

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☒ FLOOR AMENDMENT

No. 1

☐ COMMITTEE AMENDMENT

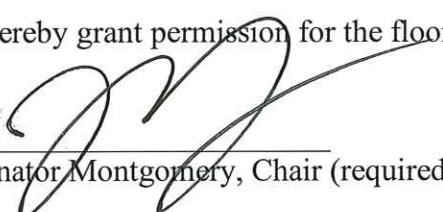
(Date)

I move to amend Senate Bill No. 555 by substituting the attached floor substitute (Request No. 2036) for the title, enacting clause, and entire body of the measure.

Submitted by:


Senator Montgomery

I hereby grant permission for the floor substitute to be adopted.


Senator Montgomery, Chair (required)

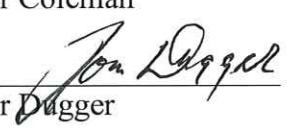
Senator Jett


Senator Garvin


Senator Hamilton


Senator Brooks

Senator Coleman


Senator Dugger

Senator Matthews

Senator Prieto


Senator Woods

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Retirement and Insurance committee majority requires six (6) members' signatures.

Montgomery-RD-FS-SB555
3/20/2023 8:41 AM

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(Floor Amendments Only)

Date and Time Filed:

3-20-23 2:30 pm jd

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE

FOR

SENATE BILL NO. 555

By: Montgomery of the Senate

and

Sneed of the House

FLOOR SUBSTITUTE

An Act relating to prepaid funeral services; amending 36 O.S. 2021, Sections 6121, 6124, 6124.1, 6124.2, 6125.2, 6128, and 6130, which relate to permits, payment for benefits, transfer of ownership, funding of contracts, annual reporting, and penalties; requiring contract for all prepaid funeral services; providing method for filing certain applications; allowing certain fees to be levied by the Insurance Commissioner; modifying permit expiration and renewal provisions; requiring certain report for certain expired permit holders upon reapplication; stating exemption; requiring timely response by permit holder to Insurance Commissioner upon certain inquiry; requiring update of information by electronic means by certain date; establishing certain fine; modifying change of name application for certain permit holder; prohibiting permit holder from operating under name other than name on application; providing for funding of certain contracts; modifying penalties assessed; updating statutory references; updating statutory language; making language gender neutral; and providing an effective date.

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

1 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6121, is
2 amended to read as follows:

3 Section 6121. A. Any individual, firm, partnership,
4 corporation, or association (hereinafter called "organization")
5 which ~~shall accept money or anything of value~~ issues contracts for
6 prearranged, or prepaid funeral services, or funeral service
7 merchandise as defined in the Funeral Services Licensing Act or for
8 ~~any contract providing~~ future funeral services or funeral
9 merchandise at a fixed price or at a cost plus a percentage, or at
10 retail price less a percentage discount, or providing for any
11 special consideration of any kind to be granted or made available to
12 the purchaser or holder of such contract, in this state, under any
13 sales contract, bond, certificate or other form of written document
14 providing for prepaid, discounted or otherwise specially priced
15 funeral or burial benefits or services or funeral merchandise to be
16 delivered at an undetermined future date dependent upon the death of
17 a contracting party or other person designated by a contracting
18 party (hereinafter called "prepaid funeral benefits") shall first
19 obtain a permit from the Insurance Commissioner authorizing the
20 transaction of this type of business before entering into any such
21 contract. It shall be unlawful to ~~sell~~ issue contracts for prepaid
22 funeral benefits unless the seller holds a valid, current permit at
23 the time the contract is made.

1 B. The Insurance Commissioner may deny the issuance of a permit
2 if the organization:

3 1. Makes a material misstatement or misrepresentation in an
4 application for a permit;

5 2. Fraudulently or deceptively obtains or attempts to obtain a
6 permit for another; or

7 3. If any of its officers, owners, partners, or directors are
8 determined by the Commissioner to not be competent, trustworthy,
9 financially responsible, and of good personal and business
10 reputation and character.

11 C. The Insurance Commissioner may approve an application of an
12 organization for a permit and deny the request of the organization
13 to act as a trustor if the organization does not satisfy all
14 qualifications. This shall not hinder an organization from entering
15 into contracts funded by assignments of insurance.

16 D. All permits issued pursuant to the provisions of this
17 section shall be displayed in a conspicuous place at all times on
18 the premises of the organization. No organization may consent to,
19 or allow the use or display of, the permit by a person other than
20 the persons authorized to represent the organization in contracting
21 prepaid funeral benefits.

22 E. The organization shall not be entitled to enforce a contract
23 made in violation of the act, but the purchaser or the heirs of the
24 purchaser, or legal representative, shall be entitled to recover

1 triple the amounts paid to the organization with interest thereon at
2 the rate of six percent (6%) per annum under any contract made in
3 violation hereof.

4 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6124, is
5 amended to read as follows:

6 Section 6124. A. Each organization desiring to ~~accept money or~~
7 ~~anything of value for prepaid funeral benefits or an agreement~~ issue
8 contracts to provide funeral benefits in the future at a fixed or
9 predetermined cost, shall electronically file an application for a
10 permit with the Insurance Commissioner in the manner and form
11 prescribed by the Commissioner, and shall at the time of filing an
12 application pay one initial filing fee of Fifty Dollars (\$50.00) and
13 any other transaction or related fees deemed necessary by the
14 Commissioner. The Insurance Commissioner shall issue a permit upon:

15 1. The receipt of the application and payment of the filing
16 fee;

17 2. Determination that the organization is in good standing as a
18 funeral establishment with the Oklahoma Funeral Board; and

19 3. Making a finding that the organization has complied with the
20 provisions of this act and the rules promulgated under this act
21 pursuant to Section 6121 et seq. of this title by the Insurance
22 Commissioner. All applications shall be signed by the organization
23 requesting the permit, and shall contain a statement that the
24 organization will comply with all the requirements as established by

1 ~~this act~~ Section 6121 et seq. of this title. All permits shall
2 expire annually on ~~December 31~~ of the year the permit is first
3 ~~issued~~ April 30, unless renewed; permits may be renewed for a period
4 not to exceed the succeeding ~~December 31~~ April 30 upon the payment
5 of a renewal fee of Fifty Dollars (\$50.00). ~~Late application for~~
6 ~~renewal of a permit shall require a fee of double the renewal fee.~~
7 ~~No application for renewal of a permit shall be accepted after~~
8 ~~January 31 of each year. The Insurance Commissioner may authorize~~
9 ~~acceptance of a new permit application pursuant to this section~~
10 ~~prior to the expiration of the one-year period upon good cause shown~~
11 The renewal application shall be filed, and the fee shall be paid
12 electronically in a form and manner prescribed by the Commissioner.
13 A permit that expires for failure to submit a renewal application
14 may be reinstated within ninety (90) days after the expiration date
15 following the submission and payment of a renewal application,
16 renewal fee, and any other fees deemed necessary by the
17 Commissioner. The renewal fee for a permit that expires for failure
18 to submit a renewal application shall be double the renewal fee for
19 a timely renewal application. The Insurance Commissioner shall
20 require a permit holder whose permit has been expired for more than
21 ninety (90) days to reapply as if a new applicant and pay an
22 application fee that is double the renewal fee for a timely renewal
23 application and any other fees deemed necessary by the Commissioner.
24 An application submitted after the permit has been expired for more

1 than ninety (90) days shall include a detailed report of services
2 provided in this state during the period of expired permit.

3 B. The Insurance Commissioner may cancel a permit or refuse to
4 issue a permit or refuse to issue a renewal of a permit for failure
5 to comply with any provision of ~~this act~~ Section 6121 et seq. of
6 this title, or any valid rule, which the Insurance Commissioner has
7 promulgated, after reasonable notice to the organization and after
8 hearing if the organization requests a hearing. When the Insurance
9 Commissioner cancels a permit or refuses to issue a renewal of a
10 permit for a violation as provided by this subsection, the Insurance
11 Commissioner shall notify the Oklahoma Funeral Board of the action
12 and the nature of any violations.

13 C. No organization shall be entitled to a new permit for a
14 period of one (1) year after cancellation or refusal by the
15 Insurance Commissioner to issue or renew the permit of the
16 organization, but shall thereafter be entitled to a new permit upon
17 satisfactory proof of compliance with this law after the expiration
18 of the one-year period.

19 D. Any person or organization aggrieved by the actions of the
20 Insurance Commissioner may appeal therefrom as provided by Article
21 II of the Administrative Procedures Act.

22 E. Every permit holder, upon receipt of any inquiry from the
23 Commissioner, shall furnish the Commissioner with an adequate
24

1 response to the inquiry within twenty (20) days from the date that
2 the inquiry is received.

3 F. Each permit holder shall electronically notify the
4 Commissioner of and pay any fees deemed necessary by the
5 Commissioner for any change in address or contact information within
6 thirty (30) days of the change. Submission and payment shall be
7 completed in the form and manner prescribed by the Commissioner.
8 Any submission of a change of legal business name, "doing business
9 as" or assumed name, address, or contract email address received
10 more than thirty (30) days after the change occurred shall be
11 accompanied by a fee of Fifty Dollars (\$50.00).

12 SECTION 3. . AMENDATORY 36 O.S. 2021, Section 6124.1, is
13 amended to read as follows:

14 Section 6124.1. A. No prepaid funeral benefit permit shall be
15 transferable from one organization to another except as provided in
16 this section. The selling organization shall notify the Insurance
17 Commissioner at least forty-five (45) days prior to transfer of
18 ownership. Notification shall be in a form provided by the
19 Insurance Commissioner and shall contain at a minimum the following
20 information:

- 21 1. The name of the acquiring organization;
- 22 2. The date the acquiring organization will take control of the
- 23 funeral establishment;
- 24

1 3. A listing of all unrealized prepaid funeral benefit
2 contracts funded by insurance assignments;

3 4. A listing of all unrealized prepaid funeral benefit
4 contracts funded by trusts;

5 5. A detailed description of existing trusts to include, but
6 not be limited to, the name of the contract holder and the trust
7 value per contract; and

8 6. Any other information the Insurance Commissioner may
9 request.

10 B. The Insurance Commissioner may waive the notice requirement
11 provided for in subsection A of this section upon good cause shown.

12 C. The acquiring organization shall make application for a
13 permit at least thirty (30) days prior to the transfer of ownership.
14 Approval is contingent upon the organization receiving an
15 establishment license as provided for in Sections 395.1 through
16 396.33 of Title 59 of the Oklahoma Statutes. The application shall
17 include an assumption agreement executed by the acquiring
18 organization in a form provided by the Insurance Commissioner.

19 D. The acquiring organization shall be issued a prepaid funeral
20 benefit permit prior to the relinquishment of control of the trust
21 by the selling organization. The acquiring organization shall not
22 access funds held in the trust until authorization has been given by
23 the Insurance Commissioner.
24

1 E. Upon good cause shown, the Insurance Commissioner may deny
2 transfer of the trust from the selling organization to the acquiring
3 organization.

4 F. The Insurance Commissioner may assume the role of acting
5 trust conservator as a means of safeguarding the rights and
6 interests of the individual contract holder. The organization may
7 make application to the Insurance Commissioner to draw down funds
8 upon fulfillment of the prepaid funeral service contract.

9 G. Whenever a prepaid funeral benefit permit holder refuses to
10 submit the books, records, papers and instruments of the prepaid
11 funeral benefit contracts to the examination and inspection of the
12 assistants or examiners of the Insurance Commissioner, or refuses or
13 neglects to establish or maintain a prepaid funeral benefit permit
14 in accordance with the requirements of ~~the Prepaid Funeral Benefits~~
15 ~~Act~~ Section 6121 et seq. of this title within ninety (90) days after
16 a written demand to establish or maintain a prepaid funeral benefit
17 permit is made by the Commissioner, or in any manner obstructs or
18 interferes with the examination of its prepaid funeral benefit
19 contracts or refuses to be examined on oath concerning any of the
20 affairs of its prepaid funeral benefit contracts, the Commissioner
21 may make application for receivership in the manner of a domestic
22 insurer pursuant to Sections 1901 through 1920 of this title, in
23 addition to the applicable penalties and enforcement provisions of
24 this act.

1 H. The Insurance Commissioner may prescribe rules concerning
2 matters incidental to this section.

3 SECTION 4. AMENDATORY 36 O.S. 2021, Section 6124.2, is
4 amended to read as follows:

5 Section 6124.2. A. No prepaid funeral benefit permit holder
6 shall change the name under which the permit holder operates except
7 as provided in this section. ~~The prepaid funeral benefit permit~~
8 ~~holder shall obtain approval from the Insurance Commissioner at~~
9 ~~least thirty (30) days prior to changing the name of the permit~~
10 ~~holder.~~ The application for change of name of a prepaid funeral
11 benefit permit holder shall be filed electronically in a the manner
12 and form provided by the Insurance Commissioner, along with any
13 applicable fees, within thirty (30) days of the legal change and
14 shall contain, at a minimum, the following information:

- 15 1. The name of the permit holder;
- 16 2. The proposed new name of the permit holder; ~~and~~
- 17 3. The date the name change will become effective;
- 18 4. The business address of the permit holder; and
- 19 5. The permit holder's primary email address.

20 B. ~~The Insurance Commissioner may waive the approval~~
21 ~~requirement provided for in subsection A of this section upon good~~
22 ~~cause shown.~~

23 C. The Insurance Commissioner may deny the change of name of
24 the prepaid funeral benefit permit holder upon good cause shown.

1 ~~D. C.~~ Upon approval of a change of name Unless the change of
2 name is denied, the Insurance Commissioner shall issue a prepaid
3 funeral benefit permit with the new name. The prepaid funeral
4 benefit permit holder shall display in a conspicuous place at all
5 times on the premises of the organization all permits issued
6 pursuant to the provisions of this section. No organization may
7 consent to or allow the use or display of the permit by a person
8 other than the persons authorized to represent the organization in
9 contracting prepaid funeral benefits.

10 ~~E. D.~~ The Insurance Commissioner may ~~prescribe~~ promulgate rules
11 concerning matters incidental to this section.

12 E. Permit holders shall not conduct business under any name or
13 at a different business address other than that specified in the
14 permit.

15 SECTION 5. AMENDATORY 36 O.S. 2021, Section 6125.2, is
16 amended to read as follows:

17 Section 6125.2. A. Contracts for prepaid funeral benefits
18 provided for pursuant to Section 6125 of this title may be funded by
19 ~~assignments of life insurance proceeds to the contracting~~
20 ~~organization~~ either:

- 21 1. A standard life or accident insurance policy; or
- 22 2. An individual or group fixed annuity.

23 B. A guaranteed contract for prepaid funeral benefits provided
24 for pursuant to paragraph 1 of subsection B of Section 6125 of this

1 title which is to be funded by ~~assignment of life insurance proceeds~~
2 a standard life or accident insurance policy or an individual or
3 group fixed annuity shall provide that:

4 1. The contract be funded by ~~a life~~ an insurance policy or
5 annuity issued in the face amount of the current purchase price of
6 the contract for prepaid funeral benefits;

7 2. All accrued benefits under the insurance policy or annuity
8 shall become available for disbursement to the organization upon the
9 death of the beneficiary of the prepaid funeral contract;

10 3. The beneficiary shall be the same individual under the
11 contract as the insured under the ~~life~~ insurance policy or annuity;
12 and

13 4. The disbursement of ~~life~~ the insurance policy or annuity
14 proceeds to the organization shall constitute payment in full to the
15 organization for which the services and merchandise are contracted
16 ~~for~~.

17 C. A nonspecified contract for prepaid funeral benefits
18 provided for pursuant to paragraph 2 of subsection B of Section 6125
19 of this title which is to be funded by ~~assignment of life insurance~~
20 ~~proceeds~~ a standard life or accident insurance policy or an
21 individual or group fixed annuity shall provide that:

22 1. The total proceeds paid to the organization under the
23 insurance policy or annuity shall not exceed the actual retail cost
24 of the funeral services and merchandise at the time of delivery;

1 2. Any funds remaining unused shall be refunded to the
2 purchaser or to the personal representative of the purchaser or
3 designated beneficiary; and

4 3. After November 1, 2009, all price lists reflecting the
5 actual retail cost of funeral services and merchandise used at the
6 time of the delivery of services shall be retained for a period of
7 at least six (6) years.

8 D. A violation of this section shall constitute a misdemeanor
9 and shall be punished by a fine ~~of not less than One Hundred Dollars~~
10 ~~(\$100.00)~~ ~~nor~~ more than Five Hundred Dollars (\$500.00) or by
11 imprisonment in the county jail for not less than one (1) month nor
12 more than six (6) months, or by both such fine and imprisonment.

13 SECTION 6. AMENDATORY 36 O.S. 2021, Section 6128, is
14 amended to read as follows:

15 Section 6128. Each organization shall electronically file an
16 annual report with the Insurance Commissioner on or before March 15
17 of each year in such form and manner as the Insurance Commissioner
18 may require, showing the names and addresses of all persons with
19 whom contracts for prepaid funeral benefits have been made prior to
20 December 31 of the preceding year which had not been fully
21 discharged on December 31 and, also showing the date of the
22 contract, the name of the bank or depository holding the trust fund
23 and the amount of the trust fund under each contract on the
24 preceding December 31. Any organization which has discontinued the

1 sale of prepaid funeral benefits, but which still has outstanding
2 contracts, shall not be required to obtain a renewal of its permit,
3 but it shall continue to make annual reports to the Insurance
4 Commissioner until all such contracts have been fully discharged. A
5 filing fee of Fifty Dollars (\$50.00), along with any transaction or
6 other applicable fees, shall accompany each report. If any officer
7 of any organization fails or refuses to file an annual report, or to
8 cause it to be filed within thirty (30) days after he or she has
9 been notified by the Insurance Commissioner that the report is due
10 and has not been received, he or she shall be guilty of a
11 misdemeanor and shall be punished as prescribed in Section 6130 of
12 this title.

13 SECTION 7. AMENDATORY 36 O.S. 2021, Section 6130, is
14 amended to read as follows:

15 Section 6130. A. Any officer, director, agent, or employee of
16 any organization subject to the terms of Sections 6121 through
17 6136.18 of this title who makes or attempts to make any contract in
18 violation of the provisions of Sections 6121 through 6136.18 of this
19 title, or who refuses to allow an inspection of the records of the
20 organization, or who violates any other provision of Sections 6121
21 through 6136.18 of this title, upon conviction, shall be guilty of a
22 felony and shall be punished by imprisonment in the custody of the
23 Department of Corrections for a term ~~of~~ not more than ten (10)
24 years, and a fine not exceeding Ten Thousand Dollars (\$10,000.00),

1 and ordered to pay restitution to the victim. Each violation of any
2 provision of Sections 6121 through 6136.18 of this title shall be
3 deemed a separate offense and prosecuted individually.

4 B. The violation of any provision of Sections 6121 through
5 6136.18 of this title shall constitute a cause for the Oklahoma
6 Funeral Board to revoke, or to refuse to issue or renew, any license
7 issued pursuant to the provisions of Sections 396 through 396.33 of
8 Title 59 of the Oklahoma Statutes. The violation of any provision
9 of Sections 6121 through 6136.18 of this title shall constitute a
10 cause for the Insurance Commissioner to ~~issue a notice and order to~~
11 ~~show cause why the licensee shall not be censured, have the license~~
12 ~~of the licensee suspended or revoked, be subject to, after~~
13 opportunity for hearing, censure, suspend, revoke, or refuse to
14 renew a permit, issue a fine of not less than One Hundred Dollars
15 ~~(\$100.00) and not more than One Thousand Dollars (\$1,000.00), or be~~
16 ~~subject to both such fine and punishment~~ any combination thereof.

17 SECTION 8. This act shall become effective November 1, 2023.
18

19 59-1-2036 RD 3/20/2023 9:30:32 AM
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