

## **IC 30-2-9**

### **Chapter 9. Prepaid Funeral Plans and Funeral Trust Funds Established Before 1982**

#### **IC 30-2-9-0.1**

##### **Repealed**

*(Repealed by P.L.63-2012, SEC.31.)*

#### **IC 30-2-9-1**

##### **Agreement or contract; personal property, merchandise, or services; General Cemetery law**

Sec. 1. (a) Any payment of money made to any person, firm, partnership, association, limited liability company, or corporation, other than a bank or trust company, upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any 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 or persons whose body or bodies are to be so disposed of, shall be held to be trust funds, and the person, firm, partnership, association, or corporation receiving said payments is hereby declared to be a trustee thereof. This subsection applies only to such a contract or agreement executed before July 1, 1978.

(b) After June 30, 1978, it is unlawful to enter into any agreement or contract for a purpose described in subsection (a) unless the agreement or contract requires that all payments be made by the settlor to an account in a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

whose principal office is in Indiana.

(c) Nothing contained in this chapter shall be deemed or construed to apply to those persons, firms, partnerships, associations, limited liability companies, or corporations covered by the "Indiana General Cemetery Law", IC 23-14-1.

*(Formerly: Acts 1963, c.303, s.1.) As amended by Acts 1978, P.L.133, SEC.1; Acts 1979, P.L.272, SEC.1; P.L.8-1993, SEC.465; P.L.79-1998, SEC.92.*

#### **IC 30-2-9-1.5**

##### **Funeral trusts**

Sec. 1.5. (a) After June 30, 1978, but before July 1, 1982, an individual may establish one (1) funeral trust under this section, in lieu of any other arrangement for advance payment of funeral and burial expense, such as a joint account, that may be lawful under section 1(b) of this chapter.

(b) A funeral trust established under this section must:

- (1) be irrevocable;

- (2) have only one (1) settlor;
- (3) name a financial institution qualified under section 1(b) of this chapter in which all funds are to be deposited;
- (4) name an embalmer, a funeral director, or funeral home, licensed under IC 25-15, as sole beneficiary;
- (5) be accompanied by a contract between the settlor and beneficiary as provided in subsection (c); and
- (6) be either a time deposit, or account, or certificate of deposit in a financial institution, in the names of the settlor and the beneficiary payable on death to the survivor, or name the designated financial institution as sole trustee.

(c) A funeral trust contract must specify in detail the funeral and burial services to be provided by the beneficiary, and must specify the place of the funeral and the place of burial or other disposition. The contract must contain an acknowledgement by the settlor that he understands the irrevocable nature of the trust. In addition, the contract may provide for reasonable adjustment of the services to be provided if:

- (1) the settlor has not contributed the full amount specified in the contract at the time of his death; or
- (2) the reasonable expense of transporting the corpse a distance greater than twenty-five (25) miles to the place of the funeral or the place of burial is paid by the beneficiary.

The contract may contain other provisions not inconsistent with this chapter, including a provision for disposition of income on the trust funds that results in a balance greater than the contribution agreed to by the settlor.

(d) The settlor may change the beneficiary, but any new beneficiary must be licensed under IC 25-15 or be a funeral director or funeral home licensed under the laws of another state. The settlor may also change the place of the funeral or the place of burial.

(e) Any trust established under section 1(a) of this chapter may be converted to a funeral trust, provided for under this section, by agreement of the parties to the original contract, payment of all trust funds into the funeral trust, and satisfaction of all requirements of this section including execution of the required contract.

(f) Any trust established under this chapter may be converted to a funeral trust provided for under IC 30-2-10 by satisfaction of all requirements of that chapter.

*As added by Acts 1978, P.L.133, SEC.2. Amended by Acts 1979, P.L.272, SEC.2; Acts 1982, P.L.179, SEC.1; P.L.246-1985, SEC.20.*

### **IC 30-2-9-2**

#### **Deposit of funds; investments**

Sec. 2. All trust funds paid under section 1(a) of this chapter shall be deposited in a bank or trust company whose principal office is in this state, or invested in a savings and loan, or building and loan association whose principal office is in this state, in the name of the trustee, as trustee, within thirty (30) days after receipt thereof, and shall be held by such trustee in trust, subject to the provisions of this

chapter.

*(Formerly: Acts 1963, c.303, s.2.) As amended by Acts 1978, P.L.133, SEC.3.*

### **IC 30-2-9-3**

#### **Permits; fidelity bonds; accounts, books, and records**

Sec. 3. No person, firm, partnership, association, limited liability company, or corporation may accept or hold trust funds paid under section 1(a) of this chapter without first securing from the state board of funeral service a permit to accept and hold the funds. Applications for the permit must be in writing, signed by the applicant, and duly verified on forms furnished by the board. Each application must contain at least the following:

- (1) The full name and address (both residence and place of business) of the applicant, and every member, officer, and director of the applicant if the applicant is a firm, partnership, association, limited liability company, or corporation. Any permit issued in response to the application is valid for two (2) years, only at the address stated in the application for the applicant or at the address as may be approved by the board.
- (2) A detailed statement of the applicant's assets and liabilities.
- (3) A fidelity bond executed by the applicant and a surety company authorized to do business in this state in the amount not exceeding ten thousand dollars (\$10,000) as the board may require.

Upon receipt of such application and bond, the board shall issue a permit unless it determines that the applicant has made false statements or representations in the application, is insolvent, has conducted or is about to conduct his business in a fraudulent manner, or is not duly authorized to transact business in this state. The board may require an additional bond from time to time in amounts equal to one tenth (1/10) of the trust funds held by the permittee. The bond must run to the state of Indiana for the use and benefit of the beneficiaries of the trust funds. The permittee shall keep accurate accounts, books, and records in this state of all transactions, copies of all agreements, dates, and amounts of payments made and accepted on all agreements, the names and addresses of the contracting parties, the persons for whose benefit the funds are accepted, and the names of the depositories of the funds. The permittee shall make reports to the board annually or at any other times that the board may require, on forms furnished by the board. Every application must be accompanied by a fee of ten dollars (\$10) and every report must be accompanied by a fee of two dollars (\$2). The permittee shall make all the books and records pertaining to the trust funds available to the board for examination. The board, or a qualified person designated by it may at any time investigate the books, records, and accounts of the permittee with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony he may require.

*(Formerly: Acts 1963, c.303, s.3.) As amended by Acts 1978,*

*P.L.133, SEC.4; P.L.246-1985, SEC.21; P.L.8-1993, SEC.466.*

#### **IC 30-2-9-4**

##### **Deposits or investments; interest or dividends; withdrawal; forfeiture**

Sec. 4. The amount or amounts deposited or invested, with interest or dividends thereon, if any, shall not be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless sooner withdrawn and repaid to the person who originally paid the money under or in connection with said agreement or series of agreements or to his or her legal representative: Provided, That if the agreement or series of agreements provides for forfeiture and retention of any or all such payments by reason of default in payment upon and according to the terms thereof, then upon any such default and forfeiture the trustee may withdraw such deposits or investments: Provided, further, That nothing herein contained shall prohibit the change of depository by the trustee and the transfer of trust funds from one depository to another. This section applies only to trust funds that include payments under section 1(a) of this chapter.

*(Formerly: Acts 1963, c.303, s.4.) As amended by Acts 1978, P.L.133, SEC.5.*

#### **IC 30-2-9-5**

##### **Compensation and expenses of trustee**

Sec. 5. This chapter shall not be construed to prohibit a trustee under section 1(a) of this chapter from being reimbursed and receiving from the fund its reasonable expenses in the custody and administration of the funds and the usual and reasonable compensation for its services as the trustee. However, the expenses and compensation shall be fixed by the state board of funeral service in a reasonable amount based upon the principal fund and the earnings of the fund deposited or invested under each of the agreements or series of agreements. A financial institution trustee under section 1.5 of this chapter may be reimbursed for its reasonable expenses from the fund, except the amount shall be fixed by the Indiana department of financial institutions.

*(Formerly: Acts 1963, c.303, s.5.) As amended by Acts 1978, P.L.133, SEC.6; P.L.246-1985, SEC.22.*

#### **IC 30-2-9-6**

##### **Liquidated damages**

Sec. 6. It shall be unlawful for any such agreement or agreements to provide for forfeiture and retention of payments upon any such agreement or series of agreements as and for liquidated damages for default therein in excess of 10% of the payments made or \$35.00, whichever sum is the larger.

*(Formerly: Acts 1963, c.303, s.6.)*

#### **IC 30-2-9-7 Version a**

**False reports; illegal use or disbursement of funds**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 7. (a) Except as provided in subsection (b) or (c), a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

(c) Except as authorized in an agreement described in section 4 of this chapter permitting the early withdrawal of funds, a trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

*(Formerly: Acts 1963, c.303, s.7.) As amended by Acts 1978, P.L.2, SEC.3001; P.L.113-2007, SEC.8; P.L.61-2008, SEC.4.*

**IC 30-2-9-7 Version b**

**False reports; illegal use or disbursement of funds**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 7. (a) Except as provided in subsection (b) or (c), a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Level 5 felony.

(c) Except as authorized in an agreement described in section 4 of this chapter permitting the early withdrawal of funds, a trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

*(Formerly: Acts 1963, c.303, s.7.) As amended by Acts 1978, P.L.2, SEC.3001; P.L.113-2007, SEC.8; P.L.61-2008, SEC.4; P.L.158-2013, SEC.304.*

**IC 30-2-9-8**

**Partial invalidity of law**

Sec. 8. If any part or parts of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect as completely as if the part held unconstitutional had not been included herein, if such remaining part or parts can then be administered for the purpose of licensing and regulating payments for future use in connection with the disposition of a dead human body, as provided for in this chapter.

*(Formerly: Acts 1963, c.303, s.8.) As amended by Acts 1982, P.L.171, SEC.116.*