

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2373

S.P. 922

In Senate, January 12, 2000

An Act to Prevent Misuse of Mortuary Trust Funds.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.
Cosponsored by Representative STANWOOD of Southwest Harbor and
Senators: AMERO of Cumberland, President LAWRENCE of York, PINGREE of Knox,
Representatives: CAMPBELL of Holden, MAYO of Bath, MURPHY of Kennebunk, Speaker
ROWE of Portland, VOLENIK of Brooklin.

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 32 MRSA §1401, sub-§1, ¶¶A, C, D and E,** as enacted by PL
4 1999, c. 258, §2 and affected by §3, are amended to read:

6 A. All money paid during a person's lifetime to any
7 individual, firm, association, partnership or corporation,
8 by that person or by someone on behalf of that person, under
9 an agreement that services will be performed or personal
10 property will be delivered in connection with the
11 disposition of that person's body after death must be
12 deposited by the payee within 10 days after receipt of the
13 money in a separate account in a financial institution or
14 credit union authorized to do business in this State, as
15 defined in Title 9-B, section 131, subsections 12-A and
16 17-A, in the name of the payee as mortuary trustee for the
17 person for whose benefit the payment was made and must be
18 held in that account together with interest if any. If
19 money is paid by check, share draft or money order, the
20 payee shall instruct the payor to make the instrument
21 payable to the financial institution or credit union into
22 which it is to be deposited.

24 C. Within 30 days after the deposit of funds by the payee,
25 the financial institution or credit union shall provide a
26 written confirmation of the deposit, including the amount
27 deposited, to the payor or the payor's legal representative.
28 Nothing in this section may be construed to prevent the
29 direct transfer of these funds to another financial
30 institution or credit union by payee transfer, by financial
31 institution or credit union merger or consolidation or by
32 operation of law, provided that within 30 days after the
33 direct transfer of the funds, the recipient financial
34 institution or credit union shall provide a written
35 confirmation of the deposit, including the amount deposited,
36 to the payor or the payor's legal representative.

38 D. The agreement must be in writing and a copy must be
39 furnished to the payor or the payor's legal representative
40 by the payee when the agreement is executed. The agreement
41 may be revocable or irrevocable; however, if irrevocable,
42 there must be a provision to allow for the transfer of the
43 account by the appointment of successor trustees. The
44 agreement must clearly state the name of the initial
45 financial institution or credit union into which the money
46 will be deposited and must direct the payor to send a copy
47 of the agreement to the named financial institution or
48 credit union. The agreement must clearly state terms
49 providing for disposition of excess funds after funeral
50 goods and services have been provided. The agreement must

2 clearly state any fees that may be charged against the
account; fees must be reasonable, as defined by the board,
and may be charged only:

4 (1) Upon transfer of the account by the appointment of
6 a successor trustee;

8 (2) Upon revocation of the agreement if the agreement
is revokable; and

10 (3) For the actual financial and tax administration of
12 the account.

14 The payee shall maintain a complete record of the deposit of
all funds, including principal and interest. The record
16 must be available for inspection by the payor, the payor's
legal representative, the commissioner's designee or an
18 inspector for the board and must contain the name and
address of the financial institution or credit union
20 currently in possession of the funds and the dates and
amounts of deposits.

22 E. The funds may be withdrawn directed by the payee to
24 another financial institution or credit union or directed
back to the payor or the payor's legal representative, if
26 otherwise lawful and permitted by contract, ~~by the payee~~ on
written instructions of the payor or the payor's legal
28 representative ~~or~~. The funds may only be withdrawn by the
payee on the presentation of proof of death of the person
30 for whose benefit the funds were paid, in which event they
must be used in accordance with the agreement.

32 **Sec. 2. 32 MRSA §1401, sub-§3**, as enacted by PL 1999, c. 258,
34 §2 and affected by §3, is amended to read:

36 **3. Financial institution or credit union liability.** The
financial institution or credit union is discharged from
38 liability for direct payment of the funds in an account under
subsection 1 to another financial institution or credit union or
40 to the payee, upon presentation of a written consent ~~to~~
~~withdrawal~~ signed by the payor or the payor's legal
42 representative and by the payee or upon withdrawal of the funds
by the payee upon presentation of proof of death of the person
44 for whose benefit the funds were paid.

46 SUMMARY

48 This bill amends the laws governing mortuary trust funds as
50 follows.

2 1. It requires that, if money is paid by check, share draft
or money order under a prearranged funeral or burial plan, the
4 payee must instruct the payor to make the instrument payable to
the financial institution into which it is to be deposited.

6
8 2. It requires prearranged funeral and burial plan
agreements to state the name of the financial institution into
which the money will be deposited and directs the payor to send a
10 copy of the agreement to the named institution.

12 3. It requires the payee to keep complete records,
including the name and address of the institution currently in
14 possession of the funds.

16 4. Current law allows the payee to withdraw funds on the
instructions of the payor. This bill allows the payee only to
18 direct the funds to another institution or to the payor. The
funds may be withdrawn by the payee only upon the death of the
20 beneficiary.