

SHORT TITLE: Funeral services and cemeteries; renaming Oklahoma State Board of Embalmers and Funeral Directors to Oklahoma State Funeral Services Commission; transferring authority over Perpetual Care Fund Act and Cemetery Merchandise Trust Act from State Bank Commissioner to Commission; codification; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 279

By: Stipe

AS INTRODUCED

An Act relating to funeral services and cemeteries;
amending 8 O.S. 1991, Sections 165, 166, as amended
by Section 3, Chapter 218, O.S.L. 1993, 168,
Section 5, Chapter 218, O.S.L. 1993 and 169, as
amended by Section 6, Chapter 218, O.S.L. 1993 (8
O.S. Supp. 1994, Sections 166, 168.1 and 169),
which relate to perpetual care trust funds;
clarifying language; modifying certain filing time
and stating filing fee; conforming language to
reflect change in regulatory authority; clarifying
audit and fee provisions; expanding entities not
covered by certain provisions; changing authority
to administer Perpetual Care Fund Act from State
Bank Commissioner to Oklahoma State Funeral
Services Commission; making certain rules, orders
and actions effective until Commission takes
certain action; transferring certain powers,
duties, responsibilities, records, fund balances,
encumbrances and obligations to Commission;
modifying penalty; requiring certain owners and
operators to obtain permit before entering into
contracts; making certain acts unlawful and
providing remedies; providing for permit
application, fees, issuance, renewal, cancellation,
refusal to renew, appeal, and procedures related
thereto; amending 8 O.S. 1991, Sections 301, 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, 315 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 prepaid cemetery merchandise; correcting statutory reference; modifying and adding definitions; conforming language to reflect change in regulatory entity; modifying gender references; clarifying language; changing authority to administer Cemetery Merchandise Trust Act from State Bank Commissioner to Oklahoma State Funeral Services Commission; stating certain filing fee; making filed copy of contract or report prima facie evidence of facts; making certain rules, orders and actions effective until Commission takes certain action; transferring certain powers, duties, responsibilities, records, fund balances, encumbrances and obligations to Commission; modifying certain fees and prohibiting prorating and refunding of fees; setting additional fee; modifying penalties; clarifying provisions relating to audits; amending 59 O.S. 1991, Sections 395.1, 396, as amended by Section 1, Chapter 3, O.S.L. 1992, 396.1, 396.2, 396.2a, 396.3, 396.4, 396.5, 396.5a, 396.8, 396.10, 396.11, 396.12, 396.12a, 396.12b, 396.12c, 396.12d, 396.12e, 396.12f, 396.14, 396.15, 396.16, 396.17, 396.18, 396.24 and 396.25 (59 O.S. Supp. 1994, Section 396), which

relates to regulation of funeral services;
clarifying and correcting statutory references;
renaming Oklahoma State Board of Embalmers and
Funeral Directors to Oklahoma State Funeral
Services Commission; adding members to Commission
and stating qualifications and terms; conforming
language; modifying appointment procedure;
providing for removal from Commission membership,
meetings and quorum; defining terms; bringing sale
of cemetery merchandise under authority of
Commission; deleting obsolete language; modifying
qualifications for applicants; modifying fees;
modifying conditions for issuing reciprocal
license; modifying conditions for licensing
apprentices as embalmers or funeral directors;
requiring certain display of license; expanding
certain prohibition; modifying situations when
personal or direct supervision is required and
activities to which unlicensed person are
restricted; making violation of certain other acts
a condition for certain disciplinary actions and
subject to certain penalties and liabilities and
conforming related provisions; allowing Commission
fines and administrative penalties to be enforced
as civil judgments are enforced; changing title of
certain position and fund; deleting provision for
paying certain fines to counties and obsolete
language pertaining to certain fund; requiring
Commission include certain addition information in
certain record; modifying Commission officers and
bringing limited service establishments under
certain rule making and enforcement provisions;

clarifying reimbursement provisions; authorizing employment of auditors and placing Commission employees in unclassified status; making exception for current classified employees; amending 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and last amended by Section 5, Chapter 315, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-5.5), which relates to the exempt unclassified service; including Commission employees in exempt unclassified service; repealing 59 O.S. 1991, Sections 396.21, 396.22 and 396.26, which relate to meetings and removal of members of Board and severability; providing for codification; providing an effective date; and declaring an emergency.

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~~ the Perpetual Care Fund 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 Oklahoma State Bank Commissioner Funeral Services Commission, accompanied by a filing fee of Fifty Dollars (\$50.00) and 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~~ director of the Commission 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 Commission. 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~~ director shall charge and collect a fee, as set by rule of the Commission, 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 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, and charitable and or eleemosynary institutions operating cemeteries in this state.

SECTION 4. 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 A. The Perpetual Care Fund Act, Section 161 et seq. of ~~Title 8 of the Oklahoma Statutes~~ this title, shall be administered by the ~~State Bank Commissioner~~ Oklahoma State Funeral

Services Commission. The ~~Commissioner~~ Commission 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 the Perpetual Care Fund Act.

B. In addition to rules promulgated by the Commission, rules promulgated by the State Banking Commissioner or the State Banking Board prior to July 1, 1995, shall be the rules of the Commission and shall continue in effect until such rules are amended or repealed by rules promulgated by the Commission. Any order made or action taken prior to July 1, 1995, by the State Banking Commissioner pursuant to the provisions of, or rules promulgated pursuant to the Perpetual Care Fund Act shall be considered valid and in effect unless rescinded by the Commission.

C. Effective July 1, 1995, all powers, duties, responsibilities and records of the State Banking Commissioner relating to regulation of the Perpetual Care Fund Act and all fund balances, encumbrances and obligations of the Cemetery Merchandise Trust Act Revolving Fund are hereby transferred to the Commission.

SECTION 5. AMENDATORY 8 O.S. 1991, Section 169, as amended by Section 6, Chapter 218, O.S.L. 1993 (8 O.S. Supp. 1994, Section 169), is amended to read as follows:

Section 169. Any person, firm or corporation violating any of the provisions of the Perpetual Care Fund Act shall, ~~upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00)~~ be subject to the penalties and liabilities set forth in Section 396.12d of Title 59 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170 of Title 8, unless there is created a duplication in numbering, reads as follows:

Any owner or operator of a cemetery who shall accept money or anything of value for prepaid grave spaces, lots, crypts or niches, whether above or below the surface of the ground, shall first obtain a permit from the Oklahoma State Funeral Services Commission authorizing the transaction of this type of business before entering into any such contract. It shall be unlawful to sell any prepaid grave spaces, lots, crypts or niches, whether above or below the surface of the ground, unless the owner or operator of the cemetery holds a valid, current permit at the time the contract is made. The owner or operator of a cemetery shall not be entitled to enforce a contract made in violation of the Perpetual Care Fund Act, but the purchaser or the heirs, or legal representative, shall be entitled to recover triple the amounts paid to the owner or operator of the cemetery with interest thereon at the rate of six percent (6%) per annum under any contract made in violation hereof.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 171 of Title 8, unless there is created a duplication in numbering, reads as follows:

A. 1. Each owner or operator of a cemetery desiring to accept money or anything of value for prepaid graves spaces, lots, crypts or niches, whether above or below the surface of the ground, shall file an application for a permit with the Oklahoma State Funeral Services Commission, and shall, at the time of filing the application, pay one initial filing fee of One Hundred Fifty Dollars (\$150.00).

2. The Director of the Commission 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 of the Commission, promulgated pursuant to the Perpetual Care Fund Act.

3. All applications shall be signed by the owner or operator of the cemetery requesting the permit and shall contain a statement

that the applicant will comply with all the requirements as established pursuant to the Perpetual Care Fund Act.

4. All permits shall expire on the 31st day of December of the year the 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 One Hundred Fifty (\$150.00). Late application for renewal of a license shall require a fee of double the renewal fee.

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

6. Fees paid pursuant to this section shall not be prorated or refunded.

B. The director may cancel a permit or refuse to issue a permit or refuse to issue a renewal of a permit for failure to comply with any provisions of the Perpetual Care Fund Act or any rules promulgated by the Commission, after reasonable notice to the permittee and after a hearing before the Commission if the permittee requests a hearing in accordance with Article II of the Administrative Procedures Act.

C. No owner or operator of a cemetery shall be entitled to a new permit for a period of one (1) year after cancellation or refusal by the director to renew a permit, but shall thereafter be issued a new permit upon satisfactory proof of compliance with the Perpetual Care Fund Act, after the expiration of the one-year period.

D. Any person or owner or operator of a cemetery aggrieved by the actions of the director or the Commission may appeal therefrom as provided by the Administrative Procedures Act.

SECTION 8. AMENDATORY 8 O.S. 1991, Section 301, is amended to read as follows:

Section 301. ~~Sections 18 through 32~~ Section 301 et seq. of this ~~act~~ title shall be known and may be cited as the "Cemetery Merchandise Trust Act".

SECTION 9. 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 Organization 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~~ Commission" means the Oklahoma State Banking Board Funeral Services Commission; ~~and~~

9. "Director" means the director of the Commission; and

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

SECTION 10. 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~~ Oklahoma State Funeral Services Commission 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 11. 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. 1. The Cemetery Merchandise Trust Act, Section 302 et seq. of this title, shall be administered by the Oklahoma State Bank Commissioner Funeral Services Commission. The ~~Commissioner~~ Commission 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.

2. All prepaid cemetery merchandise contracts must be in writing, and no such contract form shall be used without first being submitted to and approved by the Commissioner director of the Commission.

3. The fee assessed for filing a copy of a contract with the Commission shall be Twelve Dollars and fifty cents (\$12.50).

4. A copy of a contract or report filed with the Commission shall be prima facie evidence of the facts stated therein.

B. An organization aggrieved by an action or order of the ~~Commissioner~~ Commission or director 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~~ pursuant to the provisions of the Administrative Procedures Act.

C. In addition to rules promulgated by the Commission, rules promulgated by the State Banking Commissioner or the State Banking Board prior to July 1, 1995, shall be the rules of the Commission and shall continue in effect until such rules are amended or repealed by rules promulgated by the Commission. Any order made or action taken prior to July 1, 1995, by the State Banking Commissioner pursuant to the provisions of, or rules promulgated

pursuant to, the Cemetery Merchandise Trust Act shall be considered valid and in effect unless rescinded by the Commission.

D. 1. Effective July 1, 1995, all powers, duties, responsibilities and records of the State Banking Commissioner relating to regulation of the Cemetery Merchandise Trust Act and all fund balances, encumbrances and obligations of the Cemetery Merchandise Trust Act Revolving Fund are hereby transferred to the Commission.

SECTION 12. AMENDATORY 8 O.S. 1991, Section 305, is amended to read as follows:

Section 305. A. 1. Each organization desiring to accept money or anything of value for prepaid cemetery merchandise shall file an application for a permit with the ~~Board~~ Oklahoma State Funeral Services Commission, and shall at the time of filing ~~such the~~ application pay one initial filing fee of ~~Fifty Dollars (\$50.00)~~ One Hundred Fifty Dollars (\$150.00). The ~~Board~~ director of the Commission 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~~ of the Commission promulgated pursuant to the Cemetery Merchandise Trust Act ~~by the Board~~. 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.

2. All permits shall expire on the 31st day of December of the year ~~said the~~ permit is first issued, unless renewed; ~~permits.~~ 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)~~ One Hundred Fifty Dollars (\$150.00). 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.

3. Fees paid pursuant to this section shall not be prorated or refunded.

B. The ~~Board~~ director may cancel a permit or refuse to issue a permit or refuse to issue a renewal of ~~such a~~ a permit for failure to comply with any provisions of the Cemetery Merchandise Trust Act or any rules ~~or regulations~~ promulgated pursuant thereto ~~by the Board,~~ after reasonable notice to the permittee and after a hearing before the Commission 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~~ director 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~~ the one-year period.

D. Any person or organization aggrieved by the actions of the ~~Board~~ Commission or director may appeal therefrom as provided by the Administrative Procedures Act.

SECTION 13. 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~~ Oklahoma State Funeral Services Commission 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 14. 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~~ Oklahoma State Funeral Services Commission and all purchasers of prepaid cemetery merchandise. The bond shall be ~~approved by the Board~~ submitted to the director of the Commission for approval and shall be accompanied by a nonrefundable fee of Fifty Dollars (\$50.00).

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

SECTION 15. 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. A. Each organization shall file an annual report with the Oklahoma State ~~Banking Board~~ Funeral Services Commission on or before March 15 of each year in such form as the ~~Board~~ Commission 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.

B. 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~~. However, the organization shall continue to make annual reports to the ~~Board~~ Commission until all such funds have been disbursed pursuant to the Cemetery Merchandise Trust Act.

C. A filing fee of Fifty Dollars (\$50.00) shall accompany each report.

D. 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~~ director of the Commission that the report is due and has not been received, ~~he~~ the officer shall be ~~guilty of a misdemeanor and shall be punished as prescribed in Section 315 of this title~~ subject to the penalties and liabilities set forth in Section 396.12d of Title 59 of the Oklahoma Statutes.

SECTION 16. AMENDATORY 8 O.S. 1991, Section 309, is amended to read as follows:

Section 309. The ~~Board~~ director of the Oklahoma State Funeral Services Commission may audit 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, as set by rule of the Commission, may be paid from the organization's cemetery merchandise trust fund. For such purposes, the ~~Board~~ director or a designee 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 ~~Board~~ director may require any officer of an organization to furnish and submit the books, records, papers and instruments of the organization to the examiner.

SECTION 17. AMENDATORY 8 O.S. 1991, Section 310, is amended to read as follows:

Section 310. In the event the ~~Board~~ director of the Oklahoma State Funeral Services Commission determines that moneys have been improperly paid by the trustee to the organization during the period covered by the audit, ~~then~~ the ~~Board~~ director shall order the

organization to redeposit to the trust such moneys improperly withdrawn within sixty (60) days.

SECTION 18. 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~~ director of the Oklahoma State Funeral Services Commission, 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 19. 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~~ director of the Oklahoma State Funeral Services Commission or its 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~~ director may request the Attorney General of this state to institute proceedings for the appointment of a receiver for such organization.

SECTION 20. 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~~ director of the Oklahoma State Funeral Services Commission shall be deemed to have forfeited its corporate

franchise. The Attorney General of this state upon the request of the ~~Board~~ director shall then begin an action for the appointment of a receiver for such organization and to dissolve the same.

SECTION 21. AMENDATORY 8 O.S. 1991, Section 315, is amended to read as follows:

Section 315. Any organization, or its officers or directors, which violate any provision of the Cemetery Merchandise Trust Act shall, ~~upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00)~~ be subject to the penalties and liabilities set forth in Section 396.12d of Title 59 of the Oklahoma Statutes.

SECTION 22. 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. A. There is hereby created the "Cemetery Merchandise Trust Act Revolving Fund". The fund shall consist of all monies received by the ~~Board~~ Oklahoma State Funeral Services Commission 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~~ Commission. 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.

B. Effective July 1, 1995, all fund balances, encumbrances and obligations of the Cemetery Merchandise Trust Act Recovery Fund are hereby transferred to the Oklahoma State Funeral Services Commission.

SECTION 23. AMENDATORY 59 O.S. 1991, Section 395.1, is amended to read as follows:

Section 395.1 ~~Sections 396 through 396.26 of Title 59 of the Oklahoma Statutes, and Sections 3, 5, 9, 10, 11, 12, 13 and 14 of this act~~ Section 395.1 et seq. of this title shall be known and may be cited as the "Funeral Services Licensing Act".

SECTION 24. AMENDATORY 59 O.S. 1991, Section 396, as amended by Section 1, Chapter 3, O.S.L. 1992 (59 O.S. Supp. 1994, Section 396), is amended to read as follows:

Section 396. A. There is hereby re-created, to continue until July 1, 1998, in accordance with the provisions of the Oklahoma Sunset Law, as provided by Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission. The ~~Board~~ Commission shall consist of ~~seven (7)~~ eleven (11) persons, who shall be appointed by the Governor. The term of membership of each member of said ~~Board~~ Commission shall be five (5) years from the expiration of the term of the member succeeded. Any member having served as a member of the ~~Board~~ Commission shall be eligible for reappointment. Provided that, a member of the ~~Board~~ Commission shall serve no more than two consecutive terms and any unexpired term that a member is appointed to shall not apply to this limit. The Governor shall appoint the necessary members to ~~said Board~~ the Commission upon vacancies and immediately prior to the expiration of the various terms. ~~Upon request of the Governor, appointments of a licensed embalmer and funeral director member of the Board shall be made from a list of five qualified persons submitted by the Oklahoma Funeral Directors Association.~~ An appointment to fill a vacancy shall be for the unexpired term. A member of said ~~Board~~ Commission shall serve until ~~his~~ a successor is appointed and qualified.

B. 1. No person shall be a member of the ~~Board~~ Commission, unless, at the time of appointment, ~~he~~ the person is of good moral character and a resident of this state.

2. Five of the members shall have been actively engaged in the practice of embalming and funeral directing in this state for not less than seven (7) consecutive years immediately prior to ~~his~~ appointment, ~~and each of such.~~ These members shall have ~~an~~ active ~~license~~ licenses as provided by this act and ~~such member~~ shall keep ~~his license~~ their licenses effective and remain ~~a resident~~ residents of this state during the entire time ~~he serves~~ of service on the ~~Board~~ Commission.

3. Two of the members of the ~~Board~~ Commission shall be chosen from the general public, one of which shall, if possible, be a person licensed and actively engaged in the health care field and such members shall not be licensed funeral directors or embalmers or have any interest, directly or indirectly, in any funeral establishment or any business dealing in funeral services, supplies or equipment. These two members shall be appointed to serve terms ending July 1, 1981, and July 1, 1982, respectively, and their terms shall be for five-year terms thereafter.

4. The four positions created in this act and effective July 1, 1995, shall be filled as follows:

- a. three of the members shall be owners or operators of cemeteries, and
- b. one member shall be an employee of the State Department of Health.

Members initially appointed to the Commission pursuant to this paragraph may be appointed for terms of less than five years in such a manner that the terms are staggered. Thereafter, members filling these positions shall serve five-year terms.

C. The Governor shall remove from membership of the Commission, at any time, any member for continued neglect of duty, conduct

involving moral turpitude, or any violation of the provisions of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes.

D. Meetings of the Commission shall be held at least twice a year at such places as may be designated by the Commission. Four members of the Commission shall constitute a quorum.

SECTION 25. AMENDATORY 59 O.S. 1991, Section 396.1, is amended to read as follows:

Section 396.1 Members of ~~said Board~~ the Oklahoma State Funeral Services Commission, before entering upon their duties, shall take and subscribe to the oath of office provided for state officers, and the same shall be filed in the office of the Secretary of State.

SECTION 26. AMENDATORY 59 O.S. 1991, Section 396.2, is amended to read as follows:

Section 396.2 As used in the Funeral Services Licensing Act:

1. "Embalmer" means a person who disinfects or preserves dead human remains, entire or in part, by the use of chemical substances, fluids or gases in the remains, or by the introduction of same into the remains by vascular or hypodermic injection, or by direct application into organs or cavities;

2. "Funeral director" means a person who:

- a. is engaged in or conducts, or holds ~~himself~~ oneself out as being engaged in preparing for the burial or disposal and directing and supervising the burial or disposal of dead human remains,
- b. is engaged in or conducts or holds ~~himself~~ oneself out as being engaged in maintaining a funeral establishment for the preparation and the disposition, or for the care of dead human remains,
- c. uses, in connection with ~~his~~ one's name or funeral establishment, the words "funeral director" or

"undertaker" or "mortician" or any other title
implying that he is engaged as a funeral director, or

d. sells funeral service merchandise to the public;

3. "Funeral establishment" means a place of business used in the care and preparation for burial or transportation of dead human remains, or any place where any person or persons shall hold forth and be engaged in the profession of undertaking or funeral directing;

4. "Apprentice" means a person who is engaged in learning the practice of embalming or of the practice of funeral directing, as the case may be, under the instruction and personal supervision of a duly-licensed embalmer or a duly-licensed funeral director of and in the State of Oklahoma, pursuant to the provisions of the Funeral Services Licensing Act, and who is duly registered as such with ~~said Board~~ the Commission;

5. ~~"Board"~~ "Commission" means the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission;

6. "Directing a funeral" or "funeral directing" means directing funeral services from the time of the first call until interment or entombment services are completed, or until the remains are released for transport to a crematorium, or released to a public carrier;

7. "First call" means the beginning of the relationship and duty of the funeral director to take charge of dead human remains and have such remains prepared by embalming, cremation, or otherwise, for burial or disposition, provided all laws pertaining to public health in this state are complied with. First call does not include calls made by ambulance, when the person dispatching the ambulance does not know whether or not dead human remains are to be picked up;

8. "Personal supervision" means the physical presence of a licensed funeral director or embalmer at the specified time and place of the providing of acts of funeral service;

9. "Direct supervision" means the general control, supervision and management or directing a funeral without requiring the physical presence of a licensed funeral director or embalmer;

10. "Funeral service" means a funerary ritual or ceremony conducted at a specified time and place;

11. "Limited service establishment" means a fixed place of business consisting of an equipped preparation room, and other rooms as necessary, for the specified purpose of performing preparation and shipping services of dead human remains to funeral establishments inside and outside this state;

~~10.~~ 12. "Funeral service merchandise or funeral services" means those products and services normally provided by funeral establishments, including, but not limited to, the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches or outer enclosures; and

~~11.~~ 13. "Outer enclosure" means a grave liner, grave box, or grave vault; and

14. "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.

SECTION 27. AMENDATORY 59 O.S. 1991, Section 396.2a, is amended to read as follows:

Section 396.2a In addition to any other powers and duties imposed by law, the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission shall have the power and duty to:

1. Prescribe and promulgate rules ~~and regulations~~ necessary to effectuate the provisions of the Funeral Services Licensing Act, and to make orders as it may deem necessary or expedient in the performance of its duties;

2. Prepare, conduct and grade examinations, written or oral, of persons who apply for the issuance of licenses to them;

3. Determine the satisfactory passing score on such examinations and issue licenses to persons who pass the examinations or are otherwise entitled thereto;

4. Determine eligibility for licenses and certificates of apprenticeship;

5. Issue licenses for funeral directors, embalmers, funeral establishments, limited service establishments and for sale of funeral service merchandise and cemetery merchandise;

6. Issue certificates of apprenticeship;

7. Upon good cause shown, as hereinafter provided, deny the issuance of a license or certificate of apprenticeship or suspend, revoke or refuse to renew licenses or certificates of apprenticeship, and upon proper showing, to reinstate them;

8. Review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension, revocation or refusal to renew;

9. Establish and levy administrative penalties against any person or entity who violates any of the provisions of the Funeral Services Licensing Act or any rule ~~or regulation~~ promulgated pursuant thereto;

10. Obtain an office, secure facilities and employ, direct, discharge and define the duties and set the salaries of office personnel as deemed necessary by the ~~Board~~ Commission;

11. Initiate disciplinary, prosecution and injunctive proceedings against any person or entity who violates any of the

provisions of the Funeral Services Licensing Act or any rule or regulation promulgated pursuant thereto;

12. Investigate alleged violations of the Funeral Services Licensing Act or of the rules ~~and regulations~~, orders or final orders of the ~~Board~~ Commission;

13. Promulgate rules of conduct governing the practice of licensed funeral directors, embalmers, funeral establishments, limited service establishments and sale of funeral service merchandise and cemetery merchandise;

14. Keep accurate and complete records of its proceedings and certify the same as may be appropriate;

15. Request prosecution by the district attorney or the Attorney General of this state of any person or any violation of the Funeral Services Licensing Act;

16. Whenever it deems it appropriate, confer with the Attorney General of this state ~~or his assistants~~ in connection with all legal matters and questions; and

17. Take such other action as may be reasonably necessary or appropriate to effectuate the Funeral Services Licensing Act.

SECTION 28. AMENDATORY 59 O.S. 1991, Section 396.3, is amended to read as follows:

Section 396.3 A. The Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission shall determine the qualifications necessary to enable any person to practice as a funeral director or embalmer, and prescribe the requirements for a funeral establishment, limited service establishment ~~or~~, funeral service merchandise and cemetery merchandise license. The ~~Board~~ Commission shall examine all applicants for licenses to practice as a funeral director or embalmer. The ~~Board~~ Commission shall issue the proper licenses to applicants who successfully pass ~~such examination~~ required examinations and qualify pursuant to any additional requirements the ~~Board~~ Commission may prescribe.

B. The minimum requirements for a license to practice funeral directing or embalming, or both, are as follows:

1. An applicant for a license to practice embalming shall be at least twenty (20) years of age, ~~a legal resident of this state, a citizen of the United States,~~ and of good moral character. In addition, said applicant shall have at least sixty (60) accredited hours of study from an accredited college or university or equivalent as determined by the ~~Board~~ Commission, shall be a graduate of a school of mortuary science accredited by the ~~Conference of Funeral Service Examining Boards of the United States~~ American Board of Funeral Service Education and approved by the ~~Board~~ Commission, and have served one (1) year as a registered apprentice. The applicant may serve as a registered apprentice prior to enrollment in an approved school of mortuary science, or subsequent to graduation from said school.

Curriculum of study for an embalmer in a school of mortuary science shall include the following subjects:

- a. mortuary science to include embalming technique, chemistry of embalming, color harmony, discoloration and its causes, effects, and treatment, treatment of special cases, restorative art, funeral management, professional ethics; ~~and,~~
- b. anatomy; ~~and,~~
- c. organic and inorganic chemistry; ~~and,~~
- d. pathology; ~~and,~~
- e. microbiology; ~~and,~~
- f. sanitation and hygiene; ~~and,~~
- g. public health regulations; ~~and,~~
- h. mortuary law and administration.

2. An applicant for a license to practice as a funeral director shall be a licensed embalmer or shall have available a licensed embalmer. An applicant who graduates from an approved school of

mortuary science, having an integrated course of study for an embalmer and funeral director, may make application to take an examination for both licenses. If the applicant graduates from a school of mortuary science granting a certificate of graduation as a funeral director, ~~said~~ the applicant shall also complete the following subjects:

- a. mortuary management and administration ~~and~~,
- b. business education, including business law ~~and~~,
- c. legal medicine and toxicology (as it pertains to funeral directing) ~~and~~,
- d. public relations and psychology ~~and~~, and
- e. public health, hygiene and sanitary science.

C. The ~~Board~~ Commission shall issue the appropriate license to any qualified applicant whose application has been approved by the ~~Board~~ Commission, and who has paid the fees required by Section 396.4 of this title, has passed the required examination with a general average of not less than seventy-five percent (75%) and has demonstrated to the ~~Board~~ Commission proficiency as an embalmer or funeral director.

D. The ~~Board~~ Commission shall maintain for public inspection a list of all accredited schools of embalming and mortuary science.

SECTION 29. AMENDATORY 59 O.S. 1991, Section 396.4, is amended to read as follows:

Section 396.4 A. Unless otherwise provided by law, the following shall be the fees charged for the licenses, registrations, and examinations required by the Funeral Services Licensing Act:

Funeral Director License or Renewal	\$50.00
Embalmer License or Renewal	\$50.00
Registration for Funeral Director Apprentice or Embalmer Apprentice	\$25.00
Reinstatement of Funeral Director Apprentice or Embalmer Apprentice	\$25.00

Embalmer <u>Law Examination</u>	\$40.00
Funeral Director Examination	\$40.00
	<u>\$80.00</u>
Funeral Establishment License or Renewal	\$150.00
Limited Service Establishment License or Renewal	\$150.00
Reciprocal License for Funeral Director or Embalmer	\$150.00
Funeral Service Merchandise License or Renewal	\$25.00
<u>Cemetery Merchandise License or Renewal</u>	<u>\$25.00</u>

B. Fees for ~~funeral director examinations and embalmer examinations~~ the law examination shall be paid at least thirty (30) days prior to the scheduled examination. An examination fee shall not be refundable.

C. The Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission is authorized to determine and fix special administrative service fees. Each such fee shall not be in excess of Two Hundred Dollars (\$200.00).

D. If any renewal fee required by this section is not paid on or before January 31 of each year, the amount of said fee shall be doubled and if said fee is not paid on or before April 30 of each year, such license shall be in default and shall terminate automatically.

SECTION 30. AMENDATORY 59 O.S. 1991, Section 396.5, is amended to read as follows:

Section 396.5 All licenses issued by the ~~Board~~ Oklahoma State Funeral Services Commission shall expire on the 31st day of December of each year. The ~~Board~~ Commission shall issue a renewal for ~~such a~~ license without further examination upon the payment of a renewal fee as required by Section 396.4 of this title. A funeral director or embalmer who fails to apply for a renewal license for a period of three (3) years or more, shall be reinstated by taking a written and

oral examination, as required by the ~~Board~~ Commission, and by paying a fee of Twenty-five Dollars (\$25.00) and the current years' dues.

SECTION 31. AMENDATORY 59 O.S. 1991, Section 396.5a, is amended to read as follows:

Section 396.5a All funeral directors ~~and/or~~ and embalmers regularly licensed in this state, who are or become members of the armed forces of the United States, shall upon proper notification to the secretary of the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission be placed upon the inactive military service list to be kept by ~~such~~ the secretary and shall not be subject to the payment of renewal fees upon their licenses as funeral directors ~~and/or~~ or embalmers until such time as they have been discharged from the military service of the United States and desire to practice their profession in this state. Upon ~~the~~ discharge ~~of such licensees,~~ they shall be reinstated as active funeral directors ~~and/or~~ or embalmers upon ~~the~~ payment of the ~~then~~ current year's license fee.

SECTION 32. AMENDATORY 59 O.S. 1991, Section 396.8, is amended to read as follows:

Section 396.8 A. The ~~Board~~ Oklahoma State Funeral Services Commission shall have the power to issue reciprocal licenses to applicants licensed in other states which have equal or like educational requirements as required by this state or the ~~Board~~ Commission.

B. A license as an embalmer or funeral director shall be issued ~~without examination~~ to an out-of-state resident ~~intending to become a resident of this state,~~ who submits:

1. Submits to the ~~Board~~ Commission satisfactory evidence that ~~said the~~ applicant has met all the requirements of ~~Sections 396 through 396.25~~ Section 395.1 et seq. of this title ~~and pays;~~

2. Pays the fees required by Section 396.4 of this title; and

3. Satisfactorily passes the state law examination administered by the Commission.

Provided, failure to disclose the existence of a funeral directors or embalmers license issued in another state is grounds for refusing to issue a license or to revoke an issued license in this state.

C. The ~~Board~~ Commission may issue an appropriate reciprocal license ~~without examination~~ to a resident of a state which does not have the same educational requirements necessary ~~for reciprocity to~~ qualify for licensure with this state, if ~~said~~ the applicant:

1. ~~has~~ Has a current license to practice as an embalmer or funeral director in ~~his~~ the state of residence from which reciprocating; and

2. ~~has~~ Has been actively practicing as an embalmer or funeral director in the state of residence from which reciprocating for at least ten (10) consecutive years; ~~and~~

3. ~~has~~ Has never been convicted of a felony; ~~and~~

4. ~~has~~ Has never had said license revoked or suspended in the state of residence from which reciprocating; and

5. ~~is~~ Is not currently facing disciplinary action in the state of residence from which reciprocating or in this state; and

6. ~~intends to practice in this state; and~~

7. ~~has~~ Successfully completes the law examination required for licensure;

7. Has filed ~~such~~ documents ~~as are~~ required by the ~~Board~~ Commission; and

8. ~~has~~ Has paid the fees as required by Section 396.4 of this title; and

9. ~~is a citizen of the United States~~ Meets the continuing education requirements of this state.

SECTION 33. AMENDATORY 59 O.S. 1991, Section 396.10, is amended to read as follows:

Section 396.10 Any person desiring to engage in the profession or business of embalming or funeral directing or both, as defined herein, shall make application, be required to show such preliminary requisites, comply with the rules of ~~said Board~~ the Oklahoma State Funeral Services Commission, and take such examinations as shall be deemed necessary by the ~~Board~~ Commission in its rules. The ~~Board~~ Commission shall publish in its rules the subject to be covered in ~~said the~~ examination and the standards to be attained ~~thereon~~. ~~Changes in the rules and regulations shall be published and be given due publicity at least fifteen (15) days before coming effective.~~

SECTION 34. AMENDATORY 59 O.S. 1991, Section 396.11, is amended to read as follows:

Section 396.11 A. The term for an apprenticeship in embalming and the term for an apprenticeship in funeral directing may be served concurrently. Applications for an apprenticeship in funeral directing or embalming shall be made to the ~~Board~~ Oklahoma State Funeral Services Commission in writing on a form and in a manner prescribed by the ~~Board~~ Commission. The ~~Board~~ Commission shall issue a certificate of apprenticeship to any person applying for ~~said a~~ certificate who submits to the ~~Board~~ Commission satisfactory evidence that ~~said the~~ person is seventeen (17) years of age or older, of good moral character, and a graduate of an accredited high school as determined by the ~~Board~~ Commission. The application shall be accompanied by a registration fee as required by Section 396.4 of this title.

B. The ~~Board~~ Commission shall prescribe and enforce such rules ~~and regulations~~ as necessary to qualify apprentice applicants as embalmers or funeral directors. A license to practice embalming or funeral directing shall not be issued until ~~said the~~ applicant has complied with the rules of the ~~Board~~ Commission, and ~~said the~~ applicant has embalmed at least twenty-five dead human bodies for

burial or shipment and conducted at least twenty-five funeral services during apprenticeship.

C. An apprenticeship registration shall not be reinstated or renewed more than twice. An apprentice who fails to become a licensed funeral director or embalmer within ~~five (5)~~ three (3) years from the date of initial registration as an apprentice shall reapply for application for an apprenticeship as required by this section.

SECTION 35. AMENDATORY 59 O.S. 1991, Section 396.12, is amended to read as follows:

Section 396.12 A. Any place where a person shall hold forth by word or act that ~~such~~ the person is engaged in the profession of undertaking or funeral directing shall be deemed as a funeral establishment and shall be licensed as such pursuant to the provisions of the Funeral Services Licensing Act.

In addition, every funeral establishment shall be operated by a full time person holding a valid funeral director's license. Each establishment shall have conspicuously displayed at the entrance the name of the person licensed to conduct ~~such~~ the establishment. In those instances where embalming takes place on the premises, the license of the embalmer or embalmers shall be displayed at the entrance of the establishment.

B. The Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission shall have the power to inspect the premises in which funeral directing is conducted or where embalming is practiced or where an applicant ~~proposed~~ proposes to practice, ~~and such Board is hereby~~ embalming. The Commission is empowered to prescribe and endorse rules ~~and regulations~~ for reasonable sanitation of ~~such~~ these establishments, including necessary drainage, ventilation, and necessary and suitable instruments for such business or profession.

C. Any place where a person shall hold forth by word or act that ~~such~~ the person is engaged in preparing and shipping of dead human remains to funeral establishments inside and outside this state shall be deemed a limited service establishment and shall be licensed as such pursuant to the provisions of the Funeral Services Licensing Act.

SECTION 36. AMENDATORY 59 O.S. 1991, Section 396.12a, is amended to read as follows:

Section 396.12a A. No person, unless licensed as an embalmer, shall assist, observe or place any chemical substance, fluid or gas on or in dead human remains ~~who is not a licensed embalmer~~. This prohibition shall not apply to a registered apprentice embalmer, working under the supervision of a licensed embalmer pursuant to rules of the Commission and shall not apply to medical students or their teachers in state-maintained medical schools in this state.

B. No person shall act or hold ~~himself~~ oneself out as a funeral director, embalmer, apprentice, provide funeral services or merchandise or operate a funeral establishment or a limited service establishment without a current license or registration issued pursuant to the Funeral Services Licensing Act.

SECTION 37. AMENDATORY 59 O.S. 1991, Section 396.12b, is amended to read as follows:

Section 396.12b A. Each at-need funeral conducted within this state shall be under the personal supervision of a duly-licensed funeral director who holds a valid license from the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission. A registered apprentice may assist in arranging and conducting funerals. ~~To conduct~~ Directing a funeral shall require the ~~personal~~ direct supervision of a licensed funeral director from the time of the first call until interment is completed, except as otherwise provided by law. A funeral director ~~conducting~~ directing a funeral in this state shall ensure that the casket or other

container holding the deceased human remains shall not incur any damage other than that which is normally incurred in the burial or final disposition of human remains.

B. The embalming of dead human remains shall require the ~~presence and the direct~~ personal supervision of a duly licensed embalmer⁷; however, a ~~licensed~~ registered apprentice embalmer may perform the embalming of a dead human remains provided said registered apprentice embalmer, pursuant to rules of the Commission, is under the direct supervision of a duly licensed embalmer.

C. Nothing in this section regarding the ~~conduct~~ directing of funerals or personal or direct supervision of a licensed director, a registered apprentice embalmer, or licensed embalmer, shall apply to persons related to the deceased by blood or marriage. Further, nothing in this section shall apply or in any manner interfere with the duties of any state officer or any employee of a local state institution.

D. Dead human remains shall be picked up on first call only under the ~~direction~~ direct and personal supervision of a licensed funeral director or embalmer. Dead human remains may be picked up or transferred from one funeral home to another funeral home and from a funeral home to and from a morgue where an autopsy is to be performed ~~without a licensed funeral director personally making the transfer. In circumstances in which there is no reasonable probability that unlicensed personnel will encounter family members or other persons with whom funeral arrangements are normally made by licensed funeral directors or embalmers,~~ dead human remains may be ~~picked up or transferred without the~~ only under the direct or personal supervision of a licensed funeral director or embalmer. Dead human remains may be picked up or transferred by a currently registered apprentice without the personal supervision of a funeral director or embalmer⁷; provided however, any ~~inadvertent~~ contact with family members or other persons by individuals not licensed by

the Commission shall be restricted to ~~the currently registered~~
~~apprentice identifying~~ individuals who:

1. Identify the ~~employer to the person, arranging~~ licensed
funeral director or embalmer at first call;

2. Arrange an appointment with the ~~employer~~ licensed funeral
director for any person who ~~indicates a desire to make~~ making
funeral arrangements for the deceased; and ~~making~~

3. Make any disclosure ~~to the person~~ that is required by any
federal or state law, rule or regulation.

E. A funeral director or embalmer who directs the removal or
transfer of dead human remains without providing personal
supervision shall be held strictly accountable ~~for compliance with~~
~~the requirements of, and exceptions to, first call as provided by~~ to
the Funeral Services Licensing Act and rules promulgated pursuant
thereto.

SECTION 38. AMENDATORY 59 O.S. 1991, Section 396.12c, is
amended to read as follows:

Section 396.12c After notice and hearing pursuant to Article II
of the Administrative Procedures Act, the Oklahoma State ~~Board of~~
~~Embalmers and Funeral Directors~~ Funeral Services Commission may
refuse to issue or renew, or may revoke or suspend, any license or
registration for any one or combination of the following:

1. Conviction of a felony shown by a certified copy of the
record of the court of conviction;

2. Conviction of a misdemeanor involving gross moral turpitude;

3. Gross malpractice or gross incompetency, which shall be
determined by the ~~Board~~ Commission;

4. False or misleading advertising as a funeral director or
embalmer;

5. Employment by the licensee of a person or persons to solicit
funeral directing or embalming; provided, however, that this

subsection shall have no application to the operation of burial associations;

6. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 161 et seq., 201 through 235 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes;

7. Fraud or misrepresentation in obtaining a license;

8. Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the burial or other disposition of dead human remains;

9. Violation of any rules ~~or regulations~~ of the ~~Board~~ Commission in administering the purposes of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes;

10. Use of intoxicating liquor sufficient to produce drunkenness in public, or habitual addiction to the use of habit-forming drugs or either; or

11. Payment or causing to be paid, directly or indirectly, for the securing of business, or direct or indirect solicitation of business.

SECTION 39. AMENDATORY 59 O.S. 1991, Section 396.12d, is amended to read as follows:

Section 396.12d A. Any person or entity who violates any of the provisions of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, or rule ~~or regulation~~ promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities ~~authorized by the Funeral Services Licensing Act:~~

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;

2. Administrative fines;

3. Injunctive proceedings; and
4. Other disciplinary action.

B. Further, such person or entity shall be subject to criminal penalties pursuant to the provisions of Section 396.24 of ~~Title 59 of the Oklahoma Statutes~~ this title.

C. Any fine or administrative penalty which is imposed by the Commission against such person or entity may be enforced in the same manner in which civil judgments may be enforced.

SECTION 40. AMENDATORY 59 O.S. 1991, Section 396.12e, is amended to read as follows:

Section 396.12e A. Any person or entity who has been determined by the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission to have violated any provision of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, or any rule, ~~regulation,~~ or order issued pursuant thereto, may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the ~~Board~~ Commission pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the ~~Board~~ Commission shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes. All monies collected from such administrative penalties shall be deposited with the State Treasurer and ~~by him~~ placed in the

"Fund of the Oklahoma State Board of Funeral Directors and Embalmer Funeral Services Commission", created pursuant to Section 396.14 of Title 59 of the Oklahoma Statutes this title.

C. Any license or certificate of apprenticeship holder may elect to surrender ~~his~~ the license or certificate of apprenticeship in lieu of said penalty but shall be forever barred from obtaining a reissuance of ~~said~~ the license or certificate of apprenticeship.

SECTION 41. AMENDATORY 59 O.S. 1991, Section 396.12f, is amended to read as follows:

Section 396.12f A. Complaints against any person for alleged violations of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, or of any ~~of the rules and regulations~~ rule or order issued pursuant thereto, shall be in writing, signed by the complainant and filed with the ~~executive secretary-treasurer~~ director of the Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission. In addition to the general public, any member or employee of the ~~Board~~ Commission, or the ~~executive secretary-treasurer~~ director thereof, having knowledge of a violation may sign a complaint for ~~any~~ the violation ~~of which he has knowledge~~. All complaints shall name the person complained of, and shall state the time and place of the alleged violations and the facts of which the complainant has knowledge. Upon receiving a complaint, the ~~Board~~ Commission shall examine the same, and determine whether there is a reasonable cause to believe the charges to be true.

B. If upon inspection, investigation or complaint, or whenever the ~~Board~~ Commission determines that there are reasonable grounds to believe that a violation of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, or of any rule ~~or regulation~~ promulgated or order issued pursuant thereto has occurred, the ~~Board~~ Commission shall

give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that the matters complained of be corrected immediately or that the alleged violator appear before the ~~Board~~ Commission at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection E of this section.

C. The ~~Board~~ Commission shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of subsection F of this section within fifteen (15) days of receipt of the notice provided for in subsection B of this section. On the basis of the evidence produced at the hearing, the ~~Board~~ Commission shall make findings of fact and conclusions of law and enter an order thereon. The ~~Board~~ Commission shall give written notice of the order to the alleged violator and to any other persons who appeared at the hearing and made written request for notice of the order. If the hearing is held before a hearing officer as provided for in subsection F of this section, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the ~~Board~~ Commission which shall thereupon enter its order. The ~~Board~~ Commission may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the ~~Board~~ Commission shall become final and binding on all parties unless appealed to the district court pursuant to Article II of the Administrative Procedures Act, within thirty (30) days after notice has been sent to the parties.

D. Whenever the ~~Board~~ Commission finds that as a result of a violation of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, or any rule ~~or regulation~~ promulgated or order issued pursuant thereto an emergency exists requiring immediate action to

protect the public health or welfare, the ~~Board~~ Commission may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with the order immediately but on application to the ~~Board~~ Commission shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the ~~Board~~ Commission shall continue the order in effect, revoke it or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the county in which said person resides, or in which ~~his~~ one's business is located, within thirty (30) days of the ~~Board's~~ Commission's action. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases.

E. Except as otherwise expressly provided by law, any notice, order or other instrument issued by or pursuant to authority of the ~~Board~~ Commission may be served on any person affected thereby personally, by publication or by mailing a copy of the notice, order or other instrument by registered mail directed to the person affected at ~~his~~ the last-known post office address as shown by the files or records of the ~~Board~~ Commission. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the ~~Board~~ Commission.

Every certificate or affidavit of service made and filed as provided for in this subsection shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

F. The hearings authorized by this section may be conducted by the ~~Board~~ Commission. The ~~Board~~ Commission may designate hearing

officers who shall have the power and authority to conduct such hearings in the name of the ~~Board~~ Commission at any time and place. Such hearings shall be conducted in conformity with and records made thereof pursuant to Article II of the Administrative Procedures Act.

SECTION 42. AMENDATORY 59 O.S. 1991, Section 396.14, is amended to read as follows:

Section 396.14 The ~~executive secretary-treasurer~~ director of the ~~Board~~ Oklahoma State Funeral Services Commission shall keep and preserve all records of the ~~Board~~ Commission, issue all necessary notices to the embalmers, funeral directors and apprentices of the state, and perform such other duties as may be imposed ~~upon him~~ by ~~said Board~~ the Commission. ~~Said executive secretary-treasurer~~ The director is hereby authorized and empowered to collect, in the name and on behalf of the ~~Board~~ Commission, the fees prescribed in ~~this act~~ the Funeral Services Licensing Act or in Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, and all fees so collected shall at the end of each month be deposited ~~by him~~ with the State Treasurer. The State Treasurer shall place ten percent (10%) of the money so received in the general fund of the state, and the balance in a special fund to be known as the "Fund of the Oklahoma State Board of Funeral Directors and Embalmers Funeral Services Commission". Payment from said fund shall be upon warrants drawn by the State Treasurer against claims submitted by the ~~Board~~ Commission to the Director of State Finance for audit and payment. All monies so received in said fund may be used by the ~~Board~~ Commission in carrying out the provisions of ~~this act~~ the Funeral Services Licensing Act and of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes. ~~All fines assessed and collected for the violation of any of the provisions of this act shall be paid to the county treasurer of the county where the offense was committed and credited to the general fund of the county.~~

~~An accounting of the funds accumulated under the provisions of this act shall be rendered semiannually of receipts and disbursements to the Secretary of the State of Oklahoma.~~

SECTION 43. AMENDATORY 59 O.S. 1991, Section 396.15, is amended to read as follows:

Section 396.15 The State of Oklahoma shall not in any manner be required to appropriate public funds to enforce the provisions of ~~this act~~ the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes.

SECTION 44. AMENDATORY 59 O.S. 1991, Section 396.16, is amended to read as follows:

Section 396.16 The ~~Board~~ Oklahoma State Funeral Services Commission shall keep a record of its proceedings, and its acts relating to the issuance, refusal, renewal, suspensions and revocation of licenses. This record shall contain the name, place of business, and residence of each registered embalmer ~~and,~~ funeral director ~~and,~~ registered apprentice and funeral service merchandise and cemetery merchandise licensee, and the date and number of ~~his~~ the license or certificate of registration. This record shall be open to public inspection.

SECTION 45. AMENDATORY 59 O.S. 1991, Section 396.17, is amended to read as follows:

Section 396.17 The Oklahoma State ~~Board of Embalmers and Funeral Directors~~ Funeral Services Commission shall have the power to select from its own members a president, vice-president and a ~~secretary-treasurer~~ secretary and to make, adopt, promulgate and enforce reasonable rules ~~and regulations~~ for the:

1. Transaction of its business;
2. Sanitary management of funeral ~~homes~~ home establishments and limited service establishments;
3. Work of embalmers and apprentices;

4. Management of the ~~Board's~~ Commission's affairs;

5. Betterment and promotion of the educational standards of the profession of embalming and the standards of service and practice to be followed in the profession of embalming and funeral directing in this state; and

6. Carrying into effect of any of the provisions of the Funeral Services Licensing Act and of Sections 161 et seq., 201 et seq. and 301 et seq. of Title 8 of the Oklahoma Statutes, as it may deem expedient, just and reasonable and consistent with the laws of this state.

SECTION 46. AMENDATORY 59 O.S. 1991, Section 396.18, is amended to read as follows:

Section 396.18 ~~All of the members~~ A. Members of ~~said Board the~~ Oklahoma State Funeral Services Commission shall be reimbursed for ~~travel~~ all actual and necessary expenses ~~incident to his attendance upon the business of the Board as provided in~~ incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

B. The ~~Board~~ Commission is hereby authorized to employ ~~an executive secretary-treasurer~~ a director at an annual salary to be set by the ~~Board~~ Commission, payable monthly, and to rent and equip an office ~~therefor in some~~ in a city in ~~the~~ this state to be selected by the ~~Board~~ Commission. ~~Said executive secretary-treasurer~~ The director shall keep ~~such~~ and records, and perform ~~such~~ other lawful duties as are required by or placed upon ~~him~~ the director by ~~said Board the~~ Commission, and shall be entitled to receive ~~traveling~~ actual and necessary expenses while in the performance of the duties as directed and prescribed by the ~~Board~~ Commission. ~~Said executive secretary-treasurer~~ The director shall not accept any employment from any funeral home or wholesale house dealing in funeral supplies or equipment while acting as ~~such executive secretary-treasurer~~ the director.

C. ~~The Board~~ Commission shall have the right and authority to employ necessary personnel including, but not limited to, auditors to carry out the provisions of this act the Funeral Services Licensing Act and of Sections 161 et seq., 201 et seq. and 301 et seq. of Title 8 of the Oklahoma Statutes and any rules promulgated or orders issued pursuant thereto. Such personnel and positions, including the director, shall be placed in unclassified status, exempt from the provisions of the Oklahoma Personnel Act, Section 840-1.1 et seq. of Title 74 of the Oklahoma Statutes. Provided, any person employed by the Oklahoma State Board of Embalmers and Funeral Directors prior to the effective date of this act who is in the classified service shall retain such status, and the position held by such person shall not become unclassified until vacated by such person.

D. The expense of ~~said Board~~ the Commission shall at no time exceed the ~~receipt thereof~~ receipts of the Commission.

SECTION 47. AMENDATORY 59 O.S. 1991, Section 396.24, is amended to read as follows:

Section 396.24 Any person, firm, association or corporation who violates any of the provisions of the Funeral Services Licensing Act or of Sections 161 et seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

SECTION 48. AMENDATORY 59 O.S. 1991, Section 396.25, is amended to read as follows:

Section 396.25 Each and every person who embezzles, abstracts or willfully misapplies any of the monies, funds, security or credit of the ~~Board~~ Oklahoma State Funeral Services Commission or who misuses any of the funds or fees so collected, ~~by virtue of this act pursuant to the Funeral Services Licensing Act or of Sections 161 et~~

seq., 201 et seq. or 301 et seq. of Title 8 of the Oklahoma Statutes, and any person who with like intent, aids or abets any person in violation of this section or any portion thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars (\$500.00), nor exceeding Five Thousand Dollars (\$5,000.00), and imprisonment in the ~~penitentiary~~ State Penitentiary for a period of not less than three (3) years and not more than fifty (50) years, and the principal offenders and those aiding and abetting same may be charged in the same count, and separate offenses may be charged, in separate counts, in the same indictment, and tried together.

SECTION 49. AMENDATORY 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and last amended by Section 5, Chapter 315, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-5.5), is amended to read as follows:

Section 840-5.5 The following offices, positions, and personnel comprise the exempt unclassified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Federally funded time-limited employees hired for the specific purpose of providing public service employment or one-time special or research project services for a limited period of time and shall not exceed the period of time for which that specific federal funding is provided;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period. This category of employees shall include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Temporary lake patrol officers, regardless of the number of hours worked, who are employed by the Department of Public Safety during the period March 16 through October 31 in any calendar year; provided, the hours worked shall be considered in determining the temporary employee's eligibility for subsequent employment in any other unclassified temporary employment category;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with said State System of Higher Education. For purposes of this act a student shall

be considered a regularly enrolled student if he or she is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, and such student is regularly attending classes during that semester of employment, or

- c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's Full-Time-Equivalent Employee Limit;

14. Employees of State Capitol cafeterias;

15. Employees of either the House of Representatives or the State Senate;

16. Grand River Dam Authority personnel occupying the following offices and positions:

- a. the general manager, assistant general managers, secretaries to the general manager, and assistant general managers,
- b. the chief engineer and the engineers, superintendents, and assistant superintendents,

- c. the general counsel and the attorneys on the general counsel's staff,
- d. the secretary,
- e. the treasurer,
- f. rate analysts, and
- g. unclassified employees hired prior to May 1, 1989, who hold engineering job titles but who are not registered engineers, provided said persons are reassigned nonengineering job titles. At such time as the positions occupied by said unclassified employees are vacated, the positions shall revert to the classified service;

17. Oklahoma Tax Commission personnel occupying the following offices and positions:

- a. all revenue administrators, the budget officer and the comptroller of the Tax Commission,
- b. all administrators and unit managers in the Management Information Services Division,
- c. all Computer Programming Systems Specialist positions,
- d. all Data Processing Programmer Analyst Supervisor and Data Processing Programmer Analyst III positions,
- e. all Public Affairs Officer and Assistant Public Affairs Officer positions,
- f. Public Information Officer, and
- g. all Tax Economist positions;

18. Corporation Commission personnel occupying the following offices and positions:

- a. administrative aides, and executive secretaries to the Commissioners,
- b. Directors of all the divisions,
- c. General Counsel,
- d. Public Utility Division Chief Engineer,

- e. Public Utility Division Chief Accountant,
- f. Public Utility Division Chief Economist, and
- g. Secretary of the Commission;

19. State Department of Education personnel occupying the following offices and positions:

- a. Administrative Assistants,
- b. Informational Representatives III,
- c. Driver Educational Electronics Technician,
- d. Media Technical Assistants,
- e. Executive Secretaries,
- f. Accounting Supervisor,
- g. Supervisor of Records,
- h. Supervisor of Printing Services,
- i. Migrant Records Transfer System Representative,
- j. Financial Managers, and
- k. in addition to the State Department of Education offices and positions listed in this paragraph, any and all offices and positions within the State Department of Education for which the annual salary is Twenty-one Thousand Nine Hundred Forty-three Dollars (\$21,943.00) or more shall also be in the unclassified service of this state.

Nothing in this paragraph is intended to change the status, whether classified or unclassified, of any person employed by the Department of Education prior to May 1, 1989. No position shall become unclassified while it is occupied by a classified employee because of any change in salary or grade. Hereafter, any position paid an annual salary of Twenty-one Thousand Nine Hundred Forty-three Dollars (\$21,943.00) or more shall be in the unclassified service upon being vacated;

20. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency

having a primary responsibility to coordinate educational programs operated for children in state institutions;

21. Bill Willis Community Mental Health Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

22. The State Comptroller, Office of the Director of State Finance;

23. Employees of the Oklahoma Development Finance Authority;

24. Those positions so specified in the annual business plan of the Department of Commerce;

25. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

26. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and
- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in Section 840.10 of this title;

27. State Insurance Fund personnel occupying the following offices and positions:

- a. Commissioner,

- b. Deputy Commissioner,
- c. Administrative Assistants to the Commissioner,
- d. Executive Secretaries to the Commissioner and Deputy Commissioner,
- e. Law Clerks and Legal Assistants,
- f. Special Counsel,
- g. General Counsel,
- h. Medical Analysts Supervisor,
- i. Medical Analysts,
- j. Field Adjusters,
- k. Investment Officer, and
- l. Collections Attorneys;

28. The Carl Albert Internship Program Coordinator within the Office of Personnel Management;

29. Department of Corrections personnel occupying the following offices and positions:

- a. Associate Director,
- b. Executive Secretary,
- c. General Counsel,
- d. Assistant General Counsel,
- e. Deputy Director,
- f. Public Information Officer,
- g. Personnel Manager,
- h. Administrator of Planning and Research,
- i. Administrator of Finance and Accounting,
- j. Executive Assistant,
- k. Administrator of Information Services,
- l. Affirmative Action Officer,
- m. System Development Manager,
- n. Computer Operations Manager,
- o. Training Director,
- p. Assistant Training Director,

- q. Administrator of Construction and Maintenance,
- r. Administrative Assistant,
- s. Secretary,
- t. Administrator of Classification and Programs,
- u. Coordinator of Facility Classification,
- v. Mediation Coordinator,
- w. Inspector General,
- x. Medical Director,
- y. Psychiatrist,
- z. Physician,
- aa. Optometrist,
- ab. Dental Services Supervisor,
- ac. Dentist,
- ad. Psychologist,
- ae. Administrator of Dietary Services,
- af. Warden I,
- ag. Warden II,
- ah. Warden III,
- ai. Deputy Warden I,
- aj. Deputy Warden II,
- ak. Deputy Warden III,
- al. Community Treatment Center Superintendent,
- am. Community Treatment Center Assistant Superintendent,
- an. Probation and Parole District Supervisor,
- ao. Probation and Parole Assistant District Supervisor,
- ap. Administrator of Human Resources,
- aq. Facility Staffing Pattern Analyst,
- ar. Correctional School Superintendent,
- as. Regional Director,
- at. Assistant Regional Director,
- au. Chief of Operations, and
- av. Chief Psychologist;

30. Department of Corrections personnel occupying the following offices and positions as representatives of the Oklahoma State Industries:

- a. Administrator of Industrial Production,
- b. Administrator of Agriculture Production,
- c. OSI Sales Representative,
- d. OSI Sales Manager, and
- e. Marketing Manager.

The positions listed in this paragraph shall be funded from the Department of Corrections Industries' Revolving Fund only. In addition to the regular salary, any unclassified sales representative of the Oklahoma State Industries of the Department of Corrections who is responsible for obtaining a contract for products manufactured or services provided by prison industries may, at the discretion of the Director of the Department of Corrections, be awarded additional compensation of not more than five percent (5%) of the total amount of said contracts but not more than Five Thousand Dollars (\$5,000.00) per year. This compensation may be in addition to the salary of the employee and may be paid in one lump sum from any funds available to the Department of Corrections. No such compensation shall be made unless funds are available. Funds for payment of any compensation awards shall be encumbered to the extent of the awards.

Incumbents in positions listed in paragraph 29 of this section and in this paragraph that are classified under the Merit System of Personnel Administration on the effective date of this act shall have the option of remaining in their classified status under the Merit System of Personnel Administration. Incumbents that choose to accept unclassified appointments shall so signify in writing. All future appointees to these positions shall be unclassified.

Incumbents that choose to remain in the classified service under the Merit System of Personnel Administration shall be subject to all

rules and procedures of the Merit System of Personnel Administration. By the end of the first full work week of each month, the Director of the Department of Corrections shall submit to the Director of State Finance a report listing the total number of part-time employees employed during the preceding month, the positions for which they were employed, and the number of hours worked for each part-time position;

31. Department of Labor personnel occupying the following offices and positions:

- a. Deputy Commissioner,
- b. Executive Secretary to the Commissioner,
- c. Chief of Staff, and
- d. Administrative Assistant, Legal;

32. The State Bond Advisor and ~~his~~ employees;

33. The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

34. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

35. The officers and employees of the State Banking Department;
~~and~~

36. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes; and

37. Employees of the Oklahoma State Funeral Services Commission.

SECTION 50. REPEALER 59 O.S. 1991, Sections 396.21, 396.22 and 396.26, are hereby repealed.

SECTION 51. This act shall become effective July 1, 1995.

SECTION 52. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-0158

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