

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 555

By: Montgomery

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5
6 AS INTRODUCED

7 An Act relating to prepaid funeral services; amending
8 36 O.S. 2021, Sections 6121, 6124, 6124.1, 6124.2,
9 6128, and 6130, which relate to permits, payment for
10 benefits, transfer of ownership, funding of
11 contracts, annual reporting, and penalties; requiring
12 contract for all prepaid funeral services; providing
13 method for filing certain applications; allowing
14 certain fees to be levied by the Insurance
15 Commissioner; modifying permit expiration and renewal
16 provisions; requiring certain report for certain
17 expired permit holders upon reapplication;
18 prohibiting contracts funded by trust; stating
19 exemption; requiring timely response by permit holder
20 to Insurance Commissioner upon certain inquiry;
21 requiring update of information by electronic means
22 by certain date; establishing certain fine; modifying
23 change of name application for certain permit holder;
24 prohibiting permit holder from operating under name
other than name on application; providing for funding
of certain contracts; modifying penalties assessed;
making language gender neutral; updating statutory
language; and 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 6121, is
22 amended to read as follows:

23 Section 6121. A. Any individual, firm, partnership,
24 corporation, or association (hereinafter called "organization")

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

20 B. The Insurance Commissioner may deny the issuance of a permit
21 if the organization:

22 1. Makes a material misstatement or misrepresentation in an
23 application for a permit;

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

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

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

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

18 E. The organization shall not be entitled to enforce a contract
19 made in violation of the act, but the purchaser or the heirs of the
20 purchaser, or legal representative, shall be entitled to recover
21 triple the amounts paid to the organization with interest thereon at
22 the rate of six percent (6%) per annum under any contract made in
23 violation hereof.

1 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6124, is

2 amended to read as follows:

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

12 1. The receipt of the application and payment of the filing
13 fee;

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

16 3. Making a finding that the organization has complied with the
17 provisions of this act and the rules promulgated under pursuant to
18 this act by the Insurance Commissioner. All applications shall be
19 signed by the organization requesting the permit, and shall contain
20 a statement that the organization will comply with all the
21 requirements as established by this act. All permits shall expire
22 annually on December 31 of the year the permit is first issued April
23 30, unless renewed; permits may be renewed for a period not to
24 exceed the succeeding ~~December 31~~ April 30 upon the payment of a

1 renewal fee of Fifty Dollars (\$50.00). ~~Late application for renewal~~
2 ~~of a permit shall require a fee of double the renewal fee. No~~
3 ~~application for renewal of a permit shall be accepted after January~~
4 ~~31 of each year. The Insurance Commissioner may authorize~~
5 ~~acceptance of a new permit application pursuant to this section~~
6 ~~prior to the expiration of the one-year period upon good cause shown~~
7 The renewal application shall be filed, and the fee shall be paid
8 electronically in a form and manner prescribed by the Commissioner.
9 A permit that expires for failure to submit a renewal application
10 may be reinstated within ninety (90) days after the expiration date
11 following the submission and payment of a renewal application,
12 renewal fee, and any other fees deemed necessary by the
13 Commissioner. The renewal fee for a permit that expires for failure
14 to submit a renewal application shall be double the renewal fee for
15 a timely renewal application. The Insurance Commissioner shall
16 require a permit holder whose permit has been expired for more than
17 ninety (90) days to reapply as if a new applicant and pay an
18 application fee that is double the renewal fee for a timely renewal
19 application and any other fees deemed necessary by the Commissioner.
20 An application submitted after the permit has been expired for more
21 than ninety (90) days shall include a detailed report of services
22 provided in this state during the period of expired permit.

23 B. The Insurance Commissioner may cancel a permit or refuse to
24 issue a permit or refuse to issue a renewal of a permit for failure

1 to comply with any provision of this act, or any valid rule, which
2 the Insurance Commissioner has promulgated, after reasonable notice
3 to the organization and after hearing if the organization requests a
4 hearing. When the Insurance Commissioner cancels a permit or
5 refuses to issue a renewal of a permit for a violation as provided
6 by this subsection, the Insurance Commissioner shall notify the
7 Oklahoma Funeral Board of the action and the nature of any
8 violations.

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

15 D. Any person or organization aggrieved by the actions of the
16 Insurance Commissioner may appeal therefrom as provided by Article
17 II of the Administrative Procedures Act.

18 E. On and after the effective date of this act, no organization
19 shall issue a contract for prepaid benefits funded by a trust
20 account. An organization may continue to operate and fund a trust
21 established prior to the effective date of this act for existing
22 contract holders.

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

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

3 G. 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 as
9 or assumed name, address, or contract email address received more
10 than thirty (30) days after the change occurred shall be accompanied
11 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;

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.

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 within ninety (90) days after a written demand to establish or
16 maintain a prepaid funeral benefit permit is made by the
17 Commissioner, or in any manner obstructs or interferes with the
18 examination of its prepaid funeral benefit contracts or refuses to
19 be examined on oath concerning any of the affairs of its prepaid
20 funeral benefit contracts, the Commissioner may make application for
21 receivership in the manner of a domestic insurer pursuant to
22 Sections 1901 through 1920 of this title, in addition to the
23 applicable penalties and enforcement provisions of this act.
24

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 in a form provided by the Insurance
12 Commissioner and shall contain, at a minimum, the following
13 information:

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

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

22 ~~C.~~ The Insurance Commissioner may deny the change of name of
23 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~~ All contracts for prepaid funeral
18 benefits provided for pursuant to Section 6125 of this title ~~may on~~
19 and after the effective date of this act shall be funded by
20 ~~assignments of life insurance proceeds to the contracting~~
21 ~~organization~~ either:

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

1 B. A guaranteed contract for prepaid funeral benefits provided
2 for pursuant to paragraph 1 of subsection B of Section 6125 of this
3 title ~~which is to be funded by assignment of life insurance proceeds~~
4 issued on and after the effective date of this act shall provide
5 that:

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

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

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

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

19 C. A nonspecified contract for prepaid funeral benefits
20 provided for pursuant to paragraph 2 of subsection B of Section 6125
21 of this title ~~which is to be funded by assignment of life insurance~~
22 ~~proceeds~~ issued on or after the effective date of this act shall
23 provide that:
24

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

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

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

11 D. A violation of this section shall constitute a misdemeanor
12 and shall be punished by a fine ~~of~~ not less than One Hundred Dollars
13 (\$100.00) nor more than Five Hundred Dollars (\$500.00) or by
14 imprisonment in the county jail for not less than one (1) month nor
15 more than six (6) months, or by both such fine and imprisonment.

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

18 Section 6128. Each organization shall file an annual report
19 with the Insurance Commissioner on or before March 15 of each year
20 in such form as the Insurance Commissioner may require, showing the
21 names and addresses of all persons with whom contracts for prepaid
22 funeral benefits have been made prior to December 31 of the
23 preceding year which had not been fully discharged on December 31
24 and, also showing the date of the contract, the name of the bank or
25

1 depository holding the trust fund and the amount of the trust fund
2 under each contract on the preceding December 31. Any organization
3 which has discontinued the sale of prepaid funeral benefits, but
4 which still has outstanding contracts, shall not be required to
5 obtain a renewal of its permit, but it shall continue to make annual
6 reports to the Insurance Commissioner until all such contracts have
7 been fully discharged. A filing fee of Fifty Dollars (\$50.00) shall
8 accompany each report. The Commissioner may assess any additional
9 fees as deemed necessary pursuant to this act. If any officer of
10 any organization fails or refuses to file an annual report, or to
11 cause it to be filed within thirty (30) days after he or she has
12 been notified by the Insurance Commissioner that the report is due
13 and has not been received, he or she shall be guilty of a
14 misdemeanor and shall be punished as prescribed in Section 6130 of
15 this title.

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

18 Section 6130. A. Any officer, director, agent, or employee of
19 any organization subject to the terms of Sections 6121 through
20 6136.18 of this title who makes or attempts to make any contract in
21 violation of the provisions of Sections 6121 through 6136.18 of this
22 title, or who refuses to allow an inspection of the records of the
23 organization, or who violates any other provision of Sections 6121
24 through 6136.18 of this title, upon conviction, shall be guilty of a

1 felony and shall be punished by imprisonment in the custody of the
2 Department of Corrections for a term ~~of~~ not more than ten (10)
3 years, and a fine not exceeding Ten Thousand Dollars (\$10,000.00),
4 and ordered to pay restitution to the victim. Each violation of any
5 provision of Sections 6121 through 6136.18 of this title shall be
6 deemed a separate offense and prosecuted individually.

7 B. The violation of any provision of Sections 6121 through
8 6136.18 of this title shall constitute a cause for the Oklahoma
9 Funeral Board to revoke, or to refuse to issue or renew, any license
10 issued pursuant to the provisions of Sections 396 through 396.33 of
11 Title 59 of the Oklahoma Statutes. The violation of any provision
12 of Sections 6121 through 6136.18 of this title shall constitute a
13 cause for the Insurance Commissioner to ~~issue a notice and order to~~
14 ~~show cause why the licensee shall not be censured, have the license~~
15 ~~of the licensee suspended or revoked, be subject to~~ after
16 opportunity for hearing, censure, suspend, revoke, or refuse to
17 renew a permit, issue a fine ~~of not less than One Hundred Dollars~~
18 ~~(\$100.00) and~~ not more than One Thousand Dollars (\$1,000.00), or ~~be~~
19 ~~subject to both such fine and punishment~~ any combination thereof.

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

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