

1 ENGROSSED SENATE
2 BILL NO. 544

By: Montgomery of the Senate

3 and

4 Sneed of the House

5
6 An Act relating to the Perpetual Care Fund Act;
7 amending 36 O.S. 2021, Sections 7106 and 7112, which
8 relate to annual reports and actions to recover
9 monies; requiring owner of certain fund to maintain
10 certain permit; establishing application and renewal
11 process for certain permit; modifying application fee
12 for certain permit; requiring electronic submission
13 and payment; requiring renewal fee prior to
14 reinstatement of certain permit; establishing renewal
15 procedures for expired permit; requiring certain
16 report from expired permit holder; conforming
17 language; requiring certain report and fee payment by
18 certain date; setting maximum for certain fine; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 36 O.S. 2021, Section 7106, is
22 amended to read as follows:

23 Section 7106. A. ~~The~~ No owner of a cemetery ~~maintaining~~ shall
24 maintain a Perpetual Care Trust Fund, or certificate of deposit in
lieu of a Perpetual Care Trust Fund, ~~shall be required to pay to the~~
~~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 Commissioner, showing, for the preceding calendar~~
~~year;~~ unless the owner has received a permit from the Insurance

1 Commissioner. Initial and renewal permit applications shall be
2 filed electronically in the manner and form prescribed by the
3 Commissioner, along with a two-hundred-dollar application fee and
4 any transaction or other applicable fees. The permit shall expire
5 on March 15 of each calendar year unless it is renewed by the permit
6 holder. A permit expired for failure to submit a renewal
7 application and fee may be reinstated within ninety (90) days after
8 the expiration date by electronically filing a renewal application,
9 paying a fee in an amount that is double the renewal fee, and paying
10 any transaction or other applicable fees in the form and manner
11 prescribed by the Commissioner. The Commissioner shall require a
12 permit holder whose permit has been expired for more than ninety
13 (90) days to reapply as if a new applicant and pay an application
14 fee equal to an amount that is double the renewal fee, in addition
15 to any other fines imposed. Any application received after the
16 permit has been expired for more than ninety (90) days shall include
17 a detailed report of Perpetual Care Trust Fund services provided in
18 this state during the period that the permit was expired.

19 B. The owner of a cemetery maintaining a Perpetual Care Trust
20 Fund or certificate of deposit in lieu of a Perpetual Care Trust
21 Fund shall, by March 15 of each calendar year, electronically file a
22 report and pay any applicable fees in the manner and form prescribed
23 by the Commissioner. Such report shall show, for the preceding
24 calendar year:

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

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

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

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

12 5. The amount segregated and deposited in the Perpetual Care
13 Fund as provided by the Perpetual Care Fund Act which, if the
14 Perpetual Care Fund is held in trust, shall be certified by the
15 trustee of the Perpetual Care Fund as to correctness thereof, and
16 the trustee shall provide:

17 a. the total amount of the principal of the Perpetual

18 Care Fund as of the end of the calendar year,

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

21 c. the cash on hand,

22 d. a verification in writing of all assets in which
23 monies of the Perpetual Care Fund have been invested;

1 provided, the verification shall be obtained from the
2 holder or holders of the assets,

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

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

7 The annual fee collected pursuant to this subsection shall be
8 deposited in the State Insurance Commissioner Revolving Fund created
9 pursuant to Section 307.3 of this title.

10 ~~B.~~ C. If the Perpetual Care Fund is maintained in a certificate
11 of deposit in lieu of a trust fund, the cemetery shall provide in
12 its annual report a verification from the financial institution as
13 to the amount of principal of the Perpetual Care Fund as of the end
14 of the calendar year, and the amount of funds contributed to the
15 certificate of deposit by the cemetery as of each maturity date of
16 the certificate of deposit during the last calendar year.

17 ~~C.~~ D. The Commissioner shall have authority, at any time, to
18 inspect the books and records of any cemetery, and to make an
19 examination thereof for the purpose of determining if proper sums
20 have been deposited with the trustee in the Perpetual Care Fund, or
21 in a certificate of deposit maintained in lieu of a trust fund, and
22 if the Fund is being properly administered by the trustee in
23 accordance with the provisions of the Perpetual Care Fund Act and
24 rules of the Commissioner. The examination shall be conducted

1 pursuant to Sections 309.1 through 309.7 of this title and the cost
2 of the examination shall be paid by the cemetery owner. The cost of
3 the examination shall be billed directly to the cemetery owner by
4 the examiner. Each cemetery owner and trustee is responsible for
5 maintaining satisfactory books and records which adequately justify
6 all information contained in the annual report required by this
7 section.

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

21 SECTION 2. AMENDATORY 36 O.S. 2021, Section 7112, is
22 amended to read as follows:

23 Section 7112. A. The Insurance Commissioner may initiate an
24 action to recover payments required to be deposited to the State

1 Insurance Commissioner Revolving Fund pursuant to the Perpetual Care
2 Fund Act or to recover other monies received or disbursed in
3 violation of the Perpetual Care Fund Act.

4 B. The Insurance Commissioner may, after an opportunity for
5 hearing ~~and a determination that an owner of a cemetery is in~~
6 ~~violation of the Perpetual Care Fund Act,~~ censure an owner of a
7 cemetery, levy a fine ~~as deemed appropriate by the Commissioner~~ not
8 to exceed One Thousand Dollars (\$1,000.00) for each occurrence, or
9 ~~both censure and levy a fine against an owner of a cemetery~~ any
10 combination of the above for violation of any provision of the
11 Perpetual Care Fund Act or any rules promulgated in accordance with
12 the act.

13 SECTION 3. This act shall become effective November 1, 2023.

14 Passed the Senate the 21st day of March, 2023.

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16 _____
17 Presiding Officer of the Senate

18 Passed the House of Representatives the ____ day of _____,
19 2023.

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21 _____
22 Presiding Officer of the House
23 of Representatives
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