

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1438

BY: APPLE

AS INTRODUCED

AN ACT RELATING TO CEMETERIES; AMENDING 8 O.S. 1981, SECTIONS 163, 164, 165, 166, 168 AND 169, WHICH RELATE TO THE PERPETUAL CARE FUND ACT; MODIFYING HOW FUNDS SHALL BE EXPENDED; RESTRICTING DEPOSIT OF FUNDS TO FINANCIAL INSTITUTION HAVING TRUST POWERS; REQUIRING CEMETERIES TO HAVE ONE TRUSTEE; PROVIDING FOR IMMEDIATE DEPOSIT OF FUNDS INTO TRUST; PROVIDING FOR INCOME TO PAY CERTAIN TRUST FEES; RESTRICTING TYPE OF INVESTMENT OF FUND; REQUIRING TRUSTEES TO FILE ANNUAL REPORT; MODIFYING CONTENTS OF THE REPORT; MODIFYING EXCEPTIONS TO THE ACT; MODIFYING FINES AND PENALTIES; PROVIDING FOR THE STATE BANKING COMMISSIONER TO ADMINISTER THE PERPETUAL CARE FUND ACT; PROVIDING FOR WAIVER OF TYPE OF TRUSTEE REQUIREMENT; PROVIDING FOR ORDER OF REDEPOSIT; PROVIDING FOR THE BANK COMMISSIONER TO ENFORCE THE ACT TO RECOVER UNLAWFUL PAYMENTS AND SEEK INJUNCTIONS; RESTRICTING FUNDS FROM BEING ATTACHED IN ABSENCE OF FRAUD; PROVIDING FOR APPOINTMENT OF RECEIVER IN CERTAIN INSTANCES; PROVIDING FORUM FOR CIVIL ACTIONS; CREATING PERPETUAL CARE REVOLVING FUND; AMENDING SECTIONS 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30 AND 32, CHAPTER 297, O.S.L. 1989 (8 O.S. SUPP. 1990,

SECTIONS 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 313, 314 AND 316), WHICH RELATE TO THE CEMETERY MERCHANDISE TRUST ACT; ADDING AND MODIFYING DEFINITIONS; MODIFYING TERM USED FOR APPLICANT OF PERMIT FOR SALE OF CEMETERY MERCHANDISE; REPLACING THE OKLAHOMA STATE BANKING BOARD WITH THE COMMISSIONER OF STATE BANKING AS ADMINISTRATOR OF THE CEMETERY MERCHANDISE TRUST ACT; MODIFYING NAME OF ENTITY RECEIVING MERCHANDISE TRUST PERMIT; MODIFYING NAME USED THROUGHOUT ACT FOR REGULATOR AND THE REGULATED; PERMITTING CERTAIN EXAMINATION BY THE COMMISSIONER; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 8 O.S. 1981, Section 163, is amended to read as follows:

Section 163. In all cemeteries in this state where grave spaces, lots, crypts or niches are sold, whether above or below the surface of the ground, not less than ten percent (10%) of the purchase price or value thereof, whichever is greater, shall be segregated and set aside as a permanent trust fund to be known as the "Perpetual Care Fund". Provided, further, said Perpetual Care Fund shall be invested as hereinafter prescribed and the income only shall be used in improving, caring for, and embellishing the lots, walks, drives, grounds, parks and other improvements in such cemeteries ~~and~~, the maintenance of office and care of records and the payment of trustee fees and examination fees as permitted by Section 166 of this title. Such setting aside and depositing shall

be made by the owners of such cemeteries to a ~~bank or trust company~~  
~~authorized by law to administer such trusts, or other trustees~~  
federally insured financial institution having trust powers and  
which shall then act as trustee of such fund, not later than thirty  
(30) days after the close of the month in which was received the  
final payment on the purchase price of each grave space, lot, crypt  
or niche, and such amounts shall be held by the trustee of the  
Perpetual Care Fund in trust for the specific purposes ~~stated in a~~  
~~written trust agreement~~ set forth in this act. Unless granted a  
waiver by the Commissioner pursuant to Section 170 of this title,  
only a federally insured financial institution having trust powers  
may act as a trustee of a Perpetual Care Fund and may receive a fee  
for acting as such trustee.

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 163.1 of Title 8, unless there  
is created a duplication in numbering, reads as follows:

Any trust established as a "Perpetual Care Fund" shall have only  
one trustee over all funds received from a cemetery or a group of  
cemeteries under common ownership.

SECTION 3. AMENDATORY 8 O.S. 1981, Section 164, is  
amended to read as follows:

Section 164. Donations, deposits or bequests may be made in  
trust by mutual agreement between the cemetery and lot owner or lot  
owners, for the special care of specified lots, monuments or  
mausoleums in any such cemetery, and such funds shall be immediately  
placed in trust and invested in like manner as the Perpetual Care  
Fund, but a separate account shall be kept of each amount so  
deposited, donated and bequeathed and only the income derived from  
such funds shall be used in paying fees of the trustee and the care,  
maintenance and repair of such lots, monuments and mausoleums,  
unless otherwise provided by the donor.

SECTION 4. AMENDATORY 8 O.S. 1981, Section 165, is amended to read as follows:

Section 165. Accumulated trust funds held by the trustee of the Perpetual Care Fund shall be invested solely in the manner provided in 60 O.S. 1981, Section 175.1 et seq., the Oklahoma Trust Act, ~~Chapter 15, Session Laws 1941,~~ and any amendments thereto. The income derived therefrom shall be returned to such cemeteries to be used by them only as provided by this act.

SECTION 5. AMENDATORY 8 O.S. 1981, Section 166, is amended to read as follows:

Section 166. The owners of said cemeteries and the trustees shall be required to file a report within ninety (90) days after the end of the fiscal year of each cemetery with the State Bank Commissioner, showing the gross amount received from sales, as in ~~Section 3 hereof provided,~~ the 163 of this title. The amount segregated and deposited in the Perpetual Care Fund ~~as provided by this act which~~ shall be certified by the trustee of the Perpetual Care Fund as to correctness thereof, and the trustee shall state (a) the total amount of the principal of the Perpetual Care Fund held by the trustee (b) the securities or other assets or investments in which such ~~care~~ funds are invested and the cash on hand as of the date of the report, and (c) the income derived and any distribution thereof from such Perpetual Care Fund during the preceding ~~calendar~~ fiscal year including the trustee fees. Provided, further, the State Bank Commissioner shall have authority, at any time, to inspect the books and records of any such cemetery, and to ~~make an audit~~ perform an examination thereof for the purpose of determining if proper sums have been deposited with the trustee in the Perpetual Care Fund, and if said fund is being properly administered by said trustee in accordance with the provisions of this act and other applicable laws. The Bank Commissioner ~~shall~~ may in his discretion charge and collect a fee for such examination or audit as provided

in Section ~~19, Title 6, O.S. 1951~~ 211 of Title 6 of the Oklahoma Statutes, which fee shall be ~~disposed of as fees collected for the examination of banks and trust companies deposited in the Perpetual Care Revolving Fund and which fee shall be paid promptly by the cemetery, its owner or its Perpetual Care Fund.~~

SECTION 6. AMENDATORY 8 O.S. 1981, Section 168, is amended to read as follows:

Section 168. ~~Municipal, religious, fraternal, corporate and rural cemeteries and free community burial grounds are now regulated by Chapters 1, 2, 3, and 5, Title 8, O.S.A., 1951 and the provisions of this~~ This act shall not apply to such those cemeteries regulated by Chapters 1, 2, 3, and 5 of Title 8 of the Oklahoma Statutes; nor to cemeteries operated by charitable and eleemosynary institutions.

SECTION 7. AMENDATORY 8 O.S. 1981, Section 169, is amended to read as follows:

Section 169. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall if convicted be fined not less than ~~Fifty Dollars (\$50.00)~~ One Hundred Dollars (\$100.00) nor more than ~~Five Hundred Dollars (\$500.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) per violation and imprisoned not less than thirty (30) days nor more than six (6) months in the county jail, or shall suffer both such fine and imprisonment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170 of Title 8, unless there is created a duplication in numbering, reads as follows:

A. The Perpetual Care Fund Act shall be administered and enforced by the State Bank Commissioner. The Commissioner is authorized to define terms not specifically defined in this act and to prescribe reasonable rules and regulations concerning the keeping and inspection of records, the filing of reports, trustees' duties,

handling of funds and all matters incidental to the orderly administration of this act.

B. Any person, group, or organization wishing to use some trustee other than a federally insured financial institution may apply to the Commissioner for a waiver from the restrictions of Section 163 of this title provided that a trustee other than a federally insured financial institution shall not receive any fee from the Perpetual Care Fund.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 171 of Title 8, unless there is created a duplication in numbering, reads as follows:

In the event the Commissioner determines that monies have been improperly paid by the trustee to a cemetery during the period covered by the audit, then the Commissioner shall order the cemetery to redeposit to the trust such amount as was improperly withdrawn within not less than sixty (60) days of the order of the Commissioner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 172 of Title 8, unless there is created a duplication in numbering, reads as follows:

The Commissioner may initiate an action to enforce his order to enforce the Perpetual Care Fund Act or to recover other monies or property received or disbursed in violation of the Perpetual Care Fund Act. In addition, the Commissioner may seek to enjoin any violation of said act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 173 of Title 8, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in this act, the Perpetual Care Fund and income derived therefrom shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the

cemetery, owner of the cemetery, trustee, purchaser or beneficiary, or anyone by any legal or equitable process or by operation of law.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 174 of Title 8, unless there is created a duplication in numbering, reads as follows:

Whenever any person acting for or on behalf of any cemetery refuses to submit the books, records, papers and instruments of such cemetery to the examination and inspection of the assistants or examiners of the Commissioner, or in any manner obstructs or interferes with the examination or audit of its Perpetual Care Fund, or refuses to be examined on oath concerning any of the affairs of its Perpetual Care Fund, the Commissioner may institute proceedings in the district court located in the county where such cemetery is located for the appointment of a receiver for such cemetery.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175 of Title 8, unless there is created a duplication in numbering, reads as follows:

Any cemetery which refuses or neglects to establish or maintain a Perpetual Care Fund in accordance with the requirements of the Perpetual Care Fund Act within ninety (90) days after demand to do so is made upon it in writing by the Commissioner shall be deemed to have forfeited its corporate franchise if the cemetery shall be so incorporated. Regardless of whether such cemetery is incorporated, the Commissioner may bring an action for the appointment of a receiver for such cemetery and where appropriate to dissolve the same. Any such action shall be brought in the district court in the county where such cemetery is located.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 176 of Title 8, unless there is created a duplication in numbering, reads as follows:

There is hereby created the "Perpetual Care Revolving Fund". The fund shall consist of all monies received by the Board pursuant

to the Perpetual Care Fund Act. The fund shall be a continuing fund not subject to fiscal year limitations and shall be subject to the administrative direction of the Bank Commissioner. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims submitted to the Director of State Finance. Monies in the fund may be expended for expenses incurred in administering and enforcing the Perpetual Care Fund Act.

SECTION 15. AMENDATORY Section 18, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 302), is amended to read as follows:

Section 302. As used in the Cemetery Merchandise Trust Act:

1. "Cemetery merchandise" means markers, memorials, vases, memorial vases, monuments, equipment, crypts, niches or outer enclosures. Cemetery merchandise shall not include the sale of lands or interests therein as grave lots or grave spaces; burial or interment rights; and delivered or installed crypts, niches or outer enclosures;

2. "Purchase price" means the gross amount to be paid for cemetery merchandise under the provisions of a prepaid cemetery merchandise contract. Purchase price shall not include finance charges, sales tax, charges for real property interests or charges for credit life insurance;

3. "Prepaid cemetery merchandise contract" means any agreement for the sale of cemetery merchandise by an organization which requires payment of the purchase price, in whole or in part, prior to delivery of the cemetery merchandise, which agreement is entered into from and after the effective date of this act;

4. "Minimum funding requirement" means that portion of the purchase price equal to one hundred ten percent (110%) of the wholesale cost, freight on board, to the organization of the cemetery merchandise, excluding outer enclosures, covered in a prepaid cemetery merchandise contract. Wholesale costs shall be

determined by the organization on the basis of such quotations and price lists as are available to the organization from the wholesale concerns;

5. ~~"Organization~~ "Permittee" means any person, individual, firm, partnership, corporation or association ~~authorized to establish or operate a cemetery merchandise trust fund pursuant to the Cemetery Merchandise Trust Act~~ which has obtained and holds a valid permit from the Commissioner. This shall not include state, county, municipal, township, rural community, religious, fraternal or nonprofit corporate entities, free community burial grounds, and charitable or eleemosynary institutions operating cemeteries in this state;

6. "Outer enclosure" means a grave liner, grave box, or grave vault;

7. ~~"Board" means the Oklahoma Banking Board~~ "Commissioner" means the Oklahoma Banking Commissioner; ~~and~~

8. "Financial institution" means a federally-insured bank, trust company, or savings and loan association which is authorized to do business in this state; and

9. "Person" means an individual, corporation, partnership, joint venture, trust estate or unincorporated association or any other legal entity.

SECTION 16. AMENDATORY Section 19, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 303), is amended to read as follows:

Section 303. Any ~~organization~~ person which shall accept money or anything of value for cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall first obtain a permit from the ~~Board~~ Commissioner authorizing the transaction of this type of business before entering into any such contract. It shall be unlawful to sell any prepaid cemetery merchandise unless the ~~organization~~ person holds a valid, current permit at the time such

contract is made. The ~~organization~~ person shall not be entitled to enforce a contract made in violation of the Cemetery Merchandise Trust Act, but the purchaser or his heirs, or legal representative, shall be entitled to recover triple the amounts paid to the ~~organization~~ person with interest thereon at the rate of six percent (6%) per annum under any contract made in violation hereof.

SECTION 17. AMENDATORY Section 20, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 304), is amended to read as follows:

Section 304. The Cemetery Merchandise Trust Act shall be administered by the ~~Board~~ Commissioner. The ~~Board~~ Commissioner is authorized to prescribe reasonable rules and regulations concerning the keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration and enforcement of this law. All prepaid cemetery merchandise contracts must be in writing and no such contract form shall be used without first being submitted to the ~~Board~~ Commissioner.

SECTION 18. AMENDATORY Section 21, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 305), is amended to read as follows:

Section 305. A. Each ~~organization~~ person desiring to accept money or anything of value for prepaid cemetery merchandise shall file an application for a permit with the ~~Board~~ Commissioner and shall at the time of filing such application pay one initial filing fee of Fifty Dollars (\$50.00). The ~~Board~~ Commissioner shall issue a permit upon the receipt of the application and payment of the filing fee, and upon making a finding that the applicant has complied with the rules and regulations as may be established pursuant to the Cemetery Merchandise Trust Act by the ~~Board~~ Commissioner. All such applications shall be signed by the ~~organization~~ person requesting the permit, and shall contain a statement that the applicant will

comply with all the requirements as established pursuant to the Cemetery Merchandise Trust Act. All permits shall expire on the 31st day of December of the year said permit is first issued, unless renewed; permits shall be renewed for a period not to exceed the succeeding December 31 upon the payment of a renewal fee of Fifty Dollars (\$50.00). Late application for renewal of a ~~license~~ permit shall require a fee of double the renewal fee. No application for renewal of a ~~license~~ permit shall be accepted after January 31 of each year. Applicants shall be required to reapply as if they were a new applicant.

B. The ~~Board~~ Commissioner may cancel a permit or refuse to issue a permit or refuse to issue a renewal of such permit for failure to comply with any provisions of the Cemetery Merchandise Trust Act or any rules or regulations promulgated thereto by the ~~Board~~ Commissioner after reasonable notice to the person or permittee and after a hearing if the person or permittee requests a hearing in accordance with Article II of the Oklahoma Administrative Procedures Act.

C. No ~~organization~~ person or permittee shall be entitled to a new permit for a period of one (1) year after cancellation, or refusal by the ~~Board~~ Commissioner to renew a permit, but shall thereafter be issued a new permit upon satisfactory proof of compliance with the Cemetery Merchandise Trust Act, after the expiration of said one (1) year.

D. Any person or ~~organization~~ permittee aggrieved by the actions of the ~~Board~~ Commissioner may appeal therefrom as provided by the Administrative Procedures Act.

SECTION 19. AMENDATORY Section 22, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 306), is amended to read as follows:

Section 306. A. Each ~~organization~~ permittee shall establish and maintain a cemetery merchandise trust fund with a financial

institution having trust powers. A cemetery merchandise trust fund shall at all times be in the custody of a financial institution. Any cemetery merchandise trust funds may be invested, reinvested, exchanged, retained, sold and managed as a part of common trust funds in the manner required by and subject to the ~~Board~~ Commissioner and at the election of the trustee. A copy of each contract or a written notice containing all relevant information regarding such prepaid cemetery merchandise contracts for which deposits are made shall be furnished to the financial institution. The financial institution shall serve as trustee for the purposes of the Cemetery Merchandise Trust Act.

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

C. ~~An organization~~ A permittee entering into a prepaid cemetery merchandise contract shall be entitled to retain all of the purchase price under the prepaid cemetery merchandise contract until it has received an amount equal to thirty-five percent (35%) of the purchase price of the cemetery merchandise, except outer enclosures, sold in a prepaid cemetery merchandise contract. For outer enclosures, the first thirty-five percent (35%) of the retail price

of the outer enclosures collected may be retained by the ~~organization~~ permittee. The remaining sixty-five percent (65%) of the retail price collected for the outer enclosures shall be invested as otherwise provided by this section.

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

E. Annually, as of December 31 of each year, each ~~organization~~ permittee shall determine the wholesale cost for all cemetery merchandise, excluding outer enclosures, covered by a prepaid cemetery merchandise contract for which funds are then held in a cemetery merchandise trust or in an individual merchandise account. If the amount held with respect to a prepaid cemetery merchandise contract exceeds the minimum funding required, the excess shall be paid by the trustee of the cemetery merchandise trust to the ~~organization~~ permittee upon the approval of the Commissioner. In such event, no further deposit shall be required with respect to the prepaid cemetery merchandise contract until such time as the amount held no longer exceeds the minimum funding requirement. If the minimum funding requirement is not satisfied, no amount shall be paid to or withdrawn by the ~~organization~~ permittee and the ~~organization~~ permittee shall continue or shall resume, as the case

may be, making the deposits required by subsection D of this section.

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

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

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

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

3. Certification by an approved manufacturer to the purchaser that the ~~organization~~ permittee has paid the wholesale price of the cemetery merchandise and that the cemetery merchandise will be delivered upon request of the purchaser;

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

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

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

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

SECTION 20. AMENDATORY Section 23, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 307), is amended to read as follows:

Section 307. A. As an alternative to the trust requirements of Section ~~22~~ 306 of this ~~act~~ title, ~~an organization~~ a permittee may purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered prepaid cemetery merchandise contracts. For the purposes of this section, the term "outstanding liabilities" means the gross replacement or wholesale value of the prepaid cemetery merchandise.

B. The bond shall be made payable to the State of Oklahoma for the benefit of the ~~Board~~ Commissioner and all purchasers of prepaid cemetery merchandise. The bond shall be approved by the ~~Board~~ Commissioner.

C. The ~~Board~~ Commissioner shall establish by rule the requirements and guidelines for the bonds required herein.

SECTION 21. AMENDATORY Section 24, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 308), is amended to read as follows:

Section 308. Each ~~organization~~ permittee shall file an annual report with the ~~Board~~ Commissioner on or before March 15 of each year in such form as the ~~Board~~ Commissioner may require, showing the name of the financial institution holding the cemetery merchandise trust fund and the amount of the trust fund under each contract on

the preceding December 31, and also showing the method of determination of the wholesale costs made pursuant to Section ~~22~~ 306 of this ~~act~~ title. Any ~~organization~~ permittee which has discontinued the sale of prepaid cemetery merchandise, but which still has funds deposited in a cemetery merchandise trust fund or surety, shall not be required to obtain a renewal of its permit, but it shall continue to make annual reports to the ~~Board~~ Commissioner until all such funds have been disbursed pursuant to this act. A filing fee of Fifty Dollars (\$50.00) shall accompany each report. If any officer, agent or owner of any ~~organization~~ permittee fails or refuses to file an annual report, or fails or refuses to cause it to be filed within thirty (30) days after the ~~organization~~ permittee has been notified by the ~~Board~~ Commissioner that the report is due and has not been received, he shall be guilty of a misdemeanor and shall be punished as prescribed in Section ~~31~~ 315 of this ~~act~~ title.

SECTION 22. AMENDATORY Section 25, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 309), is amended to read as follows:

Section 309. The ~~Board~~ Commissioner may ~~audit~~ examine each ~~organization~~ permittee so as to ~~approve the organization's~~ determine the compliance of the permittee or not with the Cemetery Merchandise Trust Act. The fee for such ~~audit~~ examination may be paid from the ~~organization's~~ cemetery merchandise trust fund of the permittee. For such purposes, the ~~Board~~ Commissioner is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any ~~organization~~ permittee. The examination may be reduced to writing by the person taking it, and the examiner may make findings as to the condition of each cemetery merchandise trust fund examined. For the purpose of such audits, the ~~Board~~ Commissioner may require any officer, agent or owner of an ~~organization~~ permittee to furnish and submit the

books, records, papers and instruments of the ~~organization~~ permittee to the examiner.

SECTION 23. AMENDATORY Section 26, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 310), is amended to read as follows:

Section 310. In the event the ~~Board~~ Commissioner determines that moneys have been improperly paid by the trustee to the ~~organization~~ permittee during the period covered by the audit, then the ~~Board~~ Commissioner shall order the ~~organization~~ permittee to redeposit to the trust such moneys improperly withdrawn within sixty (60) days.

SECTION 24. AMENDATORY Section 27, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 311), is amended to read as follows:

Section 311. The ~~Attorney General of this state, at the request of the Board,~~ Commissioner may initiate an action to recover payments required to be redeposited to the cemetery merchandise trust pursuant to the Cemetery Merchandise Trust Act or to recover other moneys received or disbursed in violation of the Cemetery Merchandise Trust Act. In addition, the ~~Attorney General~~ Commissioner may seek to enjoin any violation of said act.

SECTION 25. AMENDATORY Section 29, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 313), is amended to read as follows:

Section 313. Whenever any officer of any ~~organization~~ person or permittee refuses to submit the books, records, papers and instruments of such ~~organization~~ person or permittee to the examination and inspection of the ~~Board's~~ assistants or examiners of the Commissioner, or in any manner obstructs or interferes with the examination or audit of its cemetery merchandise trust fund, or refuses to be examined on oath concerning any of the affairs of its cemetery merchandise trust fund, the ~~Board~~ Commissioner may request

~~the Attorney General of this state to~~ institute proceedings for the appointment of a receiver for such ~~organization~~ permittee.

SECTION 26. AMENDATORY Section 30, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 314), is amended to read as follows:

Section 314. Any ~~organization~~ person or permittee which refuses or neglects to establish or maintain a cemetery merchandise trust fund in accordance with the requirements of the Cemetery Merchandise Trust Act within ninety (90) days after demand to do so is made upon it in writing by the ~~Board~~ Commissioner shall be deemed to have forfeited its permit and its corporate franchise. The Attorney General of this state upon the request of the ~~Board shall~~ Commissioner may then begin an action for the appointment of a receiver for such ~~organization~~ permittee and to dissolve the same.

SECTION 27. AMENDATORY Section 32, Chapter 297, O.S.L. 1989 (8 O.S. Supp. 1990, Section 316), is amended to read as follows:

Section 316. There is hereby created the "Cemetery Merchandise Trust Act Revolving Fund". The fund shall consist of all monies received by the ~~Board~~ Commissioner pursuant to the Cemetery Merchandise Trust Act. The fund shall be a continuing fund not subject to fiscal year limitations and shall be subject to the administrative direction of the ~~Oklahoma Banking Board~~ Commissioner. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims submitted to the Director of State Finance. Monies in the fund may be expended for expenses incurred in administering and enforcing the Cemetery Merchandise Trust Act.

SECTION 28. This act shall become effective September 1, 1991.

43-1-5558 MMS