

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 153

By: Crutchfield of the Senate

and

Hilliard of the House

AS INTRODUCED

An Act relating to insurance; creating the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act; providing short title; stating purpose; providing scope of application; defining terms; establishing the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association and stating purpose therefor; providing for administration; requiring organizations to be members of Association; providing duties and powers of the Association; providing for Plan of Operation and amendments thereto; requiring that plan be submitted to Oklahoma State Board of Embalmers and Funeral Directors; requiring approval by the Board; authorizing the Board to establish rules if plan is not submitted; providing requirements for the plan; authorizing certain provisions in the Plan; providing for assignments and right of recovery of covered claims; providing for proposals to distribute assets of insolvent organizations; authorizing procedures to aid in detection and prevention of insolvencies; providing scope of covered claims; prohibiting acts; providing for examinations; exempting the Association from taxes; providing immunity from liability; providing for stays of proceedings and setting aside of judgments; providing for codification; and providing an effective date.

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

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

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

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

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

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

The Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act shall apply to every organization authorized by the Insurance Commissioner or Oklahoma State Board of Embalmers and Funeral Directors to operate a prepaid funeral benefit trust fund.

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

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

1. "Association" means the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association;

2. "Claimant" means any person who has contracted in writing for prepaid funeral merchandise or services with any organization authorized pursuant to Section 6121 et seq. of Title 36 of the Oklahoma Statutes to contract for prepaid funeral merchandise and services;

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

4. "Director" means any one of the directors of the Association;

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

6. "Member organization" means any organization as defined by this section;

7. "Organization" means any individual, firm, partnership, corporation, or association holding a permit issued pursuant to Section 6121 of Title 36 of the Oklahoma Statutes; and

8. "Trust" means any trust fund operated by an organization.

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

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

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

C. The business and functions of the Association shall be managed and administered by the Oklahoma State Board of Embalmers and Funeral Directors.

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

A. The Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association shall:

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

2. Maintain at all times for the payment of covered claims and administrative expense an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) and make assessments as appropriate. Assessments shall be calculated by assessing against each organization a percentage, to be determined by the Association, of each organization's total funds held in cash or cash equivalent based upon its financial report filed with the Commissioner. No organization shall pay its assessment from monies in its trust fund.

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

C. The Association may:

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

2. Borrow funds necessary to effect the purposes of the act in accordance with the Plan of Operation required by Section 7 of this act;

3. Sue or be sued;

4. Negotiate and enter into such contracts as are necessary to carry out the purpose of the act;

5. Refund to members, in proportion to the contribution of each member, that amount by which the assets of the Association exceed its liabilities if at the end of any calendar year the Oklahoma State Board of Embalmers and Funeral Directors finds that the assets of the Association exceed the liabilities as estimated for the coming year;

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

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

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

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

A. The Oklahoma State Board of Embalmers and Funeral Directors Association shall adopt a Plan of Operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association.

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

C. The Plan of Operation shall:

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

2. Establish procedures for handling assets of the Association;

3. Establish the amount and method of reimbursing directors;

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

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

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

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

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

D. The Plan of Operation may provide that any or all powers and duties of the Association are delegated to a corporation, association, or other organization incorporated and resident in this state which performs or will perform functions similar to those of this Association or its equivalent. Such a corporation, association, or organization shall be reimbursed in the same manner as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of the Board.

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

A. The Oklahoma State Board of Embalmers and Funeral Directors shall:

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

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

B. The Board may:

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

2. Suspend or revoke, after the notice and hearing, the permit to provide prepaid funeral benefits in this state of any member organization which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Board may levy a fine on any member organization which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than One Hundred Dollars (\$100.00) per month; or

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

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

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

A. Any claimant recovering under this act shall be deemed to have assigned the claimant's rights under the policy to the Association to the extent of the claimant's recovery from the Association. Every organization or claimant seeking the protection

of this act shall cooperate with the Association to the same extent as the person would have been required to cooperate with the insolvent organization. In the case of an insolvent organization operating on a plan with assessment liability, payment of covered claims by the Association shall not operate to reduce the liability of any person to the receiver, liquidator, or statutory successor for unpaid assessments.

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

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

A. Within one hundred twenty (120) days of a final determination of insolvency of an organization by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disburse assets from the organization's marshaled assets from time to time as such assets become available to the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association.

B. The proposal shall include provisions for:

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

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

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

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

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

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

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

To aid in the detection and prevention of insurer insolvencies, the Association may, at the conclusion of any organization insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the Association.

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

A covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of

claims against the liquidator or receiver of an insolvent organization.

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

No person, including an organization, agent, or affiliate of an organization, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of merchandise or service covered by the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association Act. This section shall not apply to the Oklahoma Prepaid Funeral Benefit Trust Fund Guaranty Association or to any other entity which does not sell or solicit prepaid funeral contracts.

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

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

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

The Association shall be exempt from payment of all taxes levied by this state or any of its subdivisions.

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

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

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

All proceedings in which an insolvent organization, its claimants, or the Association is a party in any court in this state shall be stayed one hundred twenty (120) days from the date an order of liquidation, rehabilitation, receivership, or conservatorship is final to permit proper legal action by the Association on any matters germane to its powers and duties. As to judgment under any decision, order, verdict, or finding based on default, the Association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

SECTION 18. This act shall become effective November 1, 2001.

48-1-34 WHT 6/12/2015 11:03:59 AM