

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1951

By: Weaver

AS INTRODUCED

An Act relating to cemeteries; amending 8 O.S. 1991, Sections 165, 166, as amended by Section 3, Chapter 218, O.S.L. 1993, and 168 (8 O.S. Supp. 1994, Section 166), which relate to the Perpetual Care Fund Act; updating statutory reference; changing date upon which certain reports are due; modifying exceptions to act; amending 8 O.S. 1991, Sections 302, as last amended by Section 1, Chapter 98, O.S.L. 1994, 303, 304, as amended by Section 8, Chapter 218, O.S.L. 1993, 305, 306, as amended by Section 9, Chapter 218, O.S.L. 1993, 307, 308, as amended by Section 10, Chapter 218, O.S.L. 1993, 309, 310, 311, 313, 314, and 316, as amended by Section 11, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Sections 302, 304, 306, 308, and 316), which relate to the Cemetery Merchandise Trust Act; updating certain references; modifying and adding definition; transferring certain duties and responsibilities from the State Banking Board to the State Banking Commissioner; providing that any reference in certain rules to Oklahoma Banking Board shall mean the State Banking Commissioner; providing that certain rules shall remain effective; modifying appeals of certain action or

order; modifying expenditure of monies in Cemetery Merchandise Trust Act Revolving Fund; and providing an effective date.

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

SECTION 1. AMENDATORY 8 O.S. 1991, Section 165, is amended to read as follows:

Section 165. Accumulated trust funds held by the trustee of the Perpetual Care Fund shall be invested in the manner provided in the Oklahoma Trust Act, ~~Chapter 15, Session Laws 1941,~~ and any amendments thereto. The income derived therefrom shall be returned to such cemeteries to be used by them only as provided by this act.

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 by March 15 of each year with the State ~~Bank~~ Banking Commissioner, 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 shall have authority, at any time, to inspect the books and records of any such cemetery, and to make an ~~audit~~ examination 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 and rules of the Commissioner. 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~~, which fee shall be deposited in the Cemetery Merchandise Trust Act Revolving Fund.

SECTION 3. AMENDATORY 8 O.S. 1991, Section 168, is amended to read as follows:

Section 168. ~~Municipal~~ The provisions of the Perpetual Care Fund Act shall not apply to municipal, religious, fraternal, corporate and, rural cemeteries and or nonprofit entities, free community burial grounds are now regulated by Chapters 1, 2, 3 and 5, Title 8, O.S.A., 1951 and the provisions of this act shall not apply to such cemeteries; nor to cemeteries operated by, county cemetery associations, Indian tribal cemeteries on tribal land and charitable and or eleemosynary institutions operating cemeteries in this state.

SECTION 4. 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, trust, corporation ~~or~~, ~~association authorized to establish or operate a cemetery merchandise trust fund pursuant to the Cemetery Merchandise Trust Act~~ or entity. ~~This Organization~~ shall not include state, county, municipal, township, rural community, religious, fraternal or nonprofit entities, free community burial grounds, county cemetery associations, Indian tribal cemeteries on tribal land 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; ~~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; and

10. "Commissioner" means the State Banking Commissioner.

SECTION 5. AMENDATORY 8 O.S. 1991, Section 303, is amended to read as follows:

Section 303. Any organization which shall accept money or anything of value for cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall first obtain a permit from the ~~Board~~ State Banking Commissioner authorizing the transaction of this

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

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~~ Banking Commissioner. The Commissioner is authorized to promulgate reasonable rules ~~and regulations~~ concerning the keeping and inspection of records, the filing of contracts and reports, investments of and handling of the trust funds, and all other matters incidental to the orderly administration of this law. Any reference to the Oklahoma Banking Board in rules promulgated pursuant to the Cemetery Merchandise Trust Act shall mean the State Banking Commissioner. The rules promulgated by the Oklahoma Banking Board prior to the effective date of this act shall continue in effect until such rules are amended or repealed by rule of the Commissioner promulgated pursuant to the provisions of Article I of the Administrative Procedures Act. All prepaid cemetery merchandise contracts must be in writing, and no such contract form shall be used without first being submitted to the Commissioner.

B. An organization aggrieved by an action or order of the Commissioner 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 305, is amended to read as follows:

Section 305. A. Each organization desiring to accept money or anything of value for prepaid cemetery merchandise shall file an application for a permit with the ~~Board~~ State Banking Commissioner, and shall at the time of filing such application pay one initial filing fee of Fifty Dollars (\$50.00). The ~~Board~~ 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 pursuant to the Cemetery Merchandise Trust Act by the ~~Board~~ Commissioner. 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 pursuant to the Cemetery Merchandise Trust Act. All permits shall expire on the 31st day of December of the year said permit is first issued, unless renewed; permits shall 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~~ permit shall require a fee of double the renewal fee. No application for renewal of a ~~license~~ permit shall be accepted after January 31 of each year. Applicants shall be required to reapply as if they were a new applicant.

B. The ~~Board~~ 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 provisions of the Cemetery Merchandise Trust Act or any rules ~~or regulations~~ promulgated thereto by the ~~Board~~ Commissioner, after reasonable notice to the permittee and after a hearing before the Commissioner if the permittee requests a

hearing in accordance with Article II of the ~~Oklahoma~~ Administrative Procedures Act.

C. No organization shall be entitled to a new permit for a period of one (1) year after cancellation, or refusal by the ~~Board~~ Commissioner to renew a permit, but shall thereafter be issued a new permit upon satisfactory proof of compliance with the Cemetery Merchandise Trust Act, after the expiration of said one (1) year.

D. Any person or organization aggrieved by the actions of the ~~Board~~ Commissioner may appeal therefrom to the State Banking Board as provided by the Administrative Procedures Act.

SECTION 8. AMENDATORY 8 O.S. 1991, Section 306, as amended by Section 9, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, 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~~ State Banking Commissioner 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 sold in a prepaid cemetery merchandise contract.

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 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 9. AMENDATORY 8 O.S. 1991, Section 307, is amended to read as follows:

Section 307. A. As an alternative to the trust requirements of Section ~~22~~ 306 of this ~~act~~ title, an organization may purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered prepaid cemetery merchandise contracts. For the purposes of this section, the term "outstanding liabilities" means the gross replacement or wholesale value of the prepaid cemetery merchandise.

B. The bond shall be made payable to the State of Oklahoma for the benefit of the ~~Board~~ State Banking Commissioner and all purchasers of prepaid cemetery merchandise. The bond shall be approved by the ~~Board~~ Commissioner.

C. The ~~Board~~ Commissioner shall establish by rule the requirements and guidelines for the bonds required herein.

SECTION 10. 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~~ Commissioner on or before March 15 of each year in such form as the ~~Board~~ Commissioner 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~~ Commissioner 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~~ Commissioner that the report is due and has not been received, ~~he~~ such officer shall be guilty of a misdemeanor and shall be punished as prescribed in Section 315 of this title.

SECTION 11. AMENDATORY 8 O.S. 1991, Section 309, is amended to read as follows:

Section 309. The ~~Board~~ State Banking Commissioner may ~~audit~~ examine each organization so as to approve the organization's determination of the wholesale costs made pursuant to Section 22 306

of this ~~act~~ title. The fee for ~~such audit~~ the examination may be paid from the organization's cemetery merchandise trust fund. For such purposes, the ~~Board~~ Commissioner is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any organization. The examination may be reduced to writing by the person taking it, and the examiner may make findings as to the condition of each cemetery merchandise trust fund examined. For the purpose of ~~such audits~~ the examinations, the ~~Board~~ Commissioner may require any officer of an organization to furnish and submit the books, records, papers and instruments of the organization to the examiner.

SECTION 12. AMENDATORY 8 O.S. 1991, Section 310, is amended to read as follows:

Section 310. In the event the ~~Board~~ State Banking Commissioner determines that moneys have been improperly paid by the trustee to the organization during the period covered by the ~~audit~~ examination, ~~then~~ the ~~Board~~ Commissioner shall order the organization to redeposit to the trust such moneys improperly withdrawn within sixty (60) days.

SECTION 13. AMENDATORY 8 O.S. 1991, Section 311, is amended to read as follows:

Section 311. The Attorney General of this state, at the request of the ~~Board~~ State Banking Commissioner, may initiate an action to recover payments required to be redeposited to the cemetery merchandise trust pursuant to the Cemetery Merchandise Trust Act or to recover other moneys received or disbursed in violation of the Cemetery Merchandise Trust Act. In addition, the Attorney General may seek to enjoin any violation of said act.

SECTION 14. AMENDATORY 8 O.S. 1991, Section 313, is amended to read as follows:

Section 313. Whenever any officer of any organization refuses to submit the books, records, papers and instruments of such

organization to the examination and inspection of the ~~Board's~~ State Banking Commissioner's assistants or examiners, or in any manner obstructs or interferes with the examination ~~or audit~~ of its cemetery merchandise trust fund, or refuses to be examined on oath concerning any of the affairs of its cemetery merchandise trust fund, the ~~Board~~ Commissioner may request the Attorney General of this state to institute proceedings for the appointment of a receiver for such organization.

SECTION 15. AMENDATORY 8 O.S. 1991, Section 314, is amended to read as follows:

Section 314. Any organization which refuses or neglects to establish or maintain a cemetery merchandise trust fund in accordance with the requirements of the Cemetery Merchandise Trust Act within ninety (90) days after demand to do so is made upon it in writing by the ~~Board~~ State Banking Commissioner shall be deemed to have forfeited its corporate franchise. The Attorney General of this state upon the request of the ~~Board~~ Commissioner shall then begin an action for the appointment of a receiver for such organization and to dissolve the same.

SECTION 16. 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 ~~Board~~ State Banking Commissioner 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 and the Perpetual Care Fund Act.

SECTION 17. This act shall become effective November 1, 1995.

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