

1 STATE OF OKLAHOMA

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

3 SENATE BILL 544

By: Montgomery

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5  
6 AS INTRODUCED

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

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

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

24 Section 7106. A. ~~The~~ No owner of a cemetery ~~maintaining~~ shall  
25 maintain a Perpetual Care Trust Fund, or certificate of deposit in  
26 lieu of a Perpetual Care Trust Fund, ~~shall be required to pay to the~~  
27 ~~Insurance Commissioner an annual fee of Two Hundred Dollars~~  
28 ~~(\$200.00), and file a report of each cemetery by March 15 of each~~  
29 ~~year with the Commissioner, showing, for the preceding calendar~~

1 year; unless the owner has received a permit from the Insurance  
2 Commissioner. Initial and renewal permit applications shall be  
3 filed and a Two Hundred Dollar (\$200.00) application fee or any  
4 other fee assessed under this subsection shall be paid  
5 electronically in the form and manner prescribed by the  
6 Commissioner. The permit shall expire on March 15 of each calendar  
7 year unless it is renewed by the permit holder. A permit expired  
8 for failure to submit a renewal application and fee may be  
9 reinstated within ninety (90) days after the expiration date by  
10 electronically filing a renewal application, paying a fee in an  
11 amount that is double the renewal fee, and paying any other fees  
12 assessed in the form and manner prescribed by the Commissioner. The  
13 Commissioner shall require a permit holder whose permit has been  
14 expired for more than ninety (90) days to reapply as if a new  
15 applicant and pay an application fee equal to an amount that is  
16 double the renewal fee, in addition to any other fines imposed. Any  
17 application received after the permit has been expired for more than  
18 ninety (90) days shall include a detailed report of Perpetual Care  
19 Trust Fund services provided in this state during the period that  
20 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 file a report and pay any fees for the preceding year

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1 electronically by March 15 of each calendar year in the manner and  
2 form prescribed by the Commissioner.

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.

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17 59-1-398 RD 2/7/2023 5:17:17 PM