

1 ENGROSSED SENATE
2 BILL NO. 481

By: Stanislawski of the Senate

3 and

4 McCall of the House

5
6 An Act relating to insurance; amending 36 O.S. 2011,
7 Sections 6124.1 and 7106, which relate to prepaid
8 funeral benefit permits and annual reports;
9 authorizing the transfer of benefits to Insurance
10 Commissioner in certain circumstances; amending 36
11 O.S. 2011, Section 7102, as amended by Section 17,
12 Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2015, Section
13 7102), which relates to definitions; clarifying
14 certain terms; amending 36 O.S. 2011, Section 7103,
15 which relates to deposits into trust fund;
16 authorizing cemeteries to choose method of
17 distribution from perpetual care fund; providing
18 certain terms for distribution; authorizing Insurance
19 Commissioner to limit or prohibit distributions in
20 certain situations; mandating certain payments;
21 amending 36 O.S. 2011, Section 7105, which relates to
22 investment of trust funds; adding terms affecting
23 certain incomes; amending 36 O.S. 2011, Section 6125,
24 as amended by Section 12, Chapter 269, O.S.L. 2013
(36 O.S. Supp. 2015, Section 6125), which relates to
deposit of funds; modifying destination of certain
funds collected; amending 36 O.S. 2011, Section 7126,
which relates to cemetery merchandise trust funds;
modifying destination of certain funds collected; and
providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6124.1, is
amended to read as follows:

1 Section 6124.1. A. No prepaid funeral benefit permit shall be
2 transferable from one organization to another except as provided in
3 this section. The selling organization shall notify the Insurance
4 Commissioner at least forty-five (45) days prior to transfer of
5 ownership. Notification shall be in a form provided by the
6 Insurance Commissioner and shall contain at a minimum the following
7 information:

8 1. The name of the acquiring organization;

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

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

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

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

18 6. Any other information the Insurance Commissioner may
19 request.

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

22 C. The acquiring organization shall make application for a
23 permit at least thirty (30) days prior to the transfer of ownership.
24 Approval is contingent upon the organization receiving an

1 establishment license as provided for in Sections 395.1 through
2 396.33 of Title 59 of the Oklahoma Statutes. The application shall
3 include an assumption agreement executed by the acquiring
4 organization in a form provided by the Insurance Commissioner.

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

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

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

18 G. Whenever a prepaid funeral benefit permit holder refuses to
19 submit the books, records, papers and instruments of the prepaid
20 funeral benefit contracts to the examination and inspection of the
21 assistants or examiners of the Insurance Commissioner, or refuses or
22 neglects to establish or maintain a prepaid funeral benefit permit
23 in accordance with the requirements of the Prepaid Funeral Benefits
24 Act within ninety (90) days after a written demand to establish or

1 maintain a prepaid funeral benefit permit is made by the
2 Commissioner, or in any manner obstructs or interferes with the
3 examination of its prepaid funeral benefit contracts or refuses to
4 be examined on oath concerning any of the affairs of its prepaid
5 funeral benefit contracts, the Commissioner may make application for
6 receivership in the manner of a domestic insurer pursuant to
7 Sections 1901 through 1920 of this title.

8 H. The Insurance Commissioner may prescribe rules concerning
9 matters incidental to this section.

10 SECTION 2. AMENDATORY 36 O.S. 2011, Section 7106, is
11 amended to read as follows:

12 Section 7106. A. The owner of a cemetery maintaining a
13 Perpetual Care Trust Fund, or certificate of deposit in lieu of a
14 Perpetual Care Trust Fund, shall be required to pay to the Insurance
15 Commissioner an annual fee of Two Hundred Dollars (\$200.00), and
16 file a report of each cemetery by March 15 of each year with the
17 Commissioner, showing, for the preceding calendar year:

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

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

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

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

6 5. The amount segregated and deposited in the Perpetual Care
7 Fund as provided by the Perpetual Care Fund Act which, if the
8 Perpetual Care Fund is held in trust, shall be certified by the
9 trustee of the Perpetual Care Fund as to correctness thereof, and
10 the trustee shall provide:

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

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

15 c. the cash on hand,

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

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

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

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1 The annual fee collected pursuant to this subsection shall be
2 deposited in the State Insurance Commissioner Revolving Fund created
3 pursuant to Section 307.3 of ~~Title 36 of the Oklahoma Statutes~~ this
4 title.

5 B. If the Perpetual Care Fund is maintained in a certificate of
6 deposit in lieu of a trust fund, the cemetery shall provide in its
7 annual report a verification from the financial institution as to
8 the amount of principal of the Perpetual Care Fund as of the end of
9 the calendar year, and the amount of funds contributed to the
10 certificate of deposit by the cemetery as of each maturity date of
11 the certificate of deposit during the last calendar year.

12 C. The Commissioner shall have authority, at any time, to
13 inspect the books and records of any cemetery, and to make an
14 examination thereof for the purpose of determining if proper sums
15 have been deposited with the trustee in the Perpetual Care Fund, or
16 in a certificate of deposit maintained in lieu of a trust fund, and
17 if the Fund is being properly administered by the trustee in
18 accordance with the provisions of the Perpetual Care Fund Act and
19 rules of the Commissioner. The examination shall be conducted
20 pursuant to Sections 309.1 through 309.7 of ~~Title 36 of the Oklahoma~~
21 ~~Statutes~~ this title and the cost of the examination shall be paid by
22 the cemetery owner. The cost of the examination shall be billed
23 directly to the cemetery owner by the examiner. Each cemetery owner
24 and trustee is responsible for maintaining satisfactory books and

1 records which adequately justify all information contained in the
2 annual report required by this section.

3 D. Whenever a cemetery owner and/or trustee refuses to submit
4 the books, records, papers, and instruments of the cemetery to the
5 examination and inspection of the assistants or examiners of the
6 Insurance Commissioner, or refuses or neglects to establish or
7 maintain a Perpetual Care Trust Fund in accordance with the
8 requirements of the Perpetual Care Fund Act within ninety (90) days
9 after a written demand to establish or maintain a Perpetual Care
10 Fund is made by the Commissioner, or in any manner obstructs or
11 interferes with the examination of its cemetery or refuses to be
12 examined on oath concerning any of the affairs of its cemetery, the
13 Commissioner may make application for receivership in the manner of
14 a domestic insurer pursuant to Sections 1901 through 1920 of this
15 title.

16 SECTION 3. AMENDATORY 36 O.S. 2011, Section 7102, as
17 amended by Section 17, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2015,
18 Section 7102), is amended to read as follows:

19 Section 7102. As used in the Perpetual Care Fund Act:

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

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

4 3. "Purchase price" means the gross dollar amount the customer
5 shall pay the cemetery under a contractual agreement between the two
6 to exchange ownership of, or rights to, certain burial spaces.
7 Purchase price shall not include finance charges, sales tax, charges
8 for credit life insurance, opening and closing costs and setting
9 fees, but shall include any amount which the customer is required to
10 pay as a deposit to the Perpetual Care Fund, described in Section
11 7103 of this title. On sales of burial spaces wherein discounts or
12 free spaces are granted to the customer by the cemetery, the
13 purchase price shall be the fair market value or the normal selling
14 price of that particular type of burial space as sold by the
15 cemetery;

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

19 5. "Income", except as provided in subsection D of Section 7103
20 of this title, means the return derived from the principal amount,
21 excluding capital gains;

22 6. "Insurance Commissioner" or "Commissioner" means the
23 Insurance Commissioner of the State of Oklahoma; and
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1 7. "Designated agent" means one or more individuals designated
2 by the cemetery owner and whom the owner has acknowledged as having
3 fiduciary responsibilities under the Perpetual Care Fund Act.

4 SECTION 4. AMENDATORY 36 O.S. 2011, Section 7103, is
5 amended to read as follows:

6 Section 7103. A. In all cemeteries in this state where burial
7 spaces are sold, not less than ten percent (10%) of the purchase
8 price thereof shall be segregated and set aside as a permanent trust
9 fund to be known as the "Perpetual Care Fund". The Perpetual Care
10 Fund shall be invested as hereinafter prescribed, and the income
11 only shall be used in improving, caring for, and embellishing the
12 lots, walks, drives, parks and other improvements in the cemeteries
13 and maintenance of office and care of records.

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

20 C. The owner or designated agent of a cemetery shall set aside
21 and deposit the amounts required in subsections A and B of this
22 section in a financial institution authorized by law, as trustee, to
23 administer the trusts, not later than thirty (30) days after the
24 close of the month in which was received the final payment on the

1 purchase price of each burial space. The amounts shall be held by
2 the trustee of the Perpetual Care Fund in trust for the specific
3 purposes stated in a written trust agreement. The trust agreement
4 may provide for an individual or other entity to exist as cotrustee;
5 provided, however, in no instance shall the cotrustee have sole
6 access to deposits held in the Perpetual Care Fund, except as
7 otherwise provided in this act.

8 D. Notwithstanding the requirements of subsection C of this
9 section, if the total amount of the Perpetual Care Fund maintained
10 by the cemetery is an amount equal to or less than the standard
11 insurance amount per depositor as provided by the Federal Deposit
12 Insurance Corporation, the cemetery may, in lieu of depositing the
13 funds in a trust account, purchase a certificate of deposit from a
14 financial institution according to the terms of this subsection.
15 The certificate of deposit shall be pledged in favor of the Oklahoma
16 Insurance Department with no right of withdrawal by the cemetery,
17 whether before or after maturity, except upon application to, and
18 approval by, the Insurance Commissioner. The terms of the
19 certificate of deposit shall provide for notice to the Insurance
20 Department within thirty (30) days prior to maturity. Only interest
21 accruing from the certificate of deposit may be withdrawn by the
22 cemetery and shall be considered income for purposes of subsection A
23 of this section. If a cemetery maintains a certificate of deposit
24 in lieu of a trust fund, as it collects funds which are required to

1 be deposited into its Perpetual Care Fund, it shall segregate those
2 funds from its other operating funds and contribute those funds to
3 the certificate of deposit upon its next maturity date. If a
4 Perpetual Care Fund of a cemetery is maintained in a certificate of
5 deposit, but grows in an amount greater than the standard insurance
6 amount per depositor as provided by the Federal Deposit Insurance
7 Corporation, the cemetery shall comply with the provisions of
8 subsection C of this section by placing all of its Perpetual Care
9 Fund in trust and shall no longer maintain a certificate of deposit
10 as authorized by this subsection.

11 E. A cemetery regulated under this section may choose
12 distribution from the perpetual care fund in the form of either all
13 net ordinary income or an amount, not to be reduced by taxes or
14 fees, not exceeding five percent (5%) of the average fair market
15 value of the trust funds.

16 1. A cemetery may select a distribution method by delivering
17 written instructions to the trustee of the fund no later than thirty
18 (30) days prior to the beginning of the calendar year. Such
19 notification shall also be provided to the Insurance Commissioner.
20 The distribution method and distribution rate selected shall remain
21 in effect unless the cemetery notifies the trustee and the Insurance
22 Commissioner of its desire to effect a change.

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1 2. Disbursements from the trust shall be made on a monthly,
2 quarterly, semi-annual or annual basis, as agreed upon by the
3 cemetery and the trustee.

4 3. In the event that the trustee does not receive written
5 instructions from the cemetery informing the trustee of the method
6 of calculation chosen, then the trustee shall calculate and disburse
7 the net ordinary income, as earned, on a monthly basis.

8 4. If the cemetery company selects a distribution based on the
9 average fair market value calculation, the trustees must ensure that
10 an investment policy is in place whose goals and objectives are
11 supportive of the growth of the care and maintenance fund. In order
12 to withdraw up to five percent (5%) of trust funds, the current
13 market value of the trust after the withdrawal shall be greater than
14 the aggregate of eighty percent (80%) of the market value of the
15 trust as of the preceding calendar year, plus the total
16 contributions made to trust principal from such date to the date
17 that the method of calculation is selected. If this is not the
18 case, distributions will be limited for that year to the net
19 ordinary income.

20 5. The Insurance Commissioner may limit or prohibit the
21 distribution based on average fair market value calculation in
22 situations where investment returns and distribution practices have
23 not resulted in sufficient protection of the care fund's trust
24 principal from a three to five year analysis, or where the trustee

1 and any investment manager are not able to demonstrate sufficient
2 knowledge and expertise regarding the effective implementation of
3 distributing income for the maintenance of the cemetery using this
4 method.

5 F. Without regard to the withdrawal method selected pursuant to
6 subsection E of this section, capital gains taxes shall be paid from
7 the trust principal.

8 SECTION 5. AMENDATORY 36 O.S. 2011, Section 7105, is
9 amended to read as follows:

10 Section 7105. Accumulated trust funds held by the trustee of
11 the Perpetual Care Fund shall be invested in the manner provided in
12 the Oklahoma Trust Act, Sections 175.1 through 175.57 of Title 60 of
13 the Oklahoma Statutes, and any amendments thereto. The income
14 derived therefrom shall be returned to the cemeteries to be used by
15 them only as provided by the Perpetual Care Fund Act and in a manner
16 consistent with elections made pursuant to subsection E of Section
17 7103 of this title.

18 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6125, as
19 amended by Section 12, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2015,
20 Section 6125), is amended to read as follows:

21 Section 6125. A. 1. The organization may retain from the
22 first funds collected, the first ten percent (10%) of the purchase
23 price of all contracts issued pursuant to paragraph 1 of subsection
24 B of this section. Thereafter, one hundred percent (100%) of all

1 funds collected pursuant to the provisions of contracts for prepaid
2 funeral benefits, except for outer enclosures as defined by the
3 Funeral Services Licensing Act, shall be ~~placed in interest-bearing~~
4 ~~investments authorized by Article 16 of the Insurance Code, except~~
5 ~~to the extent the Insurance Commissioner may determine that a~~
6 ~~particular asset may be inappropriate for investment for prepaid~~
7 ~~funeral benefits~~ invested in the manner provided in the Oklahoma
8 Trust Act, Sections 175.1 through 175.57 of Title 60 of the Oklahoma
9 Statutes, and any amendments thereto.

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

17 3. The funds required to be deposited pursuant to paragraphs 1
18 and 2 of this subsection shall be deposited within ten (10) days
19 after the collection of the funds and shall be held in a trust fund
20 in this state for the use, benefit, and protection of purchasers of
21 contracts for prepaid funeral benefits. Nothing contained within
22 this section shall be construed to prohibit an organization
23 authorized to accept prepaid funds from transferring the funds held
24 in trust from one trust depository to another if notice of the

1 transfer is given to the Insurance Commissioner within ten (10) days
2 before the transfer and the organization transferring the funds
3 remains the designated trustor. This subsection shall not affect
4 funds invested prior to November 1, 1988.

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

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

21 2. A contract establishing a fund for prepaid funeral benefits.
22 The provisions of this type of contract shall require an initial
23 minimum deposit of Twenty-five Dollars (\$25.00) and shall grant the
24 purchaser the right to add to the fund at the discretion of the

1 purchaser. The provisions of this contract shall provide that the
2 funds accumulated shall apply to the cost of the funeral services
3 and merchandise selected and that any funds remaining unused shall
4 be refunded to the purchaser or to the personal representative or
5 designated beneficiary of the purchaser and if withdrawal of monies
6 occurs prior to death, the organization may retain from the
7 interest, all interest incurred in excess of the minimum amount
8 payable pursuant to subsection D of this section less taxes and
9 administrative fees. This type of contract shall also bear upon it
10 the language: "Exact Funeral Merchandise and Services to be Selected
11 at Time of Death";

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

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

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1 C. If an organization other than the organization with which
2 the purchaser contracted provides funeral merchandise and services
3 upon the death of the beneficiary of the contract, the organization
4 with whom the purchaser contracted shall forward, upon receipt of
5 request in writing from the purchaser or the personal representative
6 of the purchaser, the net value of the contract plus the amount
7 withheld pursuant to paragraph 1 of subsection A of this section to
8 the organization which provided the merchandise and services or to
9 the purchaser or the personal representative of the purchaser.

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

22 E. A purchaser of either of the types of contracts authorized
23 by the provisions of this section may withdraw the net value of the
24 contract by signing a statement requesting the withdrawal. The

1 organization shall retain in its files a copy of the statement
2 requesting the withdrawal. Withdrawal of funds deposited pursuant
3 to the provisions of a contract authorized by the provisions of
4 paragraph 1 of subsection B of this section shall void the
5 obligation of the contracting organization to provide funeral
6 merchandise and services at a guaranteed price. Withdrawal forms
7 shall be retained on file for at least six (6) years by the
8 organization.

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

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

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1 H. In no event shall more funds be withdrawn or paid pursuant
2 to the provisions of one contract than were deposited with the
3 organization and which were accumulated as interest. All funds
4 deposited pursuant to the provisions of a contract authorized by the
5 provisions of this section and deposited pursuant to the terms of
6 this section and the interest earned on the funds shall be exempt
7 from attachment, garnishment, execution, and the claims of
8 creditors, receivers, or trustees in bankruptcy, until the time the
9 funds have been withdrawn from the trust account and paid to the
10 organization or refunded to the purchaser.

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

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

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1 K. No organization holding a permit issued pursuant to the
2 provisions of Sections 6121 and 6124 of this title shall accept any
3 funds except pursuant to the provisions of a contract for prepaid
4 funeral or burial benefits authorized by the provisions of Sections
5 6121 through 6136.18 of this title, and no organization shall accept
6 funds from a purchaser in excess of the contracted price of prepaid
7 funeral or burial benefits purchased.

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

19 SECTION 7. AMENDATORY 36 O.S. 2011, Section 7126, is
20 amended to read as follows:

21 Section 7126. A. Each organization shall establish and
22 maintain a cemetery merchandise trust fund with a financial
23 institution having trust powers. A cemetery merchandise trust fund
24 shall at all times be in the custody of a financial institution.

1 Any cemetery merchandise trust funds may be invested, reinvested,
2 exchanged, retained, sold and managed as a part of common trust
3 funds in the manner ~~required by and subject to the Insurance~~
4 ~~Commissioner and at the election of the trustee~~ provided in the
5 Oklahoma Trust Act, Sections 175.1 through 175.57 of Title 60 of the
6 Oklahoma Statutes, and any amendments thereto. A copy of each
7 contract or a written notice containing all relevant information
8 regarding the prepaid cemetery merchandise contracts for which
9 deposits are made shall be furnished to the financial institution.
10 The financial institution shall serve as trustee for the purposes of
11 the Cemetery Merchandise Trust Act.

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

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

7 D. After an organization has received the amount it is entitled
8 to receive, in accordance with subsection C of this section, all
9 payments of the purchase price to the organization pursuant to a
10 prepaid cemetery merchandise contract shall be deposited by the
11 organization in a cemetery merchandise trust fund until such time as
12 the requirements of subsection E of this section have been satisfied
13 or delivery is made of the cemetery merchandise, or until an amount
14 satisfying the minimum funding requirement has been deposited.
15 Thereafter, all payments of the purchase price in excess of the
16 minimum funding requirement may be retained by the organization.
17 Deposits shall be made within ten (10) business days after the end
18 of the month in which such deposits are received by the
19 organization.

20 E. Annually, as of December 31 of each year, each organization
21 shall determine the wholesale cost for all cemetery merchandise
22 covered by a prepaid cemetery merchandise contract for which funds
23 are then held in a cemetery merchandise trust or in an individual
24 merchandise account. If the amount held with respect to a prepaid

1 cemetery merchandise contract exceeds the minimum funding required,
2 the excess shall be paid by the trustee of the cemetery merchandise
3 trust to the organization. In such event, no further deposit shall
4 be required with respect to the prepaid cemetery merchandise
5 contract until such time as the amount held no longer exceeds the
6 minimum funding requirement. If the minimum funding requirement is
7 not satisfied, no amount shall be paid to or withdrawn by the
8 organization and the organization shall continue or shall resume, as
9 the case may be, making the deposits required by subsection D of
10 this section.

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

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

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

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

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

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

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

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

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

