

would not be able to operate a motor vehicle with safety upon the highways; subject to review by a court of competent jurisdiction.

Passed the Senate May 27, 1977.

Passed the House May 13, 1977.

Approved by the Governor June 6, 1977.

Filed in Office of Secretary of State June 6, 1977.

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## CHAPTER 163

[Substitute Senate Bill No. 2210]

### FUNERAL AND CEMETERY SERVICES

AN ACT Relating to the regulation of funeral and cemetery services; adding new sections to chapter 48.40 RCW; and prescribing penalties.

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

**NEW SECTION.** Section 1. (1) Notwithstanding the provisions of RCW 48.40.080, a funeral establishment licensed pursuant to chapter 18.39 RCW may enter into prearrangement funeral service contracts, subject to the provisions of this chapter.

(2) Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter:

(a) "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 named or implied in the contract, to furnish funeral merchandise or services.

(b) "Funeral merchandise or services" shall mean 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.

(c) "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.

**NEW SECTION.** Sec. 2. (1) Any funeral establishment selling by prearrangement funeral service contract any funeral merchandise or services shall establish and maintain one or more prearrangement funeral service trust funds for the benefit of the beneficiary of the prearrangement funeral service contract.

(2) Fifteen percent of the cash purchase price of each prearrangement funeral service contract, excluding sales tax, may be retained by the funeral establishment. 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) All prearrangement funeral service trust funds shall be deposited in a qualified 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 contract.

(4) 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 to each contract.

(5) A depository designated as the depository 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 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 that the prearrangement funeral merchandise and services covered by the contract have been canceled in accordance with its terms.

(6) Any purchaser or beneficiary who has procured a prearrangement funeral service contract shall have 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.

(7) Prearrangement funeral service contracts shall automatically terminate if the funeral establishment goes out of business, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or for any other reason is unable to fulfill the obligations under the contract. In such event, and upon demand by the purchaser or beneficiary of the prearrangement funeral service contract, the depository of the prearrangement funeral service contract funds shall refund to the purchaser or beneficiary all funds deposited under the said contract, unless otherwise ordered by a court of competent jurisdiction.

(8) Prearrangement funeral service trust funds 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 as collateral or other security.

(9) 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 may not be less than eighty-five percent of the cash purchase price of the contract.

NEW SECTION. Sec. 3. No funeral establishment shall enter into prearrangement funeral service contracts in this state unless the funeral establishment has obtained a certificate of registration issued by the commissioner and such certificate is then in force.

NEW SECTION. Sec. 4. To qualify for and hold a certificate of registration a funeral establishment must:

(1) Be licensed pursuant to chapter 18.39 RCW; and

(2) Fully comply with and qualify according to the provisions of this chapter.

NEW SECTION. Sec. 5. The commissioner may refuse to renew or may revoke or suspend a funeral establishment's certificate of registration, if the funeral establishment:

(1) Fails to comply with any provisions of this chapter or any proper order or regulation of the commissioner;

(2) Is found by the commissioner 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 commissioner when required; or

(4) Is found by the commissioner 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 hazardous to purchasers, beneficiaries, or to the public.

NEW SECTION. Sec. 6. To apply for an original certificate of registration, a funeral establishment must:

(1) File with the commissioner 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 commissioner; and

(d) Such other documents, stipulations, or information as the commissioner may reasonably require to evidence compliance with the provisions of this chapter.

(2) Deposit with the commissioner the fees required by this chapter to be paid for filing the accompanying documents, and for the certificate of registration, if granted.

NEW SECTION. Sec. 7. All certificates of registration issued pursuant to this chapter shall continue in force until suspended, revoked, or renewed. A certificate shall be subject to renewal annually on the first day of July upon application by the funeral establishment and payment of the required fees.

The commissioner shall collect in advance the following fees:

(1) Certificate of registration:

(a) Issuance – thirty-five dollars;

(b) Renewal – fifteen dollars;

(2) Annual statement of financial condition – ten dollars.

All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following receipt of such funds and the funds shall be credited to the general fund.

NEW SECTION. Sec. 8. The commissioner shall give a funeral establishment notice of his intention to suspend, revoke, or refuse to renew the establishment's certificate of registration not less than ten days before the order of suspension, revocation or refusal is to become effective.

No funeral establishment whose certificate of registration has been suspended, revoked, or refused shall subsequently be authorized to enter into prearrangement

contracts unless the grounds for such suspension, revocation, or refusal in the opinion of the commissioner no longer exist and the funeral establishment is otherwise fully qualified.

Upon the suspension, revocation or refusal of a funeral establishment's certificate of registration, the commissioner shall give written notice of such action to the director of the department of motor vehicles.

**NEW SECTION.** Sec. 9. (1) Each authorized funeral establishment shall annually, before the first day of March, file with the commissioner a true and accurate statement of its financial condition, transactions, and affairs for the preceding calendar year. The statement shall be on such forms and shall contain such information as required by this chapter and by the commissioner.

(2) The commissioner shall suspend or revoke 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 commissioner has, for good cause, granted.

**NEW SECTION.** Sec. 10. No prearrangement funeral contract forms shall be used without the prior approval of the commissioner.

The commissioner 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.

**NEW SECTION.** Sec. 11. (1) The commissioner shall have the authority expressly conferred upon him by or reasonably implied from the provisions of this chapter.

(2) The commissioner may:

(a) Make reasonable rules and regulations for effectuating any provision of this chapter in accordance with chapter 34.04 RCW;

(b) Conduct investigations to determine whether any person has violated any provision of this chapter; and

(c) Conduct examinations, investigations, and hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this chapter.

**NEW SECTION.** Sec. 12. Any person who shall violate or fail to comply with, or aid or abet any person in the violation of, or failure to comply with any of the provisions of this chapter shall be guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Any such violation shall constitute an unfair practice under chapters 19.86 and 48.30 RCW and conviction thereunder shall be grounds for license revocation under chapter 18.39 RCW. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW.

**NEW SECTION.** Sec. 13. Sections 1 through 12 are each added to chapter 48.40 RCW.

**NEW SECTION.** Sec. 14. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

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## CHAPTER 164

[Substitute Senate Bill No. 2858]

### CITIES AND TOWNS—SOLID WASTE DISPOSAL

AN ACT Relating to solid waste; amending section 1, chapter 208, Laws of 1975 1st ex. sess. and RCW 35.21.152; and amending section 2, chapter 208, Laws of 1975 1st ex. sess. and RCW 35.92.022.

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

Section 1. Section 1, chapter 208, Laws of 1975 1st ex. sess. and RCW 35.21-.152 are each amended to read as follows:

A city or town may construct, condemn, purchase, acquire, add to, and extend systems and plants for the collection and disposal of solid waste and for its processing and conversion into other valuable or useful products with full jurisdiction and authority to manage, regulate, maintain, operate and control such systems and plants, and to enter into agreements providing for the maintenance and operation of systems and plants for the processing and conversion of solid waste and for the sale of said products under such terms and conditions as may be determined by the legislative authority of said city or town: **PROVIDED HOWEVER,** That no such solid waste processing and conversion plant now in existence or hereafter constructed may be condemned: **PROVIDED FURTHER,** That ~~((contracts relating to the processing and conversion of solid waste into valuable and useful products and the sale thereof shall take place only after receipt of competitive written offerings by such city or town subject to final approval by the legislative authority of such city or town; and be it further provided that after the award of such processing, conversion or sale contract all competitive offerings and other documentary material considered in connection therewith shall become matters of public record))~~ agreements relating to the sale of solid materials recovered during the processing of solid waste shall take place only after the receipt of competitive written bids by such city or town: AND PROVIDED FURTHER, That all documentary material of any nature associated with the negotiation and formulation of agreement terms and conditions shall become matters of public record as it applies to:

- (a) The maintenance and operation of systems and plants for the processing and conversion of solid waste;
- (b) The sale of products resulting from such processing and conversion; and
- (c) Any materials recovered during the processing of solid waste.

Agreements relating to systems and plants for the processing and conversion of solid wastes to useful products and agreements relating to sale of such products shall be in compliance with RCW 35.21.120 ~~((and shall be entered into only after public advertisement and evaluation of competitive offerings))~~. Any agreement for