracts(~~(; subject to the provisions of this chapter)~~).

Sec. 3. Section 3, chapter 66, Laws of 1982 and RCW 18.39.250 are each amended to read as follows:

(1) Any funeral establishment selling funeral merchandise or services by prearrangement funeral service contract (~~((any funeral merchandise or services))~~) and accepting moneys therefore shall establish and maintain one or more prearrangement funeral service (~~((trust funds))~~) trusts under Washington state law with two or more designated trustees, for the benefit of the beneficiary of the prearrangement funeral service contract or may join with one or more other Washington state licensed funeral establishments in a "master trust" provided that each member of the "master trust" shall comply individually with the requirements of this chapter.

(2) (~~((Fifteen))~~) Up to ten percent of the cash purchase price of each prearrangement funeral service contract, excluding sales tax, may be retained by the funeral establishment unless otherwise provided in this chapter. If the prearrangement funeral service contract is canceled within thirty calendar days of its signing, then the purchaser shall receive a full refund of

all moneys paid under the contract. ((Deposits to the prearrangement funeral service trust fund shall be made not later than the twentieth day of the month following the receipt of each payment made on the last eighty-five percent of each prearrangement funeral service contract, excluding sales tax:))

(3) At least ninety percent of the cash purchase price of each prearrangement funeral service contract, paid in advance, excluding sales tax, shall be placed in the trust established or utilized by the funeral establishment. Deposits to the prearrangement funeral service trust shall be made not later than the twentieth day of the month following receipt of each payment made on the last ninety percent of each prearrangement funeral service contract, excluding sales tax.

(4) All prearrangement funeral service trust ((funds)) moneys shall be deposited in an insured account in a qualified public depository or shall be invested in instruments issued or insured by any agency of the federal government if these securities are held in a public depository. The account shall be designated as the prearrangement funeral service trust ((fund)) of the ((particular)) funeral establishment for the benefit of the beneficiaries named in the prearrangement funeral service contracts. The prearrangement funeral service trust shall not be considered as, nor shall it be used as, an asset of the funeral establishment.

((4)) (5) After deduction of reasonable fees for the administration of the trust, taxes paid or withheld, or other expenses of the trust, all interest, dividends, increases, or accretions of whatever nature earned by a trust ((fund)) shall be kept unimpaired and shall become a part of the trust ((fund, and)). Adequate records shall be maintained to allocate the share ((thereof)) of principal and interest to each contract. Fees deducted for the administration of the trust shall not exceed one percent of the face amount of the prearrangement funeral service contract per annum. In no instance shall the administrative charges deducted from the prearrangement funeral service trust reduce, diminish, or in any other way lessen the value of the trust so that the services or merchandise provided for under the contract are reduced, diminished, or in any other way lessened.

((A depository designated as the depository)) (6) Except as otherwise provided in this chapter, the trustees of a prearrangement funeral service trust ((fund)) shall permit withdrawal of all funds deposited under a prearrangement funeral service contract, plus accruals thereon, under the following circumstances and conditions:

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

(b) If the funeral establishment files a verified statement with the ((depository)) trustees that the prearrangement funeral merchandise and

services covered by the contract have been canceled in accordance with its terms.

~~((6))~~ (7) Subsequent to the thirty calendar day cancellation period provided for in this chapter, any purchaser or beneficiary who has (~~procured~~) a revocable prearrangement funeral service contract has the right to demand a refund of the (~~entire~~) amount (~~paid on the contract, together with all interest, dividends, increases, or accretions to the funds~~) in trust.

~~((7))~~ (8) Prearrangement funeral service contracts (~~shall automatically terminate~~) which have or should have an account in a prearrangement funeral service trust may be terminated by the board if the funeral establishment goes out of business, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, has its prearrangement funeral service certificate of registration revoked, or for any other reason is unable to fulfill the obligations under the contract. In such event, (~~and~~) or upon demand by the purchaser or beneficiary of the prearrangement funeral service contract, the (~~depository of the prearrangement funeral service contract funds~~) funeral establishment shall refund to the purchaser or beneficiary all (~~funds~~) moneys deposited (~~under the contract~~) in the trust and allocated to the contract unless otherwise ordered by a court of competent jurisdiction. The purchaser or beneficiary may, in lieu of a refund, elect to transfer the prearrangement funeral service contract and all amounts in trust to another funeral establishment licensed under this chapter which will agree, by endorsement to the contract, to be bound by the contract and to provide the funeral merchandise or services. Election of this option shall not relieve the defaulting funeral establishment of its obligation to the purchaser or beneficiary for any amounts required to be, but not placed, in trust.

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

~~((8))~~ (10) Prearrangement funeral service trust (~~funds~~) moneys shall not be used, directly or indirectly, for the benefit of the funeral establishment or any director, officer, agent, or employee of the funeral establishment including, but not limited to, any encumbrance, pledge, or other

use of prearrangement funeral service trust (~~(funds)~~) moneys as collateral or other security.

~~((9))~~ (11) If, at the time of the signing of the prearrangement funeral service contract, the beneficiary of the trust is a recipient of public assistance as defined in RCW 74.04.005, or reasonably anticipates being so defined, the contract may provide that the trust will be irrevocable. If after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance under Title 74 RCW, the contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the trust irrevocable thereafter in order to become or remain eligible for such assistance.

(12) Every prearrangement funeral service contract (~~shall contain language which informs the purchaser of the prearrangement funeral service trust fund and the amount to be deposited in the trust fund, which shall not be less than eighty-five percent of the cash purchase price of the contract.~~) financed through a prearrangement funeral service trust shall contain language which:

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

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

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

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

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

NEW SECTION. Sec. 4. A new section is added to chapter 18.39 RCW to read as follows:

Prearranged funeral service contracts funded through insurance shall contain language which:

(1) States the amount of insurance;

(2) Informs the purchaser of the name and address of the insurance company through which the insurance will be provided, the policy number, and the name of the beneficiary; and

(3) Informs the purchaser that amounts paid for insurance may not be refundable.

Sec. 5. Section 4, chapter 66, Laws of 1982 as amended by section 67, chapter 259, Laws of 1986 and RCW 18.39.260 are each amended to read as follows:

A funeral establishment shall not enter into prearrangement funeral service contracts in this state unless the funeral establishment has obtained a certificate of registration issued by the board and such certificate is then in force.

Certificates of registration shall be maintained by funeral establishments ~~((until all prearrangement contract obligations have been fulfilled;))~~ and the funeral establishment shall comply with all requirements related to the sale of prearrangement contracts until all obligations have been fulfilled. The board may, for just cause, release a funeral establishment from specific registration or reporting requirements.

Sec. 6. Section 7, chapter 66, Laws of 1982 as amended by section 68, chapter 259, Laws of 1986 and RCW 18.39.280 are each amended to read as follows:

To apply for an original certificate of registration, a funeral establishment must:

- (1) File with the board its request showing:
 - (a) Its name, location, and organization date;
 - (b) The kinds of funeral business it proposes to transact;
 - (c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the ~~((director, and))~~ board;
 - (d) Documents establishing its trust, or its affiliation with a master trust, and the names and addresses of the trustees if a trust is to be used to finance prearrangement funeral service contracts;
 - (e) Documents establishing its relationship with insurance carriers if insurance is to be used to finance;
 - (f) Documents establishing any other financing relationships; and
 - (g) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter.
- (2) Deposit with the director the fees required by this chapter to be paid for filing the accompanying documents, and for the certificate of registration, if granted.

Sec. 7. Section 6, chapter 66, Laws of 1982 as amended by section 70, chapter 259, Laws of 1986 and RCW 18.39.300 are each amended to read as follows:

In addition to the grounds for action set forth in RCW 18.130.170 and 18.130.180, the board may take the disciplinary action set forth in RCW 18.130.160 against the funeral establishment's license, the license of any funeral director and/or the funeral establishment's certificate of registration, if the licensee or registrant:

- (1) Fails to comply with any provisions of this chapter, chapter 18.130 RCW, or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts could be hazardous to purchasers or beneficiaries and the people of this state;

(3) Refuses to be examined, or refuses to submit to examination (~~(or to produce its accounts, records and files for examination)~~) by the board when required; (~~(or)~~)

(4) Fails to pay the expense of an examination; or

(5) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued (~~(operation)~~) execution or servicing of prearrangement funeral service contracts hazardous to purchasers, beneficiaries, or to the public.

Sec. 8. Section 10, chapter 66, Laws of 1982 as amended by section 71, chapter 259, Laws of 1986 and RCW 18.39.320 are each amended to read as follows:

(1) Each (~~(authorized)~~) funeral establishment which has prearrangement funeral service contracts outstanding shall annually, (~~(at the time of its registration renewal)~~) as required by the board, file with the board a true and accurate statement of its financial condition(~~(;)~~) and transactions(~~(;)~~) and affairs involving prearrangement funeral service contracts for its preceding fiscal year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall take disciplinary action against the certificate of registration of any funeral establishment which fails to file its annual statement when due or after any extension of time which the board has, for good cause, granted.

Sec. 9. Section 11, chapter 66, Laws of 1982 as amended by section 72, chapter 259, Laws of 1986 and RCW 18.39.330 are each amended to read as follows:

No prearrangement funeral contract forms shall be used without the prior approval of the board.

The board shall disapprove any such contract form, or withdraw prior approval, when such form:

(1) Violates or does not comply with this chapter;

(2) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the merchandise or service purported to be provided in the general coverage of the contract;

(3) Has any title, heading, or other part of its provisions which is misleading; (~~(or)~~)

(4) Is being solicited by deceptive advertising;

(5) Fails to disclose fully the terms of the funeral service being provided by the contract, including but not limited to, any discounts, guarantees,

provisions for merchandise or service substitutions or other significant items;
or

(6) Is not written in language which the board considers to be easily understood by the purchaser.

NEW SECTION. Sec. 10. A new section is added to chapter 18.39 RCW to read as follows:

(1) The board shall examine a prearrangement funeral service trust whenever it deems it necessary, but at least once every three years, or whenever the licensee fails after reasonable notice from the board to file the reports required by this chapter or the board.

(2) The expense of the prearrangement funeral service trust examination shall be paid by the licensee and shall not be deducted from the earnings of the trust. In the case of a "master trust," the expense of the prearrangement funeral service trust examination shall be shared jointly by all funeral establishments participating in such trust.

(3) Such examination shall be conducted in private in the principal office of the licensee and the records relating to prearrangement funeral service contracts and prearrangement funeral service trusts shall be available at such office.

Sec. 11. Section 13, chapter 66, Laws of 1982 and RCW 18.39.350 are each amended to read as follows:

Any person who violates or fails to comply with, or aids or abets any person in the violation of, or failure to comply with any of the provisions of this chapter is guilty of a (~~gross misdemeanor~~) class C felony pursuant to chapter 9A.20 RCW. Any such violation constitutes an unfair practice under chapter 19.86 RCW and this chapter and conviction thereunder is grounds for license revocation under this chapter. Retail installment (~~transactions~~) contracts under this chapter shall be governed by chapter 63.14 RCW.

Sec. 12. Section 14, chapter 66, Laws of 1982 and RCW 18.39.360 are each amended to read as follows:

This chapter does not apply to any funeral right or benefit issued or granted as an incident to or by reason of membership in any fraternal or benevolent association or cooperative or society, or labor union not organized for profit.

NEW SECTION. Sec. 13. A new section is added to chapter 18.39 RCW to read as follows:

Any trust which has not matured or been refunded and for which no beneficiary can be located fifty years after its creation shall be considered

abandoned and will be handled in accordance with the escheat laws of the state of Washington.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 391

[Substitute Senate Bill No. 5085]

FINANCIAL PLANNERS—REGISTRATION

AN ACT Relating to financial planners; and amending RCW 21.20.005 and 21.20.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 60, chapter 282, Laws of 1959 as last amended by section 1, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.005 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of licensing of this state.

(2) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310(1), (2), (3), (4), (9), (10), (11), (12), or (13), as now or hereafter amended, (b) effecting transactions exempted by RCW 21.20.320, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into this state in any manner to persons other than those specified in subsection (b) above.