

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1599

By: Shortey

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5
6 AS INTRODUCED

7 An Act relating to prepaid funeral benefits; amending
8 36 O.S. 2011, Section 6125, which relates to prepaid
9 funeral benefits contract; prohibiting certain
contract from being offered; and providing an
effective date.

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

13 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6125, is
14 amended to read as follows:

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

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

10 3. The funds required to be deposited pursuant to paragraphs 1
11 and 2 of this subsection shall be deposited within ten (10) days
12 after the collection of the funds and shall be held in a trust fund
13 in this state for the use, benefit, and protection of purchasers of
14 contracts for prepaid funeral benefits. Nothing contained within
15 this section shall be construed to prohibit an organization
16 authorized to accept prepaid funds from transferring the funds held
17 in trust from one trust depository to another if notice of the
18 transfer is given to the Insurance Commissioner within ten (10) days
19 before the transfer and the organization transferring the funds
20 remains the designated trustor. This subsection shall not affect
21 funds invested prior to November 1, 1988.

22 B. ~~An~~ Except as otherwise provided in this subsection, an
23 organization authorized to accept prepaid funds shall be authorized
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1 to provide purchasers with a choice of either of the following types
2 of contracts:

3 1. A contract for Specific and Described Funeral Merchandise
4 and Service at a Guaranteed Price. The provisions of this type of
5 contract shall provide that interest paid by the organization upon
6 monies deposited in trust shall be added to the principal and that
7 principal and interest shall become available for disbursement to
8 the organization upon the death of the beneficiary and if withdrawal
9 of monies occurs prior to death, the net value, plus the amount
10 withheld pursuant to paragraph 1 of subsection A of this section,
11 shall be paid to the purchaser. Net value of the contract for
12 purposes of this section shall be determined by adding the amount of
13 all principal paid in pursuant to the provisions of the contract
14 plus all interest payable pursuant to subsection D of this section
15 less taxes and administrative fees;

16 2. A contract establishing a fund for prepaid funeral benefits.
17 The provisions of this type of contract shall require an initial
18 minimum deposit of Twenty-five Dollars (\$25.00) and shall grant the
19 purchaser the right to add to the fund at the discretion of the
20 purchaser. The provisions of this contract shall provide that the
21 funds accumulated shall apply to the cost of the funeral services
22 and merchandise selected and that any funds remaining unused shall
23 be refunded to the purchaser or to the personal representative or
24 designated beneficiary of the purchaser and if withdrawal of monies

1 occurs prior to death, the organization may retain from the
2 interest, all interest incurred in excess of the minimum amount
3 payable pursuant to subsection D of this section less taxes and
4 administrative fees. This type of contract shall also bear upon it
5 the language: "Exact Funeral Merchandise and Services to be Selected
6 at Time of Death";

7 3. Upon the effective date of this act, an organization shall
8 not be authorized to offer purchasers a contract pursuant to the
9 provisions of paragraph 1 of this subsection;

10 4. Notwithstanding the provisions of this section, at no time
11 shall the purchaser of a contract for Specific and Described Funeral
12 Merchandise and Service at a Guaranteed Price receive upon any
13 withdrawal or transfer a sum less than the original principal
14 collected; or

15 ~~4.~~ 5. Notwithstanding the provisions of this section, at no
16 time shall the purchaser of a contract for Exact Funeral Merchandise
17 and Services to be Selected at Time of Death receive upon any full
18 withdrawal or transfer prior to death a sum less than the original
19 principal collected available at death, with the exception of those
20 accounts which bear principal reduced by previously made cash
21 withdrawals.

22 C. If an organization other than the organization with which
23 the purchaser contracted provides funeral merchandise and services
24 upon the death of the beneficiary of the contract, the organization

1 with whom the purchaser contracted shall forward, upon receipt of
2 request in writing from the purchaser or the personal representative
3 of the purchaser, the net value of the contract plus the amount
4 withheld pursuant to paragraph 1 of subsection A of this section to
5 the organization which provided the merchandise and services or to
6 the purchaser or the personal representative of the purchaser.

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

19 E. A purchaser of either of the types of contracts authorized
20 by the provisions of this section may withdraw the net value of the
21 contract by signing a statement requesting the withdrawal. The
22 organization shall retain in its files a copy of the statement
23 requesting the withdrawal. Withdrawal of funds deposited pursuant
24 to the provisions of a contract authorized by the provisions of

1 paragraph 1 of subsection B of this section shall void the
2 obligation of the contracting organization to provide funeral
3 merchandise and services at a guaranteed price. Withdrawal forms
4 shall be retained on file for at least three (3) years by the
5 organization.

6 F. Following the death of a beneficiary for whom a contract has
7 been purchased, the organization shall prepare a statement,
8 acknowledged by the purchaser if the purchaser is not the
9 beneficiary, or by the personal representative of the purchaser if
10 the purchaser is the beneficiary, setting forth the use of the funds
11 deposited and the party to whom any unused funds were disbursed. A
12 copy of this statement shall remain in the files of the organization
13 for at least three (3) years and a copy shall be delivered to the
14 trust depository and the purchaser.

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

21 H. In no event shall more funds be withdrawn or paid pursuant
22 to the provisions of one contract than were deposited with the
23 organization and which were accumulated as interest. All funds
24 deposited pursuant to the provisions of a contract authorized by the

1 provisions of this section and deposited pursuant to the terms of
2 this section and the interest earned on the funds shall be exempt
3 from attachment, garnishment, execution, and the claims of
4 creditors, receivers, or trustees in bankruptcy, until the time the
5 funds have been withdrawn from the trust account and paid to the
6 organization or refunded to the purchaser.

7 I. Each organization subject to the provisions of this section
8 shall furnish a bond in the form of a cash bond, letter of credit,
9 or fidelity bond, to be approved by the Insurance Commissioner, in
10 the amount of Three Hundred Thousand Dollars (\$300,000.00) or
11 fifteen percent (15%) of all funds collected for prepaid funeral
12 benefits, whichever is less.

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

20 K. No organization holding a permit issued pursuant to the
21 provisions of Sections 6121 and 6124 of this title shall accept any
22 funds except pursuant to the provisions of a contract for prepaid
23 funeral or burial benefits authorized by the provisions of Sections
24 6121 through 6136.18 of this title, and no organization shall accept

1 funds from a purchaser in excess of the contracted price of prepaid
2 funeral or burial benefits purchased.

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

14 SECTION 2. This act shall become effective November 1, 2012.

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