

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 275

By: Brown

COMMITTEE SUBSTITUTE

An Act relating to cemeteries; amending 8 O.S. 1991, Sections 162, 163, 166, 169, 302, 304, 306 and 308, which relate to perpetual care funds and cemetery merchandise trust funds; modifying and adding definitions; clarifying language; providing for cotrustee and prohibiting sole access to certain deposits by cotrustee; modifying, clarifying and adding information to be included in annual report filed with State Bank Commissioner; requiring maintenance of books and records to adequately justify information in annual report; requiring cemeteries providing prepayment financing programs to comply with certain provisions of Uniform Consumer Credit Code; providing for administration of act and promulgation of certain rules; modifying penalties; modifying merchandise included in determination of amount to be deposited in cemetery merchandise trust fund and of wholesale cost; removing certain duties of State Banking Board and granting same to State Bank Commissioner; modifying conditions for continuing deposit of payments in fund; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 8 O.S. 1991, Section 162, is amended to read as follows:

Section 162. As used in the Perpetual Care Fund Act:

~~The word "cemetery"~~ 1. "Cemetery" or "cemeteries" used in
~~this act shall, for the purposes of this Act mean~~ means any land or structure in this state dedicated to or used, or intended to be used, for the interment of human remains;

2. "Burial space" means any grave space, lot, mausoleum crypt or niche which is used or intended to be used for the interment of human remains;

3. "Purchase price" means the gross dollar amount the customer must pay the cemetery under a contractual agreement

between the two to exchange ownership of certain grave spaces, lots, mausoleum crypts or niches. Purchase price does not include finance charges, sales tax, charges for credit life insurance, opening and closing costs and setting fees, but does include any amount which the customer is required to pay as a deposit to the Perpetual Care Fund, described in Section 163 of this title. On sales of burial spaces wherein discounts or free spaces are granted to the customer by the cemetery, the purchase price is determined to be the fair market value or the normal selling price of that particular type of burial space as sold by the cemetery; and

4. "Financial institution" means a federally insured bank, trust company or savings and loan association which is authorized to do business in this state.

SECTION 2. AMENDATORY 8 O.S. 1991, Section 163, is amended to read as follows:

Section 163. A. In all cemeteries in this state where grave spaces, lots, mausoleum crypts or niches are sold, whether above or below the surface of the ground, not less than ten percent (10%) of the purchase price thereof shall be segregated and set aside as a permanent trust fund to be known as the "Perpetual Care Fund". ~~Provided, further, said~~ The Perpetual Care Fund shall be invested as hereinafter prescribed, and the income only shall be used in improving, caring for, and embellishing the lots, walks, drives, parks and other improvements in such cemeteries and maintenance of office and care of records.

~~Such setting aside and depositing shall be made by the owners of such cemeteries to a bank or trust company~~ B. The owner of a cemetery shall set aside and deposit such amounts in a financial institution authorized by law, as trustee, to administer such trusts, or other trustees, not later than thirty (30) days after the close of the month in which was received the final payment on the purchase price of each grave space, lot, mausoleum crypt or niche, ~~and such~~ Such amounts shall be held by the trustee of the Perpetual Care Fund in trust for the specific purposes stated in a written trust agreement. The trust agreement may provide for an

individual or other entity to exist as cotrustee; provided, however, in no instance shall the cotrustee have sole access to deposits held in the Perpetual Care Fund, except as otherwise provided in this act.

SECTION 3. AMENDATORY 8 O.S. 1991, Section 166, is amended to read as follows:

Section 166. A. ~~The owners~~ owner of ~~said cemeteries~~ a cemetery maintaining a Perpetual Care Trust Fund shall be required to file a report within ninety (90) days after the end of the ~~fiscal~~ calendar year of each cemetery with the State Bank Commissioner, showing ~~the,~~ for the preceding calendar year:

1. The gross amount received from sales, ~~as in Section 3 hereof provided,~~ the of grave spaces, lots, mausoleum crypts and niches;

2. The total purchase price of grave spaces, lots, mausoleum crypts and niches on contracts which received final payment and required deposits to the Perpetual Care Fund during the calendar year;

3. The operating expenses incurred during the calendar year which are eligible to be paid from income of the Perpetual Care Fund;

4. The total amount of the principal of the Perpetual Care Fund as of the beginning of the preceding calendar year; and

5. The amount segregated and deposited in the Perpetual Care Fund as provided by this act which shall be certified by the trustee of the Perpetual Care Fund as to correctness thereof, and the trustee shall ~~state~~ provide:

~~(a)~~ a. the total amount of the principal of the Perpetual Care Fund ~~held by the trustee as of the end of the calendar year,~~

~~(b)~~ b. the securities and other assets in which such ~~care funds~~ perpetual care funds are invested and,

c. the cash on hand ~~as of the date of the report, and~~

~~(e),~~

- d. a verification in writing of all assets in which monies of the Perpetual Care Fund have been invested; provided, such verification shall be obtained from the holder or holders of such assets,
- e. the income derived from ~~such~~ the Perpetual Care Fund investments during the ~~preceding~~ calendar year, and
- f. the gross expenditures or transfers from income of the Perpetual Care Fund during the calendar year.

~~Provided, further, the~~ B. The State Bank Commissioner shall have authority, at any time, to inspect the books and records of any such cemetery, and to make an audit thereof for the purpose of determining if proper sums have been deposited with the trustee in the Perpetual Care Fund, and if ~~said fund~~ the Fund is being properly administered by ~~said~~ the trustee in accordance with the provisions of ~~this~~ the Perpetual Care Fund Act. Each cemetery owner and trustee is responsible for maintaining satisfactory books and records which adequately justify all information contained in the annual report required by this section. The Bank Commissioner shall charge and collect a fee for such examination or audit ~~as provided in Section 19, Title 6, O.S. 1951,~~ which fee shall be disposed of as fees collected for the examination of banks and trust companies.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 167.1 of Title 8, unless there is created a duplication in numbering, reads as follows:

Every cemetery which provides prepayment financing programs to its customers under contracts in which a finance charge is made shall comply with all applicable provisions of the Uniform Consumer Credit Code, Section 1-101 et seq. of Title 14A of the Oklahoma Statutes, as they apply to disclosure and annual percentage rate calculation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 168.1 of Title 8, unless there is created a duplication in numbering, reads as follows:

The Perpetual Care Fund Act, Section 161 et seq. of Title 8 of the Oklahoma Statutes, shall be administered by the State Bank

Commissioner. The Commissioner is authorized to promulgate reasonable rules and regulations concerning the keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this law. SECTION 6. AMENDATORY 8 O.S. 1991, Section 169, is amended to read as follows:

Section 169. Any person, firm or corporation violating any of the provisions of ~~this act~~ the Perpetual Care Fund Act shall, upon conviction, be deemed guilty of a misdemeanor and shall ~~if convicted be fined~~ be subject to a fine of not less than Fifty Dollars (\$50.00) One Hundred Dollars (\$100.00) nor more than ~~Five Hundred Dollars (\$500.00) and imprisoned not less than thirty (30) days nor more than six (6) months in the county jail, or shall suffer both such fine and imprisonment~~ Two Thousand Five Hundred Dollars (\$2,500.00).

SECTION 7. AMENDATORY 8 O.S. 1991, Section 302, is amended to read as follows:

Section 302. As used in the Cemetery Merchandise Trust Act:

1. "Cemetery merchandise" means markers, memorials, vases, memorial vases, monuments, equipment, crypts, niches or outer enclosures. Cemetery merchandise shall not include the sale of lands or interests therein as grave lots or grave spaces; burial or interment rights; and delivered or installed crypts, niches or outer enclosures;
2. "Purchase price" means the gross amount to be paid for cemetery merchandise under the provisions of a prepaid cemetery merchandise contract. Purchase price shall not include finance charges, sales tax, charges for real property interests or charges for credit life insurance;
3. "Prepaid cemetery merchandise contract" means any agreement for the sale of cemetery merchandise by an organization which requires payment of the purchase price, in whole or in part, prior to delivery of the cemetery merchandise, which agreement is entered into from and after the effective date of this act;
4. "Minimum funding requirement" means that portion of the purchase price equal to one hundred ten percent (110%) of the

wholesale cost, freight on board, to the organization of the cemetery merchandise, ~~excluding outer enclosures,~~ covered in a prepaid cemetery merchandise contract. Wholesale costs shall be determined by the organization on the basis of such quotations and price lists as are available to the organization from the wholesale concerns;

5. "Organization" means any individual, firm, partnership, corporation or association authorized to establish or operate a cemetery merchandise trust fund pursuant to the Cemetery Merchandise Trust Act. This shall not include state, county, municipal, township, rural community, religious, fraternal or nonprofit corporate entities, free community burial grounds, and charitable or eleemosynary institutions operating cemeteries in this state;

6. "Outer enclosure" means a grave liner, grave box, or grave vault;

7. "Board" means the ~~Oklahoma~~ Oklahoma State Banking Board; and

8. "Financial institution" means a federally insured bank, trust company, or savings and loan association which is authorized to do business in this state.

SECTION 8. AMENDATORY 8 O.S. 1991, Section 304, is amended to read as follows:

Section 304. The Cemetery Merchandise Trust Act, Section 302 et seq. of this title, shall be administered by the ~~Board~~ State Bank Commissioner. The ~~Board~~ Commissioner is authorized to ~~prescribe~~ promulgate reasonable rules and regulations concerning the keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this law. All prepaid cemetery merchandise contracts must be in writing, and no such contract form shall be used without first being submitted to the ~~Board~~ Commissioner.

SECTION 9. AMENDATORY 8 O.S. 1991, Section 306, is amended to read as follows:

Section 306. A. Each organization shall establish and maintain a cemetery merchandise trust fund with a financial institution having trust powers. A cemetery merchandise trust

fund shall at all times be in the custody of a financial institution. Any cemetery merchandise trust funds may be invested, reinvested, exchanged, retained, sold and managed as a part of common trust funds in the manner required by and subject to the Board and at the election of the trustee. A copy of each contract or a written notice containing all relevant information regarding such prepaid cemetery merchandise contracts for which deposits are made shall be furnished to the financial institution. The financial institution shall serve as trustee for the purposes of the Cemetery Merchandise Trust Act.

B. Deposits to a cemetery merchandise trust fund shall be carried in the name of the organization and the amounts deposited therein may be commingled. Provided, however, the accounting records shall establish a separate account for each prepaid cemetery merchandise contract and shall show the amounts deposited, and the income or loss accruing thereon, with respect to each prepaid cemetery merchandise contract. The trustee shall reimburse the organization for all income taxes and costs incurred with respect to the operation of such fund, and the trustee shall be reimbursed from the earnings of such fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services. The taxes and costs shall be paid from earnings for the fund prior to the allocation of earnings to the individual accounts.

C. An organization entering into a prepaid cemetery merchandise contract shall be entitled to retain all of the purchase price under the prepaid cemetery merchandise contract until it has received an amount equal to thirty-five percent (35%) of the purchase price of the cemetery merchandise, ~~except outer enclosures,~~ sold in a prepaid cemetery merchandise contract. ~~For outer enclosures, 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 section.~~

D. After an organization has received the amount it is entitled to receive, in accordance with subsection C of this section, all payments of the purchase price to the organization pursuant to a prepaid cemetery merchandise contract shall be deposited by the organization in a cemetery merchandise trust fund until such time as the requirements of subsection E of this section have been satisfied or delivery is made of the cemetery merchandise, or until an amount satisfying the minimum funding requirement has been deposited. Thereafter, all payments of the purchase price in excess of the minimum funding requirement may be retained by the organization. Deposits shall be made within ten (10) business days after the end of the month in which such deposits are received by the organization.

E. Annually, as of December 31 of each year, each organization shall determine the wholesale cost for all cemetery merchandise, ~~excluding outer enclosures,~~ covered by a prepaid cemetery merchandise contract for which funds are then held in a cemetery merchandise trust or in an individual merchandise account. If the amount held with respect to a prepaid cemetery merchandise contract exceeds the minimum funding required, the excess shall be paid by the trustee of the cemetery merchandise trust to the organization. In such event, no further deposit shall be required with respect to the prepaid cemetery merchandise contract until such time as the amount held no longer exceeds the minimum funding requirement. If the minimum funding requirement is not satisfied, no amount shall be paid to or withdrawn by the organization and the organization shall continue or shall resume, as the case may be, making the deposits required by subsection D of this section.

F. No part of the moneys required to be held in a cemetery merchandise trust fund pursuant to the provisions of the Cemetery Merchandise Trust Act shall ever be used for any other purpose other than investment as authorized by this section until delivery of the cemetery merchandise is made.

G. Delivery of cemetery merchandise for the purposes of this subsection may be accomplished in one of the following ways:

1. Actual and physical delivery of the cemetery merchandise to the purchaser;

2. Physical attachment of the cemetery merchandise to realty or cemetery space owned by the purchaser;

3. Certification by an approved manufacturer to the purchaser that the organization has paid the wholesale price of the cemetery merchandise and that the cemetery merchandise will be delivered upon request of the purchaser;

4. Written notification to the purchaser by the organization that the cemetery merchandise is in the possession of the organization and may be removed by the purchaser upon full payment for the cemetery merchandise; and

5. When construction or permanent installation of the cemetery merchandise has been completed, with respect to cemetery merchandise which is affixed to realty.

H. Upon delivery of the cemetery merchandise pursuant to a prepaid cemetery merchandise trust contract, the organization shall present the trustee with a verified statement that delivery has been made, and upon such presentation, the trustee shall pay to the organization the amount of any funds held in trust with respect to the cemetery merchandise delivered and no further deposits shall be made with respect to such cemetery merchandise.

I. Should the buyer move to a community in which the cemetery does not accept transfers of outer enclosures from the cemetery which the buyer has entered into a cemetery merchandise contract, the selling organization will refund sixty-five percent (65%) of the retail price plus interest equal to the annual interest computed from the date that the contract was paid in full based on the financial institution's passbook interest rate at the time that the refund is requested.

SECTION 10. AMENDATORY 8 O.S. 1991, Section 308, is amended to read as follows:

Section 308. Each organization shall file an annual report with the State Banking Board on or before March 15 of each year in such form as the Board may require, showing the name of the financial institution holding the cemetery merchandise trust fund

and the amount of the trust fund under each contract on the preceding December 31, and also showing the method of determination of the wholesale costs made pursuant to Section ~~22~~ 306 of this ~~act~~ title. The total required deposits to the cemetery merchandise trust fund during the year shall also be reported. Each cemetery is responsible for maintaining satisfactory books and records, which will adequately justify all information contained in the annual report required by this section. Any organization which has discontinued the sale of prepaid cemetery merchandise, but which still has funds deposited in a cemetery merchandise trust fund or surety, shall not be required to obtain a renewal of its permit, but it shall continue to make annual reports to the Board until all such funds have been disbursed pursuant to ~~this act~~ the Cemetery Merchandise Trust Act. A filing fee of Fifty Dollars (\$50.00) shall accompany each report. If any officer of any organization fails or refuses to file an annual report, or fails or refuses to cause it to be filed within thirty (30) days after the organization has been notified by the Board that the report is due and has not been received, he shall be guilty of a misdemeanor and shall be punished as prescribed in Section ~~31~~ 315 of this ~~act~~ title.

SECTION 11. This act shall become effective September 1, 1993.

44-1-0785

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