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February 7, 2023

AS AMENDED

SENATE BILL NO. 544

By: Montgomery of the Senate

and

Sneed of the House

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

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

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

Section 7106. A. ~~The~~ No owner of a cemetery ~~maintaining~~ shall 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~~

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

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

1 by the Commissioner. Such report shall show, for the preceding
2 calendar year:

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

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

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

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

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

19 a. the total amount of the principal of the Perpetual
20 Care Fund as of the end of the calendar year,

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

23 c. the cash on hand,
24

- 1 d. a verification in writing of all assets in which
2 monies of the Perpetual Care Fund have been invested;
3 provided, the verification shall be obtained from the
4 holder or holders of the assets,
5 e. the income derived from the Perpetual Care Fund
6 investments during the calendar year, and
7 f. the gross expenditures or transfers from income of the
8 Perpetual Care Fund during the calendar year.

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

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

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

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

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

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

1 Section 7112. A. The Insurance Commissioner may initiate an
2 action to recover payments required to be deposited to the State
3 Insurance Commissioner Revolving Fund pursuant to the Perpetual Care
4 Fund Act or to recover other monies received or disbursed in
5 violation of the Perpetual Care Fund Act.

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
17 February 7, 2023 - DO PASS AS AMENDED
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