

House Bill 2085

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Consumer and Business Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to prearrangement sales of funeral or cemetery merchandise or services and preconstruction sales of interment spaces.

A BILL FOR AN ACT

1
2 Relating to funeral products; creating new provisions; and amending ORS 97.923, 97.925, 97.927,
3 97.933, 97.935, 97.936, 97.937, 97.939, 97.941, 97.942, 97.943, 97.945, 97.947, 97.948 and 97.949.

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

5 **SECTION 1.** ORS 97.923 is amended to read:

6 97.923. As used in ORS 97.923 to 97.949 and 97.994 unless the context requires otherwise:

7 (1) "Beneficiary" means the person[, *if known,*] who is to receive the funeral and cemetery
8 merchandise, funeral and cemetery services or completed interment spaces.

9 (2) "Certified provider" means [*any person*] **an entity** certified under ORS 97.933 to sell [*or*],
10 offer for sale **or administer** prearrangement sales contracts or preconstruction sales contracts.

11 (3) **"Common trust fund account" means trust funds received by a certified provider from**
12 **two or more purchasers.**

13 [(3)] (4) "Delivery" occurs when:

14 (a) Physical possession of the funeral or cemetery merchandise is transferred to the purchaser;
15 or

16 (b) If authorized by a purchaser under a purchase agreement:

17 (A) The title to the funeral or cemetery merchandise has been transferred to the purchaser, has
18 been paid for, and is in the possession of the seller, who has documented the sale in the purchaser's
19 records through use of a serial or other identifying number and placed the merchandise, until
20 needed, for storage on the seller's premises; or

21 (B) The merchandise has been identified for the purchaser or the beneficiary as documented by
22 the manufacturer's receipt placed by the seller in the purchaser's records and held by the man-
23 ufacturer for future delivery.

24 [(4)] (5) "Depository" means a financial institution or trust company, as those terms are defined
25 ORS 706.008, that is authorized to accept deposits in this state or to transact trust business in this
26 state **and is not registered as a master trustee.**

27 [(5)] *"Director" means the Director of the Department of Consumer and Business Services.*

28 (6) "Guaranteed contract" means a written preconstruction sales contract or prearrangement
29 sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral
30 and cemetery merchandise or funeral and cemetery services contained in the contract and under
31 which no charges other than the sales price contained in the contract [*shall be*] **are** required upon

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 delivery or performance of the funeral or cemetery merchandise or services[.], **if:**

2 **(a) Required payments have been made as specified in the contract; and**

3 **(b) The balance of payment required by the contract is paid before the death of the ben-**
 4 **eficiary.**

5 (7)(a) “Master trustee” means an entity that is not a certified provider under ORS 97.923 to
 6 97.949 and that has fiduciary responsibility for the uniform administration of funds including, but
 7 not limited to, acceptance, custodianship, investment and accounting, delivered to it by a certified
 8 provider for the benefit of purchasers of preconstruction sales contracts or prearrangement sales
 9 contracts.

10 (b) “Master trustee” does not include a financial institution, as defined in ORS 706.008, that acts
 11 solely as a depository under ORS 97.923 to 97.949.

12 (8) “Nonguaranteed contract” means a written preconstruction sales contract or prearrangement
 13 sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral
 14 or cemetery merchandise or services contained in the contract, when the price of the merchandise
 15 and services selected has not been fixed and will be determined by existing prices at the time the
 16 merchandise and services are delivered or provided.

17 (9) “Prearrangement sales” or “prearrangement sales contract” means any sale, excluding the
 18 sale and contemporaneous or subsequent assignment of a life insurance policy or an annuity con-
 19 tract, made to a purchaser, that has as its purpose the furnishing of funeral or cemetery merchan-
 20 dize or services in connection with the final disposition or commemoration of the memory of a dead
 21 human body, for use at a time determinable by the death of the person or persons whose body or
 22 bodies are to be disposed and where the sale terms require payment or payments to be made at a
 23 currently determinable time.

24 (10) “Preconstruction sale” or “preconstruction sales contract” means a sale made to a pur-
 25 chaser, for the purpose of furnishing undeveloped interment spaces and when the sale terms require
 26 payment or payments to be made at a currently determinable time.

27 *[(11) “Provider” means any entity that sells and offers for sale funeral or cemetery merchandise*
 28 *or services.]*

29 *[(12)]* (11) “Purchaser” means a beneficiary or a person acting on behalf of a beneficiary who
 30 enters into a prearrangement sales contract or a preconstruction sales contract with a certified
 31 provider under which any payment or payments made under the contract are required to be depos-
 32 ited in trust under ORS 97.941.

33 *[(13)]* (12) “Salesperson” means an individual registered under ORS 97.931 and employed by a
 34 certified provider to engage in the sale of prearrangement or preconstruction sales contracts on
 35 behalf of the certified provider.

36 *[(14)]* (13) “Sales price” means the gross amount paid by a purchaser for a prearrangement sales
 37 contract or preconstruction sales contract, excluding sales taxes, credit life insurance premiums and
 38 finance charges.

39 *[(15)]* (14) “Trust” means an express trust created under ORS 97.941 whereby a trustee has the
 40 duty to administer the amounts specified under ORS 97.941 received under a prearrangement sales
 41 contract or a preconstruction sales contract for the benefit of the purchaser of a prearrangement
 42 sales contract or preconstruction sales contract.

43 *[(16)]* (15) “Undeveloped interment spaces” or “undeveloped spaces” means any space to be used
 44 for the reception of human remains that is not completely constructed or developed at the time of
 45 initial payment.

SECTION 2. ORS 97.925 is amended to read:

97.925. It is the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to *[assure]* **ensure** funds for performance to *[those]* purchasers who contract through prearrangement sales contracts for the purchase of funeral or cemetery merchandise or services, and through preconstruction sales contracts for undeveloped interment spaces. It is also the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to provide for the certification or registration of *[persons]* **entities** selling *[or]*, offering for sale **or administering** prearrangement sales contracts and preconstruction sales contracts, the creation and administration of prearrangement sales contract and preconstruction sales contract trust funds, the disbursement and allocation of trust funds upon the certified provider's performance of its contractual obligations and to provide protection for the purchaser upon the certified provider's default.

SECTION 3. ORS 97.927 is amended to read:

97.927. *[(1) Except as provided in this section, ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 apply to all certified providers, master trustees and salespersons who sell or offer for sale prearrangement sales contracts or preconstruction sales contracts.]*

[(2)] (1) ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to $[:]$

[(a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or]

[(b) Any] a nonprofit memorial society charging less than a \$100 membership fee.

[(3)] (2) Notwithstanding subsection *[(2)] (1)* of this section, ORS 97.937 applies to $[:]$

[(a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or]

[(b) Any] a nonprofit memorial society charging less than a \$100 membership fee.

SECTION 4. ORS 97.933 is amended to read:

97.933. (1) *[A provider]* **An entity** may not engage in prearrangement sales or preconstruction sales **or administer prearrangement sales contracts or preconstruction sales contracts** unless the *[provider]* **entity** is certified by the Director of the Department of Consumer and Business Services. **Each location at which an entity engages in prearrangement sales or preconstruction sales or administers prearrangement sales contracts or preconstruction sales contracts must be separately certified.** The director shall:

(a) Establish procedures for issuing certificates required by this section.

(b) Establish standards for determining whether a certificate should be issued.

(c) Set certification and renewal fees.

(d) Require annual renewal of certification.

(e) Establish standards for rules of conduct of certified providers.

(2) The fees described in this section *[shall be reasonable and shall defray]* **must be sufficient to meet** the costs associated with the administration of ORS 97.923 to 97.949 **and to maintain a reasonable emergency fund.**

(3)(a) *[Every]* **A** certified provider shall file an annual report with the director on forms *[provided]* **prescribed** by the director **by rule.** The annual report *[shall]* **must** contain any information reasonably considered necessary by the director, including but not limited to:

(A) A disclosure of *[changes in]* **deposits and withdrawals of** trust *[deposits]* **funds;**

(B) The number of consecutively numbered prearrangement or preconstruction sales contracts sold during the reporting period;

(C) A complete inventory of the funeral merchandise $[,]$ **and** cemetery merchandise *[or a combination thereof]* delivered in lieu of trust fund requirements under ORS 97.941, including:

(i) The location of the merchandise;

1 (ii) Merchandise serial numbers or warehouse receipt numbers identified by the name of the
 2 purchaser or the beneficiary; and

3 (iii) The statement of the certified provider that each item of merchandise is in the seller's
 4 possession at the specified location; and

5 (D) The number of withdrawals from or terminations of any trusts.

6 (b) If the annual report is not filed or is filed and shows any material discrepancy, the director
 7 may take appropriate action and send notification of the matter to the State Mortuary and Cemetery
 8 Board.

9 (c) The director may relieve a certified provider of the duty to file the annual report upon a
 10 determination that the certified provider has performed all obligations under the prearrangement
 11 sales contract or preconstruction sales contract, or that such obligations lawfully have been as-
 12 sumed by another **certified provider** or have been discharged or canceled.

13 (4) The director may audit the records of a certified provider that relate to prearrangement
 14 sales or preconstruction sales, as the director may consider appropriate. The director may refer any
 15 matter outside of normal auditing procedures to the office of the Attorney General for investigation
 16 and send notification of the referral to the State Mortuary and Cemetery Board.

17 (5) The conduct of individuals, including salespersons as defined in ORS 97.923, employed by a
 18 certified provider is the direct responsibility of the certified provider.

19 (6) *[A certificate issued to a]* **Authority to operate as a certified provider** is not transferable.
 20 *[A person]* **An entity** that seeks to purchase or otherwise acquire control of a cemetery or funeral
 21 establishment *[that is a certified provider]* shall first apply to the director *[and obtain approval of the*
 22 *purchase or change in control]* **to become a certified provider.**

23 *[(7) A certificate issued to a provider becomes inactive when the certificate is surrendered to the*
 24 *director. The director retains jurisdiction over the provider as long as trust funds remain on deposit*
 25 *for prearrangement sales contracts or preconstruction sales contracts. While the certificate is inactive,*
 26 *the provider shall:]*

27 *[(a) Cease all prearrangement sales to the public;]*

28 *[(b) Collect and deposit into trust all installment funds paid toward contracts sold prior to becom-*
 29 *ing inactive;]*

30 *[(c) Seek disbursement of trust funds only in accordance with the requirements of the written contracts*
 31 *and ORS 97.923 to 97.949 until the funds have been exhausted; and]*

32 *[(d) Continue to submit required annual reports and renewal fees until no trust funds remain on*
 33 *deposit.]*

34 **SECTION 5.** ORS 97.935 is amended to read:

35 97.935. (1) *[A person]* **An entity** may not operate as a master trustee unless the *[person]* **entity**
 36 is registered with the Director of the Department of Consumer and Business Services. The director
 37 shall:

38 (a) Establish procedures for registering *[persons]* **master trustees** under this section.

39 (b) Establish standards for master trustees.

40 (c) Set registration and renewal fees.

41 (d) Establish standards for rules of conduct of master trustees.

42 (2)(a) *[Every]* **A** master trustee shall file an annual report with the director on forms provided
 43 by the director. The annual report *[shall]* **must** contain any information reasonably considered
 44 necessary by the director, including but not limited to:

45 (A) A disclosure of changes in trust deposits; and

1 (B) A list of all certified providers for which the master trustee holds funds and the total amount
 2 of funds held for each certified provider.

3 (b) The director may take appropriate action under ORS 97.948 and 97.949 if a master trustee
 4 fails to file the annual report or the report contains any material discrepancy.

5 (c) The director may relieve a master trustee of the duty to file the annual report upon a de-
 6 termination that the master trustee has performed all obligations under the trust agreement with
 7 each certified provider, or that the master trustee's obligations have been lawfully assumed by an-
 8 other [person] **master trustee** or have been discharged or canceled.

9 (3) The director may conduct an annual audit of a master trustee. The director shall prescribe
 10 the form of audits under this section **by rule**.

11 (4) A master trustee who is audited under this section shall pay all expenses and costs incurred
 12 by the director in conducting the audit.

13 **SECTION 6.** ORS 97.936 is amended to read:

14 97.936. (1) In addition to other actions authorized under ORS 97.948 (2), the Director of the De-
 15 partment of Consumer and Business Services may:

16 (a) Issue an emergency order suspending or restricting a certificate or registration or ordering
 17 a certified provider or master trustee or [a person] **an entity** acting as a certified provider or master
 18 trustee to cease and desist from specified conduct; or

19 (b) Take other action deemed necessary by the director in the circumstances.

20 (2) The director shall promptly provide opportunity for hearing pursuant to ORS chapter 183.

21 (3) Emergency orders are:

22 (a) Effective when issued;

23 (b) Reviewable as provided in ORS 183.480; and

24 (c) Enforceable in the courts of this state.

25 **SECTION 7. ORS 97.937 is added to and made a part of ORS 97.923 to 97.949.**

26 **SECTION 8.** ORS 97.937 is amended to read:

27 97.937. (1) This section applies to **endowment care** trust deposits required to be made by
 28 endowment care cemeteries under ORS 97.929.

29 [(2) As used in this section, "common trust account" means trust funds received by a provider from
 30 two or more purchasers.]

31 [(3) All such trust funds shall be deposited by the provider with a financial institution in the State
 32 of Oregon carrying deposit insurance, within 15 days after receipt thereof.]

33 **(2) A certified provider shall deposit trust funds with a depository within 15 days after
 34 receiving the funds from the purchaser.**

35 **(3) A trust fund [shall] must** be held in a separate account in the name of the **certified** provider
 36 followed by the words "funeral plan trust account," in trust for the [person for whom such] **benefi-
 37 ciary of the** prearranged funeral plan [is made], or in a common trust **fund** account in the name
 38 of the **certified** provider in trust for each [person for whom such] **beneficiary of the** prearranged
 39 funeral plan [is made], until a trust fund is released under any of the following conditions:

40 (a) Upon presentation of proof of the death of the [person for whom a] **beneficiary of the** pre-
 41 arranged funeral plan, **the depository** [is made, the financial institution] shall release the principal
 42 and accrued income allocable to that [person's] **beneficiary's** account to the **certified** provider.

43 (b) Upon presentation of the written request of the purchaser [of a revocable] **to cancel a** trust,
 44 **other than an irrevocable trust**, the [financial institution] **depository** shall release the principal
 45 and accrued income allocable to the [purchaser's account] **purchaser** as directed in [such] **the** re-

1 quest.

2 [(c) Upon presentation of proof of the death, dissolution, insolvency or merger with another of the
3 provider of a revocable trust, the financial institution shall release the principal and accrued income
4 allocable to each purchaser's account to that purchaser.]

5 [(d)] (c) Upon presentation of proof of the [death,] dissolution[,] **or** insolvency, or merger with
6 another **certified provider**, of the **certified** provider of an irrevocable trust, the [financial institu-
7 tion] **depository** shall continue to hold such trust fund subject to the funeral plan trust, and upon
8 appointment of a successor **certified** provider by [the purchaser, the purchaser's legal
9 representative,] the Director of the Department of Consumer and Business Services or a court of
10 competent jurisdiction, the [financial institution] **depository** shall release [such] **the** trust fund to the
11 successor **certified** provider only as provided in paragraph (a) of this subsection.

12 (4) If trust funds are held in a common trust **fund** account under subsection (3) of this section,
13 the **certified** provider shall maintain records showing the purchaser and beneficiary of each indi-
14 vidual trust fund in the account and the allocation to each individual trust fund of interest earned
15 by the account. [The] Records concerning allocation of interest must be updated at least [annually]
16 **quarterly**.

17 (5) The **certified** provider may appoint a successor depository. The original depository shall
18 [only] release the trust funds to the successor depository **only** as described in [subsections (1) to
19 (4)] **subsection (3)** of this section.

20 (6) The [financial institution] **depository** is not responsible for the fulfillment of any prearranged
21 funeral plan, [excepting only such financial institution] **except that the depository** shall release a
22 trust fund **only** as provided in this section.

23 (7) The director may appoint a successor **certified** provider upon a determination that the ori-
24 ginal **certified** provider has [ceased to provide the kinds of services and things which the original]
25 **failed to perform the duties of a certified** provider [agreed to provide, that the purchaser or the
26 purchaser's legal representative cannot be readily identified or contacted] and that the appointment
27 of a successor **certified** provider is [appropriate] **necessary** in order to protect the interests of the
28 trust beneficiaries. [Financial institutions holding deposits of such trust funds shall change their re-
29 cords to reflect such appointment of a successor provider] Upon receipt of written notice of the ap-
30 pointment from the director, **a depository holding deposits of trust funds shall change the**
31 **depository's records to reflect the appointment of a successor certified provider.** [Where]
32 **When** the director proposes to [take such action] **appoint a successor certified provider** under this
33 subsection, the **certified** provider being replaced shall be accorded notice and an opportunity for
34 hearing as provided in ORS chapter 183.

35 **SECTION 9.** ORS 97.939 is amended to read:

36 97.939. (1) Three copies of a written sales contract shall be executed for each prearrangement
37 sales contract or preconstruction sales contract sold by a certified provider. The certified provider
38 shall retain one copy of the contract and a copy of the completed contract shall be given to:

39 (a) The purchaser; and

40 (b) The depository or the master trustee, if applicable.

41 (2) Upon receiving [a trust deposit] **trust funds** under ORS 97.941, the master trustee shall sign
42 a copy of the contract received under subsection (1) of this section, retain a copy for its files and
43 return the contract to the purchaser.

44 (3) Each completed contract shall:

45 (a) Comply with the plain language standards described in ORS 180.545 (1);

- 1 (b) Be consecutively numbered;
- 2 (c) Have a corresponding consecutively numbered receipt;
- 3 (d) Be preprinted or, if the certified provider uses a master trustee, be obtained from the master
- 4 trustee;
- 5 (e) Identify the purchaser and certified provider who sold the contract;
- 6 (f) Specify whether the contract is a guaranteed contract or a nonguaranteed contract;
- 7 (g) Specify the specific funeral or cemetery merchandise or services or undeveloped interment
- 8 spaces included and not included in the contract; and
- 9 (h) If a guaranteed contract, disclose that the certified provider *[may retain]* **is entitled to re-**
- 10 **ceive** 10 percent of the sales price.

11 (4)(a) Notwithstanding ORS 97.943 (8), in the case of a prearrangement sales contract, if at the

12 time of entering into the contract, the beneficiary of the contract is a recipient of public assistance

13 or reasonably anticipates becoming a recipient of public assistance, the contract may provide that

14 the contract is irrevocable.

15 (b) The contract may provide for an election by the beneficiary, or by the purchaser on behalf

16 of the beneficiary, to make the contract thereafter irrevocable if after the contract is entered into,

17 the beneficiary becomes eligible or seeks to become eligible for public assistance.

18 **SECTION 10.** ORS 97.941 is amended to read:

19 97.941. (1) Upon receiving anything of value under a prearrangement sales contract or precon-

20 struction sales contract, the certified provider who sold the contract shall deposit the following

21 amounts into one or more trust funds maintained pursuant to ORS 97.923 to 97.949, 97.992, 97.994

22 and 692.180:

23 (a) *[Ninety percent of]* **If** the amount received **is** in payment of a guaranteed prearrangement

24 sales contract or guaranteed preconstruction sales contract, **90 percent of the amount received.**

25 *[The remaining 10 percent shall be paid to]* The **certified** provider who sold the contract **is entitled**

26 **to receive the remaining 10 percent.***[: or]*

27 (b) *[One hundred percent of]* **If** the amount received **is** in payment of a nonguaranteed prear-

28 rangement sales contract or nonguaranteed preconstruction sales contract, **100 percent of the**

29 **amount received.**

30 (2) **A certified provider shall pay** all trust *[deposits]* **funds** required by ORS 97.923 to 97.949,

31 97.992, 97.994 and 692.180 *[shall be placed in a depository or delivered]* **directly** to a master trustee

32 **or depository** within five business days *[of their receipt]* **after the certified provider receives the**

33 **funds from the purchaser.**

34 *[(3)(a) The trust deposits of a provider that does not use the services of a master trustee shall be*

35 *maintained in a depository, except that the provider may invest the trust funds in a manner that is, in*

36 *the opinion of the provider, reasonable and prudent under the circumstances.]*

37 *[(b) A provider that invests trust funds may invest the funds only in:]*

38 **(3)(a) If a certified provider places trust funds in a depository, the funds may be invested**

39 **only in:**

- 40 (A) Certificates of deposit;
- 41 *[(B) U.S. Treasuries;]*
- 42 **(B) United States Treasury bills;**
- 43 (C) Issues of *[U.S.]* **United States** government agencies;
- 44 (D) Guaranteed investment contracts; or
- 45 (E) Banker's acceptances or corporate bonds rated A or better by Standard & Poor's Corpo-

1 ration or Moody's Investors Service.

2 [(c) All investments made under paragraph (b) of this subsection shall be placed in the custody of
3 the depository in which the trust funds were originally deposited or any other depository that may
4 qualify under ORS 97.923 to 97.949.]

5 [(d)] (b) Prearrangement sales contract trust fund and preconstruction sales contract trust fund
6 accounts [shall] **must** be in the name of the **certified** provider who sold the contract under ORS
7 97.923 to 97.949, 97.992, 97.994 and 692.180.

8 (4) **A certified provider shall identify** funds deposited in the trust fund account [shall be
9 identified] in the records of the **certified** provider by the name of the purchaser and beneficiary.
10 [and adequate records shall be maintained to allocate] **The certified provider shall maintain re-**
11 **records that specify the allocation of** all earnings to each prearrangement sales contract or pre-
12 construction sales contract. Nothing [shall prevent the] **prohibits the certified** provider from
13 [commingling] **directing a master trustee or a depository to commingle** the deposits in [any
14 such] **a** trust fund account for purposes of managing and investing the funds. A common trust fund
15 account [shall] **must** be identified by the name of the **certified** provider.

16 (5) When a prearrangement sales contract or preconstruction sales contract includes rights of
17 interment and funeral or cemetery merchandise or services, **the terms of the contract must**
18 **clearly provide for** the application of payments received under the contract [shall be clearly pro-
19 vided in the contract].

20 (6) [Any person] **An entity** engaging in prearrangement sales or preconstruction sales [who en-
21 ters into a combination sale which involves] **that involve** the sale of items subject to trust and any
22 item not subject to trust [shall be prohibited from increasing] **may not increase** the sales price of
23 those items not subject to trust with the purpose of allocating a lesser sales price to items which
24 require a trust deposit.

25 (7)[(a) A provider may appoint a successor provider.] The **master trustee or** depository shall
26 release the trust funds deposited under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 and accrued
27 income only to the successor **certified** provider as described in ORS 97.943 and 97.944 or upon
28 presentation of the written request of the purchaser.

29 [(b) If appointing a successor provider under this subsection, the original provider shall notify the
30 Director of the Department of Consumer and Business Services of the proposed change at least 30 days
31 prior to the appointment.]

32 (8)[(a)] **A certified** provider may appoint a successor depository or a master trustee [as defined
33 in ORS 97.923.] **and shall**

34 [(b) If appointing a successor depository or master trustee under this subsection, the provider, the
35 successor depository and the master trustee must] notify the Director **of the Department of Con-**
36 **sumer and Business Services** of the proposed change at least 30 days prior to the appointment.

37 (9)(a) The director may appoint a successor certified provider upon a determination that:

38 (A) The original certified provider has [ceased to provide the services and merchandise that the
39 original] **failed to perform the duties of a** certified provider [agreed to provide];

40 (B) The certificate issued to the original certified provider has been revoked or surrendered; and

41 (C) The appointment of a successor certified provider is [appropriate] **necessary** in order to
42 protect the interests of the purchasers and beneficiaries of prearrangement sales contracts or pre-
43 construction sales contracts.

44 (b) Depositories or master trustees holding deposits of trust funds by the original certified pro-
45 vider shall change their records to reflect the appointment of a successor certified provider upon

1 receipt of written notice of the appointment from the director.

2 (10) The trust fund accounts [*shall be*] **are** a single purpose fund. In the event of the **certified**
 3 provider’s bankruptcy, the funds and accrued income [*shall not be*] **are not** available to any creditor
 4 as assets of the **certified** provider, but [*shall*] **must** be distributed to the purchasers or managed for
 5 [*their*] **the purchasers’** benefit by the trustee in bankruptcy, receiver or assignee.

6 (11)(a) If the original **certified** provider is licensed under ORS chapter 692 and voluntarily sur-
 7 renders the license to the State Mortuary and Cemetery Board, [*the original provider shall transfer*
 8 *responsibility as provider under this section to a successor provider who holds a certificate issued by*
 9 *the director under ORS 97.933*] **prearrangement sales contracts and preconstruction sales con-**
 10 **tracts must be transferred to the successor certified provider appointed by the director.**

11 (b) If the original **certified** provider is not licensed under ORS chapter 692, upon presentation
 12 of proof of the [*death,*] dissolution, insolvency or merger with another **certified** provider of the ori-
 13 ginal **certified** provider, the depository shall release the prearrangement trust fund deposits or
 14 preconstruction trust fund deposits to the purchaser.

15 (c) If the original **certified** provider is licensed under ORS chapter 692, upon proof of the
 16 [*death,*] insolvency or involuntary surrender of the license of the original **certified** provider, the
 17 depository shall release the prearrangement trust fund deposits or preconstruction trust fund de-
 18 posits to the purchaser.

19 (12) The purchaser or beneficiary of a prearrangement sales contract or preconstruction sales
 20 contract may be named cotrustee with the **certified** provider with the written consent of the pur-
 21 chaser or beneficiary.

22 (13) A **certified** provider who has not appointed a master trustee **and is placing funds with a**
 23 **depository** shall have an annual audit of all trust account funds performed by an independent cer-
 24 tified public accountant in accordance with generally accepted accounting procedures. The **certified**
 25 provider shall [*make*] **provide** the audit results [*available*] to the director [*if requested*] **as part of**
 26 **the annual report.**

27 [*(14) As used in this section, “common trust fund account” means trust funds received by a pro-*
 28 *vider from two or more purchasers.*]

29 **SECTION 11.** ORS 97.942 is amended to read:

30 97.942. (1) The Attorney General, on behalf of the Director of the Department of Consumer and
 31 Business Services, may petition the circuit courts of this state for appointment of a receiver for a
 32 certified provider or [*person*] **entity** acting as a certified provider without certification.

33 (2) If the court determines that a receivership is necessary or advisable, the court shall appoint
 34 a receiver:

35 (a) When a receiver would ensure the orderly and proper conduct of a **certified** provider’s pro-
 36 fessional business and affairs during or in the aftermath of an administrative proceeding to revoke
 37 or suspend the **certified** provider;

38 (b) When a receiver would protect the public’s interest and rights in the business, premises or
 39 activities of the **certified** provider **or entity** sought to be placed in receivership;

40 (c) Upon a showing of serious and repeated violations of ORS 97.923 to 97.949 demonstrating an
 41 inability or unwillingness to comply with the provisions of ORS 97.923 to 97.949;

42 (d) When a receiver would prevent loss, wasting, dissipation, theft or conversion of assets that
 43 should be marshaled and held available for the honoring of obligations under ORS 97.923 to 97.949;
 44 or

45 (e) When the court receives proof of other grounds that the court deems good and sufficient for

1 instituting receivership action concerning the [*receiver*] **certified provider or entity** sought to be
 2 placed in receivership.

3 (3)(a) A receivership under this section may be temporary or for the winding up and dissolution
 4 of a business, as the director may request and the court determines to be necessary or advisable in
 5 the circumstances.

6 (b) Venue of receivership proceedings may be, at the director's request, in Marion County or the
 7 county where the subject of the receivership is located. The appointed receiver shall be the director
 8 or a person that the director nominates and that the court approves.

9 (c) The director may expend money from budgeted funds or the Funeral and Cemetery Consumer
 10 Protection Trust Fund to implement a receivership. Any expenditures are a claim against the estate
 11 in the receivership proceedings.

12 **SECTION 12.** ORS 97.943 is amended to read:

13 97.943. (1) A **master trustee or a** depository may not make any distributions from prearrange-
 14 ment sales contract trust deposits except as provided in this section.

15 (2) The principal of a trust created pursuant to a prearrangement sales contract shall be paid
 16 to the certified provider who sold the contract if the certified provider who sold the contract swears,
 17 by affidavit, that the certified provider has delivered all merchandise and performed all services
 18 required under the prearrangement sales contract and delivers to the **master trustee or the de-**
 19 **pository** one of the following:

20 (a) A certified death certificate of the beneficiary; or

21 (b) A sworn affidavit signed by the certified provider and by:

22 (A) One member of the beneficiary's family; or

23 (B) The executor of the beneficiary's estate.

24 (3) The principal of a trust created pursuant to a prearrangement sales contract [*shall*] **must**
 25 be paid to the purchaser if the original **certified** provider is no longer qualified to serve as **the**
 26 **certified** provider under ORS 97.941 (11).

27 (4) Upon completion by the certified provider of the actions described in subsection (2) of this
 28 section, the **master trustee or the** depository shall pay to the certified provider from the prear-
 29 rangement sales contract trust fund an amount equal to the sales price of the merchandise delivered.

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

32 (a) The certified provider who sold the contract if the contract is a guaranteed contract; or

33 (b) The contract purchaser, or the purchaser's estate, if the contract is a nonguaranteed con-
 34 tract.

35 (6) The **master trustee or the** depository may rely upon the certifications and affidavits made
 36 to it under the provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180, and [*shall not be*] **is**
 37 **not** liable to any person for such reliance.

38 (7) If [*for any reason*] a certified provider who sold [*the*] a prearrangement sales contract [*has*
 39 *refused to comply, or cannot or*] does not comply with the terms of the prearrangement sales contract
 40 within a reasonable time after the certified provider is required to do so, the purchaser or heirs or
 41 assigns or duly authorized representative of the purchaser or the beneficiary [*shall have*] **has** the
 42 right to a refund in the amount equal to the sales price paid for undelivered merchandise and un-
 43 performed services plus undistributed earnings amounts held in trust attributable to such contract,
 44 within 30 days of the filing of a sworn affidavit with the certified provider who sold the contract
 45 and the **master trustee or the** depository setting forth the existence of the contract and the fact

1 of breach. A copy of this affidavit shall be filed with the Director of the Department of Consumer
 2 and Business Services. In the event a certified provider who has sold a prearrangement sales con-
 3 tract is prevented from performing by strike, shortage of materials, civil disorder, natural disaster
 4 or any like occurrence beyond the control of the certified provider, the certified provider's time for
 5 performance *[shall be]* **is** extended by the length of such delay.

6 (8) Except for an irrevocable contract described in ORS 97.939 (4), at any time prior to the death
 7 of the beneficiary of a prearrangement sales contract, the purchaser of the prearrangement sales
 8 contract may cancel the contract and *[shall be]* **is** entitled to a refund of all amounts paid on the
 9 contract, all amounts in trust including earnings allocated to the contract that are in excess of all
 10 amounts paid on the contract and unallocated earnings on trust contract amounts from the date of
 11 the last allocation to the date of the refund request, less any amounts paid for merchandise already
 12 delivered or services already performed, which amounts may be retained by the certified provider
 13 as compensation.

14 (9) Notwithstanding ORS 97.941 (4) and subsection (5) of this section, *[upon receiving a sworn*
 15 *affidavit from the master trustee or provider stating that qualifying expenses, taxes or fees have been*
 16 *incurred, a depository shall allow]* a master trustee or **certified** provider *[to pay from earnings of*
 17 *trust fund deposits any expenses,]* **may pay** accounting fees, taxes, depository fees, investment man-
 18 ager fees and *[other fees as may be necessary to enable the provider to comply with the reporting re-*
 19 *quired by ORS 97.923 to 97.949, and to perform other services for the trust as may be authorized by*
 20 *ORS 97.923 to 97.949]* **master trustee fees from earnings of trust fund deposits.** Any payment
 21 of expenses or fees from earnings of a trust fund deposit under this subsection *[shall]* **must** not:

- 22 (a) Exceed an amount equal to two percent per calendar year of the value of the trust as de-
 23 termined on the first day of January of each calendar year;
- 24 (b) Include the payment of any fee to the **certified** provider in consideration for services ren-
 25 dered as **certified** provider; or
- 26 (c) Reduce, diminish or in any other way lessen the value of the trust fund deposit so that the
 27 **merchandise or** services *[or merchandise]* provided for under the contract are reduced, diminished
 28 or in any other way lessened.

29 **SECTION 13.** ORS 97.945 is amended to read:

30 97.945. (1) *[Every prearrangement sales contract or preconstruction sales contract seller]* **A certi-**
 31 **fied provider** shall pay to the Director of the Department of Consumer and Business Services a \$5
 32 fee for each prearrangement sales contract or preconstruction sales contract entered into, to be paid
 33 into a special income earning fund in the State Treasury, separate from the General Fund, known
 34 as the Funeral and Cemetery Consumer Protection Trust Fund. The fees shall be remitted to the
 35 director annually within 30 days after the end of December for all contracts that have been entered
 36 into during the 12-month period.

37 (2) Except as provided in this section, the fund shall be used solely for the purpose of providing
 38 restitution to purchasers who have suffered pecuniary loss arising out of prearrangement sales
 39 contracts or preconstruction sales contracts. The fund may be used for payment of actual adminis-
 40 trative expenses incurred in administering the fund. All moneys in the Funeral and Cemetery Con-
 41 sumer Protection Trust Fund are appropriated continuously to the director for the payment of
 42 restitution under this section and the payment of expenses incurred in performing the duties and
 43 functions of the director required under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180.

44 (3) The director shall administer the fund and shall adopt rules governing the payment of
 45 restitution from the fund.

1 (4) Payments for restitution shall be made only upon order of the director where the director
 2 determines that the obligation is noncollectible from the certified provider. Restitution [*shall*] **must**
 3 not exceed the amount of the sales price paid plus interest at the statutory rate.

4 (5) The fund [*shall*] **must** not be applied toward any restitution for losses on a prearrangement
 5 sales contract or preconstruction sales contract entered into prior to September 27, 1987.

6 (6) The fund [*shall*] **must** not be allocated for any purpose other than that specified in ORS
 7 97.923 to 97.949, 97.992, 97.994 and 692.180.

8 (7) If the director proposes to deny an application for restitution from the fund, the director
 9 shall accord an opportunity for a hearing as provided in ORS chapter 183.

10 (8) Notwithstanding any other provision of this section, the payment of restitution from the fund
 11 [*shall be*] **is** a matter of grace and not of right and no purchaser [*shall have*] **has** vested rights in
 12 the fund as a beneficiary or otherwise.

13 (9)(a) The **director shall annually review the** status of the fund [*shall be reviewed annually*
 14 *by the director*]. If the [*review*] **director** determines that the fund together with all accumulated in-
 15 come earned on the fund is sufficient to cover costs of potential claims against the fund and that
 16 the total number of outstanding claims filed against the fund is less than 10 percent of the fund's
 17 current balance, then payments to the fund [*shall*] **may** be adjusted accordingly at the discretion
 18 of the director.

19 **(b) If the fund's balance falls below acceptable levels to meet future obligations, the di-**
 20 **rector by rule may increase the fee or impose an assessment on certified providers.**

21 **SECTION 14. Section 15 of this 2011 Act is added to and made a part of ORS 97.923 to**
 22 **97.949.**

23 **SECTION 15. A person may not, in connection with performing certified provider activ-**
 24 **ities, operating an endowment care cemetery, providing services as a master trustee or**
 25 **providing related services:**

26 (1) **Employ any device, scheme or artifice to defraud;**

27 (2) **Knowingly make any untrue statement of a material fact or omit to state a material**
 28 **fact necessary in order to make the statements made, in the light of the circumstances un-**
 29 **der which the statements are made, not misleading;**

30 (3) **Engage in any act, practice or course of business that operates or would operate as**
 31 **a fraud or deceit upon any person; or**

32 (4) **Make or file, or cause to be made or filed, to or with the Director of the Department**
 33 **of Consumer and Business Services any statement, report or document that is known to be**
 34 **false in any material respect or matter.**

35 **SECTION 16. ORS 97.947 is amended to read:**

36 97.947. (1)(a) The Director of the Department of Consumer and Business Services may examine
 37 the conditions and resources, including sales contracts, of a certified provider, master trustee or
 38 [*person*] **entity** acting as a certified provider or master trustee without certification or registration
 39 to determine whether the certified provider, master trustee or [*person*] **entity** acting as a certified
 40 provider or master trustee without certification or registration is complying with ORS 97.923 to
 41 97.949, the rules of the director and any other laws of this state applicable to a certified provider
 42 or master trustee.

43 (b) In addition to the authority conferred by ORS 97.948, the director may require a certified
 44 provider, master trustee or [*person*] **entity** acting as a certified provider or master trustee without
 45 certification or registration to pay the actual and reasonable costs of the examination.

1 (2) For the purpose of an examination under this section, the director may administer oaths and
 2 affirmations, compel the attendance of witnesses, take evidence and require the production of books,
 3 papers, correspondence, memoranda, agreements or other documents or records that the director
 4 considers relevant or material to the examination.

5 (3) If a certified provider, master trustee or *[person]* **entity** acting as a certified provider or
 6 master trustee without certification or registration fails to comply with a subpoena issued under this
 7 section or a party or witness refuses to testify on any matter, the judge of the circuit court for any
 8 county, on the application of the director, shall compel obedience by proceedings for contempt as
 9 in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to
 10 testify on a matter before the court.

11 (4) Each witness who appears before the director under a subpoena issued under this section
 12 shall receive the fees and mileage provided for witnesses in ORS 44.415 (2), except that a witness
 13 subpoenaed at the instance of parties other than the director or an examiner may not be compen-
 14 sated for attendance or travel unless the director certifies that the testimony of the witness was
 15 material to the matter investigated.

16 (5) During the course of any examination, the director may cause the depositions of witnesses
 17 to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court.

18 **SECTION 17.** ORS 97.948 is amended to read:

19 97.948. (1) The Director of the Department of Consumer and Business Services may discipline a
 20 certified provider, master trustee or *[person]* **entity** acting as a certified provider or master trustee
 21 without certification or registration who has been found by an audit or examination conducted by
 22 the director:

- 23 (a) To be in violation of ORS 97.923 to 97.949;
- 24 (b) To have liabilities that exceed assets;
- 25 (c) To be unable to meet obligations as they come due; or
- 26 (d) To be in a financial condition that fails to adequately protect the interests of customers.

27 (2) In disciplining a certified provider, master trustee or *[person]* **entity** acting as a certified
 28 provider or master trustee without certification or registration under subsection (1) of this section,
 29 the director may take the following actions:

- 30 (a) Impose probation.
- 31 (b) Suspend the certificate or registration.
- 32 (c) Revoke the certificate or registration.
- 33 (d) Place limitations on the certificate or registration.
- 34 (e) Refuse to issue or renew a certificate or registration.
- 35 (f) Issue an order to cease and desist from the activities that support the discipline.
- 36 (g) Take any other disciplinary action that the director finds proper, including assessment of the
 37 costs of the investigation and disciplinary proceedings and assessment of a civil penalty not to ex-
 38 ceed \$10,000 per violation.

39 (3) If the certificate or registration of a certified provider or master trustee is suspended under
 40 this section, the holder of the certificate or registration may not engage in the activities allowed
 41 by the certificate or registration during the term of suspension. Upon the expiration of the term of
 42 suspension, the director shall reinstate the certificate or registration if the conditions for which the
 43 certificate or registration was suspended no longer exist.

44 (4) The director shall enter each case of disciplinary action on the records of the Department
 45 of Consumer and Business Services.

1 (5) Civil penalties under this section may be imposed as provided in ORS 183.745.

2 (6) If the director takes disciplinary action under this section, the director may send a notice
3 of the action to the State Mortuary and Cemetery Board and to the Attorney General.

4 **SECTION 18.** ORS 97.949 is amended to read:

5 97.949. (1) If the Director of the Department of Consumer and Business Services has reason to
6 believe that a person has violated any provision of ORS 97.923 to 97.949, the director may give the
7 information relative to the violation to the appropriate federal, state or local law enforcement offi-
8 cer having jurisdiction over the violation.

9 (2) If the director, in the course of taking an action against a certified provider, master trustee
10 or *[person]* **entity** acting as a certified provider or master trustee without certification or registra-
11 tion, finds that a salesperson or person acting as a salesperson has violated any provision of ORS
12 97.923 to 97.949, the director shall provide the State Mortuary and Cemetery Board with a copy of
13 the findings and the order of the director. The board shall, upon receipt of such information, disci-
14 pline the salesperson or person acting as a salesperson as required by law.

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