

1 ENGROSSED SENATE
2 BILL NO. 2042

By: Brown of the Senate

3 and

4 Sullivan of the House
5
6

7 An Act relating to cemeteries and insurance; amending
8 O.S. 2001, Sections 161, 162, as amended by Section
9 7, Chapter 275, O.S.L. 2008, 163, as last amended by
10 Section 8, Chapter 275, O.S.L. 2008, 165, 166, as
11 last amended by Section 10, Chapter 80, O.S.L. 2007,
12 167.1, 168, as amended by Section 4, Chapter 3,
13 O.S.L. 2009, 168.1, 169.1 and 170 (8 O.S. Supp 2009,
14 Sections 162, 163, 166, and 168), which relate to the
15 Perpetual Care Fund Act; updating short title;
16 transferring duties from the State Banking
17 Commissioner to the Insurance Commissioner; adding
18 definitions; modifying the amount in a cemetery's
19 Perpetual Care Fund that qualifies a cemetery to
20 purchase a certificate of deposit; updating statutory
21 citations; requiring certain examination of a
22 Perpetual Care Fund to be conducted pursuant to law;
23 requiring the cost of the examination to be paid by
24 the cemetery owner and the cost to be directly billed
to the cemetery owner; clarifying applicability of
statutory citations; clarifying statutory citations;
authorizing the Insurance Commissioner to initiate
certain actions; authorizing the Insurance
Commissioner to censure or levy a fine against the
owner of a cemetery; amending 8 O.S. 2001, Sections
301, 302, as amended by Section 5, Chapter 3, O.S.L.
2009, 303, as amended by Section 6, Chapter 3, O.S.L.
2009, 304, as last amended by Section 7, Chapter 3,
O.S.L. 2009, 305, as amended by Section 9, Chapter
275, O.S.L. 2008, 306, 307, as amended by Section 8,
Chapter 3, O.S.L. 2009, 308, 309, 310, 311, 313, 315
and 316 (8 O.S. Supp. 2009, Sections 302, 303, 304,
305 and 307), which relate to the Cemetery
Merchandise Trust Act; updating short title;
transferring duties from the State Banking
Commissioner to the Insurance Commissioner; modifying

1 definitions; requiring the Cemetery Merchandise Trust
2 Act to be administered by the Insurance Commissioner;
3 modifying date; specifying the amount of the
4 application fee for late applicants; requiring
5 certain examination to be conducted pursuant to law;
6 requiring the cost of the examination to be paid by
7 the cemetery owner and the cost to be directly billed
8 to the cemetery owner; authorizing the Insurance
9 Commissioner to initiate action to recover certain
10 payments; authorizing the Insurance Commissioner to
11 censure a permittee, suspend or revoke a permit, or
12 levy a penalty; stating conditions in which the
13 Insurance Commissioner may make application for
14 receivership of certain organizations as it relates
15 to a cemetery merchandise trust fund; correcting
16 language; providing that certain monies shall be
17 transferred to the State Treasury for deposit into
18 the State Insurance Commissioner Revolving Fund;
19 requiring certain monies to be deposited into the
20 State Insurance Commissioner Revolving Fund;
21 repealing 8 O.S. 2001, Section 314, which relates to
22 failure to establish or maintain a cemetery
23 merchandise trust fund; providing for recodification;
24 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. 2001, Section 161, is
amended to read as follows:

Section 161. ~~This Act~~ Sections 161 through 170 of this title,
as recodified by this act, shall be known and may be cited as the
"Perpetual Care Fund Act".

SECTION 2. AMENDATORY 8 O.S. 2001, Section 162, as
amended by Section 7, Chapter 275, O.S.L. 2008 (8 O.S. Supp. 2009,
Section 162), is amended to read as follows:

1 Section 162. As used in the Perpetual Care Fund Act:

2 1. "Cemetery" or "cemeteries" means any land or structure in
3 this state dedicated to or used, or intended to be used, for the
4 interment of human remains;

5 2. "Burial space" means any grave space, lot, mausoleum crypt
6 or niche, whether above or below ground, which is used or intended
7 to be used for the interment of human remains;

8 3. "Purchase price" means the gross dollar amount the customer
9 ~~must~~ shall pay the cemetery under a contractual agreement between
10 the two to exchange ownership of, or rights to, certain burial
11 spaces. Purchase price ~~does~~ shall not include finance charges,
12 sales tax, charges for credit life insurance, opening and closing
13 costs and setting fees, but ~~does~~ shall include any amount which the
14 customer is required to pay as a deposit to the Perpetual Care Fund,
15 described in Section 163 of this title. On sales of burial spaces
16 wherein discounts or free spaces are granted to the customer by the
17 cemetery, the purchase price ~~is determined to~~ shall be the fair
18 market value or the normal selling price of that particular type of
19 burial space as sold by the cemetery; ~~and~~

20 4. "Financial institution" means a federally insured bank or
21 savings and loan authorized to exercise trust powers or a trust
22 company that is authorized to do business in this state;

23 5. "Income", except as provided in subsection D of Section 163
24 of this title, means the return derived from the principal amount;

1 6. "Insurance Commissioner" or "Commissioner" means the
2 Insurance Commissioner of the State of Oklahoma; and

3 7. "Designated agent" means one or more individuals designated
4 by the cemetery owner and whom the owner has acknowledged as having
5 fiduciary responsibilities under the Perpetual Care Fund Act.

6 SECTION 3. AMENDATORY 8 O.S. 2001, Section 163, as last
7 amended by Section 8, Chapter 275, O.S.L. 2008 (8 O.S. Supp. 2009,
8 Section 163), is amended to read as follows:

9 Section 163. A. In all cemeteries in this state where burial
10 spaces are sold, not less than ten percent (10%) of the purchase
11 price thereof shall be segregated and set aside as a permanent trust
12 fund to be known as the "Perpetual Care Fund". The Perpetual Care
13 Fund shall be invested as hereinafter prescribed, and the income
14 only shall be used in improving, caring for, and embellishing the
15 lots, walks, drives, parks and other improvements in ~~such~~ the
16 cemeteries and maintenance of office and care of records.

17 B. If a cemetery allows a person or other entity to construct
18 or otherwise establish a burial space at the cemetery that is not
19 purchased from the cemetery, the cemetery shall collect from ~~such~~
20 the person or entity an amount not less than ten percent (10%) of
21 the construction or retail cost of the burial space, to be deposited
22 in the ~~cemetery's~~ Perpetual Care Fund of the cemetery.

23 C. The owner or designated agent of a cemetery shall set aside
24 and deposit ~~such~~ the amounts required in subsections A and B of this

1 section in a financial institution authorized by law, as trustee, to
2 administer ~~such~~ the trusts, not later than thirty (30) days after
3 the close of the month in which was received the final payment on
4 the purchase price of each burial space. ~~Such~~ The amounts shall be
5 held by the trustee of the Perpetual Care Fund in trust for the
6 specific purposes stated in a written trust agreement. The trust
7 agreement may provide for an individual or other entity to exist as
8 cotrustee; provided, however, in no instance shall the cotrustee
9 have sole access to deposits held in the Perpetual Care Fund, except
10 as otherwise provided in this act.

11 D. Notwithstanding the requirements of subsection C of this
12 section, if the total amount of the Perpetual Care Fund maintained
13 by the cemetery is ~~One Hundred Thousand Dollars (\$100,000.00) or~~
14 ~~less~~ an amount equal to or less than the standard insurance amount
15 per depositor as provided by the Federal Deposit Insurance
16 Corporation, the cemetery may, in lieu of depositing the funds in a
17 trust account, purchase a certificate of deposit from a financial
18 institution according to the terms of this subsection. The
19 certificate of deposit shall be pledged in favor of the Oklahoma
20 ~~State Banking~~ Insurance Department with no right of withdrawal by
21 the cemetery, whether before or after maturity, except upon
22 application to, and approval by, the ~~State Banking~~ Insurance
23 Commissioner. The terms of the certificate of deposit shall provide
24 for notice to the Insurance Department within thirty (30) days prior

1 to maturity. Only interest accruing from the certificate of deposit
2 may be withdrawn by the cemetery and shall be considered income for
3 purposes of subsection A of this section. If a cemetery maintains a
4 certificate of deposit in lieu of a trust fund, as it collects funds
5 which ~~must~~ are required to be deposited into its Perpetual Care
6 Fund, it shall segregate those funds from its other operating funds
7 and contribute those funds to the certificate of deposit upon its
8 next maturity date. If a ~~cemetery's~~ Perpetual Care Fund of a
9 cemetery is maintained in a certificate of deposit, but grows in an
10 amount greater than ~~One Hundred Thousand Dollars (\$100,000.00)~~ the
11 standard insurance amount per depositor as provided by the Federal
12 Deposit Insurance Corporation, the cemetery shall comply with the
13 provisions of subsection C of this section by placing all of its
14 Perpetual Care Fund in trust and shall no longer maintain a
15 certificate of deposit as authorized by this subsection.

16 SECTION 4. AMENDATORY 8 O.S. 2001, Section 165, is
17 amended to read as follows:

18 Section 165. Accumulated trust funds held by the trustee of the
19 Perpetual Care Fund shall be invested in the manner provided in the
20 Oklahoma Trust Act, Sections 175.1 through 175.57 of Title 60 of the
21 Oklahoma Statutes, and any amendments thereto. The income derived
22 therefrom shall be returned to ~~such~~ the cemeteries to be used by
23 them only as provided by ~~this act~~ the Perpetual Care Fund Act.

1 SECTION 5. AMENDATORY 8 O.S. 2001, Section 166, as last
2 amended by Section 10, Chapter 80, O.S.L. 2007 (8 O.S. Supp. 2009,
3 Section 166), is amended to read as follows:

4 Section 166. A. The owner of a cemetery maintaining a
5 Perpetual Care Trust Fund, or certificate of deposit in lieu of a
6 Perpetual Care Trust Fund, shall be required to pay to the ~~State~~
7 ~~Banking~~ Insurance Commissioner an annual fee of Two Hundred Dollars
8 (\$200.00), and file a report of each cemetery by March 15 of each
9 year with the ~~State-Banking~~ Commissioner, showing, for the preceding
10 calendar year:

11 1. The gross amount received from sales of grave spaces, lots,
12 mausoleum crypts and niches;

13 2. The total purchase price of grave spaces, lots, mausoleum
14 crypts and niches on contracts which received final payment and
15 required deposits to the Perpetual Care Fund during the calendar
16 year;

17 3. The operating expenses incurred during the calendar year
18 which are eligible to be paid from income of the Perpetual Care
19 Fund;

20 4. The total amount of the principal of the Perpetual Care Fund
21 as of the beginning of the preceding calendar year; and

22 5. The amount segregated and deposited in the Perpetual Care
23 Fund as provided by ~~this act~~ the Perpetual Care Fund Act which, if
24 the Perpetual Care Fund is held in trust, shall be certified by the

1 trustee of the Perpetual Care Fund as to correctness thereof, and
2 the trustee shall provide:

- 3 a. the total amount of the principal of the Perpetual
- 4 Care Fund as of the end of the calendar year,
- 5 b. the securities and other assets in which such
- 6 perpetual care funds are invested,
- 7 c. the cash on hand,
- 8 d. a verification in writing of all assets in which
- 9 monies of the Perpetual Care Fund have been invested;
- 10 provided, ~~such~~ the verification shall be obtained from
- 11 the holder or holders of ~~such~~ the assets,
- 12 e. the income derived from the Perpetual Care Fund
- 13 investments during the calendar year, and
- 14 f. the gross expenditures or transfers from income of the
- 15 Perpetual Care Fund during the calendar year.

16 The annual fee collected pursuant to this subsection shall be
17 deposited in the ~~Cemetery Merchandise Trust Act~~ State Insurance
18 Commissioner Revolving Fund created pursuant to Section ~~316~~ 307.3 of
19 ~~this title~~ Title 36 of the Oklahoma Statutes.

20 B. If the Perpetual Care Fund is maintained in a certificate of
21 deposit in lieu of a trust fund, the cemetery shall provide in its
22 annual report a verification from the financial institution as to
23 the amount of principal of the Perpetual Care Fund as of the end of
24 the calendar year, and the amount of funds contributed to the

1 certificate of deposit by the cemetery as of each maturity date of
2 the certificate of deposit during the last calendar year.

3 C. The Commissioner shall have authority, at any time, to
4 inspect the books and records of any ~~such~~ cemetery, and to make an
5 examination thereof for the purpose of determining if proper sums
6 have been deposited with the trustee in the Perpetual Care Fund, or
7 in a certificate of deposit maintained in lieu of a trust fund, and
8 if the Fund is being properly administered by the trustee in
9 accordance with the provisions of the Perpetual Care Fund Act and
10 rules of the Commissioner. The examination shall be conducted
11 pursuant to Sections 309.1 through 309.7 of Title 36 of the Oklahoma
12 Statutes and the cost of the examination shall be paid by the
13 cemetery owner. The cost of the examination shall be billed
14 directly to the cemetery owner by the examiner. Each cemetery owner
15 and trustee is responsible for maintaining satisfactory books and
16 records which adequately justify all information contained in the
17 annual report required by this section. ~~The Commissioner shall~~
18 ~~charge and collect a fee for such examination, which fee shall be~~
19 ~~deposited in the Cemetery Merchandise Trust Act Revolving Fund.~~

20 SECTION 6. AMENDATORY 8 O.S. 2001, Section 167.1, is
21 amended to read as follows:

22 Section 167.1 Every cemetery which provides prepayment
23 financing programs to its customers under contracts in which a
24 finance charge is made shall comply with all applicable provisions

1 of the Uniform Consumer Credit Code, ~~Section~~ Sections 1-101 ~~et seq.~~
2 through 9-101 of Title 14A of the Oklahoma Statutes, ~~as they apply~~
3 ~~to disclosure and annual percentage rate calculation.~~

4 SECTION 7. AMENDATORY 8 O.S. 2001, Section 168, as
5 amended by Section 4, Chapter 3, O.S.L. 2009 (8 O.S. Supp. 2009,
6 Section 168), is amended to read as follows:

7 Section 168. A. The provisions of the Perpetual Care Fund Act
8 shall not apply to municipal, religious, fraternal, or nonprofit
9 entities, free community burial grounds, county cemetery
10 associations, Indian tribal cemeteries on tribal land and charitable
11 or eleemosynary institutions operating cemeteries in this state.

12 B. The provisions of the Perpetual Care Fund Act may apply to
13 unincorporated cemetery associations operating cemeteries in this
14 state. Unincorporated cemetery associations that make application
15 with the ~~State Bank~~ Insurance Commissioner to maintain a perpetual
16 care fund and are approved by the Commissioner shall comply with all
17 provisions of the Perpetual Care Fund Act.

18 SECTION 8. AMENDATORY 8 O.S. 2001, Section 168.1, is
19 amended to read as follows:

20 Section 168.1 The Perpetual Care Fund Act, ~~Section 161 et seq.~~
21 ~~of Title 8 of the Oklahoma Statutes,~~ shall be administered by the
22 ~~State Bank~~ Insurance Commissioner. The Commissioner is authorized
23 to promulgate reasonable rules and regulations concerning the
24 keeping and inspection of records, the filing of contracts and

1 reports, and all other matters ~~incidental to~~ concerning the orderly
2 administration and implementation of ~~this law~~ the Perpetual Care
3 Fund Act.

4 SECTION 9. AMENDATORY 8 O.S. 2001, Section 169.1, is
5 amended to read as follows:

6 Section 169.1 It shall be unlawful for any owner or operator of
7 a cemetery to accept money or anything of value under a contract
8 entered into pursuant to the Perpetual Care Fund Act and
9 fraudulently or intentionally fail or refuse to honor ~~such~~ the
10 contract providing for the improving, caring for, and embellishing
11 of the burial lots, walks, drives, parks and other improvements in
12 the cemetery.

13 In addition to other penalties authorized by law, this
14 fraudulent or intentional failure or refusal to honor ~~such~~ the
15 contract with the consumer shall be a violation of the Oklahoma
16 Consumer Protection Act pursuant to Sections 751 through 764.1 of
17 Title 15 of the Oklahoma Statutes.

18 SECTION 10. AMENDATORY 8 O.S. 2001, Section 170, is
19 amended to read as follows:

20 Section 170. ~~The Attorney General of this state, at the request~~
21 ~~of the State Banking Commissioner,~~ Insurance Commissioner may
22 initiate an action to recover payments required to be deposited to
23 ~~the Oklahoma State Banking Department revolving fund~~ State Insurance
24 Commissioner Revolving Fund pursuant to the Perpetual Care Fund Act

1 or to recover other monies received or disbursed in violation of the
2 Perpetual Care Fund Act. ~~In addition, the Attorney General may seek~~
3 ~~to enjoin any violation of the Perpetual Care Fund Act~~ The Insurance
4 Commissioner may, after an opportunity for hearing and a
5 determination that an owner of a cemetery is in violation of the
6 Perpetual Care Fund Act, censure an owner of a cemetery, levy a fine
7 as deemed appropriate by the Commissioner, or both censure and levy
8 a fine against an owner of a cemetery.

9 SECTION 11. AMENDATORY 8 O.S. 2001, Section 301, is
10 amended to read as follows:

11 Section 301. Sections ~~18~~ 301 through ~~32~~ 316 of this ~~act~~ title,
12 as recodified by this act, shall be known and may be cited as the
13 "Cemetery Merchandise Trust Act".

14 SECTION 12. AMENDATORY 8 O.S. 2001, Section 302, as
15 amended by Section 5, Chapter 3, O.S.L. 2009 (8 O.S. Supp. 2009,
16 Section 302), is amended to read as follows:

17 Section 302. As used in the Cemetery Merchandise Trust Act:

18 1. "Cemetery merchandise" means markers, memorials, vases,
19 memorial vases, monuments, equipment, crypts, niches or outer
20 enclosures. Cemetery merchandise shall not include the sale of
21 lands or interests therein as grave lots or grave spaces; burial or
22 interment rights; and delivered or installed crypts, niches or outer
23 enclosures;

1 2. "Purchase price" means the gross amount to be paid for
2 cemetery merchandise under the provisions of a prepaid cemetery
3 merchandise contract. Purchase price shall not include finance
4 charges, sales tax, charges for real property interests or charges
5 for credit life insurance;

6 3. "Prepaid cemetery merchandise contract" means any agreement
7 for the sale of cemetery merchandise by an organization which
8 requires payment of the purchase price, in whole or in part, prior
9 to delivery of the cemetery merchandise, which agreement is entered
10 into from and after November 1, 1989;

11 4. "Minimum funding requirement" means that portion of the
12 purchase price equal to one hundred ten percent (110%) of the
13 wholesale cost, plus delivery charges, of the cemetery merchandise
14 covered in a prepaid cemetery merchandise contract;

15 5. "Organization" means any individual, firm, partnership,
16 trust, corporation, association or entity. Organization shall not
17 include state, county, municipal, township, rural community,
18 religious, fraternal or nonprofit entities, free community burial
19 grounds, county cemetery associations, Indian tribal cemeteries on
20 tribal land and charitable or eleemosynary institutions operating
21 cemeteries in this state;

22 6. "Outer enclosure" means a grave liner, grave box, or grave
23 vault;

1 7. "Lawn crypt" means a subsurface permanent outer enclosure
2 installed before need in multiple units for the purpose of interring
3 human remains;

4 8. ~~"Board" means the State Banking Board;~~

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

8 ~~10.~~ 9. "Commissioner" or "Insurance Commissioner" means the
9 ~~State Banking~~ Insurance Commissioner of the State of Oklahoma; and

10 ~~11.~~ 10. "Wholesale cost" means an amount determined on the
11 basis of such standard quotations and price lists as are published
12 by the vendor of the cemetery merchandise, without regard to any
13 discounts that may be available to the organization.

14 SECTION 13. AMENDATORY 8 O.S. 2001, Section 303, as
15 amended by Section 6, Chapter 3, O.S.L. 2009 (8 O.S. Supp. 2009,
16 Section 303), is amended to read as follows:

17 Section 303. A. Any organization which shall accept money or
18 anything of value for cemetery merchandise pursuant to a prepaid
19 cemetery merchandise contract shall first obtain a permit from the
20 ~~State Banking~~ Insurance Commissioner authorizing the transaction of
21 this type of business before entering into ~~any such~~ the contract.

22 It shall be unlawful to sell any prepaid cemetery merchandise unless
23 the organization holds a valid, current permit at the time ~~such~~ the
24 contract is made. The organization shall not be entitled to enforce

1 a contract made in violation of the Cemetery Merchandise Trust Act,
2 but the purchaser, or the heirs or legal representative of the
3 purchaser, shall be entitled to recover triple the amounts paid to
4 the organization with interest thereon at the rate of six percent
5 (6%) per annum under any contract made in violation ~~hereof~~ of this
6 act.

7 B. An organization with any prepaid cemetery merchandise
8 contracts subject to the provisions of the Cemetery Merchandise
9 Trust Act shall apply for, and obtain, approval of the Commissioner
10 before transferring or conveying in any manner the cemetery, its
11 obligations or both the cemetery and its obligations under ~~such~~ the
12 prepaid cemetery merchandise contracts. ~~Such~~ The application shall
13 be accompanied by a fee equal to that required under Section 305 of
14 this title and shall include such information as the Commissioner
15 may prescribe. The Commissioner shall not approve any such transfer
16 or conveyance until the applicant has provided sufficient evidence
17 that a cemetery merchandise trust fund equal to the minimum funding
18 requirement is maintained pursuant to Section 306 of this title or
19 the applicant has obtained a surety bond pursuant to the provisions
20 of Section 307 of this title.

21 SECTION 14. AMENDATORY 8 O.S. 2001, Section 304, as last
22 amended by Section 7, Chapter 3, O.S.L. 2009 (8 O.S. Supp. 2009,
23 Section 304), is amended to read as follows:

24

1 Section 304. A. The Cemetery Merchandise Trust Act, ~~Section~~
2 ~~302 et seq.~~ Sections 301 through 316 of this title, shall be
3 administered by the ~~State Banking~~ Insurance Commissioner. The
4 Commissioner is authorized to promulgate reasonable rules concerning
5 the keeping and inspection of records, the filing of contracts and
6 reports, investments of and handling of the trust funds, and all
7 other matters ~~incidental to~~ concerning the orderly administration
8 and implementation of this law the Cemetery Merchandise Trust Act.
9 ~~Any reference to the Oklahoma Banking Board in rules promulgated~~
10 ~~pursuant to the Cemetery Merchandise Trust Act shall mean the State~~
11 ~~Banking Commissioner. The rules promulgated by the Oklahoma Banking~~
12 ~~Board prior to the effective date of this act shall continue in~~
13 ~~effect until such rules are amended or repealed by rule of the~~
14 ~~Commissioner promulgated pursuant to the provisions of Article I of~~
15 ~~the Administrative Procedures Act.~~ All prepaid cemetery merchandise
16 contracts ~~must~~ shall be in writing, and no ~~such~~ contract form
17 created after the effective date of this act shall be used without
18 first being submitted to, and approved by, the Commissioner.

19 B. An organization aggrieved by an action or order of the
20 Commissioner may appeal the action or order to the ~~State Banking~~
21 ~~Board which may then affirm, modify or reverse the action or order~~
22 ~~of the Commissioner as provided by~~ Oklahoma Insurance Department in
23 accordance with Article II of the Administrative Procedures Act.
24

1 C. The provisions of the Cemetery Merchandise Trust Act shall
2 not be applicable to any organization that has obtained a permit
3 pursuant to Section 6121 of Title 36 of the Oklahoma Statutes if the
4 organization is in compliance with the provisions of Sections 6121
5 through 6136.18 of Title 36 of the Oklahoma Statutes with respect to
6 items that are considered cemetery merchandise pursuant to the
7 Cemetery Merchandise Trust Act.

8 D. Unless sold pursuant to a permit issued under Section 6121
9 of Title 36 of the Oklahoma Statutes, no organization in Oklahoma
10 may sell, in advance of actual need, the services of opening or
11 closing a burial space, as defined in Section 162 of this title,
12 unless the organization deposits in trust no less than sixty-five
13 percent (65%) of the principal amount of the services sold, or
14 maintains a surety bond for the full principal amount of the
15 services sold. Any contracts for ~~such~~ services sold before July 1,
16 ~~2009~~ 2010, remain enforceable by the purchaser against the seller.

17 SECTION 15. AMENDATORY 8 O.S. 2001, Section 305, as
18 amended by Section 9, Chapter 275, O.S.L. 2008 (8 O.S. Supp. 2009,
19 Section 305), is amended to read as follows:

20 Section 305. A. Each organization desiring to accept money or
21 anything of value for prepaid cemetery merchandise shall file an
22 application for a permit with the ~~State-Banking~~ Insurance
23 Commissioner, and shall at the time of filing ~~such~~ the application
24 pay one initial filing fee of Two Hundred Dollars (\$200.00). The

1 Commissioner shall issue a permit upon the receipt of the
2 application and payment of the filing fee, and upon making a finding
3 that the applicant has complied with the rules as may be established
4 pursuant to the Cemetery Merchandise Trust Act by the Commissioner.
5 All ~~such~~ applications shall be signed by the organization requesting
6 the permit, and shall contain a statement that the applicant will
7 comply with all the requirements as established pursuant to the
8 Cemetery Merchandise Trust Act. All permits shall expire on the
9 15th day of March of the year following the year the permit is first
10 issued, unless renewed. Permits shall be renewed for a period not
11 to exceed the succeeding March 15 upon the payment of a renewal fee
12 of Two Hundred Dollars (\$200.00). Late application for renewal of a
13 permit shall require a fee of double the renewal fee. No
14 application for renewal of a permit shall be accepted after ~~May 1~~
15 March 15 of each year. ~~Applicants~~ Late applicants shall be required
16 to reapply as if they were a new applicant, and pay an application
17 fee ~~and all late fees and~~ equal to an amount that is double the
18 ~~renewal fees that had not~~ fee in addition to any fines that may have
19 ~~been paid~~ imposed with respect to an expired permit.

20 B. The Commissioner may cancel a permit or refuse to issue a
21 permit or refuse to issue a renewal of ~~such~~ a permit for failure to
22 comply with any provisions of the Cemetery Merchandise Trust Act or
23 any rules promulgated thereto by the Commissioner, after reasonable
24 notice to the permittee and ~~after a~~ opportunity for hearing before

1 the Commissioner ~~if the permittee requests a hearing~~ in accordance
2 with Article II of the Administrative Procedures Act.

3 C. No organization shall be entitled to a new permit after
4 cancellation, or refusal by the Commissioner to renew a permit, but
5 shall thereafter be issued a new permit upon satisfactory proof of
6 compliance with the Cemetery Merchandise Trust Act.

7 D. Any person or organization aggrieved by the actions of the
8 Commissioner may appeal therefrom to the ~~State Banking Board~~
9 Oklahoma Insurance Department as provided by the Administrative
10 Procedures Act.

11 SECTION 16. AMENDATORY 8 O.S. 2001, Section 306, is
12 amended to read as follows:

13 Section 306. A. Each organization shall establish and maintain
14 a cemetery merchandise trust fund with a financial institution
15 having trust powers. A cemetery merchandise trust fund shall at all
16 times be in the custody of a financial institution. Any cemetery
17 merchandise trust funds may be invested, reinvested, exchanged,
18 retained, sold and managed as a part of common trust funds in the
19 manner required by and subject to the ~~State Banking~~ Insurance
20 Commissioner and at the election of the trustee. A copy of each
21 contract or a written notice containing all relevant information
22 regarding ~~such~~ the prepaid cemetery merchandise contracts for which
23 deposits are made shall be furnished to the financial institution.

1 The financial institution shall serve as trustee for the purposes of
2 the Cemetery Merchandise Trust Act.

3 B. Deposits to a cemetery merchandise trust fund shall be
4 carried in the name of the organization and the amounts deposited
5 therein may be commingled. Provided, however, the accounting
6 records shall establish a separate account for each prepaid cemetery
7 merchandise contract and shall show the amounts deposited, and the
8 income or loss accruing thereon, with respect to each prepaid
9 cemetery merchandise contract. The trustee shall reimburse the
10 organization for all income taxes and costs incurred with respect to
11 the operation of ~~such~~ the fund, and the trustee shall be reimbursed
12 from the earnings of ~~such~~ the fund for all reasonable costs incurred
13 in serving as trustee, including a reasonable fee for its services.
14 The taxes and costs shall be paid from earnings for the fund prior
15 to the allocation of earnings to the individual accounts.

16 C. An organization entering into a prepaid cemetery merchandise
17 contract shall be entitled to retain all of the purchase price under
18 the prepaid cemetery merchandise contract until it has received an
19 amount equal to thirty-five percent (35%) of the purchase price of
20 the cemetery merchandise sold in a prepaid cemetery merchandise
21 contract.

22 D. After an organization has received the amount it is entitled
23 to receive, in accordance with subsection C of this section, all
24 payments of the purchase price to the organization pursuant to a

1 prepaid cemetery merchandise contract shall be deposited by the
2 organization in a cemetery merchandise trust fund until such time as
3 the requirements of subsection E of this section have been satisfied
4 or delivery is made of the cemetery merchandise, or until an amount
5 satisfying the minimum funding requirement has been deposited.
6 Thereafter, all payments of the purchase price in excess of the
7 minimum funding requirement may be retained by the organization.
8 Deposits shall be made within ten (10) business days after the end
9 of the month in which such deposits are received by the
10 organization.

11 E. Annually, as of December 31 of each year, each organization
12 shall determine the wholesale cost for all cemetery merchandise
13 covered by a prepaid cemetery merchandise contract for which funds
14 are then held in a cemetery merchandise trust or in an individual
15 merchandise account. If the amount held with respect to a prepaid
16 cemetery merchandise contract exceeds the minimum funding required,
17 the excess shall be paid by the trustee of the cemetery merchandise
18 trust to the organization. In such event, no further deposit shall
19 be required with respect to the prepaid cemetery merchandise
20 contract until such time as the amount held no longer exceeds the
21 minimum funding requirement. If the minimum funding requirement is
22 not satisfied, no amount shall be paid to or withdrawn by the
23 organization and the organization shall continue or shall resume, as
24

1 the case may be, making the deposits required by subsection D of
2 this section.

3 F. No part of the ~~moneys~~ monies required to be held in a
4 cemetery merchandise trust fund pursuant to the provisions of the
5 Cemetery Merchandise Trust Act shall ever be used for any other
6 purpose other than investment as authorized by this section until
7 delivery of the cemetery merchandise is made.

8 G. Delivery of cemetery merchandise for the purposes of this
9 subsection may be accomplished in one of the following ways:

10 1. Actual and physical delivery of the cemetery merchandise to
11 the purchaser;

12 2. Physical attachment of the cemetery merchandise to realty or
13 cemetery space owned by the purchaser;

14 3. Certification by an approved manufacturer to the purchaser
15 that the organization has paid the wholesale price of the cemetery
16 merchandise and that the cemetery merchandise ~~will~~ shall be
17 delivered upon request of the purchaser;

18 4. Written notification to the purchaser by the organization
19 that the cemetery merchandise is in the possession of the
20 organization and may be removed by the purchaser upon full payment
21 for the cemetery merchandise; and

22 5. When construction or permanent installation of the cemetery
23 merchandise has been completed, with respect to cemetery merchandise
24 which is affixed to realty.

1 H. Upon delivery of the cemetery merchandise pursuant to a
2 prepaid cemetery merchandise trust contract, the organization shall
3 present the trustee with a verified statement that delivery has been
4 made, and upon ~~such~~ the presentation, the trustee shall pay to the
5 organization the amount of any funds held in trust with respect to
6 the cemetery merchandise delivered and no further deposits shall be
7 made with respect to ~~such~~ the cemetery merchandise.

8 I. Should the buyer move to a community in which the cemetery
9 does not accept transfers of outer enclosures from the cemetery
10 which the buyer has entered into a cemetery merchandise contract,
11 the selling organization will refund sixty-five percent (65%) of the
12 retail price plus interest equal to the annual interest computed
13 from the date that the contract was paid in full based on the
14 ~~financial institution's~~ passbook interest rate of the financial
15 institution at the time that the refund is requested.

16 SECTION 17. AMENDATORY 8 O.S. 2001, Section 307, as
17 amended by Section 8, Chapter 3, O.S.L. 2009 (8 O.S. Supp. 2009,
18 Section 307), is amended to read as follows:

19 Section 307. A. As an alternative to the trust requirements of
20 Section 306 of this title, an organization may purchase a surety
21 bond in an amount not less than the minimum funding requirement.

22 B. The surety bond shall be made payable to the State of
23 Oklahoma for the benefit of the ~~State-Banking~~ Insurance Commissioner
24

1 and all purchasers of prepaid cemetery merchandise. The bond shall
2 be approved by the Commissioner.

3 C. The Commissioner may establish by rule the requirements and
4 guidelines for the surety bonds required ~~herein~~ pursuant to this
5 section.

6 D. A surety bond maintained under the provisions of this
7 section or Section 304 of this title may be cancelled or terminated
8 by the surety only by providing notice to the Commissioner, no later
9 than ninety (90) days before the effective date of ~~such~~ the
10 cancellation or termination. Notwithstanding ~~such~~ the cancellation,
11 termination, or expiration of a bond maintained under this section
12 or Section 304 of this title, the surety shall remain liable for
13 obligations arising during the term of the bond and prior to the
14 termination, cancellation or expiration.

15 SECTION 18. AMENDATORY 8 O.S. 2001, Section 308, is
16 amended to read as follows:

17 Section 308. Each organization shall file an annual report with
18 the ~~State Banking~~ Insurance Commissioner on or before March 15 of
19 each year in ~~such~~ a form as the Commissioner may require, showing
20 the name of the financial institution holding the cemetery
21 merchandise trust fund and the amount of the trust fund under each
22 contract on the preceding December 31, and also showing the method
23 of determination of the wholesale costs made pursuant to Section 306
24 of this title. The total required deposits to the cemetery

1 merchandise trust fund during the year shall also be reported. Each
2 cemetery is responsible for maintaining satisfactory books and
3 records, which will adequately justify all information contained in
4 the annual report required by this section. Any organization which
5 has discontinued the sale of prepaid cemetery merchandise, but which
6 still has funds deposited in a cemetery merchandise trust fund or
7 surety, shall not be required to obtain a renewal of its permit, but
8 it shall continue to make annual reports to the Commissioner until
9 all ~~such~~ the funds have been disbursed pursuant to the Cemetery
10 Merchandise Trust Act. A filing fee of Two Hundred Dollars
11 (\$200.00) shall accompany each report. If any officer of any
12 organization fails or refuses to file an annual report, or fails or
13 refuses to cause it to be filed within thirty (30) days after the
14 organization has been notified by the Commissioner that the report
15 is due and has not been received, ~~such~~ the officer shall be guilty
16 of a misdemeanor and shall be punished as prescribed in Section 315
17 of this title.

18 SECTION 19. AMENDATORY 8 O.S. 2001, Section 309, is
19 amended to read as follows:

20 Section 309. The ~~State Banking Insurance~~ Insurance Commissioner may
21 examine each organization so as to approve the ~~organization's~~
22 determination by the organization of the wholesale costs made
23 pursuant to Section 306 of this title. The ~~fee for the examination~~
24 ~~may be paid from the organization's cemetery merchandise trust fund.~~

1 ~~For such purposes, the Commissioner is authorized to administer~~
2 ~~oaths and to examine under oath the directors, officers, employees~~
3 ~~and agents of any organization. The examination may be reduced to~~
4 ~~writing by the person taking it, and the examiner may make findings~~
5 ~~as to the condition of each cemetery merchandise trust fund~~
6 ~~examined. For the purpose of the examinations, the Commissioner may~~
7 ~~require any officer of an organization to furnish and submit the~~
8 ~~books, records, papers and instruments of the organization to the~~
9 ~~examiner~~ examination shall be conducted pursuant to Sections 309.1
10 through 309.7 of Title 36 of the Oklahoma Statutes and the cost of
11 the examination shall be paid by the cemetery owner. The cost of
12 the examination shall be billed directly to the cemetery owner by
13 the examiner.

14 SECTION 20. AMENDATORY 8 O.S. 2001, Section 310, is
15 amended to read as follows:

16 Section 310. In the event the ~~State Banking~~ Insurance
17 Commissioner determines that ~~moneys~~ monies have been improperly paid
18 by the trustee to the organization during the period covered by the
19 examination, the Commissioner shall order the organization to
20 redeposit to the trust ~~such moneys~~ the monies improperly withdrawn
21 within sixty (60) days.

22 SECTION 21. AMENDATORY 8 O.S. 2001, Section 311, is
23 amended to read as follows:

24

1 Section 311. A. The Attorney General of this state, at the
2 request of the State Banking Insurance Commissioner, may, after
3 notice and an opportunity for hearing, initiate an action to recover
4 payments required to be redeposited to the cemetery merchandise
5 trust pursuant to the Cemetery Merchandise Trust Act or to recover
6 other moneys monies received or disbursed in violation of the
7 Cemetery Merchandise Trust Act. In addition, the Attorney General
8 may seek to enjoin any violation of said act.

9 B. The Commissioner may, after an opportunity for hearing,
10 censure a permittee or may suspend or revoke a permit for violation
11 of any provision of the Cemetery Merchandise Trust Act. In addition
12 to, or in lieu of, any censure, suspension or revocation, a
13 permittee may be subject to a civil penalty of not less than One
14 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
15 (\$1,000.00) per occurrence or violation.

16 SECTION 22. AMENDATORY 8 O.S. 2001, Section 313, is
17 amended to read as follows:

18 Section 313. Whenever any officer of any organization refuses
19 to submit the books, records, papers and instruments of ~~such an~~ an
20 organization to the examination and inspection of the ~~State Banking~~
21 ~~Commissioner's~~ assistants or examiners of the Insurance
22 Commissioner, or refuses or neglects to establish or maintain a
23 cemetery merchandise trust fund in accordance with the requirements
24 of the Cemetery Merchandise Trust Act within ninety (90) days after

1 a written demand to establish or maintain a cemetery merchandise
2 trust fund is made by the Commissioner, or in any manner obstructs
3 or interferes with the examination of its cemetery merchandise trust
4 fund, or refuses to be examined on oath concerning any of the
5 affairs of its cemetery merchandise trust fund, the Commissioner may
6 ~~request the Attorney General of this state to institute proceedings~~
7 ~~for the appointment of a receiver for such organization~~ make
8 application for receivership in the manner of a domestic insurer
9 pursuant to Sections 1901 through 1920 of Title 36 of the Oklahoma
10 Statutes.

11 SECTION 23. AMENDATORY 8 O.S. 2001, Section 315, is
12 amended to read as follows:

13 Section 315. Any organization, or its officers or directors,
14 which violate any provision of the Cemetery Merchandise Trust Act
15 shall, upon conviction, be deemed guilty ~~or~~ of a misdemeanor and
16 shall be subject to a fine of not less than One Hundred Dollars
17 (\$100.00) nor more than Two Thousand Five Hundred Dollars
18 (\$2,500.00).

19 SECTION 24. AMENDATORY 8 O.S. 2001, Section 316, is
20 amended to read as follows:

21 Section 316. ~~There is hereby created the "Cemetery Merchandise~~
22 ~~Trust Act Revolving Fund". The fund shall consist of all~~ Upon the
23 effective date of this act, all monies received by the State Banking
24 Commissioner pursuant to the Cemetery Merchandise Trust Act and all

1 monies deposited in the Cemetery Merchandise Trust Act Revolving
2 Fund and any other monies as required by law shall be transferred to
3 the State Treasury and deposited into the State Insurance
4 Commissioner Revolving Fund provided for in Section 307.3 of Title
5 36 of the Oklahoma Statutes. Monies received after the effective
6 date of this act pursuant to the Cemetery Merchandise Trust Act
7 shall be deposited into the State Insurance Commissioner Revolving
8 Fund. The fund shall be a continuing fund not subject to fiscal
9 year limitations and shall be subject to the administrative
10 direction of the Oklahoma Banking Board. Expenditures from the fund
11 shall be made upon warrants issued by the State Treasurer against
12 claims submitted to the Director of State Finance. Monies in the
13 fund may be expended for expenses incurred in administering and
14 enforcing the Cemetery Merchandise Trust Act and the Perpetual Care
15 Fund Act.

16 SECTION 25. REPEALER 8 O.S. 2001, Section 314, is hereby
17 repealed.

18 SECTION 26. RECODIFICATION 8 O.S. 2001, Section 161, as
19 amended by Section 1 of this act, shall be recodified as Section
20 7101 of Title 36 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering.

22 SECTION 27. RECODIFICATION 8 O.S. 2001, Section 162, as
23 last amended by Section 2 of this act, shall be recodified as
24

1 Section 7102 of Title 36 of the Oklahoma Statutes, unless there is
2 created a duplication in numbering.

3 SECTION 28. RECODIFICATION 8 O.S. 2001, Section 163, as
4 last amended by Section 3 of this act, shall be recodified as
5 Section 7103 of Title 36 of the Oklahoma Statutes, unless there is
6 created a duplication in numbering.

7 SECTION 29. RECODIFICATION 8 O.S. 2001, Section 164,
8 shall be recodified as Section 7104 of Title 36 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering.

10 SECTION 30. RECODIFICATION 8 O.S. 2001, Section 165, as
11 amended by Section 4 of this act, shall be recodified as Section
12 7105 of Title 36 of the Oklahoma Statutes, unless there is created a
13 duplication in numbering.

14 SECTION 31. RECODIFICATION 8 O.S. 2001, Section 166, as
15 last amended by Section 5 of this act, shall be recodified as
16 Section 7106 of Title 36 of the Oklahoma Statutes, unless there is
17 created a duplication in numbering.

18 SECTION 32. RECODIFICATION 8 O.S. 2001, Section 167.1,
19 as amended by Section 6 of this act, shall be recodified as Section
20 7107 of Title 36 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering.

22 SECTION 33. RECODIFICATION 8 O.S. 2001, Section 168, as
23 last amended by Section 7 of this act, shall be recodified as
24

1 Section 7108 of Title 36 of the Oklahoma Statutes, unless there is
2 created a duplication in numbering.

3 SECTION 34. RECODIFICATION 8 O.S. 2001, Section 168.1,
4 as amended by Section 8 of this act, shall be recodified as Section
5 7109 of Title 36 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering.

7 SECTION 35. RECODIFICATION 8 O.S. 2001, Section 169,
8 shall be recodified as Section 7110 of Title 36 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering.

10 SECTION 36. RECODIFICATION 8 O.S. 2001, Section 169.1,
11 as amended by Section 9 of this act, shall be recodified as Section
12 7111 of Title 36 of the Oklahoma Statutes, unless there is created a
13 duplication in numbering.

14 SECTION 37. RECODIFICATION 8 O.S. 2001, Section 170, as
15 amended by Section 10 of this act, shall be recodified as Section
16 7112 of Title 36 of the Oklahoma Statutes, unless there is created a
17 duplication in numbering.

18 SECTION 38. RECODIFICATION 8 O.S. 2001, Section 301, as
19 amended by Section 11 of this act, shall be recodified as Section
20 7121 of Title 36 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering.

22 SECTION 39. RECODIFICATION 8 O.S. 2001, Section 302, as
23 last amended by Section 12 of this act, shall be recodified as
24

1 Section 7122 of Title 36 of the Oklahoma Statutes, unless there is
2 created a duplication in numbering.

3 SECTION 40. RECODIFICATION 8 O.S. 2001, Section 303, as
4 last amended by Section 13 of this act, shall be recodified as
5 Section 7123 of Title 36 of the Oklahoma Statutes, unless there is
6 created a duplication in numbering.

7 SECTION 41. RECODIFICATION 8 O.S. 2001, Section 304, as
8 last amended by Section 14 of this act, shall be recodified as
9 Section 7124 of Title 36 of the Oklahoma Statutes, unless there is
10 created a duplication in numbering.

11 SECTION 42. RECODIFICATION 8 O.S. 2001, Section 305, as
12 last amended by Section 15 of this act, shall be recodified as
13 Section 7125 of Title 36 of the Oklahoma Statutes, unless there is
14 created a duplication in numbering.

15 SECTION 43. RECODIFICATION 8 O.S. 2001, Section 306, as
16 amended by Section 16 of this act, shall be recodified as Section
17 7126 of Title 36 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering.

19 SECTION 44. RECODIFICATION 8 O.S. 2001, Section 307, as
20 last amended by Section 17 of this act, shall be recodified as
21 Section 7127 of Title 36 of the Oklahoma Statutes, unless there is
22 created a duplication in numbering.

23 SECTION 45. RECODIFICATION 8 O.S. 2001, Section 308, as
24 amended by Section 18 of this act, shall be recodified as Section

1 7128 of Title 36 of the Oklahoma Statutes, unless there is created a
2 duplication in numbering.

3 SECTION 46. RECODIFICATION 8 O.S. 2001, Section 309, as
4 amended by Section 19 of this act, shall be recodified as Section
5 7129 of Title 36 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering.

7 SECTION 47. RECODIFICATION 8 O.S. 2001, Section 310, as
8 amended by Section 20 of this act, shall be recodified as Section
9 7130 of Title 36 of the Oklahoma Statutes, unless there is created a
10 duplication in numbering.

11 SECTION 48. RECODIFICATION 8 O.S. 2001, Section 311, as
12 amended by Section 21 of this act, shall be recodified as Section
13 7131 of Title 36 of the Oklahoma Statutes, unless there is created a
14 duplication in numbering.

15 SECTION 49. RECODIFICATION 8 O.S. 2001, Section 312,
16 shall be recodified as Section 7132 of Title 36 of the Oklahoma
17 Statutes, unless there is created a duplication in numbering.

18 SECTION 50. RECODIFICATION 8 O.S. 2001, Section 313, as
19 amended by Section 22 of this act, shall be recodified as Section
20 7133 of Title 36 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering.

22 SECTION 51. RECODIFICATION 8 O.S. 2001, Section 315, as
23 amended by Section 23 of this act, shall be recodified as Section
24

1 7134 of Title 36 of the Oklahoma Statutes, unless there is created a
2 duplication in numbering.

3 SECTION 52. RECODIFICATION 8 O.S. 2001, Section 316, as
4 amended by Section 24 of this act, shall be recodified as Section
5 7135 of Title 36 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering.

7 SECTION 53. This act shall become effective July 1, 2010.

8 SECTION 54. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12 Passed the Senate the 23rd day of February, 2010.

13

14

Presiding Officer of the Senate

15

16 Passed the House of Representatives the ____ day of _____,
17 2010.

18

19

Presiding Officer of the House
of Representatives

20

21

22

23

24