

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1296

By: Sparks of the Senate

and

McEntire of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; amending 36 O.S. 2011,
12 Section 6125, as last amended by Section 6, Chapter
13 118, O.S.L. 2016 (36 O.S. Supp. 2017, Section 6125),
14 which relates to investment of prepaid funeral
15 services funds; modifying investment of certain
16 funds; providing exception for investment of funds;
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6125, as
20 last amended by Section 6, Chapter 118, O.S.L. 2016 (36 O.S. Supp.
21 2017, Section 6125), is amended to read as follows:

22 Section 6125. A. 1. The organization may retain from the
23 first funds collected, the first ten percent (10%) of the purchase
24 price of all contracts issued pursuant to paragraph 1 of subsection
25 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 ~~invested in the manner~~
4 ~~provided in the Oklahoma Trust Act, Sections 175.1 through 175.57 of~~
5 ~~Title 60 of the Oklahoma Statutes, and any amendments thereto~~ placed
6 in investments authorized by Article 16 of the Insurance Code,
7 except to the extent the Insurance Commissioner may determine that a
8 particular asset may be inappropriate for investment for prepaid
9 funeral benefits.

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~~7~~i
19 provided, however, that the organization may retain from the
20 interest~~7~~ 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 2. This act shall become effective November 1, 2018.
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21 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/04/2018 - DO
22 PASS, As Amended.
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