STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1747 By: Johnson (Glen)

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 1991, Sections 6121, 6124, 6125 and 6129, which relate to prepaid funeral benefits; correcting terminology; providing additional requirement for issuance of certain permits; modifying requirements for placement of certain funds; modifying provisions relating to certain contract; removing certain requirement for placement of certain funds; modifying authority to collect administrative fee; removing bonding requirement if certain circumstances occur; providing procedures and requirement for annual financial examinations; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 6121, is amended to read as follows:

Section 6121. Any individual, firm, partnership, corporation, or association (hereinafter called "organization") which shall accept money or anything of value for prearranged, or prepaid funeral services, or funeral service merchandise as defined in the Funeral Services Licensing Act or for any contract providing future funeral services or funeral merchandise at a fixed price or at a cost plus a percentage, or at retail price less a percentage discount, or providing for any special consideration of any kind to be granted or made available to the purchaser or holder of such contract, in this state, under any sales contract, bond, certificate or other form of written document providing for prepaid, discounted or otherwise specially priced funeral or burial benefits or services or funeral merchandise to be delivered at an undetermined future date dependent upon the death of a contracting party or other person designated by a contracting party (hereinafter called "prepaid funeral benefits") shall first obtain a permit from the Insurance ~~Boarder~~ Commissioner

authorizing the transaction of this type of business before entering into any such contract. It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time such contract is made. The seller shall not be entitled to enforce a contract made in violation of the act, but the purchaser or his heirs, or legal representative, shall be entitled to recover triple the amounts paid to the seller with interest thereon at the rate of six percent (6%) per annum under any contract made in violation hereof.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 6124, is amended to read as follows:

Section 6124. A. Each organization desiring to accept money or anything of value for prepaid funeral benefits or an agreement to provide funeral benefits in the future at a fixed or predetermined cost, shall file an application for a permit with the Insurance Commissioner, and shall at the time of filing such application pay one initial filing fee of Fifty Dollars ($50.00). The Insurance Commissioner shall issue a permit upon the receipt of the application and payment of the filing fee, and upon making a finding that the applicant has complied with the rules and regulations as may be established under this act by the Insurance Commissioner. Additionally, after January 1, 1994, the Insurance Commissioner shall be required to make a finding that the applicant has complied with the Funeral Services Licensing Act, Section 395.1 et seq. of Title 59 of the Oklahoma Statutes, and the rules and regulations established pursuant to said act, or the Agents Licensing Act, Section 1421 et seq. of this title, prior to the issuance of the permit. Provided that all such applications shall be signed by the organization requesting the permit, and shall contain a statement that the applicant will comply with all the requirements as established by this act. All permits shall expire on the 31st day of December of the year said permit is first issued, unless renewed; permits may be renewed for a period not to exceed the succeeding December 31 upon the payment of a renewal fee of Fifty Dollars ($50.00). Late application for renewal of a license shall require a fee of double the renewal

fee. No application for renewal of a license shall be accepted after January 31 of each year. Applicants shall be required to reapply as if they were a new applicant.

B. The Insurance Commissioner may cancel a permit or refuse to issue a permit or refuse to issue a renewal of such permit for failure to comply with any provision of this act, or any valid rule or regulation, which the Insurance Commissioner has prescribed, after reasonable notice to the permittee and after hearing if the permittee requests a hearing.

C. No organization shall be entitled to a new permit for a period of one (1) year after cancellation, or refusal by the Insurance Commissioner to renew his permit but shall thereafter be entitled to a new permit upon satisfactory proof of compliance with this law, after the expiration of said one (1) year.

D. Any person or organization aggrieved by the actions of the Insurance Commissioner may appeal therefrom as provided by the Administrative Procedures Act, Section 301 et seq. of Title 75 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 6125, is amended to read as follows:

Section 6125. A. 1. The organization may retain from the first funds collected, the first ten percent (10%) of the purchase price of all contracts issued pursuant to paragraph 1 of subsection B of this section. Thereafter, one hundred percent (100%) of all funds collected pursuant to the provisions of contracts for prepaid funeral benefits, except for outer enclosures as defined by the Funeral Service Licensing Act, shall be placed in ~~assets eligible for investment by a domestic insurer~~ <u>interest-bearing investments authorized by Article 16 of the Insurance Code</u>, except to the extent the Insurance Commission may determine that a particular asset may be inappropriate for investment for prepaid funeral benefits.

2. For outer enclosures at the option of the organization the first thirty-five percent (35%) of the retail price of the outer enclosures collected may be retained by the organization. The remaining sixty-five percent (65%) of the retail price collected

for the outer enclosures shall be invested as otherwise provided by this subsection pursuant to the provisions of contracts for prepaid funeral benefits.

3. The funds required to be deposited pursuant to paragraphs 1 and 2 of this subsection ~~and paragraph 1 of subsection D of this section,~~ shall be deposited within ten (10) days of the end of the calendar month after the collection of said funds and shall be held in a trust fund in this state for the use, benefit, and protection of purchasers of contracts for prepaid funeral benefits. Nothing contained within this section shall be construed to prohibit an organization authorized to accept prepaid funds from transferring the funds held in trust from one trust depository to another if notice of the transfer is given to the Insurance ~~Boarder~~ Commissioner within ten (10) days before the transfer. This subsection shall not affect funds invested prior to November 1, 1988.

B. An organization authorized to accept prepaid funds shall be authorized to provide purchasers with a choice of either of the following types of contracts:

1. A contract for specific and described funeral merchandise and service at a guaranteed price. The provisions of this type of contract shall provide that interest ~~earned~~ paid by the organization upon ~~moneys~~ monies deposited in trust shall be added to the principal and that principal and interest shall become available for disbursement to the organization upon the death of the beneficiary and if withdrawal of monies occurs prior to death, the ~~organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to subsection D of this section less taxes and administrative fees~~ net value, plus the amount withheld pursuant to paragraph 1 of subsection A of this section, shall be paid to the purchaser. Net value shall be determined as provided in subsection C of this section; or

2. A contract establishing a fund for prepaid funeral benefits. The provisions of this type of contract shall require an initial minimum deposit of Twenty-five Dollars ($25.00) and

shall grant the purchaser the right to add to the fund at his discretion. The provisions of this contract shall provide that the funds accumulated shall apply to the cost of the funeral services and merchandise selected and that any funds remaining unused shall be refunded to the purchaser or to his personal representative or designated beneficiary and if withdrawal of monies occurs prior to death, the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to subsection D of this section less taxes and administrative fees. This type of contract shall also bear upon it the language: "Exact Funeral Merchandise and Services to be Selected at Time of Death".

C. If an organization other than the organization with which the purchaser contracted provides funeral merchandise and services upon the death of the beneficiary of the contract, the organization with whom the purchaser contracted shall forward, upon receipt of request in writing from the purchaser or his personal representative, the net value of the contract to the organization which provided said merchandise and services or to the purchaser or his personal representative. The net value of the contract for purposes of this section shall be determined by adding the amount of all principal paid in pursuant to the provisions of the contract plus all interest payable pursuant to subsection D of this section less taxes and administrative fees.

D. ~~1. At least ninety percent (90%) of all funds collected under contracts issued pursuant to paragraph 2 of subsection B of this section, except for outer enclosures as defined by the Funeral Service Licensing Act, shall be placed in assets eligible for investment by a domestic insurer, except to the extent the Insurance Commission may determine that a particular asset may be inappropriate for investment for prepaid funeral benefits.~~

~~2.~~ Funds deposited in trust pursuant to the provisions of either type of contract authorized by the provisions of this section shall earn for the account of the purchaser a rate of interest which is not less than the minimum rate of interest offered by the qualified depositories specified in subsection A of

this section to their savings customers having interest-bearing accounts. The organization, in a nondiscriminatory manner, may pay or accrue interest for the accounts of purchasers at any rate greater than the minimum rate that the organization desires, provided, however, that the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to this subsection.

E. A purchaser of either of the types of contracts authorized by the provisions of this section may withdraw the net value of the contract by signing a statement requesting the withdrawal. The organization shall provide a copy of the statement to the Insurance ~~Boarder~~ Commissioner. The organization shall retain in its files a copy of the statement requesting the withdrawal. Withdrawal of funds deposited pursuant to the provisions of a contract authorized by the provisions of paragraph 1 of subsection B of this section shall void the obligation of the contracting organization to provide funeral merchandise and services at a guaranteed price. Withdrawal forms shall be retained on file for at least three (3) years by the organization.

F. Following the death of a beneficiary for whom a contract has been purchased, the organization shall prepare a statement, acknowledged by the purchaser if the purchaser is not the beneficiary, or by the personal representative of the purchaser if the purchaser is the beneficiary, setting forth the use of the funds deposited and the party to whom any unused funds were disbursed. A copy of this statement shall remain in the files of the organization for at least three (3) years and a copy shall be delivered to the trust depository. Copies of the statement shall also be sent to the ~~Boarder~~ Insurance Commissioner and the purchaser.

G. After thirty (30) days, a contract of either type authorized by the provisions of this section may become irrevocable and not subject to withdrawal prior to the death of the beneficiary if the purchaser signs an election making said contract irrevocable. This election shall not become effective until thirty (30) days after signing the original contract.

H. In no event shall more funds be withdrawn or paid pursuant to the provisions of one contract than were deposited with the organization and which were accumulated as interest. All funds deposited pursuant to the provisions of a contract authorized by the provisions of this section and deposited pursuant to the terms of this section and the interest earned on said funds shall be exempt from attachment, garnishment, execution, and the claims of creditors, receivers, or trustees in bankruptcy, until such time as the funds have been withdrawn from the trust account and paid to the organization or refunded to the purchaser.

I. Each organization subject to the provisions of this section shall furnish a bond in the form of a cash bond, letter of credit, or fidelity bond, to be approved by the Insurance ~~Boarder~~ Commissioner, in the amount of Three Hundred Thousand Dollars ($300,000.00) or fifteen percent (15%) of all funds collected for prepaid funeral benefits, whichever is less. Provided, the provisions of this subsection shall cease to be in effect when full funding of the Oklahoma Prepaid Funeral Benefit Trust Guaranty Association Act is achieved and each holder of a permit issued pursuant to Section 6121 of this title complies with said act.

J. Organizations contracting with purchasers for prepaid funeral benefits pursuant to ~~paragraph~~ paragraphs 1 and 2 of subsection B of this section shall be entitled to deduct from the principal and interest allocable to the contracts an administrative fee which shall not exceed the product of .001146 times the total contract fund including accrued interest per month or any major portion thereof.

K. No organization holding a permit issued pursuant to the provisions of Sections 6121 and 6124 of this title shall accept any funds except pursuant to the provisions of a contract for prepaid funeral or burial benefits authorized by the provisions of Sections 6121 through 6136 of this title, and no organization shall accept funds from a purchaser in excess of the contracted price of prepaid funeral or burial benefits purchased.

L. Any organization which knowingly commits any of the acts set forth in the first sentence of Section 6121 of this title without first having obtained a permit to engage in said activity from the Insurance ~~Boarder~~ Commissioner, or any organization which commits said acts while knowingly operating with an invalid or expired permit, upon conviction, shall be guilty of a misdemeanor. Each separate act performed without a valid permit shall be deemed a separate offense. The punishment upon conviction for such offense shall be a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both such fine and imprisonment.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 6129, is amended to read as follows:

Section 6129. Each organization which has outstanding contracts for prepaid funeral benefits shall maintain within this state such records as the Insurance Commissioner may require to enable the Insurance Commissioner to determine whether the organization is complying with the provisions of Sections 6121 through 6136 of this title. Each organization shall provide to the Insurance Commissioner an annual statement of the financial condition of funds collected pursuant to contracts for prepaid funeral benefits. The statement shall be ~~prepared and signed by an accounting firm or individual holding a permit to practice public accounting in this state and shall be~~ due by the fifteenth day of March of each year and shall reflect, at a minimum, the assets and liabilities of each prepaid funeral benefits fund and the location and status of all trust funds for prepaid funeral benefits as of the last day of December of the preceding year. Failure to file an annual statement by the date required may result in censure, or suspension or revocation of license, and an administrative penalty imposed by the Insurance Commissioner of from One Hundred Dollars ($100.00) to One Thousand Dollars ($1,000.00) for each occurrence.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6129.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Annually, on or before the fifteenth day of March, and whenever the Insurance Commissioner deems it to be prudent or necessary, each organization operating one or more prepaid funeral trusts shall have a financial examination of each trust and related prepaid funeral accounts for the preceding calendar year, prepared by a licensed certified public accountant and in accordance with procedures promulgated by the Insurance Commissioner's office. The examination also shall evaluate and report on the compliance of each trust with the provisions of Section 6121 et seq. of Title 36 of the Oklahoma Statutes, relating to prepaid funeral benefits.

SECTION 6. This act shall become effective September 1, 1993.

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