

**Enrolled**  
**House Bill 2371**

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS (at the request of Oregon Funeral Directors' Association)

CHAPTER .....

AN ACT

Relating to distributions from prearrangement sales contract trust fund deposits; amending ORS 97.943.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 97.943 is amended to read:

97.943. (1) A depository shall make no distributions from prearrangement sales contract trust deposits except as provided in this section.

(2) The principal of a trust created pursuant to a prearrangement sales contract shall be paid to the certified provider who sold the contract if the certified provider who sold the contract swears, by affidavit, that the certified provider has delivered all merchandise and performed all services required under the prearrangement sales contract and delivers to the depository one of the following:

- (a) A certified death certificate of the beneficiary; or
- (b) A sworn affidavit signed by the certified provider and by:
  - (A) One member of the beneficiary's family; or
  - (B) The executor of the beneficiary's estate.

(3) The principal of a trust created pursuant to a prearrangement sales contract shall be paid to the purchaser if the original provider is no longer qualified to serve as provider under ORS 97.941 (10).

(4) Upon completion by the certified provider of the actions described in subsection (2) of this section, the depository shall pay to the certified provider from the prearrangement sales contract trust fund an amount equal to the sales price of the merchandise delivered.

(5) Upon the final payment to the certified provider of the principal in trust under subsection (2) of this section, the undistributed earnings of the trust shall be paid to:

- (a) The certified provider who sold the contract if the contract is a guaranteed contract; or
- (b) The contract purchaser, or the purchaser's estate, if the contract is a nonguaranteed contract.

(6) The depository may rely upon the certifications and affidavits made to it under the provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180, and shall not be liable to any person for such reliance.

(7) If for any reason a certified provider who sold the prearrangement sales contract has refused to comply, or cannot or does not comply with the terms of the prearrangement sales contract within a reasonable time after the certified provider is required to do so, the purchaser or heirs or assigns or duly authorized representative of the purchaser or the beneficiary shall have the right to a refund

in the amount equal to the sales price paid for undelivered merchandise and unperformed services plus undistributed earnings amounts held in trust attributable to such contract, within 30 days of the filing of a sworn affidavit with the certified provider who sold the contract and the depository setting forth the existence of the contract and the fact of breach. A copy of this affidavit shall be filed with the Director of the Department of Consumer and Business Services. In the event a certified provider who has sold a prearrangement sales contract is prevented from performing by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the certified provider, the certified provider's time for performance shall be extended by the length of such delay.

(8) At any time prior to the death of the beneficiary of a prearrangement sales contract, the purchaser of the prearrangement sales contract may cancel the contract and shall be entitled to a 100 percent refund of the entire amount paid on the contract including undistributed earnings attributable to such amount, but excluding any amount paid for merchandise already delivered, which amount shall be retained by the certified provider who sold the contract as liquidated damages.

(9) Notwithstanding ORS 97.941 (4) and subsection (5) of this section, upon receiving a sworn affidavit from the provider stating that qualifying expenses, taxes or fees have been incurred, a depository shall allow a provider to pay from earnings of trust fund deposits any expenses, accounting fees, taxes, depository fees, investment manager fees and other fees as may be necessary to enable the provider to comply with the reporting required by ORS 97.923 to 97.949, and to perform other services for the trust as may be authorized by ORS 97.923 to 97.949. Any payment of expenses or fees from earnings of a trust fund deposit under this subsection shall not:

*[(a) Exceed an amount equal to 25 percent per calendar year of the earnings of the trust fund deposit in the calendar year;]*

**(a) Exceed an amount equal to two percent per calendar year of the value of the trust as determined on the first day of January of each calendar year;**

(b) Include the payment of any fee to the provider in consideration for services rendered as provider; or

(c) Reduce, diminish or in any other way lessen the value of the trust fund deposit so that the services or merchandise provided for under the contract are reduced, diminished or in any other way lessened.

**Passed by House February 22, 2005**

**Repassed by House May 4, 2005**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 2, 2005**

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President of Senate

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State