

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1748

By: Johnson (Glen)

COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act; providing short title; stating purpose; providing scope of application; defining terms; establishing the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association and stating purpose therefor; providing for administration; requiring certain organizations to be members of Association; requiring a plan of operation; establishing a board of directions and providing for composition, appointment, terms of office and filling of vacancies; providing that the board serve without compensation, except for certain reimbursement; providing duties and powers of the Association; providing for the plan of operation and amendments thereto; requiring that plan be submitted to the Commissioner; requiring approval by the Commissioner; authorizing the Commissioner to establish certain rules if plan is not submitted; providing requirements for the plan; authorizing certain provisions in the plan; providing duties and powers of the Commissioner with respect to the Association; providing for assignments and right of recovery of covered claims; providing for proposals to distribute assets of insolvent organizations; authorizing procedures to aid in detection and prevention of insolvencies; providing scope of covered claims; prohibiting certain acts; providing for certain examinations; providing immunity from liability in certain circumstances; providing for stays of certain proceedings and setting aside of certain judgments; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

The purpose of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act is to provide a mechanism for the payment of covered claims under certain prepaid funeral benefit trust fund contracts, to avoid excessive delay in payment, to avoid financial loss to contract holders because of the insolvency of a prepaid funeral benefit trust, to assist in the detection and prevention of prepaid funeral benefit trust insolvencies, and to provide an association to assess the cost of such protection among prepaid funeral benefit trust fund permit holders.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act shall apply to all organizations authorized by the Oklahoma Insurance Commission to operate a prepaid funeral benefit trust fund.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act:

1. "Association" means the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association;
2. "Claimant" means any person who has contracted in writing for prepaid funeral merchandise and services with any organization authorized by the Oklahoma Insurance Department pursuant to Section 6121 et seq. of Title 36 of the Oklahoma Statutes to contract for prepaid funeral merchandise and services;
3. "Organization" means any individual, firm, partnership, corporation, or association holding a permit issued pursuant to Section 6121 of Title 36 of the Oklahoma Statutes;
4. "Commissioner" means the Insurance Commissioner;
5. "Trust" means any trust fund operated by an organization;

6. "Contract" means a written agreement for prepayment of funeral merchandise and services as authorized by Section 6121 et seq. of Title 36 of the Oklahoma Statutes;

7. "Insolvent trust" means any trust licensed by the Commissioner to sell prepaid funeral benefit trust fund contracts which is no longer able to meet its financial obligations under its contracts;

8. "Director" means any one of the directors of the Association; and

9. "Member organization" means any organization as defined by this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a nonprofit organization to be known as the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association to effectuate the purposes of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act. The Association shall be administered in accordance with the provisions of the act and the board of directors is empowered to do all things necessary to effectuate the purposes of the act and to administer the Association.

B. All organizations defined as member organizations shall be and remain members of the Association as a condition of their authority to operate prepaid funeral trust funds in this state. The Association shall perform its functions under a plan of operation established and approved under the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The business and functions of the Association shall be managed and administered by a board composed of not less than seven (7) nor more than nine (9) directors who are member organizations. The initial board of directors shall be appointed by the Governor; thereafter the directors shall be selected by the

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member organizations pursuant to procedures established in the plan of operation and subject to approval by the Commissioner. Each member of the board of directors shall designate a full-time salaried employee to represent it on the board of directors. Each member shall serve for a term of two (2) years. The members of the board of directors shall be subject to approval by the Commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the Commissioner. If no members are appointed by November 1, 1993, the Commissioner may appoint the initial members of the board of directors.

B. In approving selections to the board, the Commissioner shall consider whether or not all member organizations are fairly represented and any other factors the Commissioner deems necessary.

C. Members of the board shall serve without compensation but may be reimbursed from the assets of the Association for expenses incurred by them in the performance of duties as members of the board of directors.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Association shall:

1. Be obligated to pay all covered claims for unfunded liability of a trust up to a maximum of Ten Thousand Dollars (\$10,000.00) per individual contract holder with a trust. In no event shall the Association be obligated to pay a claimant an amount in excess of the contract obligation from which the claim arises; and

2. Maintain at all times for the payment of covered claims and administrative expense an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) and shall make other assessments as appropriate. Assessments shall be calculated by assessing against each organization a percentage, to be determined by the Association of each organizations total funds held in cash or cash equivalent based upon its financial report filed with the

Commissioner. No organization shall pay its assessment out of its trust fund.

B. The Association shall not be responsible for the payment of any claims of a trust fund until such time as a court of competent jurisdiction shall place the trust fund in receivership based upon a finding that the trust fund is unable to meet all of its financial obligations.

C. The Association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

2. Borrow funds necessary to effect the purposes of the act in accordance with the plan of operation;

3. Sue or be sued;

4. Negotiate and become a party to such contracts as are necessary to carry out the purpose of the act;

5. Refund to members in proportion to the contribution of each member that amount by which the assets of the Association exceed its liabilities, if at the end of any calendar year the board of directors finds that the assets of the Association exceed the liabilities as estimated by the board of directors for the coming year;

6. Arrange for the sale and transfer of the assets and contracts of any trust unable to meet all of its trust obligations;

7. Perform such other acts as are necessary or proper to effectuate the purpose of the act; and

8. Bring legal action against any organization and/or its officers and directors to recover any funds expended by the Association due to any organization being unable to meet its trust obligations or refusing to pay its assessments.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Association shall submit to the Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the

Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

B. If the Association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter, the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner. All member organizations shall comply with the plan of operation.

C. The plan of operation shall:

1. Establish the procedures whereby all the powers and duties of the Association under this act will be performed;

2. Establish procedures for handling assets of the Association;

3. Establish the amount and method of reimbursing members of the board of directors under this title;

4. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims;

5. Establish procedures for records to be kept of all financial transactions of the Association, its agents and the board of directors;

6. Establish procedures for records to be kept of all financial transactions of the Association, its agents and the board of directors;

7. Provide that any member organization aggrieved by any final action or decision of the Association may appeal to the Commissioner within thirty (30) days after the action or decision;

8. Establish the procedures whereby selections for the board of directors will be submitted to the Commissioner; and

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

D. The plan of operation may provide that any or all powers and duties of the Association are delegated to a corporation, association or other organization incorporated and resident in the State of Oklahoma which performs or will perform functions similar to those of this Association, or its equivalent. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Commissioner, and may be made only to a corporation, association or organization.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall:

1. Notify the Association of the existence of an insolvent organization not later than three (3) days after the Commissioner receives notice of the determination of the insolvency; and

2. Upon request of the board of directors, provide the Association with a copy of the annual financial statement of each member organization.

B. The Commissioner may:

1. Require that the Association notify the claimants of the insolvent organization and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last-known address. Notice by publication in a newspaper of general circulation shall be sufficient where no address is known;

2. Suspend or revoke, after the notice and hearing, the permit to provide prepaid funeral benefits in this state of any member organization which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a fine on any member organization which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that

no fine shall be less than One Hundred Dollars (\$100.00) per month; or

3. Revoke the designation of any servicing facility if the Commissioner finds claims are being handled unsatisfactorily.

C. Any final action or order of the Commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any person recovering under this act shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Every organization or claimant seeking the protection of this act shall cooperate with the Association to the same extent as such person would have been required to cooperate with the insolvent organization. In the case of an insolvent organization operating on a plan with assessment liability, payment of covered claims by the Association shall not operate to reduce the liability of any person to the receiver, liquidator or statutory successor for unpaid assessments.

B. The Association shall have the right to recover the amount of any "covered claim" paid on behalf of a person pursuant to the provisions of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act from any person who is an affiliate of the insolvent organization and whose liability obligations to other persons are satisfied in whole or in part by payments made pursuant to the provisions of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Within one hundred twenty (120) days of a final determination of insolvency of an organization by a court of

competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disburse assets out of such organization's marshaled assets from time to time as such assets become available to the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association.

B. Such proposal shall at least include provisions for:

1. Reserving amounts for the payment of expenses of administration and claims falling within priorities higher than that of the Association;

2. Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available;

3. Equitable allocation of disbursements to each of the associations entitled thereto;

4. The securing by the receiver from each of the associations entitled to disbursements of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within priorities higher than that of the Fund in accordance with such priorities. No bond shall be required of any such association; and

5. A full report to be made by the Association to the receiver accounting for all assets so disbursed to the Association on such assets and any other matter as the court may direct.

C. The receiver's proposal shall provide for disbursements to the Association in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.12 of Title 36, unless there is created a duplication in numbering, reads as follows:

To aid in the detection and prevention of insurer insolvencies:

1. The board of directors may, upon majority vote:

- a. make recommendations to the Commissioner for the detection and prevention of organization insolvencies, and
- b. respond to requests by the Commissioner to discuss and make recommendations regarding the status of any member organization whose financial condition may be hazardous to claimants or the public. Such recommendations shall not be considered public documents;

2. The board of directors may, at the conclusion of any organization insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the Association, and submit such report to the Commissioner.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.13 of Title 36, unless there is created a duplication in numbering, reads as follows:

A covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent organization.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.14 of Title 36, unless there is created a duplication in numbering, reads as follows:

No person, including an organization, agent or affiliate of an organization shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement,

announcement or statement which uses the existence of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association for the purpose of sales, solicitation or inducement to purchase any form of merchandise or service covered by the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act. This section shall not apply to the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association or to any other entity which does not sell or solicit prepaid funeral contracts.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.15 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Association shall be subject to the examination by the Commission and a report shall be made not less than annually by the board of directors concerning the financial condition of the Association. The report shall be made in such form as the Commissioner shall prescribe.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.16 of Title 36, unless there is created a duplication in numbering, reads as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member organization or its agent or employees, the Association, its directors, employees or agents, for any action taken by them in the performance of their powers and duties under this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6136.17 of Title 36, unless there is created a duplication in numbering, reads as follows:

All proceedings in which the insolvent organization, its claimants, or the Association is a party in any court in this state shall be stayed one hundred twenty (120) days from the date an order of liquidation, rehabilitation, receivership or conservatorship is final to permit proper legal action by the Association on any matters germane to its powers and duties. As

to judgment under any decision, order, verdict or finding based on default, the Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

SECTION 18. This act shall become effective September 1, 1993.

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