ENGROSSED HOUSE
BILL NO. 1458 By: McAffrey of the House

and

Coates of the Senate

An Act relating to insurance; amending 36 O.S. 2001, Sections 6121, 6123, 6124, as amended by Section 29, Chapter 57, O.S.L. 2003, 6125, 6125.2, 6126, 6130, as amended by Section 22, Chapter 125, O.S.L. 2007 and 6136.18 (36 O.S. Supp. 2008, Sections 6124 and 6130), which relate to prepaid funeral services and funeral service merchandise; allowing Insurance Commissioner to deny certain permit under certain circumstances; stating circumstances for denial; requiring conspicuous display of certain permit by specific persons; clarifying statutory intent; updating statutory references; requiring retention of itemized statements for certain period of time; prohibiting issuance of new permit for certain period if permit is not renewed; allowing acceptance of a new permit prior to expiration of certain time period upon good cause shown; prohibiting transfer of certain permit from one organization to another; requiring certain notification of transfer of ownership; stating time, form and requirements of notice; requiring application of acquiring organization for certain permit within specific time; stating requirement of application; providing for approval on occurrence of certain conditions; providing for access to certain funds upon authorization by Insurance Commissioner; allowing denial of transfer; providing for Insurance Commissioner to act as trust conservator; allowing organization to draw down funds upon fulfillment of certain condition; allowing Insurance Commissioner to prescribe certain rules; modifying time for deposit of certain funds; requiring that transferring organization remain designated trustor if certain transfers occur; providing for determination of net value of certain contract; providing for purchaser of certain contracts to receive specified amount upon

withdrawal prior to death; eliminating requirement that organization provide certain statements to the Insurance Commissioner and others; providing for availability of certain benefits upon the death of certain person; providing that beneficiary remain same individual under certain contract; providing requirements for nonspecified contracts for prepaid funeral benefits; modifying bond requirements; requiring certain price list; modifying penalty upon occurrence of certain actions; updating statutory reference; eliminating certain notice requirements; providing for Insurance Commissioner to prescribe certain rules; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6121, is amended to read as follows:

Section 6121. A. Any individual, firm, partnership, corporation, or association (hereinafter called "organization") which shall accept money or anything of value for prearranged, or prepaid funeral services, or funeral service merchandise as defined in the Funeral Services Licensing Act or for any contract providing future funeral services or funeral merchandise at a fixed price or at a cost plus a percentage, or at retail price less a percentage discount, or providing for any special consideration of any kind to be granted or made available to the purchaser or holder of such contract, in this state, under any sales contract, bond, certificate or other form of written document providing for prepaid, discounted or otherwise specially priced funeral or burial benefits or services

or funeral merchandise to be delivered at an undetermined future date dependent upon the death of a contracting party or other person designated by a contracting party (hereinafter called "prepaid funeral benefits") shall first obtain a permit from the Insurance Commissioner authorizing the transaction of this type of business before entering into any such contract. It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time ~~such~~ the contract is made.

B. The Insurance Commissioner may deny the issuance of a permit if the organization:

1. Makes a material misstatement or misrepresentation in an application for a permit; or

2. Fraudulently or deceptively obtains or attempts to obtain a permit for another.

C. The Insurance Commissioner may approve an application of an organization for a permit and deny the request of the organization to act as a trustor if the organization does not satisfy all qualifications. This shall not hinder an organization from entering into contracts funded by assignments of insurance.

D. All permits issued pursuant to the provisions of this section shall be displayed in a conspicuous place at all times on the premises of the organization. No organization may consent to, or allow the use or display of, the permit by a person other than

the persons authorized to represent the organization in contracting prepaid funeral benefits.

E. The ~~seller~~ organization shall not be entitled to enforce a contract made in violation of the act, but the purchaser or ~~his~~ the heirs of the purchaser, or legal representative, shall be entitled to recover triple the amounts paid to the ~~seller~~ organization with interest thereon at the rate of six percent (6%) per annum under any contract made in violation hereof.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6123, is amended to read as follows:

Section 6123. ~~Section~~ Sections 6121 ~~et seq.~~ through 6136.18 of this title shall be administered by the Insurance Commissioner. The Insurance Commissioner is authorized to prescribe reasonable rules and regulations concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this law; and the Insurance Commissioner shall first approve all forms for sale contracts for prepaid funeral benefits. All ~~such~~ contracts for prepaid funeral benefits ~~must~~ shall be in writing and no contract form shall be used without first being approved by the Insurance Commissioner. On any prepaid funeral when the person dies and ~~his~~ the funeral is performed, and the money is drawn down, any organization receiving ~~such~~ the monies so drawn down shall ~~send to the Insurance Commissioner their itemized statement of charges~~ retain the itemized

statement of charges in the files of the organization for at least three (3) years.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6124, as amended by Section 29, Chapter 57, O.S.L. 2003 (36 O.S. Supp. 2008, Section 6124), is amended to read as follows:

Section 6124. A. Each organization desiring to accept money or anything of value for prepaid funeral benefits or an agreement to provide funeral benefits in the future at a fixed or predetermined cost, shall file an application for a permit with the Insurance Commissioner, and shall at the time of filing an application pay one initial filing fee of Fifty Dollars ($50.00). The Insurance Commissioner shall issue a permit upon:

1. The receipt of the application and payment of the filing fee;

2. Determination that the ~~applicant~~ organization is in good standing as a funeral establishment with the Oklahoma Funeral Board; and

3. Making a finding that the ~~applicant~~ organization has complied with the rules promulgated under this act by the Insurance Commissioner. All applications shall be signed by the organization requesting the permit, and shall contain a statement that the ~~applicant~~ organization will comply with all the requirements as established by this act. All permits shall expire on December 31 of the year the permit is first issued, unless renewed; permits may be

renewed for a period not to exceed the succeeding December 31 upon the payment of a renewal fee of Fifty Dollars ($50.00). Late application for renewal of a ~~license~~ permit shall require a fee of double the renewal fee. No application for renewal of a ~~license~~ permit shall be accepted after January 31 of each year. ~~Applicants shall be required to reapply as if they were a new applicant~~ The Insurance Commissioner may authorize acceptance of a new permit application pursuant to this section prior to the expiration of the one-year period upon good cause shown.

B. The Insurance Commissioner 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 provision of this act, or any valid rule, which the Insurance Commissioner has promulgated, after reasonable notice to the ~~permittee~~ organization and after hearing if the ~~permittee~~ organization requests a hearing. When the Insurance Commissioner cancels a permit or refuses to issue a renewal of a permit for a violation as provided by this subsection, the Insurance Commissioner shall notify the Oklahoma Funeral Board of the action and the nature of any violations.

C. No organization shall be entitled to a new permit for a period of one (1) year after cancellation, or refusal by the Insurance Commissioner to renew the permit of the organization but shall thereafter be entitled to a new permit upon satisfactory proof

of compliance with this law, after the expiration of ~~said one (1) year~~ the one-year period.

D. Any person or organization aggrieved by the actions of the Insurance Commissioner may appeal therefrom as provided by Article II of the Administrative Procedures Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6124.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No prepaid funeral benefit permit shall be transferable from one organization to another. The selling organization shall notify the Insurance Commissioner at forty-five (45) days prior to transfer of ownership. Notification shall be in a form provided by the Insurance Commissioner and shall contain at a minimum the following information:

1. The name of the acquiring organization;

2. The date the acquiring organization will take control of the funeral establishment;

3. A listing of all unrealized prepaid funeral benefit contracts funded by insurance assignments;

4. A listing of all unrealized prepaid funeral benefit contracts funded by trusts;

5. A detailed description of existing trusts to include, but not be limited to, the name of the contract holder and the trust value per contract; and

6. Any other information the Insurance Commissioner may request.

B. The Insurance Commissioner may waive the notice requirement provided for in subsection A of this section upon good cause shown.

C. The acquiring organization shall make application for a permit at least thirty (30) days prior to the transfer of ownership. Approval is contingent upon the organization receiving an establishment license as provided for in Sections 395.1 through 396.33 of Title 59 of the Oklahoma Statutes. The application shall include an assumption agreement executed by the acquiring organization in a form provided by the Insurance Commissioner.

D. The acquiring organization shall be issued a prepaid funeral benefit permit prior to the relinquishment of control of the trust by the selling organization. The acquiring organization shall not access funds held in the trust until authorization has been given by the Insurance Commissioner.

E. Upon good cause shown, the Insurance Commissioner may deny transfer of the trust from the selling organization to the acquiring organization.

F. The Insurance Commissioner may assume the role of acting trust conservator as a means of safeguarding the rights and interests of the individual contract holder. The organization may make application to the Insurance Commissioner to draw down funds upon fulfillment of the prepaid funeral service contract.

G. The Insurance Commissioner may prescribe rules concerning matters incidental to this section.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6125, is amended to read as follows:

Section 6125. A. 1. The organization may retain from the first funds collected, the first ten percent (10%) of the purchase price of all contracts issued pursuant to paragraph 1 of subsection B of this section. Thereafter, one hundred percent (100%) of all funds collected pursuant to the provisions of contracts for prepaid funeral benefits, except for outer enclosures as defined by the Funeral ~~Service~~ Services Licensing Act, shall be placed in interest-bearing investments authorized by Article 16 of the Insurance Code, except to the extent the Insurance ~~Commission~~ Commissioner may determine that a particular asset may be inappropriate for investment for prepaid funeral benefits.

2. For outer enclosures at the option of the organization the first thirty-five percent (35%) of the retail price of the outer enclosures collected may be retained by the organization. The remaining sixty-five percent (65%) of the retail price collected for the outer enclosures shall be invested as otherwise provided by this subsection pursuant to the provisions of contracts for prepaid funeral benefits.

3. The funds required to be deposited pursuant to paragraphs 1 and 2 of this subsection shall be deposited within ten (10) days ~~of~~

~~the end of the calendar month~~ after the collection of ~~said~~ the funds and shall be held in a trust fund in this state for the use, benefit, and protection of purchasers of contracts for prepaid funeral benefits. Nothing contained within this section shall be construed to prohibit an organization authorized to accept prepaid funds from transferring the funds held in trust from one trust depository to another if notice of the transfer is given to the Insurance Commissioner within ten (10) days before the transfer and the organization transferring the funds remains the designated trustor. This subsection shall not affect funds invested prior to November 1, 1988.

B. An organization authorized to accept prepaid funds shall be authorized to provide purchasers with a choice of either of the following types of contracts:

1. A contract for ~~specific~~ Specific and ~~described funeral merchandise~~ Described Funeral Merchandise and ~~service~~ Service at a ~~guaranteed price~~ Guaranteed Price. The provisions of this type of contract shall provide that interest paid by the organization upon monies deposited in trust shall be added to the principal and that principal and interest shall become available for disbursement to the organization upon the death of the beneficiary and if withdrawal of monies occurs prior to death, the net value, plus the amount withheld pursuant to paragraph 1 of subsection A of this section, shall be paid to the purchaser. Net value of the contract for

purposes of this section shall be determined ~~as provided in subsection C of this section~~ by adding the amount of all principal paid in pursuant to the provisions of the contract plus all interest payable pursuant to subsection D of this section less taxes and administrative fees; ~~or~~

2. A contract establishing a fund for prepaid funeral benefits. The provisions of this type of contract shall require an initial minimum deposit of Twenty-five Dollars ($25.00) and shall grant the purchaser the right to add to the fund at ~~his~~ the discretion of the purchaser. The provisions of this contract shall provide that the funds accumulated shall apply to the cost of the funeral services and merchandise selected and that any funds remaining unused shall be refunded to the purchaser or to ~~his~~ the personal representative or designated beneficiary of the purchaser and if withdrawal of monies occurs prior to death, the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to subsection D of this section less taxes and administrative fees. This type of contract shall also bear upon it the language: "Exact Funeral Merchandise and Services to be Selected at Time of Death";

3. Notwithstanding the provisions of this section, at no time shall the purchaser of a contract for Specific and Described Funeral Merchandise and Service at a Guaranteed Price receive upon any

withdrawal or transfer prior to death a sum less than the original principal collected; or

4. Notwithstanding the provisions of this section, at no time shall the purchaser of a contract for Exact Funeral Merchandise and Services to be Selected at Time of Death receive upon any full withdrawal or transfer prior to death a sum less than the original principal collected available at death, with the exception of those accounts which bear principal reduced by previously made cash withdrawals.

C. If an organization other than the organization with which the purchaser contracted provides funeral merchandise and services upon the death of the beneficiary of the contract, the organization with whom the purchaser contracted shall forward, upon receipt of request in writing from the purchaser or ~~his~~ the personal representative of the purchaser, the net value of the contract plus the amount withheld pursuant to paragraph 1 of subsection A of this section to the organization which provided ~~said~~ the merchandise and services or to the purchaser or ~~his~~ the personal representative of the purchaser. ~~The net value of the contract for purposes of this section shall be determined by adding the amount of all principal paid in pursuant to the provisions of the contract plus all interest payable pursuant to subsection D of this section less taxes and administrative fees.~~

D. Funds deposited in trust pursuant to the provisions of either type of contract authorized by the provisions of this section shall earn for the account of the purchaser a rate of interest which is not less than the minimum rate of interest offered by the qualified ~~depositories~~ investments specified in subsection A of this section to ~~their~~ the savings customers of the qualified investments having interest-bearing accounts. The organization, in a nondiscriminatory manner, may pay or accrue interest for the accounts of purchasers at any rate greater than the minimum rate that the organization desires, provided, however, that the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to this subsection.

E. A purchaser of either of the types of contracts authorized by the provisions of this section may withdraw the net value of the contract by signing a statement requesting the withdrawal. ~~The organization shall provide a copy of the statement to the Insurance Commissioner.~~ The organization shall retain in its files a copy of the statement requesting the withdrawal. Withdrawal of funds deposited pursuant to the provisions of a contract authorized by the provisions of paragraph 1 of subsection B of this section shall void the obligation of the contracting organization to provide funeral merchandise and services at a guaranteed price. Withdrawal forms shall be retained on file for at least three (3) years by the organization.

F. Following the death of a beneficiary for whom a contract has been purchased, the organization shall prepare a statement, acknowledged by the purchaser if the purchaser is not the beneficiary, or by the personal representative of the purchaser if the purchaser is the beneficiary, setting forth the use of the funds deposited and the party to whom any unused funds were disbursed. A copy of this statement shall remain in the files of the organization for at least three (3) years and a copy shall be delivered to the trust depository and the purchaser. ~~Copies of the statement shall also be sent to the Insurance Commissioner and the purchaser.~~

G. After thirty (30) days, a contract of either type authorized by the provisions of this section may become irrevocable and not subject to withdrawal prior to the death of the beneficiary if the purchaser signs an election making ~~said~~ the contract irrevocable. This election shall not become effective until thirty (30) days after signing the original contract.

H. In no event shall more funds be withdrawn or paid pursuant to the provisions of one contract than were deposited with the organization and which were accumulated as interest. All funds deposited pursuant to the provisions of a contract authorized by the provisions of this section and deposited pursuant to the terms of this section and the interest earned on ~~said~~ the funds shall be exempt from attachment, garnishment, execution, and the claims of creditors, receivers, or trustees in bankruptcy, until ~~such~~ the time

~~as~~ the funds have been withdrawn from the trust account and paid to the organization or refunded to the purchaser.

I. Each organization subject to the provisions of ~~this section~~ Sections 6121 through 6136.18 of this title shall furnish a bond in the form of a cash bond, letter of credit, or fidelity bond, to be approved by the Insurance Commissioner, in the amount of ~~Three Hundred Thousand Dollars ($300,000.00)~~ Twenty-five Thousand Dollars ($25,000.00) or fifteen percent (15%) of all funds collected for prepaid funeral benefits, whichever is ~~less~~ greater.

J. Organizations contracting with purchasers for prepaid funeral benefits pursuant to paragraphs 1 and 2 of subsection B of this section shall be entitled to deduct from the principal and interest allocable to the contracts an administrative fee which shall not exceed the product of .001146 times the total contract fund including accrued interest per month or any major portion thereof.

K. No organization holding a permit issued pursuant to the provisions of Sections 6121 and 6124 of this title shall accept any funds except pursuant to the provisions of a contract for prepaid funeral or burial benefits authorized by the provisions of Sections 6121 through ~~6136~~ 6136.18 of this title, and no organization shall accept funds from a purchaser in excess of the contracted price of prepaid funeral or burial benefits purchased.

L. Any organization which knowingly commits any of the acts set forth in the first sentence of Section 6121 of this title without first having obtained a permit to engage in ~~said~~ the stated activity from the Insurance Commissioner, or any organization which commits ~~said~~ the acts while knowingly operating with an invalid or expired permit, upon conviction, shall be guilty of a misdemeanor. Each separate act performed without a valid permit shall be deemed a separate offense. The punishment upon conviction for ~~such~~ the offense shall be a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both such fine and imprisonment.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6125.2, is amended to read as follows:

Section 6125.2 A. Contracts for prepaid funeral benefits provided for pursuant to Section 6125 of ~~Title 36 of the Oklahoma Statutes~~ this title may be funded by assignments of life insurance proceeds to the contracting organization.

B. A guaranteed contract for prepaid funeral benefits provided for pursuant to paragraph 1 of subsection B of Section 6125 of ~~Title 36 of the Oklahoma Statutes~~ this title which is to be funded by assignment of life insurance proceeds shall provide that:

1. The contract be funded by a life insurance policy issued in the face amount of the current purchase price of the contract for prepaid funeral benefits;

2. All accrued benefits under the policy shall become available for disbursement to the organization upon the death of the ~~recipient under the~~ beneficiary of the prepaid funeral contract;

3. The ~~recipient~~ beneficiary shall be the same individual under the contract as the insured under the life insurance policy; and

4. The disbursement of life insurance proceeds to the organization shall constitute payment in full to the organization for the services and merchandise contracted for.

C. A nonspecified contract for prepaid funeral benefits provided for pursuant to paragraph 2 of subsection B of Section 6125 of ~~Title 36 of the Oklahoma Statutes~~ this title which is to be funded by assignment of life insurance proceeds shall provide that:

1. The total proceeds paid to the organization under the policy shall not exceed the actual cost of the funeral services and merchandise at the time of delivery; and

2. Any funds remaining unused shall be refunded to the purchaser or to ~~his~~ the personal representative of the purchaser or designated beneficiary.

D. All prepaid funeral contracts held by the organization and negotiated after November 1, 2009, shall contain a price list

reflecting the actual cost of funeral services and merchandise at the time of the delivery of services.

E. A violation of this section shall constitute a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6126, is amended to read as follows:

Section 6126. A. Each organization subject to the ~~act~~ Funeral Services Licensing Act shall designate an agent or agents, either by names of the individuals or by titles of ~~their~~ the offices or positions of the individuals, who shall be responsible for deposits of funds collected under contract for prepaid funeral benefits. The organization shall notify the Insurance Commissioner of ~~such~~ the designation ~~within~~ at least ten (10) days ~~after it becomes~~ prior to becoming subject to this act, and shall also notify the Insurance Commissioner of any changes in ~~such~~ the designation ~~within~~ at least ten (10) days ~~after such~~ before the change occurs. ~~If any person acting on behalf of the seller collects any money under such a contract and fails to deliver it within ten (10) days after collection to a designated agent, or if any designated agent fails to deposit the money within ten (10) days after he receives it, he~~

~~shall be guilty of a misdemeanor and shall be punished as prescribed in Section 10 of this act.~~

B. Any person collecting monies under a contract on behalf of an organization shall deposit the monies within ten (10) days after collection. Any person failing to deposit the monies collected shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

SECTION 8. AMENDATORY 36 O.S. 2001, Section 6130, as amended by Section 22, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2008, Section 6130), is amended to read as follows:

Section 6130. A. Any officer, director, agent, or employee of any organization subject to the terms of Sections 6121 through ~~6135~~ 6136.18 of this title who makes or attempts to make any contract in violation of the provisions of Sections 6121 through ~~6135~~ 6136.18 of this title, or who refuses to allow an inspection of the records of ~~said~~ the organization, or who violates any other provision of Sections 6121 through ~~6135~~ 6136.18 of this title, upon conviction, shall be guilty of a felony and shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of not more than ten (10) years, and a fine not exceeding Ten Thousand Dollars ($10,000.00), and ordered to pay restitution to the

victim. Each violation of any provision of Sections 6121 through ~~6135~~ 6136.18 of this title shall be deemed a separate offense and prosecuted individually.

B. The violation of any provision of Sections 6121 through ~~6135~~ 6136.18 of this title shall constitute a cause for the Oklahoma ~~State Board of Embalmers and Funeral Directors~~ Funeral Board to revoke, or to refuse to issue or renew, any license issued pursuant to the provisions of Sections 396 through 396.33 of Title 59 of the Oklahoma Statutes. The violation of any provision of Sections 6121 through ~~6135~~ 6136.18 of this title shall constitute a cause for the Insurance Commissioner to issue a notice and order to show cause why the licensee shall not be censured, have ~~his~~ the license of the licensee suspended or revoked, be subject to a fine of not less than One Hundred Dollars ($100.00) and not more than One Thousand Dollars ($1,000.00), or be subject to both such fine and punishment.

SECTION 9. AMENDATORY 36 O.S. 2001, Section 6136.18, is amended to read as follows:

Section 6136.18 A. Member organizations may convert trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits. ~~Such~~ The conversion shall be subject to the provisions of Section 6125.2 of ~~Title 36 of the Oklahoma Statutes~~ this title.

B. The Commissioner ~~must~~ shall approve a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral

benefits as safeguarding the rights and interests of the individual who purchases the prepaid funeral benefits contract.

C. ~~Each contract purchaser or holder shall be notified in writing of:~~

~~1. The terms of the proposed conversion including those terms set out in Section 6125.2 of Title 36 of the Oklahoma Statutes; and~~

~~2. The holder's right to decline the conversion.~~

~~D. An application for approval of a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits must be filed with the Commissioner on forms prescribed by the Commissioner.~~

~~E. In addition to the other investments permitted by Section 6125 of this title, funds deposited pursuant to Section 6125 of this title may be invested in the purchase of contracts of annuities as authorized by Section 702 of this title~~ The Commissioner shall prescribe rules detailing the steps necessary to complete the conversion of prepaid funeral benefit contracts funded by a trust to prepaid funeral benefits contracts funded by insurance.

SECTION 10. This act shall become effective November 1, 2009.

Passed the House of Representatives the 23rd day of February, 2009.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate