

Stricken language would be deleted from and underlined language would be added to present law.
Act 345 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: S3/7/23
A Bill

SENATE BILL 97

By: Senator D. Wallace
By: Representative Joey Carr

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO REGULATE PREPAID BENEFITS CONTRACTS; TO REDUCE BURDENS ON THE ADMINISTRATION OF PREPAID BENEFITS CONTRACTS; TO CLARIFY CONTROL OF PREPAID BENEFITS CONTRACTS; TO ENHANCE THE ADMINISTRATION OF THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO REGULATE PREPAID BENEFITS CONTRACTS; AND TO ENHANCE THE ADMINISTRATION OF THE ARKANSAS PREPAID FUNERAL BENEFITS LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 19-5-1106(b)(3), concerning the administration of the State Insurance Department Prepaid Trust Fund, is amended to read as follows:

(3) The State Insurance Department Prepaid Trust Fund shall also consist of the assets of the Prepaid Funeral Contracts Recovery Program Fund, there to be administered by the ~~Insurance Commissioner and the Prepaid Funeral Contracts Recovery Program Board as set out in § 23-40-125~~ commissioner.



SECTION 2. Arkansas Code § 23-40-111(b), concerning the cancellation or denial of a permit to sell prepaid funeral benefits under the Arkansas Prepaid Funeral Benefits Law, is amended to add additional subdivisions to read as follows:

(6)(A)(i)(a) Under § 23-40-110(c), a licensee's permit expires on June 1 of each year.

(b) For each licensee that has not renewed a permit by June 1, the commissioner shall send a notice to the licensee that the licensee is required to renew the permit within thirty (30) days of June 1.

(c) If a licensee's permit is not renewed within thirty (30) days of June 1 or is suspended or is revoked, then the licensee shall surrender to the commissioner:

(1) Any existing nonfulfilled prepaid contracts;

(2) Contract files;

(3) Inventory reports;

(4) In-force reports; and

(5) Any other documentation pertaining to the administration of the licensee's prepaid funeral benefits business.

(ii)(a) If the licensee's permit has lapsed, then the licensee shall surrender the documentation under subdivision (b)(6)(A)(i)(c) of this section within thirty (30) days of the date of the expiration of the permit.

(b) If the licensee renews the licensee's permit, then at the time the renewal is approved, the commissioner shall return the documentation to the licensee.

(iii)(a) If the licensee's permit is suspended, then the licensee shall surrender the documentation under subdivision (b)(6)(A)(i)(c) of this section within thirty (30) days of the date the commissioner's order is entered or within thirty (30) days after the deadline to appeal the commissioner's order.

(b) At the end of the period of suspension, if no other action is taken against the licensee, then the commissioner shall return the documentation to the licensee.

(c) If the permit is subsequently revoked,

then the commissioner shall not return any documentation to the licensee.

(iv) If the licensee's permit is revoked, then the licensee shall surrender the documentation under subdivision (b)(6)(A)(i)(c) of this section within thirty (30) days of the date the commissioner's order is entered or within thirty (30) days after the deadline to appeal the commissioner's order.

(B) The licensee's failure to surrender all the documentation under subdivision (b)(6)(A)(i)(c) of this section if there has been a nonrenewal within thirty (30) days of June 1 of a permit, suspension, or revocation, shall subject the licensee to an administrative penalty of:

(i) One thousand dollars (\$1,000) per violation if the licensee fails to comply with the applicable thirty-day timeline to surrender the documentation under this subdivision (b)(6); and

(ii) Five thousand dollars (\$5,000) per violation if the licensee:

(a) Fails to comply with the applicable thirty-day timeline to surrender the documentation under this subdivision (b)(6); and

(b) The commissioner finds willful misconduct or a willful violation of this subdivision (b)(6).

SECTION 3. Arkansas Code § 23-40-119(a), concerning the annual report and annual report fee under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(a) Each organization shall file an annual report and an annual report fee with the Insurance Commissioner on or before March 15 of each year in such form as the commissioner may require, showing ~~the~~:

(1) ~~Names or account~~ The names or contract numbers, or both, of all persons with whom contracts for prepaid funeral benefits have been made ~~prior to~~ before January 1 of that year that had not been fully discharged on January 1;

(2) ~~Date~~ The date of contract;

(3) ~~Name~~ If the prepaid contract is funded by cash or trust,
the:

(A) Name of the trustee holding the trust fund; and

~~(4)-(B)~~ Amount in the trust fund under each contract on the

preceding December 31~~r~~; and

(4) If the prepaid contract is funded by an insurance policy or an annuity, the:

(A) Information required under subdivisions (a)(1) and (2) of this section;

(B) Name of the insurance company or third party administrator holding the insurance policy or annuity;

(C) Insurance policy number;

(D) Date the insurance policy or annuity is issued; and

(E) Amount of the insurance policy or annuity.

SECTION 4. Arkansas Code § 23-40-119(d)(1), concerning the per-contract fee under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(d)(1)(A)(i)(a) Effective for all prepaid funeral benefits contracts executed on and after April 1, 1997, each licensee selling a prepaid funeral benefits contract shall remit to the State Insurance Department a one-time, per-contract fee of not less than five dollars (\$5.00) for each prepaid funeral benefits contract, including any amendments thereto, entered into by the licensee, whether cash or trust funded or funded by an insurance policy or annuity contract, unless the per-contract fees are otherwise eliminated or suspended by the commissioner pursuant to a rule.

(b) However, the per-contract fees once eliminated or suspended by rule of the commissioner may be reinstated by subsequent rule of the commissioner adopted upon a public hearing at a later date upon the commissioner's determination that these fees are essential and necessary to the operation of the Division of Prepaid Funeral Benefits of the State Insurance Department.

(ii) On and after July 1, 2001, the commissioner shall then transfer from each per-contract fee remitted to the department, into the Prepaid Funeral Contracts Recovery Program Fund pursuant to this act a portion of the fee in an amount to be determined by rules of the commissioner and thereafter to be administered by the commissioner ~~with advice from the Prepaid Funeral Contracts Recovery Program Board, pursuant to the provisions of~~ under this subchapter.

(B) The per-contract fees shall be remitted ~~quarterly~~

annually to the department for each ~~quarter~~ month of the calendar year with a ~~quarterly fee~~ the annual report form as prescribed by the commissioner.

~~(C) The fees shall be remitted to the department no later than forty five (45) days after each quarter.~~

SECTION 5. Arkansas Code § 23-40-119(f)(1), concerning unused funds from fees under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(f)(1) Notwithstanding the provisions of § 23-40-107, if there are any unused funds from fees collected from organizations under subsections (c) and (d) of this section not disbursed for personal services, operating expenses, maintenance and operations, and support and improvements for the Division of Prepaid Funeral Benefits, ~~such~~ the excess funds, if any, may be transferred to the Prepaid Funeral Contracts Recovery Program Fund to provide reparations to purchasers of prepaid funeral contracts who have purchased cash-funded, insurance-funded, or annuity-funded prepaid funeral contracts from organizations that have been:

(A) Declared insolvent by a state or federal court of competent jurisdiction; or

(B) Determined by either the commissioner or a state or federal court of competent jurisdiction to have fund account deficiencies.

SECTION 6. Arkansas Code § 23-40-122(a), concerning the cancellation or transfer of a prepaid contract under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(a) A purchaser may cancel or transfer a prepaid contract under this section, whether revocable or irrevocable, or whether cash-funded or funded by insurance or an annuity, at any time before performance of the contract by the seller, under the following conditions:

(1) In the case of a cash-funded or trust-funded prepaid contract:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser is entitled to receive a refund of not less than one hundred percent (100%) of all sums paid to the seller by the purchaser, not to exceed the contract price;

(B) After the death of the contract beneficiary, if the

prepaid contract is revocable, the purchaser or, ~~his or her representative~~ if the purchaser is someone other than the prepaid contract beneficiary, the contract beneficiary's family member or responsible party as determined under § 20-17-102(d), is entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;
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(C) ~~If~~ Before the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid by him or her or proceeds paid to the seller but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or

(D)(i) After the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser or, if the purchaser is someone other than the prepaid contract beneficiary, the contract beneficiary's family member or responsible party as determined under § 20-17-102(d), does not have the right to a refund of any funds paid by the purchaser or proceeds paid to the seller but does have the right to change the provider of the contract services and merchandise to a substitute provider.

(ii) If a substitute provider is used under subdivision (a)(1)(D)(i) of this section, then the seller shall transfer to the substitute provider one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;

(2) In the case of a prepaid contract funded by life insurance:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall have the right to receive not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser, if the purchaser is someone other than the prepaid contract beneficiary, or his or her designee is entitled to receive not less than one hundred percent (100%) of the policy

proceeds paid to the seller, not to exceed the original face amount of the policy; or

(C)(i) Before the death of the contract beneficiary, if the contract is irrevocable, the ~~prepaid contract~~ purchaser shall not have the right to a refund of any funds paid to the seller or the insurance company but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the prepaid contract owner purchaser, the life insurance policy used to fund the prepaid contract or funds in an amount not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, if the contract is irrevocable, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(3) In the case of a prepaid contract funded by an annuity:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser is entitled to receive a refund of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser for the annuity funding the prepaid contract;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser, if the purchaser is someone other than the prepaid contract beneficiary, or his or her designee is entitled to receive not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premium paid by the purchaser; or

(C)(i) Before the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract ~~owner~~ purchaser, the annuity policy used to fund the prepaid contract, which shall be in an amount of not less than one hundred percent (100%) of the annuity value, not to

exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premiums paid by the purchaser.

SECTION 7. Arkansas Code § 23-40-125 is amended to read as follows:

23-40-125. Prepaid Funeral Contracts Recovery Program Fund – Created – ~~Prepaid Funeral Contracts Recovery Program Board – Established.~~

(a) There is established within the State Insurance Department Prepaid Trust Fund an account to be known as the “Prepaid Funeral Contracts Recovery Program Fund”, ~~hereinafter “fund”.~~

(b) No money is to be appropriated from this fund for any purpose except for expenses and payment of claims of the Prepaid Funeral Contracts Recovery Program at the direction of the Insurance Commissioner ~~and the Prepaid Funeral Contracts Recovery Program Board.~~

(c) The fund shall be invested under the direction of the commissioner and the Treasurer of State, with advice from the Chief Fiscal Officer of the State as needed from time to time.

(d)(1) All income derived through investment of the fund, including, but not limited to, fees, interest, and dividends shall be credited as investment income to the fund and deposited therein.

(2) All income derived from fund transfers, subrogation awards, grants, orders or judgments of restitution, refunds, voluntary reimbursements or restitution, and gifts shall be credited as investment income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment except as may be provided in this subchapter.

(f)(1) The fund shall be administered by the commissioner, ~~with advice from the Prepaid Funeral Contracts Recovery Program Board, hereinafter “board”.~~

(2) The purpose of the fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the impairment, insolvency, business interruption, or improper inactivity of a prepaid funeral organization licensed in this state under this chapter.

(g)(1) From the fee for each preneed funeral contract as required by § 23-40-119(d)(1)(A) and from any funds transferred to the fund pursuant to § 23-40-119(f)(1), the commissioner ~~with board advice and consultation~~ shall administer the ~~Prepaid Funeral Contracts Recovery Program~~ program.

(2) The commissioner may suspend fees or unused funds transfers or deposits into the fund at any time and for any period for which the commissioner determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve in compliance with a rule of the commissioner.

(h) The commissioner ~~with board assistance~~ shall adopt procedures governing management of the fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(i)(1) The commissioner may expend moneys in the fund for the following purposes:

(A) To make reimbursements on approved applications; and

(B) To pay related expenses involved in operating the program as permitted under state law.

(2) Reimbursements from the fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with all applicable rules of the fund.

(j)(1) The commissioner, or his or her representatives, shall investigate all applications made and may reject or allow the claims, in whole or in part, to the extent that moneys are available in the fund.

(2) The commissioner may approve one (1) application that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part of a plan to arrange for another licensee to assume the obligations of the licensee being liquidated, if:

(A) The commissioner finds that the plan is reasonable and is in the best interests of the contract beneficiaries; and

(B) The plan is approved by a court.

(k)(1) In the event reimbursement is made to an applicant under this section, the commissioner, on behalf of the state, shall be subrogated in the reimbursed amount and may bring any action the commissioner deems advisable

for the program against any person, including a prepaid licensee.

(2) The commissioner may enforce any claims that the program, on behalf of the state, may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and any other persons that the commissioner deems appropriate. Payments shall be made from the fund for such services.

~~(1)(1) There is created the Prepaid Funeral Contracts Recovery Program Board.~~

~~(2)(A) Members of the board shall consist of no fewer than five (5) nor more than nine (9) members of various licensed Arkansas prepaid funeral organizations, including one (1) consumer member selected from the Arkansas public at large.~~

~~(B) The members of the board shall be selected by member licensees, subject to approval of the commissioner.~~

~~(C)(i) Each member of the board may serve up to two (2) consecutive four-year terms.~~

~~(ii) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to approval of the commissioner.~~

~~(D) In approving selections to the board, the commissioner shall consider, among other things, whether all member licensees are fairly represented.~~

~~(m)(1) The board shall assist the commissioner and come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the laws of this state.~~

~~(2) The fund, as well as board action, shall be is subject to examination and regulation by the commissioner.~~

~~(3)(A)(2)(A) The board commissioner, or his or her representatives, shall prepare and submit to the commissioner each year, not later than one hundred twenty (120) days after the program's fiscal year, a financial report in a form approved by the commissioner and a report of program activities during the preceding fiscal year.~~

(B) Upon request of a licensed prepaid funeral organization in this state, the commissioner shall provide the member prepaid funeral organization with a copy of the report.

~~(n)(m) There shall be no liability on the part of and no cause of~~

action of any nature shall arise against ~~any member of the board,~~ the commissioner, or his or her representatives, agents, or employees for any act or omission by them in the performance of their powers and duties under this chapter, or in its administration, dispensation, handling, or collection of funds for the program.

/s/D. Wallace

APPROVED: 3/21/23