

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 1572

By: Representatives Kerr, Rice, Barnett, Jean, Lea, S. Meeks, D. Altes

By: Senator J. Key

## For An Act To Be Entitled

AN ACT TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS  
AND INVESTMENTS UNDER THE ARKANSAS PREPAID FUNERAL  
BENEFITS LAW; AND FOR OTHER PURPOSES.

## Subtitle

TO REGULATE PREPAID FUNERAL BENEFITS  
CONTRACTS AND INVESTMENTS UNDER THE  
ARKANSAS PREPAID FUNERAL BENEFITS LAW.

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

SECTION 1. Arkansas Code § 23-40-103(10), concerning the definition of a prepaid funeral benefits contract, is amended to read as follows:

(10)(A) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of funeral services or funeral merchandise, including without limitation caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed-upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary. ~~It does not include a prearrangement;~~

(B) "Prepaid funeral benefits contract" or "prepaid contract" includes a nonspecified prepaid contract.

(C) "Prepaid funeral benefits contract" or "prepaid contract" does not include a prearrangement.

SECTION 2. Arkansas Code § 23-40-103, concerning definitions under the



Arkansas Prepaid Funeral Benefits Law, is amended to add an additional subdivision to read as follows:

(14) "Nonspecified prepaid contract" means a prepaid contract that:

(A) Does not select specific funeral merchandise or funeral services when the contract is executed;

(B) Permits the selection of funeral merchandise or funeral services at the time of need; and

(C) Applies contract funds to the cost of funeral merchandise or funeral services selected at the time of need.

SECTION 3. Arkansas Code § 23-40-112 is amended to read as follows:

23-40-112. ~~Sales contracts for prepaid~~ Prepaid funeral benefits ~~contracts.~~

(a)(1) The Insurance Commissioner shall approve forms for ~~sales contracts for~~ prepaid funeral benefits contracts.

(2)(A) A nonspecified prepaid contract shall not be approved unless the nonspecified prepaid contract provides the contract holder with interest or earnings during the term of the nonspecified prepaid contract if the nonspecified prepaid contract is not canceled under § 23-40-122.

(B) If the nonspecified prepaid contract is canceled under § 23-40-122, the seller may retain the interest accumulated on the deposit or the cash surrender value of the insurance policy used to purchase the nonspecified prepaid contract in excess of the amount paid by the purchaser.

(C) The commissioner by rule may establish additional requirements for a nonspecified prepaid contract.

(b)(1) ~~All contracts for sale of prepaid funeral benefits must~~ Prepaid funeral benefits contracts shall be in writing.

(2) and must A prepaid contract for specified benefits shall set forth the specific merchandise and services to be provided by the seller and the prepaid contract price.

(c)(1) All forms ~~of sales contracts~~ for prepaid funeral benefits contracts shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules ~~as~~ prescribed by the commissioner.

(2) No A prepaid contract form shall not be used without prior

approval of the commissioner.

(d)(1) ~~All contracts for sale of prepaid funeral benefits~~ A prepaid contract for specified benefits shall provide that the seller shall furnish to the buyer the merchandise and services as set forth in the prepaid contract at the prepaid contract price, regardless of the cost of the merchandise or services at the date of the beneficiary's death.

(2)(A) However, the seller shall not be required to furnish at the prepaid contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the prepaid contract as cash accommodation items.

(B) The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death.

(C) ~~In the event~~ If the total funds on deposit ~~shall~~ exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his or her estate.

(e) The seller shall not be entitled to enforce a prepaid contract made in violation of this chapter, but the purchaser, or his or her heirs, or his or her legal representative shall be entitled to recover all amounts paid to the seller under any prepaid contract made in violation ~~hereof~~ of this chapter.

(f)(1) This chapter ~~shall~~ does not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with ~~the provisions of~~ this chapter or the designation of an organization licensed pursuant to ~~the provisions of~~ this chapter as beneficiary of a funeral expense or other insurance policy.

(2) Such an assignment, transfer, or designation shall not be deemed to be a prepaid contract.

(g) The prepaid contract shall contain a provision in substantially the following form:

"NOTICE: If this contract is irrevocable and you choose to transfer this contract to a substitute provider, the entire amount of the contract will not be transferred and you may have to pay more to obtain 100% of the services provided for in the contract."

(h) Each seller shall provide advance written notice to the prepaid contract purchaser that the seller intends to procure a single payment whole

life insurance policy or annuity on the contract beneficiary to fund the prepaid funeral benefit contract for less money than the total amount of the cash payment if:

(1) The prepaid funeral benefits contract was originally intended by the contract purchaser to be fully paid in cash; and

(2) The amount of the single premium payment to the insurer by the seller is less than the cash payment provided to the seller by the contract purchaser.

SECTION 4. Arkansas Code § 23-40-115(a)(1)(C)(i), concerning permissible investments in bonds under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(C)(i)(a) Corporate, state, municipal, or political subdivision bonds or obligations ~~which~~ that at the time of purchase are rated ~~AA A~~ A or better by Moody's or ~~AA A~~ A or better by Standard & Poor's rate services.

(b) The Insurance Commissioner by rule may permit the continued investment in a bond purchased in compliance with subdivision (a)(1)(C)(i)(a) of this section that is subsequently downgraded for the time and in the amounts established by the commissioner; or

SECTION 5. Arkansas Code § 23-40-115(b)(1), concerning permissible investments in bonds under the Arkansas Prepaid Funeral Benefits Law, is repealed.

~~(1) Not less than one hundred thousand dollars (\$100,000) of the trust fund shall be invested in investments described in subdivision (a)(1) of this section. However, if the total amount of the trust fund is less than one hundred thousand dollars (\$100,000), then all of the trust fund shall be invested in investments described in subdivision (a)(1) of this section;~~