

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1837

By: Vaughn

AS INTRODUCED

An Act relating to cemeteries; transferring all powers, duties and responsibilities of the Perpetual Care Fund Act to the Oklahoma State Board of Embalmers and Funeral Directors; amending 8 O.S. 1991, Section 166, as amended by Section 3, Chapter 218, O.S.L. 1993 and Section 5, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Sections 166 and 168.1), which relate to the Perpetual Care Fund Act; changing references from State Bank Commissioner; amending 8 O.S. 1991, Sections 302, as last amended by Section 1, Chapter 98, O.S.L. 1994, 304, as amended by Section 8, Chapter 218, O.S.L. 1993, 308, as amended by Section 10, Chapter 218, O.S.L. 1993 and 316, as amended by Section 11, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Sections 302, 304, 308 and 316), which relate to the Cemetery Merchandise Trust Act; changing references from State Bank Commissioner and Banking Board; 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 161.1 of Title 8, unless there is created a duplication in numbering, reads as follows:

All powers, duties and responsibilities of the Perpetual Care Fund Act now exercised by the Oklahoma Banking Board pursuant to law are transferred to the Oklahoma State Board of Embalmers and Funeral Directors, together with any unexpended funds, property, records, personnel, and any outstanding financial obligations and encumbrances relating thereto.

SECTION 2. AMENDATORY 8 O.S. 1991, Section 166, as amended by Section 3, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 166), is amended to read as follows:

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

1. The gross amount received from sales 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 provide:

- a. the total amount of the principal of the Perpetual Care Fund as of the end of the calendar year,
- b. the securities and other assets in which such perpetual care funds are invested,
- c. the cash on hand,
- 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 the Perpetual Care Fund investments during the calendar year, and
- f. the gross expenditures or transfers from income of the Perpetual Care Fund during the calendar year.

B. ~~The State Bank Commissioner~~ Board 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 the Fund is being properly administered by the trustee in accordance with the provisions of 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~~ Board shall charge and collect a fee for such examination or audit, which fee shall be deposited in the Cemetery Merchandise Trust Act Revolving Fund.

SECTION 3. AMENDATORY Section 5, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 168.1), is amended to read as follows:

Section 168.1 The Perpetual Care Fund Act, Section 161 et seq. of Title 8 of the Oklahoma Statutes, shall be administered by the ~~State Bank Commissioner~~ Oklahoma State Board of Embalmers and Funeral Directors. The ~~Commissioner~~ Board 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.1 of Title 8, unless there is created a duplication in numbering, reads as follows:

All powers, duties and responsibilities of the Cemetery Merchandise Trust Act now exercised by the Oklahoma Banking Board pursuant to law are hereby transferred to the Oklahoma State Board of Embalmers and Funeral Directors, together with all unexpended funds, property, records, personnel and any outstanding financial obligations and encumbrances related thereto.

SECTION 5. AMENDATORY 8 O.S. 1991, Section 302, as last amended by Section 1, Chapter 98, O.S.L. 1994 (8 O.S. Supp. 1994, 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 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 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. "Lawn crypt" means a subsurface permanent outer enclosure installed before need in multiple units for the purpose of interring human remains;

8. "Board" means the ~~State Banking Board~~ Oklahoma State Board of Embalmers and Funeral Directors; and

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

SECTION 6. AMENDATORY 8 O.S. 1991, Section 304, as amended by Section 8, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 304), is amended to read as follows:

Section 304. A. The Cemetery Merchandise Trust Act, ~~Section 302 et seq. of this title,~~ shall be administered by the ~~State Bank Commissioner~~ Oklahoma State Board of Embalmers and Funeral

Directors. The ~~Commissioner~~ Board 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. All prepaid cemetery merchandise contracts must be in writing, and no such contract form shall be used without first being submitted to the ~~Commissioner~~ Board.

B. An organization aggrieved by an action or order of the ~~Commissioner~~ Board may appeal the action or order ~~to the State Banking Board which may then affirm, modify or reverse the action or order of the Commissioner~~ as provided by the Administrative Procedures Act.

SECTION 7. AMENDATORY 8 O.S. 1991, Section 308, as amended by Section 10, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 308), is amended to read as follows:

Section 308. Each organization shall file an annual report with the ~~State Banking Board~~ Oklahoma State Board of Embalmers and Funeral Directors 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 306 of this 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

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 315 of this title.

SECTION 8. AMENDATORY 8 O.S. 1991, Section 316, as amended by Section 11, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 316), is amended to read as follows:

Section 316. There is hereby created the "Cemetery Merchandise Trust Act Revolving Fund". The fund shall consist of all monies received by the Oklahoma State Board of Embalmers and Funeral Directors pursuant to the Cemetery Merchandise Trust Act and any other monies as required by law. The fund shall be a continuing fund not subject to fiscal year limitations and shall be subject to the administrative direction of the ~~Oklahoma Banking~~ Board. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims submitted to the Director of State Finance. Monies in the fund may be expended for expenses incurred in administering and enforcing the Cemetery Merchandise Trust Act.

SECTION 9. This act shall become effective November 1, 1995.

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