

1 ENGROSSED SENATE
2 BILL NO. 1296

By: Sparks of the Senate

3 and

4 McEntire of the House

5
6 [insurance - funds - investment - exception -
7 effective date]
8

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

10 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6125, as
11 last amended by Section 6, Chapter 118, O.S.L. 2016 (36 O.S. Supp.
12 2016, Section 6125), is amended to read as follows:

13 Section 6125. A. 1. The organization may retain from the
14 first funds collected, the first ten percent (10%) of the purchase
15 price of all contracts issued pursuant to paragraph 1 of subsection
16 B of this section. Thereafter, one hundred percent (100%) of all
17 funds collected pursuant to the provisions of contracts for prepaid
18 funeral benefits, except for outer enclosures as defined by the
19 Funeral Services Licensing Act, shall be ~~invested in the manner~~
20 ~~provided in the Oklahoma Trust Act, Sections 175.1 through 175.57 of~~
21 ~~Title 60 of the Oklahoma Statutes, and any amendments thereto~~ placed
22 in interest-bearing investments authorized by Article 16 of the
23 Insurance Code, except to the extent the Insurance Commissioner may
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1 determine that a particular asset may be inappropriate for
2 investment for prepaid 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 organization authorized to accept prepaid funds shall be
23 authorized to provide purchasers with a choice of either of the
24 following types of contracts:

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

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

1 payable pursuant to subsection D of this section less taxes and
2 administrative fees. This type of contract shall also bear upon it
3 the language: "Exact Funeral Merchandise and Services to be Selected
4 at Time of Death";

5 3. Notwithstanding the provisions of this section, at no time
6 shall the purchaser of a contract for Specific and Described Funeral
7 Merchandise and Service at a Guaranteed Price receive upon any
8 withdrawal or transfer a sum less than the original principal
9 collected; or

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

17 C. If an organization other than the organization with which
18 the purchaser contracted provides funeral merchandise and services
19 upon the death of the beneficiary of the contract, the organization
20 with whom the purchaser contracted shall forward, upon receipt of
21 request in writing from the purchaser or the personal representative
22 of the purchaser, the net value of the contract plus the amount
23 withheld pursuant to paragraph 1 of subsection A of this section to
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1 the organization which provided the merchandise and services or to
2 the purchaser or the personal representative of the purchaser.

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

15 E. A purchaser of either of the types of contracts authorized
16 by the provisions of this section may withdraw the net value of the
17 contract by signing a statement requesting the withdrawal. The
18 organization shall retain in its files a copy of the statement
19 requesting the withdrawal. Withdrawal of funds deposited pursuant
20 to the provisions of a contract authorized by the provisions of
21 paragraph 1 of subsection B of this section shall void the
22 obligation of the contracting organization to provide funeral
23 merchandise and services at a guaranteed price. Withdrawal forms
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1 shall be retained on file for at least six (6) years by the
2 organization.

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

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

18 H. In no event shall more funds be withdrawn or paid pursuant
19 to the provisions of one contract than were deposited with the
20 organization and which were accumulated as interest. All funds
21 deposited pursuant to the provisions of a contract authorized by the
22 provisions of this section and deposited pursuant to the terms of
23 this section and the interest earned on the funds shall be exempt
24 from attachment, garnishment, execution, and the claims of

1 creditors, receivers, or trustees in bankruptcy, until the time the
2 funds have been withdrawn from the trust account and paid to the
3 organization or refunded to the purchaser.

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

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

17 K. No organization holding a permit issued pursuant to the
18 provisions of Sections 6121 and 6124 of this title shall accept any
19 funds except pursuant to the provisions of a contract for prepaid
20 funeral or burial benefits authorized by the provisions of Sections
21 6121 through 6136.18 of this title, and no organization shall accept
22 funds from a purchaser in excess of the contracted price of prepaid
23 funeral or burial benefits purchased.

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

12 SECTION 2. This act shall become effective November 1, 2018.

13 Passed the Senate the 15th day of March, 2018.

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Presiding Officer of the Senate

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17 Passed the House of Representatives the ____ day of _____,

18 2018.

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Presiding Officer of the House
of Representatives

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