STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

SENATE BILL 2042 By: Brown

AS INTRODUCED

An Act relating to cemeteries and insurance; amending 8 O.S. 2001, Sections 161, 162, as amended by Section 7, Chapter 275, O.S.L. 2008, 163, as last amended by Section 8, Chapter 275, O.S.L. 2008, 165, 166, as last amended by Section 10, Chapter 80, O.S.L. 2007, 167.1, 168, as amended by Section 4, Chapter 3, O.S.L. 2009, 168.1, 169.1 and 170 (8 O.S. Supp 2009, Sections 162, 163, 166, and 168), which relate to the Perpetual Care Fund Act; updating short title; transferring duties from the State Banking Commissioner to the Insurance Commissioner; adding definitions; modifying the amount in a cemetery's Perpetual Care Fund that qualifies a cemetery to purchase a certificate of deposit; updating statutory citations; requiring certain examination of a Perpetual Care Fund to be conducted pursuant to law; requiring the cost of the examination to be paid by 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. 2009 Supp., 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

definitions; requiring the Cemetery Merchandise Trust Act to be administered by the Insurance Commissioner; modifying date; specifying the amount of the application fee for late applicants; requiring certain examination to be conducted pursuant to law; requiring the cost of the examination to be paid by the cemetery owner and the cost to be directly billed to the cemetery owner; authorizing the Insurance Commissioner to initiate action to recover certain payments; authorizing the Insurance Commissioner to censure a permittee, suspend or revoke a permit, or levy a penalty; stating conditions in which the Insurance Commissioner may make application for receivership of certain organizations as it relates to a cemetery merchandise trust fund; correcting language; providing that certain monies shall be transferred to the State Treasury for deposit into the State Insurance Commissioner Revolving Fund; requiring certain monies to be deposited into the State Insurance Commissioner Revolving Fund; repealing 8 O.S. 2001, Section 314, which relates to failure to establish or maintain a cemetery merchandise trust fund; providing for recodification; 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the total amount of the principal of the Perpetual Care Fund as of the end of the calendar year,

b. the securities and other assets in which such perpetual care funds are invested,

c. the cash on hand,

d. a verification in writing of all assets in which monies of the Perpetual Care Fund have been invested; provided, ~~such~~ the verification shall be obtained from the holder or holders of ~~such~~ the assets,

e. the income derived from the Perpetual Care Fund investments during the calendar year, and

f. the gross expenditures or transfers from income of the Perpetual Care Fund during the calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 303. A. Any organization which shall accept money or anything of value for cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall first obtain a permit from the ~~State Banking~~ Insurance Commissioner authorizing the transaction of this type of business before entering into ~~any such~~ the contract. It shall be unlawful to sell any prepaid cemetery merchandise unless the organization holds a valid, current permit at the time ~~such~~ the contract is made. The organization shall not be entitled to enforce

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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