

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/16/15
A Bill

SENATE BILL 767

By: Senator Rapert
By: Representative Collins

For An Act To Be Entitled

AN ACT TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS UNDER THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO DEFINE A NONGUARANTEED PREPAID CONTRACT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS UNDER THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO DEFINE A NONGUARANTEED PREPAID CONTRACT; AND TO DECLARE AN EMERGENCY.

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

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

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

SECTION 2. Arkansas Code § 23-40-103, concerning the definitions under the Arkansas Prepaid Funeral Benefits Law, is amended to add an additional subdivision to read as follows:

(15) "Nonguaranteed prepaid contract" means a prepaid contract for the selection of merchandise or services that does not guarantee the



price of the merchandise or services at the time of need.

SECTION 3. Arkansas Code § 23-40-112(a)(2), concerning the interest or earnings of a nonspecified prepaid contract, is amended to read as follows:

(2)(A) A Except as provided in subdivision (a)(2)(B) of this section, a nonguaranteed prepaid contract or a nonspecified prepaid contract shall ~~not~~ be approved ~~unless if~~ 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 a nonspecified~~ prepaid contract is canceled under § 23-40-122, the seller may retain the ~~interest~~ accumulated interest 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 nonguaranteed prepaid contract or a nonspecified prepaid contract.

SECTION 4. Arkansas Code § 23-40-112(b), concerning the requirements of a prepaid funeral benefits contract, is amended to add an additional subdivision to read as follows:

(3)(A) A nonguaranteed prepaid contract for specified benefits shall state that the prepaid contract is not guaranteed.

(B) A nonguaranteed prepaid contract may:

(i) State the specific merchandise and services to be provided by the seller; and

(ii) Name the prepaid contract price.

SECTION 5. Arkansas Code § 23-40-112(d)(1), concerning the specified benefits under a prepaid funeral benefits contract, is amended to read as follows:

(d)(1)(A) A seller of a prepaid contract for specified benefits shall ~~provide that the seller shall~~ furnish to the buyer the merchandise and services as ~~set forth~~ stated in the prepaid contract at the prepaid contract price, regardless of the cost of the merchandise or services at the date of

the contract beneficiary's death.

(B) A nonguaranteed prepaid contract shall state that the prepaid contract price is not guaranteed.

SECTION 6. Arkansas Code § 23-40-114(h), concerning the suspension of trust fund disbursements or withdrawals, is repealed.

~~(h) Pending a promptly scheduled hearing, the commissioner or his or her authorized representative may immediately suspend or prohibit disbursements or withdrawals from the trust fund by an organization if the commissioner or his or her authorized representative determines that the organization has violated § 23-40-114(a) in a manner sufficient to subject the organization to delinquency proceedings.~~

SECTION 7. Arkansas Code § 23-40-123 is amended to read as follows:

23-40-123. Delinquency proceedings.

(a) The If it appears upon sufficient grounds or evidence satisfactory to the Insurance Commissioner that a person or a licensee has engaged in or is about to engage in an act or a practice that violates this chapter or a rule adopted or an order issued under this chapter or that the assets or capital of a licensee are impaired or the licensee's affairs are in an unsafe condition, then the commissioner may apply to a court of competent jurisdiction for an order appointing him or her in his or her official capacity as receiver of and directing him or her to conserve, rehabilitate, or liquidate a prepaid funeral benefits contracts licensee upon one (1) or more of the following grounds order summarily a person or a licensee to cease and desist and take control of and administer the prepaid funeral benefits contracts business operations of a licensee that sells prepaid funeral benefits, if the commissioner finds:

(1) It is in the public interest necessary to ensure the orderly and proper handling of outstanding prepaid funeral benefits contracts to protect the interest and rights of active contract holders upon a revocation, suspension, or a lapse of a prepaid funeral benefits permit;

(2) It is necessary to prevent loss, waste, dissipation, theft, or conversion of assets that are required by law to be held and used for the benefit and protection of the purchasers of prepaid funeral benefits contracts under this chapter;

~~(3) The licensee has not maintained trust funds received from contracts in the manner required by seller failed to deposit or remit moneys according to § 23-40-114(a);~~

~~(2) The licensee has allowed its permit to lapse or be revoked in accordance with this chapter and has not made a full and complete accounting and restitution, if appropriate, of all prepaid funeral benefits contracts funds deposited with it;~~

~~(3) The licensee is impaired or insolvent;~~

~~(4) The licensee seller has refused to submit its books, records, accounts, or affairs to reasonable examination by the commissioner misappropriated, converted, illegally withheld or refused to pay on demand any moneys entrusted to the seller that belong to a beneficiary under a prepaid funeral benefits contract; or~~

~~(5) The licensee or any officer, director, or manager of the licensee has seller refused to be examined under oath concerning the licensee's affairs an examination by the commissioner;~~

~~(6) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the licensee to perform its obligations under prepaid funeral benefits contracts sold or assumed by the licensee; or~~

~~(7) The licensee has failed to file its annual report within the time required by law and, after written demand by the commissioner, has failed to promptly give an adequate explanation for such failure.~~

~~(b)(1) Circuit courts shall have original jurisdiction of all delinquency proceedings under this chapter, and any such court is authorized to make all necessary or appropriate orders to carry out the purposes of this chapter If the commissioner determines that immediate action is required to protect the public health, safety, or welfare of the holders of the prepaid funeral benefits contracts, the commissioner may issue an order to a licensee to cease and *desist prepaid funeral benefits contracts operations.*~~

~~(2) An order issued under subdivision (b)(1) of this section shall:~~

~~(A) State the findings that the commissioner relied upon that required emergency action; and~~

~~(B) Provide the licensee with a reasonable amount of time~~

as determined by the commissioner to respond or appeal an order issued under subdivision (b)(1) of this section.

(3) A licensee and any named party immediately shall be served with notice and a copy of the order.

(4) The order issued under subdivision (b)(1) of this section may:

(A) Direct the commissioner or his or her designee to take possession, custody, and control of the property, books, accounts, documents, and other records of the licensee as to its prepaid funeral benefits contracts operations; or

(B) Require the commissioner or his or her designee to limit the disruption to the operations of the licensee by:

(i) Prohibiting a licensee from making a disbursement of withdrawal from the licensee's trust fund;

(ii) Making a disbursement from the trust fund for any valid claim;

(iii) Procuring a substitute provider that is licensed under this chapter to service the prepaid funeral benefits contracts;

(iv) Terminating or modifying a trust fund agreement; or

(v) Authorizing the commissioner to bring and prosecute a suit in the name of the commissioner that may be necessary to collect debts or preserve assets and property for the benefit of creditors and any interested person.

(5) The commissioner shall maintain control of the licensee until the order is modified or vacated by the commissioner.

(6) The commissioner may order a licensee to relinquish any property of the licensee in connection with prepaid funeral benefits contracts to the State Insurance Department.

(c) The commissioner may apply to a court of competent jurisdiction for an order to appoint him or her, in an official capacity, as receiver of the licensee to conserve, rehabilitate, or liquidate a prepaid funeral benefits contract, if:

(1) A licensee:

(A) Has not maintained trust funds from prepaid funeral

benefit contracts under § 23-40-114;

(B) Is impaired or insolvent;

(C) Refuses to submit its books, records, accounts, or affairs to an examination by the commissioner;

(D) Has refused to be examined under oath concerning the affairs of the licensee or any officer, director, or manager of the licensee refuses to be examined; or

(E) Has failed to file the licensee's annual report within the time and according to the insurance laws of this state and does not have an adequate explanation for failure to file the annual report after written demand by the commissioner; or

(2) The commissioner has reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplications or use of trust funds or fraud affecting the ability of the licensee to perform its obligations under prepaid funeral benefits contracts sold or assumed by the licensee.

(d) Circuit courts shall have original jurisdiction of all delinquency proceedings under this chapter, and any such court is authorized to make all necessary or appropriate orders to carry out the purposes of this chapter.

~~(e)~~(e) The venue of delinquency proceedings against a licensee shall be in the Pulaski County Circuit Court.

~~(d)~~(f) Delinquency proceedings instituted ~~pursuant to~~ under this chapter shall not constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a licensee, and ~~no~~ a court shall not entertain a petition for the commencement of such proceedings unless the petition ~~has been~~ is filed in the name of the state on the relation of the commissioner.

~~(e)-(1)~~(g)(1) The commissioner shall commence any such proceeding by application to the court for an order directing the licensee to show cause why the commissioner should not have the relief prayed for in the application.

(2) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the prepaid contracts purchaser, contract beneficiaries, or the public may require.

~~(f)~~(h) An appeal shall lie to the Supreme Court from an order granting

or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of proceedings embraced therein.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that prepaid funeral organizations that are operating in this state may be in jeopardy of suffering from financial distress and may not be able to fulfill its outstanding prepaid funeral contracts; that the threat to an insured's benefits under a prepaid funeral contract is a real possibility if a prepaid funeral organization fails and that may have immense consequences; that by providing the Insurance Commissioner the authority to assist a failing or delinquent prepaid funeral organization, the insured or contract beneficiary is better protected concerning benefits; and that this act is immediately necessary because if a prepaid funeral organization fails, an insured or contract beneficiary is in danger of losing benefits or may be harmed if the prepaid funeral organization fails. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Rapert